IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 24

Originating Summons No 727 of 2015

Between

(1) Jhaveri Darsan Jitendra
(2) Jhaveri Jashma Darsan

… *Plaintiffs*

And

(1) Salgaocar Anil Vassudeva
(2) Chandana Anil Salgaocar
(3) Lakshmi Anil Salgaocar
(4) Sameer Anil Salgaocar
(5) Poornima Anil Salgaocar
(6) Arjun Anil Salgaocar

… *Defendants*

Originating Summons No 945 of 2015

Between

(1) Capital Glory Investments Pte Ltd
(2) Newton Noble Properties Pte Ltd
(3) Sino Noble Asset Management Pte Ltd

… *Plaintiffs*

And

(1) Salgaocar Anil Vassudeva
(2) Lakshmi Anil Salgaocar
(3) Sameer Anil Salgaocar
(4) Poornima Anil Salgaocar

Version No 1: 27 Oct 2020 (22:40 hrs)

(5) Chandana Anil Salgaocar
(6) Arjun Anil Salgaocar

… *Defendants*

GROUNDS OF DECISION

[Land] — [Caveats]

[Companies] — [Incorporation of companies] — [Reverse piercing]

[Companies] — [Incorporation of companies] — [Lifting corporate veil]

TABLE OF CONTENTS

FACTS **2**

THE PARTIES 2

THE LODGING OF THE CAVEATS AND THE COMMENCEMENT OF OS 727 AND OS 945 3

SUIT 821 3

EVENTS AFTER THE FILING OF SUIT 821 5

THE PARTIES' SUBMISSIONS **8**

MY DECISION **11**

SALGAOCAR'S CLAIM IN SUIT 821 11

SEPARATE LEGAL PERSONALITY 22

THE REVERSE PIERCING ARGUMENT 29

The parties' submissions *29*

The concept of reverse piercing *30*

Insider reverse piercing is unsupported by relevant authority *33*

Singapore law 33

English law 36

US law 39

Insider reverse piercing is contrary to principle *42*

THE LIFTING THE VEIL ARGUMENT 46

THE SHAREHOLDING ARGUMENT 48

CONCLUSION **50**

Version No 1: 27 Oct 2020 (22:40 hrs)

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.

Jhaveri Darsan Jitendra and others
v
Salgaocar Anil Vassudeva and others

[2018] SGHC 24

High Court — Originating Summonses Nos 727 and 945 of 2015
Kannan Ramesh J
20 April; 4, 22 May; 8 June, 26–27 July; 7 September; 16, 17 October 2017

31 January 2018

Kannan Ramesh J:

1 By Originating Summonses Nos 727 and 945 of 2015 ("OS 727" and "OS 945"), the plaintiffs applied under s 127(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the Land Titles Act") for the removal of caveats ("the Caveats") that were lodged by the first defendant ("Salgaocar") against several properties ("the Properties"). On 16 October 2017, I allowed the plaintiffs' applications in OS 727 and OS 945 and delivered detailed oral grounds. The defendants have now appealed. These are the full grounds of my decision.

Facts

The parties

2 The plaintiffs in OS 727 are Mr Jhaveri Darsan Jitendra ("Darsan"), a businessman based in Hong Kong, and his wife. They are the registered proprietors of six units in Newton Imperial ("the Newton Imperial Units"), a

Version No 1: 27 Oct 2020 (22:40 hrs)

condominium development. The Newton Imperial Units form the subject matter of OS 727.

3 The plaintiffs in OS 945 are three Singapore-incorporated companies ("the Companies"). Darsan is the sole shareholder of the third plaintiff in OS 945 and of Singapore Star Properties Pte Ltd, which is the sole shareholder of the first and second plaintiffs in OS 945. Darsan is also the managing director of the Companies. Collectively, the Companies are the registered proprietors of 11 units in Waterford Residence ("the Waterford Units"), a condominium development, and 12 units in WCEGA Tower ("the WCEGA Units"), a commercial property development. Specifically, the first and second plaintiffs in OS 945 are the registered proprietors of three and eight of the Waterford Units respectively while the third plaintiff in OS 945 is the registered proprietor of the WCEGA Units. The Waterford Units and the WCEGA Units form the subject matter of OS 945.

