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

[2025] SGHCR 8

Suit No 304 of 2022 (Taking of Accounts and Inquiries No 2 of 2024)

Between

Tio Geok Hong Bryan

… *Plaintiff*

And

(1) Korbett Pte Ltd
(2) Lee Wee Ching

… *Defendants*

Suit No 356 of 2022 (Taking of Accounts and Inquiries No 1 of 2024)

Between

Wang Piao (Wang Biao)

… *Plaintiff*

And

(1) Korbett Pte Ltd
(2) Lee Wee Ching
(3) Low Xuefen
(4) Legora Asia Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Consent judgments]
[Land — Interest in land — Liability of trustee to account]
[Trusts — Breach of trust — Remedies]

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v
Korbett Pte Ltd and another and another suit

[2025] SGHCR 8

General Division of the High Court — Suit Nos 304 and 356 of 2022 (Taking of Accounts and Inquiries Nos 1 and 2 of 2024)

AR Gan Kam Yuin
2-5 December 2024, 27 January 2025, 21 February 2025

28 April 2025 Judgment reserved

AR Gan Kam Yuin:

Introduction

1 Interlocutory judgment was entered by consent of the parties on 4 September 2023 in each of the related actions, HC/S 304/2022 ("**Suit 304**") and HC/S 356/2022 ("**Suit 356**"), before Suit 304 and Suit 356 were heard by the trial Judge. Four of the orders made under the consent interlocutory judgments ("**CIJs**") were material to the proceedings before me.

2 First, the CIJs decided that a Trust Deed dated 10 September 2016 ("**Trust Deed**") had been, and continued to be, in effect since the date of the Trust Deed. The parties to the Trust Deed were as follows:

(a) Mr Tio Geok Hong Bryan ("**Bryan**"), the plaintiff in Suit 304;

(b) Mr Wang Piao ("**Wang**"), the plaintiff in Suit 356;

(c) Mr Lee Wee Ching ("**Lee**"), the second defendant in both Suit 304 and Suit 356;

(d) Mr Chen Peng-Wei ("**Chen**"); and

(e) Korbett Pte Ltd ("**Korbett**"), the first defendant in both Suit 304 and Suit 356.

Bryan, Wang, Lee and Chen were parties to the Trust Deed as beneficiaries. Korbett was party to the Trust Deed as the trustee.

3 Secondly, the CIJs decided that Bryan and Wang had continuously each been, since the date of the Trust Deed, the owner of a 25% share of the beneficial interest in a property at 26A Hillview Terrace, Singapore 669238 ("**Property**").

4 Thirdly, the CIJs decided that Korbett shall provide an account of all profits obtained by it as a result of the breaches of its fiduciary duties owed to Bryan and Wang as set forth in the respective amended Statements of Claim filed in Suit 304 and Suit 356 ("**SOC**"), and shall make payment of all of the said profits to Bryan and Wang. I shall refer to this accounting of profits and payment as the "APP".

5 Fourthly and finally, the CIJs decided that Korbett shall provide to Bryan and Wang a full account in respect of their respective 25% share of the beneficial interest in the Property. I shall refer to this full account of beneficial interest as the "FABI".

6 The APP and the FABI in Suit 304 and Suit 356 were heard together by me. Bryan, Wang and Lee testified. Bryan and Wang called an expert witness,

Mr Png Poh Soon ("**Png**"), while Korbett's expert witness was Ms Stella Seow Lee Meng ("**Seow**").

Facts

7 Korbett was the legal owner of the Property and held it on trust for Bryan, Wang, Lee and Chen pursuant to the Trust Deed. Bryan and Wang each had a 25% beneficial interest in the Property. Lee likewise had a 25% beneficial interest in the Property. The last 25% of the beneficial interest initially belonged to Chen. Chen later dropped out of the picture. Korbett's pleaded case was that Korbett retained Chen's beneficial interest in the Property. However, in the course of the proceedings before me, Korbett and Lee took the position that Chen's 25% interest had since been taken over by Lee rather than by Korbett. I was not required to decide whether Chen's 25% interest in the Property belonged to Korbett or to Lee and I say no more about it at this point.

8 Korbett took a loan from OCBC for the purchase of the Property and made the attendant mortgage payments to OCBC. This loan was subsequently refinanced with DBS, at least once, and the mortgage payments to DBS were also made by Korbett. In addition, Korbett made payment for insurance and property tax accruing to the Property. Korbett collected rent for usage of part/s of the Property from several entities and paid for renovation and outfitting of the Property.

9 On 4 March 2021, on Lee's initiative, Bryan and Wang executed a deed of reconveyance ("**Deed of Reconveyance**") to transfer their shares in the Property to Korbett and received payment from Korbett of what was said to be their respective shares of the net sale proceeds of Korbett's sale of the Property. Bryan and Wang later discovered that there had in fact been no sale of the Property and they commenced Suit 304 and Suit 356 in 2022. Before Suit 304

and Suit 356 went to trial, the parties came to an agreement that the Deed of Reconveyance was null and void and instead, the Trust Deed continued to be in effect. These positions were captured in the CIJs.

10 I set out here paragraphs 6 and 7 of the CIJs.

11 Paragraph 6 reads:

> [Korbett] shall provide an account of all profits obtained by it as a result of the breaches of its fiduciary duties owed to [Bryan / Wang] as set forth in the [amended Statement of Claim filed in this action], and shall make payment of all of the said profits to [Bryan / Wang].

12 Paragraph 7 reads:

> [Korbett] shall provide to [Bryan / Wang] a full account in respect of [Bryan / Wang]'s 25% share of the beneficial interest in the Property.

13 The APP arises from paragraph 6 and the FABI arises from paragraph 7.

Issues to be determined

14 The issues before me are:

(a) What were the profits to be accounted for ("**Issue 1**")?

(b) Whether the profits were obtained by Korbett as a result of the breaches of Korbett's fiduciary duties owed to Bryan / Wang as set forth in the amended Statement of Claim ("**Issue 2**")?

(c) What is the amount of profits which Korbett is to pay to Bryan and to Wang ("**Issue 3**")?

(d) What is the nature and extent of the account which Korbett is to provide to Bryan and to Wang ("**Issue 4**")?

15 Issues 1, 2 and 3 are relevant to the APP whereas Issue 4 is relevant to the FABI.

Issue 1: What were the profits to be accounted for?

16 Bryan and Wang argued that Korbett should account for three categories of profits. These were (a) rent for Korbett's occupation of the Property; (b) monthly sums which Korbett received from Global Techsolutions (S) Pte Ltd ("**GTSS**"); and (c) a sum of S$23,000 which Korbett received from GTSS ("**23,000 GTSS**").

17 Bryan and Wang submitted that the burden of proof rested on Korbett to show that the profit was not one for which it should account and any doubt should be resolved in favour of Bryan and Wang [1]. One of the cases relied on by Bryan and Wang in support of this submission was the case of *Murad and another v Al-Saraj and another* [2005] All ER (D) 503 (Jul) ("***Murad***"). In particular, Bryan and Wang relied on [77] of the decision in *Murad*, which reads:

> Again, for the policy reasons, on the taking of an account, the court lays the burden on the defaulting fiduciary to show that the profit is not one for which he should account: see, for example, *Manley v Sartori* [1927] Ch 157. This shifting of the onus of proof is consistent with the deterrent nature of the fiduciary's liability. The liability of the fiduciary becomes the default rule.

