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

[2024] SGHC 198

Originating Application No 820 of 2023 (Summons No 843 of 2024)

Between

Sullivan, Sir Cornelius Sean

… *Applicant*

And

(1) Hill Capital Pte Ltd
(2) Ban Su Mei

… *Respondents*

JUDGMENT

[Civil Procedure — Striking Out]
[Trusts — Trustees]
[Equity — Fiduciary relationships — When arising]

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Sullivan, Sir Cornelius Sean
v
Hill Capital Pte Ltd and another

[2024] SGHC 198

General Division of the High Court — Originating Application No 820 of 2023 (Summons No 843 of 2024)
Kristy Tan JC
3 May, 24 July 2024

1 August 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 HC/SUM 843/2024 ("SUM 843") is an application by the second respondent in HC/OA 820/2023 ("OA 820") to strike out the whole of the action against her in OA 820. I grant the striking out application.

Facts

The parties

2 The applicant in OA 820 is Mr Sir Cornelius Sean Sullivan (the "Applicant").

3 On 30 August 1995, the Applicant's late father, Mr Joseph Sullivan ("Mr J Sullivan"), executed two discretionary trusts, referred to by the parties

as the "Anchor Trust" and the "Anchor Two Trust" (together, the "Anchor Trusts"), by way of deed under the law of the Isle of Man.[1] The beneficiaries of the Anchor Trust are Mr J Sullivan and the Anchor Two Trust. The beneficiaries of the Anchor Two Trust are Mr J Sullivan and his issue.[2]

4 The first respondent in OA 820, Hill Capital Pte Ltd ("Hill Capital"), is a company incorporated in Singapore that provides trust administration services.[3] Hill Capital was incorporated on 21 May 2011[4] and was appointed as the trustee of the Anchor Trusts on 23 May 2011.[5]

5 The second respondent in OA 820, Ms Ban Su Mei ("Ms Ban"), is the sole shareholder and director of Hill Capital.[6] Ms Ban practises as a lawyer.[7]

OA 820

6 On 15 August 2023, the Applicant commenced OA 820 against Hill Capital and Ms Ban (together, the "Respondents"), seeking:

(a) orders for the Respondents to provide various accounts and documents in respect of the Anchor Trusts;

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1 1st Affidavit of Sir Cornelius Sean Sullivan filed in support of OA 820 on 15 August 2023 ("Applicant's OA Affidavit") at para 5.

2 Applicant's OA Affidavit at para 6.

3 Applicant's OA Affidavit at p 161.

4 Applicant's OA Affidavit at p 161.

5 Applicant's OA Affidavit at paras 12–13.

6 Applicant's OA Affidavit at pp 163–164.

7 2nd Affidavit of Ban Su Mei filed in support of SUM 843 on 26 March 2024 ("Ms Ban's Affidavit") at p 2.

(b) a declaration that Hill Capital had breached its duties as trustee of the Anchor Trusts by failing to provide an account of the assets and moneys of the Anchor Trusts (the "Trust Assets" and "Trust Moneys", respectively) to the Applicant; and

(c) a declaration that Ms Ban had breached her fiduciary duties owed to the beneficiaries of the Anchor Trusts by failing to provide and/or to procure an account of the Trust Assets and Trust Moneys.

7 As is evident from the Applicant's prayers in OA 820, the underlying premise of his claims against Ms Ban is that a fiduciary relationship exists between Ms Ban and the beneficiaries of the Anchor Trusts (the "Trust Beneficiaries") where Ms Ban owes them a fiduciary duty to account for the Trust Assets and Trust Moneys.

8 The Applicant filed his affidavit in support of OA 820 on 15 August 2023 (the "Applicant's OA Affidavit"). In the Applicant's OA Affidavit, the Applicant mainly alleged that the Respondents had not been responsive to the Applicant's requests for information and documents related to the Anchor Trusts. The only allegations material to the Applicant's case that Ms Ban owed fiduciary duties to the Trust Beneficiaries were that:[8]

> … [Ms Ban] was or is managing the Anchor Trusts. … [Ms Ban] is the *sole shareholder and sole director of [Hill Capital]*. [Ms Ban] is effectively the *controller of [Hill Capital]*. [emphasis added]

9 OA 820 was amended in January 2024 to specify that the Applicant's prayers relate to the period from 23 May 2011 to the present in respect of the

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[8] Applicant's OA Affidavit at para 16; see also Applicant's OA Affidavit at paras 36, 38 and 40.

Anchor Trust and to the period from 23 May 2011 to 18 July 2023 in respect of the Anchor Two Trust.

10 The Respondents have not filed their affidavits in response to OA 820.

SUM 843

11 On 26 March 2024, Ms Ban filed SUM 843, applying to strike out the whole of the Applicant's action against her in OA 820 on the grounds that she was not and had never been a trustee of the Anchor Trusts, and did not owe the Applicant (who claimed to be a beneficiary of the Anchor Two Trust and an ultimate beneficiary of the Anchor Trust) any duties.[9]

12 On 6 May 2024, the Applicant filed his affidavit in response to SUM 843 (the "Applicant's SUM 843 Affidavit").[10] In the Applicant's SUM 843 Affidavit:

(a) The Applicant stated that it was not his case that Ms Ban was the legal trustee of the Anchor Trusts. He understood that the legal trustee was Hill Capital.[11]

(b) The Applicant took the position that Ms Ban was "a fiduciary *vis-à-vis* the Anchor Trusts" and owed the Applicant and the remaining beneficiaries of the Anchor Trusts fiduciary duties.[12]

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9 Ms Ban's Affidavit at para 11.

10 5th Affidavit of Sir Cornelius Sean Sullivan filed in response to SUM 843 on 6 May 2024 ("Applicant's SUM 843 Affidavit") (a draft of which had been provided under cover of his solicitor's affidavit, the 4th Affidavit of Nikhil Dutt Sundaraj, filed on 16 April 2024).