The lodging of the Caveats and the commencement of OS 727 and OS 945

4 On 2 July 2015, Salgaocar lodged the Caveats.

5 On 5 August 2015, the plaintiffs in OS 727 instituted OS 727, applying for the removal of the caveats lodged against the Newton Imperial Units. On 15 October 2015, the Companies commenced OS 945, applying for the removal of the caveats lodged against the Waterford Units and the WCEGA Units.

Suit 821

6 On 11 August 2015, Salgaocar commenced Suit No 821 of 2015 ("Suit 821") against Darsan. The claim in Suit 821 was critical to the assessment of the merits of OS 727 and OS 945. This was because Salgaocar's case was that

Version No 1: 27 Oct 2020 (22:40 hrs)

he had lodged the Caveats to preserve his alleged interests in the Properties pending the determination of the claim in Suit 821. In other words, the basis of the Caveats was Salgaocar's claim in Suit 821.

7 In Suit 821, Salgaocar sought, *inter alia*, a declaration that Darsan held assets, including the Properties, on trust for him and an order that Darsan convey the Properties to him. Salgaocar's claim in Suit 821 centred on an alleged agreement he reached in or around December 2003 with Darsan in Hong Kong ("the December 2003 Agreement"). The crucial elements of the December 2003 Agreement were as follows:

(a) Salgaocar would establish special purpose vehicles ("SPVs") in, *inter alia*, the British Virgin Islands ("the BVI" and "the BVI SPVs"), to conduct businesses and hold assets. He would provide all the funding for the SPVs' activities, including the acquisition of assets, the making of investments and operational expenses, and would completely control their businesses and finances.

(b) Darsan would be the shareholder and/or director of the SPVs and hold *the shares in the SPVs* as Salgaocar's nominee shareholder and/or on trust for Salgaocar. Darsan would comply with all of Salgaocar's instructions relating to the SPVs and their assets. Salgaocar would be the sole beneficial owner of all of *the shares* in the SPVs and/or any assets held by the SPVs.

8 Why the December 2003 Agreement was reached is explained by the events that unfolded thereafter. Salgaocar was a man of substantial means and stature. He had major business interests in India and was a prominent politician in the state of Goa. According to him, in or around April 2004, he procured

Version No 1: 27 Oct 2020 (22:40 hrs)

Salgaocar Mining Industries Pvt Ltd, a company incorporated in India which owned several mines there, and which Salgaocar controlled, to sell iron ore to the BVI SPVs. In turn, the BVI SPVs sold the iron ore to entities in China at much higher prices and thus reaped substantial trading profits in the region of US$690m. Salgaocar then incorporated several SPVs, some of which in Singapore ("the Singapore SPVs"). Part of the trading profits earned by the BVI SPVs were channelled to the Singapore SPVs for the purpose of undertaking investments and various businesses. The profits were used, *inter alia*, to develop Newton Imperial and purchase units in WCEGA Tower and Waterford Residence.

9 In Suit 821, Salgaocar claimed that Darsan committed breach of trust and fiduciary duties in, *inter alia*, the following ways:

(a) by transferring the Newton Imperial Units from Great Newton Properties Pte Ltd ("Great Newton"), one of the Singapore SPVs and the developer of Newton Imperial, to Darsan and Darsan's wife; and

(b) by failing to procure the return of, *inter alia*, the Waterford and WCEGA Units to Salgaocar, upon his demand for the return of the same.

Events after the filing of Suit 821

10 As mentioned earlier, on 15 October 2015, the Companies commenced OS 945, applying for the removal of the caveats lodged against the Waterford Units and the WCEGA Units.

