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

[2026] SGHC 219

Originating Claim No 214 of 2022

Between

Chan Yip Tong David (*alias* Chan Sow Lang)

… *Claimant*

And

Chan Yip Tong Franklin (*alias* Chan Sow Fatt)

… *Defendant*

Counterclaim of Defendant

Between

Chan Yip Tong Franklin (*alias* Chan Sow Fatt)

… *Claimant in Counterclaim*

And

Chan Yip Tong David (*alias* Chan Sow Lang)

… *Defendant in Counterclaim*

JUDGMENT

[Contract — Intention to create legal relations]
[Contract — Consideration]
[Contract — Duress — Economic]
[Tort — Defamation — Justification]
[Tort — Defamation — Qualified privilege]
[Trusts — Trust estate]
[Limitation of Actions — Particular causes of action — Account]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Chan Yip Tong David (*alias* Chan Sow Lang)
v
Chan Yip Tong Franklin (*alias* Chan Sow Fatt)

[2026] SGHC 219

General Division of the High Court — Originating Claim No 214 of 2022
Christopher Tan J
29–30 October, 1, 4–8 November 2024, 3 March 2025, 25 August 2026

19 October 2026 Judgment reserved.

Christopher Tan J:

Introduction

1 The two parties to this dispute ("Parties") are the claimant, Chan Yip Tong David @ Chan Sow Lang ("Claimant") and the defendant, Chan Yip Tong Franklin @ Chan Sow Fatt ("Defendant"). Both of them are brothers. Their mother ("Testatrix") had three other children:

(a) Chan Yip Tong George ("George");

(b) Chan Yip Tong Jack ("Jack"); and

(c) Chan Sow Chong @ Oliver Peter Yip Tong ("Peter"), who predeceased the Testatrix.

2 In the Testatrix's last will and testament dated 25 October 2012

("Will"),[1] she named the Parties as the executors of her estate ("Estate"). She passed away on 21 December 2012, with grant of probate being issued on 5 April 2014.[2] The Will named four beneficiaries:[3] (a) the Claimant; (b) the Defendant; (c) Peter's daughter, Chan Dione Yiptong ("Dione"); and (d) George's daughter, Chan Joanne Yiptong ("Joanne"). Notably, George and Jack were not named as beneficiaries even though they were still alive at the time the Will was made.[4]

3 The Will bequeathed the following three immovable properties to the beneficiaries above:[5]

(a) A semi-detached house at Eng Kong Road ("EK Property") was bequeathed to the Parties in equal shares.

(b) A retail unit in Far East Shopping Centre at Orchard Road ("Far East Property") was bequeathed to the Claimant, Defendant, and Dione in three equal shares.

(c) A condominium unit at Hindhede Walk ("Springdale Condo") was bequeathed to Dione and Joanne in equal shares.

The EK Property, Far East Property and Springdale Condo were transferred to the respective beneficiaries in accordance with the bequeathments listed above.[6]

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1 Exhibited in Chan Yip Tong David @ Chan Sow Lang's affidavit of evidence-in-chief (dated 5 January 2024) ("Claimant's AEIC") at pp 73–76.

2 Claimant's AEIC at para 13.

3 Claimant's AEIC at para 9.

4 Claimant's AEIC at para 12.

5 Testatrix's will at cl 3, exhibited in the Claimant's AEIC at pp 74–75.

6 Claimant's AEIC at para 14.

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4 By way of background, the EK Property had been purchased in February 2012, while it was still under construction. Thereafter, its purchase price was settled by way of progress payments. These progress payments were ongoing as at the point the Will was executed and continued to be made even after the Testatrix's death in December 2012, ending only in April 2014.[7]

5 Apart from the real estate above, the Testatrix had other financial assets, including monies in bank accounts held either by herself or jointly with one or more of her children. In respect of these monies, the Will directed as follows:[8]

> (a) All the Testatrix's monies – whether in joint or personal bank accounts – were to be applied towards the EK Property's progress payments, with any balance to be divided equally four ways between the Claimant, the Defendant, Dione, and Joanne.
>
> (b) In the event of the Testatrix's monies being insufficient to cover the EK Property's progress payments, any shortfall – which the Parties termed the "EK Shortfall" – was to be met using the net rental proceeds from the Far East Property and the Springdale Condo.

6 The present dispute arises from a multitude of claims that the Parties have levelled against each other. For a more structured analysis, I have classified these claims under the following broad categories.

7 Firstly, both sides have advanced a number of claims in relation to the EK Property, as set out below.

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7 Claimant's AEIC at para 44.

8 Testatrix's will at cl 4, exhibited in the Claimant's AEIC at p 75.

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(a) The Claimant claims for rent payable by the Defendant for the period when the Defendant's family was residing at the EK Property.

(b) The Claimant also claims for his share of the rent which the Defendant collected from the tenant who had subsequently rented the EK Property, one Hau Hoang Jason ("Jason").

(c) The Defendant, on his part seeks various remedies in relation to the rent collected from Jason, including orders that the Claimant:

(i) release the Defendant's share of rent paid by Jason, which now sits in a bank account jointly held in the names of the Parties;

(ii) pay the "excess rent" which he collected from Jason; and

(iii) furnish an account of the rent collected from Jason.

(d) The Defendant also wants the Claimant to reimburse him for the property tax which the Defendant claims to have paid for the EK Property.

(e) The Defendant also seeks to compel the Claimant to pay half the commission which the Defendant claims to have earned (in his capacity as a property agent) for procuring Jason's tenancies.

8 Secondly, the Defendant seeks damages against the Claimant for defamation. This claim pertains to an email which the Claimant had sent to the Defendant's employer, PropNex Realty Pte Ltd ("PropNex"), concerning Jason's tenancy.

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9 Thirdly, the Claimant seeks to enforce a handwritten note signed by the Defendant on 11 September 2021 ("Handwritten Note"), under which the Parties agreed that $600,000 of the proceeds from selling the EK Property (which was eventually sold in April 2022[9]) would be set aside and distributed equally to George and Jack.

10 Fourthly, both sides have advanced the following claims in relation to the Far East Property:

(a) The Claimant wants the Defendant to furnish an account of the rent which the latter had collected.

(b) The Defendant wants the Claimant to furnish an account of the maintenance fees and property tax that had been paid.

11 Fifthly, the Defendant wants the Claimant to furnish an account in respect of the following matters relating to the Estate:

(a) the EK Shortfall (as defined at [5(b)] above);

(b) the Testatrix's investment in a gold investment company called Genneva Pte Ltd, made sometime between 2011 and 2012 ("Gold Investment"); and

(c) A blue attaché case containing valuables belonging to the Testatrix.

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[9] Kelvin Mun Wai Ho's affidavit of evidence-in-chief (dated 26 December 2023) at para 12.

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12 Next, both sides also want the other party to furnish an account of the balances in various bank accounts in which the Testatrix was a joint account holder, as set out below.

(a) The Claimant wants the Defendant to furnish an account of the following two bank accounts:

(i) a joint account with CIMB Bank Bhd ending with the digits "5045" ("CIMB Joint Account"), held in the names of the Testatrix and the Defendant; and

(ii) a joint account with the Development Bank of Singapore Ltd ending with the digits "7643" ("DBS Joint Account"), held in the names of the Testatrix, the Defendant and his son.

(b) The Defendant wants the Claimant to furnish an account of various joint bank accounts, although these have not been fully particularised in the Defendant's pleadings.

13 Finally, the Defendant seeks to recover sums which he alleges the Claimant to have withdrawn from a bank account held jointly by the Testatrix and Peter with the Post Office Savings Bank Ltd ("POSB Joint Account").

14 I now deal with each of these heads of claim, according to the sequence as set out above.

Parties' claims relating to the EK Property

15 As alluded to at [4] above, after the EK Property was purchased in February 2012, its purchase price was settled via progress payments which continued until 2014. The Temporary Occupation Permit ("TOP") for the EK

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Property was eventually issued in June 2014,[10] after which there were two periods when it was occupied:

(a) From around October 2014 onwards, the Defendant and his family moved into the EK Property, where they resided for about two years, up until September 2016.[11] Thereafter, the Defendant's family moved out, with only the Defendant's son, Chan Zhaohao, Charles Yiptong ("Charles") continuing to reside at the EK Property. Charles stayed at the EK Property for only two more months – October and November 2016[12] – after which he also moved out. Thereafter, the EK Property remained vacant for about eight months.

(b) In August 2017, the Parties rented the EK Property to Jason.[13] After successive tenancies that collectively spanned more than four years, Jason vacated the EK Property sometime in January 2022.

In April 2022, the Parties sold the EK Property,[14] after having held it as tenants in common for more than nine years.

16 The Claimant claims against the Defendant for rent in respect of the EK Property, in relation to both the periods (a) and (b) in the immediately preceding paragraph. Specifically, the Claimant seeks the following:

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10 Claimant's AEIC at para 91.

11 Chan Yip Tong Franklin @ Chan Sow Fatt's affidavit of evidence-in-chief (sworn on 28 December 2023) ("Defendant's AEIC") at para 42.

12 Defendant's AEIC at para 39.

13 Exhibited in the Claimant's AEIC at pp 579–583.

14 Kelvin Mun Wai Ho's affidavit of evidence-in-chief (dated 26 December 2023) at para 12.

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(a) Rent payable by the Defendant for the duration when his family (including Charles) resided at the EK Property.

(b) Rent which the Defendant collected from Jason. As the Parties each owned half of the EK Property as tenants in common (see [3(a)] above),[15] the Claimant claims for half of the rent collected from Jason.

17 The Defendant, on his part, has advanced various counterclaims against the Claimant in respect of the EK Property:

(a) Firstly, the Defendant seeks various remedies relating to the rental proceeds from Jason's tenancies, as set out at [7(c)] above.

(b) The Defendant also wants the Claimant to reimburse him for the property tax which the Defendant claims to have paid for the EK Property.

(c) Finally, the Defendant claims against the Claimant for the commission which the Defendant claims to have earned, in his capacity as the property agent who procured Jason's tenancies.

18 I now deal each of these claims in turn.

Claimant's claim for rent payable by the Defendant for his family's stay at the EK Property

19 I begin with the Claimant's claim for rent which he says the Defendant owes in respect of the duration when the latter's family resided at the EK Property.

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15 Claimant's AEIC at para 101.

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20 The Parties agree that they had orally entered into an arrangement[16] under which the Defendant would pay the Claimant a monthly rent of $4,000 in exchange for the Defendant's family residing at the EK Property.[17] While this rent was paid by the Defendant for the months May 2015 to August 2016, the Claimant maintains that the Defendant should also have paid it for:[18]

(a) the prior seven-month period of October 2014 to April 2015; and

(b) the final three months of occupation from September to November 2016.

The Claimant thus alleges that the Defendant owes him a total of ten months' rent, amounting to $40,000.

21 The Defendant, on his part, claims that he had made a ***separate*** *oral* agreement with the Claimant, sometime on 25 June 2014, under which the Defendant was excused from having to pay rent while staying at the EK Property until the Defendant could secure rental income from his apartment in The Pinnacle @ Duxton ("Pinnacle").[19] As it turns out, the Defendant was ultimately unable to rent out Pinnacle but managed to sell it instead, in May 2015.[20] With the sale rendering the notion of renting out Pinnacle moot, the

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16 Claimant's AEIC at para 93; Transcripts for 4 November 2024 at pp 31 (line 27) – 32 (line 11).

17 Statement of Claim (Amendment No 1) (dated 8 May 2023) ("SOC") at para 7; Defence and Counterclaim (Amendment No 4) (dated 3 October 2024) ("D&CC") at para 14; Claimant's AEIC at para 94; Defendant's AEIC at para 35.

18 SOC at para 8; Claimant's AEIC at para 94; Claimant's Closing Submissions (dated 3 February 2025) ("CCS") at para 199.

19 D&CC at para 16; Defendant's AEIC at para 32.

20 Defendant's AEIC at para 35; Transcripts for 6 November 2024 at p 89 (lines 9–17); Defendant's Closing Submissions (dated 3 February 2025) ("DCS") at para 148.

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Defendant commenced paying rent for the EK Property from May 2015 onwards. The Defendant thus argues that he was excused from paying rent in respect of the EK Property prior to that, for the months October 2014 to April 2015 (*ie*, the duration in [20(a)] above), when Pinnacle could not be rented out. In response to this, the Claimant denies that he ever agreed to allow the Defendant to stay on the EK Property rent free.[21]

22 As for the months of September to November 2016 (at [20(b)] above), the Defendant claims that he and his family had already moved out of the EK Property, with only Charles staying behind in October and November 2016 to oversee post-construction rectification works on the EK Property.[22]

Preliminary observations on the arrangement for the Defendant to pay rent

23 Before addressing the Claimant's claim, I make some preliminary observations on the Parties' arrangement for the Defendant to pay a monthly rent of $4,000 in exchange for his family residing at the EK Property. As alluded to at [20] above, the Parties agree that they *did* orally enter into such an arrangement. While a co-owner in occupation of co-owned property generally has no liability to pay the other co-owners any occupation fee or rent, such liability can be agreed upon by the co-owners: *Khoo Jee Chek v Lim Beng Tiong* [2024] 1 SLR 829 at [62]. As for whether such an agreement creates a landlord-tenant relationship between the co-owners, it has been held that a co-owner of a property cannot validly grant a leasehold interest over that property to another co-owner (see the opinion of F A Chua J in *Goodland Ltd v Lim Ban Toon* [1965–1967] SLR(R) 264 at [17]). The latter proposition has

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21 Claimant's AEIC at para 94.

22 D&CC at para 16; Defendant's AEIC at para 39.

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nevertheless been criticised as being commercially impractical and out of line with Commonwealth authorities (Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) at p 214).

24 In any event, neither party goes so far as to suggest that their intention was to confer a leasehold interest on the Defendant, in exchange for him paying the monthly rent of $4,000. While their arrangement contemplated that the Defendant's family would get exclusive possession for the duration that he paid the monthly rent of $4,000, this is not in itself determinative of whether a leasehold interest was intended to be conferred. The court must ascertain parties' intentions from all the relevant circumstances, looking at their conduct and the substance of the agreement between them: *Goh Gin Chye v Peck Teck Kian Realty Pte Ltd* [1987] SLR(R) 195 at [14]–[15], citing *Street v Mountford* [1985] 1 AC 809 ("*Street*") at 818. Some insights into what the Parties intended in this case can be gleaned from a WhatsApp message sent by the Defendant to the Claimant on 30 October 2014 at 12.04am,[23] extracted below:

> Summ[a]ry on our discussion:
>
> 1, As mentioned, rental will base on market rate, we can further discuss on it. However 4k per mth is more than 2.5% interest over your half share, 8k is more than fair current market rental for this hse.
>
> …
>
> 3, … *I will discuss with my family n we move out for your family* n I'm fine with 4k per mth rental from u. … Lastly *I regretted moving if u could hv be more upfront with me that u hv e same intention of moving in*, rather after agreed with me to move in, u then ask for 10k rental which no way current market on this Semi D can fetch this value …
>
> [emphasis added]

[23] Claimant's AEIC at p 576.

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The message above does not suggest any intention by the Parties for the arrangement (by which the Defendant paid a monthly rent of $4,000) to confer any interest in the EK Property on the Defendant, over and above what he already owned (see *Street* at 824–825, citing *Marchant v Charters* [1977] 1 WLR 1181 at 1185). In fact, one can tell from the message that the arrangement was a highly fluid one, where the Parties did not even see fit to specify the duration for which this arrangement would subsist.

25 As such, rather than conferring upon the Defendant any additional interest in the EK Property, the arrangement between the Parties appeared to be more consistent with a contract by which the Claimant merely undertook a *personal* obligation to stay out of the property, for the duration that the Defendant paid rent. Notwithstanding, the Defendant relies on s 6(*d*) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") to contend that the arrangement for him to pay a monthly rent of $4,000, not having been reduced into writing, was unenforceable.[24] This provision states:

> **Contracts which must be evidenced in writing**
>
> **6.** No action shall be brought against —
>
> …
>
> (*d*) any person upon any contract for the sale or other disposition of immovable property, or any interest in such property …
>
> unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

Specifically, the Defendant argues that as there was no "*memorandum or note*" signed by him evincing the arrangement where he would pay a monthly rent of

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[24] DCS at para 155.

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$4,000 in exchange for his family being allowed to reside at the EK Property, s 6(*d*) CLA dictates that the Claimant "has no action to bring against the Defendant in respect of the alleged rent".[25]

26 This defence is clearly a non-starter. As seen from the extract above, s 6(*d*) CLA is concerned with "any contract for the sale or other disposition of immovable property, or any *interest* in such property" [emphasis added]. As the arrangement for the Defendant to stay on the EK Property was merely a contract embodying a personal obligation by the Claimant that did not entail the disposition of any interest in the EK Property (see [25] above), s 6(*d*) CLA has no relevance here.

27 In any case, the Defendant should not be allowed to raise s 6(*d*) CLA now as the provision was never pleaded by him, despite his Defence and Counterclaim having been amended *four times*. Section 6(*d*) CLA was raised by him for the very first time only in closing submissions. Guidance may be taken from the case of *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258, where the defendant also sought to rely on s 6(*d*) CLA despite not having pleaded it. V K Rajah JC (as he then was) observed (at [64]):

> This requirement for an express pleading is not a mere technicality to be blithely glossed over. The courts have always been anxious to ensure that the Statute of Frauds, its progeny included, do not evolve into instruments of sharp practice. The express pleading requirement has the salutary effect of mitigating any possibility of surprise and or prejudice that might arise from springing an arid technical defence at the last moment. Indeed, this is precisely what the defendant was attempting to effect through the guise of further arguments. In my view s 6(d) CLA has to be expressly pleaded if it is to be deployed in legal proceedings.

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[25] DCS at paras 155–156.

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Indeed, there is even greater cause to bar the Defendant from relying on s 6(*d*) CLA here, given that this is not just a case of his pleading failing to raise s 6(*d*) CLA. His pleadings actually *admitted* that there was an agreement for him to pay $4,000 rent every month.[26]

28 Notwithstanding his failure to plead s 6(*d*) CLA, the Defendant submits that the court should take "judicial notice" of this provision.[27] In making this submission, he relies on s 59(1)(*a*) of the Evidence Act 1893 (2020 Rev Ed) ("EA"), which states:

> **Facts of which court must take judicial notice**
>
> **59.**—(1) The court is to take judicial notice of the following:
>
> (*a*) all laws or rules having the force of law now or heretofore in force or hereafter to be in force in Singapore, including all Acts passed or hereafter to be passed by Parliament; …

With respect, the Defendant's submission is misconceived. When the court takes judicial notice of a fact, this simply means that the fact is taken to be uncontroversial or beyond reasonable dispute, such that it need not be proved: *Caesarstone Sdot-Yam Ltd v Ceramiche Caesar SpA* [2016] 2 SLR 1129 at [38]; see also s 58 EA. That does not relieve the Defendant from his obligation to plead his defence so that the Claimant is not taken by surprise.

My decision on the claim for rent payable by the Defendant for his family's stay at the EK Property

29 Having set out my views on the preliminary matters above, I now turn to consider the substantive arguments underlying the Claimant's claim for rent payable by the Defendant. To recapitulate, the Claimant is claiming for monthly

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26 D&CC at paras 14 & 17.

27 DCS at para 156.

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rent of $4,000, in respect of the following months when the Defendant's family resided at the EK Property (set out at [20] above):

(a) October 2014 to April 2015; and

(b) September to November 2016.

For the reasons below, I ***dismiss*** the Claimant's claim in (a) and ***allow*** his claim in (b).

(1) October 2014 to April 2015

30 Given that the Parties do not dispute that there *was* an arrangement between them for the Defendant's family to stay at the EK Property in exchange for a monthly rent of $4,000, the starting position is that the Defendant was liable to pay that rent once his family commenced their stay in October 2014. The Defendant nevertheless contends that he had a ***separate*** *oral* agreement with the Claimant excusing the Defendant from paying rent – despite his family residing at the EK Property – pending the Defendant's attempts to rent out Pinnacle: see [21] above.

31 As it is the Defendant asserting the existence of this separate oral agreement absolving him from paying rent, he bears the burden of proving it. The first port of call when faced with claims that an oral agreement had been struck would be the relevant *documentary* evidence. In *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206, the Court of Appeal explained (at [41]):

> … the first port of call for any court in determining the existence of an alleged contract and/or its terms would be the relevant *documentary* evidence. Where (as in the present case) the issue is whether or not a binding contract *exists* between the parties, a contemporaneous written record of the evidence is obviously

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> more reliable than a witness's oral testimony given well after the fact, recollecting what has transpired. Such evidence may be coloured by the onset of subsequent events and the very factual dispute between the parties. In this regard, *subjective* statements of witnesses *alone* are, in the nature of things, often unhelpful. … This is not to state that oral testimony should, *ipso facto,* be discounted. On the contrary, *credible* oral testimony can be helpful to the court, especially where … such testimony is given for the purpose of *clarifying the existing documentary evidence.* … . However, it bears reiterating that the court would always look first to the most reliable and objective evidence as to whether or not a binding contract was entered into between the parties and such evidence would tend to be *documentary* in nature. [emphasis in original]

32 The documentary evidence, including any written correspondence between the parties to the purported oral contract, needs then to be viewed against their contemporaneous conduct at the material time: *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [39]. If there is a dearth of documentary evidence, the court will examine the precise factual matrix to ascertain if the alleged oral agreement had indeed been concluded between parties: *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*") at [60].

33 Based on evidence of the WhatsApp messages exchanged between the Parties, I find that they *did* have an oral agreement to waive the rental payable by the Defendant, at least until he managed to rent out Pinnacle. The most illuminating messages were those exchanged on 23 June 2015, shortly after the Defendant had sold Pinnacle and commenced paying the monthly rent of $4,000 to the Claimant (see [21] above). I extract the salient messages in the table below:[28]

[28] Agreed Bundle of Documents (dated 23 October 2024) ("AB") pp 1600–1601.

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From	To	Time	Message Contents
Defendant	Claimant	10.52am	Eng Kong still under mum name as of now! And *our agreement was suppose to pay u rental upon renting out my pinnacle*, with bad rental market now, I can't rent out and already started paying u rental from May and what else do u want? For that I got no choice got to sell off my pinnacle to survive n pay u rental due P[ro]p[er]ty market now is so bad. Anyway I be moving out next year, I can't afford to keep paying rental 4k a month without income. I need to collect 4k rental too after I move out, hopefully can get tenant soon or at least I can save my 4k monthly.
Claimant	Defendant	11.00am	Just want to understand the basic renovation cost 6 months rental
Defendant	Claimant	11.08am	*As mentioned our agreement was upon renting out my pinnacle*, I will then use the rental collection to pay u. Unfortunately rental market is so bad that can't get to rent out my unit, yet already started paying u rental n what else u want?? …
Claimant	Defendant	11.34am	*Lopsided agreement spelled by you which I didn't reject outright due to brotherhood*. Fair for me to pay for your fulfillment and not getting rental perpetually base on your agreement and your other properties are collecting income?
Defendant	Claimant	11.48am	*U should hv rejected me n I don't need to go thru e whole trouble*. However hv started paying u now n I be moving out by next year to collect my fair share of rental too. If can sell it off will be even better.
		12.03pm	If I don't move in n I rule out Eng Kong can still be vacant till now.
Claimant	Defendant	12.05pm	Want to understand 50.50 shares of basic renovation for rental worth
Defendant	Claimant	12.06pm	Are u going to share e total cost with me?
Claimant	Defendant	12.25pm	You mentioned 6 months rental is my fair share of renovation

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From	To	Time	Message Contents
Defendant	Claimant	12.47pm	I told u that just to appease u on u keep pestering for rental despite we had agreement on upon renting out of my pinnacle, be it brotherhood as u said. Then why keep pestering? If based on what we agreed, u should not n I need not to pay rental until I rent out my unit. That's y I said no need to split reno cost when after selling e house! That's also why I decided to sell off pinnacle due to can't get tenant. Anyway should hv leave Eng Kong empty n help my youngest son to rent a place if I will to know u will go back of your word. Regretted in spending so much money and effort in moving in especially at this lousy market FYI.
		1.05pm	*If lopsided as u deem, why hv u accepted? Why didn't u reject me outrightly? Moving in already cost me almost 50k for total renovation and basic household items.* Your son job alone already 22k. Anyway your cost on this house only at abt 135k as of now b4 your accounting on Mum account which our Nieces and their husbands very much wish to know too.
Claimant	Defendant	2.54pm	*You always have reasons to outsmart others.* For me to pay for your fulfilment and enjoyment with 6.5 months free rental is fact and you deem very fair, because you told me already and became your agreement. I can't pester you because you are entitled to stay free with other rental income. All mom statements in her briefcase

[emphasis added]

34 From the extracts above, one sees that the Defendant's messages had *repeatedly* alluded to an agreement excusing him from paying rent, so long as Pinnacle had yet to be rented out. In responding to these messages, the Claimant did *not* disagree with the Defendant and instead complained that the waiver of rent arose from "a lopsided agreement" entered into "out of brotherhood" (message at 11.34am above). When the Defendant queried the Claimant as to

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why the latter acceded to the rental waiver if it was unfair, thereby lulling the Defendant into incurring the costs of moving into the EK Property and renovating the same (message at 1.05pm above), the Claimant responded that the Defendant always had reasons to outsmart others (message at 2.54pm above).

35 The Parties continued to exchange messages touching on this topic, as late as two years after the Defendant's family had vacated the EK Property. In a WhatsApp group chat dated 27 September 2018 between the Parties and their uncle, Tam Sook, the latter had voiced his disappointment over how the Parties were still fighting despite his efforts to mediate. In response, the Claimant sent the following message at 10.19pm:[29]

> Dear Tam Sook, Thank you for your relentless effort to help in our problems. I have treated all brothers fairly and honestly. I have not cheated anyone. What I am asking now is my rightful share. [Far East] rental already mentioned. EK TOP June 2014. In Oct 2014, *Franklin moved in and told me to agree with him that he would pay rental to me only if he could rent out his old property. I felt unfair but didn't argue as I valued the brotherhood.* [emphasis added]

The Claimant thus admitted in this message that he "didn't argue" with the arrangement of allowing the Defendant to stay at the EK Property rent free (pending Pinnacle being rented out) despite the Claimant feeling that this was unfair, as the Claimant valued their brotherly ties.