[1] *Murad and another v Al-Saraj and another* [2005] All ER (D) 503 (Jul) [77]; *Recovery Partners GP Ltd and another v Rukhadze and others* [2022] EWHC 690 (Comm) [260]

18 Korbett argued that the question of the burden of proof in an account of profits was unsettled, relying on the case of *UVJ and others v UVH and others and another appeal* [2020] 2 SLR 336 ("***UVJ***") at [86]–[88] where, according to Korbett, the Court of Appeal raised doubts on the views in *Murad* and left open the question as to which party would bear the burden[2].

19 I do not agree with Korbett. *UVJ* did not deal with the issue of burden of proof and paragraphs [86]–[88] of the judgment, which Korbett relied on, concerned causation rather than the burden of proof. In those paragraphs, the Court of Appeal noted the policy reasons and considerations of deterrence that underpin the rules on fiduciary duties and observed that "[d]eterrence should not be a password to avoid causation" (at [88]). The Court of Appeal went on to hold that the profits sought to be disgorged via an account of profits must be caused by the breaches of fiduciary duty.[3]

20 It is worth noting that in so far as the Court of Appeal considered *Murad*, it was only in the context of causation[4] and the Court of Appeal cited [77] of the decision in *Murad*, which was the same paragraph that Bryan and Wang relied on concerning the burden of proof, and the Court of Appeal did not express any contrary views on that paragraph.

21 Further, the High Court in *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 ("***Cheong***") agreed that the burden lay on the fiduciary to show that the profit was not one for which he should account

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[2] Korbett Reply Submissions para 12

[3] *UVJ* at [98]

[4] *UVJ* at [86] – [87]

and cited *Murad*[5]. The Court of Appeal in *UVJ* referred to *Cheong* at various points in its judgment and did not criticise that holding.

22 I will address the element of causation in respect of each category of profits which Bryan and Wang sought to make Korbett account for.

(a) Rent for Korbett's occupation of the Property

23 Korbett occupied the Property from March 2021 until a tenant was found for the Property in April 2024 and did not pay rent for that occupation[6]. This was not disputed by the parties.

24 Bryan and Wang argued that the profits which Korbett should account for must include rent that Korbett should have paid, but did not pay, for its occupation of the Property. They argued that Korbett saved on rent, which was a benefit gained by Korbett, and that an account of profits focused on the gain achieved by the errant fiduciary. They submitted that for the purposes of an account of profits, the term 'profits' was broad and encompassed all 'gains' made by the errant fiduciary[7].

25 Korbett argued that such rent cannot, as a matter of law, be considered profits for the purposes of an account of profits as these were limited to moneys that were received by the errant fiduciary from third parties, such as commissions or bonus payments; in other words, the nature of a profit that was

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[5] *Cheong* at [241]

[6] Transcript 2 Dec 2024 p32 line 5 – 11; Korbett Lead Counsel Statement 18 Nov 2024 p5; Lee AEIC para 19, 33, 37

[7] Plaintiff Closing Submissions para 9, 32 – 34; Plaintiff Reply Submissions para 6, 16

liable to an order of account of profits was invariably in the form of monetary sums received by the errant fiduciary[8].

26 Several cases were cited to me, which I now consider in turn.

27 The decision cited to me for *Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 15 ("***Parakou***") was the decision of the High Court although the matter was taken on appeal. The decision on appeal did not reverse the principles for which *Parakou* had been cited to me[9]. In *Parakou,* the directors of the company were found to have breached their fiduciary duties in a wide range of actions, such as approving the disposal of the company's assets at an undervalue, repaying debts to related companies to prefer those companies, and approving payment of salaries and bonuses to employees of the company including themselves. The High Court held the directors liable for an account of profits made by each of them in connection with the bonuses and salary increases that had been paid to them.

28 *Murad* concerned a defendant who made fraudulent misrepresentations to the claimants which induced the claimants to enter into a business venture. The court ordered the defendant to disgorge a secret commission of £369,000 which had been paid to the defendant.

29 In *Daniel Fernandez v Edith Woi and another* [2021] 5 SLR 712 ("***Daniel***"), the first defendant was the sole shareholder and a director of the second defendant. The plaintiff deposited funds in the second defendant's bank account. The first defendant misappropriated the plaintiff's funds from the

[8] Korbett Reply Submissions para 26 - 32

[9] *Parakou Investment Holdings Pte Ltd and another v Parakou Shipping Pte Ltd (in liquidation) and other appeals* [2018] SGCA 3

second defendant's bank account. The court found that the first defendant was liable to account for the misappropriated sums.

30 There are two key points I want to draw from the decisions above**.** First, there was a relatively direct link between the breach of fiduciary duty and the profit gained by the errant fiduciary which had to be accounted for, and secondly, the errant fiduciary pocketed actual sums of money.

31 In *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847 ("***Mona***"), an employee diverted business opportunities from his employer to a company incorporated by him. The High Court found the employee liable to account for any profits he personally made from the diverted contracts. The Court of Appeal held that the commissions which the employee had received from his company were derived from the profits which his company had earned from the diverted contracts and had to be accounted for as profits.

32 The court in *Innovative Corp Pte Ltd v Ow Chun Ming and another* [2023] 3 SLR 1488 ("***Innovative***") held that the remedy of an account of profits included profits earned by companies related to the errant fiduciary which earned those profits because of the errant fiduciary's wrongful misappropriation of a business project. The errant fiduciary also had to account for directors' fees, salaries and remuneration that he and his relatives received from one of those related companies.

33 In *Cheong*, the court agreed that the account of profits succeeded in respect of advisory fees and service fees paid to a corporate vehicle because the opportunity to earn those fees came about from an investment which the fiduciary had not obtained the beneficiary's consent to.

34 The decisions of *Mona*, *Innovative* and *Cheong* illustrate that the gains of the errant fiduciary need not be directly or immediately derived from the wrongful acts. And this fact itself does not disentitle an aggrieved party to seek an account of profits from an errant fiduciary. The chain of causation can involve several intervening steps, some of which may be taken by entities separate from the errant fiduciary. To illustrate: contracts are first diverted by the errant fiduciary to a company, the company secondly executes the contracts, the company thirdly earns profits on the diverted contracts, the company fourthly pays the errant employee commissions, and finally the errant employee has to account for those commissions.

35 That still leaves the question of whether an account of profits is limited to actual sums of money pocketed by the errant fiduciary, which Korbett submitted to be the correct position under the law.

36 ***In re Howlett (William Henry) (Dec'd)*** [1949] 1 Ch 767 ("***Howlett***") concerned a trustee who occupied and used a trust property with a wharf on it but did not pay any occupation rent. The plaintiff claimed an account of the rents and profits of the wharf. The trustee argued that the rent had to have been actually received by the trustee and could not apply to a notional receipt of any rent. The court however, accepted the argument of the plaintiff that a trustee who remained in occupation of trust property for his own purposes could not argue that he had not received any rents or profits in respect of the property. The court agreed that the trustee used the property for his own purposes and received, in theory, rents and profits, because he was chargeable with an occupation rent, and must be considered as still having the occupation rent in his own pocket.

37 I turn back to *UVJ*. The defendants were the executors and trustees of an estate. The estate held shares in four companies. The defendants used the estate's shares to vote in favour of remuneration to be paid to them by three of the companies. The defendants also rented two properties, owned by one of the companies, at a rate below annual value. The plaintiffs sought an account of the directors' remuneration received by the defendants and benefits-in-kind from the rentals of the properties quantified at the difference between the rent the defendants actually paid and the annual value.

38 The Court of Appeal found that even though the defendants had breached their duty by using the estate's shares to vote in favour of the directors' remuneration, the directors' remuneration would have been approved even without the estate's votes. In other words, the defendants' breach of duty did not cause the remuneration to be approved and the plaintiffs could not claim that remuneration from the defendants. As for the benefits-in-kind, the Court of Appeal held that there was no evidence that the defendants had used the estate's shares to fix the rent they paid. In other words, there was no causal link between the use of the estate's shares and the low rent and the plaintiffs' claim for an account of the benefits-in-kind also failed.