11 On 28 December 2015, Darsan applied to strike out Suit 821.

Version No 1: 27 Oct 2020 (22:40 hrs)

12 On 1 January 2016, Salgaocar unfortunately passed away. It would seem he left no will.

13 On 23 June 2016, the plaintiffs obtained an order that Salgaocar's widow ("Lakshmi") and four children be joined as parties to OS 727 and OS 945. No letters of administration had been obtained in respect of his estate at that stage.

14 Thereafter, on about 29 June 2016, an alleged dispute arose between Lakshmi and her elder daughter ("Chandana") over who should represent Salgaocar's estate. After Lakshmi had applied for the grant of letters of administration, Chandana commenced an action in the Family Justice Courts to challenge Lakshmi's entitlement to the grant of letters of administration ("the FJC Action"). The following events then transpired:

(a) On 13 March 2017, Lakshmi applied to stay OS 727 and OS 945 pending the determination of the FJC Action, and the grant of letters of administration for Salgaocar's estate. On the same day, Lakshmi also applied to convert OS 727 and OS 945 to writ actions.

(b) On 20 April 2017, I directed Lakshmi and Chandana to each file an affidavit in relation to the FJC Action within two weeks, *ie*, by 4 May 2017. The affidavit was to exhibit the pleadings in the FJC Action, describe the status of the same and include a list of directions made in the FJC Action for the furtherance of the proceedings.

(c) On 4 May 2017, Lakshmi and Chandana sought permission not to file the pleadings in the FJC Action. Their solicitors confirmed that they would file affidavits setting out the background to the FJC Action and the directions made therein. After considering the matter, I ordered Lakshmi and Chandana to provide drafts of the text of the affidavits to

Version No 1: 27 Oct 2020 (22:40 hrs)

the court and the plaintiffs by 15 May 2017. Subject to the undertaking given by the plaintiffs' counsel, Mr Ang Cheng Hock SC ("Mr Ang"), that the content of the pleadings in the FJC Action would not be disclosed to the plaintiffs, I ordered Lakshmi and Chandana to make available the pleadings to the court and the solicitors for the plaintiffs by 15 May 2017.

(d) However, Lakshmi and Chandana did not comply with my directions. On 22 May 2017, the parties appeared before me and counsel for Lakshmi and Chandana explained that this was because they were on the brink of settling their alleged dispute in the FJC Action after mediation. I directed Lakshmi and Chandana to file affidavits by 8 June 2017 setting out the status of the mediation and, in the event that a settlement was reached, timelines for securing letters of administration for Salgaocar's estate.

(e) On 8 June 2017, the parties appeared before me once more and I made further directions to move the matter forward. I also made clear that no further extensions of time or indulgence would be granted to Lakshmi and Chandana.

(f) On 20 June 2017, Lakshmi applied for OS 727 and OS 945 to be consolidated with Suit 821.

Finally, on 3 July 2017, Lakshmi was appointed the sole administratrix of the estate of Salgaocar. On 26 July 2017, I allowed Lakshmi's application to withdraw her application to stay OS 727 and OS 945. I also allowed the plaintiffs' application to withdraw OS 727 and OS 945 against all the defendants except for Salgaocar and Lakshmi. I did not make any orders on Lakshmi's

Version No 1: 27 Oct 2020 (22:40 hrs)

application for consolidation of proceedings but proceeded to hear the parties on the merits of OS 727 and OS 945.

15 I now turn to the parties' submissions.

The parties' submissions

16 The parties did not dispute the law governing the removal of caveats and their submissions proceeded from this common ground. In *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 at [77], Sundaresh Menon JC (as he then was) cited with approval Lord Diplock's statement of the relevant principles in *Eng Mee Yong and Others v V Letchumanan s/o Velayutham* [1980] AC 331 ("*Eng Mee Yong*"), an appeal to the Privy Council from Malaysia. In that case, Lord Diplock held at 337D that the caveator has the onus of meeting the following two requirements to maintain the caveat:

(a) First, the caveator must establish that "on the evidence … his claim to an interest in the property does raise *a serious question to be tried*" [emphasis added].

