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

[2024] SGHC 70

Suit No 1123 of 2020

Between

Manoj Dharmadas Kalwani

… Plaintiff

And

Bharat Dharmadas Kalwani

… Defendant

JUDGMENT

[Civil Procedure — Pleadings]
[Contract — Loan agreement]
[Contract — Oral contract]
[Limitation of Actions — Extension of limitation period — Acknowledgment]
[Restitution — Unjust enrichment]
[Restitution — Failure of consideration — Total failure of consideration]

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Manoj Dharmadas Kalwani
v
Bharat Dharmadas Kalwani

[2024] SGHC 70

General Division of the High Court — Suit No 1123 of 2020
Wong Li Kok, Alex JC
28–30 November 2023, 23 January 2024

15 March 2024 Judgment reserved.

Wong Li Kok, Alex JC:

Introduction

1 This is a suit involving a dispute between two brothers. For many years, these brothers have worked together to grow the family business, which has flourished. Unfortunately, the success of the business did not mirror the state of their interpersonal relationship. Litigation ensued. One brother claims that he had *loaned* dividends to the other; the other claims that the loan was in fact a *gift*. Ancillary claims involving allegations of unpaid wine that one brother had allegedly bought on behalf of the other, and allegedly unpaid car number plates that one brother had transferred to the other, have also been injected into the fray. Ultimately, the fact that this dispute involves brothers in a family business context means that the documentary evidence is somewhat lacking. The court's task is to parse through the informal dealings as between the parties to discern the true underlying transactions.

Facts

The parties

2 The plaintiff ("Mr Manoj") and the defendant ("Mr Mike") are brothers from the Kalwani family. The Kalwani family is the family behind the Novelty group of companies ("Novelty Group"), a family-owned business involved in, among other things, the construction, development, and sale of residential properties.[1] The persons involved, at some point or another, in the Novelty Group include the late Mr Kalwani Kishinchand Ghanshamdas (the grandfather of Mr Manoj and Mr Mike),[2] Mr Dharmadas Kishinchand Kalwani (the father of Mr Manoj and Mr Mike),[3] the late Mdm Sheela Dharmadas Kalwani (the mother of Mr Manoj and Mr Mike),[4] Ms Kamni Dharmadas Kalwani (a sister of Mr Manoj and Mr Mike),[5] Ms Geetu Dharmadas Kalwani (a sister of Mr Manoj and Mr Mike),[6] Mr Manoj[7] and Mr Mike.[8] The family business was started by Mr Kalwani Kishinchand Ghanshamdas in the 1950s.[9] The business took on the name of "Novelty Dept Store" in the 1960s–1970s when Mr

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1 Affidavit of evidence-in-chief ("AEIC") of Mr Bharat Dharmadas Kalwani dated 9 November 2023 ("Mr Mike's AEIC") at para 5; AEIC of Ms Geetu Dharmadas Kalwani dated 9 November 2023 ("Ms Geena's AEIC") at para 10.

2 Mr Mike's AEIC at para 15; Ms Geena's AEIC at para 20; AEIC of Ms Kamni Dharmadas Kalwani dated 10 November 2023 ("Ms Kamni's AEIC") at para 14.

3 AEIC of Mr Manoj Dharmadas Kalwani dated 31 October 2023 ("Mr Manoj's AEIC") at para 11; Mr Mike's AEIC at para 16; Ms Geena's AEIC at para 20; Ms Kamni's AEIC at para 15.

4 Mr Manoj's AEIC at para 11; Mr Mike's AEIC at para 17; Ms Geena's AEIC at para 40 (as amended on 24 November 2023).

5 Ms Kamni's AEIC at para 16.

6 Ms Geena's AEIC at para 18.

7 Mr Manoj's AEIC at para 11.

8 Mr Mike's AEIC at para 5.

9 Mr Manoj's AEIC at para 10; Mr Mike's AEIC at para 15.

Dharmadas Kishinchand Kalwani ("Mr Dharmadas") joined the business.[10] On 27 September 1995, the business was incorporated as Novelty Dept Store Pte Ltd ("Novelty Dept Store"), with the founding directors and shareholders being Mr Dharmadas, Mr Mike, Ms Geetu Dharmadas Kalwani ("Ms Geena") and Ms Kamni Dharmadas Kalwani ("Ms Kamni").[11] Over time, the family business evolved from selling novelty items and trinkets,[12] to selling electronic products,[13] to property development.[14] In the course of the Novelty Group's business, Novelty Dept Store also came to incorporate various subsidiaries with Novelty Dept Store as the parent company of the Novelty Group.[15]

3 Mr Manoj is the youngest sibling of the Kalwani family.[16] Mr Manoj claims that he started working part-time in Novelty Dept Store in the 1980s when he was in secondary school.[17] It is not disputed that Mr Manoj was formally employed in Novelty Dept Store after he completed his national service in the 1990s.[18] Mr Manoj was appointed as a director of Novelty Dept Store on 24 May 2002.[19] On 27 July 2007,[20] Mr Manoj became a shareholder of Novelty Dept Store when Mr Dharmadas transferred a 20% shareholding in

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10 Mr Manoj's AEIC at para 10; Mr Mike's AEIC at para 16.

11 Mr Manoj's AEIC at paras 10–14; Mr Mike's AEIC at paras 41–45; Ms Geena's AEIC at paras 27–29; Agreed Chronology dated 5 January 2024 ("Agreed Chronology") at p 1.

12 Mr Mike's AEIC at para 15.

13 Mr Mike's AEIC at para 23.

14 Mr Manoj's AEIC at para 17; Mr Mike's AEIC at para 55.

15 Mr Manoj's AEIC at para 9; Mr Mike's AEIC at para 108.

16 Mr Manoj's AEIC at para 8.

17 Mr Manoj's AEIC at para 12; Mr Mike's AEIC at para 51.

18 Mr Manoj's AEIC at para 15; Mr Mike's AEIC at para 52.

19 Mr Manoj's AEIC at para 28.

20 Agreed Chronology at p 1.

Novelty Dept Store to Mr Manoj by way of a gift.[21] Mr Manoj commenced a minority oppression action in HC/S 248/2020 on 17 March 2020, which was settled in 2022. Mr Manoj's shares in Novelty Dept Store were bought out as part of the settlement.[22] Mr Manoj is no longer a director of the Novelty Group entities.[23]

4 Mr Mike is the eldest sibling of the Kalwani family.[24] He is presently the group president and chief executive officer of the Novelty Group.[25] He claims to have been the first amongst his siblings to start helping out with the family business,[26] and dropped out of school at around age 13 to work full-time in the family business.[27] In the early 2000s, Mr Mike appointed Ms Geena as the chief financial officer of the Novelty Group to manage the Novelty Group's accounts, finances and general administrative matters.[28] In the present suit, Ms Geena and Ms Kamni testified in support of Mr Mike's case.

Background to the dispute

The S$2.8m transfer

5 The primary dispute in this suit involves a transfer of a total sum of S$2,837,481.55 (the "S$2.8m transfer") from Mr Manoj to Mr Mike. Mr Manoj

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21 Mr Manoj's AEIC at para 30; Mr Mike's AEIC at para 107; Ms Geena's AEIC at para 59.

22 Mr Manoj's AEIC at para 32.

23 Mr Manoj's AEIC at para 198.

24 Mr Mike's AEIC at para 7.

25 Mr Mike's AEIC at para 5.

26 Mr Mike's AEIC at para 18.

27 Mr Mike's AEIC at para 19.

28 Mr Mike's AEIC at para 84; Ms Geena's AEIC at paras 18 and 39.

alleges that this sum is a loan he gave to Mr Mike on Mr Mike's request which needs to be repaid.[29] Mr Mike's primary defence is that the S$2.8m transfer is a gift from Mr Manoj.[30] Secondarily, Mr Mike also argues that Mr Manoj is estopped from claiming the S$2.8m from Mr Mike.[31]

6 The S$2.8m transfer is a transfer of dividends that Mr Manoj received from Novelty Builders Pte Ltd ("Novelty Builders"). Novelty Builders is a company that carries out construction works for residential and commercial properties.[32] Novelty Builders was incorporated on 5 January 2006 under its previous name "Novelty Milliard Engineering Pte Ltd".[33] At the time of its incorporation, the four shareholders and directors were Mr Manoj, Mr Mike and two other individuals.[34] The two other individuals were bought out by Mr Manoj and Mr Mike in July 2006.[35] Since then, Mr Manoj and Mr Mike were each 50% shareholders in Novelty Builders.[36] The chief financial officer of Novelty Builders is Ms Geena.[37] Parties are generally agreed that Novelty Builders was set up to carry out construction projects for Novelty Group to support its property development efforts.[38]

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29 Mr Manoj's AEIC at para 96.

30 Defence and Counterclaim (Amendment No. 4) dated 6 November 2023 at para 7.33.

31 Defendant's Closing Submissions ("DCS") at para 66.

32 Mr Mike's AEIC at para 6.

33 Mr Mike's AEIC at para 90; Ms Geena's AEIC at para 45; Supplementary AEIC of Mr Manoj Dharmadas Kalwani dated 16 November 2023 ("Mr Manoj's SAEIC") at para 38; Agreed Chronology at p 1.

34 Mr Manoj's SAEIC at para 39; Ms Geena's AEIC at para 45.

35 Mr Manoj's SAEIC at para 42; Ms Geena's AEIC at para 48; Mr Mike's AEIC at paras 93–94; Agreed Chronology at p 1.

36 Mr Manoj's SAEIC at paras 5 and 42; Mr Mike's AEIC at paras 6 and 97.

37 Ms Geena's AEIC at para 78.

38 Mr Manoj's SAEIC at para 36; Mr Mike's AEIC at paras 90–91.

7 Aside from Novelty Group's commercial endeavours, Novelty Builders was also involved in the construction of Mr Manoj's and Mr Mike's family homes. Mr Manoj had gotten engaged in 2011 and was looking for a family home around then.[39] In 2012, Mr Manoj bought a property (the "Clacton Property") from a subsidiary in the Novelty Group.[40] The Clacton Property is intended as Mr Manoj's family home.[41] The Clacton Property was built by Novelty Builders.[42] Relatedly, sometime before 2011, Mr Mike and Mdm Sheela Dharmadas Kalwani bought a property (the "Wilkinson Property") from Novelty Dept Store.[43] The Wilkinson Property is intended as the family home for Mr Mike, Ms Geena, Ms Kamni and their parents.[44] The Wilkinson Property was also built by Novelty Builders.[45]

8 The construction costs (including costs for variation works)[46] for the Clacton Property and the Wilkinson Property were high. Ms Geena, as Novelty Builders' chief financial officer, was advised by the company's auditor that invoices had to be issued for the construction works at the Clacton Property and the Wilkinson Property, lest Novelty Builders had to absorb the losses.[47] The following invoices were issued by Novelty Builders in respect of the two properties:

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39 Mr Manoj's AEIC at para 51.

40 Mr Manoj's AEIC at para 61.

41 Mr Manoj's AEIC at para 52.

42 Mr Manoj's AEIC at para 75.

43 Mr Mike's AEIC at para 114.

44 Mr Mike's AEIC at paras 112 and 125.

45 Mr Mike's AEIC at para 113.

46 Ms Geena's AEIC at paras 76–79.

47 Ms Geena's AEIC at para 79.

(a) For the Clacton Property:

(i) tax invoice CONSOCT13/DCL065 dated 31 October 2013 for the sum of S$1,426,138.18 issued to Mr Manoj;[48]

(b) For the Wilkinson Property:

(i) tax invoice CONSDEC12/DWR086 dated 31 December 2012 for the sum of S$3,862,700 issued to Mr Mike;[49] and

(ii) tax invoice CONSNOV13/DWR068 dated 30 November 2014 for the sum of S$6,519,562.52 issued to Mr Mike.[50]

9 It was decided that Novelty Builders would issue dividends to Mr Manoj and Mr Mike. The dividends would be applied to pay down the debt owed by Mr Manoj and Mr Mike to Novelty Builders in respect of the Clacton Property and the Wilkinson Property.[51] Thus, Novelty Builders declared dividends in two tranches as follows:

(a) by a directors' resolution dated 30 December 2014, Novelty Builders declared dividends totalling S$6,500,000, with S$3,250,000 payable to each of Mr Manoj and Mr Mike for the financial year ending 31 December 2014;[52] and

(b) by a directors' resolution dated 30 December 2015, Novelty Builders declared dividends totalling S$2,000,000, with S$1,000,000

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48 Mr Manoj's AEIC at para 77 and p 156; Agreed Chronology at p 2.

49 Mr Mike's AEIC at para 140 and p 68; Agreed Chronology at p 1.

50 Mr Mike's AEIC at para 140 and p 70; Agreed Chronology at p 2.

51 Mr Manoj's AEIC at para 88; Mr Mike's AEIC at para 143; Ms Geena's AEIC at para 86.

52 Ms Geena's AEIC at para 96 and pp 249–251; Agreed Chronology at p 2.

payable to each of Mr Manoj and Mr Mike for the financial year ending 31 December 2015.[53]

10 Ms Geena then arranged for a series of credits and debits in relation to the accounts Mr Manoj and Mr Mike maintained with Novelty Builders to pay off their debt in respect of the Clacton Property and the Wilkinson Property.

11 Firstly, Ms Geena arranged for a setting-off of debts owing by Novelty Builders to Mr Manoj and Mr Mike. In relation to Mr Manoj, as of 31 December 2013, Novelty Builders owed Mr Manoj S$13,619.73.[54] Ms Geena arranged for this sum to be debited from Mr Manoj's account with Novelty Builders to pay Novelty Builders part of the sum it had invoiced Mr Manoj for the variation works carried out at the Clacton Property. This left a balance of S$1,412,518.45 due and owing by Mr Manoj to Novelty Builders.[55] In relation to Mr Mike, as of 31 December 2012, 31 December 2013 and 31 December 2014, Novelty Builders owed Mr Mike S$195,542.52,[56] S$79,330.35,[57] and S$35,000[58] respectively. Ms Geena arranged for these sums to be debited from Mr Mike's account with Novelty Builders to pay Novelty Builders part of the sum it had invoiced Mr Mike for the variation works carried out at the Wilkinson Property.[59] After these sums were debited, there was a sum of S$10,072,389.65

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53 Ms Geena's AEIC at para 96 and pp 253–255; Agreed Chronology at pp 1–2.