36 Despite the trail of messages corroborating the Defendant's claim that there was an oral agreement allowing him to stay rent free, the Claimant insisted while under cross-examination that he did not agree to excusing the Defendant

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29 AB p 1074.

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from paying rent during the latter's stay at the EK Property.[30] However, the Claimant was simply unable to explain the WhatsApp messages above, which clearly show that he *did* agree.[31]

37 Admittedly, the Defendant's claim that there was an oral agreement – allowing him and his family to stay at the EK Property rent free (pending Pinnacle being rented out) – was not entirely free of difficulty. In court, the Defendant explained that this oral agreement was concluded at a coffee shop in Toa Payoh, immediately after he and the Claimant had collected the keys to the EK property from the conveyancing lawyer's Toa Payoh office, on 25 June 2014.[32] However, the WhatsApp messages exchanged between the Parties show that four weeks after that, *ie*, on 22 July 2014,[33] the Claimant was *still* inquiring if the Defendant had collected the keys to the EK Property.[34] There would have been little reason for the Claimant to make such an inquiry on 22 July 2014 if the Parties had indeed gone to the lawyer's Toa Payoh office just four weeks before that (*ie*, on 25 June 2014) to collect the keys to the EK Property.[35] If the Defendant's account of how the Parties had collected the keys at the Toa Payoh office on 25 June 2014 is in doubt, this could potentially also cast doubt on his account that they met at the Toa Payoh coffee shop after collecting the keys, where the oral agreement (to let the Defendant stay rent free) was allegedly struck. Under cross-examination, the Defendant was unable to satisfactorily explain the disjoint between his oral evidence and the Claimant's WhatsApp

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30 Transcripts for 30 October 2024 at p 29 (lines 28–32).

31 Transcripts for 30 October 2024 at p 30 (lines 1–19).

32 Transcripts for 4 November 2024 at pp 7 (line 1) – 8 (line 12).

33 Message on 22 July 2014 at 4.07pm and 4.20pm, exhibited in AB p 910.

34 Transcripts for 4 November 2024 at p 16 (lines 15–31).

35 CCS at para 204.

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message on 22 July 2014.[36]

38 Nevertheless, I find this to be insufficient to cause any material damage to the veracity of the Defendant's account. The WhatsApp messages at [33] above are sufficiently probative that the oral agreement – to let the Defendant stay rent free at the EK Property – was indeed struck. I am prepared to grant the Defendant some latitude for any difficulties in recalling the exact circumstances under which the oral agreement came into being (*eg*, whether it was struck at the point when he collected the keys to the EK Property), given that the event took place some 10 years before the trial.

39 The Claimant also points to the WhatsApp exchange on 30 October 2014 (when the Defendant's family had just moved into the EK Property), where the Parties recorded their agreement that the Defendant would pay a monthly rent of $4,000 in exchange for his family residing at the EK Property (see [24] above).[37] The Claimant highlights that there was nothing in that WhatsApp exchange suggesting that the Defendant's obligation to pay that rent would be suspended pending his attempts to rent out Pinnacle. The Claimant questions why the Parties would even be tying down the quantum of the monthly rent if the Defendant had indeed been excused from paying rent at that point in time (Pinnacle having yet to be rented out).[38] In my view, little turns on this. The exchange of WhatsApp messages was consistent with a discussion between the Parties as to the rent that the Defendant would eventually have to pay, once his obligation to pay rent commenced. There was nothing in the WhatsApp exchange to suggest that the $4,000 was going to be *immediately* payable.

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36 Transcripts for 4 November 2024 at pp 17 (line 1) – 18 (line 29).

37 Message on 30 October 2014 at 12.04am, exhibited in AB p 916.

38 CCS at para 207.

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40 The Claimant also points to the chronology of events annexed to the Defendant's Opening Statement, which states that the oral agreement was for the Defendant's family to stay in the EK Property rent free until Pinnacle was *sold*.[39] This conflicts with the position in the *main body* of the Defendant's Opening Statement, which is that the arrangement was for his family to stay rent free until Pinnacle was *rented out*.[40] The Claimant thus argues that the Defendant is unable to even give a consistent account of the terms of the alleged oral agreement to let him stay rent free.[41] In my view, this inconsistency is quite minor in the greater scheme of things. The position that has consistently been advocated by the Defendant – throughout his pleadings, affidavit of evidence-in-chief ("AEIC") and oral evidence – is that his family was allowed to stay at the EK Property rent free until Pinnacle was *rented out*. It was only in the chronology, which was appended as an annex to the Opening Statement, that the term "sold" was used instead of "rented out". The Defendant has clarified on the stand that the chronology was erroneous in this regard.[42]

41 I thus find that on balance, the Claimant *did* agree – albeit resentfully – to let the Defendant stay on the EK Property rent free until Pinnacle was rented out. The Defendant was thus not obliged to pay the monthly rent of $4,000, as from the time his family moved into the EK Property in October 2014 to the point when Pinnacle was sold in May 2015 (when the notion of renting out Pinnacle became moot). I thus dismiss the Claimant's claim for monthly rent of $4,000 for the months of October 2014 to April 2015, set out at [20(a)] above.

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39 Defendant's Opening Statement (dated 23 October 2024) at p 23.

40 Defendant's Opening Statement (dated 23 October 2024) at para 51.

41 CCS at para 203.

42 Transcripts for 4 November 2024 at p 4 (lines 1–9).

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(2) September to November 2016

42 I now turn to the period spanning September to November 2016, referred to at [20(b)] above, being the last three months before the Defendant and all his family members fully vacated the EK Property.

43 I begin with the month of September 2016. The Defendant admits that his family *did* continue to reside at the EK Property until the end of September 2016[43] and that he was consequently obliged to pay the Claimant rent for that month (Pinnacle having already been sold long before then). Indeed, the Defendant contends that he *did* pay the rent of $4,000 for the month of September 2016.[44] The Claimant maintains that he did not.[45]

44 On this, the law is clear. If a party who has an undisputed contractual obligation to make a payment pleads that did make that payment, the burden is on him to prove that the payment was in fact made: *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 at [23]–[31]. On the evidence, the Defendant has plainly failed to discharge that burden. All he needed to do was adduce his financial records to show that the monthly rent of $4,000 for September 2016 was indeed transferred to the Claimant. Rather than doing so, he chose to simply fold his arms and insist that the Claimant proves a negative (*ie*, that the Claimant did *not* receive payment). The Claimant's claim for the rent of $4,000 payable for the month of September 2016 must thus be granted.

45 As regards the rent for October and November 2016, the Defendant

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43 Defendant's AEIC at para 42; Transcripts for 6 November 2024 at p 104 (lines 19–25).

44 D&CC at para 16; Defendant's AEIC at para 42.

45 Claimant's AEIC at para 95.

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claims that his family was no longer residing at the EK Property, save for his son Charles, who stayed on for these final two months to oversee rectification works (see [22] above). According to Charles, he was the only person residing at the EK Property then – the rest of the family having moved out.[46]

46 Even if I accept Charles' explanation that he remained at the EK Property in October and November 2016 to oversee rectification works, this does nothing to alter the Defendant's obligation to pay rent for those two months. The Defendant claims that there was "a whole myriad of defects from the EK Property that would require further rectification works".[47] However, in making that assertion, the Defendant relies on a property defects list dated 14 July 2014,[48] *ie*, about *three months before* the Defendant and his family had even moved into the EK Property (they moved in only in October 2014). After September 2016, when the Defendant's family finally vacated and left Charles behind, they would have resided at the EK Property for about two years. Presumably, the bulk of the rectification works would have been completed by the end (if not before commencement) of the family's stay.[49] Notwithstanding that such works would have been carried out under the watch of the Defendant's family members during their stay, the Parties evidently did *not* view this as absolving the Defendant from paying rent (once Pinnacle was sold). That being the case, I fail to see how Charles' purpose of staying behind in October and November 2016 to supervise rectification works (if any was even left) absolves the Defendant from paying rent for his son's stay for these two final months.

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46 Chan Zhaohao, Charles Yiptong's affidavit of evidence-in-chief (sworn on 28 December 2023) at para 17.

47 Defendant's AEIC at para 41.

48 Defendant's AEIC at p 104.

49 Defendant's AEIC at para 29.

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47 The Defendant also contends that he had to *personally* reside at the EK Property, in order for him to be liable for rent. Given that the Defendant was no longer residing at the EK Property in October and November 2016 (when only Charles stayed there), he argues that he had no obligation to pay rent for those two months. In support of this contention, the Defendant highlights a portion of the trial transcripts where the following question was posed to the Claimant in cross-examination:[50]

> Q: If [the Defendant] was not staying there, would he be liable to rent to you? It's … simple yes … or no.
>
> A: No.

The Defendant relies on the Claimant's answer "No" in the extract above to submit that the Claimant himself agrees that so long as the Defendant is no longer personally residing at the EK Property (which was the case in October and November 2016), the obligation to pay rent would cease[51] (notwithstanding that Charles may have remained). However, this submission plainly mischaracterises the evidence. The question posed to the Claimant in the extract above was: "If [the Defendant] was not staying there, would he be liable *to rent* to you?" and not "would he be liable *to **pay** rent* to you?" It is unacceptable for the Defendant to recast the question on record into one that supports his submission. In any case, his submission entirely sidesteps the critical exchange which came immediately after that extracted above, which I set out below:[52]

> Q Okay. And---so if it is true that only Charles and not [the Defendant] was staying there, then aren't you suing the wrong person?

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50 Transcripts for 30 October 2024 at p 37 (lines 13–18).

51 Defendant's Reply Submissions (dated 3 March 2025) ("DRS") at para 80.

52 Transcripts for 30 October 2024 at p 37 (lines 19–22).

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> A Charles is his son. So as long as his family still occupy, it's still considered occupying the unit, whether who occupied it.

48 The Claimant's response, extracted immediately above, accords with what I understand from the evidence to be the arrangement between the Parties, being that rent was payable for the Defendant's *family* (and not just the Defendant personally) residing at the EK Property. As a matter of common sense, that must be correct. Taking the Defendant's contention to its logical conclusion would mean that his entire family could remain on the EK Property indefinitely and he would *still* not be liable for rent, so long as he himself was not there. I fail to see how the Parties could have intended such a ludicrous outcome.

49 Accordingly, I hold that the Defendant is liable to pay the Claimant rent for the months September to November 2016, totalling $12,000.

Parties' claims relating to rent paid by Jason

50 I now turn to address the claims concerning the rental proceeds from Jason's tenancy of the EK Property.

51 After the Defendant's family had moved out, the EK Property remained vacant for about eight months before it was tenanted to Jason in August 2017. Jason had rented the EK Property over three consecutive tenancy agreements that collectively spanned a duration of more than four years:

(a) The first tenancy was embodied in an agreement ("1st Tenancy Agreement") signed in August 2017 by Jason and both the Parties.[53] The

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53 Exhibited in the Claimant's AEIC at pp 579–583.

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1st Tenancy Agreement was for a term of two years commencing 25 August 2017.

(b) The second tenancy was encapsulated in an addendum to the 1st Tenancy Agreement ("2nd Tenancy Agreement"), signed in August 2019[54] by Jason and the Defendant but *not* the Claimant. The 2nd Tenancy Agreement extended the lease under the 1st Tenancy Agreement by a further two-year term, commencing 25 August 2019.

(c) The third tenancy was pursuant to an oral agreement ("3rd Tenancy Agreement") struck in August 2021 between Jason and the Defendant, where both of them agreed to a short extension of the lease, from September 2021 to March 2022.

All three tenancy agreements above were for a monthly rent of $7,800.

52 Under the 1st Tenancy Agreement, Jason was required to pay a security deposit of two months' rent (*ie*, $15,600),[55] which he duly handed to the Defendant.[56] Thereafter, the rent from Jason under the 1st Tenancy Agreement was paid into an account with Standard Chartered Bank (Singapore) Ltd ending with the digits "3344" ("SCB Joint Account"), held in the joint names of the Parties.[57] The Claimant pleaded, and the Defendant admitted, that the rent paid into the SCB Joint Account amounted to a total of $142,971.04[58] – comprising rent collected under the 1st Tenancy Agreement for the months of August 2017

54 Exhibited in the Defendant's AEIC at pp 138–140.

55 Clause 2, exhibited in the Claimant's AEIC at p 579.

56 SOC at para 14; Claimant's AEIC at para 101; D&CC at para 32.

57 SOC at para 10.

58 SOC at para 12 and D&CC at para 28.

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to July 2019 (save for August and September 2018, for which Jason paid the rent to the Parties directly[59]).

53 When the 1st Tenancy Agreement was about to expire in August 2019, the Defendant sought to extend Jason's tenancy, as he felt that the rent paid by Jason was above the market rate.[60] The Defendant consequently prepared the 2nd Tenancy Agreement, being an addendum to the 1st Tenancy Agreement that extended the lease for another two years (*ie*, from 25 August 2019 to 24 August 2021), at the same monthly rent of $7,800. On 7 August 2019, the Defendant and Jason signed the 2nd Tenancy Agreement. The Claimant *refused* to sign the same[61] but the Defendant still proceeded with the 2nd Tenancy Agreement. Upon signing the 2nd Tenancy Agreement, Jason decided to use the two-month security deposit which he had paid the Defendant under the 1st Tenancy Agreement to offset the rent for the first two months of the lease under the 2nd Tenancy Agreement,[62] *ie*, August and September 2019. In effect, this meant that there was no security deposit covering Jason's obligations under the 2nd Tenancy Agreement. For the rest of the term under the 2nd Tenancy Agreement, Jason split the monthly rent into two equal portions of $3,900, which he *separately* deposited into the personal bank accounts of both the Parties every month.[63] The Claimant did not object to receiving the same, despite his refusal to sign the 2nd Tenancy Agreement.

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59 Claimant's AEIC at paras 102–103, Defendant's AEIC at para 52.

60 Defendant's AEIC at para 55.

61 Claimant's AEIC at para 105; Defendant's AEIC at paras 56–57.

62 Defendant's AEIC at para 58.

63 Claimant's AEIC at para 108; Defendant's AEIC at para 56 and p 138; Hau Hoang Jason's affidavit of evidence-in-chief (dated 28 December 2023) at para 14.

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54 When the 2nd Tenancy Agreement expired in August 2021, Jason and the Defendant entered into the 3rd Tenancy Agreement, under which they orally agreed to a short extension of the lease for six months, from September 2021 to March 2022.[64] However, Jason moved out of the EK Property sometime in January or February 2022. Under the 3rd Tenancy Agreement, Jason paid the full amount of each month's rent to the Defendant (instead of separately paying half the monthly rent to the Claimant, as he did under the 2nd Tenancy Agreement). In doing so, Jason had left it to the Defendant to split the rent with the Claimant.[65] However, the Defendant retained the entire amount of rent collected under the 3rd Tenancy Agreement, without handing half of the same to the Claimant.[66]

55 Arising from Jason's tenancies, the Parties make the following claims:

(a) The Claimant claims for his half share of the rent paid by Jason, for the first two months of the lease under the 2nd Tenancy Agreement as well as for the entire period spanning September 2021 to January 2022 when Jason was in occupation under the 3rd Tenancy Agreement.

(b) The Defendant counterclaims against the Claimant for:

(i) An order that the Claimant releases to the Defendant the latter's half share of the $142,971.04 which currently sits in the SCB Joint Account (see [52] above), which comprises the rent paid by Jason under the 1st Tenancy Agreement;

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64 D&CC at para 34.

65 Defendant's AEIC at para 60; Transcripts for 4 November 2024 at p 51 (lines 14–23).

66 Claimant's AEIC at para 110.

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(ii) Payment of "excess rent" of $74,880 which the Claimant collected from Jason; and

(iii) An account to be furnished by the Claimant in respect of the rent collected from Jason's tenancies.

56 Each of these claims is considered in turn below.

Claimant's claim for his half share of rent paid by Jason under the 2nd and 3rd Tenancy Agreements

57 The Claimant claims for the following amounts of rent which the Defendant had collected from Jason:

(a) $7,800, being the Claimant's half share of the first two months of rent under the 2nd Tenancy Agreement.

(b) $19,500, being the Claimant's half share of the rent that Jason paid from September 2021 to January 2022 (totalling $39,000) under the 3rd Tenancy Agreement.[67]

For the reasons below, I ***allow*** the Claimant's claims in both (a) and (b) above.

(1) Claimant's claim for his half share of the first two months of rent under the 2nd Tenancy Agreement

58 As explained at [53] above, Jason used his security deposit to settle the first two months of rent payable under the 2nd Tenancy Agreement, *ie*, August and September 2019. As the security deposit now represents the first two months of rent under the 2nd Tenancy Agreement, this effectively means that

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67 SOC at para 15.

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the rent for these two months lies in the Defendant's coffers. The Claimant claims half of that amount, on the basis that he is entitled to half of all the rent generated by the EK Property.[68]

59 The Claimant's claim for his half share of rent is grounded in s 73A of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("CLPA"), which states that a "tenant in common shall be liable to account to his co-owner for receiving more than his share or proportion of any rents or profits arising from the property." Given that the Parties were tenants in common of the EK Property in equal shares (see [3(a)] above), the Defendant is liable to account to the Claimant for the rent collected from Jason. The Claimant's entitlement to an account, which arises by virtue of s 73A CLPA, is not in any way diminished by the fact that he did not actually sign the 2nd Tenancy Agreement (see [53] above). This is because s 73A CLPA imposes a *mandatory* statutory obligation, providing co-owners with a remedy against their fellow co-owners for rental income from co-owned property where there would otherwise be none: *Aw Chee Peng v Aw Chee Loo* [2022] 5 SLR 451 at [27]–[31]; *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [79].

60 Accordingly, I order the Defendant to pay the Claimant $7,800, being the latter's half share of the security deposit that was used by Jason to pay the rent for the months of August and September 2019.

(2) Claimant's claim for his half share of the rent under the 3rd Tenancy Agreement

61 Unlike in the case of the 2nd Tenancy Agreement, where Jason separately paid half of each month's rent to the Claimant (see [53] above), the

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[68] SOC at paras 13–14.

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rent under the 3rd Tenancy Agreement – collected for the months of September 2021 to January 2022 and totalling $39,000 – was paid *entirely* to the Defendant. As the Claimant has not been given his half share of the $39,000, the Defendant is liable under s 73A CLPA to account to him for the same.

62 Accordingly, I order the Defendant to pay the Claimant $19,500, being his half share of the rent under the 3rd Tenancy Agreement. In doing so, I note that the Defendant himself admits that this sum is due to the Claimant.[69]

63 This is also an appropriate juncture to highlight the Defendant's allegation that he had previously offered to pay the Claimant the latter's half share of the rent under the 3rd Tenancy Agreement but the Claimant refused.[70] According to the Defendant, sometime on or around 3 November 2021 (*ie*, about two months after the 3rd Tenancy Agreement's term had commenced), the Claimant turned up at the EK Property to harass Jason. The Defendant, who was present, tried to defuse the situation by offering to pay the Claimant the rental proceeds under the 3rd Tenancy Agreement but the latter refused.[71] In the Claimant's cross-examination, an extract of which is set out below, the Claimant admitted that the Defendant *did* make this offer to him:[72]

> Q … wouldn't you agree that at that meeting [at the EK Property on 3 November 2021], [t]he [Defendant] offered to give you half of the rent that he was collecting … So is that a yes or no?
>
> A Yes.
>
> Q But you refused.

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69 Defendant's AEIC at para 61.

70 D&CC at para 34; Defendant's AEIC at para 61.

71 DCS at para 165; DRS at para 86.

72 Transcripts for 1 November 2024 at p 62 (lines 13–32).

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> A Because he wants to take it out from the Standard Chartered joint account.
>
> Q That's right.
>
> A Yah.
>
> Q He wanted to give you an advance of the total amount ---
>
> A I don't know whether is it advance or not.
>
> Q ---that … the tenant would pay. An advance. Which means that you would get to collect the rent earlier rather than monthly, correct? Do you remember this offer?
>
> A Yah. Based---based on---based on what you said is correct.

64 I have some sympathy for the Defendant's position that the Claimant had little reason to refuse the Defendant's offer to pay him the rental proceeds from the 3rd Tenancy Agreement. As seen from the extract above, the Claimant objected to the offer because the Defendant was proposing to fund the payment from the SCB Joint Account. However, it is hard to see why this was objectionable. As at that point in time (3 November 2021), the SCB Joint Account would have contained the rental proceeds of $142,971.04 collected under the 1st Tenancy Agreement (see [52] above). The Defendant's half share of this balance would have more than sufficed to cover the Claimant's half share of the rental proceeds under the 3rd Tenancy Agreement. The Defendant consequently intends to make submissions on costs as regards this point.[73]

Defendant's prayer for an order that his share of the rental proceeds in the SCB Joint Account be released to him

65 As explained at [52] above, the rent paid by Jason under the 1st Tenancy Agreement (amounting to $142,971.04) now sits in the SCB Joint Account,

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73 DCS at para 165.

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which is a bank account jointly held in the names of the Parties.[74] Neither of the Parties can withdraw monies from the SCB Joint Account without the consent of the other because the account's terms dictate that withdrawals may be made only with the signatures of *both* the Parties.[75]

66 Given the Defendant's inability to withdraw his share of the funds in the SCB Joint Account without the Claimant's consent, the Defendant seeks:

(a) an order compelling the Claimant to release the Defendant's half share of the $142,971.04 from the SCB Joint Account;[76] and

(b) pre-judgment interest arising from the Claimant's wrongful refusal to release to the Defendant the latter's half share of the funds in the SCB Joint Account.[77]

67 There is no dispute that the Defendant is entitled to half the rental proceeds from the EK Property. The Claimant states plainly in his closing submissions that "it is common ground the monies held in the [SCB Joint] Account consisting of rental collected from [the EK Property] belong equally to the Claimant and [the] Defendant".[78] The Claimant has also not sought to plead a right of set-off or any other cause of action, against which the Defendant's entitlement may be extinguished. I thus see no grounds to stop the Defendant from accessing his half share of the rental proceeds from the 1st Tenancy Agreement, which now sits in the SCB Joint Account.

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74 Claimant's AEIC at para 102; D&CC at para 86.

75 Claimant's AEIC at paras 102 and 152; Defendant's AEIC at para 53.

76 D&CC at para 118(d).

77 D&CC at para 118(c)(x).

78 CCS at para 224.

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68 Accordingly, I ***grant*** an order that the Parties take the necessary steps to withdraw the $142,971.04 from the SCB Joint Account and divide the same between themselves equally. Apart from the $142,971.04, the SCB Joint Account also contains another $600,000 (see [147] below for the background to this). Any interest earned from the bank in respect of both these amounts and paid by the bank into the SCB Joint Account is similarly to be withdrawn and divided equally between the Parties.

69 I also ***decline*** to award the Defendant any pre-judgment interest, arising from the Claimant's failure to release the Defendant's half share of the $142,971.04. The Defendant has not offered any particulars as to the rate of interest which the sums in the SCB Joint Account have been earning from the bank and, more pertinently, justify why he should be awarded further interest *over and above* those interest earnings. Furthermore, the Defendant has failed to specify exactly *when* he demanded for the Claimant to release his half share of the $142,971.04. That date is critical, because it is the starting point from which his claim for interest is to be calculated.

Defendant's claim for "excess rent" of $74,880

70 The Defendant also claims against the Claimant for "excess rent" of $74,880 which he alleges that the Claimant had collected from Jason.[79] This claim hinges on cl 1 of the 1st Tenancy Agreement,[80] which set out the monthly rent of $7,800. Critically, cl 1 stipulated that the $7,800 was to be apportioned as follows:

(a) $4,680 for "rental"; and

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79 D&CC at para 118(c)(iv); DCS at para 158.

80 Clause 1, exhibited in the Claimant's AEIC at p 579.

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(b) $3,120 for "furniture, fixtures & fittings".

A fuller extract of cl 1 is set out below:[81]

> The Landlord agrees to let and the Tenant agrees to take [the EK Property] together with the furniture, fixtures and other effects therein (as more fully described in the Inventory List attached) for a period of **Twenty-Four (24) months** … at the monthly rental in the sum of … **S$7,800/=** … of which **S$4,680/=** to rental and **S$3,120/=** to furniture, fixtures & fittings, payable monthly in advance … [emphasis in original]

71 Building on the manner in which cl 1 had apportioned the monthly rent, the Defendant constructed his case on "excess rent" as follows:

(a) It was the Defendant, and not the Claimant, who bore the expenses of the EK Property's "furniture, fixtures & fittings".[82] Accordingly, the Claimant's half share of the rent should exclude the component of the monthly rent apportioned for "furniture, fixtures & fittings" (*ie*, $3,120) and be restricted only to the component apportioned for "rental" (*ie*, $4,680).

(b) This means that the Claimant should only have received $2,340 each month (*ie*, half of $4,680) and not $3,900 (being half of $7,800).[83] The Claimant had thus improperly reaped "excess rent" of $1,560 (*ie*, $3,900 minus $2,340) every month.

(c) Having collected such "excess rent" for four years (*ie*, two years under the 1st Tenancy Agreement and another two years under the 2nd

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81 Clause 1, exhibited in the Claimant's AEIC at p 579.

82 Defendant's AEIC at para 43.

83 D&CC at para 18.

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> Tenancy Agreement), the total excess rent collected by the Claimant was $74,880[84] (*ie*, $1,560 per month multiplied by 48 months).

As seen from the calculations in (c) above, the Defendant's claim for "excess rent" applies not only to the rent under the 1st Tenancy Agreement but to that under the *2nd* Tenancy Agreements as well. This is notwithstanding that the clause apportioning the monthly rent into two components is found only in 1st Tenancy Agreement (*ie*, cl 1, extracted at [70] above) and *not* expressly reproduced in the 2nd Tenancy Agreement. While the Defendant has not directly addressed this point, I assume that he is relying on the following clause in the 2nd Tenancy Agreement:[85]

> [a]ll other terms and conditions … shall remain unchanged and in full force and effect as per the [1st] Tenancy Agreement

as a means of importing cl 1 from the 1st Tenancy Agreement into the 2nd Tenancy Agreement.