39 It is significant that the Court of Appeal did not rule that benefits-in-kind are a type of gain that is not susceptible to an account of profits. Although the outcomes were different because causation was not proven on the facts, *UVJ* is consistent with *Howlett* in that an account of profits is not limited to actual funds received by an errant fiduciary, contrary to Korbett's argument.

40 Hence, I am of the view that an errant fiduciary may be made to account for profits which he had notionally received. It may be more obvious, as seen in *Parakou*, *Murad* and *Daniel*, that an errant fiduciary should be liable to disgorge

actual sums of money which had flowed into his pocket in breach of a fiduciary duty, but that is not a prerequisite.

41 If Korbett's argument is accepted *ie.* that the nature of a profit that is liable to an order of account of profits is invariably in the form of monetary sums received by the errant fiduciary, errant fiduciaries would simply ensure that they were always rewarded indirectly so as to put their gains beyond the reach of an account of profits. This would lead to an undesirable situation whereby beneficiaries are left out of pocket as it would make it easy for fiduciaries to avoid having to provide an account of profits. For instance, instead of a commission for diverting contracts to another company, the errant employee who diverted the contracts could require that other company to reward him by giving him discounts on any products and services he purchased from that other company. There would be no commissions or bonus payments or actual monies received by the errant employee from that other company, but I am of the view that it would be eminently correct that the errant employee should account for the benefit he received in the form and amount of the discounts that he received.

42 I find that profits for the purposes of the APP include rent that Korbett should have paid, but did not pay, for its occupation of the Property.

(b) Monthly sums received from GTSS

43 Korbett acknowledged that it received S$3,210 every month from GTSS over the period 1 April 2017 to 5 February 2021. Korbett's objection to these sums being treated as profits which it had to account for was that GTSS's

payments to Korbett were not rent but were payments towards Lee's share of the mortgage[10].

44 Korbett accepted that GTSS did occupy part of the Property and that GTSS did pay Korbett S$3,210 every month[11]. So the question is whether GTSS' payments are to be treated as rent for the Property or as payments on behalf of Lee for Lee's share of the mortgage.

45 In the accounting affidavit signed by Lee on 28 November 2023[12], he stated that Korbett had received S$99,810 from GTSS as rental proceeds which were used towards servicing the mortgage. In a further accounting affidavit signed by Lee on 9 February 2024, he reiterated that GTSS had paid rent[13]. Those affidavits clearly stated the position that first, GTSS was paying rent *and secondly,* that the rent was used towards servicing the mortgage. Those affidavits were signed with the advice of counsel as Korbett and Lee were represented throughout the proceedings. In those affidavits, a clear understanding was demonstrated of the distinction between the character of the payment (*ie.* rent) and the use to which that payment was put (*ie.* defraying Lee's share of the mortgage).

46 Lee's oral evidence on this issue demonstrated that he *conflated* the character of GTSS' payments with the use to which Korbett put GTSS' payments[14]. The way in which Lee spoke about the rental showed that *because*

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[10] Korbett Closing Submissions para 116

[11] Lee affidavit 28 Nov 2023 para 9 S/No 3(c)(ii); Lee affidavit 9 Feb 2024 para 37

[12] Para 9, S/No 3(c)(iii)

[13] Para 34 – 35, 37

[14] Transcript 2 Dec 2024 p17 line 4 – p22 line 7

GTSS' payments were *useful towards*, and *used towards*, defraying Lee's share of the mortgage, Lee's shorthand for the situation became that GTSS' payments were *for* his share of the mortgage. Whilst that shorthand is quite understandable especially from a layperson, it cannot change the true character of the payment or the fact that there were two separate and distinct obligations being discharged – first, the payment of the rent to Korbett for GTSS' occupation of the property and secondly, the payment of the mortgage to the bank for the loan taken by Korbett to buy the property.

47 Leaving aside what Korbett and Lee thought about GTSS' payments of rent, Korbett also argued that Bryan and Wang had agreed that GTSS' payments would be attributed to Lee's share of the mortgage.

48 There was no documentary evidence in connection with this point, save for an exchange over WhatsApp between Lee and Bryan[15]. The exchange is as follows:

> *[26/4/17, 15:47:20] Bryan Tio: How much is Apek supposed to pay for monthly rental for 26A? I need to apportion part of it to Derrick*
> *[26/4/17, 15:49:17] Kenneth Lee: Har I already took that into account*
> *[26/4/17, 15:49:29] Kenneth Lee: 1/2 to KORBETT 1/2 to Apek*
> *[26/4/17, 15:50:36] Bryan Tio: Ya. But my half they take up a portion on my location ma*
> *[26/4/17, 15:51:14] Kenneth Lee: Whoa lao 100*
> *[26/4/17, 15:52:31] Bryan Tio: Cannot be i take less than whole of ground floor n then pay over 5-6k for rental*
> *[26/4/17, 16:16:33] Kenneth Lee: They only using 1/4 of the backyard right?*
> *[26/4/17, 18:14:27] Bryan Tio: More like half if i see the layout correctly. Anyway they will have people there and will incur electricity and water bills etc.*
> *[2/5/17, 11:45:25] Bryan Tio: When you coming back to office?*
> *[2/5/17, 11:59:59] Kenneth Lee: Why?*
> *[2/5/17, 12:19:01] Bryan Tio: Everyday i talk to my guys i hear your side taking up more space on the ground floor in 26A...*😕
> *[2/5/17, 12:22:21] Kenneth Lee: Ya your guys talk too much*

[15] Lee AEIC p100 - 101

> *[2/5/17, 12:23:36] Bryan Tio: Now your furnace going to take up 1/3 of my space at the front*
> *[2/5/17, 12:24:05] Kenneth Lee: Not mine.. me piao*
> *[2/5/17, 12:28:35] Bryan Tio: For how long?*
> *[2/5/17, 12:29:01] Bryan Tio: And i heard also have cmp stored inside?*
> *[2/5/17, 12:32:27] Kenneth Lee: Hahaha you go ask him*
> *[2/5/17, 12:38:24] Bryan Tio: I am going to charge rental for all the storage*

49 I do not accept that that exchange, as written, demonstrated a clear acceptance by Bryan (Wang was not a party to that exchange) that GTSS' payments would be attributed to Lee's share of the mortgage.

50 I also considered the explanations that Bryan and Lee, as the parties to that exchange, gave about what they had written in the chat. Bryan was questioned in some detail about what was being discussed in that chat[16]. I understand his testimony to be that what was discussed there was the usage of the Property and how much each user had paid or should be paying for the space it was using. He did not accept that the effect of that chat was that GTSS' payments would be attributed to Lee's share of the mortgage.

51 Bryan's evidence about that WhatsApp exchange was consistent with his later testimony that he had not even known that GTSS was paying rent, much less that GTSS' payments would be attributed to Lee's share of the mortgage[17]. Bryan also said that the mortgage payments were made by Apek Services Pte Ltd ("**Apek**") for himself and Wang whereas Korbett and/or Lee would bear the rest of the mortgage payments and he disagreed that payment from GTSS would be included under Lee's share[18]. For completeness, although Wang was not a party to that chat, I note that he also testified that he had not known that GTSS

[16] Transcript 4 Dec 2024 p34 line 31 – p40 line 26

[17] Transcript 4 Dec 2024 p40 line 13 - 20, p54 line 13 – 22

[18] Transcript 4 Dec 2024 p48 line 4 – 26

was paying rent[19] and he thought the entities paying for the mortgage were Apek for himself and Bryan, and Korbett for Lee[20].