54 Ms Geena's AEIC at para 100.

55 Ms Geena's AEIC at para 100.

56 Ms Geena's AEIC at para 101.

57 Ms Geena's AEIC at para 102.

58 Ms Geena's AEIC at para 105.

59 Ms Geena's AEIC at paras 101–105.

due and owing by Mr Mike to Novelty Builders for the variation costs of the Wilkinson Property.[60]

12 Secondly, Ms Geena arranged for the dividends issued by Novelty Builders to Mr Manoj and Mr Mike to be applied towards paying down their debts in respect of the Clacton Property and the Wilkinson Property. Thus, around November 2015, Ms Geena arranged for the dividends of S$3,250,000 received by Mr Mike for the financial year ending 31 December 2014 (see [9(a)] above) to be paid to Novelty Builders as part payment of Mr Mike's debt in respect of the Wilkinson Property.[61] Around November 2015, Ms Geena arranged for the dividends of S$3,250,000 received by Mr Manoj for the financial year ending 31 December 2014 (see [9(a)] above) to be paid to Novelty Builders as full payment of Mr Manoj's debt of S$1,412,518.45 in respect of the Clacton Property.[62] The remainder of the dividends due to Mr Manoj, amounting to S$1,837,481.55, was credited to Mr Manoj's account with Novelty Builders on 31 December 2014.[63] Thereafter, this sum of S$1,837,481.55 was debited from Mr Manoj's account with Novelty Builders and credited to Mr Mike's account as reflected in a credit entry dated 31 December 2015.[64]

13 In relation to the dividends of S$1,000,000 each received by Mr Manoj and Mr Mike for the financial year ending 31 December 2015 (see [9(b)] above),

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60 Ms Geena's AEIC at para 105.

61 Ms Geena's AEIC at para 107 (as amended on 24 November 2023); Agreed Chronology at p 2.

62 Ms Geena's AEIC at para 108 (as amended on 24 November 2023); Agreed Chronology at p 2.

63 Ms Geena's AEIC at para 109; Agreed Chronology at p 2.

64 Ms Geena's AEIC at paras 110–112; Agreed Chronology at p 3.

Ms Geena arranged to be recorded in Novelty Builders' ledger for Mr Manoj and Mr Mike a credit entry of S$1,000,000 each.[65] Thereafter, Mr Manoj's dividends of S$1,000,000 were debited from his account and credited to Mr Mike's account as reflected in ledger entries dated 31 December 2015.[66]

14 As of 31 December 2015, there was altogether S$3,837,481.55 standing to Mr Mike's credit in his account with Novelty Builders. Ms Geena arranged for this to be paid to Novelty Builders for the variation works carried out at the Wilkinson Property,[67] as reflected in ledger debit entries dated 31 December 2015.[68] After these debits dated 31 December 2015 from Mr Mike's account with Novelty Builders, Mr Mike owed S$2,984,908.10 to Novelty Builders for the variation costs of the Wilkinson Property.[69] There was a further round of dividends issued by Novelty Builders for the financial year ending 31 December 2017 in the amount of S$2,900,000 each to Mr Manoj and Mr Mike.[70] Those dividends are not the subject of this present suit. Mr Mike's dividend of S$2,900,000 was applied to pay down Mr Mike's debt to Novelty Builders for the Wilkinson Property.[71] As for Mr Manoj's dividend, on 18 September 2019, Mr Manoj received a cheque for S$2,900,000 postdated to 3 October 2019, which Mr Manoj encashed.[72]

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65 Ms Geena's AEIC at paras 114–116; Agreed Chronology at p 3.

66 Ms Geena's AEIC at paras 117–119; Agreed Chronology at p 3.

67 Ms Geena's AEIC at para 120.

68 Ms Geena's AEIC at paras 121–122; Agreed Chronology at p 3.

69 Ms Geena's AEIC at para 123.

70 Ms Geena's AEIC at paras 140–146 and p 277; Agreed Chronology at p 4.

71 Agreed Chronology at p 4.

72 Agreed Chronology at pp 4–5.

15 Mr Manoj's key claim is that the S$1,837,481.55 debited from his account with Novelty Builders and credited to Mr Mike's account as reflected in a credit entry dated 31 December 2015 (see [12] above) and the S$1,000,000 debited from Mr Manoj's account and credited to Mr Mike's account as reflected in ledger entries dated 31 December 2015 (see [13] above), totalling S$2,837,418.55, constitute loans from Mr Manoj to Mr Mike.[73] In contrast, Mr Mike claims that these sums were gifts from Mr Manoj.[74]

The Edulis wines

16 Mr Manoj's ancillary claim in this suit concerns a sum of S$33,000 (calculated on the basis of a conversion of €21,456 at the exchange rate of €1: S$1.5424 on 3 June 2016). This claim is for wine that Mr Manoj allegedly paid for on Mr Mike's behalf in 2016, on the basis that Mr Manoj would be repaid on demand.[75] Mr Mike denies owing Mr Manoj this sum of S$33,000 and asserts instead that Mr Manoj had paid for his own wine, which Mr Mike had ordered on Mr Manoj's behalf.[76]

17 There is in evidence two undisputed invoices from the wine supplier Edulis SA ("Edulis") issued to Mr Mike, bearing the following details:

(a) invoice no. 63028 for the amount of €7,605 dated 3 May 2016;[77] and

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73 Statement of Claim (Amendment No. 1) dated 30 June 2023 at para 3(g).

74 Defence and Counterclaim (Amendment No. 4) dated 6 November 2023 at para 7.33.

75 Statement of Claim (Amendment No. 1) dated 30 June 2023 at para 2(c).

76 Defence and Counterclaim (Amendment No. 4) dated 6 November 2023 at para 5.2; Mr Mike's AEIC at para 174.

77 Mr Manoj's AEIC at para 206(a) and p 402; Mr Mike's AEIC at para 171 and p 151; Agreed Chronology at p 3.

(b) invoice no. 63155 for the amount of €21,456 dated 9 May 2016.[78]

18 On 2 June 2016, Mr Mike had forwarded to Mr Manoj an e-mail enclosing the two Edulis invoices.[79] Thereafter, on 3 June 2016, Mr Manoj's personal secretary effected payment for invoice no. 63155 for the amount of €21,456 from Mr Manoj's personal bank account.[80] On 8 June 2016, Mr Mike made payment of €7,605 for invoice no. 63028.[81]

19 In support of his defence that Mr Manoj's payment of €21,456 was effected for Mr Manoj's own wine order, Mr Mike adduced in evidence an e-mail exchange between him and Mr Manoj showing the following:

(a) On 4 May 2016 at 8.35pm, Edulis had e-mailed Mr Mike with an advertisement for a "Vega Sicilia 'Valbuena' 2010" wine.[82]

(b) On 4 May 2016 at 9.38pm, Mr Mike forwarded Edulis' e-mail to Mr Manoj, with the following message:

> I am buying a few of these bottles do u wNt [*sic*] me to add in some for you ?
>
> Thank you
>
> Best Regards,
>
> Mike Kalwani

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78 Mr Manoj's AEIC at para 206(b) and p 404; Mr Mike's AEIC at para 171 and p 152; Agreed Chronology at p 3.

79 Mr Manoj's AEIC at para 210 and pp 406–411; Mr Mike's AEIC at para 171 and pp 150–155; Agreed Chronology at p 3.

80 Mr Manoj's AEIC at para 211 and pp 429–431; Mr Mike's AEIC at para 172 and pp 157–159; Agreed Chronology at p 3.

81 Mr Mike's AEIC at para 173 and pp 162–165; Agreed Chronology at p 3.

82 Mr Mike's AEIC at pp 146–147.

(c) On 5 May 2016 at 8.44am, Mr Manoj replied to Mr Mike's e-mail with the following:

> Ok pls add some for me but let me pay for it thank u
> Best Regards,
> Manoj Kalwani

The Number Plates

20 Mr Mike brings a counterclaim in this suit concerning two car number plates – SGJ1L and SGS1P (collectively, the "Number Plates") – which he transferred to Mr Manoj, allegedly in exchange for a promise by Mr Manoj to pay an aggregate sum of S$300,000 (the "Number Plates debt"), which sum Mr Manoj has not paid.[83] Mr Manoj's defence is that the Number Plates were not owned by Mr Mike, and were instead owned by Novelty Dept Store,[84] and that Mr Manoj had made the necessary payment for the Number Plates by transferring his funds in Novelty International Pte Ltd to Mr Dharmadas' account in Novelty Dept Store.[85] Mr Manoj also claims that Mr Mike's claim for the S$300,000 in relation to the Number Plates is time-barred as this alleged debt, which dates back to the 2000s, was only raised on 28 December 2020 in Mr Mike's defence and counterclaim of the same date.[86]

21 Both parties adduced records from the Land Transport Authority ("LTA") to support their respective cases.

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83 Defence and Counterclaim (Amendment No. 4) dated 6 November 2023 at paras 14–16.

84 Reply and Defence to Counterclaim (Amendment No. 4) at para 10.

85 Reply and Defence to Counterclaim (Amendment No. 4) at para 12.

86 Reply and Defence to Counterclaim (Amendment No. 4) at para 15; Mr Manoj's AEIC at para 244.

22 In respect of the number plate SGJ1L, the records from the LTA show:

Date	Event
29 December 2006 – 19 September 2007	SGJ1L was registered under Mr Mike's name for a Lamborghini G. Spider for the period of 29 December 2006 to 19 September 2007.[87]
18 January 2008	SGJ1L was registered under Mr Mike's name for an Austin Mini for 18 January 2008 (*ie,* one day).[88]
18 January 2008 – 21 January 2008	SGJ1L was registered under Mr Manoj's name for an Austin Mini for the period of 18 January 2008 to 21 January 2008.[89]
21 January 2008 – 25 June 2010	SGJ1L was registered under Mr Manoj's name for a Lamborghini G. Spyder for the period of 21 January 2008 to 25 June 2010.[90]
25 June 2010 – 28 March 2014	SGJ1L was registered under Mr Manoj's name for a Bentley Continental Flying Spur Speed 6.0 A for the period of 25 June 2010 to 28 March 2014.[91]
3 October 2014 – 29 May 2023	SGJ1L was registered under Mr Manoj's name for a Ferrari FF SMT ABS D/Airbag 4WD HID for the period of 3 October 2014 till the date of LTA's letter (29 May 2023).[92]

23 In respect of the number plate SGS1P, the records from the LTA show:

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87 Mr Mike's AEIC at para 224 and pp 260 – 261.

88 Mr Mike's AEIC at paras 224 and pp 260 – 261.

89 Mr Manoj's AEIC at pp 451–452.

90 Mr Manoj's AEIC at pp 451–452.

91 Mr Manoj's AEIC at pp 451–452.

92 Mr Manoj's AEIC at pp 451–452.

Date	Event
31 January 2007 – 1 February 2007	SGS1P was registered under Mr Manoj's name for a Morris 1275 for the period of 31 January 2007 to 1 February 2007.[93]
1 February 2007	SGS1P was registered under Mr Mike's name for a Morris 1275 for 1 February 2007 (*ie,* one day).[94]
1 February 2007 – 8 August 2007	SGS1P was registered under Mr Mike's name for a Ferrari 430F1 Spider for the period of 1 February 2007 to 8 August 2007.[95]
22 May 2008	SGS1P was registered under Mr Mike's name for a Mercedes Benz 190E for 22 May 2008 (*ie,* one day).[96]
22 May 2008	SGS1P was registered under Mr Manoj's name for a Mercedes Benz 190E for 22 May 2008 (*ie,* one day).[97]
29 May 2008 – 7 September 2010	SGS1P was registered under Mr Manoj's name for a Lamborghini Murcielago LP640 for the period of 29 May 2008 to 7 September 2010.[98]

93 Mr Manoj's AEIC at pp 451–452.

94 Mr Mike's AEIC at paras 225(c) and pp 260 – 261.

95 Mr Mike's AEIC at paras 225(b) and pp 260 – 261.

96 Mr Mike's AEIC at paras 225(c) and pp 260 – 261.

97 Mr Manoj's AEIC at pp 451–452.

98 Mr Manoj's AEIC at pp 451–452.

8 September 2010 – 20 February 2012	SGS1P was registered under Mr Manoj's name for a Lamborghini Murcielago LP670-4 Superveloce for the period of 8 September 2010 to 20 February 2012.[99]
20 February 2012 – 3 March 2021	SGS1P was registered under Mr Manoj's name for a Rolls Royce Phantom EWB 6.7 A for the period of 20 February 2012 to 3 March 2021.[100]
10 March 2021 – 29 May 2023	SGS1P was registered under Mr Manoj's name for a Lamborghini Urus for the period of 10 March 2021 till the date of LTA's letter (29 May 2023).[101]

24 According to Mr Mike, sometime in the late 2000s, Mr Manoj wanted vehicle number plates with nice numbers for his cars.[102] Mr Mike's evidence is that he and Mr Manoj agreed that Mr Mike would transfer to Mr Manoj the Number Plates for S$150,000 each, and Mr Manoj insisted on paying for the Number Plates.[103] Mr Mike asserts that he had originally purchased the Number Plates via bidding using his own money, and had registered the number plates under his name.[104]

25 According to Mr Manoj, "[i]n all likelihood",[105] SGJ1L was owned or paid for by Novelty Dept Store. Mr Manoj's account is that in late 2007, Mr

99 Mr Manoj's AEIC at pp 451–452.

100 Mr Manoj's AEIC at pp 451–452.

101 Mr Manoj's AEIC at pp 451–452.

102 Mr Mike's AEIC at para 76.

103 Mr Mike's AEIC at para 77.

104 Mr Mike's AEIC at para 78.

105 Mr Manoj's AEIC at para 223.

Manoj told Ms Geena and Mr Mike that Mr Manoj would pay for, amongst other things, the SGJ1L number plate.[106] Mr Manoj's case is that he had told Ms Geena, as Novelty Group's chief financial officer, to make the necessary deductions from Mr Manoj's ledgers with Novelty Dept Store.[107] Ms Geena allegedly affirmed on a few occasions thereafter that she had made the necessary deductions.[108] According to Mr Manoj, this is evidenced by entries made in Mr Dharmadas' ledger with Novelty Dept Store showing that Ms Geena had credited S$750,000 in dividends issued to Mr Manoj by Novelty International Pte Ltd to Mr Dharmadas on 31 December 2007.[109] The payment was made to Mr Dharmadas because Novelty Dept Store had earlier administratively recorded a disposal of cars and car number plates owned by Novelty Dept Store to Mr Dharmadas. Mr Manoj says that this is evidenced by an entry on Mr Dharmadas' ledger with Novelty Dept Store dated 31 December 2004.[110]

26 As for SGS1P, Mr Manoj's evidence is that he had bid for this car number plate in his personal capacity when it was first launched in January 2007.[111] Mr Manoj asserts that he had successfully acquired the car number plate, but had thereafter transferred it to Mr Mike in February 2007 so that Mr Mike could hold it for Mr Manoj.[112] Mr Mike allegedly then returned the car number plate to Mr Manoj on 22 May 2008.[113]

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106 Mr Manoj's AEIC at para 225.