72 For the reasons below, I ***dismiss*** the Defendant's claim for "excess rent".

(1) Evidence of the Parties' intentions

73 By way of context, the Claimant has explained that it was the Defendant who came up with the idea of apportioning the rent paid by Jason into a "rental" component and a "furniture, fixtures & fittings" component, as a means of reducing the tax payable on the rental proceeds. I accept this, in light of the evidence of WhatsApp messages from the Defendant to that effect.[86] Critically,

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84 D&CC at para 20; Defendant's AEIC at para 66.

85 Exhibited in the Defendant's AEIC at p 138.

86 Claimant's AEIC at paras 114–115 and pp 586–587.

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there is nothing in these messages or in any other evidence of the Parties' communications to show that they ever agreed to restrict the Claimant's half share of the rent from the EK Property – which he is statutorily entitled to under s 73 CLPA (see [59] above) – to only the "rental" component of the monthly rent. Certainly, no such intention can be gleaned from a plain reading of the 1st Tenancy Agreement, whose clauses govern the legal relationship between the Parties (as landlords) on the one part and Jason (as tenant) on the other, with no mention whatsoever of how the monthly rent was to be dealt with *as between the two landlords*.

74 In any case, the Defendant has admitted under cross-examination that there was no agreement between him and the Claimant for the latter's share of the rent to be restricted to just the "rental" component of the monthly rent of $7,800 (as opposed to a half share of the full amount of $7,800), conceding that *both* landlords were entitled to the full rent of $7,800.[87]

(2) Expenses allegedly incurred by the Defendant on the EK Property

75 Furthermore, the Defendant's attempt to exclude the Claimant from the "furniture, fixtures & fittings" component of the monthly rent is not adequately supported by the evidence. As the Defendant is the party seeking to deduct $74,880 from the Claimant's share of the rental proceeds, the burden lies on the Defendant to prove that such a deduction is indeed in order.

76 I am mindful of the Claimant's concession that he did not incur any expenses for the EK Property's "furniture, fixtures & fittings". He had even agreed with the suggestion posed to him in cross-examination that it must then

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87 Transcripts for 5 November 2024 at p 43 (lines 9–22).

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have been the Defendant who incurred those expenses.[88] However, that concession does not carry the Defendant's case very far, given the dearth of evidence as to exactly what "furniture, fixtures & fittings" were within the EK Property. Such evidence would have allowed the court to assess if the expenses incurred on these items (if they were indeed incurred by the Defendant) approached the order of $74,880, which the Defendant now seeks to deduct as "excess rent". Unfortunately, there is no inventory of "furniture, fixtures & fittings" to speak of, notwithstanding that cl 1 of the 1st Tenancy Agreement (extracted at [70] above) specifically alluded to "furniture, fixtures and other effects therein … as more fully described in the *Inventory List* attached" [emphasis added]. While Jason testified that the EK Property had a dining table, a coffee table, a small glass cabinet and possibly some bed frames,[89] the Defendant has not explained the provenance of these items and, more importantly, shown how their cost could add up to $74,880.

77 Apart from the furniture, the Defendant contends that he bore the costs of the refurbishment, renovation and upkeep of the EK Property, including pre-handover renovations sought by Jason. The Defendant lists the following expenses which he claims to have incurred:

(a) Nearly $60,000 on renovation and refurbishment;[90] and

(b) $8,535.50 on various upkeep expenses (*eg*, installation of swimming pool lights and artificial grass, lift maintenance and curtain dry cleaning).[91]

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88 Transcripts for 30 October 2024 at pp 60 (line 25) – 61 (line 3).

89 Transcripts for 7 November 2024 at p 95 (lines 16–22).

90 D&CC at para 20; Defendant's AEIC at para 38.

91 D&CC at para 21; Defendant's AEIC at para 50.

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The Defendant claims that the Claimant – who owns half the EK Property – was liable to bear half of these expenses[92] but failed to do so.[93]

78 In my view, these purported expenses fail to support the Defendant's claim for "excess rent". As regards the $60,000 allegedly spent on renovation and refurbishment, the Defendant has not adduced any documentary proof to show that expenditures amounting to this sum had indeed been incurred. In fact, the Defendant affirmed in the following portion of his AEIC that he could not recall if he received any invoices for the renovation and refurbishment works:[94]

> I engaged the services of the Claimant's son, Jason Chan, for some renovation works of the EK Property, specifically the carpentry works and the installation of wooden bannisters on the staircase, which costed me around $22,000. As these works were done on an informal-family basis, I cannot recall whether I received any receipts or invoices, but I simply paid the quoted sum.

79 At a broader level, it is trite that where expenses for improvements or repairs to a property have been voluntarily incurred by one of its tenants in common, the other tenants in common who were in no position to reject those improvements or repairs should not be made to contribute towards those expenses: *Chia Kok Weng v Chia Kwok Yeo* [2017] 2 SLR 964 ("*Chia Kok Weng"*) at [74] (citing *Leigh v Dickeson* (1884) 15 QBD 60). In the present case, the Claimant affirms that he *never* agreed to the renovation, refurbishment and upkeep expenses which the Defendant now seeks to get him to share in. The Claimant's averment is consistent with the evidence, which contains no hint of him ever having agreed to the expenses for renovation, refurbishment and upkeep of the EK Property. Rather, the Claimant suggests that these expenses

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92 D&CC at para 20.

93 Defendant's AEIC at para 64.

94 Defendant's AEIC at para 38.

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were unilaterally incurred by the Defendant for the benefit of the latter's own family[95] as they wanted to move into the EK Property. I note that this suggestion is consistent with the messages exchanged between the Parties on 23 June 2015, *ie*, about eight months after the Defendant's family had moved into the EK Property. In that exchange, the Complaint was bemoaning the lopsidedness of the agreement by which the Defendant had been allowed to stay in the EK Property rent free, pending Pinnacle being rented out. To this, the Defendant retorted with the following message (exhibited at [33] above, at 1.05pm):

> If lopsided as u deem, why hv u accepted? Why didn't u reject me outrightly? *Moving in already cost me almost 50k for total renovation and basic household items*. [emphasis added]

The emphasised portion of the Defendant's message strongly suggests that the lion's share of the costs incurred by him in improving the EK Property was for his own benefit, *ie*, to facilitate his family's stay.

80 The Defendant highlights that the court in *Chia Kok Weng* contemplated that the remedy of equitable accounting may nevertheless be available if the tenant in common concerned had incurred expenses which *enhanced* the property's value (*Chia Kok Weng* at [76]–[77]). In this respect, the Defendant claims that the $8,535.50 spent on (*inter alia*) the installation of swimming pool lights and artificial grass (see [77(b)] above) served to improve the EK Property's value.[96] However, I fail to see the relevance of this submission. The remedy of equitable accounting is not at issue in this case – it was never a remedy sought by the Defendant. In any event, no evidence was led as to the monetary impact that these expenditures had on the EK Property's sale price.

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95 Claimant's AEIC at paras 98–99.

96 Defendant's Further Reply Submissions (dated 25 August 2026) ("DFRS") at paras 20–21.

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(3) Conclusion on the Defendant's claim for "excess rent"

81 Consequently, the Defendant's claim that $74,880 of the rental proceeds constituted "excess rent" collected by the Claimant is baseless.

Defendant's claim for an account of the rent collected from Jason

82 The Defendant also seeks an account from the Claimant of the rent collected from Jason's tenancies.[97] In my view, this claim can be summarily ***dismissed***.

83 As alluded to at [59] above, s 73A CLPA requires a tenant in common to account to his co-owner "for receiving *more than his share or proportion* of any rents or profits arising from the property" [emphasis added]. The evidence in this case is clear that the Claimant has not received anything more than his rightful share of the rent from the EK Property, meaning that there is nothing collected from Jason which the Claimant needs to account for:

(a) For the 1st Tenancy Agreement, the rent collected from Jason has been paid into the SCB Joint Account (see [52] above).

(b) As for the 2nd Tenancy Agreement, the rent was paid by Jason to the Parties equally (see [53] above), save for the first two months of rent (which were settled using the security deposit – see [58] above), which the Defendant still holds.

(c) As regards the 3rd Tenancy Agreement, all the rent collected from Jason currently lies in the Defendant's coffers (see [54] above).

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97 D&CC at paras 115(c), 116(c) and 118(b).

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84 The Defendant's claim for the Claimant to furnish an account of the rent collected from Jason is thus devoid of merit.

Defendant's claim for reimbursement of the property tax which he purportedly paid in respect of the EK Property

85 The Defendant also contends that he had paid $13,420.50 in property tax for the EK Property, for the duration commencing from the issue of the TOP in June 2014 to when Jason first moved in at the end 2017.[98] He now claims that the Claimant, as a tenant in common of the EK Property, should be made to pay half of the $13,420.50 or even *all* of it.[99] In support of the latter position that the Claimant could even be held liable for *all* of the $13,420.50, the Defendant highlights that the property tax figure was based on a concessionary 6% owner-occupied rate (as opposed to the regular 14%) and this was thanks to the Defendant and his family residing in the EK Property at the material time.[100]

86 The Claimant, on his part, explains that he was always willing to pay his share of the property tax for the EK Property but the Defendant did not give him copies of the property tax statements.[101]

87 In my view, the Defendant's claim for the Claimant to reimburse him for the purported property tax payment of $13,420.50 should be ***dismissed***. I am of course aware that the Claimant conceded that he did *not* pay the EK

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98 D&CC at para 20; Defendant's AEIC at para 51.

99 D&CC at para 118(c)(xii).

100 Defendant's AEIC at para 51; DCS at para 164.

101 Defence to Counterclaim (Amendment No 4) (dated 4 October 2024) ("Def to CC") at para 11; Claimant's AEIC at para 100; Chan Yip Tong David @ Chan Sow Lang's supplementary affidavit of evidence-in-chief (dated 22 July 2024) ("Claimant's Supp AEIC") at para 11.

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Property's property tax, going so far as to agree with the suggestion that it was the Defendant who paid for it.[102] Still, there is insufficient evidential basis to support the *figure* of $13,420.50, for which the Defendant now seeks a contribution from the Claimant:

(a) Firstly, it is unclear to me just how the Defendant arrived at this figure. The Defendant has adduced a property tax bill for the year 2015[103] to demonstrate that at least $9,740.50 in property tax was payable for the EK Property.[104] However, no explanation has been provided as to how the $9,740.50 feeds into the figure of $13,420.50, which the Defendant claims to have paid. Critically, the Defendant admitted while on the stand that he did not know how the $13,420.50 was derived – all he did was to ask his daughter-in-law to calculate the amount of property tax paid, without asking her how she arrived at the final figure.[105]

(b) Secondly, no evidence has been adduced to show that the amount of $13,420.50 was *actually paid* to the tax authorities. The Defendant adduced a bank statement showing various GIRO deductions[106] but offers no explanation as to what the entries therein mean or how they correlate to the figure of $13,420.50 which he claims to have paid.

88 In my view, these evidential shortcomings cannot be overlooked, especially since it was within the Defendant's power to obtain the relevant supporting documents. Since he is unable to prove that $13,420.50 was in

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102 Transcripts for 30 October 2024 at pp 54 (line 28) – 55 (line 2).

103 Exhibited in the Defendant's AEIC at p 132.

104 Defendant's AEIC at para 51.

105 Transcripts for 5 November 2024 at pp 51 (line 27) – 52 (line 8).

106 Exhibited in the Defendant's AEIC at p 134.

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indeed assessed as property tax and paid, his claim to be reimbursed for this sum fails.

Defendant's claim for commission for procuring Jason's tenancies

89 I now turn to the Defendant's claim for the commission which he contends that he is entitled to – in his capacity as a property agent – for having procured Jason's tenancies.

90 The Defendant's pleaded case is that he was entitled to commission of one month's rent, *ie*, $7,800, for *each* of the four years during which the EK Property had been rented to Jason under the 1st and 2nd Tenancy Agreements – meaning that his total commission amounted to $31,200.[107] The Defendant also pleaded that the Claimant was liable to pay him *half* of this sum, *ie*, $15,600.[108] The Claimant, on his part, contends that the claim for a commission is without basis as he never agreed to pay any commission to the Defendant.[109]

91 The Defendant's claim for commission has a bearing on the security deposit that he collected from Jason under the 1st Tenancy Agreement, which Jason subsequently used to offset the first two months of rent under the 2nd Tenancy Agreement (see [58] above). Specifically, the Defendant contends that he was entitled to retain the security deposit as payment for, *inter alia*, the commission earned by him in procuring Jason's tenancies.[110]

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107 D&CC at paras 21–22.

108 D&CC at para 22 & 118(c)(vi).

109 Claimant's AEIC at para 117.

110 D&CC at para 21.

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92 For the following reasons, I find that the Defendant has failed to sufficiently substantiate his claim that he was entitled to a commission for procuring Jason's tenancies. Accordingly, I ***dismiss*** his claim that the Claimant pay him $15,600 as commission for procuring Jason's tenancies.

93 For a start, the Defendant has failed to coherently frame his entitlement to a commission. As alluded to at [90] above, his pleaded case is that he was entitled to commission of $7,800 for *each* of the four years that the EK Property was leased to Jason, under the 1st and 2nd Tenancy Agreements – meaning that the total commission due to him was $31,200. He also pleaded that the Claimant was liable to pay *half* of this sum, *ie*, $15,600. However, these pleadings ran counter to his AEIC, in which he averred that he was entitled to commission of $7,800 for *every two years* that the EK Property was rented to Jason – meaning that the total commission due to him for the four years spanning the 1st and 2nd Tenancy Agreements was $15,600 (rather than $31,200). The Defendant's AEIC then asserted that the Claimant was responsible for the *full amount* (rather than just half) of the commission of $15,600.

94 Furthermore, as explained below, the Defendant's claim for commission was not supported by a plain reading of either the 1st Tenancy Agreement or 2nd Tenancy Agreement.

Commission under the 1st Tenancy Agreement

95 In so far as the 1st Tenancy Agreement is concerned, cl 5(*g*) contemplated that a commission would be payable by the landlord(s) upon renewal of the tenancy. Clause 5(*g*) is extracted below:[111]

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111 Exhibited in the Claimant's AEIC at p 582.

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> … In the event that the Landlord should grant the Tenant an extension of the said term herein then the Landlord shall *pay the agency* renewal commission at the prevailing industrial rate plus GST. [emphasis added]

This clause thus contemplated payment of a commission upon *renewal* of the lease in the 1st Tenancy Agreement. In other words, the obligation to pay a commission under the 1st Tenancy Agreement arose when the 2nd Tenancy Agreement was concluded.

96 The Defendant's attempt to rely on this clause suffers from several difficulties. For a start, the Defendant has not adduced any evidence to demonstrate what the term "prevailing industrial rate" in cl 5(*g*) means and – more specifically – why this translates to the commission figure claimed by him.

97 More importantly, neither cl 5(*g*) nor any other clause in the 1st Tenancy Agreement suggested that the commission – which was payable by the landlord – was to be paid to the property *agent* (*ie*, the Defendant). Rather, cl 5(*g*) explicitly stated that the commission was payable to the *agency* (*ie*, PropNex). That any commission under the 1st Tenancy Agreement was payable to PropNex and not the Defendant is further reinforced by another clause in the 1st Tenancy Agreement, cl 5(*l*). Clause 5(*l*), extracted below, stated that the *agency* PropNex was not liable to refund the landlord any commission in the event of premature termination of the 1st Tenancy Agreement:[112]

> It is expressly understood by the Landlord that the commission paid to **PROPNEX REALTY PTE LTD** as the brokerage fee in this transaction has been fully earned for services rendered and there shall be no claim made by the Landlord against **PROPNEX REALTY PTE LTD** for a refund of the commission should the Tenant prematurely terminate the tenancy herein or for any other reasons. [emphasis in original]

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112 Exhibited in the Claimant's AEIC at p 583.

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98 Under cross-examination, the Defendant conceded that the operation of the clauses above suggests that any commission under the 1st Tenancy Agreement was payable to PropNex rather than to him personally.[113] Notwithstanding, he tried to explain on the witness stand that he is claiming commission *on PropNex's behalf*.[114] This assertion came as a surprise, given that it was not reflected anywhere in the Defendant's pleadings. Rather, the Defence and Counterclaim,[115] in alluding to the Claimant's "[f]ailure to pay the Defendant *his rightful commission*"[116] [emphasis added], clearly reflected that the Defendant is laying claim to the commission in his *personal* capacity.

99 Accordingly, the 1st Tenancy Agreement offers no basis for the Defendant's claim for a commission.

Commission under the 2nd Tenancy Agreement

100 As for the 2nd Tenancy Agreement, the main clause which the Defendant relies upon in support of his claim for a commission is cl 4. Unlike the 1st Tenancy Agreement, which stipulated that commission was payable to *PropNex* (rather than to the Defendant), cl 4 of the 2nd Tenancy Agreement explicitly *named* the Defendant as the person entitled to "renewal rental commission" of $7,800. Clause 4 is extracted below:[117]

> **Commission:** First month renewal rental commission of … **S$7,800** … payable to **Mr Chan Yip Tong Franklin.** [emphasis

113 Transcripts for 4 November 2024 at pp 57 (lines 14–19) & 58 (lines 24–32).

114 Transcripts for 4 November 2024 at pp 61 (line 22) – 62 (line 17) & 65 (lines 19–29).

115 D&CC at para 22.

116 D&CC at para 100(f).

117 Exhibited in the Defendant's AEIC at p 138.

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in original]

101 I should observe at the outset that the Defendant's pleaded case, being that he is entitled to a commission of $7,800 for *each* year of the tenancy (see [90] above), is contradicted by the very terms of clause 4, which stipulated a commission of $7,800 for the entire two-year term under the 2nd Tenancy Agreement.

102 Furthermore, the Defendant has not explained why cl 4 should be construed as obliging the *landlords* (*ie*, the Parties) – as opposed to the tenant (*ie*, Jason) – to pay the commission stipulated therein. The clause merely stated that commission of $7,800 was to be paid to the Defendant, without specifying *who* was liable to make the payment. It is not possible to simply resolve this ambiguity in the Defendant's favour, especially since cl 4 of the 2nd Tenancy Agreement comes immediately after cll 1 and 3, which set out the *tenant's* payment obligations – specifically Jason's obligation to pay rent and his agreement to the continued retention of the security deposit. So long as the Defendant is unable to establish that cl 4 obliges the landlord(s) to pay the commission, the alleged liability of the Claimant (as landlord) to bear half of that commission has not been made out.

103 More importantly, it has not been established that the Claimant *agreed* to be bound by cl 4, given that the latter never signed the 2nd Tenancy Agreement. The Defendant argues that as the Claimant had continued to accept half the rent paid by Jason under the 2nd Tenancy Agreement (see [53] above), the Claimant should be regarded as having acquiesced to its terms by his conduct.[118] This submission lacks merit. The Claimant was simply collecting

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118 DCS at para 161.

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what was legally due to him under s 73A CLPA (see [59] above). That entitlement existed independently of whatever terms the 2nd Tenancy Agreement might have contained.

104 In fact, the evidence is quite clear that the Claimant refused to sign the 2nd Tenancy Agreement *precisely* because he objected to the Defendant being conferred a commission under its terms.[119] This is amply corroborated by the WhatsApp messages exchanged between the Parties just a few weeks prior to the commencement of the lease under the 2nd Tenancy Agreement. On the afternoon of 5 August 2019, the Claimant sent messages to the Defendant clarifying that he *was* prepared to sign the 2nd Tenancy Agreement but was *not* prepared to pay the commission specified under its terms. For example:

(a) At 2.49pm, the Claimant wrote: "I am not paying commission".[120]

(b) Shortly after that, at 3.08pm, he followed up with another message stating: "I will sign the addendum: No commission".[121]

That same day, the Defendant responded by sending a message citing cl 5(*g*) of the 1st Tenancy Agreement (extracted at [95] above), which contemplated that a commission was payable upon renewal of the lease under the 1st Tenancy Agreement.[122] The Claimant replied one week later, on 12 August 2019, with the exact same message: "I will sign the addendum: No commission".[123]

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119 Claimant's AEIC at para 105.

120 Message on 5 August 2019 at 2.49pm, exhibited in AB p 1081.

121 Message on 5 August 2019 at 3.08pm, exhibited in AB p 1081.

122 Message on 5 August 2019 at 3.17pm, exhibited in AB p 1081.

123 Message on 12 August 2019 at 12.53pm, exhibited in AB p 1081.

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105 The documentary evidence thus debunks any suggestion that the Claimant had acquiesced to the terms of the 2nd Tenancy Agreement conferring upon the Defendant a right to a commission.

Conclusion on Defendant's claim for commission

106 The Defendant's claim for commission which he was purportedly entitled to, in his capacity as the property agent who procured Jason's tenancies, thus fails. Neither the 1st Tenancy Agreement nor the 2nd Tenancy Agreement substantiate his claim to such a commission.

Summary of my determinations on the claims relating to the EK Property

107 I summarise my findings in respect of the Parties' respective claims relating to the EK Property.

(a) In respect of the Claimant's claim for monthly rent of $4,000, for the period that the Defendant's family resided at the EK Property:

(i) I dismiss the claim in respect of the months October 2014 to April 2015 as I find that – on balance – the Claimant *did* agree to let the Defendant's family reside at the EK Property rent free for this duration, at least until Pinnacle was rented out.

(ii) I allow the claim in respect of the three months of September, October and November 2016.

(b) In respect of Jason's lease of the EK Property, I allow the Claimant's claim for his half share of the rent paid by Jason for the following periods:

(i) The first two months of the lease under the 2nd Tenancy Agreement, *ie*, August and September 2019, for which Jason had

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offset the rent against the two-month security deposit collected by the Defendant. Specifically, I allow the Claimant's claim of $7,800, being his half share of the rent for these two months.

(ii) The five-month period spanning September 2021 to January 2022, during the 3rd Tenancy Agreement. Specifically, I allow the Claimant's claim of $19,500, being his half share of the rent for this period.

(c) As regards the *Defendant's* claims in relation to the rent collected from Jason, I make the following orders.

(i) I grant the Defendant's prayer that the Claimant releases to the Defendant the latter's half share of the rental proceeds collected from Jason under the 1st Tenancy Agreement, *ie*, half of the $142,971.04 currently in the SCB Joint Account. The Parties are to take collective steps to withdraw this amount from the SCB Joint Account and divide the same between themselves in equal shares. Any interest earned from the bank on the principal sums deposited into the SCB Joint Account is also to be withdrawn and divided equally between the Parties.

(ii) I dismiss the Defendant's claims for:

(A) "excess rent" of $74,880, which the Claimant was alleged to have collected from Jason; and

(B) the Claimant to furnish an account of the rent collected from Jason.

(d) I also dismiss the Defendant's claim that the Claimant reimburses him for the property tax of $13,420.50.

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(e) Finally, I dismiss the Defendant's claim for $15,600, being what he professes to be the Claimant's half share of the commission purportedly due to the Defendant for having procured Jason's tenancies.

Defendant's claim for defamation

108 The Defendant's claim in defamation stems from an email dated 15 December 2021, which the Claimant had sent to PropNex inquiring about the commission payable under the 1st Tenancy Agreement ("PropNex Email").

109 To better appreciate the purport of the PropNex Email, it is necessary to lay out the backdrop against which it was sent. As explained at [95] above, cl 5(*g*) of the 1st Tenancy Agreement contemplated that commission was payable in the event of the lease being renewed. It is also clear that the Defendant *did* collect what he deemed as commission due to him under the 1st Tenancy Agreement. As explained at [91] above, he appropriated Jason's security deposit as his commission. The Defendant's intentions in doing are expressly spelt out in his pleadings, extracted below:[124]

> Additionally, *it is not true that the Defendant merely kept the Security Deposit*. The Defendant, being an estate agent of the EK Property, was *entitled to a commission which was equivalent to 1 month of rent (S$7,800) as reflected in the Tenancy Agreement dated 22 August 2017* [*ie*, the 1st Tenancy Agreement], the Defendant is the EK Property's Agent as the Defendant has his name and signature on it. [emphasis added]

That the Defendant appropriated Jason's security deposit as a means of satisfying the commission which he regarded as due to himself under the 1st Tenancy Agreement is also reflected in his WhatsApp messages:

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124 D&CC at para 21.

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(a) On 18 September 2017, in response to a message from the Claimant asking: "Where is the 2 month rental deposit?", the Defendant replied: "One mth was meant for rental commission".[125]

(b) Seven months later, on 24 April 2018, the Claimant again pressed the Defendant for the rental deposit, to which the Defendant responded that it had been applied to the Defendant's *commission* of $7,800 and various "pre handover expenses".[126]

(c) Five months later, in late September 2018, the Claimant made various allegations on a WhatsApp group chat to the effect that the Defendant failed to properly account for the security deposit. On 28 September 2018, the Defendant retorted to these allegations on the group chat with the following message:[127]

> … *you knew very well one month is for my rental commission for finding this current tenant at 7.8k* rental with fully furnished, another one month was used for pre tenant moving in preparation expenses which I hv already produced all the breakdown to you via WhatsApp, it was more than 7.8k … [emphasis added]

110 The Defendant's act of appropriating the commission payable under the 1st Tenancy Agreement was questionable, given that (as discussed at [97] above) the commission was payable to PropNex and not to the Defendant. The Defendant himself testified that he was obliged to submit the commission to PropNex, so as to allow the latter to process its own cut of the commission.[128] He explained that it would be "totally unacceptable" for him, as an agent, to

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125 Messages on 18 September 2017 at 2.39pm & 3.39pm, exhibited in AB p 1610.