52 As for Lee, he said that Korbett and GTSS were paying on his behalf and he seemed to assert that because everyone knew that GTSS was controlled by him, therefore everyone knew that GTSS' payments were attributed to discharging his share of the mortgage[21]. Nonetheless, Lee fell short of suggesting that Bryan and Wang had expressly agreed, whether orally or in writing (leaving aside the WhatsApp chat which I have dealt with above), that GTSS' payments would be attributed to Lee's share of the mortgage. I do not accept that even if "everyone knew" that GTSS was also a company controlled by Lee, then it must necessarily follow that whatever GTSS paid for occupying part of the Property would be taken as Lee's share of the mortgage.

53 I therefore find that the monthly payments that GTSS made to Korbett that are attributed to GTSS' occupation of the Property are profits which Korbett must account for. Korbett has not discharged the burden of showing that these monthly payments are to be treated as payments towards Lee's share of the mortgage of the Property rather than as profits to be accounted for.

(c) 23,000 GTSS

54 Korbett received S$23,000 from GTSS on or about 26 April 2017.

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[19] Transcript 4 Dec 2024 p100 line 21 - 23

[20] Transcript 4 Dec 2024 p109 line 2 - 19

[21] Transcript 2 Dec 2024 p14 line 10 – p16 line 12, p19 line 3 – 5, p31 line 1 - 19

55 In the further accounting affidavit signed by Lee on 9 February 2024, Lee disclosed that GTSS had paid S$23,000 on 26 April 2017 for rent[22]. However, that receipt of S$23,000 from GTSS was omitted from Korbett's later account given on 7 October 2024[23] and Lee did not explain this omission[24].

56 In any event, no source document was disclosed until the first day of the proceedings before me when an invoice for that amount and described as being for "Sales and admin charges" was adduced and Lee suggested that the accountant had mistakenly included it in the earlier accounting affidavit as a rental receipt[25]. Although counsel took him to that invoice[26], Lee did not explain how the accountant could have mistaken an invoice for "Sales and admin charges" to be an invoice for rental.

57 I considered whether the invoice should be taken at face value and therefore removed from the account. One difficulty with that approach, however, is that Lee's further accounting affidavit of 9 February 2024 suggested that the descriptions used in the invoices which Korbett issued were "irrelevant" to the true nature of the invoice[27].

58 Ultimately, I considered the table of rental receipts which Korbett used in the further accounting affidavit of 9 February 2024. The table spanned the period 1 April 2017 to 2 October 2023 and there was a discernible regularity in

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[22] P18 S/No 2

[23] Agreed Core Bundle p77

[24] Transcript 2 Dec 2024 p23 line 14 – p24 line 6

[25] Transcript 2 Dec 2024 p58 line 15 – p60 line 15, p61 line 21 – p63 line 4

[26] Transcript 2 Dec 2024 p91 line 7 – 19

[27] Para 29, 31

the monthly receipts both as to the amounts and as to the dates, which supported Lee's point that the S$23,000 payment was an outlier[28].

59 On balance, although Korbett could have done a better job in the accounting and Lee could have been clearer in his explanations, I do not think there is a real ambiguity or doubt to be resolved in favour of Bryan and Wang and I accept that the payment of S$23,000 from GTSS need not be accounted for by Korbett as rent.

Issue 2: Whether the profits were obtained by Korbett as a result of the breaches of Korbett's fiduciary duties owed to Bryan / Wang as set forth in the amended Statement of Claim?

60 In respect of each of the three categories of profits discussed above, I will consider whether the profits can be said to have been obtained by Korbett as a result of the breaches of Korbett's fiduciary duties owed to Bryan / Wang as set forth in the amended Statement of Claim ("**SOC**").

(a) Rent for Korbett's occupation of the Property

61 Korbett argued that because the SOC did not plead that Korbett profited by using the Property rent-free, Bryan and Wang cannot ask that Korbett disgorge the unpaid rent[29]. Korbett also argued that the beneficiaries had agreed that Korbett could use the Property rent-free until a tenant was found[30]. I deal with these arguments in turn.

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[28] P18 - 24

[29] Korbett Closing Submissions para 24, 26

[30] Korbett Closing Submissions para 14 – 18, 32

What had to be pleaded

62 I do not accept that Bryan and Wang had to plead Korbett's profit from use of the Property rent-free. The argument is premised on a misunderstanding of paragraph 6 of the CIJs. Paragraph 6, as set out at [11] above, said that Korbett is to account for profits obtained by it as a result of the breaches of the fiduciary duties owed to Bryan and Wang as set out in the SOC. What has to be set out in the SOC is the nature of the fiduciary duties owed and the fiduciary duties that were alleged to have been breached, not the profits from rent-free occupation.

63 I do not accept that the rules of pleading would apply to the APP conducted under the CIJs. No authority was cited for this proposition and, on the other hand, it is settled law that an account of profits has a wide scope, to discourage temptation and enforce the highest ethical standards, with unauthorised gains being readily imputed to the breach (see Peter Devonshire, Account of Profits: An Exemplar of Fiduciary Doctrine? (2023) 30 New Zealand Universities Law Review 549 at p549, p553, p562).

64 The SOC at paragraph 7 pleaded the fiduciary duties owed by Korbett, including a duty to act in the best interests of each of the beneficiaries, a duty to act honestly and in good faith including disclosing all material information in respect of the Property, and a duty not to profit from its position as a trustee. This would suffice to require Korbett to account for any profits obtained from using the Property rent-free *unless* the beneficiaries had agreed to that usage with full knowledge of all material facts. Korbett's breach of duty caused Korbett to gain the benefit of not having to pay rent when it would otherwise have had to pay rent for occupying any other property. The necessary element

of causation is satisfied unless Korbett persuades me that it occupied the Property rent-free because there was an agreement that it could do so.

The rent-free agreement

65 This brings me to the argument about the rent-free agreement. Korbett referred to an agreement reached orally between the beneficiaries in late 2016 – March 2017 that Korbett could use 75% of the Property rent-free until a new tenant was found ("**Trust Arrangement**"). Korbett said that the Trust Arrangement was integral to the Trust Deed dated 10 September 2016 and, since paragraph 2 of the CIJs provided that "The Trust Deed dated 10 September 2016 has been, and continues to be, in effect since the date of the Trust Deed", the Trust Arrangement should be viewed singly with the Trust Deed and was revived as well when the Trust Deed was pronounced to be reinstated[31]. I do not accept this argument.

66 Had the Trust Arrangement been revived with the Trust Deed, the parties could and should have recorded that as part of the CIJs when they appeared before the trial Judge for that purpose, but they did not. The parties were represented by counsel throughout the proceedings. I agree with Korbett that the terms of the CIJs bind the parties and that the parties' entitlements are delineated by the terms of the CIJs[32]. It is not open to me to rewrite the terms of the CIJs by stipulating that the Trust Arrangement was revived.

67 Korbett asserted that Bryan and Wang confirmed during the trial before me that the Trust Arrangement existed[33]. I considered the passages of testimony

[31] Korbett Closing Submissions para 13 - 18

[32] Korbett Closing Submissions para 19

[33] Korbett Closing Submissions para 15 – 16

which Korbett relied on in support of this assertion[34]. I do not agree that Bryan and Wang confirmed the Trust Arrangement. I deal with each of those passages of testimony in turn.

68 Lee said, "…they will use APEK to pay 50% of the rent and the other 50% of the rent paid by us…", but he seemed to qualify this a little later to say that he (or Korbett and/or GTSS on his behalf) would pay an amount as his contribution to defray the mortgage although it should not be viewed as rent[35]. Whatever he meant, it was not the same as saying that Korbett could stay rent-free.