107 Mr Manoj's AEIC at para 226.

108 Mr Manoj's AEIC at para 227.

109 Mr Manoj's AEIC at para 228.

110 Mr Manoj's AEIC at para 231.

111 Mr Manoj's AEIC at para 235.

112 Mr Manoj's AEIC at para 240.

113 Mr Manoj's AEIC at para 241.

27 Ms Geena gave evidence that sometime in 2017, Mr Mike, Mr Manoj and herself met at the Novelty Group's offices for a discussion. During this discussion, Mr Manoj instructed Ms Geena to pay Mr Mike for the Number Plates by transferring credit in Mr Manoj's account with Novelty Dept Store to Mr Mike's account.[114] According to Ms Geena, she was never able to make these adjustments because Mr Manoj never told her how much to transfer out of his account with Novelty Dept Store. Ms Geena was also occupied with visiting her late mother, who was ill then, in hospital.[115] It is also in evidence that on 22 December 2017, Mr Manoj had sent a WhatsApp message to Ms Geena, stating the following:[116]

> … Also pls confirm with this clown that the cars accounts have been adjusted and reversed to my account as we had sat down and discussed and I had told u all the cars that I had used from day one even yesterday he tells me he has bought me cars and etc …

Issues to be determined

28 There were three broad claims in the present suit, which will be analysed in turn:

(a) Mr Manoj's claim for the return of a sum of S$2,837,418.55 from Mr Mike, on the basis that this sum allegedly constitutes Mr Manoj's share of dividends issued by Novelty Builders which Mr Manoj had loaned to Mr Mike.[117]

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114 Ms Geena's AEIC at para 125.

115 Ms Geena's AEIC at para 127.

116 Ms Geena's AEIC at p 269; Mr Manoj's AEIC at para 245.

117 Statement of Claim (Amendment No. 1) at para 3.

(b) Mr Manoj's claim for repayment of a sum of S$33,000 from Mr Mike, on the basis that Mr Manoj had allegedly paid first for wine from Edulis on Mr Mike's behalf.[118]

(c) Mr Mike's counterclaim against Mr Manoj for an aggregate sum of S$300,000, on the basis that Mr Mike had allegedly transferred Number Plates to Mr Manoj in exchange for a promise by Mr Manoj to pay for said Number Plates.[119]

Preliminary issue one: sufficiency of Mr Manoj's pleadings

29 Before going into the meat of the parties' dispute, I will say a few words about the sufficiency of Mr Manoj's pleadings and the impact thereon for the evidence he has sought to adduce in this suit. In particular, I will focus on the summons taken out by Mr Manoj in HC/SUM 3578/2023 on 22 November 2023 to amend his pleadings on the S$2.8m transfer. Mr Mike objected fiercely at the hearing of the summons given the centrality of the S$2.8m transfer to the present action. However, the broader principles on sufficiency of pleadings analysed in this section is applicable as well to my analysis of the rest of the pleadings and evidence in this suit.

30 On 22 November 2023, Mr Manoj took out HC/SUM 3578/2023 to amend his Reply and Defence to Counterclaim and sought to add the following words (the "22 Nov Amendment") at paragraph 3(a):

> The Plaintiff avers that his relationship with the Defendant was strained at all material times due to, among other things, personality clashes, unhappiness about items that the Defendant claims to have gifted the Plaintiff, and differences in their views on their contributions to the family business. Parties

118 Statement of Claim (Amendment No. 1) at para 2(c).

119 Defence and Counterclaim (Amendment No. 4) at paras 14–16.

> did not have the type of relationship where the Plaintiff would give the Defendant almost S$3m.

31 Mr Manoj explained that he wanted to make the amendment to prevent unnecessary technical objections from distracting the trial.[120] Mr Manoj argued that the amendment would not take Mr Mike by surprise or prejudice his defence as, according to Mr Manoj, Mr Mike knew that the parties' relationship was strained.[121]

32 Mr Mike objected to the application.[122] Mr Mike's complaints fell into two broad categories:

(a) Mr Manoj's pleadings, with the proposed amendment, are insufficiently particularised;[123] and

(b) Mr Manoj's pleadings are sought to be amended too late, such that Mr Mike has insufficient opportunity to bring up evidence in response.[124]

33 On 27 November 2023, I allowed the amendment.[125]

34 As the complaints raised by Mr Mike may have an impact on the weight to be given to the evidence that Mr Manoj has given in this suit, I will briefly address Mr Mike's complaints.

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120 Affidavit of Manoj Dharmadas Kalwani dated 22 November 2023 at para 15.

121 Affidavit of Manoj Dharmadas Kalwani dated 22 November 2023 at paras 16–18.

122 Minute Sheet for hearing on 27 November 2023.

123 Affidavit of Bharat Dharmadas Kalwani dated 24 November 2023 at paras 61–68.

124 Affidavit of Bharat Dharmadas Kalwani dated 24 November 2023 at paras 41, 53, 60, 69–76.

125 HC/ORC 5888/2023 recording order dated 27 November 2023.

35 In my judgment, Mr Manoj's pleadings, as amended, are sufficiently particularised, with sufficient notice given to Mr Mike, such that full weight can be given to Mr Manoj's evidence given for this trial.

Law on pleadings

36 The law on pleadings had been examined in detail by the Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("V Nithia") at [34]–[41].

37 In *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [46], the Court of Appeal summarised the key holding of *V Nithia* in the following manner:

> … it must be emphasised that procedure is the handmaiden of justice, not its master. In *V Nithia v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 ("Nithia"), this court embarked on a review of the law of pleadings and observed (at [2]) that the process of pleadings is to ensure, inter alia, that the plaintiff knows the nature and substance of the defence. A court should not adopt "an overly formalistic and inflexibly rule-bound approach" which might result in injustice (see *Nithia* at [39]). Ultimately, the underlying consideration of the law of pleadings is to prevent surprises arising at trial (see, for example, the Singapore High Court decision of *Lu Bang Song v Teambuild Construction Pte Ltd* [2009] SGHC 49 at [17]). In the present case, it can hardly be said that the Respondents had been taken by surprise. From the pleadings as well as the AEICs, the Respondents were clearly apprised of the line of argument which the Appellant was seeking to advance but attempted to limit the pleaded defence on the technical basis that there was no "pleading that incorporates the entire claim". However, it could not have escaped the Respondent's attention that the Appellant had never regarded the 18 transactions as legitimate "advances" and that this formed a basis of its defence as articulated in Para 44.

38 In essence, the process of pleadings seeks to ensure that the opposing party knows the nature and substance of the case that the pleading party seeks

to run. The underlying consideration of the law of pleadings is to prevent surprises arising at trial, and courts should not adopt an overly formalistic or rule-bound approach. I note that the rule in O 18 r 8 of the Rules of Court (2014 Rev Ed) on matters which must be specifically pleaded serves this very same purpose of ensuring that adequate notice is given to all parties as to the case they must meet at trial: Jeffrey Pinsler, *Singapore Court Practice* (LexisNexis, 2023) at para 18/8/4.

39 The specific fact pattern and *dicta* in the Court of Appeal case of *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 ("*Liberty Sky*") is germane. In *Liberty Sky*, the appellant investment vehicle had sued the respondent medical practice for fraudulent misrepresentation in relation to the sale of shares in the respondent medical practice to the appellant investment vehicle. The High Court and the Court of Appeal held that the fraudulent misrepresentation claim succeeded. The issue that vexed the courts was the remedy to be awarded, and the issue of whether the remedies were adequately pleaded was discussed by the Court of Appeal at [14]–[17]. The appellant investment vehicle argued that at law, the burden was on the representor (*ie,* the respondent medical practice) to plead bars to rescission (*Liberty Sky* at [14]). The appellant investment vehicle argued that given that the respondent medical practice had not pleaded any bars to rescission, the High Court judge below had erred in refusing recission on the basis of the impossibility of *restitutio in integrum* (because the bulk of the shares purchased by the appellant investment vehicle on the basis of the misrepresentations had been on-sold to third parties).

40 The Court of Appeal considered that it was open to the respondent medical practice to argue that bars to recission had barred the ordering of recission in the suit. The Court of Appeal reasoned as follows:

> 16 In so far as the question of pleading is concerned, it was, in fact, open to [the appellant investment vehicle] to request leave to make further written submissions but it chose not to do so. Given the overall circumstances, it *cannot* be said that [the appellant investment vehicle] was taken by *surprise*. Indeed, the circumstances surrounding the sale of the AMP shares to the Chinese Investors pursuant to the Investment Agreements constituted a fact within [the appellant investment vehicle's] *exclusive knowledge*. Yet, it chose – notwithstanding the fact that it had full notice of the argument that rescission was barred by the intervention of third party rights at least by the time of [the respondent doctor's] closing submissions – not to adduce any evidence that would have supported its claim to rescission. In the circumstances, we find the argument from pleading to be rather arid and technical. The entire spirit underlying the regime of pleadings is that each party is aware of the respective arguments against it and that neither is therefore taken by surprise. [The appellant investment vehicle's] submission that [the respondent doctor's] failure to plead the bars to rescission prevented it from running the argument that *restitutio in integrum* was possible, is ***antithetical*** to the very *spirit* of the rules of pleading themselves. This is because the *specific facts and circumstances germane* to *that* argument were actually within [the appellant investment vehicle's] exclusive knowledge.
>
> [emphasis in original]

41 In essence, the Court of Appeal considered that the appellant investment vehicle was not taken by surprise by the respondent medical practice's failure to plead bars to rescission. The appellant investment vehicle had notice of the argument that rescission was barred by the intervention of third-party rights and could have requested leave to make further submissions or adduce further evidence if it wished to do so.

Mr Manoj's pleadings are sufficiently particularised

42 It is my judgment that the 22 Nov Amendment is specific and detailed. The crux of the pleading is Mr Manoj's averment that he and Mr Mike did not have the type of relationship where Mr Manoj would give Mr Mike almost S$3m. This directly clashes with Mr Mike's defence of gift in relation to the

S$2.8m transfer. Mr Manoj follows on by explaining why the parties did not have such a relationship – this is due to the strained relationship due to, among other things, "personality clashes, unhappiness about items that the Defendant claims to have gifted the Plaintiff, and differences in their views on their contributions to the family business". As for the statement "at all material times", the most obvious and reasonable interpretation of what times are material would be the time period when the dividends were declared from Novelty Builders and when the alleged loan/gift was made.

43 In relation to the timing of the amendment, it is my judgment that the amendment was not too late. It is well-established that a court has a wide power to allow amendments to pleadings at any stage of the proceedings, including on appeal: *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [117]–[119]. In deciding whether to allow an amendment, there are two primary considerations which tend to pull in different directions. The first is whether the amendment sought would allow the real issues in the proceedings to be determined, thereby ensuring that the ends of substantive justice are met. The second requires that procedural fairness to the opposing party is maintained. When an application for amendment is made late in the day, especially after the trial of the matter has concluded, it is usually the case that the prejudice to the other party would be greater. Furthermore, in such cases, courts also have to ensure that the party seeking to amend is not given a second bite of the cherry.

44 Relative to the cases where amendments to the pleadings have been sought at the appeal stage, the present amendments were made at a relatively early time, before trial has commenced. Mr Manoj's latest affidavit of evidence-in-chief ("AEIC") (*ie,* his supplemental AEIC dated 16 November 2023) was filed with a bit more than a week left before trial commenced on 28 November

2023. By this time, Mr Manoj's claims and the full extent of his evidence would have been made known to Mr Mike. If Mr Mike wished to do so, he could have put in an application for further evidence in rebuttal. Indeed, in *Hua Khian Co (Pte) Ltd v Lee Eng Kiat* [1996] 2 SLR(R) 562, the Court of Appeal at [18]–[22] had disagreed with the High Court judge's decision to expunge certain paragraphs from a witness's AEIC. The Court of Appeal had noted that the respondent would not suffer any prejudice by the presence of the offending paragraphs in the AEIC and the respondent could have simply applied at trial to adduce evidence to rebut the allegations. Similarly, in the *Liberty Sky* case canvassed above, the Court of Appeal had observed two points. Firstly, whether *restitutio in integrum* was possible was a fact within the appellant investment vehicle's exclusive knowledge. Secondly, the appellant investment vehicle had chosen, notwithstanding the fact that it had full notice of the argument that rescission was barred by the intervention of third-party rights at least by the time of the respondent medical practice's closing submissions, not to adduce any evidence that would have supported its claim to rescission.

45 In the present case, in Mr Mike's affidavit dated 24 November 2023, he had in fact highlighted at paragraphs 70 to 73 the sorts of evidence he could adduce to rebut Mr Manoj's allegation that the parties did not have the sort of relationship where Mr Manoj would give large gifts to Mr Mike. These pieces of evidence include, allegedly, gifts of whiskey, club memberships, and WhatsApp messages and e-mails evidencing the gifts. It would have been open to Mr Mike to adduce such evidence. This evidence pertains to matters within Mr Mike's exclusive knowledge. It does not appear at all onerous for Mr Mike to adduce at least some of such evidence in rebuttal.

46 In summary, therefore, Mr Manoj's pleadings are sufficiently particularised on the issue of whether the parties had the type of relationship

where Mr Manoj would give Mr Mike a gift of S$2.8m so as to put Mr Mike on notice of the case he has to meet. The amendments to the pleadings did not come at a time when irreparable prejudice would be done to Mr Mike. It was open to Mr Mike to apply to adduce further evidence to rebut any new material that had been raised by Mr Manoj. I therefore give full weight to the evidence adduced by Mr Manoj in this suit.

