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

[2021] SGHC 62

Bankruptcy No 533 of 2018
(Summons No 5249 of 2020)

In the matter of the Bankruptcy Act (Cap 20)

And

In the matter of Tan Boon Kian

Between

Goh Eck Hong

… *Plaintiff*

And

Tan Boon Kian

… *Defendant*

And

In the matter of Sections 98 and 99 of the Bankruptcy Act (Cap 20)

Between

Hamish Alexander Christie (as private trustee in bankruptcy of Tan Boon Kian)

… *Applicant*

And

(1) Tan Boon Kian
(2) Tan Boon Hock
(3) Tan Poh Swan

(4) Tan Seo Teng Felicia

… *Respondents*

JUDGMENT

[Insolvency Law] — [Avoidance of transactions] — [Transactions at an undervalue]
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Tan Siong Thye J
11 February 2021

30 March 2021 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The first respondent, Mr Tan Boon Kian (the "Bankrupt"), was a man of substantial personal net worth and the Group Chairman of the Cairnhill Group of Companies.[1] On 7 March 2018, a bankruptcy application was filed against him.[2] Subsequently, on 19 April 2018, he was declared bankrupt.[3]

2 In the two years preceding the filing of the bankruptcy application, the Bankrupt had transferred substantial sums of money to the following family

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1 Second Affidavit of Hamish Alexander Christie ("Second Affidavit of HAC"), at para 8.

2 Originating Summons (Creditor's Bankruptcy Application) filed on 7 March 2018.

3 ORC 2654/2018.

members: the second respondent, Mr Tan Boon Hock ("TBH"); the third respondent, Mdm Tan Poh Swan ("TPS"); and the fourth respondent, Ms Tan Seo Teng Felicia ("FT"). I shall refer to them collectively as the "Recipients". The details of these transfers (which I shall refer to collectively as the "Transfers") are as follows:

(a) On 18 January 2017, the Bankrupt transferred S$250,000 to his sister, TPS. This was effected by a cheque dated 16 January 2017, which was cleared on 18 January 2017.[4]

(b) On 18 January 2017, the Bankrupt transferred S$150,000 to his brother, TBH. This was effected by a cheque dated 17 January 2017, which was cleared on 18 January 2017.[5]

(c) On 1 November 2016 and 25 January 2017, the Bankrupt transferred a total of S$100,000 to his daughter, FT. This was effected by two cheques for S$50,000 each: a cheque dated 26 October 2016, which was cleared on 1 November 2016, and another cheque dated 17 January 2017, which was cleared on 25 January 2017.[6] This aggregated sum was spent by FT on her wedding banquet at the Ritz-Carlton hotel, which was held on 9 December 2016.[7]

3 By an Order of Court dated 18 December 2018,[8] Mr Hamish Alexander Christie was appointed as the trustee of the Bankrupt's bankruptcy estate (the

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4 Second Affidavit of HAC, at paras 4(c) and 35 and Exhibit HAC-12 at p 263.

5 Second Affidavit of HAC, at paras 4(a) and 20 and Exhibit HAC-7 at p 107.

6 Second Affidavit of HAC, at paras 4(e) and 48 and Exhibit HAC-15 at pp 281–282; Affidavit of Tan Seo Teng Felicia ("Affidavit of FT"), at para 12.

7 Affidavit of FT, at paras 10 and 25.

8 HC/ORC 8381/2018.

"Private Trustee"). The Private Trustee commenced this application ("SUM 5249/2020") for declarations that the Transfers are void under ss 98 and/or 99 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) (the "Act") as the transactions entered into with FT were undervalued and the payments to TPS and TBH were unfair preferences. The Private Trustee also seeks court orders for each of the Recipients to transfer the sums received to the Private Trustee within 14 days of the orders.[9]

The parties' cases

The Private Trustee's case

4 The Private Trustee submits that the Bankrupt was "utterly and indisputably insolvent" at the time of the Transfers.[10]

5 In respect of the moneys transferred by the Bankrupt to TPS and TBH, the Private Trustee's case is that the transfers of S$250,000 and S$150,000 respectively were unfair preferences. TPS and TBH were (and continue to be) unsecured creditors of the Bankrupt and these transfers improved their position in the Bankrupt's bankruptcy regime relative to the other unsecured creditors, thereby giving both of them an unfair preference.[11] Further, TPS and TBH are "associates" of the Bankrupt as they are his siblings. Hence, the Private Trustee submits that the Bankrupt is statutorily presumed to have been influenced by a desire to prefer them over other creditors. The burden is on TPS and TBH to

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9 HC/SUM 5249/2020.

10 Applicant's Written Submissions ("PTS"), at paras 3 and 37.

11 PTS, at para 75.

rebut this presumption on a balance of probabilities.[12] The Private Trustee asserts that they have failed to rebut this presumption.

6 In respect of the moneys transferred to FT, the Private Trustee submits that the transfers amounting to S$100,000 were transactions at an undervalue because they were gifts from the Bankrupt. Alternatively, these transactions were entered into with FT on terms that provided for the Bankrupt to receive no consideration, or the consideration received by the Bankrupt in these transactions was significantly less than the value of the consideration provided by FT.[13] The Private Trustee accepts that the court has the discretion under s 98(2) of the Act to decline to make an order to restore the position to what it would have been if the Bankrupt had not entered into these transactions. However, he contends that the facts of this case do not warrant the court to exercise this discretion.[14]

TPS's and TBH's cases

7 TPS and TBH contend that the transfers to them should not be avoided as the Bankrupt was not insolvent at the time of the transfers to them[15] and that these transfers were not influenced by any desire on the part of the Bankrupt to unfairly favour them.[16]

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12 PTS, at paras 76–85.

13 PTS, at para 89.

14 Applicant's Supplemental Submissions ("PTSS"), at paras 2 and 16–20.

15 Second and Third Respondents' Skeleton Submissions ("TBHS"), at paras 2(a) and 31–61.

16 TBHS, at paras 2(c) and 62–69.

FT's case

8 FT, like TPS and TBH, contends that the Bankrupt was not insolvent at the time of the transfers to her.[17] Further, FT submits that even if the Bankrupt was insolvent at the relevant time, the transfers to her should not be declared void and she should not be required to transfer the S$100,000 she received to the Private Trustee, because such an order would have a "significant and wholly disproportionate effect" on her and would be unjust.[18]

The applicable law

9 As a preliminary point, I note that this application was made under the provisions of the Bankruptcy Act, which has since been repealed. The statutory provisions governing transactions at an undervalue and unfair preferences are now contained in ss 361–365 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA"). These statutory provisions under the Bankruptcy Act and the IRDA are substantially the same. Hence, the issues arising in this application would not have been resolved differently under the equivalent IRDA provisions.

Unfair preferences

10 Where an individual is adjudged bankrupt and he has, at the relevant time (as defined in s 100 of the Act), given an unfair preference to any person (the "recipient"), the private trustee in bankruptcy may apply to the court to make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that unfair preference (s 99(1) (read with s 36) and s 99(2) of the Act).

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17 Fourth Respondent's Skeletal Submissions ("FTS"), at para 4.

18 FTS, at paras 5–12.

11 Where the recipient is an associate of the individual, the relevant time to claw back the moneys is the period of two years prior to the day of the making of the bankruptcy application on which the individual is adjudged bankrupt (s 100(1)(*b*)(ii) of the Act). An "associate" includes a relative of the individual, which in turn includes his brother, sister, and lineal descendant (ss 101(2) and 101(7) of the Act). I shall refer to this two-year period as the "clawback period for unfair preferences".

12 Further, the individual must have either (a) been insolvent at the relevant time of the preference, or (b) become insolvent in consequence of the preference (s 100(2) of the Act).

13 Pursuant to s 99(3) of the Act, an individual gives an unfair preference to the recipient if: (a) the recipient is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities; and (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting the recipient into a position which, in the event of the individual's bankruptcy, will be better than the position the recipient would otherwise have been in.

14 In addition, pursuant to s 99(4) of the Act, the court will only make an order if the individual who gave the preference was influenced, in deciding to give it, by a desire to produce in relation to the recipient the effect of putting the recipient into a position which, in the event of the individual's bankruptcy, will be better than the position the recipient would have been in if the preference had not been given. For convenience, I shall refer to this as the "desire to prefer". Where the recipient was an associate of the individual at the time the unfair preference was given, such a desire to prefer will be *presumed* unless the contrary is shown (s 99(5) of the Act).

Transactions at an undervalue

15 Where an individual is adjudged bankrupt and he has, at the relevant time (as defined in s 100 of the Act), entered into a transaction with any person at an undervalue, the private trustee in bankruptcy may apply to the court to make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction (s 98(1) (read with s 36) and s 98(2) of the Act).

16 The relevant time is the period of five years before the day of the making of the bankruptcy application on which the individual is adjudged bankrupt (s 100(1)(*a*)(ii) of the Act). I shall refer to this five-year period as the "clawback period for undervalue transactions".