(b) Secondly, the caveator must then establish that the balance of convenience favours maintaining the caveat.

In this regard, Lord Diplock noted that a caveat operates in much the same way as an interlocutory injunction and brings into play the same principles.

17 The plaintiffs submitted as follows:

(a) First, Salgaocar's claim to an interest in the Properties did not raise any serious question to be tried because, even if all of Salgaocar's factual allegations in Suit 821 were accepted:

Version No 1: 27 Oct 2020 (22:40 hrs)

(i) Salgaocar would not have any interest in the Properties, and therefore the Caveats had been lodged without basis; and

(ii) the December 2003 Agreement would be unenforceable under the rule in *Foster v Driscoll* [1929] 1 KB 470 ("*Foster*"), because that agreement would have been to carry out acts which were contrary to the laws of India.

(b) Secondly, in any event, the balance of convenience did not lie in favour of maintaining the caveats.

(c) Thirdly, the defendants were committing an abuse of process in seeking to delay the removal of the Caveats.

18 The plaintiffs also argued that Suit 821 was automatically discontinued under O 21 r 2(6) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"). Under that provision, an action is deemed discontinued if no step is taken by a party in the action for more than one year (unless the court extends the one-year deadline). According to the plaintiffs, the last step taken by a party to Suit 821 occurred on 28 December 2015, when Darsan applied to strike out Suit 821 (see [11] above). Suit 821 was deemed discontinued after 28 December 2016 because no further step was taken in Suit 821 by that date.

19 The defendants submitted as follows:

(a) First, Salgaocar's claim to an interest in the Properties did raise a serious question to be tried for the following reasons:

(i) there were serious issues to be tried regarding whether Salgaocar had a beneficial interest in the Properties under:

(A) the principles of lifting the corporate veil; and

Version No 1: 27 Oct 2020 (22:40 hrs)

(B) the principle of "reverse piercing".

In any event, Salgaocar would have a caveatable interest in the Properties merely by virtue of being the beneficial shareholder of the Singapore SPVs (*ie*, Great Newton and the Companies) that owned the Properties. I should point out in this regard that the defendants did not contend that Darsan and Salgaocar had agreed pursuant to the December 2003 Agreement that the assets of the SPVs (or for present purposes the Singapore SPVs that owned the Properties) would be held on trust for Salgaocar.

(ii) the rule in *Foster* did not apply; and further, the expert evidence on the point was unsatisfactory and the complexity of the issues pertaining to foreign illegality warranted a trial.

(b) Secondly, in any event, the balance of convenience favoured maintaining the caveats.

(c) Thirdly, the defendants had not abused the process of the court.

20 The defendants also denied that Suit 821 was automatically discontinued under O 21 r 2(6) of the Rules of Court. At a pre-trial conference for Suit 821 on 30 June 2016, the court had directed Chandana to apply for letters of administration of the estate of Salgaocar. Chandana duly complied with this direction. The defendants argued that this was a step in Suit 821 for the purposes of O 21 r 2(6) that restarted the one-year deadline under O 21 r 2(6). Suit 821 had therefore not been discontinued and was still pending.

Version No 1: 27 Oct 2020 (22:40 hrs)

My decision

21 As noted at [16] above, the law governing the removal of caveats was undisputed. It is settled that in an application under s 127(1) of the Land Titles Act for a caveat to be removed, the caveator must establish (1) a serious question to be tried in relation to his claim to an interest in the property and (2) that the balance of convenience favours maintaining the caveat.

22 The plaintiffs submitted that Salgaocar's claim to an interest in the Properties did not raise a serious question to be tried (see [17(a)] above). I first considered the first prong of this submission, *ie*, the argument that even if all of Salgaocar's factual allegations in Suit 821 were accepted, he would not have an interest in the Properties (see [17(a)(i)] above). Assessing this argument requires understanding exactly what the fulcrum of Salgaocar's case in Suit 821 was. It is to this inquiry that I now turn.