11 Applicant's SUM 843 Affidavit at para 14.

12 Applicant's SUM 843 Affidavit at para 14.

(c) The Applicant's stated basis for his position was:[13]

> ***Ms Ban is the sole controller and decision-maker in relation to the Anchor Trusts and owes fiduciary obligations to the beneficiaries of the Anchor Trusts***
>
> 15. By virtue of Ms Ban's role and position as sole director and shareholder of Hill Capital, she has de-facto full control over Hill Capital and is in a position to exercise all the powers of the trustee of the Anchor Trusts. Ms Ban has in fact been exercising this power. I elaborate below.
>
> [emphasis in original]

(d) The Applicant exhibited five further pieces of correspondence in a bid to make good his claim.[14]

The Applicant's subsequent applications in OA 820

13 For a more complete picture of the procedural history, on 9 April 2024, the Applicant filed: (a) HC/SUM 952/2024 ("SUM 952"), seeking permission to amend OA 820 to, *inter alia*, remove his claims against Ms Ban; and (b) HC/SUM 953/2024 ("SUM 953"), seeking to convert the part of the proceedings in OA 820 against Ms Ban to an originating claim.

14 When SUM 843 first came before me, neither party suggested or requested that SUM 952 and/or SUM 953 be determined prior to SUM 843. The parties were also content for SUM 843 to be heard and determined on a standalone basis. The hearing of SUM 843 proceeded accordingly and was part-heard. When the hearing resumed on 24 July 2024, the parties' counsel informed me that SUM 952 and SUM 953 had not been heard yet. It also

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13 Applicant's SUM 843 Affidavit at p 6 and para 15.

14 Applicant's SUM 843 Affidavit at paras 16–24.

appeared that the Applicant was considering whether and/or how he intended to proceed in respect of SUM 952 and SUM 953.

The parties' cases

Ms Ban's case

15 Ms Ban submits that the claims against her in OA 820 should be struck out under O 9 r 16(1)(*a*) of the Rules of Court 2021 ("ROC 2021") for disclosing no reasonable cause of action. As a director of Hill Capital, her fiduciary duties are owed only to Hill Capital and not to the Trust Beneficiaries.[15] The mere fact that she is the director of a one-client corporate trustee (*ie*, Hill Capital) does not have any bearing on whether she owes a fiduciary duty to the Trust Beneficiaries.[16] That she is the sole shareholder and director of Hill Capital does not make her the alter ego of Hill Capital.[17] The items of correspondence referred to by the Applicant do not show that she personally assumed fiduciary obligations to the Trust Beneficiaries; they do no more than reflect her involvement, as a director of Hill Capital, in dealing with Hill Capital's affairs relating to the Anchor Trusts.[18] While the Applicant has not brought any claim against her in tort, there would be no basis for such a claim in any event.[19]

16 Further and/or in the alternative, Ms Ban submits that the claims against her in OA 820 should be struck out under O 9 r 16(1)(*b*) of the ROC 2021 for

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15 2nd Respondent's Written Submissions dated 26 April 2024 ("RWS") at paras 29–42 and 47.

16 RWS at para 43.

17 RWS at paras 44–46.

18 RWS at para 48.

19 RWS at para 49.

being an abuse of process of the court as they lack basis.[20] The claims are also frivolous and/or vexatious, serving no useful purpose other than to oppress her, given that the information and account sought by the Applicant are with the trustee of the Anchor Trusts.[21]

17 Further and/or in the alternative, Ms Ban submits that it is in the interests of justice to strike out the claims against her in OA 820 under O 9 r 16(1)(*c*) of the ROC 2021 as they are neither legally nor factually sustainable.[22]

The Applicant's case

18 In the Applicant's written submissions, he submits that the relevant inquiry is whether Ms Ban had placed herself in a position where the law can objectively impute an intention on her part to undertake fiduciary obligations to the Trust Beneficiaries.[23] His case, in gist, is that Ms Ban had assumed fiduciary duties to the Trust Beneficiaries and is a fiduciary or a trustee de son tort in relation to the Anchor Trusts.[24]

19 Further and in the alternative, the Applicant submits that Ms Ban is the alter ego of Hill Capital and the corporate veil should be lifted such that the fiduciary duties owed by Hill Capital to the Applicant are "interposed on [Ms Ban]".[25]

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20 RWS at paras 53–60.

21 RWS at paras 61–62.

22 RWS at paras 63–65.

23 Applicant's Written Submissions dated 26 April 2024 ("AWS") at paras 28–30.

24 AWS at paras 31–52.

25 AWS at paras 53–61.

20 For these reasons, the Applicant submits that his claims against Ms Ban disclose a reasonable cause of action, are not an abuse of process, are in the interest of justice to ventilate, and should not be struck out.[26]

21 The Applicant further submits that Ms Ban's objections in SUM 843 "merely evince disputes of material fact in OA 820", which call for OA 820 to be converted to an originating claim instead of struck out.[27]

Decision on striking out under O 9 r 16(1)(*a*) of the ROC 2021

22 In my judgment, OA 820 discloses no reasonable cause of action against Ms Ban. The prayers for relief sought against her should be struck out and the action against her dismissed, pursuant to O 9 r 16(1)(*a*) of the ROC 2021.

23 I will explain my decision with reference to my analysis of the following issues:

(a) the principles relevant to striking out a claim in an originating application under O 9 r 16(1)(*a*) of the ROC 2021;

(b) whether the Applicant has a reasonable cause of action against Ms Ban as an *ad hoc* fiduciary;

(c) whether the Applicant has a reasonable cause of action against Ms Ban as a trustee de son tort; and

(d) whether the Applicant has a reasonable cause of action against Ms Ban as the alter ego of Hill Capital.

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26 AWS at paras 26, 62 and 71.

27 AWS at paras 20, 74 and 77.

Order 9 r 16(1)(a) of the ROC 2021

24 The relevant provisions in O 9 r 16 of the ROC 2021 state:

> (1) The Court may order any … pleading to be struck out … on the ground that –
>
> (*a*) it discloses no reasonable cause of action … ;
>
> …
>
> and may order the action to be … dismissed … accordingly.
>
> (2) No evidence is admissible on an application under paragraph (1)(*a*).
>
> (3) This Rule applies to an originating application as if it were a pleading.
>
> …

25 A cause of action contains two dimensions, *viz*, (a) the legal basis which entitles the plaintiff to succeed; and (b) the factual situation which entitles the plaintiff to obtain from the court a remedy against the defendant: *Philip Morris Products Inc v Power Circle Sdn Bhd and others* [1999] 1 SLR(R) 964 at [5]; *Hong Alvin v Chia Quee Khee* [2011] SGHC 249 at [17].

26 A reasonable cause of action under O 9 r 16(1)(*a*) of the ROC 2021 means a cause of action with some chance of success when only the allegations in the pleadings are considered: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [17], citing *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21]. It has also been held that the court should not exercise the power of striking out "by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action": *Gabriel Peter* at [18].