17 As is the case with unfair preferences, the individual must have either (a) been insolvent at the relevant time, or (b) become insolvent in consequence of the transaction (s 100(2) of the Act). However, where the transaction was entered into with an associate of the individual, these requirements are *presumed* to be satisfied unless the contrary is shown (s 100(3) of the Act).

18 Section 98(3) of the Act sets out the situations in which an individual will be considered to have entered into a transaction at an undervalue. Two situations are potentially relevant in this case: gifts or transactions on terms that provide for the individual to receive no consideration (s 98(3)(*a*)) and transactions for consideration the value of which (in money or money's worth) is significantly less than the value of the consideration provided by the individual (s 98(3)(*c*)).

Issues to be determined

19 It is not disputed that TPS, TBH and FT are associates of the Bankrupt, as they are his sister, his brother and his daughter respectively.[19] The timing and quantum of the Transfers to the three Recipients are also not disputed.[20] It is, therefore, clear that the Transfers took place within the applicable clawback period for unfair preferences and the applicable clawback period for undervalue transactions.[21]

20 Further, the parties do not dispute that TPS and TBH were creditors of the Bankrupt. The transfers to them *in fact* put them in a better position upon his bankruptcy than they would otherwise have been in (as the moneys they received were partial repayments of the outstanding loans they had extended to the Bankrupt).[22] This suffices to establish an unfair preference within the statutory definition in s 99(3) of the Act.

21 The central issues to be determined in this case are, therefore, as follows:

(a) whether the Bankrupt was insolvent at the time of the Transfers;

(b) whether the Bankrupt was influenced by a desire to prefer when he made the transfers to TPS and TBH;

(c) whether the transfers to FT were transactions at an undervalue; and

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19 PTS, at para 2(b); TBHS, at paras 16 and 63.

20 PTS, at para 2(a); TBHS, at para 11; FTS, at para 4 (read with Affidavit of FT, at para 12).

21 PTS, at paras 72–74 and 86–88.

22 PTS, at paras 17, 20 and 75.

(d) if the transfers to FT were indeed transactions at an undervalue, whether I should nevertheless decline to make the order sought by the Private Trustee in the circumstances of her case.

My decision

Whether the Bankrupt was insolvent at the time of the Transfers

22 I shall first deal with the issue of whether the Bankrupt was insolvent at the time of the Transfers, *ie*, in November 2016 and January 2017.

23 Pursuant to s 100(4) of the Act, an individual is insolvent for the purposes of ss 98 and 99 if either of the following conditions is satisfied: (a) he is unable to pay his debts as they fall due, or (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities. For convenience, I shall refer to these conditions as the "cash flow test" and the "balance sheet test" respectively, even though these terms are more commonly used in relation to companies (see *Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 15 at [64]). It is well established that these two tests are to be read disjunctively, so that the Bankrupt will be held to be insolvent as long as one of the two tests is satisfied (see *Living the Link Pte Ltd (in creditors' voluntary liquidation) and others v Tan Lay Tin Tina and others* [2016] 3 SLR 621 ("*Living the Link*") at [26] and *CCM Industrial Pte Ltd (in liquidation) v Chan Pui Yee* [2016] SGHC 231 at [15]).

24 Before I deal with the application of the two tests for insolvency in the present case, I wish to reiterate that the Bankrupt's insolvency at the time of the transfers to *FT* can be presumed under s 100(3) of the Act unless the contrary is shown. This is because the Private Trustee is seeking to impugn these transfers

on the basis that they were transactions at an undervalue[23] and FT was an associate of the Bankrupt (by virtue of being his daughter). FT, therefore, bears the burden of proving, on a balance of probabilities, that the Bankrupt was *not* insolvent at the time of the transfers to her. In her submissions, FT argues that the Bankrupt was not insolvent when the transfers to her were made, for the reasons set out in the Bankrupt's first affidavit.[24] As these reasons are substantially reproduced in TPS's and TBH's submissions, I shall consider the issue of whether FT has discharged her burden of proving that the Bankrupt was not insolvent together with the issue of whether the Private Trustee has proven, on a balance of probabilities, that the Bankrupt was insolvent for the purposes of the application against TPS and TBH. In this case, these issues are two sides of the same coin.

The cash flow test

25 Under s 100(4)(*a*) of the Act, an individual is cash flow insolvent if he is unable to pay his debts as they fall due. Cash flow insolvency will be established if the individual was "pressed for payments at the material time … and had not been able to pay" (see *Living the Link* at [27], citing *Leun Wah Electric Co (Pte) Ltd (in liquidation) v Sigma Cable Co (Pte) Ltd* [2006] 3 SLR(R) 227 at [8]). For a debt to be taken into account in the cash flow insolvency test, there must have been some form of demand or request for payment: "even debts which are technically due are to be ignored where there is no current indication that the creditors concerned are requiring repayment" (*Goode on Principles of Corporate Insolvency Law* (Kristin van Zweiten gen ed) (Sweet & Maxwell, 5th Ed, 2018) ("*Goode*") at para 4–19, an earlier edition

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23 PTS, at paras 86 and 89.

24 FTS, at para 4.

of which was cited with approval in *Seah Chee Wan and another v Connectus Group Pte Ltd* [2019] SGHC 228 at [107]). In this regard, I find the observations of Prof Ian F Fletcher in *The Law of Insolvency* (Sweet & Maxwell, 3rd Ed, 2002) at para 20-017, which were cited with approval in *Living the Link* at [27], instructive:

> As proof of the debtor company's state of illiquidity, it will suffice to exhibit to the court some evidence – conveniently, often, in the form of correspondence – showing an *unequivocal request for payment made by the creditor*, and an *absence of any* bona fide *dispute as to indebtedness on the part of the debtor.*
>
> [emphasis added]

Although these observations were made in relation to insolvent companies, they are, in my view, equally applicable to insolvent individuals.

26 The Private Trustee submits that the Bankrupt was cash flow insolvent at the time of the Transfers as he was unable to pay his debts as they fell due.[25] The Private Trustee relies on the following facts:

(a) Most of the Bankrupt's assets were illiquid in nature and could not easily be utilised to discharge his debts as they fell due.[26]

(b) TPS and TBH had made several loans to the Bankrupt which had fallen due for repayment but had not been repaid:[27]

(i) a loan of RM2,438,192.69 made by TPS on 1 February 2014, which the Bankrupt was to repay in 100 monthly instalments commencing on 1 March 2014;

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25 PTS, at para 37(b).

26 PTS, at para 66.

27 PTS, at para 67; Second Affidavit of HAC, Exhibit HAC-6, at pp 72–105 and Exhibit HAC-11, at pp 196–261.

(ii) a loan of S$1,250,000 made by TPS on 2 March 2012, which the Bankrupt was to repay by 1 March 2013;

(iii) a loan of S$1,000,000 made by TPS on 7 November 2012, which the Bankrupt was to repay by 6 December 2012;

(iv) a loan of S$239,750 made by TPS on 27 July 2015, which the Bankrupt was to repay by the end of 2015;

(v) a loan of RM4,958,746.10 made by TBH on 1 February 2014, which the Bankrupt was to repay in 100 monthly instalments commencing on 1 March 2014;

(vi) a loan of S$974,189.64 made by TBH on 25 December 2012, which the Bankrupt was to repay in 100 monthly instalments commencing on 1 January 2013; and

(vii) a loan of S$239,750 made by TBH on 27 July 2015, which the Bankrupt was to repay by the end of 2015.

(c) Although the Bankrupt deposed that his family members who had made loans to him, including TBH and TPS, were prepared to give him time to repay them, the Private Trustee submits that it is "hard to believe that TBH and TPS (as well as the rest of the Bankrupt's family members) would not have made any demands for repayment of the loans, especially where clear repayment timelines were stipulated in most of the loans, and the amount outstanding was a substantial sum".[28] In this regard, the Private Trustee also relies on the letter to the Bankrupt from Allen & Gledhill LLP dated 8 March 2017 (the "A&G Letter of Demand"), which stated in "clear and unequivocal" terms the

[28] PTS, at para 69.

Bankrupt's family members' demand for him to make immediate repayment of his debts of RM21,708,144.50 and S$13,314,949.38 within seven days from the date of the letter.[29] The Private Trustee further relies on the minutes of a meeting on 10 May 2019 which record the Bankrupt's statement that his relationship with TPS had gone sour over the years due to money-related matters.[30] Notwithstanding the A&G Letter of Demand, these debts remain substantially unpaid to date.

(d) In their letters to the Bankrupt dated 25 August 2016 and 3 October 2016, Harry Elias Partnership LLP ("HEP") had requested the payment of their bills amounting to an aggregate sum of S$212,136.45. In particular, in their letter dated 3 October 2016, HEP stated that they "look[ed] forward to [the Bankrupt's] early settlement" of their bills.[31] However, these debts remain substantially unpaid to date.