Salgaocar's claim in Suit 821

23 In Suit 821, Salgaocar claimed that he was beneficially entitled to assets, including the Properties, title to which was held by the SPVs, by virtue of the December 2003 Agreement (see [7] above). Plainly, it was not sufficient for him to simply claim an interest in the Properties for there to be a serious question to be tried. A claim to an interest does not in and of itself raise a serious issue to be tried. What is critical is the basis of that claim. Does the basis of the claim give rise to a serious question to be tried? In this regard, when examining the basis of the claim, the focus must be on the substance of the case that is being asserted to sustain the claim of a caveatable interest. Scattered or passing references to an interest would not suffice. If on the pleadings and the affidavits, the *grounds* for or *the substance* of Salgaocar's claim to an interest in the

Version No 1: 27 Oct 2020 (22:40 hrs)

Properties did not support a serious question to be tried, the Caveats could not be maintained.

24 The plaintiffs submitted that there was no serious question to be tried. According to the plaintiffs, the basis of Salgaocar's claim in Suit 821, as correctly understood, was his contention that he beneficially owned all the shares in the SPVs by reason of the December 2003 Agreement. That was why the December 2003 Agreement was the crux of Suit 821: Salgaocar claimed that by virtue of that agreement, he was the sole beneficial owner of the shares in the SPVs. Yet even if Salgaocar had owned all of the shares in the SPVs, he would not have owned their assets. The SPVs were separate legal entities holding assets in their own name. Title to those assets vested in the SPVs, not in Salgaocar. The plaintiffs thus averred that there was no serious question to be tried relating to Salgaocar's claim to an interest in the Properties. I should observe that it was to meet this submission and to lay claim to the Properties that counsel for Lakshmi argued that I should lift the corporate veil or have regard to the purported principle of reverse piercing (see [43] below).

25 After carefully reviewing the statement of claim in Suit 821, along with the affidavits filed by Salgaocar (before his passing), Lakshmi and Chandana, and submissions filed in these applications, I came to the view that the plaintiffs' characterisation of Salgaocar's claim in Suit 821 was accurate. In this regard, as the fulcrum of the claim was the December 2003 Agreement, it was important to understand the scope of the alleged agreement. I will now set out some relevant extracts from the statement of claim in Suit 821.

26 The statement of claim in Suit 821 began with a description of what the parties agreed under the December 2003 Agreement:

Version No 1: 27 Oct 2020 (22:40 hrs)

> 2. Following discussions between [Salgaocar] and [Darsan] in Hong Kong in the Marco Polo Hongkong Hotel in or around December 2003, it was agreed and/or there was a common understanding and/or intention between [Salgaocar] and [Darsan] ("**the December 2003 Agreement**"), as follows:
>
> …
>
> c) [Darsan] would be a shareholder and/or director of the SPVs, and would *hold the shares in the SPVs as [Salgaocar's] nominee shareholder and/or fiduciary and/or for the benefit of and/or in trust for[Salgaocar].* Further and/or alternatively, [Darsan] was to hold his positions within the SPVs (including his position as shareholder and/or director and/or bank signatory of the SPVs) as a nominee and/or fiduciary and/or otherwise for the benefit of or to act on the instructions of [Salgaocar]. …
>
> d) *[Salgaocar] would be the sole beneficial owner of all the shares issued in the SPVs …* and *all monies and/or investments and/or other assets held by the SPVs … [Darsan] would hold any interest he may have in the SPV Assets on trust for [Salgaocar].*
>
> …
>
> [emphasis added]

It seemed plain from this description that the crux of the December 2003 Agreement, according to Salgaocar, was that Darsan held the shares in the SPVs on trust for him. Admittedly, it was pleaded in para 2(d) of the statement of claim that under the December 2003 Agreement, Salgaocar would be "the sole beneficial owner of … all monies and/or investments and/or other assets held by the SPVs", and that Darsan "would hold any interest he may have in the SPV Assets on trust for [Salgaocar]". I address this at [31] below.