126 Messages on 24 April 2018 from 11.11am to 11.14am, exhibited in AB pp 1611–1612.

127 AB p 1076.

128 Transcripts for 4 November 2024 at p 62 (lines 1–12).

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retain the entire commission without submitting the same to PropNex.[129]

111 After the Defendant had appropriated the commission, the Claimant repeatedly pressed him for proof that the commission was submitted to PropNex. An example of this is seen in a WhatsApp message exchange between the Parties on 24 April 2018, extracted below, where the Claimant sought a receipt documenting submission of the commission to PropNex:[130]

From	To	Time	Message Contents
Claimant	Defendant	11.09am	How about the maintenance and commission receipts?
		11.11am	As mentioned before, all monies should go into the joint account and disburse from there to have a clear accounting for income tax purpose
Defendant	Claimant	11.12am	Commission if u need receipts, I'll need to submit to company n that will need to include 7% GST.
Claimant	Defendant	11.13am	Doesn't matter, I want everything above board
			…
Defendant	Claimant	11.15am	Receipts will be provided

The messages above show that the Defendant was reluctant to pay the commission to PropNex as this would incur 7% GST. In spite of this, the Claimant *insisted* on a receipt as he wanted "everything above board". The Defendant had then responded at 11.15am saying: "Receipts will be provided".[131] However, the Defendant never produced any receipt to document the submission of the commission to PropNex.

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129 Transcripts for 5 November 2024 at pp 13 (line 8) – 14 (line 20).

130 AB pp 1611–1612.

131 Message on 24 April 2018 at 11.15am, exhibited in AB p 1612.

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112 Consequently, on 15 December 2021, the Claimant sent the PropNex Email, in which he voiced his suspicions that the commission appropriated by the Defendant may not have been submitted to PropNex.[132] The text of the PropNex Email,[133] which was sent to the email address designated by PropNex for whistleblower complaints, is extracted below:

> From: [Claimant's email address]
> Sent: Wednesday, 15 December 2021 4:39 pm
> To: whistleblowing@propnex.com
>
> Subject: Rental commission paid but no official receipt issued
>
> Dear Sir/Madam,
>
> Your agent, [the Defendant], IC: Sxxxx118Z, CEA: R000740H, collected the Rental Commission of SGD $7800.00, for the rental of … [the EK Property] … in August 2017.
>
> Despite numerous reminders for official receipt, none have been issued to date.
>
> *I suspect the said commission is not submitted to PropNex and therefore official receipt is not available.*
>
> Attached the PropNex Tenancy Agreement dated 22 August 2017 for your perusal and necessary action.
>
> [emphasis added]

113 PropNex eventually responded to the Claimant via an email dated 22 April 2022 confirming that the Defendant did *not* submit to PropNex the commission which the latter had appropriated from Jason's security deposit.[134] During the trial, the Defendant also conceded that he never submitted the commission to PropNex.[135]

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132 Claimant's AEIC at para 126.

133 AB at pp 1567–1568.

134 AB p 1558.

135 Transcripts for 5 November 2024 at pp 32 (lines 29–32) and 35 (line 27) – 36 (line 5).

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114 The Defendant's case is that the PropNex Email was defamatory as it suggested that he was dishonest, thereby lowering his reputation in the eyes of his colleagues at PropNex.[136] He thus claims against the Claimant for damages for libel to be assessed.[137] The Claimant's defence is that he was simply raising concerns to PropNex about the lack of a receipt, rather than accusing the Defendant of misconduct.[138] In any event, the Claimant contends[139] that the contents of the PropNex Email qualify for the defences of justification[140] and qualified privilege.[141]

115 For the reasons below, I ***dismiss*** the Defendant's claim in defamation. In summary, I find that:

(a) the PropNex Email *was* defamatory; but

(b) the Claimant is *entitled* to raise the defences of justification and qualified privilege.

I elaborate on each of these findings below.

Whether the words in the PropNex Email bore a defamatory meaning

116 To establish the tort of defamation, a claimant needs to demonstrate that the statement in question (a) is defamatory in nature; (b) refers to the claimant; and (c) is published: see *Golden Season Pte Ltd v Kairos Singapore Holdings*

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136 D&CC at para 102; Defendant's AEIC at para 65.

137 D&CC at para 103.

138 CCS at para 145.

139 Def to CC at para 46.

140 CCS at para 156.

141 CCS at paras 157–160.

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Pte Ltd [2015] 2 SLR 751 (*"Golden Season*") at [35]. In the present case, it is not disputed that elements (b) and (c) are present – the PropNex Email was published to PropNex and referred clearly to the Defendant. The key element at issue is thus whether the PropNex Email was defamatory in nature.

117 As explained in *Golden Season* (at [36]), a statement is considered defamatory if it (a) lowers the claimant in the estimation of right-thinking members of society generally; (b) causes him to be shunned or avoided; or (c) exposes him to hatred, contempt or ridicule. The Defendant's case appears to be that the PropNex Email defamed him along the lines of (a). This can be gleaned from the following section of the Defendant's pleadings:[142]

> [t]he words "*I suspect the said commission is not submitted to PropNex and therefore official receipt is not available*["] were defamatory and lowered the reputation of the Defendant among his colleagues at PropNex by suggesting that he was dishonest. [emphasis in original]

While not explicitly enunciated in his pleadings, the Defendant's position appears to be that the words in the PropNex Email are defamatory in their *natural and ordinary meaning* – the Defendant not having pleaded that they were defamatory by way of innuendo.

118 In *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 ("*Bernard Chan*"), the Court of Appeal expounded on the approach for determining if the words at issue are indeed defamatory in their natural and ordinary meaning. The court held (at [18]):

> … The general principles applicable to the construction of words based on their natural and ordinary meanings are as follows:

142 D&CC at para 102.

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> (a) the natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person;
>
> (b) as the test is objective, the meaning which the defendant intended to convey is irrelevant;
>
> (c) the ordinary reasonable reader is not avid for scandal but can read between the lines and draw inferences;
>
> (d) where there are a number of possible interpretations, some of which may be non-defamatory, such a reader will not seize on only the defamatory one;
>
> (e) the ordinary reasonable reader is treated as having read the publication as a whole in determining its meaning, thus "the bane and the antidote must be taken together"; and
>
> (f) the ordinary reasonable reader will take note of the circumstances and manner of the publication.

119 I agree that the PropNex Email was defamatory, bearing in mind the natural and ordinary meaning of its words, as it sought to impute to the Defendant a serious act, *ie*, pocketing commission that he should have handed to his principal. In this respect, words imputing a serious act to a claimant may be pitched at varying levels of certainty: see *Ng Koo Kay Benedict v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 ("*Benedict Ng*") at [16], citing the English Court of Appeal decision in *Chase v News Group Newspapers* [2002] EWCA Civ 1772 ("*Chase*") at [45]. Specifically, in associating a claimant with a serious act, an allegation may convey that:

(a) the claimant did *in fact* committed the serious act ("*Chase* Level One");

(b) there are *reasonable grounds to suspect* that the claimant committed the serious act ("*Chase* Level Two"); or

(c) there are *grounds for investigating* whether the claimant was responsible for the serious act ("*Chase* Level Three").

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Allegations falling into any of the three levels above may potentially be regarded as defamatory, albeit to varying degrees: see *Benedict Ng* at [17]. Specifically, an allegation where the degree of certainty is pitched at *Chase* Level One carries the highest defamatory sting, while an allegation where it is pitched at Chase Level Three carries the lowest.

120 In so far as the PropNex Email is concerned, the statement: "I *suspect* the said commission is not submitted to PropNex" [emphasis added] pegs the degree of certainty with which the serious act (pocketing the commission without submitting the same to PropNex) was imputed to the Defendant at *Chase* Level Two. This statement voiced the suspicion that the Defendant had committed the serious act, while proffering his failure to produce a receipt from PropNex as reasonable grounds for that suspicion. Its words were defamatory in that they conveyed that there were reasonable grounds to suspect that the Defendant pocketed monies that should have been handed over to his principal.

121 These observations must then be juxtaposed against the defamatory meaning actually *pleaded* by the Defendant. The Defence and Counterclaim did not simply state that the PropNex Email defamed the Defendant by suggesting that he pocketed his principal's commission. It went further, pleading that the PropNex Email defamed him by "suggesting that he was *dishonest*" (see extract at [117] above). The difficulty with this pleaded meaning is that there was nothing in the PropNex Email which conceivably touched on the Defendant's state of mind. From the perspective of someone reading the PropNex Email, the Defendant could well have been labouring under a host of other mental states (*eg*, recklessness or negligence) – and not necessarily dishonesty, when he appropriated the commission. Accordingly, the Defendant's pleadings (which are binding on him) attributed a greater defamatory sting to the PropNex Email than what its words actually carried.

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122 Still, even if a claimant pleads a defamatory meaning carrying a greater sting than what the impugned statement actually conveys, he is still entitled at trial to rely on the less defamatory meaning, so long as this does not amount to a substantially different allegation from what was pleaded. In *Slim v Daily Telegraph Ltd* [1968] 2 QB 157, Diplock LJ (as he then was) observed (at 175):

> The plaintiffs, as they were entitled to do, chose to set out in their statement of claim the particular defamatory meaning which they contended was the natural and ordinary meaning of the words. Where this manner of pleading is adopted, the defamatory meaning so averred is treated at the trial as the most injurious meaning which the words are capable of bearing, and the plaintiff is, in effect, estopped from contending that the words do bear a more injurious meaning and claiming damages on that basis. But *the averment does not of itself prevent the plaintiff from contending at the trial that even if the words do not bear the defamatory meaning alleged in the statement of claim to be the natural and ordinary meaning of the words, they nevertheless bear some other meaning less injurious to the plaintiff's reputation but still defamatory of him, nor does it relieve the adjudicator of the duty of determining what is the right natural and ordinary meaning of the words*, though nice questions may arise as to whether one meaning is more or less injurious than another. … [emphasis in original omitted; emphasis added in italics]

123 The views of Diplock LJ above were cited with approval by the Court of Appeal in *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 ("*Review Publishing*"), at [118] and [128]. The Court of Appeal in *Review Publishing* also observed (at [131]) that "a more serious allegation would usually include a less serious one, with the result that *the court may find a less defamatory meaning than that originally pleaded*" [emphasis added], although the court also caveated that:

> there may come a point where a less serious allegation amounts to a substantially different allegation from that originally pleaded; in such circumstances, the plaintiff should amend his pleadings to expressly plead the less defamatory meaning.

124 Given the guiding principles above, I take the view that *even* if the

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PropNex Email did not impute the more defamatory meaning as pleaded by the Defendant (*ie*, that he was *dishonest*) but imputed a less defamatory meaning (that he pocketed commission due to his principal, whether out of dishonesty or otherwise), he is nevertheless entitled to rely on the less defamatory meaning at trial. The less defamatory meaning in this case does not differ substantially from that pleaded and in fact constitutes the substratum from which the more defamatory meaning which *was* pleaded (*ie*, that he was dishonest) is inferred.

125 This then brings me to the nub of my decision in respect of the defamation claim. Even if the PropNex Email was defamatory, has the Claimant succeeded in establishing the defences of justification and qualified privilege? In my view, the Claimant succeeds in *both* these defences.

Justification

126 For his plea of justification, the Claimant must prove that the imputation conveyed by the defamatory words are true. In *Bernard Chan*, the Court of Appeal observed (at [43]):

> It is trite law that it is an absolute defence in a civil defamation claim that the imputation is true or substantially true. A defamatory imputation is presumed to be false, and the burden of proof falls upon the defendant to plead and show that it is true. *The meaning that is proved to be true must be that which the relevant statement is held to bear* (*ie*, the higher meaning in the present case), and the defence will not succeed if a materially less serious meaning is proved to be true. It is the imputation contained in the words which has to be justified, not the literal truth of the words, nor some similar charge not contained in the words. [emphasis added]

127 In this case, I have explained in the preceding section that the PropNex Email was defamatory, to the extent that it conveyed that there were *reasonable grounds to suspect* that the Defendant pocketed the commission which should have been paid to PropNex (see [120] above). To succeed in the defence of

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justification, the Claimant must establish that this statement was true, *ie*, that there were indeed reasonable grounds for such a suspicion.

128 Proceeding on that basis, I find that the defence of justification is clearly made out. As at the time the PropNex email was sent, there were eminently reasonable grounds to suspect that the Defendant did pocket the commission under the 1st Tenancy Agreement, without submitting the same to PropNex:

(a) The Defendant's messages explicitly stated that he appropriated Jason's security deposit to satisfy the commission due to himself under the 1st Tenancy Agreement: see [109] above.

(b) The Claimant asked the Defendant for a receipt from PropNex evidencing the submission of the commission, saying that he wanted everything to be "above board" (see [111] above), but never received one despite repeated requests.

Viewed cumulatively, both factors above provided ample grounds to suspect that the Defendant failed to submit the commission to PropNex. Pertinently, this suspicion was borne out by subsequent events. As explained at [113] above, it is now established that the commission was *never* submitted by the Defendant to PropNex for processing.

129 The defence of justification is thus made out. That alone suffices to defeat the Defendant's claim for defamation. Nevertheless, for completeness, I will go on to examine the Claimant's other defence to the defamation claim, *ie*, that of qualified privilege.

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Qualified privilege

130 There are various categories of situations where the defence of qualified privilege may defeat an action for defamation. One such instance was canvassed in *Golden Season*, where the court cited (at [91]) the following passage from Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at para 13.069):

> where the Defendant makes a statement with a view to protecting his or her self-interests, such statements are privileged to the extent that they are published *bona fide* and are relevant and necessary for protecting such interests.

131 Applying that principle to the present case, it is clear that the Claimant's defence of qualified privilege is amply substantiated. On the face of cl 5(*g*) of the 1st Tenancy Agreement (extracted at [95] above), the party obliged to pay PropNex the commission stipulated by that clause would be the landlord(s), *ie*, the Parties. The Claimant thus had an interest in ensuring that any rent that was otherwise owing from himself but which had been appropriated by the Defendant – ostensibly for purposes of the commission under the 1st Tenancy Agreement – was indeed channelled towards discharging the Claimant's liability for that commission. In writing to PropNex to voice his reservations about whether the commission had indeed been so channelled, the Claimant was doing no more than protecting his own interest.

132 The defence of qualified privilege is also available when there is *reciprocity* of interests between communicator and recipient, in that (a) the communicator of the defamatory words has an interest or duty (whether legal, social or moral) to communicate the information concerned; and (b) the recipient has a corresponding interest or duty to receive that information. In *Bernard Chan*, the Court of Appeal cited (at [87]) the judgment of the Privy

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Council's decision in *Seaga v Harper* [2009] AC 1, where Lord Carswell explained (at [5]):

> The defence of qualified privilege … is founded upon the need to permit the making of statements where there is a duty, legal, social or moral, or sufficient interest on the part of the maker to communicate them to recipients who have a corresponding interest or duty to receive them, even though they may be defamatory, so long as they are made without malice, that is to say, honestly and without any indirect or improper motive. It is the occasion on which the statement is made which carries the privilege, and under the traditional common law doctrine there must be a reciprocity of duty and interest: *Adam v Ward* [1917] AC 309, 334 per Lord Atkinson. …

Such reciprocity of interests is clearly discernible on the present facts. Apart from the Claimant's interest in communicating his concerns about the commission to PropNex (canvassed in the immediately preceding paragraph), PropNex also had a corresponding interest in ensuring that its own agents abided by the obligations placed on them under PropNex's standard form contracts. This is seen in how PropNex, after having been alerted by the PropNex Email to the Defendant's failure to submit the commission, replied to the Claimant that the Defendant's "failure to meet his obligations to the Company" was "an internal matter … and will be dealt with accordingly".[143]

133 The defence of qualified privilege may nevertheless be defeated if it can be shown that the defendant was actuated by malice when publishing the defamatory statement: *Bernard Chan* at [86]. Malice may be established by showing *either* of the following elements, set out in *Bernard Chan* (at [90]):

> (a) the defendant's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and (b) where the defendant has a genuine or honest belief in the truth of the defamatory statement, but his dominant motive is to injure the defendant or some other improper motive.

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143 AB p 1558.

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In his closing submissions, the Defendant alleged that the Claimant was disqualified from the defence of qualified privilege because the PropNex Email had been actuated by malice.[144]

134 I refuse to entertain the allegation of malice as it was never pleaded by the Defendant. The requirement that malice be pleaded is found in O 43 r 3(3) of the Rules of Court 2021 ("ROC"), extracted below:

> **Obligation to give particulars (O. 43, r. 3)**
>
> **3.**— …
>
> (3) Where in an action for libel or slander the claimant alleges that the defendant maliciously published the words or matters complained of, the claimant need not in the claimant's statement of claim give particulars of the facts on which the claimant relies in support of the allegation of malice, but if —
>
> …
>
> (*b*) the claimant intends to allege that the defendant was actuated by express malice,
>
> the claimant must, with permission of the Court, serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

135 At trial, when Defendant's counsel sought to put to the Claimant that the PropNex Email was actuated by malice, Claimant's counsel immediately objected on the ground that malice was never pleaded.[145] Defendant's counsel retorted that since the Claimant's plea of qualified privilege was only raised for the very first time in the Defence to Counterclaim, and the ROC disallows further pleadings after that, the Defendant effectively had no further medium through which malice could be pleaded.[146] With respect, this objection was

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144 DCS at para 92; Transcripts for 1 November 2024 at p 16 (lines 13–15).

145 Transcripts for 1 November 2024 at p 18 (lines 1–7).

146 Transcripts for 1 November 2024 at p 18 (lines 11–16).

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misplaced. It is of course true that O 2 r 9(3) ROC disallows the filing of further rounds of pleadings after the Defence (or Defence to Counterclaim) *without the court's approval*. However, there was nothing in this case preventing the Defendant from seeking such approval to file a further pleading, raising the allegation of malice. In fact, O 43 r 3(3) ROC (extracted immediately above) – which mandates that malice be pleaded – explicitly contemplates that pleading of malice is done "with permission of the Court": see also *Singapore Civil Procedure 2025* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2024) at para 43/3/8. The Defendant thus ought to have sought the court's permission to file a *reply* to the Defence to Counterclaim, so that his allegation of malice could be pleaded. It bears re-iterating that his Defence and Counterclaim had been amended four times (see [27] above). It is thus difficult to conceive of an excuse for his failure to plead the allegation of malice, when the sufficiency of his pleadings was patently a live issue in his litigation strategy.

136 Malice must be pleaded because it embodies a very serious allegation. As observed by Hoo Sheau Peng JC (as she then was) in *Ezion Holdings Ltd v Credit Suisse AG* [2018] 3 SLR 356 ("*Ezion Holdings*") (at [26]):

> A plea of malice is "a very serious allegation of intentional impropriety or bad faith". … Specifically, in a defamation action, O 78 r 3(3) requires a plaintiff to "serve a reply giving particulars of the facts and matters from which the malice is to be inferred" when the defendant has pleaded that the words complained of were published upon a privileged occasion. … As described in the English case of *Claire Henderson v The London Borough of Hackney and The Learning Trust* [2010] EWHC 1651 (QB) …, a plea of malice "is tantamount to one of fraud or dishonesty and must be pleaded with scrupulous care and specificity" (at [40]).

The requirement to plead malice also has significant procedural implications. For example, it affords the party claiming qualified privilege the opportunity to strike out the allegation of malice at an early stage if that allegation prejudices, embarrasses or delays the trial: *Ezion Holdings* at [28].

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137 The Defendant nevertheless asks the court to exercise its discretion under O 3 r 2(1) ROC to waive the requirement that malice be pleaded, on the ground that it would be in the interests of justice to do so.[147] However, the reasons advanced by the Defendant in support of that request are unpersuasive:

(a) Firstly, the Defendant says that it is "plain from the facts" that there was express malice on the Claimant's part,[148] especially given how the PropNex Email had been sent long after the Parties' relationship had soured.[149] However, the delay in sending the PropNex Email could have been attributed to a host of reasons – the Defendant has not explained why any such delay is necessarily suggestive of malice.

(b) Secondly, the Defendant argues that he *did* "in effect" plead malice, by virtue of the following sentence at para 102 of his Defence and Counterclaim: "The words [in the PropNex Email] were calculated to disparage the Defendant in his profession."[150] I reject this submission as well. All this sentence does is allude to the PropNex Email being *defamatory*. There is nothing in the Defendant's pleadings alerting the reader to the Defendant's intent to allege any of the elements of malice as laid out at [133] above.

In short, the justifications proffered by the Defendant above are nothing short of a flimsy. Sanctioning them would be tantamount to paying lip service to an important procedural safeguard.

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147 DCS at paras 90–91.

148 DCS at para 92.

149 DCS at paras 94–97.

150 DCS at para 98.

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138 Consequently, I uphold the Claimant's defence of qualified privilege and reject the Defendant's attempt to raise the allegation of malice.

Claimant's claim to enforce the Handwritten Note

139 At around the time that the lease under the 3rd Tenancy Agreement commenced, the Defendant found a buyer for the EK Property ("Buyer"). On 11 September 2021, the Parties signed an Option to Purchase ("OTP") with the Buyer, under which they agreed to sell the EK Property for $5m.[151] This sale was ultimately completed in April 2022,[152] after the lease under the 3rd Tenancy Agreement expired.

140 Critically, the Parties also signed the Handwritten Note on 11 September 2021, in conjunction with the signing of the OTP. By the Handwritten Note, the Parties jointly agreed to set aside $600,000 from the proceeds of sale of the EK Property, from which George and Jack would each receive $300,000. The Claimant now seeks to compel the Defendant to honour the Handwritten Note's terms (*ie*, to pay $600,000 from the EK Property's sale proceeds to George and Jack), while the Defendant seeks to impugn the Handwritten Note on the grounds of lack of consideration and economic duress.

141 To better understand the genesis of the Handwritten Note, it is necessary to lay out the factual background in some detail. After the Testatrix's passing in 2012, the relationship between the four brothers – the Parties, George and Jack – grew strained, due in no small part to the fact that the Will left nothing to George and Jack despite these two brothers surviving the Testatrix: see [2]

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151 Defendant's AEIC at para 98.

152 Kelvin Mun Wai Ho's affidavit of evidence-in-chief (dated 26 December 2023) at para 12.

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above. In or around June 2018, the Parties' uncle, Tam Sook (who resides in Mauritius) flew to Singapore to try and achieve reconciliation between the brothers. To that end, Tam Sook proposed that the Parties should *each* contribute $300,000, where these monies would then be used to pay $300,000 to George and $300,000 to Jack.[153] The Parties orally agreed in principle to Tam Sook's proposal – this oral agreement is referred to as the "Oral AIP".[154]

142 The payments contemplated by the Oral AIP (where George and Jack would each receive $300,000) were ultimately never made. The Parties hold diverging perspectives as to the purport of the Oral AIP:

(a) The Defendant contends that under the Oral AIP, a condition of the payments to George and Jack was that the EK Property be sold by 30 September 2018.[155] Since this condition was never met (the sale of the EK Property having taken place only in April 2022), the Defendant contends that the Oral AIP was superseded.[156]

(b) The Claimant disagrees that the Oral AIP hinged on any such condition, maintaining that the 30 September 2018 date was merely a target date for the payments to be made to George and Jack.[157]

Notwithstanding the Parties' conflicting views as to the Oral AIP's terms, the Claimant has made it clear that his claim to compel the Defendant to honour the

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153 SOC at para 27.

154 Claimant's AEIC at paras 134–135; Defendant's AEIC at para 67.

155 D&CC at para 58; Defendant's AEIC at para 69; DCS at para 19.

156 Defendant's AEIC at para 117.

157 Claimant's AEIC at para 137; Claimant's Supp AEIC at para 13; Claimant's Reply Submissions (dated 3 March 2025) ("CRS") at para 6.

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payments contemplated by the Oral AIP (*ie*, for George and Jack to each receive $300,000 from the Parties) is *not* based on the Oral AIP but on the Handwritten Note that was subsequently signed on 11 September 2021.[158]

143 This then brings me to how the Handwritten Note came into being. In early September 2021, the Defendant informed the Claimant about the Buyer's offer to pay $5m for the EK Property.[159] The Defendant accordingly sought to procure the signature of the Claimant (as co-owner of the EK Property) on the OTP. On 11 September 2021, the Defendant brought the OTP to a meeting with the Claimant, intending for the Claimant to sign the same.[160] However, during this meeting, the Claimant flatly told the Defendant that he was *not* signing the OTP unless the Defendant agreed to George and Jack each receiving $300,000 (being the payments contemplated by the Oral AIP) from the sale proceeds. To document the Defendant's agreement to this condition, the Claimant produced the Handwritten Note for the Defendant's signature. The terms of the Handwritten Note are extracted below:[161]

> We, Chan Yip Tong David … and Chan Yip Tong Franklin … agreed to use the sales proceed [*sic*] from the sales of [the EK Property] to pay to:
>
> (1) Chan Yip Tong George $300,000 three hundred thousand
>
> (2) Chan Yiptong Jack $300,000 three hundred thousand
>
> A total of $600,000 six hundred thousand to be deducted from the sales proceed [*sic*].
>
> 11 Sept 2021

144 Agitated by the Claimant's demand that the Defendant sign the

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158 CRS at para 5; Transcripts for 29 October 2024 at pp 19 (line 28) – 20 (line 5).

159 Claimant's AEIC at para 140; Defendant's AEIC at para 98.

160 Claimant's AEIC at para 143; Defendant's AEIC at para 107.

161 Exhibited in the Claimant's AEIC at p 606.

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Handwritten Note, the Defendant raised his voice and an argument ensued. The altercation culminated in the Claimant walking away from the meeting without signing the OTP and without the Handwritten Note being signed by the Defendant.[162] After a few minutes, the Defendant capitulated and reached out to the Claimant, telling him that the Defendant would sign the Handwritten Note. The Parties accordingly met once more and, this time, both of them signed the Handwritten Note.[163] Upon the Defendant signing the Handwritten Note, the Claimant signed the OTP.[164]

145 The very next day (*ie*, 12 September 2021), at 3.20pm, the Defendant sent the Claimant the following WhatsApp message,[165] in which the Defendant disavowed the Handwritten Note and declared that he signed it out of duress:[166]

> This is my stance and I declare this note was not created by me, I reject and disagree totally with this note. I was signed under duress with your unknow hidden ulterior motive. Sorry

The Claimant retorted with a message that same day at 8.41pm stating that the Claimant would *also* regard the OTP as having been vitiated, offering to return the Defendant the cashier's order that had been furnished by the Buyer.[167]

146 Notwithstanding this skirmish, the sale of the EK Property was duly completed on 8 April 2022. The sale proceeds were distributed between the Parties, *save for the sum of $600,000*, which lay at the heart of the dispute surrounding the Handwritten Note. The Parties agreed to carve this sum out

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162 Claimant's AEIC at para 144; Defendant's AEIC at para 112.