27 On the other hand, TPS and TBH contend that the Private Trustee has failed to discharge his legal burden of proving, on a balance of probabilities, that the cash flow test of insolvency was satisfied at the time of the Transfers. They rely on the following:

(a) In January 2017, none of the Bankrupt's family members were pressing him for payment. They were all prepared to give him time to sell his assets to repay them in full. The first and only time the Bankrupt's family members sent him a formal demand letter for the

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29 PTS, at para 69; Second Affidavit of HAC, Exhibit HAC-18, pp 306–309, at para 9.

30 PTS, at para 69; First Affidavit of Tan Boon Kian ("First Affidavit of TBK"), Exhibit TBK-4, p 68, at para 30.

31 PTS, at para 68; Third Affidavit of Hamish Alexander Christie ("Third Affidavit of HAC"), Exhibit HAC-31, Annex B, at pp 459–464 (see, in particular, p 463 at paras 5–6).

repayment of their loans was in March 2017 (*after* the Bankrupt made the Transfers), in the A&G Letter of Demand. The A&G Letter of Demand was triggered by concerns arising from the impending finalisation of the Bankrupt's divorce settlement with his ex-wife, and no further action was taken by any family member after the A&G Letter of Demand.[32]

(b) The Bankrupt's liabilities to non-family creditors in January 2017 were not significant. There is no evidence that any of the Bankrupt's non-family creditors had pressed him for payment as at January 2017.[33]

(c) The Bankrupt's various contingent liabilities remained contingent up to the point at which the Bankrupt was made a bankrupt, and there were no demands for repayment of these contingent liabilities at the time of the Transfers.[34]

28 On the evidence before me, I am satisfied that, on a balance of probabilities, the Bankrupt was cash flow insolvent at the time of the Transfers. I accept that the Bankrupt's family members might have been prepared to give him time to repay the loans they had extended to him, such that – even though they were technically due – the Bankrupt might not have been pressed to repay the loans from TPS and TBH (as set out at [26(b)] above) as at January 2017. However, HEP's letters dated 25 August 2016 and 3 October 2016 contained unequivocal and repeated requests for the payment of their bills, which were not disputed by the Bankrupt. Further, as at 10 February 2017, two of those bills –

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32 TBHS, at paras 34(a)–34(b).

33 TBHS, at paras 34(c)–34(d).

34 TBHS, at para 34(e).

Bill Number 128672 dated 23 August 2016 (under which the Bankrupt owed HEP S$86,474.99[35]) and Bill Number 129194 dated 28 September 2016 (under which the Bankrupt owed HEP S$60,360.18[36]) – remained entirely unpaid.[37] Furthermore, although the A&G Letter of Demand was sent to the Bankrupt in March 2017, this was very close to the Transfers in January 2017. This indicates that the Bankrupt was already unable to fulfil the demands set out in the A&G Letter of Demand. Thus, contrary to TPS's and TBH's assertions, there is indeed evidence that at least one of the Bankrupt's non-family creditors had pressed him for payment of a significant sum by the time of the Transfers and that he had been unable to pay.

29 Counsel for TPS and TBH argues that the Bankrupt's non-payment of HEP's bills does not show that he was unable to pay his debts as they fell due. He stresses that HEP continued to act for the Bankrupt and did not press him for payment and that it is not unusual for clients not to pay their solicitors' bills promptly, especially since clients may wish to apply for such bills to be taxed. However, I do not find these arguments persuasive. The fact that HEP continued to act for the Bankrupt does not indicate that their letters were merely reminders rather than unequivocal requests for payment. HEP did not press for payment vigorously as HEP were unaware that the Bankrupt was insolvent at that time. If HEP had suspected that their bills would not be paid because the Bankrupt was insolvent or faced financial difficulty, HEP would have insisted that their bills be paid before it would continue to represent the Bankrupt.

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35 Third Affidavit of HAC, Exhibit HAC-31, Annex B, p 459, at para 2.

36 Third Affidavit of HAC, Exhibit HAC-31, Annex B, p 462, at para 2.

37 Third Affidavit of HAC, Exhibit HAC-31, Annex B, p 465, at para 5.

30 The Bankrupt offered no explanation for his non-payment of these bills, other than stating that HEP were "always prepared to give [him] time to pay".[38] Neither the Bankrupt nor any of the Recipients suggested that the reason for non-payment was that the Bankrupt wished to have HEP's bills taxed. A plain reading of HEP's letters belies the Bankrupt's claim that HEP were prepared to give him time to pay these bills.

31 Therefore, applying the cash flow test, I find that the Bankrupt was insolvent at the time of the Transfers in November 2016 and January 2017.

32 In view of this, it is not strictly necessary for me to determine whether the balance sheet test for insolvency is also satisfied. As I have noted at [23] above, the two tests are disjunctive and not conjunctive. The remarks of Steven Chong J (as he then was) in *Living the Link* (at [28]) are particularly apposite in the present case: "no matter how asset rich the company might be, it will still fail the cash flow test and be held to be insolvent under s 100(4) of the [Act] if it is proved that the company was unable to pay its debts as they fell due". These remarks apply equally to individuals. Nevertheless, since the parties have made extensive submissions on the balance sheet test, I shall also address whether the Bankrupt failed the balance sheet test at the time of the Transfers.

The balance sheet test

33 Under s 100(4)(*b*) of the Act, an individual is balance sheet insolvent if the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities. The Private Trustee submits that the Bankrupt was balance sheet insolvent at the time of the Transfers as the

[38] First Affidavit of TBK, at para 23(c).

value of his assets was less than the amount of his liabilities.[39] On the other hand, the Recipients contend that the Bankrupt's net assets at that time "comfortably exceed[ed]" his net liabilities.[40] As this stark divergence in the parties' positions arose from their differing valuations of the Bankrupt's main assets and liabilities,[41] I shall deal with each of these assets and liabilities in turn.

(1) The Bankrupt's assets

34 It is common ground that the Bankrupt's main assets at the time of the Transfers were: (a) his indirect ownership of the Le Meridien luxury hotel in Sentosa (the "Hotel"); (b) the property at 17 White House Park (the "White House Park Property"); (c) the property at 278 Ocean Drive, #07-10 The Coast (the "Ocean Drive Property"); and (d) the property at Apt 1303, Royal Domain Tower, 368 St Kilda Road, Melbourne, Australia (the "Melbourne Property").

(A) THE HOTEL

35 The Bankrupt's key asset was his indirect ownership of the Hotel. At the time of the Transfers, the shareholding structure of the relevant companies that owned the Hotel was as follows. The Bankrupt held a direct 33% shareholding in Maxz Universal Development Group Limited ("MDG"), and he also owned 99.98% of Cairnhill Treasure Investments (S) Pte Ltd ("CTI"), which held a 64% shareholding in MDG. MDG, in turn, was the 94% shareholder of Treasure Resort Pte Ltd ("Treasure Resort"). The primary asset owned by Treasure Resort was the Hotel.[42]

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39 PTS, at paras 37(a) and 61.

40 TBHS, at para 61.

41 PTS, at paras 39–56; TBHS, at paras 39–55.

42 PTS, at para 9; TBHS, at paras 39–40.

(I) VALUE OF THE HOTEL

36 The Recipients contend that the value of the Hotel at the time of the Transfers was S$313m. This is based on the desktop valuation report dated 17 October 2016, which was prepared by HVS on the Bankrupt's request.[43] On the other hand, the Private Trustee argues that a more accurate estimate of the value of the Hotel at the time of the Transfers is closer to S$152.4m.[44] This is the average of the forced sale values estimated by Colliers International Consultancy & Valuation (Singapore) Pte Ltd ("Colliers International") and Knight Frank Pte Ltd ("Knight Frank") in June 2018, on the request of PricewaterhouseCoopers Advisory Services Pte Ltd ("PwC") (as the appointed receivers and managers of Treasure Resort after it went into liquidation). Colliers International's valuation report provided a figure of S$174m–S$185m[45] and Knight Frank's valuation report provided a figure of S$119.85m.[46]

37 Having considered the three valuation reports and the parties' submissions, I am of the view that HVS's valuation does not accurately reflect the actual value of the Hotel at the time of the Transfers in November 2016 and January 2017. While HVS's valuation report was the most contemporaneous (as it was prepared in October 2016 on the request of the Bankrupt), the parameters adopted by HVS significantly limit the accuracy of its valuation for present purposes for the following reasons:

(a) First, HVS's valuation of S$313m was based on discounted cash flow projections for a period of 59 years (*ie*, the entire remaining term

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43 First Affidavit of TBK, Exhibit TBK-1, at pp 17 and 21.