69 As for Bryan, I understand him to be saying that although not related to the actual occupation of how much was occupied of the Property, the mortgage burden was to be borne by the beneficiaries if no tenant was found "that will be able to pay for the mortgage"[36]. Apart from conflating liability for rent with liability for mortgage (see [46] above), Bryan did not say that Korbett could stay rent-free.

70 Wang stated that rent need not be paid but his answer must be viewed in context, namely, that Apek was paying 50% of the mortgage and Korbett was paying 50% of the mortgage until a tenant could be found[37]. Apart from similarly conflating liability for rent with liability for mortgage, Wang did not say that Korbett could stay rent-free.

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[34] Korbett Closing Submissions para 16

[35] Transcript 2 Dec 2024 p21 line 12 – p22 line 7

[36] Transcript 4 Dec 2024 p23 line 4 - 18

[37] Transcript 4 Dec 2024 p86 line 19 – p87 line 14

71 I also considered the testimony of Bryan and Wang when they were specifically questioned about Korbett's rent-free status[38]. It was put to Bryan that before 2021, there had been an agreement that any payment made by GTSS for use of space at the Property would be apportioned to Lee and/or Korbett. Bryan accepted that there had been agreement as to how the Property would be used but he said there had never been any agreement as to whether GTSS paid rental for using the Property. Wang was asked about the arrangement between 2017 and 2021 and he said that the parties had only talked about usage and they had never talked about rental. In summary, neither Bryan nor Wang confirmed the Trust Arrangement.

72 Korbett further argued that the Trust Arrangement was "necessary" to give effect to the beneficiaries' obligation to indemnify Korbett under the Trust Deed[39]. By this, Korbett referred to clause 3 of the Trust Deed which read:

> The Beneficiary shall indemnify the Trustee for all payments properly made by the Trustee in accordance with this Deed in relation to the property and for all payments made and costs and expenses properly and reasonably incurred as a result of carrying out the instructions of any of the Beneficiary.

73 Korbett went on to argue that because the Trust Arrangement "embodied" the beneficiaries' agreed understanding of how to indemnify Korbett, the Trust Arrangement was hence "an integral part" of the Trust Deed and the Trust Arrangement and the Trust Deed must be "viewed singly" such that the revival of the Trust Deed "would (without more) mean a revival of the Trust Arrangement as well"[40].

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[38] Transcript 4 Dec 2024 p54 line 10 – 22, p111 line 1 - 10

[39] Korbett Closing Submissions para 17

[40] Korbett Closing Submissions para 18

74 I reject Korbett's arguments entirely. There was no necessity whatsoever as so contended. Had the beneficiaries not agreed that some entities could defray the mortgage burden through rent, the beneficiaries would simply have had to stump up the funds to indemnify Korbett. They might have found it less pleasant, but there was no testimony before me that it was "necessary" for them to employ the mechanism of rent. Further, the arguments disregard the clear testimony of Bryan, Wang and even Lee that I have canvassed above.

75 On Korbett's case, the Trust Arrangement came into existence in late 2016 – March 2017, after the Trust Deed had been created on 10 September 2016. It was also Korbett's case that the Trust Arrangement was an oral agreement. Korbett did not articulate before me what consideration there was for the Trust Arrangement so as to make it legally binding on the parties. The point that no consideration was explained militates against the conclusion that there was indeed such a Trust Arrangement concluded orally.

76 On Korbett's case, the Trust Arrangement was an integral part of the Trust Deed and must be "viewed singly" with the Trust Deed. However, that would mean that the Trust Arrangement operated as a variation of or addendum to the Trust Deed. In this regard, I observe that s 7 of the Civil Law Act 1909 requires that declarations of trust respecting immovable property must be made in writing and the general principle is that variations thereof must also be in writing. That is yet another point that runs counter to Korbett's arguments.

77 For all these reasons, I do not accept that the Trust Arrangement existed or operated so as to allow Korbett to occupy the Property without paying rent.

(b) Monthly sums received from GTSS

78 The monthly payments that GTSS made to Korbett which were attributed to GTSS' occupation of the Property came about because of Korbett's position as trustee over the Property.

79 The SOC at paragraph 7 pleaded the fiduciary duties owed by Korbett and this suffices to require Korbett to account for the monthly payments obtained from GTSS' use of the Property.

(c) 23,000 GTSS

80 I have found above that Korbett received the S$23,000 from GTSS on or about 26 April 2017 for reasons other than usage of the Property. Accordingly, this is not a profit obtained by Korbett as a result of the breaches of Korbett's fiduciary duties owed to Bryan / Wang as set forth in the SOC.

Issue 3: What is the amount of profits which Korbett is to pay to Bryan and to Wang?

(a) Rent for Korbett's occupation of the Property

81 Bryan and Wang argued that the quantum should be S$415,333.33 for Korbett's occupation of the Property from March 2021 to April 2024 ("**Period**")[41]. Korbett argued first, that it had discharged its duty as a trustee to act in good faith and with due diligence to obtain a tenant for the Property during the Period[42], and secondly, that Png's expert evidence should be corrected such

[41] Plaintiff Closing Submissions para 47

[42] Korbett Closing Submissions para 35 - 49

that the quantum would be S$282,700 instead[43]. I disagree with Korbett on both points.

82 As to Korbett's first point, I find it wholly irrelevant to ask whether Korbett did its reasonable best in the prevailing circumstances to rent the Property to a tenant and then, being unable to find a tenant, was not wrong to decide to occupy the Property itself. Such an exercise might be relevant and appropriate if I were assessing damages arising from Korbett's breach of duty to act in the best interests of the beneficiaries. In that scenario, I might need to consider whether Korbett had been reasonably unable to find a tenant because of, among other factors, the COVID crisis, and then whether it was reasonable for Korbett to occupy the Property rather than leave it untenanted. But that is not the exercise required by the APP.

83 Turning to Korbett's second point, I note first that Korbett's attempt to correct Png's evidence is not premised on the expert evidence of its expert witness, Seow. This is likely because Seow conceded under cross-examination that the conclusions and numbers stated in her expert valuation report that she had tendered as her expert evidence to the court cannot be relied upon by the court[44]. Seow's testimony was as follows:

> Q: Well, I assess that myself based on whether one can use the conclusions in Section 13.0 for purposes of this case. So can one use the conclusions in Section 13.0 for purposes of this case? Bearing in mind what you have testified earlier and bearing your obligations to the Court as an expert. Can the Court use these numbers in this case?
>
> A: (No audible answer)

[43] Korbett Closing Submissions para 50 - 70

[44] Transcript 3 Dec 2024 p59 line 29 – p 60 line 4

> Q: It's a yes-no question to someone who says she's an independent expert. Can the Court use these numbers?
>
> A: No.

84 Nonetheless, I accept Korbett's argument that expert evidence is only there to assist the court in arriving at a decision, and that the question of the quantum of rent payable for the Period is decided by the court and not by either Png or Seow[45]. With that in mind, I considered Korbett's reasons for preferring the corrected quantum of S$282,700 ("**Corrected Quantum**") over the quantum of S$415,333.33 put forward by Png. Korbett offered two reasons.

85 First, Korbett said that Png had assumed an across-the-board standard effective floor area of 558 sq m for all the comparable properties selected by him, assuming (despite evidence to the contrary) that they were homogenous, and then chosen to adopt a higher effective floor area of 696 sq m for the Property[46].

86 However, in order for Korbett's argument to be properly mounted, the question of whether Png should have used the floor area of 696 sq m for the Property instead of the floor area of 558 sq m for the comparable properties should have been put to him in cross-examination. As the question was not put to Png and he had no opportunity to explain himself, I will not entertain this argument from Korbett.