163 Claimant's AEIC at paras 145–146; Defendant's AEIC at para 113.

164 Claimant's AEIC at para 147; Defendant's AEIC at para 113.

165 Exhibited in AB p 1808.

166 Defendant's AEIC at para 114.

167 Message on 12 September 2021 at 8.41pm, exhibited in AB pp 1682–1683.

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from the sale proceeds and deposit it into the SCB Joint Account.[168] As explained at [65] above, any withdrawal from the SCB Joint Account must be authorised by *both* the Parties, meaning that neither of them can make withdrawals without the other's concurrence. By securing the $600,000 in this fashion, the Parties were able to proceed with the sale of the EK Property without their disagreement over the Handwritten Note scuttling completion.[169]

147 The balance in the SCB Joint Account currently stands at $743,076.50.[170] This includes the $142,971.04 worth of rent collected under the 1st Tenancy Agreement (see [52] above) plus the $600,000 which the Parties set aside from the EK Property's sale proceeds (as per the immediately preceding paragraph). As regards the $142,971.04, I have already explained at [68] above that this is to be released and divided between the Parties equally (together with any interest earned on the account balance that has been credited by the bank into the account). This leaves the $600,000, over which the Parties remain deadlocked:

(a) The Claimant refuses to allow the Defendant to withdraw any part of the $600,000, which the Claimant views as payable to George and Jack under the Handwritten Note.[171]

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168 Claimant's AEIC at para 150; Defendant's AEIC at para 116.

169 D&CC at para 28; Claimant's AEIC at para 149.

170 Claimant's AEIC at para 104.

171 D&CC at para 24; Defendant's AEIC at para 117.

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(b) The Defendant refuses to authorise the disbursement of the $600,000 to George and Jack,[172] taking the position that the Handwritten Note was invalidated on two distinct grounds:[173]

(i) lack of consideration; and

(ii) economic duress and/or unconscionability.

148 The Claimant thus prays for the reliefs set out in the following paragraphs of the Statement of Claim:[174]

> (3) An order that the Defendant within 14 days from the order to be made hereon, do all acts or things and sign all cheques, forms, instructions and /or any documents as are necessary to pay to … George and … Jack a sum of S$300,000.00 each from the [SCB Joint Account];
>
> (4) An order that in the event of the Defendant's failure to comply with the order to be made in paragraph (3) herein, the Defendant shall pay the Claimant the sum of $600,000.00 to enable the Claimant to pay … George and … Jack a sum of S$300,000.00 each;
>
> (5) An order that in the event of the Defendant's failure to comply with the order to be made in paragraph (4) herein, the Claimant be at liberty to apply for an enforcement order for attachment of a debt, to attach the credit balance in the [SCB Joint Bank Account] due … to the Claimant and the Defendant, to satisfy the order in paragraph (4) made against the Defendant.

149 The Defendant, on his part, prays for an order compelling the Claimant to release what the Defendant views to be his half share of the $600,000 in the

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172 Claimant's AEIC at para 151.

173 D&CC at para 68.

174 SOC at pp 10–11, paras (3)–(4).

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SCB Joint Account,[175] as well as lost interest arising from the Claimant wrongfully detaining the Defendant's funds in the SCB Joint Account.[176]

150 In my view, the Handwritten Note *was* a validly concluded contract which the Defendant is now obliged to honour. In arriving at this conclusion:

(a) I ***reject*** the Defendant's submission that the Handwritten Note was not supported by consideration from the Claimant.

(b) I also ***reject*** the Defendant's submission that the Handwritten Note was vitiated by economic duress.

151 I set out my reasons below.

Formation of contract: Intention to create legal relations & consideration

152 By way of preliminary observation, the Handwritten Note appears to have been signed with the Parties having intended to create legal relations. Such an intention is a necessary element for the formation of a valid contract. As explained by Andrew Phang JA (as he then was) when he delivered the judgment of the Court of Appeal in *Gay Choon Ing* (at [71]):

> Put simply, it must be demonstrated that there was an intention on the part of both parties that the transaction entered into was to have legal effect before a valid contract can be said to have been formed. Put another way, the parties must have intended that, if a disagreement arose or the contract was not honoured subsequently, the aggrieved party could invoke the assistance of the court. [emphasis in original omitted]

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175 D&CC at para 118(d).

176 D&CC at para 118(c)(x).

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153 The Court of Appeal in *Gay Choon Ing* had also alluded (at [72]) to the presumption that in social and domestic arrangements, parties do not intend to create legal relations. However, on the facts of the present case, it would appear inappropriate to apply that presumption (notwithstanding the Parties being brothers) given the acrimony between them at the point the Handwritten Note was signed: see *Ong Wui Teck v Ong Wui Swoon* [2019] SGCA 61 (*"Ong Wui Teck*") at [46]. By that point, the ties between the Parties had already been fractured with discord.[177] In fact, the relationship had started to sour from as early as seven years before that, in 2014.[178]

154 In any case, even if the presumption in *Gay Choon Ing* applied, it would have been amply rebutted by the very nature of the Handwritten Note. This is a document that was reduced into writing, dated and signed. Such steps strongly suggest that the Parties intended to inject a degree of formality into the document that would facilitate proof of its terms and the fact of Parties' assent thereto, in anticipation of the eventuality of these terms having to be enforced.

155 I now turn to the Defendant's submission that the Handwritten Note was not supported by consideration from the Claimant. In my view, this submission ***fails***. As a co-owner of the EK Property, the Claimant had every right to withhold his consent to its sale. His act of sanctioning the sale by signing the OTP thus constituted valid consideration, in exchange for the Defendant signing the Handwritten Note. The Defendant nevertheless submits that the Claimant's signing of the OTP could not constitute valid consideration for the Defendant signing the Handwritten Note. The Defendant's line of reasoning is as follows.

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177 Transcripts for 1 November 2024 at p 15 (lines 25–29) and for 6 November 2024 at p 6 (lines 8–22).

178 Claimant's AEIC at paras 62–63; Defendant's AEIC at paras 33–34.

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(a) Prior to the signing of the OTP, the Claimant had been asking the Defendant extract various onerous concessions from the Buyer.[179] These included:[180]

(i) asking the Buyer incur the cost of procuring a cashier's order upfront, despite the OTP not being signed yet;

(ii) amending the OTP to explicitly stipulate the name of the Buyer, so that he would be unable to transfer the option to any third party; and

(iii) hiking the option fee payable by the Buyer to 10%, when the fee typically charged was only 5%.

Critically, the Defendant claims that the Claimant entered into a *prior* agreement with him, under which the Defendant would help secure the Buyer's agreement to these extraordinary demands, in exchange for which the Claimant would sign the OTP[181] ("Prior Agreement").

(b) The Defendant ultimately succeeded in getting the Buyer to meet these demands (onerous though they were), meaning that the Claimant then had to abide by his side of the bargain under the Prior Agreement, being to sign the OTP.[182] The Claimant's act of signing the OTP thus constituted consideration for the Prior Agreement. This same act could therefore no longer serve as consideration *again*, for the Defendant's act of signing the Handwritten Note. Accordingly, the Handwritten Note

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179 Transcript for 30 October 2024 at p 111 (lines 2–9); D&CC at para 62; Defendant's AEIC at para 106.

180 DCS at para 25.

181 D&CC at para 68; DCS at para 24.

182 DCS at para 27.

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required *fresh* consideration from the Claimant.[183] As none was provided, the Handwritten Note was not supported by consideration.[184]

156 The difficulty with the Defendant's claims about the Prior Agreement is that he is unable to point to *any* communications evincing that the Claimant agreed to *sign* the OTP, in exchange for the Defendant getting the Buyer to meet the Claimant's demands at [155(a)] above. Of relevance would be the WhatsApp messages exchanged between the Parties on 6 September 2021, *ie*, just five days before the signing of the Handwritten Note, which allude to these demands. The messages are extracted below:[185]

From	To	Time	Message Contents
Claimant	Defendant	2.44pm	I am not informed or consulted of this deal during negotiation. All terms are set by you with unheard and abnormal 20 weeks option. 20 weeks non-transferable and non-assignable Option to Purchase, deposit shall be 10%. 6 weeks non-transferable and non-assignable Option to Purchase, deposit shall be 5%.
Defendant	Claimant	2.49pm	That's why u were given till Saturday 4pm. Ok I'll propose 5% plus 5% on stakeholding. Bcoz their lawyer already advise them. Non transferable or assignable, will let buyers to accept too. …
		3.16pm	So I'm consulting u now, pls don't keep quiet is abv ok with u?
Claimant	Defendant	3.19pm	1. OTP non-transferable and non-assignable. 2. Full release of 10% deposit.

183 DRS at paras 5–6.

184 D&CC at para 70; DRS at para 7.

185 AB pp 1093–1094.

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From	To	Time	Message Contents
Defendant	Claimant	3.25pm	Noted, Ok, I'll move my tenant out n work full force, so next deal can u accept at Low offer if buyer is normal deal? Of coz not 4.25mil like next door, may be 4.5mil or higher to close. Since bank max EV only 4.5mil n SRX EV much lower even. I'm consulting u now.
Claimant	Defendant	3.26pm	We shall see the market then.

The last message from Claimant in the extract above – "We shall see the market then" – is illuminating. Rather than committing himself to signing the OTP in exchange for the Buyer's compliance with his demands, the Claimant was patently adhering to a non-committal stance *vis-à-vis* the sale. Indeed, I find it difficult to conceive of how the Claimant could have contractually bound himself to *sign* the OTP when he had yet to even have *sight* of it.

157 Consequently, I reject the Defendant's submission that the Claimant's act of signing the OTP was pursuant to the alleged Prior Agreement. The evidence simply does not support the allegation that the Claimant undertook to sign the OTP in exchange for the Defendant procuring the Buyer's compliance with the Claimant's demands. There is consequently nothing to prevent the Claimant's act of signing the OTP from serving as valid consideration for the Defendant's act of signing the Handwritten Note.

158 The Handwritten Note was therefore a validly concluded contract, entered into with an intention by the Parties to create legal relations and supported by consideration from both sides. The Claimant is entitled to demand the performance of its terms unless the Defendant can show that the Handwritten Note was vitiated for some reason or other.

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Economic duress

159 I turn to the Defendant's submission that the Handwritten Note was procured by economic duress. If he succeeds in proving this, the Handwritten Note would be voidable at his instance: *Ong Chai Koon v Ong Chai Soon* [2021] SGHC 76 at [119]. The rationale underlying the doctrine of economic duress was explained by Lord Diplock in *Universe Tankships Inc of Monrovia v International Transport Workers Federation* [1983] 1 AC 366 at 384:

> … It is not that the party seeking to avoid the contract which he has entered into with another party, or to recover money that he has paid to another party in response to a demand, did not know the nature or the precise terms of the contract at the time when he entered into it or did not understand the purpose for which the payment was demanded. The rationale is that his apparent consent was induced by pressure exercised upon him by that other party which the law does not regard as legitimate, with the consequence that the consent is treated in law as revocable unless approbated either expressly or by implication after the illegitimate pressure has ceased to operate on his mind. …

Accordingly, for economic duress to be made out, the Defendant must establish the following elements (*Tjong Very Sumito v Chan Sing En* [2012] 3 SLR 953 at [247]):

(a) the exertion of *illegitimate* pressure; and

(b) compulsion of the victim's will by such pressure.

160 Additionally, the element of causation must be present, in that the duress must have *induced* the victim to enter into the impugned transaction: *Tam Tak Chuen v Khairul bin Abdul Rahman* [2009] 2 SLR(R) 240 (*"Tam Tak Chuen*") at [62]. Causation is assessed using the "but for" test: *Oon Swee Gek v Violet Oon Inc Pte Ltd* [2024] 6 SLR 313 ("*Violet Oon*") at [53].

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161 I now discuss the above elements in turn.

Exertion of illegitimate pressure

162 To be vitiated by economic duress, the agreement must have been procured by the exertion of illegitimate pressure. In this respect, the pressure exerted on a party to enter into an agreement could either be unlawful or lawful.

(a) As regards *unlawful* pressure, the archetypal example would be the threat to break a contract if the party fails to accede to the perpetrator's demands. Pressure which is unlawful has generally been regarded as illegitimate: see *The Law of Contract in Singapore* (Andrew Phang gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at para 12.037.

(b) As regards *lawful* pressure, the threat of lawful action can also constitute illegitimate pressure in certain circumstances, although care must be taken to avoid branding "the rough and tumble of the pressures of normal commercial bargaining" as economic duress that vitiates a contract: see the judgment of Dyson J in *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530 at 545, cited with approval by Quentin Loh J in *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2011] 2 SLR 232 ("*E C Investment Holding*") at [52].

163 In *Tam Tak Chuen*, Judith Prakash J (as she then was) cited (at [50]) para 3-031 of Nelson Enonchong, *Duress, Undue Influence and Unconscionable Dealing* (Sweet & Maxwell, 2006) ("*Enonchong*"), where the learned author listed four categories of pressure from *lawful* action that might potentially be considered illegitimate:

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(a) where the threat is an abuse of legal process;

(b) where the demand is not made *bona fide*;

(c) where the demand is unreasonable; and

(d) where the threat is considered unconscionable in the light of all the circumstances.

While the categories above are couched rather broadly, case law offers some insights as to how they might manifest themselves in practice:

(a) As regards category (a) – abuse of legal process – illegitimate pressure may conceivably be discerned if the defendant "was implicitly threatening legal action that he knew had no merit … in a calculated fashion to take advantage of the [claimant's] weakness": *Violet Oon* at [68].

(b) As regards category (b) – demands that are not *bona fide* – illegitimate pressure has been held to arise when the perpetrator "carefully orchestrated" an ambush by which his demands were sprung on the victim in a manner carefully calculated to unnerve the latter into acceptance: *Tam Tak Chuen* at [55] and [59]. Similarly, where the demand is based not on facts but on exaggerations, this may well be a relevant factor in determining if the demand was made *bona fide*: *Violet Oon* at [63].

(c) In relation to category (c) – demands which are unreasonable – an instance of this can be seen in the facts of *Tam Tak Chuen*, where Prakash J observed that the plaintiff had been compelled to "g[i]ve up his shares for nothing" (at [48]), under the threat of compromising videos of the plaintiff being made public (at [58]).

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(d) As for category (d) – unconscionable threats – Prakash J had in *Tam Tak Chuen* cited (at [22]) para 3-031 of *Enonchong*, where the learned author observed that threats of lawful action have been regarded as illegitimate where:

> terms secured as a result of the threat of lawful action are so 'manifestly disadvantageous' to the complainant as to make it unconscionable for the defendant to retain the benefit of them.

164 As regards category (d), it is apparent from the extract above that this holds the potential for significant overlap with category (c) (*ie*, "where the demand is unreasonable"). The formulation of category (d) above has been the subject of some criticism. The learned authors of *The Law of Contract in Singapore* observed (at para 12.073) that:

> it is not altogether clear what unconscionability means in this particular context (bearing in mind that we are *not* dealing here with a separate (and substantive) doctrine of unconscionability as such) [emphasis in original].

Reservations about category (d) were also expressed in *E C Investment Holding*, where Loh J cautioned (at [49]) that deeming pressure as illegitimate – simply because it led to manifestly disadvantageous contractual terms – could "open the door to uncertainty" and "comes too close to re-writing disadvantageous contracts".

165 In my respectful view, Loh J's concerns are valid. Whether the terms of a contract are so manifestly disadvantageous as to be considered "unconscionable" – bearing in mind that this is a term which does not lend itself to any degree of precise delineation – is something which reasonable men can easily hold diametrically opposing views. The need for predictability in commercial dealings militates against an overly liberal approach in finding

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illegitimate pressure on this ground. Ultimately, the question may well boil down to one of degree. Disadvantageous contractual terms are an everyday by-product of uneven bargaining power and thus offer no excuse for contracting parties to go back on their promises. However, there may be rare situations where contractual terms are so lopsided that they elude any commercial explanation for why someone would agree to them, thereby necessitating closer scrutiny of any allegations that illegitimate pressure tactics were applied to extract these terms. An example of this can be gleaned from the facts of *Tam Tak Chuen*, where Prakash J observed that the plaintiff was effectively made to "g[i]ve up his shares for nothing" (see [163(c)] above).

166 Having said that, the need for commercial certainty dictates against pegging the needle at too low a threshold. Loh J had thus opined that it will be rare for a contract to be set aside on account of pressure by *lawful* means – see *E C Investment Holdings* at [51]:

> … I do not say that lawful pressure can never amount to duress, for that would be constraining the doctrine unjustifiably bearing in mind why it was developed in the first place, but it certainly will be a very rare case indeed for a contract to be set aside for duress when only lawful means or pressure was used.

This view also accords with the observation at para 3-022 of *Enonchong*, which was cited in *Tam Tak Chuen* (at [50]), where the learned author highlighted that the need for certainty in the commercial bargaining process means that it will be "relatively rare" for lawful pressure to be deemed illegitimate:

> It should be noted that the general approach of the courts in this context is one of caution. Bearing in mind the need for certainty in the commercial bargaining process, the English courts will not lightly find that a threat of lawful action in the commercial context is unacceptable and therefore illegitimate so that the transaction is voidable for duress. … Therefore cases *where a threat of lawful action that is not unlawful in itself will be regarded as illegitimate so as to constitute duress will be 'relatively rare'*. [emphasis added]

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167 With the above principles in mind, I turn to assess the Defendant's claim that the Handwritten Note should be vitiated, on account of economic duress. To clarify, the Defendant's pleadings actually state that the Handwritten Note was signed "under economic duress *and/or unconscionability*"[186] [emphasis added] (see [147(b)(ii)] above). However, it is apparent from the Defendant's submissions that he is *not* seeking to invoke the substantive doctrine of unconscionability, as expounded by the Court of Appeal in *BOM v BOK* [2019] 1 SLR 349. Rather, the Defendant appears to merely be relying on what he perceives to be the unconscionability of the Handwritten Note's terms, to establish the *illegitimacy* of the pressure he faced when signing it,[187] *ie*, that the pressure fell within category (d) in [163] above.

168 According to the Defendant, the pressure applied by the Claimant to subjugate him into signing the Handwritten Note came in the form of the Claimant's threat to refuse signing the OTP. In arguing that this pressure was *illegitimate*, the Defendant seeks to draw an analogy with the case of *Progress Bulk Carriers Ltd v Tube City IMS LLC (The Cenk Kaptanoglu)* [2012] 2 All ER (Comm) 855 (*"Progress Bulk Carriers*"), where the claim of economic duress succeeded.[188] In that case, the plaintiffs had chartered a ship from a shipowner who subsequently committed a repudiatory breach by chartering the ship to a third party. The shipowner thereafter proposed procuring a substitute ship for the plaintiffs at a reduced freight but insisted that this alternative would require the plaintiffs to waive their claims for the repudiatory breach. The plaintiffs accepted these terms under protest.

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186 D&CC at para 68.

187 DCS at paras 45–46.

188 DCS at paras 37–39.

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169 I fail to see how *Progress Bulk Carriers* assists the Defendant's defence of economic duress. The pressure in that case arose from the shipowner committing a repudiatory breach of contract that ultimately allowed it to hold the plaintiffs to ransom (see [39]). The shipowner then used the prospect of a substitute arrangement to corral the plaintiffs into waiving their claims against the shipowner. The key trait which rendered the pressure in *Progress Bulk Carriers* illegitimate – being the *unlawfulness* of that pressure (stemming from a breach of contract) – is clearly inapplicable here. There was nothing unlawful in the Claimant's refusal to sign the OTP. As a tenant in common of the EK Property, he had a right to decide whether (and when) to sell his half share.

170 The Defendant also claims that the demand for him to sign the Handwritten Note was not *bona fide*, *ie*, falling within the category of illegitimate pressure in category (b) at [163] above. Specifically, the Defendant contends that the circumstances under which the Handwritten Note was signed – laid out at [144] above – demonstrate that the Claimant had intentionally *sprung* the Handwritten Note on him by surprise, at the very last minute, just as the Defendant was trying to secure the Claimant's signature on the OTP.[189] The Defendant thus claims that the present situation is similar to that in *Tam Tak Chuen* (referred to at [163(b)] above).

171 In *Tam Tak Chuen*, the plaintiff and defendant were both doctors who shared a medical practice comprising several medical companies. The defendant managed to obtain video footage from a camera that he had furtively installed in the clinic, capturing the plaintiff engaging in sexual activity with a clinic employee. After procuring the video, the defendant spent the next three months orchestrating his plans for confronting the plaintiff with it. Thereafter, the

189 DCS at para 43; DRS at para 16.

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defendant called for a meeting with the plaintiff, on the pretext of discussing one of their clinics. At this meeting, the defendant revealed the video, while concurrently presenting the plaintiff with various alternatives – including one where the defendant would apply to wind the medical companies up and tender the video as evidence in the application. The only serious alternative open to the plaintiff was for him to resign as a director of the companies and sell his shares therein to the defendant at a tremendous undervalue. The defendant also had the necessary share transfer forms at the ready, drafted in preparation for the meeting, so that the plaintiff could sign them on the spot. Unnerved by the sudden turn of events, the plaintiff signed various documents at the meeting, including the share transfers.

172 Subsequently, the plaintiff applied to have the documents signed by him set aside on account of economic duress. In allowing the plaintiff's claim, Prakash J observed (at [55]) that the defendant's actions had been "very carefully orchestrated". His preparations included taking legal advice and having the share transfer documents drafted well in advance, so that they were ready for execution at the meeting. Prakash J concluded (at [59]):

> … I think that the circumstances in which the demand was made made the demand unconscionable. For three months, [the defendant] gave [the plaintiff] no hint of what he knew or what he was planning. He arranged a meeting late at night on the pretext of discussing an issue relating to the Kembangan Clinic and he then sprung his evidence on [the plaintiff] in a way that was calculated to unnerve the latter. He further underlined his point by telling [the plaintiff] that [the plaintiff] had more to lose if there was a compulsory winding up and the evidence went before the court. Having ruled out that option, he refused [the plaintiff's] offer to buy his own shares for $50,000. In the result, the only option that [the defendant] was willing to accept that would not have resulted in the video footage and photographs being made public was the sale of [the plaintiff's] shares at a price that was manifestly disadvantageous to [the plaintiff].

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173 In my view, the facts of the present case simply cannot be likened to those in *Tam Tak Chuen*. The Defendant's complaint about the Handwritten Note having been "sprung" on him does not cohere with the WhatsApp messages exchanged between the Parties on 4 September 2021, being a week before the Handwritten Note was signed. I extract these messages below:[190]

From	To	Time	Message Contents
Defendant	Claimant	10.41am	… Btw later what time for me to drop by your place to sign the acceptance and the OTP before 4pm deadline today?
Claimant	Defendant	1.53pm	*You must pay all money owing to George, Jack , Dionne and me*
Defendant	Claimant	2.30pm	Tell me how much? …
		2.32pm	Why are u asking me to pay them and not them to come n claim from me?
		2.33pm	Anyway tell me now on EK 4pm deadline, seller [*sic*] is waiting for answer with their [cashier's order] is ready for exchange our OTP
		2.34pm	Pls Don't beat around the bush and let's settle one thing at the time.
		2.36pm	Once after 4pm with no action or answer, I don't think we have anymore to discuss future, please let me know your direction solely on EK.
Claimant	Defendant	2.40pm	*I wish to clear all matters for once. And Tam Sook efforts coming to Singapore is not wasted. Clear for once and for all, hopefully family can come to reconciliation.*
Defendant	Claimant	2.40pm	George did ask me for his money when I met him in BG project, except he ask me when are u paying him? I'll settle mine directly with Jack.
Claimant	Defendant	2.41pm	*Pay them from the proceed*, also Dionne and mine

[emphasis added]

190 AB pp 1084–1085.

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By way of clarification, the Claimant's message "you must pay all money owing to George, Jack" (at 1.53pm above) was referring to the payment of $300,000 to each of these two other brothers, as contemplated by the Oral AIP – this was also the Defendant's understanding of the message.[191]

174 The following observations can be made about the WhatsApp messages extracted above:

(a) When the Defendant messaged the Claimant on 4 September 2021 about signing the sale-related documents, the latter's *immediate* response was to ask the Defendant to make the payments to George and Jack contemplated by the Oral AIP (message at 1.53pm above).

(b) The Claimant's message further explained that he wanted to "clear all matters for once" and ensure that the efforts by Tam Sook in brokering the Oral AIP were not wasted (message at 2.40pm above).

(c) When the Defendant tried to placate the Claimant by suggesting that the latter could pay George directly while the Defendant would "settle [his] directly" with Jack (message at 2.40pm above), the Claimant *insisted* that the amounts contemplated by the Oral AIP be paid to George and Jack from the proceeds of sale of the EK Property (see message at 2.41pm above).

By these messages, the Claimant made it unmistakeably clear that he expected the Defendant to honour the payments which the Parties had agreed to make under the Oral AIP. The Claimant also explicitly *tethered* the sale of the EK Property to these payments being made.

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191 Transcripts for 6 November 2024 at pp 163 (line 11) – 164 (line 3).

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175 In spite of the Claimant foreshadowing his designs from such an early stage – *an entire week* before the OTP was signed on 11 September 2021 – the Defendant pleaded that he had ***disregarded*** the Claimant's words.[192] Under such circumstances, it is simply not open to the Defendant to complain that the Handwritten Note (which obliged him to make the payments to George and Jack contemplated by the Oral AIP) had been – to use the term in *Tam Tak Chuen* (at [59]) – "sprung" on him.