44 PTS, at paras 53–54.

45 Third Affidavit of HAC, Exhibit HAC-25, at p 118.

46 Third Affidavit of HAC, Exhibit HAC-25, at p 166.

of the lease for the Hotel), with the net income of the Hotel projected to increase every year.[47] Therefore, while I accept that valuation is a "specialised field" that involves "matters of professional judgment",[48] I must take cognisance of the fact that HVS's valuation was premised on two highly optimistic and unrealistic assumptions. First, that the Hotel would continue to operate and turn a profit for the entire remaining duration of its lease. Second, that the Hotel would become increasingly profitable over time. Treasure Resort had incurred net losses of S$12.3m in 2014 and S$15.2m in 2015,[49] and its adjusted net current liabilities were S$221.2m in 2014 and S$228m in 2015.[50] Further, Treasure Resort's auditors in December 2016 had highlighted "a material uncertainty that may cast significant doubt about [Treasure Resort's] ability to continue as a going concern".[51] The auditors' estimates for Treasure Resort's net current liabilities were S$181.2m in 2014 and S$188m in 2015.[52] In these circumstances, HVS's two assumptions were unlikely to hold true.[53] In contrast, the valuations prepared by Colliers International and Knight Frank were based on discounted cash flow projections for a period of only ten years. On HVS's own calculations, the discounted cash flow projections for a more realistic period of ten years from 2016/2017 to 2025/2026 would amount to only S$114m.[54]

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47 First Affidavit of TBK, Exhibit TBK-1, at pp 22 and 48–49.

48 TBHS, at para 47.

49 Third Affidavit of HAC, Exhibit HAC-23, pp 61.

50 PTS, at para 48.

51 Third Affidavit of HAC, Exhibit HAC-23, at p 61.

52 Third Affidavit of HAC, Exhibit HAC-23, at p 61.

53 PTS, at para 41(a)–(b).

54 First Affidavit of TBK, Exhibit TBK-1, at p 48. This sum is the total of the discounted cash flow projections from 2016/2017 to 2025/2026, as set out in HVS's table.

(b) Secondly, HVS's valuation did not take into account any capital deduction beyond the forecast reserve for replacement.[55] Therefore, this does not accurately reflect the significant capital expenditure that would likely be incurred in the maintenance and upkeep of the Hotel for the period of 59 years.[56] HVS's valuation also does not appear to have taken into account capital depreciation of the Hotel which had only a remaining lease of 59 years.

38 This view is borne out by the fact that Colliers International's and Knight Frank's valuations of the Hotel's market value (S$205.4m[57] and S$141m[58] respectively), and the eventual sale price of the Hotel (S$156.8m),[59] were considerably lower than HVS's valuation. While these valuations and the sale of the Hotel took place in 2018 (*ie*, more than one year after the Transfers), I disagree with TPS's and TBH's submissions that this renders them "totally irrelevant", or that this is an impermissible application of hindsight.[60] In my view, they provide useful indicators of the Hotel's likely value *at the time of the Transfers* and cast doubt on the accuracy of HVS's valuation, since the value of the Hotel is unlikely to have fallen so dramatically in a short span of one or two years.

39 It is also significant that, even though the Bankrupt had been attempting to sell the Hotel since August 2016 at the earliest[61] and deposed that he was in

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55 First Affidavit of TBK, Exhibit TBK-1, at p 49.

56 PTS, at para 41(c).

57 Third Affidavit of HAC, Exhibit HAC-25, at p 152.

58 Third Affidavit of HAC, Exhibit HAC-25, at p 190.

59 Third Affidavit of HAC, at para 22(d).

60 TBHS, at paras 49–50.

61 First Affidavit of TBK, at para 12.

advanced discussions with several significant interested parties by January 2017,[62] none of these discussions bore any fruit. The Hotel was only sold in 2018 after Treasure Resort had gone into liquidation. The Recipients have not adduced any evidence, such as offers from these purportedly interested parties, to corroborate their submission that HVS's valuation of the Hotel at S$313m was a fair and accurate estimate of its value. While an offer to purchase the Hotel at S$300m was made by Menorah International Pte Ltd ("Menorah") on 12 July 2018,[63] Menorah "failed to even place the requisite deposit for the purchase of the [Hotel] within the stipulated timeframe",[64] and PwC subsequently wrote to the Bankrupt to put on record that there were "indications which suggest that these purportedly interested parties may not be genuine".[65] HVS's valuation of S$313m is therefore uncorroborated by any external evidence of the Hotel's likely value.

40 In so far as the Recipients are concerned that Colliers International's and Knight Frank's valuations may have been affected by Treasure Resort going into liquidation on 23 March 2018,[66] this concern is adequately addressed by relying on the estimates of the Hotel's *market* value, rather than its *forced sale* value (for which separate estimates were provided by both Colliers International and Knight Frank).

41 Therefore, in the absence of any expert evidence or further expert reports on the valuation of the Hotel, I am of the view that a more accurate estimate of

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62 First Affidavit of TBK, at para 13.

63 Third Affidavit of HAC, Exhibit HAC-26, at p 201.

64 Third Affidavit of HAC, Exhibit HAC-26, at p 217.

65 Third Affidavit of HAC, Exhibit HAC-26, at p 219.

66 Third Affidavit of HAC, at para 15.

the Hotel's value at the time of the Transfers is around S$173.2m. This figure is the average of the market value estimates provided by Colliers International and Knight Frank.

(II) VALUE OF THE BANKRUPT'S INDIRECT OWNERSHIP OF THE HOTEL

42 As I have explained at [35] above, the Hotel was owned by Treasure Resort. Thus, any proceeds raised from the sale of the Hotel would first have to be utilised to pay off Treasure Resort's liabilities before being distributed to the Bankrupt. The Private Trustee and the Recipients accept that Treasure Resort's liabilities at the end of 2015 amounted to S$267.6m.[67]

43 For the reasons I have given at [37]–[41] above, I am of the view that the value of the Hotel at the time of the Transfers was S$173.2m, which was less than the aggregate liabilities of Treasure Resort, *ie*, S$267.6m. I, therefore, find that, on the balance of probabilities, there would have been no surplus sale proceeds for distribution to the Bankrupt. Consequently, I agree with the Private Trustee's submission[68] that the value of the Bankrupt's indirect ownership of the Hotel at the time of the Transfers was negligible.

44 In the Bankrupt's further affidavit filed on 5 February 2021,[69] he sought to exhibit the latest available management accounts for MDG (for the financial period from 1 January 2016 to 30 June 2016) and CTI (for the financial year ended 31 December 2014).[70] These management accounts were introduced very close to the hearing of SUM 5249/2020. The Bankrupt's position is that these

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67 PTS, at para 55; TBHS, at paras 54–55.

68 PTS, at para 38 (Bankrupt's Assets, item (a)).

69 SUM 608/2021.

70 Second Affidavit of Tan Boon Kian ("Second Affidavit of TBK"), Exhibit TBK-6.

management accounts show that he was the largest creditor of both MDG and CTI, being owed S$11m by the former and S$8.23m by the latter.[71] While the Bankrupt's further affidavit and the management accounts exhibited therein were in draft form, I allowed them to be introduced into evidence as counsel for the Private Trustee raised no objection to this. Nevertheless, as I have found that the value of the Hotel at the time of the Transfers was less than the aggregate liabilities of Treasure Resort, this new evidence does not affect my conclusion at [43] above. If the sale proceeds from the Hotel would not even have sufficed to pay off Treasure Resort's liabilities, there would not have been any surplus sale proceeds for distribution to the Bankrupt after paying off MDG's and CTI's liabilities.

(B) THE WHITE HOUSE PARK PROPERTY

45 The White House Park Property was sold in or around January 2017 at S$25.5m, as part of the Bankrupt's divorce settlement with his ex-wife.[72] TPS and TBH submit that the value of this asset should be S$3.9m, *ie*, the Bankrupt's share of the balance sale proceeds which he received in February 2017.[73] The Private Trustee, however, contends that the value of this asset should be S$2.69m, *ie*, the Bankrupt's share of the sale proceeds after deductions were made to the Central Provident Fund ("CPF") Board and to the Bankrupt's ex-wife as reimbursement for various arrears.[74]

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71 Second Affidavit of TBK, at para 9.

72 First Affidavit of TBK, at para 14(a).

73 TBHS, at para 56(a).

74 PTS, at para 38 (Bankrupt's Assets, item (b)); Third Affidavit of HAC, at para 27(a) and Exhibit HAC-27 at p 224.

46 I agree with the Private Trustee that the value of the White House Park Property at the time of the Transfers was approximately S$2.69m. In applying the balance sheet test under s 100(4)(*b*), the Bankrupt's prospective liabilities must also be taken into account. As explained in *Kon Yin Tong and another v Leow Boon Cher and others* [2011] SGHC 228 at [40], a prospective liability is a debt which will certainly become due in the future, either on some date which has already been determined or on some date determinable by reference to future events. It includes both future debts, in the sense of liquidated sums due, and non-liquidated claims. In the present case, the refund of the Bankrupt's CPF funds and the reimbursement to the Bankrupt's ex-wife were prospective liabilities which the Bankrupt already had at the time of the Transfers. These deductions must therefore be applied to the Bankrupt's share of the sale proceeds in order to determine the value of the White House Park Property as an asset of the Bankrupt at the material time.