27 These principles were espoused in *Gabriel Peter* in the context of a writ action (what would now, under the ROC 2021, be referred to as an action commenced by an originating claim (an "OC action")). A question arises as to how they would transpose to the context of striking out a claim in an action commenced by an originating application (an "OA action"), where there are no pleadings and the action is ordinarily determined on the basis of affidavit evidence (and submissions) only, without oral evidence, cross-examination or a trial. In my view, the following principles would apply.

28 First, the affidavit filed in support of the originating application (the "OA supporting affidavit") will be considered by the court and be treated as the equivalent of the claimant's pleadings in an OC action. In *Knapman v Servian and another (In re Caines, decd)* [1978] 1 WLR 540 ("*Knapman*"), an application was made to strike out proceedings commenced by an originating summons (what would now, under the ROC 2021, be referred to as an OA action) on the ground that they disclosed no reasonable cause of action. The relevant English rules were similar to O 9 rr 16(1)(*a*), 16(2) and 16(3) of the ROC 2021. It was held that the court could have regard to the affidavit filed in support of the originating summons as that affidavit was intended to disclose the cause of action (at 544F). The same position is taken in Singapore (see *Gabriel Peter* at [19]).

29 However, affidavits filed in the striking out application itself, which adduce further evidence, should not ordinarily be considered in determining the striking out application. In *Knapman*, the court held that "evidence to *support or repel the striking out application* cannot be added" [emphasis added] (at 543E–F and 544E–F). In my view, this approach is consistent with the requirement under O 6 r 13 of the ROC 2021 that "[a]n affidavit filed in an originating application must contain all the evidence that is necessary or

material to the claim …", as well as with the stipulation under O 6 r 12(6) that "[e]xcept in a special case, no further affidavits may be filed after the defendant files the defendant's affidavit on the merits". In other words, the claimant in an OA action is expected to make good his claim in the OA supporting affidavit. Correspondingly, in a striking out application, the court assesses whether a reasonable cause of action is made out with reference to the contents of the OA supporting affidavit.

30 In the present case, as foreshadowed at [12] above, the Applicant adduced further evidence in the Applicant's SUM 843 Affidavit in a bid to shore up his case that Ms Ban was a fiduciary *vis-à-vis* the Trust Beneficiaries and owed him fiduciary duties. Applying the approach at [29] above, there is no reason for the further evidence in the Applicant's SUM 843 Affidavit to be considered, particularly when the issue of whether Ms Ban was a fiduciary and owed fiduciary duties was reasonably within the Applicant's contemplation when he filed the Applicant's OA Affidavit and it was incumbent on him to ensure that the Applicant's OA Affidavit dealt with all matters relevant to his application (see *CZD v CZE* [2023] 5 SLR 806 at [21]). However, Ms Ban's legal team was (to their credit) prepared to and did engage with and address the further evidence adduced in the Applicant's SUM 843 Affidavit, and it is for this reason that I also considered the Applicant's further evidence in determining SUM 843.

31 I state at the outset that I did not rely on any evidence of Ms Ban in determining SUM 843. In any event, the affidavit filed by Ms Ban in support of SUM 843 was a bare one; the exhibits contained the Applicant's pleadings in a related action, which I did not take into account. In short, I had regard only to the evidence and documents adduced by the Applicant.

32 Second, as only the OA supporting affidavit should ordinarily be considered where a defendant files an application to strike out the claim in an OA action, it would mean that the claimant's evidence is not contradicted by competing evidence from the defendant. Operating within these parameters, the court's task is to evaluate whether the claimant's evidence bears out the requisite factual substratum that would establish the legal cause of action advanced. In making this assessment, the court is not bound to unthinkingly accept the claimant's *interpretation* or *characterisation* of documentary evidence. The claimant's evidence may, even in the absence of evidence from the defendant, be contradicted or fail to be borne out by objective documentary records adduced by the claimant. The court will also remain alive to the distinction between evidence of fact and expressions of opinion or submission (even where the latter is stated in an affidavit).

33 In my view, this approach coheres with the usual manner in which an OA action is determined under O 15 r 7(5) of the ROC 2021, *viz*: "… originating applications … must be decided on the basis of the evidence adduced by affidavits and on oral or written submissions, without oral evidence or cross-examination". In determining an OA action, the court evaluates the affidavit evidence of the claimant and the defendant. Correspondingly, in an application to strike out the claim in an OA action, it makes sense for the court to evaluate the claimant's affidavit evidence and whether that makes out the two dimensions of a cause of action (see [25] above). If, in the absence of competing evidence from the defendant, the claimant cannot even establish a reasonable cause of action based on the claimant's own evidence, it would not be expeditious, cost-effective, or efficient (contrary to the Ideals espoused in O 3 rr 1(2)(*b*), 1(2)(*c*) and 1(2)(*d*) of the ROC 2021) for the OA action to proceed.

34 With this, I turn to the three premises of the Applicant's contention that Ms Ban personally owes fiduciary duties to the Trust Beneficiaries.

The ad hoc fiduciary premise

35 In determining the existence of an *ad hoc* fiduciary relationship, the court ascertains whether the putative fiduciary had voluntarily placed himself in a position where the law can objectively impute an intention on his part to undertake fiduciary duties: *Tan Teck Kee v Ratan Kumar Rai* [2022] 2 SLR 1250 ("*Tan Teck Kee*") at [69], citing *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [194]. The inquiry is open-ended and involves the court broadly examining and evaluating the specific nature of the role played by the putative fiduciary: *Tan Teck Kee* at [69]. This includes the extent to which the putative fiduciary may exercise discretion which affects the position of the supposed principal and the degree of vulnerability to which the supposed principal is subject: *Tan Teck Kee* at [69].

36 The Applicant points to various alleged factors as showing that Ms Ban had assumed fiduciary obligations to the Trust Beneficiaries. I will address the alleged factors relied on by the Applicant and explain why I do not accept his arguments.