176 Furthermore, the bases advanced by the Defendant to support his claims of illegitimate pressure by the Claimant fail to pass muster. Specifically, the Defendant claims that he was subjected to pressure on two fronts:

(a) Firstly, the Defendant claims that he had purchased a Housing and Development Board ("HDB") flat in Toa Payoh in July 2016.[193] As he was barred under HDB's rules from concurrently holding a private property (such as the EK Property), he faced pressure from HDB to divest the EK Property.[194] The Defendant's case is that the Claimant *knew* about the HDB flat[195] and how this meant that the Defendant was under pressure to sell the EK Property.[196] Specifically, the Defendant pleaded that the Claimant "***exploited*** *the Defendant's situation* and threatened"[197] [emphasis added in italics and bold italics] to refuse

192 D&CC at para 64.

193 Defendant's AEIC at para 46.

194 Defendant's AEIC at para 47; Transcripts for 6 November 2024 at p 101 (lines 16–20); DRS at para 12.

195 D&CC at para 60; Defendant's AEIC at para 109.

196 DCS at paras 31–33.

197 D&CC at para 68.

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signing the OTP – which would have left the Defendant saddled with the EK Property – unless the Defendant signed the Handwritten Note.

(b) Secondly, the Defendant pleaded that aborting the sale "would negatively impact the Defendant as an agent".[197] As alluded to at [155(a)] above, the Defendant highlights that the Claimant had made a host of unreasonable demands on the Buyer which the latter ultimately acceded to, notwithstanding their extraordinary nature. This had prompted the Defendant to give the Buyer "his ***word****, as an agent*"[197] [emphasis added in italics and bold italics] that upon the Buyer procuring the cashier's order, the sale would go through.[198] Having given such an undertaking, the Defendant's professional reputation would have suffered if the sale were to be aborted.[199]

177 For the reasons below, I find that both factors above fall far short of constituting illegitimate pressure, for purposes of establishing economic duress.

(a) As regards the Claimant's alleged exploitation of the pressure which the Defendant faced from HDB, it is undisputed that when the Handwritten Note was signed, the Claimant was *unaware* that the Defendant even owned a HDB flat.[200] The Defendant now admits that the Claimant first came to know of the HDB flat only in 2023, when the Parties underwent mediation for the present dispute.[201] Without knowledge of the HDB flat at the point when the Handwritten Note was

198 Defendant's AEIC at para 101.

199 DRS at paras 18–20.

200 Claimant's AEIC at para 154; Claimant's Supp AEIC at para 12.

201 Transcripts for 6 November 2024 at pp 101 (line 26) – 102 (line 15); see also CCS at para 62 and Def to CC at para 54.

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signed, the Claimant could not have "exploited" this fact to pressure the Defendant. In any case, there is evidence of messages exchanged between the Defendant and his brothers in January 2022, *ie*, just three months shy of completion of the sale of the EK Property to the Buyer, in which the Defendant said that he was actively contemplating buying *another* private property (a unit in a condominium development called Belgravia Ace) in his own name.[202] This significantly undermines the credibility of his claims that he felt pressured at that time to divest himself of private properties such as the EK Property.

(b) As regards the purported threat to the Defendant's professional reputation from the sale being aborted, the Claimant's evidence[203] is similarly that he was *unaware* about the Defendant undertaking to the Buyer about the sale going through. Without the Claimant having known about any such undertaking, the suggestion that he exploited the same to pressure the Defendant is similarly a non-starter. In any case, there is a dearth of objective evidence, whether in the form of messages or other documentary records, supporting the Defendant's claim that he had given an undertaking to the Buyer that the sale would proceed. Indeed, it is telling that the Buyer's own AEIC fails to allude to this.

The circumstances above thus cast grave doubts on the Defendant's claims that he faced any sort of pressure (illegitimate or otherwise), emanating from the Claimant or from any other agent for that matter, to sign the Handwritten Note.

178 I thus conclude that there was no illegitimate pressure exerted on the

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202 Messages from the Defendant exhibited at AB p 1824; Transcripts for 6 November 2024 at pp 195 (lines 13–19) & 197 (lines 12–30).

203 Claimant's Supp AEIC at para 12.

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Defendant when he signed the Handwritten Note. This is sufficient in and of itself to dispose of his claim of economic duress. However, for completeness, I will turn to examine whether the Defendant satisfied the other element of economic duress, being the compulsion of his will.

Compulsion of the Defendant's will

179 Apart from demonstrating illegitimate pressure, a party claiming economic duress must also show that his will was compelled by that pressure to the point that his assent to the transaction was vitiated. As explained by Lord Scarman in *Pao On v Lau Yiu Long* [1980] AC 614 ("*Pao On*") (at 635):

> … Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J. in *Occidental Worldwide Investment Corporation v. Skibs A I S Avanti* [1976] 1 Lloyd's Rep. 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor "which could in law be regarded as a coercion of his will so as to vitiate his consent." …

Lord Scarman then went on to list certain factors that might indicate such compulsion:

> … In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are… relevant in determining whether he acted voluntarily or not. …

180 Taking guidance from the above passage in *Pao On*, both Prakash J in *Tam Tak Chuen* (at [62]) and Loh J in *E C Investment Holdings* (at [44]) distilled the following four factors for assessing if a contracting party's will had been coerced to the point that his consent could be regarded as effectively vitiated:

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(a) whether there was any protest from person allegedly coerced;

(b) whether he had alternatives open to him at the time of the alleged coercion;

(c) whether he was independently advised; and

(d) whether he took steps to avoid the contract that he was allegedly coerced into entering, after having entered into it.

I note that in the present case, factors (a), (c) and (d) are conceivably present: (i) the Defendant protested when he was asked to sign the Handwritten Note, to the point that he and the Claimant descended into an altercation (see [144] above); (ii) the Defendant did not appear to be legally advised when signing the Handwritten Note; and (iii) the Defendant tried to disavow the Handwritten Note just one day after signing it (see [145] above).

181 Still, the list of factors in the preceding paragraph is not a checklist where, the greater the number of ticks, the more likely a finding that the contracting party's will was coerced. It is evident from Lord Scarman's description of these factors as "matters … relevant in determining whether [the contracting party] acted voluntarily or not" (in *Pao On* at 635) that they serve merely as indicators which guide the court in the overarching inquiry of whether the party's will had indeed been subjugated. The weight commanded by any one factor must depend on the circumstances. Indeed, the facts before me offer an excellent illustration of why the factors (a) and (d) enumerated in the immediately preceding paragraph might be given less weight in the present case.

182 Firstly, as regards the protests by the Defendant when signing the Handwritten Note, the Defendant stresses how he had slammed the table,

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shouted at the Claimant and was on the verge of punching him when the Claimant suddenly whipped out the Handwritten Note.[204] The Defendant argues that this evinced a "patently distraught" state of emotions,[205] consistent with his will having been coerced. However, I am unconvinced that the Defendant's emotional outburst should be accorded much weight. Unlike in the case of *Tam Tak Chuen*, the Claimant did not procure the Defendant's signature while the latter was in a state of mental disquiet. Rather, the Claimant had *walked away* from the altercation, giving the Defendant ample space to cool off. It was *the Defendant* who, after having a change of heart and agreeing to sign the Handwritten Note, called the Claimant back (see [144] above).

183 Next, as regards the Defendant's purported attempt to disavow the Handwritten Note, it is important to reiterate that when the Defendant sent the message to the Claimant declaring the Handwritten Note to be invalid on account of duress, the Claimant had responded within that very same day saying that if this was the Defendant's position, the Claimant would *also* regard the OTP as having been vitiated. The Claimant even went so far as to offer to return the cashier's order: see at [145] above. It thus appears that the chance arose for the Defendant to make good on his purported disavowal of the Handwritten Note. All he needed to do was accede to the Claimant's proposal that Parties withdraw from the sale to the Buyer. The Defendant has not explained why, despite the way out having presented itself, he *still* proceeded with the sale.

184 The Defendant's subsequent conduct also gives cause for scepticism over his conviction about disavowing the Handwritten Note. On 30 September 2021, *ie*, about 2½ weeks after the Handwritten Note was signed, the Defendant

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204 Transcripts for 30 October 2024 at p 123 (lines 14–20).

205 DCS at para 36.

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sent a message to George, in which he told George the "good news" that the EK Property had been sold. Critically, the Defendant's message stated that upon completion of the sale, the Defendant was going to *ensure* that the Claimant would hand George the $300,000 contemplated by the Oral AIP. The Defendant's message to George is extracted below:[206]

> Hi Bro George, very much wanted to share this good news with you, *if u remember … , you did ask me on how the [Tam Sook] $300k? I then told you [the Claimant] will settle his $300k directly with you* and I'll make sure this will happen as he had promised too. As we hv sold our [Eng Kong] semi-d, and by next year end March till early April completion, you should be receiving his $300k directly from him to you. I'll try my best to assist you on that to make sure he does within my limitation despite this is not enforceable nor in Mom's last Will. However, *he has been repeatedly mentioning that he will honor and I'll make sure he does.*
>
> Added he claimed that by using the $300k to buy back our SG Yiptong unity is his goal and worth him to do so. For that I'll make sure he complies too.
>
> Please keep all these to yourself at this moment … *Cheers and I'll keep you posted when the day comes closer n hope u can offer me a treat if I successfully achieve his $300k for u.*
>
> [emphasis added]

Clearly, this message from the Defendant shows him *affirming*, rather than disavowing, the purport of the Handwritten Note (under which George and Jack would each be paid $300,000 after the sale).

185 The Defendant nevertheless contends that his message to George only sought to affirm the portion of the Handwritten Note under which *the Claimant* would pay $300,000 to George and Jack. The Defendant stresses that his message said nothing about *his* obligation under the Handwritten Note to pay $300,000 to George and Jack, which the Defendant continues to regard as null

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206 Message on 30 September 2021 at 11.36am, exhibited in AB p 1810.

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and void.[207] However, the Defendant's rationalisation is plainly unconvincing, especially when one considers the message which George had immediately sent in response to the Defendant's message extracted above. George's message is set out below:[208]

> Hi Bro Franklin, Thank You Very Much for first sharing your updated Good News on the Sharing out of yours & David's $300K each (*Total: $600K-Mediated By Tam Sook on June 2018) to me-$300K & Bro Jack-$300K from yours & David's Sales Proceed Of Eng Kong Semi-Detached House*.
>
> Bro Franklin, are you absolutely sure that Bro David will only pay his share of the full $300K directly to me?
>
> Knowing him? I believe for the sake of SG Yiptong Brothers Reunited, is only logical & sincere that *my share of $300K should be given by you Bro Franklin $150K & by Bro David $150K respectively* to rekindle our brotherly relationship. That's also go same to Bro Jack share.
>
> [emphasis added]

It is abundantly clear from the second paragraph of George's message above that his impression of the "good news" was that the *full* $600,000 was going to be paid, as contemplated by the Oral AIP. Yet, the Defendant said nothing to disabuse George of this impression.

186 The factor which I *do* find to be particularly material on the facts of this case is (b) at [180] above, *ie*, whether the person claiming to have been coerced had any alternatives open to him at the time of the alleged coercion. In the present case, signing the Handwritten Note was clearly *not* the only course available to the Defendant. He concedes that a further alternative would have been to take the Claimant to court to compel the sale.[209] He also admits that he

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207 DRS at para 29.

208 Message on 30 September 2021 at 9.57pm, exhibited in AB p 1810.

209 Transcripts for 6 November 2024 at p 175 (lines 19–31).

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could simply have elected to *not* proceed with the sale.[210] For the latter option, the Defendant could have continued to lease out the EK Property. This then prompts the obvious question: *Why did the Defendant not simply reject the Handwritten Note and walk away from the sale to the Buyer?*

187 The answer to this question is obvious. The Defendant capitulated in signing the Handwritten Note not because he had no other choice but because he was bent on making a killing from the sale of the EK Property. As he explained in his AEIC, the Defendant was anxious to close the deal as the price of $5m was "far above market value"[211] – more than 10% above the bank valuation of $4.5m.[212] In a WhatsApp message that the Defendant sent the Claimant on 2 September 2021, he told the Claimant that this was a "*windfall* offer" [emphasis added].[213] When the Claimant responded frostily that he wanted the payments to George and Jack to first be addressed (see message at [173] above), the Defendant's exasperation was palpable. On 5 September 2021, the Defendant sent a message to the Claimant complaining about the latter's reticence despite the Defendant having finally found a "sucker" willing to pay $5m for the EK Property:[214]

> Good, I continued trying hard till I found this agent's sucker willing to pay 5mi1 with 5% cashier orders drafted ready and waiting to exchange for our Option To Purchase, and you kept quiet for 3 days and only responded last minute yet refused to E-sign and return letting this Offer to Purchase lapsed

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210 Transcripts for 6 November 2024 at p 174 (lines 4–8).

211 Defendant's AEIC at para 101.

212 Message on 6 September 2021 at 3.28pm, exhibited in AB at p 1095; Transcripts for 6 November 2024 at p 161 (lines 3–4).

213 Message on 2 September 2021 at 12.04pm exhibited in AB at p 1084.

214 Message on 5 September 2021 at 10.44am, exhibited in AB at p 1088.

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When the Defendant was cross-examined about his use of the term "sucker", he explained: "I'm just trying to elaborate to [the Claimant] that such a good deal, should not miss it, just take it."[215]

188 The facts are thus entirely consistent with a state of affairs where the Defendant found the sale price so irresistible that he *agreed* (albeit grudgingly) to take a haircut of $300,000 – being his share of the payment under the Handwritten Note – to secure the Claimant's concurrence. The Defendant should not be allowed to now raise the doctrine of economic duress to wriggle out of keeping to his word.

189 In light of the considerations above, I reject the Defendant's contentions that his will had been coerced when he signed the Handwritten Note.

Conclusion on economic duress

190 Given my findings above, the issue of causation (*ie*, whether the Defendant would have signed the Handwritten Note but for the purported duress exerted by the Claimant) is moot.

191 Accordingly, the Defendant's claim of economic duress fails. The validity of the Handwritten Note remains unimpeached.

Conclusion on the Handwritten Note

192 The terms of the Handwritten Note should thus be honoured. It was validly concluded, having been supported by both an intention to create legal relations and consideration. Furthermore, the Defendant's claims about the Handwritten Note having been vitiated by economic duress are without merit.

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215 Transcripts for 6 November 2024 at p 172 (lines 3–17).

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193 The Defendant is thus obliged to set aside $600,000 from the sale proceeds of the EK Property, from which $300,000 is to be paid to George and $300,000 is to be paid to Jack. I consequently ***grant*** the prayers sought by the Claimant in his Statement of Claim, set out at [148] above. Consequentially, the Defendant's prayer for half of the $600,000 in the SCB Joint Account to be released to him (see [149] above) is ***dismissed*** – the entire sum of $600,000 should go to George and Jack.

194 Before leaving the issue of the Handwritten Note, I should touch on a further argument that the Defendant has raised extremely late in the day – in his further reply closing submissions[216] – being that the Claimant lacks the *locus standi* to enforce the Handwritten Note because it confers a benefit not on him but on George and Jack. With respect, this submission is misguided. It is trite that a party can enter into a contract to confer a benefit on persons other than himself. It is open to such a party to then *enforce* that contract, by way of specific performance, which is effectively what the Claimant seeks to do here.

Parties' claims concerning the Far East Property

195 As stated at [3(b)] above, the Far East Property was bequeathed by the Testatrix to the Parties and Dione in three equal shares. In his AEIC, the Defendant explained that the Far East Property, which had been leased to commercial tenants both before and after the Testatrix' death, was rented out for the following periods:[217]

(a) March 2011 – March 2013 (*ie*, for two years);

(b) August 2013 – August 2018 (*ie*, for five years); and

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216 DFRS at para 9.

217 Defendant's AEIC at para 23.

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(c) 31 December 2022 onwards.

196 After the Testatrix died on 21 December 2012, the Defendant began collecting rent from the Far East Property.[218] He admits that the rent which he collected from the Far East Property was paid into his personal bank account.[219] Nevertheless, there was a period when the rent was paid into a bank account jointly held by the Claimant, the Defendant and Dione ("Far East Bank Account").[220] According to the Claimant, the rent for the months September 2017 to January 2018 were paid into the Far East Bank Account. [221]

Parties' submissions

197 According to the Claimant, the Parties and Dione had agreed to deposit the Far East Property's rental proceeds into the Far East Bank Account.[222] The Claimant thus alleges that the Defendant failed to properly account for the rental proceeds for those periods when they were *not* paid into the Far East bank Account but into the Defendant's personal bank account instead, namely: (a) January 2013 to August 2017;[223] and (b) from February 2018 onwards.[224] As for the rental proceeds for September 2017 to January 2018 that *were* paid into the Far East Bank Account, the Claimant says that these were used to pay for the Far East Property's monthly maintenance fees and property tax.[225]

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218 Claimant's AEIC at para 158; Defendant's AEIC at para 22.

219 Defendant's AEIC at para 24.

220 Claimant's AEIC at para 161.

221 SOC at para 21.

222 Claimant's AEIC at para 162.

223 Claimant's AEIC at para 166.

224 Claimant's AEIC at para 166.

225 Claimant's AEIC at para 164.

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198 The Claimant thus seeks an account from the Defendant of the rental proceeds which the latter collected from the Far East Property, from 1 January 2013 to date, as well as payment of the Claimant's one-third share of those proceeds. In seeking an account, the Claimant has sought to cast doubts on the veracity of the dates listed in the Defendant's AEIC, as regards the periods when the Far East Property was allegedly rented out (see [195] above). The Claimant affirms that he had made periodic visits to the Far East Property, only to find that it was occupied by a commercial tenant until at least 2020.[226] This appears to be corroborated by the Defendant own testimony in cross-examination, where he admitted that the Far East Property *was* rented out from September 2018 to December 2022 but he did not inform the other beneficial owners of this.[227]

199 The Defendant admits that he has been managing the Far East Property and collecting rent from it, but only from the second tenancy at [195(b)] above, *ie*, from August 2013 onwards.[228] The Defendant also claims that any rent collected by him should be set off against the maintenance fees and property tax in respect of the Far East Property,[229] for which he has been bearing the brunt.[230] Specifically, the Defendant claims that he has been paying for the Far East Property's maintenance fees and property tax from as far back as December 2012[231] (when the Testatrix died). The Defendant also claims that a commission of $5,250 was due to him, in his capacity as the property agent who procured

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226 Claimant's AEIC at para 163.

227 Transcripts for 5 November 2024 at pp 114 (line 19) – 115 (line 9).

228 Defendant's AEIC at para 24; Transcripts for 5 November 2024 at pp 94 (line 19) – 95 (line 8).

229 D&CC at para 6.

230 Defendant's AEIC at para 22

231 D&CC at para 46; Transcripts for 5 November 2024 at p 99 (lines 17–29); DRS at para 87.

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the first and second tenancies at [195(a)–(b)] above.[232] The Defendant calculates that although he had collected rent from the Far East Property totalling $126,000, the balance after deductions for property tax, maintenance fees and his commission would be in the region of only $37,673.[233]

200 Given the Defendant's position that any rental proceeds from the Far East Property collected by him should be set off against the monthly maintenance fees and property tax paid by him, he now seeks an account by the Claimant of the Far East Property's maintenance fees and property tax.[234] In making this claim, the Defendant alleges the following:[235]

(a) The maintenance invoices were sent to the Claimant but the latter failed to furnish the Defendant with the invoices in respect of 33 months.

(b) The property tax statements were sent to Dione but she has not furnished the Defendant with the same.

My decision on the claims concerning the Far East Property

201 The starting point is that the Defendant admits to the following:

(a) He has been collecting rent from the Far East Property and paying the same into his personal bank account, save for those months when they were paid into the Far East Bank Account (see [196] above).

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232 D&CC at para 52; Defendant's AEIC at para 22.

233 Defendant's AEIC at para 24.

234 D&CC at paras 116(d) & 118(b); DCS at para 170.

235 DCS at para 170.

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(b) He has *not* given an account of the rental proceeds to the other beneficial owners of the property, including the Claimant.[236]

Consequently, I agree that the Defendant should, by virtue of s 73A CLPA (see [59] above), be made to furnish an account of the Claimant's share of the rent collected by him.

202 The Defendant objects to providing an account as he claims that he does not possess the full set of maintenance fee invoices and property tax statements in respect of the Far East Property – the former having been sent to the Claimant and the latter having been sent to Dione (see [200] above). Without these records, the Defendant says that he is unable to calculate the appropriate amounts due to the Claimant and Dione, under the account to be furnished.[237] I reject this submission, for the following reasons:

(a) For the Defendant to provide an account of the rental proceeds, he only needs to know what rent he has received and what property tax and maintenance *he himself* has paid – all of which would be within his knowledge. For payments of maintenance and property tax not made by him, *eg*, those made by the Claimant or Dione, the Defendant is under no obligation to provide an account for them.[238]

(b) Furthermore, the Defendant claims that he has been paying for the Far East Property's maintenance fees and property tax since December 2012: see [199] above. If so, he must know how much has been paid in maintenance fees and property tax (since he was the one

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236 Transcripts for 5 November 2024 at pp 108 (line 27) – 109 (line 3).

237 DCS at para 170.

238 CCS at para 187.

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footing the bill). It is thus difficult to discern the reason for the Defendant's insistence on having the maintenance fee invoices and property tax statements, before he furnishes an account.[239]

203 I thus ***grant*** the remedies sought by the Claimant in respect of the Far East Property, namely:[240]

(a) The Defendant is to furnish an account of all rent and other monies which he has collected from the Far East Property, from 1 January 2013 to the date of this order (I note the Defendant has *not* raised the defence of time bar, in his pleadings or closing submissions, against the claim for an account in respect of the Far East Property).

(b) Upon taking of the account, the Defendant is to then pay the Claimant the latter's one-third share of the rent collected by the Defendant, after permissible deductions (including any maintenance fees and property tax paid by the Defendant).

204 I now turn to the Defendant's claim for the Claimant to furnish an account of the maintenance fees and property tax in respect of the Far East Property. I ***dismiss*** this claim for the following reasons. For a start, it is unclear why the Defendant is asking the *Claimant* to furnish an account of the property tax statements when these were sent to *Dione* (see [200(b)] above). More importantly, the Defendant claims that he has been paying the maintenance fees and property tax for the Far East Property from as far back as December 2012 (see [199] above). If so, the details of these payments would, by the Defendant's own case, be within his knowledge. I thus see little reason for him to ask the

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239 CCS at para 186.

240 SOC at p 10 paras (2)(a)–(b); Claimant's AEIC at para 175.

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Claimant to provide an account of these payments.

Parties' claims for an account to be furnished in respect of various items of the Estate

205 Both the Parties are executors *and* beneficiaries of the Estate. As executors, they each have a responsibility to maintain and furnish proper accounts of the Estate's assets. As beneficiaries, they each have the right to seek an account from the other, in the latter's capacity as executor. Pursuant to these rights and responsibilities, each of the Parties has made the following claims against the other for an account.

(a) The Defendant seeks an account from the Claimant of the following (see [11] above):

(i) the EK Shortfall;

(ii) the Gold Investment; and

(iii) the blue attaché case and its contents.

(b) The Parties each also seek an account from the other in respect of the balances in various bank accounts in which the Testatrix was a joint account holder (see [12] above).

206 Before proceeding to canvass these claims, it is apposite at this juncture to set out the legal principles governing the duty of executors (and trustees generally) to maintain and furnish accounts. In *Baker, Michael A v BCS Business Consulting Services Pte Ltd* [2023] 1 SLR 35 ("*Baker*"), the Court of Appeal explained why that duty has been placed on trustees (at [25]):

> … the accounting procedure serves the informative purpose of allowing the beneficiaries to know the status of the trust property and what transformations it has undergone. The

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> procedure may identify specific assets in respect of which the beneficiaries may be entitled to proprietary relief. Further, it has a substantive purpose in that any personal liability from maladministration of the trust may be ascertained. In this regard, the onus of proof to explain the trustee's disbursements is on the trustee since he has the day-to-day management and control over the funds. He must therefore show that his management and disbursements of the funds was consistent with the trust …

207 As regards the scope of the duty to maintain and furnish accounts, the Court of Appeal in *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR 339 ("*Foo Jee Seng (CA)*") explained (at [86]): "It is trite law that trustees are under a duty to keep account of the trusts and to allow the beneficiaries to inspect them as requested". The Court of Appeal cited Plumer MR's holding from *Pearse v Green* (1819) 1 Jac & W 135; 37 ER 327 that "[i]t is the first duty of an accounting party, whether an agent, trustee, a receiver or executor … to be constantly ready with his accounts." The Court of Appeal also explained that beneficiaries are entitled to seek an account without having to allege any breach of fiduciary duties by the trustee (at [87]):

> Beneficiaries are entitled, within proper bounds, to be furnished with an account of the funds in the trust. There is no necessity to allege any breach of fiduciary duties on the part of the trustees. …

It bears mentioning that the passage from the Court of Appeal's judgment extracted above alludes to the entitlement of the right to an account being "within proper bounds". In this respect, George Wei J explained in *Foo Jee Boo v Foo Jhee Tuang* [2016] SGHC 260 (at [81]) that an account may not be ordered "where it would be oppressive to require the executor to so account, or for some other good reason, the court in its discretion thinks it wrong to make an order".

208 Claims for an account by the trustee can either be on a common basis or

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a wilful default basis. As explained by Vinodh Coomaraswamy J in *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 ("*Lim Ah Leh (HC)*") at [191]:

> … The difference between the two is the basis upon which the account is taken. An order for a common account requires the trustee to account for the property she has received and how it has been applied. An order for an account on the footing of wilful default requires the trustee to account not only for what she has received and how it has been applied, but also for what she might have received had it not been for her "wilful default". Because the account on the footing of wilful default is stricter, additional requirements must be met before the court will order a trustee to account on that basis.

To obtain an account on a wilful default basis, a beneficiary must establish that the trustee committed at least one instance of wilful default which caused loss to the trust property*: Lim Ah Leh (HC)* at [192(c)]. In contrast, the right to an account on a common basis is "axiomatic": *Lim Ah Leh (HC)* at [192(a)].

209 Although not explicitly stated in their pleadings, both sides are seeking accounts on a common basis – they have not pleaded any instance of wilful default on the part of the other side.

Defendant's Claim for an account to be furnished in respect of the EK Shortfall, the Gold Investment and the blue attaché case

210 I begin with the Defendant's claims for the Claimant to furnish accounts in respect of the items at [11] above. To recapitulate, these items are:

(a) the EK Shortfall;

(b) the Gold Investment; and

(c) the blue attaché case and its contents.