87 For completeness and in case I am wrong to apply the rule in *Browne v Dunn* (1893) 6 R 67 here, I note that Png did explain that given the nature of the information available on the JTC Web Portal, he had adopted the median built-

[45] Korbett Reply Submissions para 37

[46] Korbett Closing Submissions para 52 – 65

in floor area and extension floor area of the comparable properties, *ie,* 558 sq m. Png also explained that the floor area of the Property was 696 sq m based on the architectural floor plan and Singapore Land Authority's cadastral map and taking into account the rear extension on the Property[47]. Finally, Seow's expert report used a slightly larger floor area of 701 sq m for the Property[48], which was not significantly at variance with Png's 696 sq m. Png had taken note of the larger floor area used by Seow and was of the opinion that the slight difference was by itself not likely to result in material differences to their respective expert opinions on market rental for the Property[49]. Seow likewise noted that the difference was less than 1% and found this margin to be reasonable and acceptable[50]. It appears therefore that both experts worked on the basis of a floor area of 696 sq m or 701 sq m for the Property (with the difference between the two having no significant impact) but not a floor area of 558 sq m.

88 Secondly, Korbett said that Png chose to apply a blanket 35% uplift for the Property as compared to the other comparable properties used by him ("**Condition Adjustment**") on the assumption and presumption that the Property was in a better condition both externally and internally, which was a fallacy as all his comparables were bare shells. The 35% Condition Adjustment was inexplicable and inconsistent with the photographs adduced which showed that there were observable differences in the conditions of the comparables (between themselves and) as compared to the Property[51].

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[47] Png AEIC p20; Transcript 5 Dec 2024 p14 line 22 – p17 line 9

[48] Seow AEIC p12

[49] Png Affidavit 28 Oct 2024 para 8(a)

[50] Seow Affidavit 28 Oct 2024 p8

[51] Korbett Closing Submissions para 52 - 63

89 Png explained that in his experience, most industrial properties were leased on a "bare shell basis", *ie,* without any fittings, as the tenant (and not the landlord) will be the party bearing the costs of the renovations. As such, where a unit has been fully fitted-out prior to being leased out, most tenants will view this favourably and offer a higher rental rate. An uplift of 35% (which Png, based on his experience, assessed to be an appropriate figure) should thus be applied to take into account the better condition of a fully fitted-out property[52]. Korbett did not adduce any expert evidence to rebut Png's evidence about this aspect of the behaviour of the rental market for industrial properties and Png's evidence should be accepted accordingly.

90 It was not disputed that the Property was fully fitted-out. As for the comparable other properties, Png observed that they were mostly "bare shells", based on a physical site inspection of the properties in Hillview Terrace as well as information and photographs that were publicly available online[53]. A visual consideration of the photographs that were included in Png's expert report is consistent with his testimony.

91 Png did not specify varying percentages for Condition Adjustment to take into account the varying external conditions of each of the comparable properties. The JTC Web Portal only showed the contracted rents of properties along a particular street (*eg,* Hillview Terrace) collectively, without identifying which particular units had been leased out[54]. Seow agreed that the addresses were not provided on the JTC Web Portal[55]. Accordingly, neither Png nor Seow

[52] Transcript 5 Dec 2024 p17 line 10 – 31

[53] Transcript 5 Dec 2024 p23 line 1 – p24 line 19

[54] Png Affidavit 28 Oct 2024 p549 - 550

[55] Transcript 3 Dec 2024 p7 line 28 – p8 line 29

could be expected to identify from the JTC Web Portal which specific properties had been leased at which specific rental rates.

92 Korbett seemed to suggest that the direct comparison method ("**DCM**") of valuation, which both Png and Seow used in their respective expert reports, required Png to have closely examined the interiors and exteriors of all the comparable properties in order to come to a more specific and accurate evaluation of the actual condition of each of the comparable properties[56].

93 I take this to mean that Korbett expected Png to seek and obtain permission from the owners of all the comparable properties to enter their properties and perform an examination of their interiors and exteriors. I think that is both unfair and unrealistic. Korbett did not adduce evidence from either expert before me that the DCM requires a valuer to go and obtain permission from the owners of all the comparable properties to enter their properties and perform an examination of their interiors and exteriors. When questioned about making adjustments under the DCM for the age of comparable properties, Seow testified that she had seen the properties from the exterior of the building, but had not seen the condition of the particular units[57]. Seow herself did not suggest that the DCM required her to have entered and examined the particular units instead of only seeing them from the outside of the building. If Korbett was suggesting that the DCM required the expert to undertake such an onerous exercise of entering and examining all the comparable properties, I do not agree with Korbett.

[56] Korbett Closing Submissions para 59 - 63

[57] Transcript 3 Dec 2024 p47 line 15 – p49 line 19

94 I do not accept either of Korbett's reasons for preferring the Corrected Quantum of S$282,700 over the quantum of S$415,333.33 put forward by Png and I accept Png's quantum.

95 Lee made the additional point that Korbett only had two employees and did not physically use, or could not have physically used, the entire Property[58]. This is irrelevant. Whether a tenant chooses to squeeze many of its employees into a location, or allows two of its employees to enjoy the entire location, or divides the location between goods storage and human occupation, or leaves it partly empty, does not determine how much rent the tenant pays for the location.

(b) Monthly sums received from GTSS

96 The quantum which Korbett is to account for is the sum total of the monthly payments received by Korbett from GTSS attributed to GTSS' occupation of the Property.

(c) 23,000 GTSS

97 Korbett is not to account for the S$23,000 received by Korbett from GTSS on 26 April 2017.

(d) Bryan and Wang should receive all of the profits to be accounted for

98 I turn now to the question of whether Korbett should be ordered to pay Bryan 50% and Wang 50% of the profits to be accounted for, or whether Korbett should be ordered to pay Bryan 25%, Wang 25%, and Lee 50% of the profits to be accounted for[59]. I go back to paragraph 6 of the CIJs which read:

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[58] Transcript 2 Dec 2024 p35 line 9 - 11

[59] Korbett Closing Submissions para 71

> [Korbett] shall provide an account of *all* profits obtained by it as a result of the breaches of its fiduciary duties owed to [Bryan / Wang] as set forth in the [amended Statement of Claim filed in this action], and shall make payment of *all of the said* profits to [Bryan / Wang]. [emphasis added]

99 I do not think I can go outside the parameters of the plain and specific language of the CIJs, so as to order Korbett to make payment to Lee of any part of the profits which Korbett is to account for. It is not open to me to ask the question of why all (and not 50% or 25%) of the profits should be paid to Bryan and Wang. The terms of the CIJs were reached between the parties as part of an overall settlement of the disputes between them which included dropping Korbett's counterclaim and it is not for me to rewrite that settlement.

100 As such, I order that Korbett is to pay to Bryan and Wang *all* of the profits which I have ordered Korbett to account for, with this amount to be divided equally between Bryan and Wang.

Issue 4: What is the nature and extent of the account which Korbett is to provide to Bryan and to Wang?

101 It transpired during the proceedings before me that it was Lee's position that he had taken over the last 25% interest of Chen, who dropped out of the trust arrangement (see [7] above)[60]. Previously, it was said that Korbett had taken over that interest[61]. I was not required to decide whether it was indeed Korbett, or Lee. For the purposes of Issue 4, I will proceed on the basis that Lee clarified that he held 50% beneficially. Whether Korbett, or Lee, held Chen's 25% interest makes no difference to my findings in respect of Issue 4. To be clear, I make no finding that Lee did indeed take over the last 25% interest and

[60] Transcript 2 Dec 2024 p13 line 7 – p14 line 18

[61] Amended Defence and Counterclaim para 13 in S 304; Amended Defence and Counterclaim para 14 in S 356

parties are free to take whatever steps they deem necessary if that question ultimately needs to be adjudicated.