(C) THE OCEAN DRIVE PROPERTY

47 The Ocean Drive Property was purchased at a price of S$3.25m and sold by the Bankrupt's ex-wife in August 2017 at S$3.22m.[75] The mortgage loan outstanding in January 2017 would have been approximately S$2.6m.[76] TPS and TBH submit that, if the Ocean Drive Property had been sold at the time of the Transfers in January 2017, the sale would likely have yielded surplus proceeds in excess of S$600,000, and that the Bankrupt would have been entitled to half of this sum (*ie*, S$300,000) as part of his divorce settlement.[77] The Private Trustee submits that the value of this property at the material time was S$413,604.94, *ie*, the Bankrupt's share of the balance sale proceeds *before*

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75 Third Affidavit of HAC, at para 28 and Exhibit HAC-29 at p 445.

76 First Affidavit of TBK, at para 14(b).

77 TBHS, at para 56(b).

refunding the Bankrupt's CPF funds.[78] Counsel for the Private Trustee explains that this position was taken for two reasons: (a) "to be fair" to the Bankrupt, as the CPF funds were refunded only in August 2017 (after the completion of the sale of the Ocean Drive Property), *ie*, after the Transfers were made; and (b) to avoid a dispute over whether the Bankrupt's refunded CPF funds should be considered the *Bankrupt's* assets at the material time.

48 I do not agree with the Private Trustee's reasons. In my view, even though the Bankrupt's CPF funds were in fact refunded only in August 2017, the amount of the refund must be taken into account in ascertaining the value of the Ocean Drive Property at the time of the Transfers. This is because the refund of the Bankrupt's CPF funds was a prospective liability which the Bankrupt already had at the time of the Transfers. If the Ocean Drive Property had been sold in January 2017, the Bankrupt would have been under an obligation to refund his CPF funds at that time. Further, the Bankrupt's CPF funds could only be used for limited purposes, and it was not argued before me that the Bankrupt's CPF funds should generally be included in his assets for the purpose of the balance sheet test. Therefore, I agree with TPS's and TBH's submissions that the value of the Ocean Drive Property at the time of the Transfers was approximately S$300,000.

(D) THE MELBOURNE PROPERTY

49 The Private Trustee submits that, as the Melbourne Property was sold by the Bankrupt's estate in 2019 for A$1.41m and the Bankrupt's share of the sale proceeds (after deducting Australian capital gains tax) was approximately S$300,000, the value of the Melbourne Property as an asset of the Bankrupt at

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78 PTS, at para 38 (Bankrupt's Assets, item (c)); Third Affidavit of HAC, Exhibit HAC-29, at p 446.

the material time was S$300,000.[79] On the other hand, TPS and TBH contend that the market value of the Melbourne Property was A$1.425m in January 2017 and that, after repaying the outstanding mortgage loan on the property together with interest, a sale of the Melbourne Property at that time would likely have yielded surplus proceeds of more than A$1m. The Bankrupt would have been entitled to half of that sum (*ie*, A$0.5m) under his divorce settlement.[80]

50 I agree with the Private Trustee that the value of the Melbourne Property at the time of the Transfers was closer to S$300,000, *ie*, the Bankrupt's share of the sale proceeds after deducting Australian capital gains tax. At the time of the Transfers, Australian capital gains tax was a prospective liability which the Bankrupt would have to discharge upon the sale of the Melbourne Property. Hence, it should be taken into account in applying the balance sheet test.

(E) SUMMARY OF THE BANKRUPT'S ASSETS

51 Taking all the above sums together, I estimate the value of the Bankrupt's assets at the time of the Transfers to be approximately S$3.29m.

Asset	**Value**
Indirect ownership of the Hotel	Negligible
White House Park Property	S$2,690,000
Ocean Drive Property	S$300,000
Melbourne Property	S$300,000
Total	**S$3,290,000**

79 PTS, at para 38 (Bankrupt's Assets, item (d)); Third Affidavit of HAC at para 29(b) and Exhibit HAC-30 at pp 448–452.

80 TBHS, at para 56(c).

(2) The Bankrupt's liabilities

52 It is common ground that the Bankrupt had the following current and contingent liabilities at the time of the Transfers:

Liability	**Value (rounded to the nearest S$)**
Debts owed to the Bankrupt's family members, as set out in the A&G Letter of Demand	RM21,708,144.50 (S$6,957,739) and S$13,314,949[81]
Other debts owed to the Bankrupt's family members	US$2,750,000 (S$3,795,000) and S$2,000,000[82]
Debts owed to HEP under Bill Number 128672 (dated 23 August 2016) and Bill Number 129194 (dated 28 September 2016)	S$146,835[83]
Contingent debt owed to UOB arising from the Bankrupt's liability as a mortgagor for a debt owed by the Bankrupt and his ex-wife	S$3,477,804[84]

81 PTS, at para 38 (Bankrupt's Liabilities, item (a)); TBHS, at para 58 (items (a) and (b)).

82 PTS, at para 38 (Bankrupt's Liabilities, item (b)); TBHS, at para 58 (items (g) and (h)).

83 PTS, at para 38 (Bankrupt's Liabilities, items (c) and (d)); TBHS, at para 58 (items (e) and (f)).

84 PTS, at para 38 (Bankrupt's Liabilities, item (f)); TBHS, at para 58 (item (j)). Owing to a typographical error, the numbering from (g)–(i) is repeated at para 58 of TBHS. The items after "Contingent liabilities (arising from personal guarantees)" have therefore been renumbered as (j)–(o).

Contingent debt owed to UOB arising from the Bankrupt's liability as a personal guarantor for facilities extended to Cairnhill Group Holdings Pte Ltd ("CGH")	S$434,210[85]
Contingent debt owed to UOB arising from the Bankrupt's liability as a joint and several guarantor for facilities extended to TCH Holding Pte Ltd	S$758,750[86]
Contingent debt owed to UOB arising from the Bankrupt's liability as a personal guarantor for facilities extended to TDS Investment Pte Ltd	S$1,778,000[87]
Sub-Total	**S$32,663,287**

53 In addition, the Private Trustee includes the following contingent debts among the Bankrupt's liabilities at the time of the Transfers:

(a) A contingent debt of S$205.74m owed to Malayan Banking Berhad ("Maybank") arising from the Bankrupt's liability as a personal guarantor for facilities extended to Treasure Resort.[88] I shall refer to this as the "Maybank-Treasure Resort Contingent Debt".

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85 PTS, at para 38 (Bankrupt's Liabilities, item (g)); TBHS, at para 58 (item (k)).

86 PTS, at para 38 (Bankrupt's Liabilities, item (h)); TBHS, at para 58 (item (l)). This appears to have been double-counted at para 58 of TBHS (item (d)).

87 PTS, at para 38 (Bankrupt's Liabilities, item (i)); TBHS, at para 58 (item (m)).

88 PTS, at para 38 (Bankrupt's Liabilities, item (j)); Second Affidavit of HAC, Exhibit HAC-20, at p 416.

(b) A contingent debt of S$432,916 owed to NAFA System Services Pte Ltd ("NAFA") arising from the Bankrupt's liability as a guarantor for NAFA's cleaning fees that were chargeable to Treasure Resort.[89] I shall refer to this as the "NAFA-Treasure Resort Contingent Debt".

(c) A contingent debt of S$30m to Maybank arising from the Bankrupt's liability as a personal guarantor for facilities extended to CGH.[90] I shall refer to this as the "Maybank-CGH Contingent Debt".

54 On the other hand, TPS and TBH submit that the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt should be excluded from the Bankrupt's liabilities as they were Treasure Resort's liabilities and would, therefore, have already been deducted in computing the Bankrupt's net assets (*ie*, in valuing the Bankrupt's indirect ownership of the Hotel at the time of the Transfers).[91] This submission is premised on the assumption that the value of the Hotel at the time of the Transfers was S$313m, following HVS's valuation.[92] As for the Maybank-CGH Contingent Debt of S$30m, this sum was not included in the Recipients' calculations and was also not addressed in their submissions.

55 Further, with regard to the valuation of these contingent liabilities, counsel for the Private Trustee submits that the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt owed by the Bankrupt should be valued in full because Treasure Resort was deeply in the

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89 PTS, at para 38 (Bankrupt's Liabilities, item (l)); Second Affidavit of HAC, Exhibit HAC-20, at pp 431–434.

90 PTS, at para 38 (Bankrupt's Liabilities, item (k)); Second Affidavit of HAC, Exhibit HAC-20, at p 408 (para 3(b)).

91 TBHS, at para 59.

92 TBHS, at paras 54 and 61.

red at the time of the Transfers and the likelihood of the Bankrupt's personal guarantees being called upon was, therefore, a certainty. In response, counsel for TPS and TBH argues that the value of the Bankrupt's contingent liabilities should be substantially discounted because there was no reason for the Bankrupt to think that there was a real risk that his various guarantees would be called upon in January 2017.

56 There are, therefore, two issues in dispute: (a) whether the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt should be *included* among the Bankrupt's liabilities at the time of the Transfers; and (b) whether the Bankrupt's contingent liabilities should be *valued* in full, or instead should be discounted to reflect the possibility that the relevant contingencies might not occur. These issues overlap, but I shall deal with them in turn for completeness.