211 Each of these three items are dealt with sequentially below.

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The EK Shortfall

212 As explained at [5] above, the Will provided that the Testatrix's monies were to be applied towards the progress payments for the EK Property until completion of its construction, with the balance of these monies to be divided between the beneficiaries thereafter. The EK Shortfall, being the shortfall should these monies be insufficient to meet the progress payments, was to be met from the net rental proceeds generated by the Far East Property and the Springdale Condo.

213 As explained at [4] above, the progress payments towards the EK Property commenced even before the Testatrix's passed away, with the Estate continuing to make the progress payments even after her death on 21 December 2012. On 25 June 2014 (about 1½ years after the Testatrix's demise), the Claimant reported to the beneficiaries that the EK Shortfall was $265,600. The Defendant paid $132,800 to the Claimant to cover half of this amount, with the Claimant bearing the other half.[241]

214 A little over five months after that, on 4 December 2014, the final progress payment towards the EK Property was made.[242] Thereafter, the Defendant pressed the Claimant for an account of how he arrived at the figure of $265,600. Consequently, at some point between 2015 and 2017, the Claimant prepared a breakdown showing how he arrived at the $265,600 figure.[243] The Claimant's efforts culminated in a single-page summary, exhibited at p 270 of his AEIC, which he handed to the Defendant on 19 July 2018.[244]

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241 Defendant's AEIC at para 79.

242 Claimant's AEIC at para 46.

243 Claimant's AEIC at para 69.

244 Defendant's AEIC at para 80.

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(1) Parties' submissions

215 The Defendant claims that when he was informed on 25 June 2014 that the EK Shortfall was $265,600, he was shocked as he was under the impression that the arrangements in the Will (set out at [5] above) would have sufficed to completely cover the EK Property's progress payments (and thereby extinguish the EK Shortfall).[245] The Defendant claims that this was why he had subsequently asked the Claimant for an account of the EK Shortfall, despite agreeing to first pay his half share of the reported figure of $132,800 in the interim.[246] The Defendant complains that the single-page summary which the Claimant eventually rendered on 19 July 2018 was too bare to constitute a proper account. The Defendant thus seeks a proper account of the EK Shortfall[247] and – if that exercise should demonstrate that the EK Shortfall no longer existed – a refund of the $132,800 which he paid.[248]

216 The Claimant submits that the Defendant is no longer entitled to an account of the EK Shortfall because such an account had already been rendered and *settled* on 3 December 2014,[249] being the day before the final progress payment was made on 4 December 2014 (see [214] above). In support of his submission, the Claimant refers to the following WhatsApp messages exchanged between the Parties on 3 December 2014:[250]

From	To	Time	Message Contents

245 D&CC at para 110; Transcripts for 6 November 2024 at p 16 (lines 7–11).

246 Defendant's AEIC at para 79.

247 D&CC at para 118(a).

248 D&CC at para 118(c)(vii).

249 CRS at para 44.

250 AB p 919.

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From	To	Time	Message Contents
Defendant	Claimant	10.25am	***Pls Let me hv the short fall amount***, so that I can transfer from our SCB joint Ac to my cheque issued Ac tmr to standby for cheque clearance. Thereafter pls keep a set of account to avoid doubt n also justify to the rest if they request again. As an administrator in law, this is our job after all.
Claimant	Defendant	10.25am	***Soon***
Defendant	Claimant	10.27am	***just on e short fall first***. Thks.
		11.08am	***This Ac is simple,*** *I hv given u e total balance in SCB 250663 (included all bonus interest), add up the total balance with u (no money to be set aside needed) less off Carmine 15% 567k, n balance divided by 2.* ***This will be our short fall***. As for me, I will use my half share of short fall to less off my cheque issued 189k n transfer e different from Joint SCB Ac to get my checking ac to get ready for clarence [*sic*].
Claimant	Defendant	11.19am	Cimb balance 44790 SCB 250663 plus 530 Total balance 295983 Cheque issued 567000 Shortfall ***271020***/2 135510 each
		11.22am	[image file attached]
		11.34am	You over look 2 withdrawal of 500 on 19 Sep and 30.89 on 4 Oct which are not transfer back into the account. I have added 530 into SCB balance for the calculation above. My shortfall is 135510. Yours 530 more

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From	To	Time	Message Contents
Defendant	Claimant	2.03pm	Yes all accounts are transparence [*sic*], indeed I withdrawn at Bukit timah branch 500 once went I was no my way up to JB, n also transfer e total sums to another account to earn higher interest (bcoz this Ac didn't pay out interest due to incremental balance policy), so then I kept this Ac to zero in prepared for e fund to be transferred in as fresh fund, thereafter when I transferred back to this Ac together with full interest earned n I forgot to add that back. This is obvious an overlooking, ***Thks for detail checking n highlighted to avoid misunderstand***. Hence a set of proper accounting will be good for everyone to go thru n avoid doubtfulness. All the more u are a very detail person n good in accounting all along.

[emphasis added in bold italics]

217 The messages above evince the following:

(a) The Defendant had asked for an account of the EK Shortfall on 3 December 2014 and, in doing so, instructed the Claimant on the formula by which the EK Shortfall was to be calculated (message at 11.08am).

(b) The Claimant complied with the Defendant's instructions, arriving at a figure of $271,020 (message at 11.19am). In doing so, the Claimant had on his own volition made certain corrections to the Defendant's figures (message at 11.34am), which the Defendant expressed gratitude for (message at 2.03pm).

(c) The Defendant accepted the Claimant's account, thanking the latter for his "detail [*sic*] checking" (message at 2.03pm),

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> notwithstanding that the shortfall figure of $271,020 was slightly higher than the figure of $265,600 rendered by the Claimant a few months earlier in June 2014 (referred to at [213] above).

218 The Claimant explains that the figure of $271,020 in the WhatsApp message above was rendered without any explanation or documentation as the Claimant had no reason to provide the same. After all, it was the Defendant who provided the formula for calculating the EK Shortfall and the Parties still trusted each other at that time.[251] The Claimant maintains that it was only after their relationship soured that the Defendant started pressing the Claimant for *another* account,[252] presumably culminating in the Claimant having to prepare the single-page summary furnished on 19 July 2018 (referred to at [214] above).

219 Critically, the Claimant also pleaded that the Defendant's claim for an account of the EK Shortfall is time-barred.[253]

(2) My decision on the EK Shortfall

220 The starting position is that the Claimant *was* liable to provide the Defendant with an account of the EK Shortfall. After all, the Claimant had a hand (in his capacity as executor) in managing the Estate's assets that were applied towards covering the EK Property's progress payments. The crux is whether, as the Claimant now submits, the account had already been settled.

221 Disregarding the factual backdrop, one could well appreciate why a beneficiary might say that the Claimant has yet to furnish a sufficient account:

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251 CRS at para 47.

252 CRS at para 48.

253 Def to CC at para 14(14); Claimant's AEIC at para 70; CCS at para 110.

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(a) The Claimant admits that he had only given a simple estimation of the EK Shortfall amount.[254] He explains that his account was a relatively simple one as he had limited accounting knowledge.[255] Nevertheless, a trustee's lack of accounting knowledge is no excuse for not preparing a proper account, given that "there is nothing particularly sophisticated about the essential task of a trustee, whether professional or lay, in documenting expenses": *Baker* at [30]. After all, the court has the discretion to "make some allowances for a lay trustee's accounting": *Baker* at [31]. In light of these principles, one may well contend that both the breakdown provided by the Claimant in his WhatsApp message on 3 December 2014 (see message at 11.19am, at [216] above) and the single-page breakdown subsequently furnished by him on 19 July 2018 (at [213] above) left much to be desired, detail-wise.

(b) Furthermore, as the Court of Appeal in *Baker* explained (at [30]), a trustee providing an account needs to break down and explain the expenses as well as "substantiate the same with sufficient supporting evidence, oral or documentary *depending on the nature and quantum of such expenses*" [emphasis added]. Intuitively, the larger the sums in the account, the greater the required level of documentary substantiation. Here, the size of the EK Shortfall was not insignificant, standing at $265,600. Yet, the Claimant did not furnish supporting documents.[256]

222 Nonetheless, in so far as the account provided by the Claimant in his WhatsApp message on 3 December 2014 is concerned, while the level of detail

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254 Claimant's AEIC at para 61.

255 Transcripts for 29 October 2024 at p 97 (lines 2–12).

256 Transcripts for 29 October 2024 at pp 112 (lines 1–4) & 113 (line 28) – 114 (line 1).

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and documentation was undoubtedly sparse, there is some force to the argument that this was still a sufficient account, *from the perspective of the Defendant*:

> (a) As a matter of principle, the degree of explanatory detail and documentary substantiation required of an account must be informed by the context. In the present case, the required level of detail was arguably attenuated by the fact that the Defendant was intimately familiar with how the EK Shortfall was to be calculated. After all, it was *the Defendant* who had instructed the Claimant on the steps for calculating the EK Shortfall (see message at 11.08am, at [216] above).
>
> (b) Furthermore, while no supporting documentation was furnished by the Claimant when rendering the account in the WhatsApp message on 3 December 2014, the sole consumer for whom the account was prepared was a co-executor himself (*ie*, the Defendant). The documents at the disposal of a person in such a capacity must inform the level of documentation that needs to accompany the account furnished to him.

223 An analogy can perhaps be drawn with *Lim Ah Leh (HC)*, where Coomaraswamy J noted (at [248]) that "the plaintiff was aware of the key features of what happened to his money", such that "ordering the defendant to render an account would serve no useful purpose". In drawing this conclusion, Coomaraswamy J noted (at [249]–[250]) that the plaintiff played an active role in instructing the defendant on the trades to be made using the former's monies, with the plaintiff even advising the defendant on the valuation of a property bought using these monies. Admittedly, the observations in *Lim Ah Leh (HC)* centred not so much on whether an account furnished was sufficiently detailed as to constitute a proper account (being the point I am discussing here) but on whether an account was even necessary. Nonetheless, if the level of knowledge

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possessed by the intended consumer of the account is relevant to the latter context, I see no reason why it cannot be relevant to the former. As such, I am somewhat sympathetic to the Claimant's position that, given the Defendant's deep acquaintance with the line items underlying the EK Shortfall (the formula for which had been dictated by Defendant himself), the account rendered by the Claimant in the WhatsApp on 3 December 2014 *was* sufficient.

224 More importantly, *even* if the Defendant had been entitled to reject the account provided in the Claimant's WhatsApp message on 3 December 2014 on account of it being too sparse and demand for one with greater detail, that is *not* what happened. Rather, the WhatsApp messages at [216] above show that the Defendant *accepted* the account provided on 3 December 2014. This is significant when one considers the factual background.

(a) To recapitulate, the Claimant had on 25 June 2014 informed the Defendant that the EK Shortfall was $265,600 (see [213] above). The Defendant claims that he was "shocked" by this figure but nevertheless paid him $132,800 first, being the Defendants half share of the $265,600 (see [215] above).

(b) About five months *after* this, the Claimant sent the Defendant the WhatsApp message on 3 December 2014 providing an account of the EK Shortfall. The figure in this account, which stood at $271,020 (see message at 11.19am, at [216] above), was quite close to the figure of $265,600 reported by the Claimant on 25 June 2014. Critically, the WhatsApp messages exchanged on 3 December 2014 fail to disclose any hint of the Defendant still being "shocked" by the account rendered (even if he was indeed shocked five months earlier on 25 June 2014). Clearly, the Defendant was no longer shocked but was *satisfied* with the

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account provided by the WhatsApp message on 3 December 2014, as seen in his response thanking the Claimant for his "detail [*sic*] checking".

(c) For a significant duration after that, the Defendant did not ask for any further explanation or documentation. As the Claimant points out, it was only after the relationship between the Parties deteriorated that the Defendant began pressing the Claimant for *another* account.[257] Presumably, this led to the Claimant having to embark on preparing a further account, sometime between 2015 and 2017, culminating in the single-page summary rendered on 19 July 2018 (see [214] above).

Given the chronology above, I am inclined towards the view that the account of the EK Shortfall should on balance be regarded as having been *settled* by the WhatsApp message of 3 December 2014. The Defendant thus had no basis to seek *another* account from the Claimant: see *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [38]–[39].

225 In the event that I am wrong in my analysis above and the Claimant is regarded as not having provided a proper account of the EK Shortfall to date, I agree with the Claimant that the claim for an account of the EK Shortfall is time-barred. The Claimant relies – rightfully in my view – on s 6(2) of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act"),[258] which states that "[a]n action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action".

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257 CRS at para 48.

258 CCS at para 128.

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226 In examining the Claimant's defence of time bar, it is necessary to first look at the nature of the Defendant's claim for an account of the EK Shortfall. This claim seeks "[a]n order that an account be taken, and the Claimant do provide and furnish an account (with supporting documents) of … calculation of the EK Shortfall Amount".[259] The claim is thus couched somewhat differently from the relatively straightforward scenario where the beneficiary simply seeks an account of the trust *assets*. Nevertheless, the Defendant's claim for an account of the EK Shortfall is still, at its essence, a claim for an account of the Estate assets – specifically those assets of the Estate *applied towards the progress payments for the EK Property*. It was only after the Estate's assets were used to discharge the progress payments – to the maximum extent possible under the means dictated by the Will at [5] above – that the *final* figure for the EK Shortfall crystallised. As such, in asking for an account of the EK Shortfall, the Defendant is for all intents and purposes demanding an account of the Estate assets that were applied towards the progress payments. Such an account would in turn allow him to tell if any assets of the Estate had *not* been duly applied towards the progress payments as directed by the Will.

227 Given the premise defined in the preceding paragraph, when does the limitation period governing the claim for an account to be furnished in respect of the EK Shortfall begin to run? In *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67 ("*Ang Toon Teck*"), Prakash J held that a trustee's liability to furnish an account of trust assets arises from the point he receives the trust assets (see also *Lim Ah Leh (HC)* at [175]–[176]). The complication which presents itself in the present case relates to *when* the Estate assets applied towards the EK Property's progress payments was received by the Claimant (in his capacity as

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259 D&CC at para 118(a).

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executor). As explained at [5] above, the Will dictated that the Estate's assets to be applied towards discharging the progress payments included not only the Testatrix's monies vesting in the Estate as at the point of her death (in December 2012) but also rental proceeds from the Far East Property and Springdale Condo. These proceeds would have *continued* to vest in the Estate – and thus be received by the Claimant in his capacity as executor – long *after* the Testatrix's death. In fact, the rental proceeds used to discharge the progress payments could theoretically have been received by the Claimant (as executor) as late as around the point when the final progress payment was made on 4 December 2014 (see [214] above), when the amount of the EK Shortfall finally crystallised. Nevertheless, the evidence does not allow one to confirm if that had indeed been the case. Nevertheless, taking the Defendant's case *at its highest* and pegging the start of the six-year limitation period at the *latest* possible point, *ie*, 4 December 2014 (the Claimant appears to have given the Defendant the benefit of the doubt by adopting this date as the starting point as well[260]), the Defendant's claim for an account would *still* be time-barred. The Defendant's claim for an account was filed only in August 2023 – well beyond the six-year mark.

228 Nevertheless, the Defendant relies on the case of *Topham v Braddick* [1809] 1 Taunt 571 ("*Topham*") for the proposition that "a cause of action for an account can arise at a later date than the date of receipt of the assets, if it is expressly or impliedly agreed to that effect".[261] *Topham* involved a case where a third party and the defendant undertook to render to the plaintiffs an account of the sale of certain goods, as and when the plaintiffs requested (at 572). It was held that the cause of action for an account accrued only at the point when the

260 CCS at para 128.

261 DCS at paras 75–76.

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plaintiffs requested for an account. Reverting to the present case, the Defendant argues that he too had a similar agreement with the Claimant, under which the latter would provide an account upon the Defendant demanding for one. As evidence of this agreement, the Defendant relies on the WhatsApp messages exchanged between the Parties on 3 December 2014 at 10.25am, extracted at [216] above. For ease of reference, I reproduce the relevant messages here:

Defendant:	Pls Let me hv the short fall amount … Thereafter pls keep a set of account …
Claimant:	Soon

According to the Defendant, the Claimant's response "Soon" constituted an *agreement* by the Claimant to furnish an account at a later date, on demand by the Defendant. The Defendant claims that such a demand was in fact made by him in 2018. Specifically, the Defendant claims that after he received the single-page summary on 19 July 2018 (alluded to at [214] above) – which he found to be overly sparse – he made a demand on 3 August 2018 that the Claimant provide him with a *proper* account of the EK Shortfall. The Defendant accordingly contends that his cause of action for an account of the EK Shortfall accrued – and the six-year limitation period consequently started to run – only as of the date of his demand on 3 August 2018.[262]

229 I reject the Defendant's contention that there was an agreement between him and the Claimant for the latter to furnish an account at a later date. Extrapolating the Claimant's WhatsApp message "Soon" to infer such an agreement would be to read too much into that single word. The Claimant was simply conveying that he would give the account "Soon",[263] which he did – this

[262] DCS at paras 78–85.

[263] Transcripts for 29 October 2024 at p 95 (lines 6–26).

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being the account in his WhatsApp message sent less than an hour after that, at 11.19am (extracted at [216] above).

230 I thus conclude that the limitation period for the claim seeking an account of the EK Shortfall would have started running no later than on 4 December 2014, when the final progress payment for the EK Property was paid from the Estate's assets and the final quantum of the EK Shortfall crystallised. The fact that a *subsequent* demand for an account may have been made after that did not reset the six-year countdown timer. As observed by the Prakash J in *Ang Toon Teck* (at [66]):

> The plaintiff argued that even if s 6(2) [of the Limitation Act] applied to this case, his claims were not time barred because the action was commenced on 14 June 1995 which was only 14 months after the beneficiaries had demanded that the defendant render them accounts. He obviously took the position that time starts to count from the date of the demand for accounts. This does not, however, appear to be the legal position.

I thus hold that the Defendant's claim for an account of the EK Shortfall is time-barred and I ***dismiss*** it.

231 Before leaving this issue, I should point out that the Defendant has also sought an account from the Claimant as regards the *financial contributions by Dione and Joanne* (if any) towards the EK Shortfall.[264] I ***dismiss*** this claim as the Defendant's affidavits and submissions are bereft of any reference as to when and how Dione and Joanne might have contributed to the EK Shortfall.

The Gold Investment and the blue attaché case

232 I now turn to the two other items for which the Defendant seeks an

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264 D&CC at paras 116(j) and 118(b).

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account from the Claimant, being the Gold Investment and the blue attaché case.

(1) The Gold Investment

233 As stated at [11(ii)] above, the Defendant seeks an account of the Gold Investment, being the Testatrix's investment in a gold investment company called Genneva Pte Ltd. The investment was made by the Testatrix sometime between 2010 and 2012, at the Claimant's suggestion.[265]

234 The Parties' submissions in respect of the Gold Investment are set out below:

(a) The Defendant contends that the Claimant failed to account for the returns from the Gold Investment despite having been the person managing it. In particular, the Defendant claims that these returns could have been applied towards reducing the EK Shortfall.[266] The Defendant thus seeks an order that the Claimant account for the Gold Investment.[267]

(b) The Claimant explains that when the Testatrix was alive, she had instructed him to liquidate the Gold Investment so that she could use the proceeds to purchase the EK Property.[268] The Claimant affirms that he had executed these instructions and accounted for the proceeds to the Testatrix even *before* she died. He thus maintains that he is no longer liable to account to the Estate's beneficiaries for the Gold Investment.[269] He also explains that he is unable to furnish any documents relating to

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265 Claimant's AEIC at para 30; D&CC at para 107

266 D&CC at para 109; Defendant's AEIC at para 87.

267 D&CC at paras 116(d) & 118(b).

268 Claimant's AEIC at para 42.

269 Def to CC at paras 14(10) & 37; Claimant's AEIC at para 43.

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the Gold Investment as he had furnished the same to the Testatrix, after liquidating it at her behest.[270] Further, as with the Defendant's claim for an account of the EK Shortfall, the Claimant contends that the claim for an account of the Gold Investment is time-barred.[271]

235 Having considered the evidence, I ***dismiss*** the Defendant's claim for an account of the Gold Investment. The Claimant's evidence – that he liquidated the Gold Investment and applied the proceeds to purposes dictated by the Testatrix while she was alive – stands unchallenged. That Defendant's counsel did not challenge the Claimant on this point is apparent from the following extract of the transcripts of the Claimant's cross-examination:[272]

> Q … Mr David, you would agree with me that he wanted more information, right? Because you only told him the profit. You did not give him any other details about the gold investment.
>
> A Yes.
>
> Q Correct?
>
> A Correct.
>
> Q Wouldn't you agree that as a co-executor and a beneficiary, he has a right to know these details?
>
> A This was done when Mother was alive. And the position was clear after confirming buying Eng Kong. And all the information, I already accounted to my mother.
>
> Q *Yes. That may have been true.*
>
> A And---and he didn't ask for anything about the whole transaction only until our relationship turned sour.
>
> [emphasis added]

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270 Transcripts for 29 October 2024 at p 136 (lines 21–32).

271 Def to CC at para 37; Claimant's AEIC at para 43; CCS at para 265.

272 Transcripts for 29 October 2024 at p 127 (lines 3–16).

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Accepting the Claimant's evidence as true, the Gold Investment would not form part of the Estate. His obligation as an executor to account for the Estate's assets would consequently not extend to the Gold Investment. The issue of time bar thus does not even arise.

236 I am mindful that the Claimant is unable to produce any records showing that the Gold Investment had indeed been liquidated while the Testatrix was alive.[273] However, given that the Defendant's claim for an account of the Gold Investment was brought more than 10 years after the Testatrix's death, some gaps in the documentary evidence is not unexpected.

237 I thus dismiss the Defendant's claim for an account of the Gold Investment.

(2) The blue attaché case

238 As stated at [11(iii)] above, the Defendant seeks an account of the Testatrix's blue attaché case.

239 The Defendant contends that the blue attaché case contained the Testatrix's jewellery and valuables and was stored in her wardrobe at the Springdale Condo, where she had resided with Jack until she died.[274] The Claimant similarly accepts that the blue attaché case contained the Testatrix's jewellery and bank account statements and was kept in the Springdale Condo.[275] The Parties' submissions in respect of the blue attaché case are set out below:

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273 Claimant's AEIC at para 43.

274 D&CC at para 89; Defendant's AEIC at paras 121–122.

275 Claimant's AEIC at para 78.

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(a) The Defendant claims that both the Claimant and George went to the Springdale Condo on the night of the Testatrix's death to collect her clothes. Thereafter, the blue attaché case, which had been in her wardrobe all along, suddenly went missing. The Defendant thus contends that the blue attaché would have last been in the possession of either the Claimant, George or Jack.[276] The Defendant thus seeks an order that the Claimant provides an account of the blue attaché case and its contents.[277]

(b) The Claimant's position is that he has not seen the blue attaché case since the Testatrix's passing and that he neither possesses it nor knows of its whereabouts.[278] The Claimant also points out that the Defendant, despite being an executor himself, had never asked about the blue attaché case prior to the commencement of these proceedings.[279]

240 In my view, the Defendant's claim for the Claimant to furnish an account of the blue attaché case and its contents should be ***granted***.

241 As an executor, the Claimant is obliged to provide an account of the Estate's assets. I do not think he is entitled to wash his hands of the responsibility to provide such an account – particularly where the asset in issue is one of such value as the blue attaché case (the Claimant himself acknowledges that it contained jewellery) – simply with a blithe statement that he does not know where the asset is. The Claimant should at least provide an account explaining the steps which he took to trace the whereabouts of the blue attaché

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276 D&CC at para 89; Defendant's AEIC at paras 121–122.

277 D&CC at paras 116(g) & 118(b).

278 Def to CC at para 16; Claimant's AEIC at para 78.

279 Claimant's AEIC at para 79.

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case, including any inquiries which he might have directed to George and Jack. If the blue attaché case is indeed lost, the Claimant's account should set out what remedial actions he had taken (*eg*, whether he had lodged a police report) and the outcome of those actions.

242 The Claimant highlights that the Defendant made no meaningful effort to locate the blue attaché case, despite the Defendant being an executor himself. In particular, the Defendant never bothered to ask George or Jack about the blue attaché case[280] and did not see fit to make a police report about its missing contents.[281] In my view, while these factors may arguably prove relevant should the Defendant seek to rely on the Claimant's account to say that the Claimant breached his duty (as executor) to the Defendant (as beneficiary), they do not absolve the Claimant from discharging the anterior obligation to first provide that account.

Parties' Claims in respect of various joint bank accounts

243 The Parties have also made claims in respect of the balances in various joint bank accounts, in which the Testatrix was one of the account holders, which they say form part of the Estate. To recapitulate:

(a) The Claimant seeks an account from the Defendant of the balances in two bank accounts (see [12(a)] above):

(i) the CIMB Joint Account, which was held jointly in the names of the Testatrix and the Defendant; and

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280 Transcripts for 5 November 2024 at p 142 (lines 12–15).

281 Transcripts for 5 November 2024 at p 142 (lines 30–32).

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(ii) the DBS Joint Account, which was held jointly in the names of the Testatrix, the Defendant and his son.

Both bank accounts above are collectively referred in this judgment as the "CIMB and DBS Joint Accounts".

(b) The Defendant, on his part, also seeks an account from the Claimant of the balances in various joint bank accounts (see [12(b)] above).

244 I first deal with the Claimant's claim, followed by the claim of the Defendant.

Claimant's claim for an account to be furnished in respect of the CIMB and DBS Joint Accounts

245 The CIMB and DBS Joint Accounts were bank accounts in which the Testatrix was a joint account holder. The CIMB Joint Account had one other joint account holder (the Defendant), while the DBS Joint Account had two other joint account holders (the Defendant and his son). According to the Claimant, he found out about these two joint accounts after his lawyers wrote to the relevant banks to inquire about accounts which the Testatrix might have held with them.[282] After the banks reverted with details of the CIMB and DBS Joint Accounts, the Claimant wrote to the Defendant asking him to account for these two joint accounts. When the Defendant refused,[283] the Claimant brought the present claims for him to furnish an account for both joint accounts.[284]

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282 Claimant's AEIC at paras 83–84 & 86.