102 Korbett agreed that the account should be provided on a wilful default basis[62]. I direct that Korbett is to produce an account of the Property which records all incomings and all outgoings. During the course of the proceedings after the entering of the CIJs, Korbett provided several accounts of the Property but the accounts did not include any incomings from, or attributed to, Lee. The reason given by Lee for this was that Korbett had made all payments on behalf of Lee[63]. This cannot be a valid reason to exclude incomings from, or attributed to, Lee, or outgoings for, or on behalf of, Lee.

103 Korbett was, and in its capacity as trustee, a separate entity from Lee. Even if the arrangement between Korbett and Lee was that Korbett would make payments on behalf of Lee and Lee need not repay Korbett, that was an arrangement that only Korbett and Lee were privy to. The other beneficiaries, Bryan and Wang, were not party to that arrangement and indeed Korbett did not assert that they were. It is necessary for the account to capture Lee's contribution to the trust, even if that means that on each and every occasion that Korbett made a payment for the Property, Lee is credited with having paid 50% of that payment.

104 Korbett submitted that under the FABI, the burden was on Korbett to prove that disbursements were authorised whereas the burden was on Bryan and/or Wang to prove that Korbett had received more than accounted for[64].

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[62] Korbett Closing Submissions para 8

[63] Transcript 2 Dec 2024 p54 line 2 – p56 line 18

[64] Korbett Reply Submissions para 11

Bearing this in mind, I now deal specifically with certain aspects of the account to be provided, which the parties disagreed on.

(a) Mortgage payments

105 Following from what I have said above, and for the avoidance of doubt, all the mortgage payments made by Bryan, Wang and Lee, whether the payments were made by each of them personally or by another entity on their behalf (such as Apek on behalf of Bryan or Wang, or Korbett on behalf of Lee), must be recorded in the account.

106 In so far as the account for the mortgage payments reflects the position of Bryan and Wang, that is to start from March 2021 onwards. This is because the position taken by Korbett was that Bryan and Wang had paid their respective shares of the mortgage payments for the Property from December 2016 to March 2021[65]. This was consistent with what happened on 4 March 2021, the date on which Bryan and Wang supposedly reconveyed their interests in the Property to Korbett and were paid their respective shares of the net sale proceeds after a supposed sale of the Property (see [9] above)[66]. In other words, as at that date, Korbett had closed the mortgage payments account for Bryan and Wang and no mortgage payments were outstanding for the period of time before March 2021.

107 During cross-examination, counsel for Korbett suggested to Bryan and Wang that they might actually still owe some mortgage payments for the period prior to March 2021[67]. This point was also advanced by Korbett in its closing

[65] Korbett Lead Counsel Statement 18 Nov 2024 p5

[66] Amended SOC para 10 – 13; Amended Defence and Counterclaim para 25 - 26

[67] Transcript 4 Dec 2024 p9 line 1 – 25, p12 line 23 – p15 line 19, p55 line 1 - 7

submissions[68]. However, the factual basis of that line of questioning did not appear to be supported by Lee's evidence. I accept that counsel may pose questions in cross-examination that are on the basis of instructions given by the client and that such instructions need not necessarily have been put on oath or affirmation before the court. However, in this case, any such instructions would appear to contradict the position taken by Korbett in its Lead Counsel Statement filed on 18 November 2024 for the purposes of the APP and FABI proceedings before me *ie.* that Bryan and Wang had paid their respective shares of the mortgage payments for the Property from December 2016 to March 2021. Similarly, the point advanced in Korbett's closing submissions disregards the position taken in the Lead Counsel Statement.

108 As part of the agreement between the parties, and as set out in the CIJs, the Deed of Reconveyance was null and void, but the point remains that in terms of accounting, the mortgage account for Bryan and Wang was "zero-ed" as at 4 March 2021. Absent any appropriate explanation from Korbett, I do not see a reason to revisit the mortgage payments before 4 March 2021.

109 However, the account to be prepared is to reflect whatever amounts Bryan, Wang and Lee owe or have paid or have been taken to have paid to Korbett (as the case may be) for the monthly mortgage payments after 4 March 2021.

110 I am satisfied that Korbett took appropriate steps to remortgage the Property and all those entries are to be reflected in the account.

[68] Korbett Closing Submissions para 83 - 86

(b) Property tax and insurance

111 I note that the criticisms levelled by Bryan and Wang against the account of property tax and insurance payments given by Korbett were based on several documents, including bank statements and correspondence with the Internal Revenue Authority of Singapore. I note further that Lee provided no substantive explanation to justify the figures which Korbett put forward and why they were not consistent with the documents[69].

112 Korbett has not discharged its burden to prove that the disbursements of property tax and insurance as put forward by Korbett were authorised and instead I find that the account should reflect that Korbett paid S$70,161.63 for property tax and S$821.76 for insurance as at November 2024.

113 In line with my ruling above, Lee's share of these payments should be attributed to him in the account, even if they were advanced on his behalf by Korbett.

(c) Renovation and outfitting

114 Bryan and Wang disputed some renovation and outfitting expenses and I deal with each disputed item in turn.

Invoice 1534/11/16 29 November 2016

115 Korbett said that this invoice was for a partition wall installed at the Property whereas Bryan and Wang said that it was installed at Korbett's office at 38B Hillview Terrace ("**38B**"). Bryan and Wang had two reasons for

[69] Transcript 2 Dec 2024 p69 line 14 – p71 line 26

disputing the installation – no renovations were being done at the Property at that time and the invoice was addressed to Korbett at 38B.

116 Lee said that the invoice was addressed to Korbett at that address but the invoice was for "pre-renovation of some partition", or some "initial works" at the Property[70]. Bryan asserted that completion for the Property had taken place around September or October 2016 and there would not have been enough time to get a renovation contractor, a quote, and the works finished, in time to have the invoice issued on 29 November 2016[71].

117 It appears that completion of the Property took place on 6 September 2016[72]. Even though Korbett argued that neither Bryan nor Wang knew the details of the renovation works whereas Lee did[73], Bryan's reasoning (see [116] above) did not depend on actual knowledge of the works and he was correct to say that completion took place in September 2016.

118 Korbett argued that Bryan had testified that he and Lee had agreed for renovation works to take place in late 2016 to early 2017, which supported the point that there were renovation works at the Property in November 2016[74]. This argument is not entirely correct. Bryan's answer of "…late 2016 to early 2017" was not an answer as to the time period of the renovation works; rather, he was answering the question from counsel which was, "…at which point did you and the beneficiaries agree that there should be basic renovations?"[75] In other words,

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[70] Transcript 2 Dec 2024 p74 line 10 – p75 line 12, p98 line 29 – p99 line 7

[71] Transcript 4 Dec 2024 p17 line 11 – p18 line 18, p59 line 11 - 30

[72] Bryan AEIC 10 Jul 2023 p162 - 174

[73] Korbett Closing Submissions para 95

[74] Korbett Closing Submissions para 96

[75] Transcript 4 Dec 2024 p19 line 27 – 29

Bryan was referring to the period in which *agreement* for the renovation works to be carried out was reached and not to the period in which works were actually *carried out*.

119 Whilst this invoice was addressed to Korbett at 38B, as were other invoices that Bryan and Wang did not dispute, those other invoices contained a description in the body of the invoice which said the works had been done at the Property. However, such a description was not present in this invoice. Further, it would have been easy for Korbett to adduce evidence of the partition wall at the Property, but this was not done.