Preliminary issue two: the rule in *Browne v Dunn*

47 At various portions of Mr Mike's closing submissions, he submits that certain points were not suggested or put to the witnesses called to support his case. In Mr Mike's view, Mr Manoj is precluded from asserting anything to the contrary in respect of the witnesses' evidence as far as the points not put or not suggested are concerned.[126]

48 I make two points at this juncture.

49 Firstly, the operation of the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*") in modern litigation has been summarised by the court in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong Singapore Finance*"). The *Browne v Dunn* rule provides that where a submission is going to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put, the party concerned will not be allowed to make that submission. However, it has been repeatedly emphasised that this rule is not a rigid or

126 DCS at para 13. See also DCS at paras 44, 47, 61 and 68.

technical rule. As noted by the court in *Hong Leong Singapore Finance* at [42], citing *Lo Sook Ling Adela v Au Mei Yin Christina and another* [2002] 1 SLR(R) 326 at [40], "the rule is not rigid and does not require every point to be put to the witness but this would generally be required where the submission was 'at the very heart of the matter'".

50 Secondly, it should be noted that parties were given the following direction as part of the directions for trial issued by the court for the present action:[127]

> 13. The rule in *Browne v Dunn* will be applied at trial in a manner which goes to substance rather than to form. Therefore, for a party to be at liberty to raise a specific point in its closing submissions, there is no need for that party's counsel formally to put or suggest that specific point to an opposing witness in cross-examination if the witness:
>
> > (a) had fair notice of that point before swearing or affirming his affidavit of evidence in chief, whether through the pleadings (including further and better particulars) or otherwise; or
> >
> > (b) has had a fair opportunity to respond to that point in his own affidavit of evidence in chief or orally in the course of his own cross-examination.
>
> 14. Further, and in any event, there is no need to put or suggest any point to a witness of fact if either: (a) it is not a point of fact, *eg* it is a proposition of law or is an inference to be drawn from the facts; or (b) the witness cannot give direct evidence of the point within the meaning of s 62(1) of the Evidence Act.

51 I thus approach the evidence given in this suit and the submissions in this case in a manner that prioritises fairness to the witnesses and emphasises substance over rigidity or technicality.

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127 Letter from Court dated 10 November 2023.

Preliminary issue three: alleged changes in the parties' cases across time

52 Mr Mike in his closing submissions also submitted that there have been many changes made to Mr Manoj's case across time, which renders Mr Manoj's testimony not credible.[128] Mr Manoj also made similar allegations that Mr Mike's defence had shifted and changed.[129]

53 In my treatment of the evidence adduced in this suit, I bear in mind the guidance of the Court of Appeal in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [56] on the need to consider the *totality* of the evidence (including contemporaneous objective documentary evidence) in determining the veracity, reliability and credibility of a particular witness' evidence. The court should be alive to the possibility that there may be good reasons for gaps in the testimony of witnesses, such as because of gaps in memory especially where a long period of time has passed since the occurrence of the events in question. I also bear in mind the guidance given by the court in *Hon Chi Wan Colman v Public Prosecutor* [2002] 2 SLR(R) 821 at [71]–[74], where the court noted that a court can decide to accept one part of a witness' testimony while rejecting another. In that case, the court observed at [71] that there were material discrepancies in evidence given by a witness relating to other incidents in the sequence of events leading to the subject transaction in that case. However, other aspects of the witness' evidence were found to be reliable and the trial judge had been entitled to rely on those parts of the evidence which were reliable (at [72] and [74]).

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128 DCS at paras 3–13 and 45, 47, 61 and 68.

129 PCS at paras 2, 62 and 84.

54 Thus, in my assessment of the various pieces of evidence tendered, and in particular the testimony of the various witnesses, I bear in mind my duty to consider the totality of the evidence and I apply my mind specifically to each issue raised to assess if the evidence on each particular issue should be accepted or rejected.

The S$2.8m transfer

Parties' cases

Mr Manoj's case

55 Mr Manoj's case is that in 2015 or 2016, there was a meeting at Novelty House (an office building belonging to the Novelty Group).[130] At that meeting, Mr Mike asked Mr Manoj for a loan of an aggregate sum of S$2,837,481.55 in Mr Manoj's account with Novelty Builders in order to pay down Mr Mike's debt to Novelty Builders.[131] Mr Manoj's case is that parties agreed that Mr Mike would repay this loan on demand. The loan was in consideration of the parties continuing their practice of maintaining accounts and/or set-offs of debits and credits as between themselves and their family-owned corporate entities.[132]

56 Mr Manoj argues that Mr Mike needed the S$2.8m transfer because Mr Mike had other debts and was unable to pay Novelty Builders in relation to the outstanding invoices for the Wilkinson Property.[133] Mr Manoj contends that given that he and Mr Mike had a strained relationship, it was unlikely for Mr Manoj to be willing to carry out the S$2.8m transfer without a promise of

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130 Mr Mike's AEIC at para 178.

131 Plaintiff's Closing Submissions dated 19 January 2024 ("PCS") at para 16.

132 PCS at para 16.

133 PCS at paras 23–31.

repayment.[134] Mr Manoj also submits that he had lent sums larger than S$2.8m to Mr Mike through oral agreements. It was thus plausible for the S$2.8m transfer to similarly be done pursuant to an oral agreement for a loan.[135] Mr Manoj further notes the parties' practice of mutually settling accounts, contending that he did not have a practice of making gifts or advancing significant sums of money to Mr Mike without expectation of repayment.[136]

57 In rebuttal to Mr Mike's defence that the S$2.8m transfer was a gift, Mr Manoj contends that Mr Mike's defence contains elements that were belatedly raised on the cusp of trial.[137] Mr Manoj also submits that Mr Mike's case that Novelty Builders' dividends were meant to be received by the shareholders of Novelty Dept Store in proportion to their shareholding in Novelty Dept Store is untenable. The agreement on this arrangement was, on Mr Mike's case, reached more than one-and-a-half years before Mr Manoj became a shareholder of Novelty Dept Store.[138] Given Mr Manoj's grievances at not being a shareholder of Novelty Dept Store, Mr Manoj submits that it is not likely that he would have agreed to incorporate and work for Novelty Builders if Novelty Builders' dividends were reserved only for Novelty Dept Store's shareholders.[139] In addition, Mr Manoj states that Mr Mike's argument that there was also an agreement for Novelty Builders' dividends to be used to pay off the parties' debt in respect of the Clacton Property and the Wilkinson Property without parties'

134 PCS at paras 32–51.

135 PCS at paras 52–57.

136 PCS at paras 58–60.

137 PCS at paras 62–68.

138 PCS at para 69.

139 PCS at para 70.

being indebted to each other or to any member of the family is not supported by sufficient evidence.[140]

58 Mr Manoj also argued that he is not estopped from claiming repayment of the S$2.8m transfer as Mr Mike has not pleaded or proved any of the constituent elements of estoppel.[141]

Mr Mike's case

59 Mr Mike's case is that there was an understanding and intention among Mr Manoj, Mr Mike and the shareholders of Novelty Dept Store that Novelty Builders would be operated and managed for the benefit of the Novelty Group.[142] Furthermore, Mr Mike's case is that this understanding included the understanding that Novelty Builder's dividends would be distributed within the family according to the family members' shareholding in Novelty Dept Store.[143] As for Mr Manoj's point that he was not a shareholder of Novelty Dept Store when Novelty Builders was incorporated, Mr Mike's rebuttal is that Mr Mike had already agreed to transfer 20% of Novelty Dept Store's shares to Mr Manoj at that point in time, and the family already regarded Mr Manoj as a 20% shareholder in Novelty Dept Store.[144]

60 Mr Mike argues that in 2015, Ms Geena raised the idea of using Novelty Builders' dividends to pay the costs of the variation works done to the Clacton Property and the Wilkinson Property. In that regard, Mr Manoj and Mr Mike

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140 PCS at paras 71–78.

141 PCS at para 92.

142 DCS at para 34.

143 DCS at paras 35–36.

144 DCS at para 40.

would not owe Novelty Builders any money and Mr Mike would not owe Mr Manoj anything for the dividends which Novelty Builders declared.[145] Mr Mike points out that Novelty Builders' ledgers record a transfer of S$2,837,481.55 in total from Mr Manoj's account to Mr Mike's account without any accompanying narration describing the transfer as a loan.[146] Mr Mike also notes that when Mr Manoj retrieved Novelty Builders' ledgers in 2019 and reviewed the entries, Mr Manoj did not raise any concerns about the entries not reflecting his assertion that the transfers were done pursuant to a loan agreement.[147]

61 Mr Mike further argues that there is no evidence that Mr Mike asked Mr Manoj for a loan of S$2.8m, let alone any agreement by Mr Mike to repay Mr Manoj such a sum on demand.[148]

62 Mr Mike states that he had no reason to ask for a loan from Mr Manoj given Mr Mike's wealth.[149] In rebuttal to Mr Manoj's attempt to raise examples of previous loans granted by Mr Manoj to Mr Mike under informal oral agreements, Mr Mike argues that one of the loans was unpleaded, and that the lack of documentation for the alleged S$2.8m loan went against Mr Manoj's evidence that he was becoming fastidious about settling his accounts with Mr Mike. In that regard, the other alleged loans were supported by documentary evidence and the loans were swiftly repaid.[150]

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145 DCS at paras 54–55.

146 DCS at para 56.

147 DCS at para 57.

148 DCS at para 58.

149 DCS at paras 60–61.

150 DCS at para 62.

63 Even if the evidence canvassed above does not support his case that there was an oral agreement between all family members that Novelty Builders would issue dividends to pay for the variation works to the Clacton Property and the Wilkinson Property without Mr Mike being indebted to Mr Manoj for the dividends, Mr Mike's case is that the evidence canvassed above is also consistent with Mr Mike's alternative case that Mr Manoj had made a gift of S$2.8m to Mr Mike.[151]

64 Finally, Mr Mike takes the position that Mr Manoj is estopped from claiming the S$2.8m from Mr Mike. On Mr Mike's case, Mr Manoj clearly and unequivocally promised Mr Mike that Mr Manoj would not enforce Mr Manoj's legal right to the dividends, and pursuant to this promise, Novelty Builders declared dividends for the financial years of 2014 and 2015 to pay down the parties' debts in respect of the Clacton Property and the Wilkinson Property.[152]

Law on oral agreements

65 It is trite that the substantive requirements of an oral agreement are no different from those in relation to a written contract – there needs to be (a) offer and acceptance; (b) intention to create legal relations; (c) certainty of terms; and (d) consideration: *Chan Tam Hoi (alias Paul Chan) v Wang Jian and other matters* [2022] SGHC 192 ("*Chan Tam Hoi*") at [64]–[65], citing *Tan Swee Wan and another v Johnny Lian Tian Yong* [2018] SGHC 169 at [222]. The court in *Chan Tam Hoi* further highlighted at [38] that the burden of proof always remains on the plaintiff to prove its positive case. The court also observed that being clear about which party bears the burden of proof "is

151 DCS at paras 63–65.

152 DCS at para 66.

especially important in cases involving oral agreements, where there will be gaps in the evidence precisely because there is no direct evidence that points to a written agreement". Crucially, the court noted that "it is important not to confer an unintended advantage to the plaintiff where the defendant's defence is unsustainable".

66 The court's remarks in *Chan Tam Hoi* is an instantiation of the broader principle explained by the Court of Appeal in *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 ("*Loo Chay Sit*") at [16]–[23] that the law of evidence allows for three possibilities in so far as the concept of proof is concerned – a fact can be said to be "proved", "disproved" or "not proved". As explained by the Court of Appeal at [21] of *Loo Chay Sit*, after a party seeking to prove the existence of a particular fact has adduced evidence in support of it, the opposing party may be able to adduce some evidence as to the non-existence of that fact. Such evidence may not be sufficient on its own for the court to conclude that, on a balance of probabilities, the fact does not exist so as to be "disproved". Such evidence may, nevertheless, sufficiently undermine the case of the party asserting the fact so as to cause doubt as to its existence with the result that the party is unable to discharge his burden of proving the fact. As I will go on to explain later, while I do not completely accept Mr Mike's defence in relation to the S$2.8m transfer, I nonetheless find that Mr Manoj has not proven his affirmative case on the alleged loan agreement.

67 As for the principles involved in determining the existence of an oral agreement, the court in *ARS v ART and another* [2015] SGHC 78 at [53]–[54] summarised the relevant principles as distilled from the case law, as follows:

> 53 I distil the following guiding principles on the proper approach for determining the existence of an oral agreement as set out in the cases cited above:

> (a) in ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
>
> (b) where possible, the court should look first at the relevant documentary evidence;
>
> (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists;
>
> (d) oral testimony may be less reliable as it is based on the witness' recollection and it may be affected by subsequent events (such as the dispute between the parties);
>
> (e) credible oral testimony may clarify the existing documentary evidence;
>
> (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and
>
> (g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.
>
> 54 I would add to [53(d)] above that, in the present case, *a fortiori*, where some 12 or more years have passed since the disputed events took place, oral testimony may become even less reliable.

Analysis

68 The crux of the issue for this claim is whether there was an oral agreement between Mr Manoj and Mr Mike for Mr Manoj to loan S$2.8m to Mr Mike. However, to arrive at a decision on this point, it will be necessary to address some of the issues raised by the parties in the long lead-up to the moment when this oral agreement is alleged to have been concluded.

No agreement for Novelty Builders' dividends to be divided according to Novelty Dept Store shareholding

69 The first issue to be decided is whether Mr Manoj was beneficially entitled to the 50% share of the dividends issued by Novelty Builders that was credited to his account. If Mr Mike is right in saying that the parties and the rest of the Novelty Dept Store shareholders had come together to enter into an oral agreement that Novelty Builder's dividends would be distributed within the family according to the family members' shareholding in Novelty Dept Store, then Mr Manoj's entitlement to Novelty Builders' dividends would be much diminished. It bears mentioning as well that this alleged agreement was not recorded in writing, so the law above on proving the existence of oral contracts apply similarly to this alleged agreement on how Novelty Builders' dividends would be distributed.

70 In my judgment, this alleged agreement that Novelty Builders' dividends would be distributed according to the shareholding in Novelty Dept Store did not exist. The evidence given by Mr Mike and Ms Geena is that the alleged agreement for Novelty Builders' dividends to be proportionally distributed to Novelty Dept Store's shareholders was entered into around the time of Novelty Builders' incorporation.[153] However, such an agreement is inconsistent with the parties' expectation as to the future role of Novelty Builders at the time of its incorporation.

71 Mr Mike's own evidence is that when Novelty Builders was set up, it was not anticipated to make any substantial profits.[154] Mr Mike further deposed that from the Novelty Group's perspective, what Novelty Builders billed

153 Mr Mike's AEIC at paras 90–93; Ms Geena's AEIC at paras 41–49.

154 Mr Mike's AEIC at para 95.

Novelty Group would be the construction costs that Novelty Group incurred for the development (effectively a pass through of costs from sub-contractors engaged by Novelty Builders).[155] In other words, Novelty Builders was simply meant to be a main contractor[156] that carried out the construction work for the property development projects undertaken by the Novelty Group. The main profits for any one property development would accrue to Novelty Dept Store as developer and not Novelty Builders as the main contractor.