283 Claimant's AEIC at paras 85 & 87.

284 SOC at p 11 para (6).

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246 The Defendant's case is that the Testatrix never deposited any of her monies into the CIMB Joint Account[285] or the DBS Joint Account.[286] He claims that he had included the Testatrix's name as a joint account holder for the CIMB Joint Account as he was previously a bankrupt and needed to ride on her status (the Testatrix being a premium bank customer) when dealing with the bank.[287] As regards the DBS Joint Account, the Defendant claims that the Testatrix's name was added as a formality,[288] consistent with what he says was the family's practice of inserting the Testatrix as a joint account holder of bank accounts held by her children and grandchildren, despite the Testatrix not having deposited her own funds into the bank accounts concerned.[289] The Claimant, on his part, submits that the Defendant's explanations for why the Testatrix's name had been included as a joint account holder are unconvincing.[290]

247 The Claimant's claim that the Defendant accounts for the balances in the CIMB and DBS Joint Accounts hinges on whether the right of survivorship operated to extinguish any benefit which the Testatrix may have had in these balances, upon her death. If it did, the benefit of the entire bank account balance would devolve to the surviving account holder(s) and cease to form part of the Estate upon the Testatrix's death. That would in turn defeat the Claimant's claim that the Defendant accounts for the balances in these bank accounts, as the Defendant's duty (as executor) to account relates only to assets of the Estate.

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285 Transcripts for 5 November 2024 at pp 77 (line 25) – 78 (line 27) & 81 (lines 20–21).

286 Transcripts for 5 November 2024 at pp 84 (line 25) – 87 (line 7).

287 Transcripts for 5 November 2024 at pp 80 (line 16) – 81 (line 12) & 149 (lines 3–19).

288 D&CC at para 84; Transcripts for 5 November 2024 at p 87 (lines 8–9).

289 Defendant's AEIC at para 130.

290 CCS at para 166.

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248 The right of survivorship arises in a joint tenancy and not a tenancy in common. In *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 ("*Estate of Yang Chun*"), Ang Cheng Hock JC (as he then was) explained the distinction between both types of interests (at [52]):

> … There are two types of concurrent interests over property in Singapore – the joint tenancy and the tenancy in common. Joint tenancy refers to a form of co-ownership where parties own the entire interest in property devoid of "shares". A hallmark of joint tenancy is the right of survivorship. Upon the death of a joint tenant, the surviving joint tenant(s) will take the entire interest in the property. This is a convenient mechanism which does away with the need for a will or other formalities. The operation of the right of survivorship also has important implications as to how joint tenants may deal with their property. A joint tenant may dispose of their interest *during* their lifetime, effecting a severance of the joint tenancy to create a tenancy in common. However, a joint tenant may not devise their interest in their will because the right of survivorship takes precedence over testamentary dispositions … [emphasis in original]

It is trite that joint bank accounts may similarly embody joint tenancies under which the right of survivorship operates: *Estate of Yang Chun* at [53].

249 If the terms governing a joint bank account dictate that the demise of an account holder results in the surviving account holder becoming legally entitled to deal with the entire account balance – as is typically the case for joint bank accounts – this would imply a joint tenancy at law (embodying the right of survivorship at law). In line with the maxim that equity follows the law, equity will *as a starting point* regard joint tenants of the legal interest as joint tenants of the beneficial interest as well: *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 ("*Patricia Khoo (CA)*") at [56]. Accordingly, there is a starting presumption in the case of joint bank accounts that the right of survivorship operates not only at law but also in equity, where the death of one account holder results in both the legal and *beneficial* interest in the account balance devolving to the surviving account holder: see *Collars Muriel Esther*

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de Jesus v Sandra Audrey Jude Collars [2008] SGHC 110 ("*Collars v Collars*") at [30].

250 Nevertheless, the starting presumption that a joint tenancy at law is also a joint tenancy in equity is "readily displaced by any of a number of contra-indications that, regardless of the legal joint tenancy, equitable ownership was intended to take the form of a [tenancy in common]": *Patricia Khoo (CA)* at [56]. For example:

(a) If there is evidence indicating that the deceased *did not intend* for his share of the balance in the joint bank account to devolve to the surviving account holder upon the deceased's demise, a resulting trust may arise under which the surviving account holder holds the deceased's share of the account balance on trust for the latter's estate: see *Estate of Yang Chun* at [54].

(b) Where there is a dearth of evidence allowing the court to infer the intention in (a) above, there may still be circumstances allowing the court to *presume* a resulting trust: *Estate of Yang Chun* at [55]. The presumption may arise if devolution of the deceased's beneficial interest in the account balance to the surviving joint account holder results in the latter getting a benefit for which he has provided no consideration. Consequently, whether a resulting trust may be *presumed* in the context of a joint bank account often hinges on the respective account holders' contributions to the bank balance. To take an example, if the account balance was funded entirely by the deceased account holder, equity may *presume* that the surviving account holder holds the account balance on resulting trust for the deceased's estate, notwithstanding the operation of the right of survivorship at law.

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In respect of (b) above, it is also important to note that a presumption of resulting trust may be countered by evidence supporting a presumption of advancement, by which the deceased is presumed to have intended for the benefit of his share of the account balance to devolve to the surviving account holder (notwithstanding the lack of consideration emanating from the latter): *Patricia Khoo (CA)* at [78(b)]. The presumption of advancement may arise if the relationship between the account holders falls within certain categories of familial ties where that presumption has been held to arise, although the *strength* of that presumption "must vary according to the facts of the case and the contemporary community attitudes and norms": *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [46].

251 I now apply the above principles to the CIMB and DBS Joint Accounts. At the outset, I observe that the balance in both joint accounts appear to have been held by way of joint tenancies *at law*, where the demise of one account holder leaves the surviving account holder(s) with the *legal* right to deal with the entire balance:

(a) As regards the DBS Joint Account, DBS had written to the Claimant's solicitors stating: "Please note that for joint account(s), the surviving operator(s) is/ are entitled to claim the available funds in the account(s)".[291]

(b) For the CIMB Joint Account, the same position can be inferred from cl 10.2(a) of CIMB Bank's Terms and Conditions Governing the Operations of Deposit Accounts, which stated: "Upon notice of the death

[291] See letter from DBS Bank (dated 13 March 2023) at AB p 490.

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> of any one of the Joint Account holders … the Bank shall be entitled to pay the credit balance in the Joint Account to the surviving Customer".[292]

252 As explained at [249] above, the existence of a joint tenancy at law over the CIMB and DBS Joint Bank Accounts gives rise to a *starting* presumption that the account holders were also joint tenants in equity. As further explained at [250] above, that starting presumption can be displaced, *eg*, if there is evidence that the Testatrix did not intend for her share of the account balance to devolve to the surviving account holder(s), such that a resulting trust can be inferred, or if the circumstances (including the account holders' respective contributions to the balance) allow a resulting trust to be *presumed*.

253 The Claimant contends that the onus is on the Defendant to *plead and prove* the factors showing that the right of survivorship applied to the CIMB and DBS Joint Accounts.[293] With respect, this submission is misplaced.

> (a) In so far as the pleadings are concerned, they unequivocally reflect the *fact* that the CIMB and DBS Joint Accounts are joint bank accounts, where the account holders include both the Testatrix and the Defendant.[294] There is no need for the Defendant to go beyond this and plead the *legal consequence* flowing from that fact, including the starting presumption in *Collars v Collars* (see [249] above) that the beneficial interest in the entire balance devolves to the surviving account holder under the right of survivorship.

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292 See letter from Defendant's lawyers to the court (dated 18 August 2026) at p 9.

293 Claimant's Further Reply Submissions (dated 25 August 2026) ("CFRS") at para 32.

294 SOC at para 40.

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(b) As regards the burden of proof, it is for the Claimant to rebut the starting position that the right of survivorship operated not just at law but in equity well. As explained in *Collars v Collars* (at [30]):

> … The onus would therefore be on the person who was challenging the right of the survivor to the money in the account to show that it was not the intention of the deceased that the survivor should have the proceeds. …

254 Unfortunately for the Claimant, the evidence fails to persuade me that a departure from the starting position (that there was a right of survivorship in equity) is warranted. For instance, the evidence is not in any way suggestive of an intention by the Testatrix for the Estate to retain the benefit of any part of the balances in the CIMB and DBS Joint Accounts, such that a resulting trust may be inferred. The Claimant attempts to rely on cl 4 of the Will, by which the Testatrix purported to bequeath "all my monies", including those "in joint bank accounts".[295] The Claimant argues that by this clause, the Testatrix clearly demonstrated an intention for the Estate to retain the benefit of her share in any joint account balances belonging to her, with a view to that share then being distributed in accordance with the Will.[296] I reject this argument for the following reasons:

(a) Firstly, there is nothing to indicate that this clause was directed at the CIMB and DBS Bank Accounts.

(b) Secondly, this directive was predicated on the balances in the joint account being "*my* monies". There is no evidence that the Testatrix had deposited any of her own monies into the CIMB and DBS Joint Accounts prior to her death.

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295 Exhibited in the Claimant's AEIC at p 75.

296 CFRS at para 33.

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255 Similarly, the complete dearth of evidence as to the Testatrix's contributions (if any) to the balance in both bank accounts makes it difficult for a resulting trust to be *presumed*. Indeed, the Defendant claims that all the monies in both bank accounts came from him and not the Testatrix (see [246] above). The Claimant has not adduced any evidence to refute this, save to complain that the reasons proffered by the Defendant for opening up a joint account with the Testatrix are unconvincing.[297]

256 As regards the CIMB Joint Account in particular, the Claimant also contends that on 2 September 2013, the Testatrix's monies in fixed deposits were misappropriated, with $225,704.94 of these monies being re-directed into the CIMB Joint Account.[298] However, given that these fund flows occurred some nine months *after* the Testatrix's death, they offer no insight into what the Testatrix's intentions were, or what monies of hers went into the CIMB Joint Account, while she was still alive. To be clear, the Claimant is not pursuing a proprietary remedy targeted at the misappropriated funds (*eg*, tracing). Rather, he is seeking an *account* of the balance in the CIMB Joint Account, which is a remedy focused not on specific monetary deposits of questionable origin but on the CIMB Joint Account as a whole. If granted, the Defendant would conceivably be liable to explain entries in the CIMB Joint Account's statements that have nothing to do with the purportedly misappropriated funds. An account is thus not the appropriate remedy for that and I see no basis for ordering it.

257 Consequently, I ***dismiss*** the Claimant's claim for an account of the balances in the CIMB and DBS Joint Accounts. These starting position – being

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297 CCS at para 166; see also CFRS at para 34.

298 CCS at para 168; Transcripts for 6 November 2024 at pp 65 (line 9) – 66 (line 16); bank statement exhibited at AB p 372; check stub exhibited at AB 479.

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that the balances were held by the account holders as joint tenancies not only at law but in equity as well – stands unrebutted. Upon the Testatrix's death, her beneficial interest (if there was any to begin with) in the balances within the CIMB and DBS Joint Accounts was extinguished. These balances thus did not form part of the Estate and the Defendant is consequently not liable (in his capacity as executor) to account for them.

Defendant's claim for an account to be furnished in respect of various bank accounts

258 The Defendant, on his part, also seeks an account from the Claimant of various bank accounts.

259 At the outset, I should state that I found it extremely difficult to decipher, from the Defendant's pleadings, just what bank accounts he is seeking an account of. I set out the relevant portions of his Defence and Counterclaim:

> **115.** Since 1 February 2023, the Defendant has requested for the following accounts that concern the Estate. These accounts are:
>
> a) The Testatrix's Bank Statements from Standard Chartered Bank and CIMB.
>
> …
>
> f) A breakdown and account of any other bank accounts in the Testatrix's name;
>
> …
>
> i) An account of all bank accounts held jointly in the names of the Testatrix and/or George, Jack, Dione, Joanne, the Claimant, and the Claimant's children; …
>
> …
>
> **116.** The Claimant, up to the point of the drafting of this amended Defence and Counterclaim, has not disclosed all accounts requested. The outstanding accounts are
>
> [(a)] the CIMB Joint and the Standard Chartered Bank account …,

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> …
>
> [(i)] the joint bank ac-counts [*sic*] …,
>
> …
>
> **118.** The Defendant claims against the Claimant:
>
> (a) An order that an account be taken, and the Claimant do provide and furnish an account (with supporting documents) of all Testatrix's Gold Investment, Testatrix's Bank Account (Standard Chartered Bank), …
>
> (b) A complete account of the accounts set out in Paragraph 116.
>
> (c) An order that the Claimant pay to the Defendant to following sums:
>
> …
>
> (ix) $8,900 being the half-amount of the sum wrongly withdrawn by the Claimant from the POSB Joint Account as set out in Paragraphs 82 and 112;
>
> …
>
> (d) That the Claimant authorises the release of the Defendant's funds held in the Joint Account as set out in Paragraphs 24 and 28 [this refers to the SCB Joint Account, as paragraph 28 alludes to the joint account in which the $600,000 proceeds from sale of the EK Property were deposited into].

260 As seen from paras 115(a), 116(a) and 118(a) of the extract of the Defence and Counterclaim above, one of the banks alluded to is "Standard Chartered Bank". However, the Defendant's pleadings failed to provide any bank account numbers(s), making it extremely difficult for me to tell if the Defendant was intending to refer to a single bank account or to different bank accounts with Standard Chartered Bank. Indeed, this lack of clarity prompted the Claimant to request for further and better particulars as to what "Standard Chartered Bank" – as reflected in a previous iteration of para 118(a) of the Defence and Counterclaim – meant. The Defendant had responded to this request with the following particulars: "The term "*Standard Chartered Bank*"

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refers to the Joint Bank Account, Bank Account Number XXXXXX3344",[299] *ie,* the SCB Joint Account. Accordingly, in the absence of particulars of any other bank accounts, I have proceeded on the basis that the "Standard Chartered Bank" account for which the Defendant seeks an account to be furnished – as set out in paras 116(a) and 118(b) – is the SCB Joint Account.

261 I also note that in a previous iteration of para 118(a) of the Defence and Counterclaim, the Defendant pleaded his claim for the following remedy:[299]

> … An order that an account be taken, and the Claimant *do provide and furnish an account* (with supporting documents) of all Testatrix's Gold Investment, *Testatrix's Bank Account (**POSB Joint Account***, Standard Chartered Bank ***& CIMB***), … [emphasis added in italics and bold italics]

However, in the latest version of the Defence and Counterclaim extracted above, the references to "POSB Joint Account" and "CIMB" have been struck out from para 118(a). I draw two conclusions from this:

(a) As regards the POSB Joint Account, the Defendant no longer requires the Claimant to furnish an account. The Claimant has also made that assumption in his closing submissions[300] and the Defendant's submissions in reply do not contradict this.

(b) As for the reference to "CIMB", although this has been struck out from para 118(a), para 116(a) still continues to refer to "CIMB Joint" – which I assume to mean the CIMB Joint Account. Given that para

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299 Further and Better Particulars of the Defendant's Defence and Counterclaim dated 23 September 2022 Pursuant to the Plaintiff's Request Dated 7 November 2022 ("F&BP") at pp 5–6.

300 CCS at para 61.

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118(b) requires an account of the items in para 116, I will assume that the Defendant is still pursuing an account of the CIMB Joint Account.

262 Finally, it is unclear to me what the Defendant was referring to by the term "joint bank ac-counts" [*sic*] in para 116(i) of the Defence and Counterclaim, extracted above. There is nothing in the Defence and Counterclaim attributing any account numbers to these "joint bank ac-counts" [*sic*]. Indeed, it is not even clear what *banks* the "joint bank ac-counts" [*sic*] were held with. The Defendant's closing submissions similarly argue that the Claimant should be made to furnish an account of the "joint accounts"[301] without clarifying what these "joint accounts" were.

263 I have also considered if the term "joint bank ac-counts" [*sic*] in para 116(i) was meant to refer to the accounts in para 115(i) of the Defence and Counterclaim, which alludes to "all bank accounts held jointly in the names of the Testatrix and/or George, Jack, Dione, Joanne, the Claimant, and the Claimant's children". However, even if I had been minded to draw such a link, this would still not remedy the deficiencies in the Defendant's pleadings. The Defendant was clear in his oral testimony that he has no idea whether the Testatrix actually shared a joint bank account with any of these persons.[302] He made no effort to check with them if she did.[303] Critically, the Defendant admitted while on the stand that he was "not sure" whether the monies in these joint accounts (assuming they even existed) contained monies belonging to the Estate.[304]

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301 DCS at para 173(a)(vi).

302 Transcripts for 5 November 2024 at p 68 (lines 3–16).

303 Transcripts for 5 November 2024 at pp 71 (line 30) – 72 (line 9).

304 Transcripts for 5 November 2024 at p 67 (lines 2–18).

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264 Given the dearth of particulars, I am unable to arrive at any ruling on the Defendant's claim for an account to be furnished, as regards the "joint bank ac-counts" [*sic*] in para 116(i) of the Defence and Counterclaim. The Defendant could have avoided this ambiguity by writing to the banks (in his capacity as executor) to get the bank account numbers of interest and listing them clearly in his pleadings. It is inexplicable why he failed to do so, leaving the court to piece together just what joint bank accounts he was referring to.

265 The upshot of the observations above is that I am able to address the Defendant's claim for an account only in respect of (a) the SCB Joint Account and (b) the CIMB Joint Account. In doing so, my findings can be stated quite summarily:

(a) As regards the SCB Joint Account, the Defendant himself has pleaded that this was opened only "upon the passing of the Testatrix".[305] The Testatrix was never an account holder of this bank account and there is no evidence of it ever having held any of the Testatrix's monies.

(b) As for the CIMB Account, it is the Defendant's own case that the Testatrix never made any deposits into this bank account, which primarily contained his own monies (see [246] above).

266 In light of the above, I conclude that neither bank account has been shown to contain monies from the Estate, for which the Claimant (as executor) is liable to give an account. Accordingly, the Defendant's claim for an account in respect of these two bank accounts is ***dismissed***.

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[305] D&CC at para 86 read with para 118(a) and F&BP at pp 5–6.

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Defendant's claim to recover sums withdrawn by the Claimant from the POSB Joint Account

267 The Defendant contends that the Claimant had wrongfully withdrawn monies from the POSB Joint Account,[306] which was held in the joint names of the Testatrix and Peter (who predeceased the Testatrix).[307] According to the Defendant, the Claimant withdrew a total sum of $17,800 over four occasions, spanning 19 to 22 December 2012 (both dates inclusive).[308] The Defendant asserts that half of the sums withdrawn belonged to him and thus claims against the Claimant for $8,900.[309]

268 If the withdrawals above were wrongful, a cause of action in respect of the sums withdrawn may well have accrued to the Testatrix (and, upon her death, to the Estate). However, that is *not* the basis of the Defendant's claim in respect of the withdrawals. His claim is premised on the withdrawals having been made in *breach of the Claimant's fiduciary duties as executor* (see [13] above). The Defendant thus cannot succeed in his claim unless the withdrawals occurred *after* the Testatrix's death, since the fiduciary duties of an executor would not have come to rest on the Claimant prior to the point of her passing.

269 This brings me to the threshold question of exactly *when* the $17,800 had been withdrawn. According to the Defendant, the withdrawals were made by the Claimant on the following four days:[310]

306 D&CC at paras 42 & 118(c)(ix).

307 Claimant's AEIC at para 21.

308 D&CC at para 112.

309 D&CC at para 118(c)(ix).

310 Defendant's AEIC at para 19.

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Date of withdrawal	**Amt withdrawn**
19 December 2012	$5,000
20 December 2012	$5,000
21 December 2012	$5,000
22 December 2012	$2,800

270 Given that the Testatrix died on 21 December 2012, the following conclusions follow:

(a) The withdrawals on 19 and 20 December 2012 were made when the Testatrix was still alive. That being the case, these two withdrawals would have been made *before* the Claimant's fiduciary duties as an executor came into force. Accordingly, the Defendant's claim that these withdrawals were in breach of the Claimant's fiduciary duties as an executor fails.

(b) As for the withdrawal on 21 December 2012 – being the *very day* on which the Testatrix passed away – the issue of whether the withdrawal was made after or before she died would naturally come down to a much closer shave. As the Defendant bears the burden of proving his claim, the onus lies on him to establish that the withdrawal was made *after* the Testatrix's death. However, no evidence was proffered at trial casting light on the issue of exactly when the withdrawal was made. Probability-wise, it is also not possible to give the Defendant the benefit of the doubt on this issue, simply by virtue of the fact that the Testatrix died at 11.29*pm* – literally the eleventh hour on 21 December 2012.[311] With her passing being that late in the night, the withdrawal on 21 December 2012 was far more likely than not made

311 See the death certificate exhibited in AB p 192.

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> *before* her death, and thus prior to the Claimant's fiduciary duties as an executor coming into force. The Defendant's claim that this withdrawal was made by the Claimant in breach of his fiduciary duty as an executor should thus be rejected as well.

Accordingly, the Defendant's claim is viable only in respect of the final withdrawal of $2,800, on 22 December 2012. It is to that withdrawal which I now turn.

271 The Claimant explains that he had made the withdrawals from the POSB Joint Account to reimburse himself after he spent about $22,238.24 of his Medisave funds on the Testatrix's medical bills.[312] The difficulty with this explanation is that an adult child who pays for his aged parent's medical expenses is generally presumed to have intended to make these payments gratuitously, without expecting the payment to give rise to an enforceable debt as against the parent: *Ong Wui Teck* at [55]. The Claimant raises the contention – both in his pleadings and AEIC[312] – that *the Testatrix* told him on many occasions to use the balance in the POSB Joint Account to reimburse himself for his expenditure on her medical bills. Presumably, his case is that the Testatrix agreed that his expenditure would give rise to a debt which he could claim from her (and thus from the Estate). However, this assertion is somewhat at odds with his oral evidence at trial, where he said that it was *the Defendant* (rather than the Testatrix) who suggested that the Claimant reimburse himself from the POSB Joint Account.[313] Given this lack of consistency, I am not prepared to accept the Claimant's assertions that he was authorised (whether by the Testatrix or the Defendant) to reimburse himself from the POSB Joint

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312 Def to CC at para 70; Claimant's AEIC at para 37.

313 Transcripts for 30 October 2024 at p 42 (lines 24–32).

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Account. In arriving at this determination, I stand guided by the observation in *Ong Wui Teck* (at [44]) that "claims for repayment of debts made against deceased persons should be supported by compelling evidence, given that the deceased persons would be unable to rebut such claims posthumously".

272 To summarise my findings on the Claimant's withdrawals from the POSB Joint Account:

(a) I ***dismiss*** the Defendant's claim in respect of the withdrawals on 19, 20 and 21 December 2012.

(b) I ***allow*** the Defendant's claim that the Claimant withdrew $2,800 from the POSB Joint Account on 22 December 2012, in breach of his fiduciary duties.

I thus order the Claimant to return the sum of $2,800 to the Estate.

Conclusion

273 The following sets out a summary of my decision in this case.

274 In respect of the EK Property, I make the following orders.

(a) For the months of September to November 2016, when the Defendant's family resided at the EK Property, the Defendant is to pay the Claimant the monthly rent of $4,000 – totalling $12,000 for three months.

(b) As regards the rent paid by Jason under the 2nd and 3rd Tenancy Agreements, the Defendant is to pay the Claimant the latter's half share of the following:

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(i) Rent under the 2nd Tenancy Agreement for the months of August and September 2019, which Jason funded using the security deposit – the Claimant's half share of this being $7,800.

(ii) Rent under the 3rd Tenancy Agreement for the months September 2021 to January 2022 – the Claimant's half share of this being $19,500.

(iii) As regards the rent collected from Jason under the 1st Tenancy Agreement, comprising the $142,971.04 in the SCB Joint Account, the Parties are to take collective steps to withdraw this sum from the SCB Joint Account, so that they can each cash out their respective half shares of the same. Any interest earned on the principal sums deposited into the SCB Joint Account is to also be divided equally between the Parties.

(c) The following claims by the Defendant, raised in relation to the rent collected from Jason, are dismissed:

(i) That the Claimant pays the "excess rent" of $74,880 collected from Jason under the 1st Tenancy Agreement.

(ii) That the Claimant accounts for the rent collected from Jason.

(d) The remaining claims by the Defendant in relation to the EK Property, set out below, are also dismissed:

(i) That the Claimant reimburses the Defendant for the property tax of $13,420.50 which the Defendant claims to have paid.

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(ii) That the Claimant pays the Defendant $15,600, which the Defendant claims to be the commission due to him as the property agent who procured Jason's tenancies.

275 The Defendant's claim in defamation is dismissed. While the PropNex Email may have carried a defamatory meaning, the defences of justification and qualified privilege are both made out.

276 As regards the Handwritten Note, I find that its formation was supported by consideration and that it was not vitiated by duress. The Claimant is thus entitled to compel the Defendant to honour the terms of the Handwritten Note.

277 In respect of the Far East Property,

(a) I grant the Claimant's claim that the Defendant furnishes an account of the rental proceeds which the Defendant had collected and (upon taking of the account) pay the Claimant his one-third share of the same, after permissible deductions.

(b) I reject the Defendant's claim that the Claimant furnishes an account of the maintenance fees and property tax.

278 In relation to the Defendant's claims that the Claimant furnishes an account in respect of the EK Shortfall, the Gold Investment and the blue attaché case:

(a) I dismiss the claim for an account of the EK Shortfall, as it is time-barred.

(b) I also dismiss the claim for an account of the Gold Investment as there is insufficient evidence that this formed part of the Estate's assets.

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(c) I grant the claim for an account of the blue attaché case and its contents.

279 I dismiss both Parties' claims for an account of the joint bank accounts highlighted in their respective pleadings.

280 Finally, I order the Claimant to return to the Estate the $2,800 which he withdrew from the POSB Joint Account.

281 I will now hear the Parties on the issue of costs of the trial.

Christopher Tan
Judge of the High Court

Lim Thian Siong and Elizabeth Anne Shuet Yan Boey (Hin Tat Augustine & Partners) for the claimant;
Alexander Nathanael Walter, Walter Ferix Silvester and Madelene Yu Rwei Yi (Silvester Legal LLC) for the defendant.

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