Alleged power, discretion and control exercised by Ms Ban in relation to the Anchor Trusts

37 The Applicant states that his case is that Ms Ban had assumed fiduciary obligations to the Trust Beneficiaries "by virtue of not just her position but the power and discretion that she did exert in relation to the Anchor Trusts".[28] He argues that while Hill Capital is the legal trustee that is granted the powers under

[28] AWS at para 32.

the trust deeds, any decision-making "must still be exercised by someone" and that person is Ms Ban as she has "full ownership and control of Hill Capital".[29] By that logic, he says that Ms Ban has unilateral and de facto "full powers and discretion" with regard to the Anchor Trusts.[30] Her decision-making would "potentially affect [the Applicant's] interests under the Anchor Trusts".[31]

38 In my judgment, the Applicant points here to no more than the fact that Ms Ban is the sole director (and shareholder) of Hill Capital. A company can only act through a human agent, and it is unsurprising that Ms Ban made decisions on behalf of Hill Capital in its role as trustee of the Anchor Trusts. In fact, the very correspondence relied on by the Applicant as supposedly evidencing Ms Ban exercising power over the Anchor Trusts, show no more than this:

(a) The Applicant cites a letter from Paris Smith LLP dated 26 July 2012 which he says concerned trust companies whose shares were held by the Anchor Trust. In the letter, Paris Smith LLP stated: "All decisions are made and documents signed via ourselves by the owners director who is a Singapore based lawyer". The Applicant says this shows that Ms Ban was the decision-maker, signed documents and exerted direct control over the Anchor Trusts.[32] In my view, however, this is entirely congruent with Ms Ban's role as the director of Hill Capital. The Paris Smith LLP letter itself referenced "the owners *director* [*sic*]".

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29 AWS at paras 33–34.

30 AWS at paras 33–34.

31 AWS at para 34.

32 Applicant's SUM 843 Affidavit at paras 16–19 and p 17.

(b) The Applicant cites an e-mail from Ms Ban to one Ms Maria Robbie dated 2 August 2022 (the "2 August 2022 E-mail") in which Ms Ban stated that if Mr J Sullivan wanted to receive trust moneys, he "needs to make [a] request to the trust so that proper documentation can be put in place". The Applicant says this shows that Ms Ban "oversees and controls the outflow of Trust Assets and monies".[33] Again, however, this is congruent with Ms Ban, as a director of Hill Capital, operating Hill Capital to, as trustee of the Anchor Trusts, oversee and control the Trust Assets and Trust Moneys. Indeed, Ms Ban had conveyed in the 2 August 2022 E-mail that the request should be made "to the trust".

(c) The Applicant cites an e-mail from Ms Ban to Paris Smith LLP dated 10 July 2013 in which Ms Ban gave instructions for the remittance of funds from one trust company to another trust company. The Applicant says this shows that Ms Ban "gives instructions in relation to the Trust Assets and monies and is the person authorized to deal with them".[34] Again, however, as the director of Hill Capital, it is unsurprising that Hill Capital's decisions would be taken and conveyed by Ms Ban.

(d) The Applicant says that Ms Ban has been the "sole point of contact" for him in matters related to the Anchor Trusts.[35] Again, however, this would be a function of Ms Ban being the sole director of Hill Capital.

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33 Applicant's SUM 843 Affidavit at paras 20 and 20(a) and pp 25–27.

34 Applicant's SUM 843 Affidavit at para 20(b) and p 29.

35 Applicant's SUM 843 Affidavit at para 22.

(e) The Applicant cites an e-mail from Ms Ban to him dated 30 June 2023 (the "30 June 2023 E-mail") in which Ms Ban mentioned being in the process of transferring the trusteeship to Fivehill Trustees Limited, a professionally regulated trust company. The Applicant says this shows Ms Ban was in a position to transfer the trusteeship and was managing the Anchor Trusts.[36] Again, however, this is consistent with Ms Ban acting as Hill Capital's director. The trust deeds of the Anchor Trusts empower the existing trustee to discharge itself and (where the Settlor is dead) appoint a replacement trustee (see cl 18(a) and the Fifth Schedule of each trust deed).[37] Ms Ban would have to act for Hill Capital in the process of doing so.

39 It cannot be that the mere fact that a trustee company is a one-man company means that its sole shareholder and director is invariably treated as personally possessing the trustee's powers and personally assuming the trustee's obligations. The thrust of the Applicant's arguments at [37]–[38] above elides the well-established separate legal personalities of a company and its shareholders and directors, and undermines the general principle that a director of a company which is a corporate trustee does not owe a fiduciary duty to a beneficiary of the trust solely by reason of his or her directorship of the trustee company (see *Bath v Standard Land Company, Limited* [1911] 1 Ch 618 at 627; *Horwood v Davenport* [2014] WASC 436 at [67]). The Applicant has not shown that Ms Ban's conduct went *beyond* that which would ordinarily arise in the course of her duties as a director of Hill Capital such that the law should objectively impute an intention on her part to undertake fiduciary duties to the

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36 Applicant's OA Affidavit at para 16 and pp 167–168.

37 Applicant's OA Affidavit at pp 50 (cl 18(a)), 84 (Fifth Schedule), 114 (cl 18(a)) and 147 (Fifth Schedule).

Trust Beneficiaries. The fact that, in this case, the Anchor Trusts are discretionary trusts does not change the foregoing analysis: the powers conferred under the trust deeds and the fiduciary obligations owed to the Trust Beneficiaries remain those of the trustee (*ie*, Hill Capital) and not Ms Ban.

40 The Applicant's reliance on *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] 4 SLR 85 ("*Baker*") to support his argument that "it is possible for the courts to find that [Ms Ban] owed fiduciary duties to [the Applicant] by virtue of her position as the sole director and shareholder of Hill Capital"[38] is misplaced. In *Baker*, the court found that one Chantal had entered into an agreement with one Weber pursuant to which Weber would acquire "Ethocyn Rights" and hold any income or proceeds generated from the Ethocyn Rights on trust for Chantal, on terms (among others) that the Ethocyn Rights would be transferred to a company owned or controlled by Weber (at [22] and [187]). The court found that the companies that held the Ethocyn Rights and proceeds generated therefrom pursuant to this trust arrangement were trustees that held these assets on trust for Chantal, and the court added that "Weber also is a trustee by virtue of his ownership and control of these companies" (at [223]). The facts in *Baker* plainly differ from those in the present case. The court in *Baker* found an express (oral) trust agreement between Chantal and Weber (at [187]), which effectively provided for Weber to hold assets on trust for Chantal through companies that Weber would control (at [22]). In these circumstances, it is unsurprising that Weber was found to be a trustee. In contrast, there is no allegation much less evidence that Mr J Sullivan and Ms Ban ever agreed that she would hold assets under the Anchor Trusts on trust through Hill Capital.

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[38] AWS at paras 41–42.