72 Furthermore, Mr Mike's pleaded case, up until his amendment to his defence on 6 November 2023, was that "the intention and understanding amongst the shareholders of [Novelty Dept Store] was for [Novelty Builders] to be operated and managed for the benefit of the Novelty Group".[157] The further pleading about the alleged agreement that Novelty Builders' dividends would be distributed according to the shareholding in Novelty Dept Store was added via the amendment to the defence on 6 November 2023,[158] which was three weeks before trial commenced and after Mr Manoj's AEIC was filed on 31 October 2023. While I do not discount Mr Mike's case purely because his case was changed, I also note that his prior pleaded defence that there was a common understanding that Novelty Builders was to be operated and managed for the benefit of the Novelty Group is consistent with Mr Manoj's account of the role of Novelty Builders as an entity that broadly benefitted Novelty Group.[159] Such statements are broad and vague and point to a general understanding that Novelty Builders benefitted Novelty Dept Store by taking the construction

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155 Mr Mike's AEIC at para 95.

156 Mr Mike's AEIC at para 91.

157 Defence and Counterclaim (Amendment No 3) dated 14 July 2023 at para 7.10.

158 Defence and Counterclaim (Amendment No 4) at para 7.10.

159 Mr Manoj's SAEIC at para 12.

burden from Novelty Dept Store. However, there is no clear expectation between the parties that Novelty Builders was meant to contribute profit upwards into Novelty Dept Store, and to the shareholders of Novelty Dept Store. Indeed, there is also no evidence that Novelty Builders had ever contributed profits upwards to Novelty Dept Store, which lends support to this conclusion.

73 Given the relative lateness of Mr Mike's pleading about the alleged agreement that Novelty Builders' dividends would be distributed according to the shareholding in Novelty Dept Store, Mr Manoj sought and was granted permission to file a supplementary AEIC addressing Mr Mike's new pleadings. Mr Manoj's AEIC goes some way towards debunking Mr Mike's case on the alleged agreement on the proportional distribution of Novelty Builders' dividends. Mr Manoj provided evidence that when Novelty Builders was incorporated with Mr Manoj, Mr Mike and two other individuals as founding shareholders, each founding shareholder contributed S$12,500 to its paid-up capital.[160] Importantly, Mr Manoj gave evidence that his capital injection of S$12,500 was drawn from his own account with Novelty Dept Store.[161] Mr Manoj also gave evidence that he later further injected S$125,000 into Novelty Builders by drawing this sum from his account with Novelty Dept Store.[162] These drawings and capital injections are supported by entries in Novelty Dept Store's ledger, with detailed narrations associating these debits with Novelty Builders. In my judgment, the fact that Mr Manoj injected his own money into Novelty Builders supports his case that Novelty Builders was a venture between him and Mr Mike, and that they were the ones entitled to any residual profits generated by Novelty Builders.

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160 Mr Manoj's SAEIC at para 41.

161 Mr Manoj's SAEIC at para 41; Core Bundle of Documents at p 606.

162 Mr Manoj's SAEIC at para 43; Core Bundle of Documents at p 609.

74 Moreover, whereas Novelty Builders was incorporated on 5 January 2006, Mr Manoj only became a shareholder of Novelty Dept Store on 27 July 2007.[163] Mr Mike's evidence is that around 2007, he decided to speak to Mr Manoj about Mr Manoj's longstanding request to be given shares in Novelty Dept Store.[164] Thereafter, Mr Mike discussed this request with Mr Dharmadas. Mr Mike and Mr Dharmadas decided to accede to Mr Manoj's request and to give Mr Manoj 20% of the shares in Novelty Dept Store.[165] Based on Mr Mike's own chronology in the evidence he gave, Mr Manoj would not have had any concrete assurance of being a shareholder of Novelty Dept Store when Novelty Builders was incorporated early in 2006. Mr Mike's evidence is that Mr Manoj was annoyed over – in Mr Manoj's view – the belated allocation to him of shares in Novelty Dept Store.[166] In this context, it would have been unlikely for Mr Manoj to have been a party to an agreement, made around the time of Novelty Builders' incorporation in early 2006, that Novelty Builders' dividends should be distributed proportionately in accordance with Novelty Dept Store's shareholding.

75 It is also commercially plausible that Novelty Builders has a different shareholding structure as compared to Novelty Dept Store because Novelty Builders was first incorporated with third party shareholders,[167] and the family had taken legal advice as to why Novelty Dept Store should not be a shareholder

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163 Agreed Chronology at p 1.

164 Mr Mike's AEIC at para 105.

165 Mr Mike's AEIC at para 106.

166 Mr Mike's AEIC at paras 101–104.

167 Mr Mike's AEIC at para 90; Mr Manoj's SAEIC at para 39.

of Novelty Builders.[168] There was therefore logic in Mr Manoj and Mr Mike being the co-venturers in this regard.

76 This being the case, I do not find that there had been a legally enforceable *agreement* that Novelty Builders' dividends would be divided up in proportion to the shareholdings in Novelty Dept Store. The context surrounding the set-up of Novelty Builders is inconsistent with the parties having made such an agreement. Indeed, Mr Mike's pleadings were never entirely clear as to the elements of such an agreement *ie*, where was the offer and acceptance, consideration, and intention to create legal relations evinced. The only understanding that I can discern from the evidence is that Novelty Builders, as part of the wider family business, benefitted Novelty Dept Store in the broad sense. Following on from this, Mr Manoj as 50% shareholder in Novelty Builders is beneficially entitled to 50% of Novelty Builders' dividends.

No oral agreement between Mr Manoj and Mr Mike for Mr Manoj to loan S$2.8m to Mr Mike

77 What followed chronologically was the issue of the invoices by Novelty Builders to Mr Manoj and Mr Mike for the costs associated with the Clacton Property and the Wilkinson Property. It was around 2015 that Ms Geena says that she raised the idea to use Novelty Builders' dividends to pay for the variation costs for the Clacton Property and Wilkinson Property.[169] This is consistent with the fact that these dividends had not been priorly pushed up to Novelty Dept Store pursuant to any alleged agreement to distribute the dividends to shareholders of Novelty Dept Store in proportion to their

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168 NEs dated 29 November 2023 at p 194, line 23 to p 195, line 5; NEs dated 30 November 2023 at p 125, lines 5–11.

169 Ms Geena's AEIC at para 89.

shareholding. Ms Geena's consultation with the rest of the family on this plan is also consistent with the loose understanding of Novelty Builders as being generally of benefit to the Novelty Group.

78 This is where the crux of this claim arises for decision. In my judgment, Mr Manoj has not proved his affirmative case that there was an oral agreement between Mr Manoj and Mr Mike for Mr Manoj to *loan* S$2.8m to Mr Mike, with an accompanying obligation on the part of Mr Mike to repay the loan on demand.

79 It bears remembering that, as explained above at [65], Mr Manoj as the plaintiff bears the burden of proving the substantive requirements of an oral agreement. Mr Manoj did not manage to adduce any documentary record evidencing the alleged oral agreement for the S$2.8m loan, nor is there any witness (other than Mr Manoj himself) who testified in support of the existence of this loan agreement. Given this state of the evidence, Mr Manoj has an uphill battle to fight in proving his positive case.

80 Mr Manoj pleaded that his relationship with Mr Mike was strained at all material times, such that the parties did not have the type of relationship where Mr Manoj would give Mr Mike almost S$3m.[170]

81 I disagree.

82 Firstly, Mr Manoj's pleaded case was that the alleged loan agreement for the S$2.8m loan to Mr Mike was made around 2015 or 2016.[171] Around this point in time, the relationship between the parties had elements of cordiality and

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170 Reply and Defence to Counterclaim (Amendment No 5) at para 3(a).

171 Statement of Claim (Amendment No 1) at para 3(g).

civility. An example can be seen in the exchange summarised above at [19] concerning Mr Mike's offer to order "Vega Sicilia 'Valbuena' 2010" wine for Mr Manoj. Another example can be seen from Mr Manoj's own evidence that in 2017, he had cancelled his own family holiday so as to travel with Mr Mike to Stuttgart, Germany to accompany Mr Mike while he underwent surgery to remove a tumour.[172] Mr Manoj gave evidence that he sincerely wanted to show support since "Mike was ultimately my brother and a co-owner of Novelty Group".[173] I am not persuaded that the relationship between the parties was so bad as to preclude the possibility of a transfer of moneys between the parties without a promise of repayment.

83 Secondly, while I note that Mr Manoj had raised in his AEIC a litany of examples of Mr Manoj and Mr Mike mutually settling accounts,[174] the alleged S$2.8m loan is qualitatively different. Many of the examples given by Mr Manoj, such as a purchase of a "Hermes Lindy Croco bag" for Mr Manoj's wife,[175] the purchase of "Rolls Royce parts, headrests, shoes and bags" for Mr Manoj[176] and the purchase of "Chateau Pavie 2008" wine for Mr Mike,[177] were dealings that were largely confined to the two parties. In contrast, the S$2.8m transfer engaged the interests of the entire Kalwani family. The S$2.8m was ultimately meant to pay for part of the construction costs of the Wilkinson Property. The Wilkinson Property was intended to be the Kalwani family home

172 Mr Manoj's AEIC at paras 187–192.

173 Mr Manoj's AEIC at paras 189 and 191.

174 Mr Manoj's AEIC at paras 157–186.

175 Mr Manoj's AEIC at paras 167–168.

176 Mr Manoj's AEIC at paras 169–172.

177 Mr Manoj's AEIC at para 186.

where the parties' parents, Mr Mike, Ms Geena, and Ms Kamni would reside.[178] *Even if* the relationship between Mr Mike and Mr Manoj was strained, and *even if* Mr Mike and Mr Manoj had some practice of accounting with each other, this is inconclusive as to whether Mr Manoj might have been willing to contribute to help with the costs of the Kalwani family home.

84 I note also that Mr Manoj had included in the list of examples of him settling accounts with Mr Mike an instance where, in 2011, Mr Manoj asked Mr Mike to help Mr Manoj with purchasing jewellery for Mdm Sheela and Mr Manoj's wife, with Mr Manoj reimbursing Mr Mike for the purchase.[179] While this example is far from conclusive of the parties' relationships with each member of the family, I note that this example provides an instance of Mr Manoj giving a gift to his mother. The broader point here is that Mr Manoj's pleading of his strained relationship with Mr Mike still leaves unanswered questions as to whether this strained relationship extended to the rest of the Kalwani family, who would ultimately benefit from the Wilkinson Property.

85 I note that Mr Manoj had provided evidence of loans (a US$9m loan in 2013 and a US$6m loan in 2014) that Mr Manoj had previously given to Mr Mike via oral agreements.[180] Yet, these were different from, and not dispositive of, the issue of the S$2.8m loan. The examples raised by Mr Manoj were short-term loans returned within a matter of weeks.[181] The US$9m loan was documented, albeit through text message evidence.[182] Moreover, Mr Mike was

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178 Ms Geena's AEIC at para 68.

179 Mr Manoj's AEIC at paras 161–163.

180 Mr Manoj's AEIC at para 133–143.

181 Mr Manoj's AEIC at paras 137 and 141.

182 Mr Manoj's AEIC at paras 136–137 and p 245, 247 and 248.

asked on the stand about whether he agreed that the US$6m loan was concluded pursuant to an oral agreement between Mr Manoj and Mr Mike.[183] Mr Mike's evidence is that he and Mr Manoj wanted to let their mother, Mdm Sheela, take advantage of higher interest rates being offered in India, and thus money was borrowed from Mr Manoj to be deposited into Mr Mike's and Mdm Sheela's joint account for the India investment.[184] Thereafter, money was borrowed in Singapore against the India investment, which allowed the money loaned from Mr Manoj to be returned to him. I observe that Mr Mike's evidence on this loan arrangement was believable and consistent with the short-term nature of the loan. In short, the evidence of previous loans is not a precedent for this current loan. In fact, the pattern of behaviour that this evidence shows is contrary to Mr Manoj's case because it shows that Mr Mike returned previous loans quickly.

86 The documentary evidence does not assist Mr Manoj's case. There is no documentary evidence at all (not even text messages) referring to the alleged S$2.8m loan. This is incongruous with the existence of the S$2.8m loan.

(a) Mr Manoj was able to raise a litany of examples of him and Mr Mike purportedly engaging in a practice of mutually settling accounts for sums owed to each other,[185] with accompanying documentary evidence demonstrating that there was a loan or money was owed.[186] This goes to the point about how Mr Manoj was, by his own evidence, more fastidious in accounting with Mr Mike for any further purchases

183 NEs dated 30 November 2023 at p 93, lines 10–12.

184 NEs dated 30 November 2023 at p 93, line 15 to p 94, line 17.

185 Mr Manoj's AEIC at paras 157–192.

186 Mr Manoj's AEIC at exhibits MDK–42 to MDK–55.

parties made for each other after 2011.[187] It is inconsistent with Mr Manoj's fastidiousness to make no mention of the S$2.8m loan, even in text messages, over the years.

(b) Novelty Builders' ledger does not reflect the S$2.8m transfer as a "loan" from Mr Manoj to Mr Mike. The ledger simply reflected, for Mr Manoj's account, "…TRANSFER CR BAL FM DIRECTOR-MDK TO DIRECTOR-BDK…" for both of the transfers totalling up to S$2.8m,[188] with similar ledger entries made for Mr Mike's account.[189] I note at this juncture that Novelty Builders' ledger does contain numerous entries that are explicitly reflected as loans, such as an entry dated 19 September 2014 bearing the narrative "INTER-CO LOAN REC'D FROM NDSPL -SDRY" for the sum of S$1,144,500.00.[190] There are numerous similar entries recording loans in Novelty Builders' ledger.[191] If the S$2.8m loan was indeed a loan, it would be reasonable to expect it to be contemporaneously reflected as such in the ledger.