(A) THE BANKRUPT'S CONTINGENT DEBTS AS A PERSONAL GUARANTOR FOR TREASURE RESORT

57 I agree with the Private Trustee's submission that the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt should be included among the Bankrupt's liabilities at the time of the Transfers. As I have found (at [41] above) that the value of the Hotel at the time of the Transfers was only around S$173.2m, the sale proceeds of the Hotel would not have been sufficient for Treasure Resort to discharge its liabilities to both Maybank and NAFA (which amounted to a total of approximately S$206.17m). Thus, the Bankrupt's personal guarantees under the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt would have been called upon.

(B) VALUATION OF THE BANKRUPT'S CONTINGENT LIABILITIES

58 I turn now to consider how the Bankrupt's contingent liabilities should be valued. As explained in *Goode* at para 4–39, there are two main approaches to valuing a contingent liability:

> One is to say that if there is a more than even chance of the contingency occurring, the liability should be taken as the present value of the contingent liability, for example, the amount of a guaranteed debt discounted to take account of its futurity. On this approach, a contingent liability with an 80% chance of accrual, although discounted for futurity would not be discounted for the 20% chance that it would not accrue, whilst a liability with a 50% chance of accrual would be disregarded altogether. An alternative approach is to value the contingent liability at the percentage of likelihood of its occurrence, so that if the likelihood were 80% the liability would be taken in at the present value of 80% of the full liability, whilst a contingent liability with a 10% chance of accrual would be estimated at the present value of 10% of the full liability.

59 However, later in the same paragraph, *Goode* observes that:

> Neither of these approaches seems fully satisfactory. The first seems to set the threshold of likelihood too high, while the second is contrary to prevailing practice, which is to value the contingency in full (less any discount for futurity) if it will probably occur and is capable of valuation and disregard it altogether in other cases. It is thought that *the question to be asked is whether there is a real prospect that the contingency will occur, in which case it should be brought in at its present value without further discount for the possibility that it may not accrue.*
>
> [emphasis added]

60 I agree with the view expressed in *Goode* that neither of the two approaches is fully satisfactory. The first approach seems overly mechanical, whereas the second approach would be highly speculative. In my view, the preferable approach (as *Goode* suggests) is to include the full value of contingent debts where there is a *real prospect* that the relevant contingency will occur. This seems to me to strike the most appropriate balance between

giving effect to the statutory mandate to take into account the debtor's contingent liabilities and reflecting the practical reality that contingent liabilities with only a remote possibility of accrual should not simply be taken at face value for the purpose of the balance sheet test.

61 I agree with the Private Trustee's submission that the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt owed by the Bankrupt should be valued in full. In this case, the relevant contingency is Treasure Resort defaulting on its debts of S$205.74m to Maybank and S$432,916 to NAFA. The Hotel was Treasure Resort's primary asset and I have found that the sale proceeds of the Hotel (of around S$173.2m) would not have been sufficient to discharge Treasure Resort's liabilities to both Maybank and NAFA (see [57] above). Furthermore, Treasure Resort was experiencing serious financial difficulties and faced a high risk of insolvency by December 2016 (see [37(a)] above). In these circumstances, there was indeed a real prospect that this contingency would occur and that the Bankrupt's personal guarantees would be called upon. Consequently, the Bankrupt's contingent liabilities under the Maybank-Treasure Resort Contingent Debt and the NAFA-Treasure Resort Contingent Debt should be valued in full, *ie*, S$206.17m.

62 The parties made no submissions before me regarding the likelihood of the Bankrupt's personal guarantees for the liabilities of the other companies (*ie*, CGH, TCH Holding Pte Ltd and TDS Investment Pte Ltd) being called upon. Hence, I am not in a position to evaluate whether there was a real prospect, at the time of the Transfers, that these other companies would have defaulted on their debts. I, therefore, make no finding on the appropriate valuation of the contingent debts owed to UOB arising from the Bankrupt's liability as a guarantor for facilities extended to CGH, TCH Holding Pte Ltd, and TDS Investment Pte Ltd, and the Maybank-CGH Contingent Debt. However, even if

the Bankrupt's contingent liabilities in respect of these other companies are valued at *zero* (which is extremely unlikely), the Bankrupt's total liabilities would have been approximately S$235.87m at the time of the Transfers:

Liability	**Value (rounded to the nearest S$)**
Debts owed to the Bankrupt's family members, as set out in the A&G Letter of Demand	RM21,708,144.50 (S$6,957,739) and S$13,314,949
Other debts owed to the Bankrupt's family members	US$2,750,000 (S$3,795,000) and S$2,000,000
Debts owed to HEP under Bill Number 128672 (dated 23 August 2016) and Bill Number 129194 (dated 28 September 2016)	S$146,835
Contingent debt owed to UOB arising from the Bankrupt's liability as a mortgagor for a debt owed by the Bankrupt and his ex-wife	S$3,477,804
Contingent debt owed to Maybank arising from the Bankrupt's liability as a personal guarantor for Treasure Resort's liabilities	S$205,740,857
Contingent debt owed to NAFA arising from the Bankrupt's liability as a guarantor of Treasure Resort's liabilities	S$432,916
Total	**S$235,866,100**

(C) SUMMARY OF THE BANKRUPT'S LIABILITIES

63 Therefore, I estimate the amount of the Bankrupt's liabilities at the time of the Transfers to be at least S$235.87m.

(3) Conclusion on the balance sheet test

64 As the amount of the Bankrupt's liabilities (at least S$235.87m) far exceeded the value of his assets (approximately S$3.29m) at the time of the Transfers, I find that the Bankrupt was also balance sheet insolvent at the material time.

Whether the Bankrupt was influenced by a desire to prefer TPS and TBH

65 I shall now consider whether the transfers to TPS and TBH should be avoided as unfair preferences. As I have explained at [20] above, TPS and TBH were creditors of the Bankrupt and the transfers put them in a better position upon his bankruptcy than they would otherwise have been in. This is sufficient to establish that these transfers were unfair preferences under s 99(3) of the Act. However, the court will only make an order in respect of these unfair preferences if the Bankrupt was influenced by a desire to prefer in making the transfers (s 99(4) of the Act). Since TPS and TBH are associates of the Bankrupt, s 99(5) of the Act applies such that the Bankrupt is *presumed* to have been influenced by a desire to prefer them unless the contrary is shown. The burden of proving that the Bankrupt was not influenced by such a desire thus lies on TPS and TBH.

66 TPS and TBH argue that the following facts show that the Bankrupt lacked the requisite desire to place them in a better position in the event of his bankruptcy:[93]

(a) By January 2017, the Bankrupt was in advanced discussions with a number of potential buyers for the Hotel. As the Bankrupt understood it, the sale of the Hotel would have cleared all his debts, leaving him with a significant surplus.

(b) The possibility that he might be facing bankruptcy never even crossed his mind, and he was confident about the future.

(c) The Bankrupt also made sizeable payments to discharge some of Treasure Resort's debts in January and February 2017, when he had no legal obligation to do so.

67 Counsel for TPS and TBH, relying on the Bankrupt's affidavit evidence,[94] further argues that if the Bankrupt had been motivated by a desire to prefer his family members, he would also have made payments to the other family members to whom he owed moneys (including his own mother), and not only to TPS and TBH.

68 On the other hand, the Private Trustee submits that the Bankrupt, TPS and TBH have failed to rebut this statutory presumption, for the following reasons:[95]

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93 TBHS, at para 66.

94 First Affidavit of TBK, at para 33.

95 PTS, at paras 77–85.

(a) It is not necessary to establish that the individual knew or believed that he was insolvent at the time of the preference. It suffices that he was influenced by the desire to put a creditor in a position which, in the event of the individual's bankruptcy, would be a better position than if no payment was made. The fact that bankruptcy never crossed the Bankrupt's mind would, therefore, be irrelevant for the purpose of establishing that he was not influenced by a desire to prefer TPS and TBH.

(b) The Bankrupt's admission that he was "very grateful" to TPS and TBH as the family members who had been the most financially supportive of him and that he had made the transfers to "show [his] appreciation to them by making some repayments to them",[96] indicates the Bankrupt's desire to prefer the individuals who had supported him most in the past over his other creditors.

(c) It is disingenuous for the Bankrupt to state that he had no legal obligation to make the sizeable payments to discharge Treasure Resort's debts in January and February 2017. By the Bankrupt's own admission, the largest payment made by the Bankrupt for this purpose was the payment of a sum of S$2.34m to Sentosa Development Corporation ("SDC") on 8 February 2017.[97] This sum was paid because the Bankrupt had, on 27 January 2017, undertaken to pay and personally guarantee the payment of this sum to SDC from the sale proceeds of the White House Park Property.[98] Thus, the Bankrupt would have breached his own legal obligations if he had not made this payment to SDC.

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96 First Affidavit of TBK, at para 32.