41 The Applicant's reliance on *Lavrentiadis, Lavrentios v Dextra Partners Pte Ltd and another* [2020] SGHC 146 ("*Lavrentiadis*")[39] also does not assist his case. In *Lavrentiadis*, the plaintiff was a client of the first defendant ("Dextra"), a licensed foreign law practice in Singapore. The second defendant was an individual who managed Dextra at all material times. The plaintiff submitted that the second defendant had voluntarily placed himself in a position where the law could impute an intention on his part to undertake fiduciary obligations to the plaintiff (at [231]). Crucially, in their closing submissions, the defendants *did not challenge* the plaintiff's assertion that the second defendant owed fiduciary duties to the plaintiff, and in fact, *implicitly accepted* that the second defendant did owe such fiduciary duties when they submitted that they "did not dishonestly breach their fiduciary duties" (at [232]). In these circumstances, it is unsurprising that the court agreed with the plaintiff that the second defendant did owe fiduciary duties to the plaintiff (at [233]). In contrast, there is no such concession by Ms Ban in the present case.

42 Finally, the Applicant's reliance (in his counsel's oral submissions) on the factual matrix in *Tan Teck Kee* is misconceived. In *Tan Teck Kee*, various persons, including the plaintiff and one Mr Seah, had orally agreed to invest in Cambodian real estate (the "Venture") (at [42]). The investors acquired properties in Cambodia through a Cambodian company ("WBL") in which one Mr Tan was a shareholder and a director (at [9] and [11]). The court found that Mr Seah had undertaken to manage the Venture with Mr Tan as his "assistant" (at [54]). The question was whether Mr Tan had performed this role "in his personal capacity" or "in his capacity as a director of WBL, thereby placing the investors in a direct legal relationship *only* with WBL" (at [57]). The court found the former to be the case; among other reasons, the investors had

[39] AWS at paras 45–46.

transferred substantial amounts of money towards the Venture with nothing in writing to even record their contributions, much less anything which suggested specifically that they had entered into an enforceable contract with WBL (at [58]–[63]). The court then found that the role which Mr Tan undertook placed him in a fiduciary relationship *vis-à-vis* the investors: he possessed a high degree of control in the handling of the investors' interest in the Venture and they were particularly vulnerable to his exercise of power (at [78]). In contrast, in the present case, Mr J Sullivan expressly appointed Hill Capital as the trustee of the Anchor Trusts pursuant to two Deeds of Retirement and Appointment dated 23 May 2011.[40] A corporate trusteeship structure was in place from the outset of Hill Capital and Ms Ban's involvement in the Anchor Trusts, and there is no evidence that Ms Ban dealt with trust assets or managed the Anchor Trusts in her personal capacity as opposed to as an agent / director of the trustee company (*ie*, Hill Capital).

Alleged vulnerability of the Trust Beneficiaries to Ms Ban

43 The Applicant submits that the Trust Beneficiaries are "vulnerable to [Ms Ban] and the manner in which she decides how to manage the affairs of the Anchor Trusts", which are discretionary trusts.[41] He cites two examples.

44 First, the Applicant again cites the 2 August 2022 E-mail from Ms Ban to Ms Maria Robbie (see [38(b)] above). He argues that this e-mail shows that "[Ms Ban] decided whether or how [Mr J Sullivan] (both the settlor and a beneficiary of the Anchor Trust) would receive trust monies".[42] However, a

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40 Applicant's OA Affidavit at pp 149–152 and 154–159.

41 AWS at para 35.

42 AWS at para 35.

review of this e-mail merely shows Ms Ban conveying that a properly documented request to receive trust moneys had to be made by Mr J Sullivan:[43]

> Dear Maria,
>
> Thank you for sending the bank statements. I think Joseph [*ie*, Mr J Sullivan] has been calling you to try and get you to send the moneys to him in Australia. We can't really do that as Sicon is under the ownership of the trust and *if he wants to receive moneys from Sicon, he needs to make [a] request to the trust so that proper documentation can be put in place*. In any event, there will be some contractors bills we need to pay.
>
> …
>
> [emphasis added]

There is nothing controversial about the point made by Ms Ban in this e-mail, and it hardly suggests that Mr J Sullivan was in a position of vulnerability *vis-à-vis* Ms Ban.

45 Second, the Applicant contends that Ms Ban had withheld information in relation to the Anchor Trusts from him and that this illustrates how the Trust Beneficiaries are "really at [Ms Ban's] mercy when it comes to the Anchor Trusts". He cites his e-mail to Ms Ban dated 4 July 2023 (the "4 July 2023 E-mail") as evidence that she had withheld information from him and his brother.[44] A review of this e-mail shows, among other things, the Applicant berating Ms Ban for her previous replies (or lack thereof) to his previous requests in relation to the Anchor Trusts, demanding "details of what is available in cash and investments so the beneficiaries can at least request a suitable distribution", and requesting "a distribution of at least £1 million now".[45] In my view, this e-mail does not advance the Applicant's case. The Applicant's entitlement (if any)

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43 Applicant's SUM 843 Affidavit at pp 25–26.

44 AWS at para 36.

45 Applicant's OA Affidavit at pp 188–190.

to information concerning the Anchor Trusts is properly a matter between the Applicant and the trustee. Any alleged refusal to provide information to the Applicant would be a refusal by the trustee and not by Ms Ban personally, unless she had assumed a personal fiduciary duty to provide the information. It is circular for the Applicant to cite Ms Ban's alleged refusal to provide information as the basis for his contention that Ms Ban had a personal duty to provide the information to begin with.

46 I therefore disagree that the evidence adduced by the Applicant shows vulnerability on the part of the Trust Beneficiaries *vis-à-vis* Ms Ban that would warrant the court objectively imputing an intention by her to undertake fiduciary duties to them.

Alleged implied undertaking by Ms Ban to act in the best interest of the Trust Beneficiaries

47 The Applicant submits that when discharging her duties and obligations as the sole director of Hill Capital in managing the Anchor Trusts, Ms Ban would have to discharge those duties with the interests of the Trust Beneficiaries in mind.[46] I find this bland general statement uncontroversial. However, the Applicant goes further to argue that this means Ms Ban had "impliedly undertaken" to manage the Anchor Trusts in the best interest of the Trust Beneficiaries.[47] Insofar as the Applicant's contention is that Ms Ban had impliedly undertaken fiduciary duties to the Trust Beneficiaries just because, as a director of Hill Capital, she would have considered the interests of the Trust Beneficiaries when making Hill Capital's decisions, I disagree. This is in substance no different from the argument made by the Applicant at [37] above

46 AWS at para 37.

47 AWS at para 37.

(which I have rejected) in disregard of the separate legal personalities of Hill Capital and its director (*ie*, Ms Ban).