(c) I also note that the idea of documenting parties' debts is not foreign to the Kalwani family. It is Mr Manoj's own evidence that the Kalwani family had previously, from 2013 to 2016, executed deeds and supplemental deeds to allow Mr Manoj's and Mr Mike's debts to Novelty Dept Store to be set-off against Mr Dharmadas', Ms Kamni's and Ms Geena's credits with Novelty Dept Store. These deeds contain an obligation for Mr Mike and Mr Manoj to repay the debts to Mr

187 Mr Manoj's AEIC at paras 157–158.

188 Ms Geena's AEIC at p 257.

189 Ms Geena's AEIC at pp 261–262.

190 Core Bundle of Documents at p 744.

191 Core Bundle of Documents at pp 664–757.

Dharmadas, Ms Kamni and Ms Geena.[192] Indeed, it is Mr Manoj's own evidence that these series of deeds and supplemental deeds were prepared to allow Novelty Dept Store's accounts to appear cleaner by reducing the amounts that are recorded as owing by Mr Mike and Mr Manoj.[193] There are salient parallels between this need to clean up Novelty Dept Store's accounts and the circumstances behind the S$2.8m transfer from Mr Manoj to Mr Mike. Mr Manoj's own evidence is that around 2015, Ms Geena mentioned to Mr Manoj and Mr Mike that she was facing issues with Novelty Builders' accounts due to significant owings from Mr Manoj and Mr Mike.[194] This led to the issuance of dividends and the transfer of dividends in order to pay down the owings. Curiously, however, there is no documentary indication of any similar arrangement being considered involving deeds and supplemental deeds to record Mr Mike's debts to Novelty Builders being paid down using credit amounts in Mr Manoj's account, with a corresponding obligation on the part of Mr Mike to repay Mr Manoj. The deeds and supplemental deeds executed by the Kalwani family to tidy up the accounts of Novelty Dept Store were dated 31 December 2013,[195] 31 December 2014,[196] 31 December 2015[197] and 31 December 2016.[198] This is around the time the alleged S$2.8m loan to Mr Mike was made. Yet, there is no indication whatsoever that a similar arrangement as that adopted by Novelty Dept

192 Mr Manoj's AEIC at paras 146–152.

193 Mr Manoj's AEIC at para 151.

194 Mr Manoj's AEIC at para 87.

195 Mr Manoj's AEIC at p 256.

196 Mr Manoj's AEIC at p 261.

197 Mr Manoj's AEIC at p 266.

198 Mr Manoj's AEIC at p 271.

> Store was considered for Novelty Builders. The point here is *not* that Novelty Builders must or ought to have used the same accounting mechanism to deal with the Wilkinson Property debt as that adopted for the debts owed to Novelty Dept Store. The point here is that the idea of documenting loans or reflecting in writing transfers of dividends made pursuant to loan agreements was not foreign to the Kalwani family. This state of affairs makes it less likely for a US2.8m loan from Mr Manoj to Mr Mike to not be reflected in any written documentation, if such a loan did in fact exist.

87 There is corroborating evidence from both Ms Kamni[199] and Ms Geena[200] that the S$2.8m transfer was not a loan. While I keep in mind the possibility that both Ms Kamni and Ms Geena might have a closer relationship to Mr Mike than Mr Manoj, it is not clear to me why Ms Kamni's evidence in particular (where she deposed that she had never heard of a loan being in place) was not challenged.[201]

88 Mr Manoj made much about Mr Mike's alleged liquidity issues, in view of his debts to Novelty Dept Store and his alleged gambling problem.[202] While I agree with Mr Manoj that Mr Mike's net worth based on the valuation of Novelty Dept Store does not equate to free liquidity, this is not conclusive about whether the parties entered into a *loan agreement* for the S$2.8m transfer. Mr Mike's alleged need for cash is also consistent with a *gift* of the S$2.8m. Mr Manoj's allegations concerning Mr Mike's cashflow issues also do not explain

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199 Ms Kamni's AEIC at para 34.

200 Ms Geena's AEIC at para 166.

201 NEs dated 30 November 2023 at p 216, line 14 to p 218, line 11.

202 PCS at para 25.

why Mr Mike had to approach Mr Manoj for a loan, and not approach the rest of the Kalwani family. It bears remembering that the Wilkinson Property was the subject of the debt that the S$2.8m was meant to repay. Logically, it can be said that there would be a moral imperative for the rest of the Kalwani family members to pitch in. Mr Manoj did not put any questions to Ms Geena and Ms Kamni in this regard when they took the stand. I am unable to draw any firm conclusions, and can only say that Mr Mike's alleged liquidity issues do not prove that there was a *loan agreement* behind the S$2.8m transfer.

89 Finally, there is Mr Mike's oral evidence that himself, Ms Geena and Mr Manoj entered into a so-called "addendum" agreement. It was allegedly agreed that Novelty Builders' dividends would first be used to pay off invoices associated with both the Clacton Property and the Wilkinson Property, before being distributed in proportion to the shareholding in Novelty Dept Store.[203] Mr Mike caveated his evidence by saying that everything "was done on an informal basis".[204] This "addendum" is not part of Mr Mike's pleaded defence. It is not part of Mr Mike's AEIC nor Ms Geena's AEIC. As this "addendum" was only raised in Mr Mike's cross-examination, Mr Manoj did not have an opportunity to address it when giving evidence. Even so, Mr Manoj in his closing submissions has managed to raise questions about the existence of this "addendum", by pointing out that (a) the sum of S$1,837,481.55 left over after Mr Manoj's dividends were used to pay down the Clacton Property debts sat in Mr Manoj's account for some time before being transferred to Mr Mike's account to settle the debts associated with the Wilkinson Property (see [12] above);[205] and (b) Ms Geena transferred S$13,619.73 extra from Mr Manoj's

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203 NEs dated 30 November 2023 at p 140, line 4 to p 141, line 17.

204 NEs dated 30 November 2023 at p 141, lines 16–17.

205 PCS at para 80.

account to Mr Mike's account, over and above Mr Manoj's share of the Novelty Builders dividends.[206] Mr Manoj contends that these two discrepancies show that there was no "addendum" agreement for Novelty Builders' dividends to be applied towards the debts associated with the Clacton Property and the Wilkinson Property in priority. With the state of the evidence before me, I do not have sufficient material to hold that Mr Mike has proven the existence of this "addendum". Yet, as noted above at [65], the unsustainability of this aspect of Mr Mike's case cannot patch the deficiencies in Mr Manoj's affirmative case. This is because Mr Manoj's rebuttal of Mr Mike's evidence on the "addendum" cannot prove Mr Manoj's affirmative case that all the elements of an oral loan contract for the S$2.8m transfer have been made out.

90 Ultimately, when a broad view is taken of this case, the parties are trying to fit a definitive legal context into a matrix of informal dealings carried out in a family-owned business. These informal dealings were carried out at a time when litigation was not yet contemplated. Both Mr Manoj and Mr Mike gave evidence that the affairs of the Novelty Group were conducted in an informal manner.[207] What emerged ultimately from my analysis of the evidence is the conclusion that Mr Manoj has failed to fit the informal dealings between the parties into the legal requirements of an oral agreement for a loan.

91 I end this section by observing that this outcome in relation to the claim concerning the S$2.8m transfer bears some resemblance to the court's conclusion at [67] of *Thong Soon Seng v Magnus Energy Group Ltd* [2023] SGHC 5 ("*Thong Soon Seng*"). In *Thong Soon Seng*, the court found that the plaintiff had failed to prove his pleaded case that he made a loan of $4m to the

206 PCS at para 81.

207 Mr Manoj's AEIC at par 81; Mr Mike's AEIC at para 14.

defendant, which resulted in the failure of his claim in debt. The court also found that the plaintiff had failed to plead and prove an unjust factor, which rendered his alternative claim in unjust enrichment a failure as well. Importantly, the court observed at [60] that the court's decision meant that the defendant was entitled to keep the $4m even though it readily accepted that the payment was not a gift, and even if its positive case on the reason for the payment cannot be proven or is actually false. Such an outcome is reflective of the common law's approach which holds that the absence of basis for the defendant's enrichment is not sufficient for restitution to follow (*Thong Soon Seng* at [62]–[63]). The conclusion that I have reached is similar. Mr Manoj has failed to prove his pleaded case that he made a loan of S$2.8m to Mr Mike. I am left with doubts as to Mr Mike's positive case because I have found that there was no agreement for Novelty Builders' dividends to be divided proportionately amongst Novelty Dept Store's shareholders and I have found that the "addendum" agreement was not proven. Yet, the absence of a proven basis for Mr Mike's enrichment is not sufficient for a remedy to follow for Mr Manoj. Mr Manoj's claim that Mr Mike has been unjustly enriched in the sum of S$2,837,418.55[208] fails as well.

92 Mr Manoj's case for the repayment of the S$2.8m transfer fails. The issue of whether Mr Manoj's claim is barred by estoppel therefore also falls away.

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208 Statement of Claim (Amendment No 1) at para 6.

The Edulis wines

Parties' cases

Mr Manoj's case

93 Mr Manoj's case is that he had paid a sum of €21,456.00 to Edulis for wines on Mr Mike's behalf in 2016, on the basis that Mr Manoj would be repaid on demand.[209] Mr Manoj's case is that the agreement was reached orally on the telephone.[210]

94 Mr Manoj contends that invoice no. 63155, which Mr Manoj paid allegedly on Mr Mike's behalf, was for 111 bottles of 4 different wines, and Mr Mike could not give a clear explanation for how Mr Manoj came to have ordered so much wine through Mr Mike for Mr Manoj's personal use.[211] Instead, Mr Manoj contends that he had a direct purchasing relationship with Edulis and did not require Mr Mike to place orders for Mr Manoj.[212] Mr Manoj also argues that his claim is not barred by laches or acquiescence as his claim is in contract, and acquiescence requires an unequivocal representation that founds an estoppel, waiver or an abandonment of rights, which Mr Mike has not proven.[213]

Mr Mike's case

95 Mr Mike's case is that he had e-mailed Mr Manoj two Edulis invoices and that Mr Manoj had paid one of the two invoices because that invoice was

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209 Statement of Claim (Amendment No. 1) dated 30 June 2023 at para 2(c).

210 PCS at para 94.

211 PCS at para 96.

212 PCS at para 97.

213 PCS at para 99.

for wines that Mr Manoj had asked Mr Mike to order on Mr Manoj's behalf.[214] Mr Mike argues that the contemporaneous documents all support his account.[215] Mr Mike also contends that it is incongruous with Mr Manoj's claim that he was fastidious, meticulous and conscious about settling his accounts with Mr Mike for Mr Manoj to not have claimed the €21,456 sum from Mr Mike earlier.[216] Further, there is no documentary evidence supporting the existence of any request from Mr Mike to Mr Manoj for Mr Manoj to pay Edulis' invoice of €21,456 on Mr Mike's behalf.[217]

96 Mr Mike also argues that Mr Manoj's failure to bring his claims within a reasonable time despite having knowledge of the facts on which his claims are based constitutes a bar by laches or a case of acquiescence which prevents Mr Manoj from acting upon the claim now.[218]

97 Mr Mike states that Mr Manoj's claim in unjust enrichment in relation to the Edulis wine claim is a non-starter given that Mr Manoj cannot make out the basis on which he paid the €21,456 (*ie,* the alleged oral agreement between Mr Mike and Mr Manoj for Mr Manoj to pay for Mr Mike's wines on Mr Mike's behalf).[219]

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214 DCS at paras 16–18 and 20–21.

215 DCS at paras 20–22.

216 DCS at para 23.

217 DCS at para 24.

218 DCS at paras 28–29.

219 DCS at para 30.

Mr Manoj did not pay for the Edulis wines on Mr Mike's behalf

98 In my judgment, Mr Manoj's claim for S$33,000 for wine that he allegedly paid for on Mr Mike's behalf fails.

99 The contemporaneous documentary evidence adduced support Mr Mike's account that the moneys paid by Mr Manoj in relation to invoice no. 63155 were for Mr Manoj's own wine order. The events surrounding Mr Manoj's payment for invoice no. 63155 have been summarised at [17]–[19] above. There is in evidence an e-mail exchange showing that on 4 and 5 May 2016, Mr Manoj and Mr Mike had a conversation over e-mail where Mr Mike offered to order some "Vega Sicilia 'Valbuena' 2010" wine for Mr Manoj. Mr Manoj agreed, saying "Ok pls add some for me but let me pay for it thank u".[220] Mr Manoj testified that this exchange shows that he had agreed that Mr Mike should place an order for some wines for Mr Manoj, and that Mr Manoj would pay for his share of the wines.[221] Invoice no. 63155 which Mr Manoj paid for did indeed include 24 bottles of "Vega Sicilia Valbuena 5° 2010" wine,[222] though admittedly it did contain other wines as well, totalling 111 bottles. Mr Mike provided a plausible explanation for why there were so many other bottles of wine in invoice no. 63155. His evidence was that Mr Manoj had separately spoken to Mr Mike on the phone and asked to order other wines as well, other than the "Vega Sicilia 'Valbuena' 2010" wine.[223] Moreover, Mr Mike testified that Mr Manoj drinks wine and entertains people with wine, whereas Mr Mike collects wine but does not drink.[224]

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220 Mr Mike's AEIC at pp 146–147.

221 NEs dated 28 November 2023 at p 229, lines 3–13.

222 Mr Mike's AEIC at p 152.

223 NEs dated 30 November 2023 at p 179, line 15 to p 180, line 5.

224 NEs dated 30 November 2023 at p 179, lines 9–15.

100 I note in this regard that documentary evidence is lacking to demonstrate that Mr Manoj had asked Mr Mike to order wines other than the "Vega Sicilia 'Valbuena' 2010" wine. Mr Mike's evidence about the parties' wine-drinking habits or lack thereof was also not in AEIC. However, the contemporaneous documents show that Mr Manoj had agreed to pay for "Vega Sicilia 'Valbuena' 2010" wine, and this wine formed a part of invoice no. 63155. This lends credibility to Mr Mike's account even though the available documents do not *completely* support all aspects of Mr Mike's narrative. Furthermore, I note that Mr Manoj admitted that in relation to another order of wines from Edulis in January 2016,[225] Mr Manoj had similarly asked Mr Mike to order some wine for Mr Manoj and was content to leave Mr Mike to deal with the specifics of that order in terms of quantity.[226] Invoice no. 63028 and invoice no. 63155 also contain repetitions. Invoice no. 63028, which Mr Mike paid[227] and which, on both parties' cases, contains wine belonging to Mr Mike,[228] contains an entry for "Vega Sicilia Unico 2007, en caisse de 6 bts … Ribera del Duero DO" wine with the quantity being 21 bottles.[229] Invoice no. 63155, which Mr Manoj paid,[230] similarly contains an entry for "Vega Sicilia Unico 2007, … Ribera del Duero DO" wine with the quantity being 48 bottles.[231] This lends credence to Mr Mike's account that the two invoices were for two separate orders of wine, with invoice no. 63028 being for Mr Mike's order and invoice no. 63155 being for

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225 Mr Mike's AEIC at para 163 and p 143.