120 On balance, I find that Korbett did not discharge its burden to prove that the payment for Invoice 1534/11/16 was authorised and neither the incurrence of nor the payment for Sin Tai Lee's invoice of 29 November 2016 is to be shown in the account as a liability for the beneficiaries under the Trust Deed to share.

Invoice 1557/05/17 3 May 2017, Invoice 1570/06/17 28 June 2017 and Invoice 1527/06/17 30 June 2017

121 These invoices may be dealt with together. Korbett explained that the invoices were for air-conditioning and, relatedly, an air curtain[76]. Bryan accepted that the works had been done at his or Apek's request and for the benefit of Apek[77]. Lee accepted that Apek had paid for the works as billed[78]. Neither the incurrence of nor the payment for these three invoices is to be shown in the account as a liability for the beneficiaries under the Trust Deed to share.

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[76] Korbett Closing Submissions para 98 - 101

[77] Plaintiff Reply Submissions para 38

[78] Plaintiff Closing Submissions para 75

Invoice 1558/05/17 3 May 2017, Invoice INV/EFG/3088/17 15 May 2017, Invoice 1596/06/17 28 June 2017, Invoice 1571/06/17 30 June 2017, Invoice 1573/06/17 30 June 2017, Invoice INV/EFG/3069R/17 3 August 2017, Invoice UCOM: 17016 28 July 2018, Invoice UCOM: 18017 28 July 2017, Invoice 1578/08/17 17 August 2017, Invoice ITV/0817/2567 23 August 2017 and Invoice ITV/0817/2568 23 August 2017

122 Korbett described these 11 invoices as being for the general improvement of the Property. Among other things, they included a pedestrian gate, cabling for the internet system and a security system. Korbett argued that the Property benefited as a whole and therefore secured a better rental of S$15,000 per month and Png had said the Property was in better condition than the comparable properties due to such improvements[79].

123 Even if a property that came complete with internet cabling and security would seem to be a better prospect than one without, that is beside the point.

124 The beneficiaries had agreed that they would pay for basic renovation works only. If there were renovation works over and above these, the future tenant would then have to bear such costs[80]. Perhaps they envisaged that some putative tenant would not want to pay more for a property that came with such features because the tenant could instal its own internet cabling very cheaply or the tenant would bring and instal its own special security system. It is not for me to say whether the beneficiaries were right or wrong in their assessment and it does not matter why the beneficiaries agreed as they did. The short point is that since that was what the beneficiaries had agreed to, Korbett as trustee could not depart from it without their consent.

[79] Korbett Closing Submissions para 104 - 107

[80] Transcript 2 Dec 2024 p72 line 9 – p73 line 23

125 Bryan and Wang argued that in reality, Lee was benefiting his own companies, Korbett and GTSS[81]. Lee explained that he was the ultimate beneficiary of both Korbett and GTSS, which were both companies controlled by him[82]. Bryan and Wang pointed out that there was no evidence that the S$15,000 rental which the tenant accepted in 2024 was attributable to those improvements which had been made in 2017. They submitted that Korbett should not be listening only to one of the three beneficiaries[83].

126 I agree that Korbett could not take instructions from only one of three beneficiaries if the instructions were being given *qua* beneficiary. However, I make no finding as to whether the general improvements were actually for the benefit of Korbett and GTSS and I make no finding as to whether the S$15,000 rental was attributable to the general improvements. I need not make these latter two findings because the general improvement works were plainly outside the scope of the basic renovation works that the beneficiaries had agreed to bear the costs of. And further, two of those beneficiaries did not agree to the general improvement works. On that basis alone, neither the incurrence of nor the payment for the 11 invoices for general improvement works is to be shown in the account as a liability for the beneficiaries under the Trust Deed to share.

Invoice 4487 24 April 2024, Invoice 26422 29 April 2024, Invoice 16459 6 May 2024 and Invoice INV-24-00616PJY-L 27 May 2024

127 The first three invoices were for servicing the air-conditioning and repairing a burst water pipe so that the Property could be handed over to the

[81] Plaintiff Closing Submissions para 68, Plaintiff Reply Submissions para 40

[82] Transcript 2 Dec 2024 p14 line 6 - 16

[83] Plaintiff Reply Submissions para 40

tenant HS Global Marketing Pte Ltd ("**HSG**")[84]. Lee agreed that had there been an outgoing tenant at that time, the outgoing tenant would have had to bear the costs to reinstate the Property and he said that the occupants of the Property at that time were Korbett and GTSS[85]. On that basis, I am of the view that Korbett and GTSS as the outgoing tenants should have borne the costs of reinstating the Property.

128 As for the fourth invoice, which was payment to the housing agent when the tenant HSG was procured, that payment could only be properly incurred if the tenancy was properly procured. Bryan and Wang made the point that the Trust Deed required Korbett to, amongst others, part with possession of the Property only with their written consent, and disclose to them all agreements affecting the ownership of the Property prior to them being made[86]. Unfortunately, it is indisputable that Korbett did not fulfil these obligations in relation to the tenancy with HSG.

129 For the reasons above, neither the incurrence of nor the payment for these four invoices that are related to the tenancy with HSG is to be shown in the account as a liability for the beneficiaries under the Trust Deed to share.

130 In summary, I direct that Korbett is to produce an account of the Property which records all incomings and all outgoings. In so far as Korbett has received payments from Bryan and Wang (either directly or by Apek on their behalf) and from Lee (either directly or by Korbett or GTSS on his behalf) for the renovation and outfitting works which are to be shared by the beneficiaries

[84] Korbett Closing Submissions para 112 - 113

[85] Transcript 2 Dec 2024 p84 line 5 – p85 line 11

[86] Plaintiff Reply Submissions para 41

under the Trust Deed, these are to be recorded in the account that Korbett is to render. As for the renovation and outfitting costs incurred by Korbett for the Property which are not a liability for the beneficiaries under the Trust Deed to share, those costs are to be shown in a separate section of the account that Korbett is to render. In that separate section, Korbett is to record payments made by any party towards those costs; this would include, for example, Apek's payment of S$24,466.62 and GTSS' payment of S$118,146.50[87] for the air-conditioning and air curtain (see [121] above).

131 Whilst I have ordered Korbett to provide an account using the parameters set out above, the parties are to note that the account is not an order for payment. It may be used by the parties, if necessary and applicable, to seek payment as appropriate from one another, but an account is not, in and of itself, a payment order.

132 In this connection, Korbett sought an order that each of Bryan and Wang should be required to pay Korbett certain sums as a result of the taking of the account and after setting off any amounts ordered against Korbett by this court[88]. I do not agree.

133 The FABI is ordered pursuant to paragraph 7 of the CIJs which read "[Korbett] shall provide to [Bryan / Wang] a full account in respect of [Bryan / Wang]'s 25% share of the beneficial interest in the Property". There was no provision in paragraph 7 for this court to also order the parties to pay one another what is due at the end of the account. It is quite different from the APP pursuant

[87] Plaintiff Closing Submissions para 75

[88] Korbett Closing Submissions para 125

to paragraph 6 of the CIJs, which expressly stated that "[Korbett] … shall make payment of all of the said profits to [Bryan / Wang]".

134 For the avoidance of any doubt, the account which Korbett is to provide pursuant to paragraph 7 of the CIJs is not to include the profits which I have ordered Korbett to account to Bryan and Wang for pursuant to paragraph 6 of the CIJs.

Conclusion

135 I will hear from the parties as to how long Korbett needs to provide the FABI and the date to which Korbett proposes to make the account up to. I grant parties liberty to apply to me should they be unable to work out any issues arising from the decision above. I will also hear from parties as to their submissions on costs.

136 I thank counsel for their assistance.

Gan Kam Yuin
Assistant Registrar

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