Alleged relationship of trust and confidence between Mr J Sullivan and Ms Ban

48 The Applicant submits that Hill Capital was appointed trustee of the Anchor Trusts because Mr J Sullivan trusted *Ms Ban* (and not Hill Capital) to run the Anchor Trusts.[48] The Applicant cites as evidence of this point an e-mail from Mr J Sullivan to Ms Ban dated 6 January 2016 (the "6 January 2016 E-mail") in which Mr J Sullivan stated:[49]

> …
>
> 9. I was highly recommended to Ban Su Mei of Khattarwong LLP, …
>
> …
>
> 10. The reason I am no longer with Khattarwong, Ban Su Mei started a company in partnership, and the company is GSM Law, …
>
> …
>
> I get on very well with Ban Su Mei and she runs our Trust, which is Anchor Trust 1 & 2 Ltd. This is a very old Trust. Ban Su Mei specialises in company and corporate law and does many seminars regarding taxation and money laundering.

49 I make three points. First, I accept that this e-mail shows that Mr J Sullivan held Ms Ban in high regard, and concomittantly, had trust and confidence in her. However, this does not mean that either of them intended for Ms Ban to personally assume the role of trustee, as opposed to having Ms Ban run the trust company that would perform that role. Indeed, that was precisely the arrangement that was put in place, with Hill Capital appointed as the trustee

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48 AWS at para 38.

49 Applicant's SUM 843 Affidavit at pp 35–36.

of the Anchor Trusts. The previous trustee of the Anchor Trusts which Hill Capital replaced, Whitmill Trust Company Limited, had *also* been a trust company.[50] There is no evidence that Mr J Sullivan was unsavvy or inexperienced in the field of trusts. To the contrary, the Anchor Trusts were settled by him under the law of the Isle of Man way back in 1995 (see [2] above); the trusteeship of the Anchor Trusts changed hands several times since their settlement[51] with Mr J Sullivan having the power of appointment of trustees during his lifetime (see cll 18(a) and 18(c) and the Fifth Schedule of each trust deed);[52] and it was only in 2011 that the administration of the Anchor Trusts moved to Singapore with Hill Capital appointed as the (new) trustee.[53] These matters reflect that Mr J Sullivan knew what he wanted and knew what he was doing when it came to matters concerning the Anchor Trusts. In turn, this indicates that the appointment of Hill Capital (and not Ms Ban) as the trustee of the Anchor Trusts was a considered decision. In the face of such a considered decision, there is no cause for the law to impute an intention on Ms Ban's part to personally undertake fiduciary duties to the Trust Beneficiaries.

50 Second, there is no allegation much less evidence that Mr J Sullivan lacked expertise in the field of trusts such that Ms Ban gained influence and superiority over him once he reposed trust in her. In fact, the matters at [49] above would sugest otherwise. This is relevant because in oral submissions, the Applicant's counsel relied on the reference to *Burdett v Miller* 957 F 2d 1375 (7th Cir, 1992) ("*Burdett*") in *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd and others* [2022] 5 SLR 837 ("*Commodities*

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50 Applicant's OA Affidavit at paras 12–13.

51 Applicant's OA Affidavit at paras 10–11.

52 Applicant's OA Affidavit at pp 50–51 (cll 18(a) and 18(c)), 84 (Fifth Schedule), 114–115 (cll 18(a) and 18(c)) and 147 (Fifth Schedule).

53 Applicant's OA Affidavit at paras 12–13 and pp 149–152 and 154–159.

Intelligence") (at [54]) to argue that a fiduciary relationship was established when Mr J Sullivan reposed trust and confidence in Ms Ban. However, a closer examination of what the court in *Commodities Intelligence* said about *Burdett* is warranted.

51 In *Commodities Intelligence*, the court highlighted the opinion of Judge Richard Posner in *Burdett* as follows (at [54]):

> … Judge Richard Posner said: "where a person solicits another to trust him in matters in which he represents himself to be expert as well as trustworthy[,] and **the other is not expert** and accepts the offer and reposes complete trust in him, a fiduciary relation is established" (at 1381). He then goes on to **qualify this view**: "[w]e have emphasized knowledge and expertise but we do not mean to suggest that every expert is automatically a fiduciary. *A fiduciary relation arises only if 'one person has reposed trust and confidence in another **who thereby gains influence and superiority over the other**'*" [emphasis added]. … [emphasis in original in italics; emphasis added in bold]

52 The court in *Commodities Intelligence* added (at [60]):

> … misplacing trust in a contractual counterparty to guard one's interests does not elevate that counterparty's status to that of a fiduciary. **There is a clear difference between *choosing to trust*, and *having to rely* on another party**. … [emphasis in original in italics; emphasis added in bold]

53 These cases do not suggest that the mere fact that a person reposed trust and confidence in another in itself gives rise to the existence of a fiduciary relationship between them. Instead, the cases suggest that it is relevant to the finding of a fiduciary relationship that the putative fiduciary was an expert in the matter at hand while the supposed principal was not; that the putative fiduciary gained influence and superiority over the supposed principal; and that the supposed principal's trust in the putative fiduciary arose more out of a need to rely on the latter than by choice. The Applicant has made no allegations and adduced no evidence to such effect. Further, the court in *Commodities*

Intelligence cautioned that "Judge Posner's approach towards identifying *ad hoc* fiduciary relationships is far from definitive. … it only calls to attention certain characteristics which *might* affect the conclusion" [emphasis in original] (at [55]).

54 Third, as Mr J Sullivan has passed away, the Applicant is unable to adduce evidence from him as to what he meant when he stated in the 6 January 2016 E-mail that Ms Ban "runs our Trust" (see [48] above). In the light of the matters highlighted at [49] above, it is my view that Mr J Sullivan was speaking loosely. I do not interpret his aforesaid statement to mean that he regarded Ms Ban *personally* as the trustee of the Anchor Trusts (as opposed to the operator of the trustee company, *ie*, Hill Capital).

55 Accordingly, I do not regard the trust and confidence reposed by Mr J Sullivan as a factor that warrants a finding that a fiduciary relationship existed between Ms Ban and Mr J Sullivan / the Trust Beneficiaries.