226 NEs dated 28 November 2023 at p 225, line 15 to p 226, line 18.

227 Mr Mike's AEIC at para 173 and pp 162–165; Agreed Chronology at p 3.

228 Mr Mike's AEIC at para 173; Mr Manoj's AEIC at paras 206–212.

229 Mr Manoj's AEIC at p 402.

230 Mr Manoj's AEIC at para 211 and pp 429–431; Mr Mike's AEIC at para 172 and pp 157–159; Agreed Chronology at p 3.

231 Mr Manoj's AEIC at p 404.

Mr Manoj's order. Otherwise, there would be little reason for Edulis to split up the orders of the "Vega Sicilia Unico 2007, … Ribera del Duero DO" wine.

101 In contrast, there is scant documentary evidence in support of Mr Manoj's claim. Most importantly, as against Mr Mike's contemporaneous documentary evidence that Mr Manoj had asked Mr Mike to order "Vega Sicilia 'Valbuena' 2010" wine for Mr Manoj and had asked to pay for the wine, Mr Manoj did not adduce evidence to show that he had made any other payment for such wine other than the €21,456 he paid under invoice no. 63155. In other words, by paying for invoice no. 63155, Mr Manoj was discharging his promise to pay as stated in his 5 May 2016 e-mail where he had said "Ok pls add some for me but let me pay for it thank u" (see [19] above).

102 I turn to Mr Manoj's claim that he had a telephone conversation with Mr Mike where the parties agreed for Mr Manoj to pay first for the Edulis wines on behalf of Mr Mike.[232] Mr Manoj admits that he has no notes of this conversation, no records showing that this call took place and no text message records referring to this telephone conversation.[233] According to Mr Manoj, there was a second call between Mr Manoj and Mr Mike after Mr Manoj had effected payment for invoice no. 63155 where Mr Mike notified Mr Manoj that invoice no. 63028 was still unpaid, but that Mr Mike could pay it himself.[234] Mr Manoj again admits that there is no documentary evidence supporting the existence of this second call, or indeed, the existence of any request from Mr Mike asking Mr Manoj to pay for invoice no. 63155.[235] The absence of documentary evidence

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232 PCS at para 94.

233 NEs dated 28 November 2023 at p 243, line 21 to p 244 line 4.

234 Mr Manoj's AEIC at para 212.

235 NEs dated 28 November 2023 at p 252, line 23 to p 253, line 25.

referencing this oral agreement is detrimental to Mr Manoj's case, especially in the light of Mr Manoj's own evidence concerning how the parties interacted with each other. It is Mr Manoj's own evidence that after 2011, he "became more fastidious in accounting with Mike for any further purchases we made for each other throughout the years", with the parties having a practice which was to "settle accounts between ourselves".[236] As noted above at [86(a)], Mr Manoj was able to raise a litany of examples of him and Mr Mike purportedly settling accounts, with accompanying documentary evidence demonstrating that there was a loan or money was owed. As against this backdrop, it is not believable, if the agreement actually existed, for Mr Manoj to not have records of him chasing for payment or at least referencing the existence of this agreement. Mr Manoj attempted to explain away this seeming inaction on the basis that from July 2017, his mother was in a coma.[237] However, July 2017 was more than a year after the payment for invoice no. 63155 was made. This explanation was thus not credible.

103 In my judgment, Mr Manoj's payment of €21,456 for invoice no. 63155 is more likely than not for his own wines, and the payment was not made pursuant to an agreement for Mr Manoj to pay first for Mr Mike's wines and be repaid later. The arguments on laches and acquiescence therefore also fall away given that Mr Manoj's primary case on the Edulis wines fail. As for the unjust enrichment issue, I note that Mr Manoj made no submission in his closing submissions on the ground of unjust enrichment in relation to the Edulis wines.[238] In any case, as the court noted in *Thong Soon Seng* at [66], it is incumbent on a claimant seeking to advance a claim in unjust enrichment to

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236 Mr Manoj's AEIC at para 158.

237 NEs dated 28 November 2023 at p 253, line 19.

238 PCS at paras 93–99.

establish an unjust factor entitling him to restitution. Having failed to discharge his burden of proving the existence of a loan agreement, and without pleading or establishing any other unjust factor entitling him to restitution, Mr Manoj's claim for S$33,000 for the Edulis wines fails.

The Number Plates

Parties' cases

Mr Mike's case

104 Mr Mike's case is that he orally agreed with Mr Manoj in the 2000s for Mr Mike to transfer to Mr Manoj the Number Plates for S$150,000 each and pursuant to that oral agreement, Mr Mike transferred the Number Plates to Mr Manoj in the 2000s.[239] Mr Mike argues that Mr Manoj had insisted on paying for the Number Plates and that this account is corroborated by Ms Geena's evidence.[240]

105 Mr Mike contends that in 2017, Mr Manoj provided acknowledgment to Mr Mike and Ms Geena that he owes Mr Mike money for the Number Plates.[241] In this regard, Mr Mike argues that his claim is not time-barred by reason of s 6(1)(*a*) of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act") because s 6(1)(*a*) does not apply to Mr Mike's claim for unjust enrichment. Moreover, there has been a renewal of the limitation period after Mr Manoj acknowledged the debt by way of his WhatsApp message to Ms Geena, and Ms Geena was Mr Mike's agent.[242]

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239 DCS at para 68.

240 DCS at para 68.

241 DCS at paras 68 and 70–72.

242 DCS at para 76.

106 Mr Mike argues that Mr Manoj has been unjustly enriched by the transfer of the Number Plates such that it would be unconscionable for Mr Manoj to retain the Number Plates.[243] The basis for his unjust enrichment claim is the oral agreement between Mr Mike and Mr Manoj for Mr Mike to transfer the Number Plates to Mr Manoj in exchange for S$300,000.[244]

Mr Manoj's case

107 Mr Manoj counters in defence to the Number Plates counterclaim that Mr Mike's pleaded case on when the alleged oral agreement for payment was formed shows an uncertain date of contract formation, throwing doubt on the existence of the agreement.[245]

108 Furthermore, Mr Manoj contends that Mr Mike has not proven that he owned the Number Plates, and that Mr Manoj's case that the Number Plates were owned by Novelty Dept Store is more likely.[246] Mr Manoj's case is that Ms Geena had effected a transfer of S$750,000 from Mr Manoj to Mr Dharmadas to pay for various items, and this payment would have covered the Number Plates.[247] In this regard, Mr Manoj explained in his AEIC that this S$750,000 was paid to Mr Dharmadas because Novelty Dept Store had earlier administratively disposed of cars and number plates previously on Novelty Dept Store's books to Mr Dharmadas as a director of Novelty Dept Store.[248] Thus

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243 DCS at para 75.

244 DCS at para 75.

245 PCS at para 101.

246 PCS at paras 102–103.

247 PCS at para 104.

248 Mr Manoj's AEIC at paras 231–232.

payment for the Number Plates had to be made to Mr Dharmadas as he had earlier paid Novelty Dept Store for the Number Plates.

109 Mr Manoj also argues that any oral agreement on payment for the Number Plates would have been entered into before the Number Plates were transferred in 2008. This means that Mr Mike's claim is time-barred.[249] Mr Manoj's position is that s 26(2) of the Limitation Act, which deems a right of action to recover a debt to accrue on the date of acknowledgement of the debt, does not apply to the Number Plates debt because s 26(2) requires a signed written acknowledgement made to the creditor or the creditor's agent (see ss 27(1) and (2) of the Limitation Act). In that regard, Mr Manoj's WhatsApp message to Ms Geena on 22 December 2017 did not acknowledge any debt owed to Mr Mike and it was not pleaded that Ms Geena was Mr Mike's agent for this debt.[250]

110 Finally, Mr Manoj submits that Mr Mike's claim under the doctrine of total failure of consideration in relation to the Number Plates fails because Mr Mike has not pleaded or proven any independent recognised unjust factor beyond the purported oral agreement.[251]

No oral agreement to pay for the Number Plates

The existence of the alleged oral contract to pay for the Number Plates

111 In my judgment, Mr Mike's claim for S$300,000 under the alleged oral agreement to transfer the Number Plates to Mr Manoj for S$150,000 each fails.

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249 PCS at para 105.

250 PCS at paras 106–110.

251 PCS at para 111.

112 As a preliminary point, it should be noted that the unsatisfactory state of the evidence concerning the ownership of the Number Plates appears to be due, in a large part, to the fact that in the 2000s, the Novelty Group and the Kalwani family appears to have mixed their personal and business assets. Mr Manoj adduced in evidence the audited financial statements of Novelty Dept Store in this regard showing that Novelty Dept Store owned over S$3m worth of motor vehicles.[252] Mr Mike's evidence is that cars were bought in Novelty Dept Store's name and, at various points in time, the accounts of various shareholders of Novelty Dept Store would be debited with the value of the cars.[253] Mr Mike's explanation for this state of affairs is that the family treated the cars as family property belonging to the family, and the family "never counted money with each other".[254] It appears, therefore, that in the 2000s, the family did not have an intention to make the clear distinctions on who owned which car (or part thereof) and whether the cars truly belonged to the family or to the family's companies, which distinctions the parties are seeking to make now. In other words, they are now trying to rationalise a situation that simply did not exist at the time.

113 Turning to the substance of the counterclaim, I first consider Mr Mike's pleading on when the alleged agreement on the Number Plates was entered into. Mr Mike pleaded that the oral agreement was entered into in the 2000s, and, similarly, in the 2000s, the Number Plates were transferred to Mr Manoj.[255] This is woefully inadequate. In *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2019] SGHC 68 ("*Independent State of*

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252 Mr Manoj's AEIC at para 217 and pp 438–440.

253 NEs dated 30 November 2023 at p 65, line 24 to p 66, line 22.

254 NEs dated 30 November 2023 at p 67, lines 3–9.

255 Defence and Counterclaim (Amendment No. 4) at paras 14–15.

Papua New Guinea"), the court held at [148]–[149] that a claimant must plead with reasonable certainty when an oral agreement was entered into. A pleading which merely asserts that an oral agreement was entered into in a particular calendar year or that it was somehow entered into over a two-month period fails the "reasonable certainty" test. *A fortiori*, a pleading that an oral agreement was concluded in "the 2000s" would fail the reasonable certainty test to an even greater degree. The court in *Independent State of Papua New Guinea* at [156] held that the vagueness of the pleadings, amongst other deficiencies in the plaintiff's case, threw substantial doubt on the existence of the pleaded agreement, though the court did not hold that the plaintiff's case failed on this ground alone. For the present matter, I similarly take into account the vagueness of Mr Mike's pleading on the Number Plates counterclaim in the overall analysis, though I do not dismiss his counterclaim on this basis alone.

114 Mr Mike's evidence is that he had bid for the Number Plates with his own money, and that they were registered under his name.[256] Yet, this is contradicted in part by LTA's records. As summarised above at [23], the earliest registration record for the number plate SGS1P shows that it was registered under Mr Manoj's name for a Morris 1275 for the period of 31 January 2007 to 1 February 2007.[257] This number plate was only registered under Mr Mike's name at a later date of 1 February 2007.[258] This partially contradicts Mr Mike's account that he had bid for the Number Plates with his own money, and that they were registered under his name.[259]

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256 Mr Mike's AEIC at para 78.

257 Mr Manoj's AEIC at pp 451–452.

258 Mr Mike's AEIC at para 225(a) and pp 260 – 261.

259 Mr Mike's AEIC at para 78.

115 As for Mr Mike's argument that Mr Manoj had, in 2017, acknowledged the debt owed in relation to the Number Plates to Ms Geena and to Mr Mike, this argument is insufficiently supported by the documentary evidence. In relation to the WhatsApp message sent by Mr Manoj to Ms Geena where he purportedly acknowledged the Number Plates debt in writing, a close reading of the message shows that it says nothing about a debt owing in respect of the Number Plates. This WhatsApp message has been reproduced at [27] above. In the message, Mr Manoj told Ms Geena to "pls confirm with this clown that the cars accounts have been adjusted and reversed to my account". Mr Manoj goes on to specify that he had "told u all the cars that I had used from day one" and complains about how "he" (apparently referring to Mr Mike) "tells me he has bought me cars and etc". This message is indeed framed in the past tense and appears to be a request from Mr Manoj directed at Ms Geena for Ms Geena to confirm with Mr Mike that the ledgers of Novelty Dept Store have been adjusted to charge the car-related costs to Mr Manoj's account.

116 It bears remembering that Ms Geena is Novelty Group's chief financial officer (see [4] above) and she maintained Novelty Dept Store's ledgers.[260] Ms Geena, in the WhatsApp chat, did not refute Mr Manoj's statement that the cars accounts have been adjusted and reversed to his account.[261] Ms Geena's explanation on the stand when asked about her omission to contradict Mr Manoj's WhatsApp message was that she did not reply as Mr Manoj was sending a lot of abusive messages.[262] This explanation still does not explain why Mr Manoj would have sent a message appearing to ask Ms Geena to *confirm* a *prior* adjustment of the company accounts. Ms Geena also gave evidence that

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260 Mr Mike's AEIC at para 181.

261 Ms Geena's AEIC at pp 269–270.

262 NEs dated 29 November 2023 at p 168, lines 2–6.

she apparently never made the adjustments to the car accounts because Mr Manoj never told her how much to transfer out of his account with Novelty Dept Store.[263] Yet, this explanation fails to account for Mr Manoj's contemporaneous statement in the WhatsApp message stating that he had "told u all the cars that I had used from day one", which suggests that Mr Manoj had provided some account of the vehicle usage that he had enjoyed (and which he presumably wanted to pay for). Furthermore, if the issue was that Ms Geena did not know how much to transfer out of Mr Manoj's account *to pay Mr Mike*, she could have asked Mr Mike. After all, it is Mr Mike's evidence and Ms Geena's evidence that the meeting where the alleged Number Plates debt was discussed was attended by Mr Mike, Mr Manoj and Ms Geena.[264] Mr Mike, on his own case, would have known of Mr Manoj's alleged acknowledgement of his promise to pay for the Number Plates, and he could have supplied the requisite figures to Ms Geena. I therefore hold that the evidence given by Ms Geena and Mr Mike in this regard does not pass muster.