97 First Affidavit of TBK, at para 34.

98 Third Affidavit of HAC, at para 27(b) and Exhibit HAC-28, p 226, at paras 4–8.

69 In my view, TPS and TBH have failed to rebut the statutory presumption that the Bankrupt was influenced by a desire to prefer. In order to rebut this presumption, TPS and TBH must show, on a balance of probabilities, that the transfers were not influenced *at all* by any desire on the Bankrupt's part to place them in a preferential position (see *Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [36]). They have not succeeded in doing so in the present case.

70 TPS and TBH are correct to point out that the court must look at the subjective desire of the debtor to determine whether he positively wished to improve the creditor's position in the event of his own insolvency. The requisite desire may be proved by direct evidence or its existence may be inferred from the existing circumstances of the case (see *DBS Bank Ltd v Tam Chee Chong and another (judicial managers of Jurong Hi-Tech Industries Pte Ltd (under judicial management))* [2011] 4 SLR 948 ("*Tam Chee Chong*") at [22] and [26]). However, the Bankrupt's direct evidence on affidavit shows that he *was* influenced by a subjective desire to improve TPS's and TBH's absolute positions at the time of the transfers. I agree with the Private Trustee's submission that the Bankrupt made the transfers to TPS and TBH to show his appreciation and gratitude to them. TPS and TBH are the family members who had been the most financially supportive of him. This evinces a clear desire on the Bankrupt's part to place them in a preferential position.

71 In this regard, the facts of the present case are similar to those of *Tam Chee Chong*, where the chairman of the insolvent company had testified that the company had given a charge to one of its creditors (*viz*, DBS) because DBS "had been very supportive of" the company. In those circumstances, the Court of Appeal found that the trial judge had been "perfectly justified" in finding that

the company's decision to grant the charge was "influenced by a desire to give DBS what it wanted because it had been good to the [company]" (at [44]).

72 Even if the possibility that he might be facing bankruptcy never crossed the Bankrupt's mind, which I find difficult to accept, this does not negate a finding that the Bankrupt was influenced by a desire to prefer. As the Court of Appeal explained in *Coöperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International, Singapore Branch) v Jurong Technologies Industrial Corp Ltd (under judicial management)* [2011] 4 SLR 977 at [31]–[32]:

> [A]s was pointed out by Lee Eng Beng in 'The Avoidance Provisions of the Bankruptcy Act 1995 and their Application to Companies' (1995) SJLS 597 at 616, a literal interpretation of s 99(4) of the [Act] provides that 'the desire to prefer relates to the producing of the effect of a preference and *has nothing to do with knowledge of one's own insolvency*'. In other words, s 99(4) *only requires that there must be a desire on the debtor's part to improve the creditor's absolute position at the time the preference is granted* (which would be the case if, *eg*, the creditor obtains cash payment or a security interest – from that point onwards, he is better off, regardless of what happens afterwards to the debtor).
>
> … As Lloyd J pointed out in *Re Conegrade Ltd* [2003] BPIR 358 at 372H, if the debtor did desire a particular result, *it matters not that it thought that bankruptcy was a remote risk*.
>
> [emphasis in original omitted; emphasis added in italics]

Thus, while I would not go so far as to say that the Bankrupt's knowledge of his insolvency (or of the likelihood of his insolvency) is *irrelevant* in determining whether he was influenced by a desire to prefer, it is not *necessary* for this purpose.

73 Further, little to no weight should be placed on the fact that the Bankrupt paid a sum of S$2.34m to SDC on 8 February 2017. Based on the evidence before me, the Bankrupt was under a legal obligation to make this payment to

SDC from the sale proceeds of the White House Park Property. Similarly, I am unable to agree with the submission made by counsel for TPS and TBH that, if the Bankrupt had been motivated by a desire to prefer his family members, he would have made payments to his other family members as well. In my view, the fact that the Bankrupt did not prefer *all* of his family members does not assist TPS and TBH in showing that the Bankrupt was not influenced by a desire to prefer *them*.

74 Therefore, TPS and TBH have failed to rebut the statutory presumption that the Bankrupt was influenced by a desire to prefer them in making the transfers.

Whether the transfers to FT were transactions at an undervalue

75 I shall now address the question of whether the transfers to FT amounting to S$100,000 were transactions at an undervalue.

76 The Private Trustee submits that the transfers to FT were gifts made by the Bankrupt to her, or otherwise transactions entered into by the Bankrupt with FT on terms that provided for him to receive no consideration (under s 98(3)(*a*) of the Act). In the alternative, the Private Trustee contends that the transfers were transactions in which the value of the consideration received by the Bankrupt was significantly less than the value of the consideration provided by him (under s 98(3)(*c*) of the Act).[99]

77 On the other hand, FT raises two arguments to support her position that the transfers to her were not gifts:

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[99] PTS, at para 89.

(a) In her affidavit, FT argued that the transfers cannot be categorised as gifts because the Bankrupt gained something personally from paying it. FT's wedding was an important way for the Bankrupt to build goodwill and further develop his relationships with his business network.[100]

(b) FT also argues that the transfers were not gifts of moneys for FT to keep, but instead were paid and used purely for the express purpose of paying for FT's wedding expenses.

78 In my view, it is clear that the transfers to FT were gifts. FT's arguments do not assist her in showing that the transfers were not gifts: the fact that a gift-giver gains something personally from giving it does not make it any less a gift, and gifts are not limited to moneys for the recipient to keep. As the Private Trustee emphasises,[101] there is also no evidence to suggest that the transfers were made on the *condition* that FT had to invite the Bankrupt's business associates. Indeed, on FT's own account, she was "like any other girl, who out of filial piety, held a grand wedding banquet for her father's sake, and [the Bankrupt], like any other father, offered to, and did, pay for a substantial portion of the wedding banquet costs".[102] The transfers to FT were, therefore, undervalue transactions under s 98(3)(*a*) of the Act.

Whether the court should decline to make the order sought against FT

79 Notwithstanding that the transfers to FT were undervalue transactions, the court has a discretion under s 98(2) of the Act not to make an order restoring

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100 FT, at para 17.

101 PTS, at para 93.

102 FT, at para 25.

the position to what it would have been if the Bankrupt had not entered into these transactions. This is implicit in the court's power under s 98(2) to "make such order *as it thinks fit*" [emphasis added] (see *Living the Link* at [72] and [75]).

80 The Private Trustee does not dispute that the court retains such a discretion. However, the Private Trustee submits that this discretion ought to be exercised sparingly and only in exceptional circumstances. Thus, the court should not exercise this discretion in the present case.[103]

81 On the other hand, FT submits that she should not be required to transfer the sum of S$100,000 to the Private Trustee. FT argues that her situation is similar to that of the respondents in the English cases of *Trustee in Bankruptcy of Gordon Robin Claridge v Claridge and another* [2011] All ER (D) 27 (Aug) ("*Claridge*") and *Re Peter Herbert Fowlds (a bankrupt) Bucknall and another (as joint trustees in bankruptcy of Peter Herbert Fowlds) v Wilson* [2020] All ER (D) 153 (May) ("*Re Fowlds*") as she received and spent the S$100,000 in good faith for the exact purpose for which it was given to her. Further, she believed that she was fully entitled to spend it. To require her to transfer this sum to the Private Trustee would be "unjust" and would have a "significant and wholly disproportionate effect" on her.[104] In this regard, FT has emphasised that she has a young family and is "just starting out in life", with a young child and two more children due this year.[105] FT elaborated that she does not own any assets and lives in a rented property. She is also a participant in the

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103 PTSS, at paras 2–3.

104 FTS, at paras 8, 10, and 12.

105 FTS, at para 12.

SGUnited Mid-Career Pathways Programme and does not have a high monthly income.

82 In my view, *Claridge* and *Re Fowlds* provide no analogy to FT's situation in the present case. The facts of both cases were wholly exceptional.

83 In *Claridge*, the bankrupt (Mr Claridge) and the respondent (Mrs Claridge) were husband and wife. Their matrimonial home (the "Property") was initially subject to a mortgage in favour of Birmingham Midshires Building Society ("BMBS"). After Mr Claridge was made bankrupt, Mrs Claridge owned the full beneficial interest in the Property and became solely liable to BMBS in relation to BMBS's outstanding mortgage. Subsequently, Mr and Mrs Claridge jointly took out a loan from Kensington Mortgage Company Limited ("KMC"). On the joint instructions of Mr and Mrs Claridge, the loan moneys were paid into Mrs Claridge's bank account. The loan moneys were used to discharge BMBS's mortgage and re-mortgage the Property in KMC's favour, as well as to repair and renovate the Property. Mr Claridge's trustee in bankruptcy sought to impugn the transfer of half of the loan moneys (*ie*, £26,689.50) from Mr Claridge to Mrs Claridge as a transaction at an undervalue.

84 Sales J (as he then was) found that Mr Claridge had entered into a transaction the substance of which involved him conferring a benefit on his wife (*Claridge* at [29]). This was because Mr Claridge's half-share of the loan moneys was paid to Mrs Claridge or to BMBS for her sole benefit (since Mrs Claridge was the sole beneficial owner of the Property). However, Sales J declined to make an order against Mrs Claridge under the provision of the Insolvency Act 1986 (c 45) (UK) equivalent to s 98 of the Act. While one factor taken into account by Sales J was the fact that Mrs Claridge had spent the

moneys in good faith believing that she was fully entitled to spend it (*Claridge* at [49(ii)]), Sales J also had regard to the following factors:

(a) In the context of this transaction, there was no simple way to restore the position to what it would have been if Mr Claridge had not entered into this transaction (*Claridge* at [49(ii)]).