Alleged acknowledgment by Ms Ban that she owes fiduciary duties to the Trust Beneficiaries

56 The Applicant again cites the 30 June 2023 E-mail, this time pointing to a statement by Ms Ban that "[she] take[s] [her] fiduciary obligations very seriously". The Applicant then cites the 4 July 2023 E-mail he sent in reply in which he noted that it was appreciated that "[she] take[s] [her] fiduciary duties seriously" in relation to the Anchor Trusts. Ms Ban did not write back to say that she did not owe fiduciary duties in relation to the Anchor Trusts. In the Applicant's submission, this supposedly shows that all parties understood and

acknowledged that Ms Ban was acting as a fiduciary in relation to the Anchor Trusts.[54]

57 In reviewing these e-mails, it is apposite to begin with the Applicant's e-mail to Ms Ban dated 29 June 2023. In this e-mail, he threatened that unless she provided the information he sought:[55]

> … I have no option but to instruct my Lawyers … to request on my behalf and make office complaints to the Regulatory Department, Law Society of Singapore. I may even have to go to the police.

58 In that context, Ms Ban sent the 30 June 2023 E-mail, stating:[56]

> …
>
> I have read your emails in the past week as well as some of your communication with third parties, that have now been forwarded to me. Some of the communication appears to be rather accusatory and completely misguided in terms of what you perceive to have been put in place by the late Mr Joseph Sullivan. From what I have read, I would say, some of it may even be bordering on defamatory.
>
> …
>
> *I am a professional and I take my fiduciary obligations very seriously*. If you continue to make baseless allegations against my professional integrity, I will be left with no choice but to seek legal advice.
>
> …
>
> [emphasis added]

59 The Applicant replied to Ms Ban in the 4 July 2023 E-mail, and made the following statement:[57]

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54 AWS at paras 39–40; Applicant's SUM 843 Affidavit at para 24.

55 Applicant's OA Affidavit at p 186.

56 Applicant's OA Affidavit at pp 167–168.

57 Applicant's OA Affidavit at pp 188–190.

> Whilst it is appreciated that you take your fiduciary duties seriously, you have not been forthcoming in accounting for your stewardship and certainly not willing to provide full trust deeds at the reasonable request of beneficiaries. …

60 I place little weight on this exchange of e-mails. The exchange was clearly heated. By threatening to make a complaint "to the Regulatory Department, Law Society of Singapore", the Applicant was targeting Ms Ban as a lawyer. Her reply in the 30 June 2023 E-mail stated that she was a "professional" who took her "fiduciary obligations" very seriously. She did not state to whom or in what context her "fiduciary obligations" were owed. The Applicant's reply in the 4 July 2023 E-mail also did not state clearly what "fiduciary duties" he had in mind.

61 More importantly, the relevant inquiry at law is whether the putative fiduciary had "*voluntarily place[d] himself in a position* where the law can ***objectively*** impute an intention on his or her part to undertake [fiduciary] obligations" [emphasis in original]; the fiduciary undertaking "arises *as a consequence of the fiduciary's conduct*" [emphasis in original]: *Tan Yok Koon* at [194]. The Applicant's counsel also reiterated at both hearings of SUM 843 that the relevant time at which to assess whether Ms Ban had assumed fiduciary duties to the Trust Beneficiaries was the time at which Hill Capital was appointed as trustee of the Anchor Trusts, *ie*, in May 2011 (the Applicant's case being that the fiduciary relationship between Ms Ban and the Trust Beneficiaries arose from that time). This being so, it is Ms Ban's conduct at the relevant time that is most material; words uttered in (or a non-reply following) a heated exchange taking place more than ten years after the relevant time are of little probative value in determining whether Ms Ban had undertaken fiduciary duties to the Trust Beneficiaries when Hill Capital was appointed as trustee of the Anchor Trusts in May 2011.

Alleged assumption by Ms Ban of the role of trustee

62 The Applicant submits that Ms Ban "has also assumed the role of trustee (even though she is not the legal trustee)".[58] He cites as evidence of this the 6 January 2016 E-mail (see [48] above) and another e-mail from Mr J Sullivan to a third party also dated 6 January 2016 in which Mr J Sullivan stated that Ms Ban ran the Anchor Trusts.[59] As I have found at [54] above, in such instances, Mr J Sullivan was simply speaking loosely and cannot be taken to mean that Ms Ban was *personally* the trustee of the Anchor Trusts (as opposed to the operator of the trustee company, *ie*, Hill Capital). More pertinently, these remarks of Mr J Sullivan shed no light on the question of whether Ms Ban had, by her conduct, personally undertaken fiduciary duties to the Trust Beneficiaries.

63 The Applicant also cites the fact that in e-mails sent by Ms Ban on matters regarding the Anchor Trusts, she "never signed off as a director of Hill Capital" and often signed off as a "Partner" at GSM Law LLP. This supposedly shows that she "did not draw any distinction between her acting in her personal capacity or as a director of Hill Capital" and "had clearly assumed, or at the very least conveyed to the rest of the world that she is assuming, the role of trustee".[60] In my view, this argument rests on pedantry and I do not accept that it provides any sound basis for inferring that Ms Ban had assumed the role of trustee of the Anchor Trusts.

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58 AWS at para 43.

59 AWS at para 43; Applicant's SUM 843 Affidavit at para 21 and pp 33 and 35–36.

60 AWS at para 44; Applicant's OA Affidavit at p 168.

Conclusion

64 At bottom, and as is apparent from the text of the Applicant's OA Affidavit and the Applicant's SUM 843 Affidavit (see [8] and [12(c)] above), the Applicant's case that Ms Ban owes fiduciary duties to the Trust Beneficiaries rests chiefly on the fact that Ms Ban controlled Hill Capital as its sole shareholder and director. However, neither this fact nor the other alleged factors raised in the Applicant's submissions show that Ms Ban should objectively be taken to have personally assumed fiduciary duties to the Trust Beneficiaries. She was doing no more than acting as the agent of Hill Capital in its performance of its role as trustee of the Anchor Trusts. Simply put, there is no factual substratum that supports a legal cause of action premised on Ms Ban being an *ad hoc* fiduciary. I thus conclude that the Applicant has no reasonable cause of action against Ms Ban as an *ad hoc* fiduciary.