117 Mr Mike's case on the number plates is not made out and the evidential burden does not shift to Mr Manoj to prove his defence. However, for completeness, I turn to examine Mr Manoj's defence. I note firstly that Mr Manoj's defence – that he had effected payment for the Number Plates by paying Mr Dharmadas via a credit entry dated 31 December 2007 in Mr Dharmadas' account – was pleaded as early as 22 March 2023.[265] However, Mr Mike did not manage to explain away this payment. In his closing submissions, Mr Mike highlighted that the 31 December 2007 credit entry in Mr Dharmadas'

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263 Ms Geena's AEIC at para 127.

264 Ms Geena's AEIC at paras 124–125; Mr Mike's AEIC at paras 178–180.

265 Reply and Defence to Counterclaim (Amendment no. 5) at para 12 (amendments made on 22 March 2023).

account contains a narration stating "FINAL DIVIDEND DECLARED BY [NIPL]… UTILISED TO REPAY INTER CO LOAN".[266] I note, however, that Mr Manoj had adduced in evidence ledger records showing that Novelty Dept Store had previously disposed of motor vehicles to Mr Dharmadas and had debited his account accordingly.[267] In addition, Mr Mike had in fact confirmed on the stand that Mr Dharmadas' account (and the accounts of other Novelty Dept Store shareholders too) was debited with the value of motor vehicles.[268] While the narration concerning the "INTER CO LOAN" appended to the 31 December 2007 credit entry raises some doubts, these doubts are insufficient, in my judgment, to substantially undermine Mr Manoj's defence. It is unclear what "INTER CO LOAN" refers to and there is nothing in evidence to suggest that the subject matter of the loan cannot be cars or the Number Plates. It is therefore plausible that the person to be repaid in relation to the Number Plates was Mr Dharmadas, as asserted by Mr Manoj.

The Number Plates counterclaim is time-barred

118 I move on to consider the time bar issue. Section 6(1)(*a*) of the Limitation Act prescribes a six-year limitation period for actions founded on contract. It reads as follows:

> **Limitation of actions of contract and tort and certain other actions**
>
> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;
>
> …

266 DCS at para 69, referring to Mr Manoj's AEIC at p 449.

267 Mr Manoj's AEIC at para 231 and p 448.

268 NEs dated 30 November 2023 at lines 14–22.

119 Mr Mike's counterclaim on the Number Plates was first pleaded on 28 December 2020 in the first iteration of his Defence and Counterclaim. As noted above at [113], Mr Mike pleaded that the alleged oral agreement for payment of S$300,000 in total for the Number Plates was entered into in the 2000s, and, similarly, in the 2000s, the Number Plates were transferred to Mr Manoj.[269] More than ten years has elapsed between the alleged making and breaching of the oral agreement, and the bringing of the counterclaim.

120 It is common ground as between the parties that the limitation periods in the Limitation Act (as it currently stands) do not apply to claims in unjust enrichment: *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben Finance*") at [52].[270] However, this position taken by the parties does not answer the anterior question of whether Mr Mike's Number Plates counterclaim can properly be considered a claim in unjust enrichment.

121 The Court of Appeal in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto Emporium*") at [180] had observed that there is today a generally recognised difference between "what has been termed 'restitution for ***unjust enrichment***' [and] 'restitution for ***wrongs***"' [emphasis in original]. The Court of Appeal noted that while it was thought in the past that the law of restitution comprised both "restitution for unjust enrichment" as well as "restitution for wrongs", it is now recognised that "restitution for unjust enrichment" is a distinct and new branch of the law of obligations (*Turf Club Auto Emporium* at [180]–[181]). The key distinction is this:

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269 Defence and Counterclaim (Amendment No. 4) at paras 14–15.

270 Minute Sheet for hearing on 23 January 2024.

(a) The law of unjust enrichment comprises a separate cause of action (with restitution as the remedial response), which is made out when there is no civil wrong but the defendant is unjustly enriched at the expense of the plaintiff: *Turf Club Auto Emporium* at [181].

(b) In contrast, "restitution for wrongs" relates only to the remedial response to a civil wrong (including breaches of contract, torts and breaches of fiduciary duty): *Turf Club Auto Emporium* at [182].

122 In the present case, Mr Mike has framed his claim in "unjust enrichment" as follows:[271]

> …The basis for D's unjust enrichment claim is the oral agreement D and P entered for D to transfer to P the Plates and for P to pay D $300,000. D has transferred the Plates to P. But D has not paid D the $300,000.

123 Mr Mike's purported "unjust enrichment" claim is founded on a civil wrong, and that is Mr Manoj's alleged breach of the alleged oral agreement to pay for the Number Plates. Taxonomically, this claim is a plea for a remedial restitutionary response to a civil wrong consistent with the description in [121(b)] above. It cannot be described as a cause of action "when there is *no civil wrong* but the defendant is *unjustly enriched* at the expense of the plaintiff" [emphasis in original] (*Turf Club Auto Emporium* at [181]). Thus, it is a misnomer to name this claim as an "unjust enrichment" claim. It would be more accurate to classify the claim as a claim for restitution for wrongs.

124 At [73] of *Esben Finance*, the Court of Appeal held that "the Limitation Act applies where the restitutionary claim brought is founded on a civil wrong for which a limitation period is provided under the Act, but not otherwise". The

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271 DCS at para 75.

Court of Appeal explained that this outcome results because "restitution for wrongs relates *only* to the remedial response to a civil wrong, and that the claim therefore is founded on the civil wrong *itself*" [emphasis in original]. The Court of Appeal at [73] also cited with approval Professor Virgo's comment in Graham Virgo, *The Principles of the Law of Restitution* (Oxford University Press, 3rd Ed, 2015) at pp 738–739 where he stated that "because the underlying cause of action for the claim is the tort or the breach of contract … the limitation period for those causes of action should apply even where the claimant seeks a restitutionary remedy" as "[i]f the wrong is statute-barred then there is no longer a cause of action on which the restitutionary claim can be based".

125 Thus, in the present case, even if I find the alleged oral contract concerning the Number Plates to exist, I hold that the time bar in s 6(1)(*a*) of the Limitation Act applies to it. This is because Mr Mike's purported claim in "unjust enrichment" is, in substance, a plea for restitution for a civil wrong. This civil wrong is Mr Manoj's alleged breach of the oral contract. Where a restitutionary claim for an alleged civil wrong is brought, this restitutionary claim is also subject to the time bar that applies to the civil wrong which underlies the claim.

There has been no acknowledgement of debt

126 I turn to Mr Mike's contention that Mr Manoj had acknowledged his debt in relation to the Number Plates in 2017, and thus there has been an extension of the limitation period to bring the counterclaim.

127 Sections 26(2) and 27 of the Limitation Act provide as follows:

> **Fresh accrual of action on acknowledgment or part payment**
>
> **26.—**

> …
>
> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.
>
> **Formal provisions as to acknowledgments and part payments**
>
> **27.**—(1) Every such acknowledgment as is referred to in section 26 shall be in writing and signed by the person making the acknowledgment.
>
> (2) Any such acknowledgment or payment as is referred to in section 26 may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

128 Section 26(2) of the Limitation Act allows for a right of action to recover a debt to be deemed to have accrued on the date when the debtor acknowledged the debt. However, s 27(1) requires the acknowledgement to be in writing and signed by the person making the acknowledgment, and s 27(2) requires the acknowledgment to be made to the creditor or the creditor's agent.

129 In the present case, there is no denial from Mr Manoj that the WhatsApp message sent by Mr Manoj to Ms Geena on 22 December 2017 (see [27] above) constitutes signed writing provided by Mr Manoj. In this regard, I note that in *Anuva Technologies Pte Ltd v Advanced Sierra Electrotech Pte Ltd and another suit* [2020] 4 SLR 569 at [34], the court held that WhatsApp messages satisfied the signed writing requirement.

130 However, Mr Manoj disputes that the message acknowledges any debt due to Mr Mike in respect of the Number Plates. He asserts that Mr Mike has

not pleaded that Ms Geena is Mr Mike's agent for the purpose of acknowledgment of the debt.[272]

131 In relation to the issue of pleadings, I am prepared to decide this issue in favour of Mr Mike. Mr Mike pleaded that "[b]y way of a WhatsApp message from the Plaintiff to [Ms Geena] on 22 December 2017, the Plaintiff acknowledged the Debt".[273] This is a sufficient pleading to put Mr Manoj on notice that Mr Mike takes the position that an acknowledgment given to Ms Geena suffices for an acknowledgment of a debt owed ultimately to Mr Mike. As noted in *Halsbury's Laws of Singapore - Partnership and Agency* vol 15 (LexisNexis Singapore, 2023) at para 180.161, "[t]he relation of agency arises in law whenever one person, called 'the agent', has authority to act on behalf of another, called 'the principal', and consents so to act" [footnotes omitted]. Furthermore, the court in *Win Line (UK) Ltd v Masterpart (Singapore) Pte Ltd and another* [1999] 2 SLR(R) 24 at [23], citing *Garnac Grain Company Incorporated v H M F Faure & Fairclough Ltd* [1968] AC 1130 at 1137, noted that parties would be held to have consented to a principal-agent relationship if they have agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it. The consent can be given expressly or by implication from their words and conduct. I am satisfied for the present case that Ms Geena was Mr Mike's (and indeed, Mr Manoj's) agent when it came to the issue of adjusting the parties' accounts with Novelty Dept Store to effect debt repayments from one party to the other. Mr Manoj, Mr Mike and Ms Geena herself have given evidence that it was Ms Geena's responsibility as chief financial officer to effect the various adjustments of the parties' accounts. With that context, it must follow that Ms Geena had

272 PCS at paras 108–110.

273 Defence and Counterclaim (Amendment No. 4) at para 18.

authority to take cognisance of the parties' debts and make adjustments to the accounts to effect the necessary repayments, and that she consents so to act.[274]

132 The challenge for Mr Mike, however, is to prove that the 22 December 2017 WhatsApp message from Mr Manoj actually acknowledges a debt of S$300,000 owed to Mr Mike for the Number Plates. The Court of Appeal in *Fairview Developments Pte Ltd v Ong & Ong Pte Ltd and another appeal* [2014] 2 SLR 318 ("*Fairview*") at [93] stated that a useful summary of the applicable legal principles governing what would constitute a valid acknowledgment within the meaning of s 26(2) of the Limitation Act is set out in [40] of *Kim Eng Securities Pte Ltd v Tan Suan Khee* [2007] 3 SLR(R) 195 ("*Kim Eng Securities*"). In turn, the court in *Kim Eng Securities* relied on the earlier Court of Appeal authority of *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 ("*Chuan & Company*").

133 Significantly for present purposes, the Court of Appeal in *Chuan & Company* held that the communication allegedly acknowledging the debt must be construed as a whole and in its context. Where words in a document are clear, it is not permissible to refer to extrinsic material to give the words a meaning that is at variance with the express words: *Fairview* at [93], citing *Kim Eng Securities* at [40], which in turn referred to *Chuan & Company* at [35] (though the relevant proposition appears at [28] of *Chuan & Company*).

134 The Court of Appeal in *Chuan & Company* cited with approval the illustrative case of *Kamouh v Associated Electrical Industries International Ltd* [1979] 2 WLR 795 ("*Kamouh*"), which facts are germane for the present case.

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274 Ms Geena's AEIC at paras 124–127; Mr Mike's AEIC at paras 179–182; Mr Manoj's AEIC at paras 225–230 and 247.

In *Kamouh*, as summarised by the Court of Appeal at [24] of *Chuan & Company*, the plaintiff's brother had, in April 1967, procured a contract for the defendants and had incurred expenses in connection therewith. In May 1967, the first defendant stated in a letter to the brother that they recognised that he was in effect out of pocket to the extent of £100,000 for those activities. In reply to a letter from him, the defendants wrote in March 1970 to deny that there was any agreement to pay him remuneration and added (see at 802):

> Turning now to your out-of-pocket expenses, you will appreciate that you have had substantial payments on account although I understand that so far no detail or corroborative evidence has been produced by you. You will appreciate that it is quite impossible for this company to make any further payment to you in respect of your disbursements without a detailed account supported by appropriate and acceptable evidence of payment. If you will provide the required information it will have early consideration.

135 The Court of Appeal in *Chuan & Company* at [25]–[26] noted that the court in *Kamouh* held that the above paragraph could not amount to an acknowledgement of debt. While the above paragraph should properly be read in its context, and reference can be made to earlier letters exchanged between the parties, the above paragraph could not be viewed to be an acknowledgment. It did not admit that any sum was due to the plaintiff's brother as expenses. It was no more than an acknowledgment that there might be something owing.

136 In the present case, Mr Manoj's WhatsApp message of 22 December 2017 cannot be construed as an acknowledgement of a debt that was owing to Mr Mike. The message was framed in the past tense and in fact conveyed a request to Ms Geena to confirm with Mr Mike that the cars account have been adjusted, *ie*, that the adjustment had occurred some time in the past. There is furthermore no reference to the Number Plates. At best, the WhatsApp message could be construed as an admission that some debt in relation to cars had been

owing in the past, but Mr Manoj's assertion in the message was that the debt has since been paid via adjustments to his account and there was no debt owing.

137 In my judgment, the provision for the fresh accrual of action on acknowledgment of debt under s 26(2) of the Limitation Act is not engaged by the 22 December 2017 WhatsApp message. Mr Mike's counterclaim is time-barred under s 6(1)(*a*) of the Limitation Act.

Conclusion

138 I dismiss Mr Manoj's claim for S$2,837,418.55 for the transfer made to Mr Mike.

139 I dismiss Mr Manoj's claim for S$33,000 for the Edulis wines.[275]

140 I dismiss Mr Mike's counterclaim for S$300,000 for the Number Plates.

141 This judgment in no way diminishes the achievements of Mr Manoj and Mr Mike as accomplished and successful businessmen and members of our society. The whole family have worked hard from little to achieve much and this judgment will not take that away from them. Following the conclusion of this case, if Mr Manoj and Mr Mike find that the taking of separate ways is the

[275] Statement of Claim (Amendment No. 1) dated 30 June 2023 at para 2(c).

path of least resistance to avoid further disputes, then that should happen. There is no shame in that. It does not preclude a reconciliation in the future.

142 I will hear the parties on costs.

Wong Li Kok, Alex JC
Judicial Commissioner

Zhu Ming-Ren Wilson, Yeo En Fei Walter and Chai Yui-Kai Wesley
(Rajah & Tann Singapore LLP) for the plaintiff;
Pardeep Singh Khosa, Leow Wei Xiang Joel and Tan Jun Hao
(Morgan Lewis Stamford LLC) for the defendant.