(b) The extent to which Mrs Claridge had benefited from the transaction was limited. She remained liable to KMC to make *all* the mortgage repayments. There was no evidence of the extent to which the value of the Property was actually increased by the expenditure of Mr Claridge's share of the loan moneys on it. It, therefore, did not appear unjust in all the circumstances that no order should be made against Mrs Claridge (*Claridge* at [49(iii)] and [49(vi)]).

85 These factors do not apply in the present case. The transfers amounting to S$100,000 were direct gifts from the Bankrupt to FT which can be simply reversed by an order that FT transfer a sum of S$100,000 to the Private Trustee. Further, FT benefited significantly from the transaction as S$100,000 of her wedding expenses were defrayed by the transfers.

86 I turn now to *Re Fowlds*. Several years before his bankruptcy, the bankrupt (Mr Fowlds) had retained his stepdaughter (Ms Wilson), a qualified management accountant, to provide forensic accountancy services on an arm's length, commercial basis. Ms Wilson was owed a total of £99,330, and Mr Fowlds paid her about 48% of this sum (*ie*, less than £50,000) within the applicable clawback period. Mr Fowlds' trustees in bankruptcy sought to impugn this payment to Ms Wilson on the ground that it was an unfair preference.

87 Jones J found that the payment was an unfair preference, but declined to order Ms Wilson to return the payment. Jones J took into account the following factors (*Re Fowlds* at [79]–[93]):

(a) The debt arose from a commercial relationship and represented a fair amount for the work carried out. Further, Ms Wilson's relationship to Mr Fowlds did not gain her any priority or advantage over his other commercial creditors.

(b) Ms Wilson played no part in the making of the preference other than receiving the payment; she acted in good faith and had no reason to question the payment at any material time.

(c) Ms Wilson no longer had the payment or realisable assets of remaining value purchased from those funds.

(d) Ms Wilson had limited financial means and would not have been able to restore the payments without selling her family home, which would adversely affect her children (including their contact with their father) and her business. Restoration of the payments would thus have a significant and wholly disproportionate effect upon her, bearing in mind that only a sum of less than £50,000 would be restored to the bankruptcy estate.

88 The situation of Ms Wilson in *Re Fowlds* is, therefore, very different from the situation of FT in the present case. I accept that FT may have received and spent the S$100,000 in good faith and that transferring S$100,000 to the Private Trustee would place a financial burden on FT and her family. However, I do not think the effect of such an order on FT is comparable to the hardship Ms Wilson would have suffered from having to sell her home and relocate her

children and her business. Although FT has asserted that she and her husband "simply do not have the means to return such a large sum",[106] she has not adduced any evidence to support this. FT has also not given any evidence to show that she would suffer any particular hardship as a result of having to transfer the sum of S$100,000 to the Private Trustee. In addition, unlike Ms Wilson in *Re Fowlds* (who had received the payment from Mr Fowlds as consideration for the professional services she had provided to him on a commercial basis), FT was a volunteer for the full sum of S$100,000 and provided no consideration for the same.

89 Furthermore, Jones J was careful to emphasise that it would be a "departure from the wide scope of the norm to refuse relief if all the other requirements of the statutory provision are satisfied". He added that there would have to be "something unusual" to justify such a course, given that the purpose of the relevant statutory provisions was to "achieve the equal rate of distribution to which creditors should be entitled under the statutory waterfall" (*Re Fowlds* at [12]). Indeed, Jones J expressly stated that he "would not be considering exercising the discretion if the [p]ayment had been a gift or a transaction at an undervalue" (*Re Fowlds* at [101]). In this case, I have found that the transfers to FT were gifts. *Re Fowlds* therefore does not assist FT.

90 Two additional considerations further undercut FT's argument that she would be unfairly prejudiced if she is ordered to transfer S$100,000 to the Private Trustee.

(a) The evidence suggests that FT would have had the financial means to pay for her wedding expenses even without the transfers from

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106 FT, at para 26.

the Bankrupt. FT had booked the Ritz-Carlton hotel as the venue for her wedding banquet by 15 December 2015, and had been required to pay deposits amounting to S$39,787.31 (30% of the anticipated cost of the wedding banquet) by 9 June 2016.[107] The transfers were only made to FT in November 2016 and January 2017, and the Bankrupt referred to the S$50,000 transferred to FT in November 2016 as "stand by for her wedding".[108] Thus, although FT stated during the hearing that she had booked the wedding venue and paid the required deposits before receiving the transfers on the faith of the Bankrupt's verbal agreement to defray the costs of the wedding, the objective evidence adduced by FT herself suggests that she did not *rely* on the transfers to pay for her wedding banquet expenses. The transfers were, therefore, more akin to the Bankrupt's contributions towards defraying the cost of her wedding, rather than funds which she depended on to be able to afford her very lavish wedding banquet.

(b) At the hearing, FT estimated that she received *ang pow* money amounting to approximately S$50,000 as gifts from the guests who attended her wedding. This would have further helped to defray the cost of the wedding banquet. Indeed, the combined amount of the transfers and the *ang pow* money was more than sufficient to cover the cost of the wedding banquet, which was S$135,292.20.[109] In other words, after taking into account the transfers and the *ang pow* money, it appears that FT and her husband did not need to pay a single cent towards their wedding banquet.

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107 FT, Tab C, at pp 57 and 59.

108 FT, Tab A, at p 15.

109 FT, at para 14(3) and Tab C at p 76.

91 Therefore, I find that the circumstances of this case do not justify the court exercising its discretion under s 98(2) of the Act not to make an order restoring the position to what it would have been if the Bankrupt had not entered into these transactions. I agree with the Private Trustee's submission that the Bankrupt's creditors should not be made to foot the bill for FT's lavish wedding banquet on her behalf.[110] If I were to decline to make the order sought by the Private Trustee against FT, this would be tantamount to allowing FT to receive an unqualified windfall at the expense of the Bankrupt's creditors, when she has given no value for her receipt of the transfers from the Bankrupt. This would be an inequitable outcome.

Summary of findings

92 In summary, I make the following findings:

(a) At the time of the Transfers, the Bankrupt was insolvent under s 100(4) of the Act.

(b) The transfers to TPS and TBH were unfair preferences, and they were given within the applicable clawback period for unfair preferences. In deciding to give these preferences, the Bankrupt was influenced by a desire to prefer TPS and TBH.

(c) The transfers to FT were transactions at an undervalue, and they were entered into within the applicable clawback period for undervalue transactions. The circumstances of the present case do not justify the court exercising its discretion under s 98(2) of the Act not to make an order restoring the position to what it would have been if the Bankrupt had not entered into these transactions.

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110 PTSS, at para 21.

Conclusion

93 For all of the above reasons, I grant the Private Trustee's application for the following orders:

(a) an order that TBH transfers the sum of S$150,000 to the Private Trustee;

(b) an order that TPS transfers the sum of S$250,000 to the Private Trustee; and

(c) an order that FT transfers the sum of S$100,000 to the Private Trustee.

The Recipients are to make the necessary transfers within 14 days of the date of this judgment, unless otherwise agreed with the Private Trustee.

94 In addition to the above orders, the Private Trustee sought declarations that the Transfers are void under ss 98 and/or 99 of the Act. However, I am reluctant to make these orders. Sections 98(2) and 99(2) of the Act empower this court to "make such order as it thinks fit for *restoring the position* to what it would have been" [emphasis added] if the Bankrupt had not entered into the undervalue transactions or given the unfair preferences. The court may do so by, for example, requiring the Recipients to pay, in respect of benefits received by them from the Bankrupt, such sums to the Private Trustee as the court may direct (s 102(1)(*d*) of the Act). I have made such orders at [93] above. These orders are sufficient for the Private Trustee to claw back the moneys from the Recipients for distribution to the creditors of the Bankrupt. It is not necessary for me to declare the Transfers to the Recipients void. Furthermore, unlike the earlier version of the Act which was in force prior to 15 July 1995, the relevant provisions of the present Act do not refer to undervalue transactions or unfair

preferences being void (or, for that matter, voidable) (see *Buildspeed Construction Pte Ltd (in liquidation) v Theme Corp Pte Ltd and another* [2000] 1 SLR(R) 287 at [51]). Hence, I decline to declare that the Transfers to the Recipients are void or voidable as it serves no useful purpose to the Private Trustee.

95 I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge of the High Court

Siew Guo Wei and Yeow Yuet Cheong (Tan Kok Quan Partnership) for the applicant;
The first respondent absent and unrepresented;
Chua Sui Tong and Tang Abigail (Rev Law LLC) for the second and third respondents;
The fourth respondent in person.