The trustee de son tort premise

65 A trustee de son tort is a person who, "not being a trustee and *not having authority from a trustee*, takes upon himself to intermeddle with trust matters or to do acts characteristic of the office of trustee": *Mara v Browne* [1896] 1 Ch 199 at 209. A person does not become a trustee de son tort merely by acting as the agent of trustees in transactions within their legal powers: *Carl Zeiss Stiftung v Herbert Smith & Co and another (No 2)* [1969] 2 WLR 427 at 435B (*per* Danckwerts LJ, citing *Halsbury's Laws of England* vol 38 (Butterworths, 3rd ed, 1962) at para 1450).

66 The Applicant relies on the same alleged factors I have addressed at [37]–[63] above to contend that he has a viable claim that Ms Ban "had intermeddled in the management of the Anchor Trusts otherwise than merely as an agent of Hill Capital, claiming for herself the function of a trustee of the

Anchor Trusts".[61] I disagree. As I have found, the evidence relied on by the Applicant shows no more than Ms Ban acting as an agent of and with authority from Hill Capital. The Applicant has no reasonable cause of action against Ms Ban as a trustee de son tort.

The alter ego premise

67 A company's corporate veil may be pierced on the ground that its controller is the company's alter ego. The key inquiry where an argument of alter ego is raised is whether the company is carrying on the business of its controller: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*") at [96]. However, it must be borne in mind that for one-man companies, the sole shareholder and director would almost always be the controlling mind and will of the company; this cannot be the basis for piercing the corporate veil in the case of every one-man company as that would defeat the point of incorporation for many small, closely held companies: *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 at [71].

68 In *Alwie Handoyo*, the Court of Appeal found that the sole shareholder and director ("Alwie") of a company ("OAFL") was its alter ego and upheld the decision of the court below to pierce OAFL's corporate veil. This was in view of the fact, among others, that Alwie had operated OAFL's bank account as if it was his own personal bank account (at [98]). He had also procured payments due to OAFL in a manner that suggested he made no distinction between OAFL and himself, as evidenced by his request for moneys payable to OAFL under an agreement to be deposited via cheque into his bank account (at [99]).

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61 AWS at para 49.

69 I turn to address the Applicant's factual arguments that Ms Ban is the alter ego of Hill Capital.

70 First, the Applicant points to the fact that Ms Ban has been Hill Capital's one constant and only shareholder and director from its inception.[62] This, however, may be said of all one-man companies and is hardly a decisive factor.

71 Second, the Applicant repeats his point that Mr J Sullivan had viewed the Anchor Trusts as being administered and managed by Ms Ban (see [62] above) and that he had trusted her to do so (see [48] above).[63] I have rejected any suggestion that Mr J Sullivan regarded Ms Ban, as opposed to Hill Capital, as the trustee of the Anchor Trusts (see [49] and [54] above). As for the trust he reposed in Ms Ban, it does not follow from this that Hill Capital was carrying on the business of Ms Ban.

72 Third, the Applicant again cites the 30 June 2023 E-mail. In this e-mail, Ms Ban stated that "[w]e are in the process of transferring the trusteeship to Fivehill Trustees Limited".[64] The Applicant argues that Ms Ban's use of the word "we" drew no distinction between Hill Capital's decisions in relation to the management of the Anchor Two Trust and her actions.[65] In this e-mail, Ms Ban also stated that "all of this [*ie*, the trust arrangement] was set up in 1995 and was **NOT** set up by me" [emphasis in original].[66] The Applicant purports to

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62 AWS at para 58.

63 AWS at para 59.

64 Applicant's OA Affidavit at p 167.

65 AWS at para 60.

66 Applicant's OA Affidavit at p 167.

eke relevance from Ms Ban's use of the word "me" instead of "Hill Capital".[67] In my view, these are arguments in semantics.

73 Fourth, the Applicant repeats his submission that Ms Ban did not distinguish between herself and Hill Capital as evidenced by her e-mail signature in e-mails concerning the Anchor Trusts (see [63] above).[68] I do not place any significance on this (see [63] above).

74 The Applicant has proffered only flimsy and insubstantial grounds for contending that Hill Capital was carrying on the business of Ms Ban. In contrast to the findings in *Alwie Handoyo*, the Applicant does not allege that Ms Ban treated the assets of Hill Capital as her own or that she operated Hill Capital's bank account as if it was her own. There is simply no factual basis to assert that Ms Ban is the alter ego of Hill Capital. The Applicant thus has no reasonable cause of action against Ms Ban as the alter ego of Hill Capital.

Conclusion

75 I am satisfied that OA 820 discloses no reasonable cause of action against Ms Ban because the Applicant cannot establish that she owed him fiduciary duties, which is the fundamental premise of his claims against her. Consequently, the prayers for relief sought against Ms Ban should be struck out and the action against her dismissed, pursuant to O 9 r 16(1)(*a*) of the ROC 2021.

76 In my judgment, this is a plain and obvious case for striking out. Only the evidence adduced by the Applicant was considered, and it was evaluated by

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67 AWS at para 60.

68 AWS at para 60.

this court not to provide the requisite factual basis for establishing that Ms Ban was an *ad hoc* fiduciary, a trustee de son tort or the alter ego of Hill Capital. The Applicant relied on only a small handful of correspondence; no minute or protracted examination of documents was necessary to see that the correspondence did not bear out his case.

77 Further, there is no reason to convert OA 820 to an OC action because there are no disputes of fact that need to be tried. The absence of probative or sufficient evidence adduced by the Applicant to establish a cause of action does not disputes of fact create. There is also no reason to order the Applicant to produce further affidavits or evidence because the Applicant has had two opportunities to do so (*vide* the Applicant's OA Affidavit and the Applicant's SUM 843 Affidavit); nothing suggests he has more to offer.

Striking out under O 9 rr 16(1)(*b*) and/or 16(1)(*c*) of the ROC 2021

78 In view of my decision at [75] above, it is unnecessary to consider whether the claims against Ms Ban should also be struck out under O 9 rr 16(1)(*b*) and/or 16(1)(*c*) of the ROC 2021.

Conclusion

79 In conclusion, I order that the prayers for relief sought against Ms Ban in OA 820 be and are struck out and that the whole of the action against her in OA 820 be and is dismissed.

80 Unless the parties agree on costs, they should file their written submissions on costs, limited to three pages, within seven days from the date of this judgment.

Kristy Tan
Judicial Commissioner

Woo Shu Yan, Foo Zhi Wei and Jonathan Mok (Drew & Napier LLC) for the applicant;
Lim Wei Lee, Lim Yuan Jing and Ang Guo Qiang (WongPartnership LLP) for the second respondent.