27 The statement of claim then recounted the parties' background (paras 9–17), details relating to the Salgaocar's iron ore trading activities (paras 18–35), the BVI SPVs (paras 36–64), the deployment of the trading profits (paras 65–67), and certain Swaziland investments (paras 68–81). The statement of claim turned next to the Singapore SPVs and the activities of the same (paras 82–118). It is important to note that the iron ore trading were business activities of the

Version No 1: 27 Oct 2020 (22:40 hrs)

BVI SPVs. Consequently, the profits thereby generated were theirs, not Salgaocar's. The deployment of the profits into investments were therefore acts of the BVI SPVs, not Salgaocar.

28 The statement of claim then set out various alleged breaches of duty committed by the defendant in Suit 821, *ie*, Darsan. As noted at [31(a)] below, it is significant that Salgaocar did not name any of the SPVs that allegedly held assets on trust for him, of which the Great Newton and the Companies are four, as parties to Suit 821. It was first alleged that Darsan made unauthorised changes to some of the Singapore SPVs (paras 119–122). Salgaocar then pleaded the following:

> XIII. **THE PROPERTIES AND/OR [DARSAN'S] DUTIES UNDER THE TRUST**
>
> 123. [Salgaocar] avers that [Darsan] *held and continues to hold all his shareholdings in the [BVI SPVs] and the [Singapore SPVs] on trust and/or for the benefit of [Salgaocar] and/or as [Salgaocar's] nominee shareholder*.
>
> 124. In addition, insofar as [Darsan] was a shareholder and/or director and/or bank signatory of the [BVI SPVs] and the [Singapore SPVs], [Darsan] *held such positions as a nominee and/or fiduciary and/or trustee and/or for the benefit of [Salgaocar]*.
>
> 125. ***Pursuant to the trust and/or fiduciary duties set out above***, [Darsan] (personally and/or through companies controlled by him *and/or in the various companies which he holds on trust* and/or for the benefit of [Salgaocar]) *held and continues to hold as trustee and/or constructive trustee and/or for the benefit of [Salgaocar] the Trust Assets and/or all traceable proceeds of the Trust Assets* …
>
> [emphasis added]

It again seemed clear from these paragraphs that on Salgaocar's case, Darsan held the shares in the SPVs on trust for him pursuant to the December 2003 Agreement. While Salgaocar averred in para 125 of the statement of claim that Darsan held assets on trust for him, this was stated to be "[p]ursuant to the trust

Version No 1: 27 Oct 2020 (22:40 hrs)

and/or fiduciary duties set out above", *ie*, the trust over the shares described at paras 123–124 of the statement of claim. Paragraph 125 further spoke of Darsan holding assets on trust for Salgaocar "personally *and/or through companies controlled by him and/or in the various companies which he holds on trust*" [emphasis added]. Plainly, if title to the assets was in the name of the SPVs, Darsan could not have been holding those assets on trust for Salgaocar. It would have been *the SPVs* which held the assets on trust for Salgaocar. It is clear as a matter of common sense and law that Darsan, not being owner of the assets of the SPVs, could not be said to be holding those assets on trust for Salgaocar. The statement of claim in Suit 821 is bereft of any assertion that the SPVs held their assets on trust for: (a) Darsan who in turn held them on a sub-trust for Salgaocar; or (b) Salgaocar. As noted at [31(a)] below, it is significant that Salgaocar did not name any of the SPVs that allegedly held assets on trust for him, of which the Great Newton and the Companies were four, as parties to Suit 821. This merely confirms that the December 2003 Agreement extended to only the shares in the SPVs. Accordingly, the assertion in para 125 that *Darsan* held the assets on trust for Salgaocar must be properly understood in its context. It indicated that Salgaocar's claim that assets were held on trust for him had to be interpreted rather broadly. In gist, what was averred was that Darsan was obliged to control and deal with the SPVs' assets for the benefit of Salgaocar. That was in turn because, on Salgaocar's case, Darsan held the shares in the SPVs on trust for Salgaocar, and was to act in accordance with his instructions.

29 My view in this regard was fortified by the subsequent paragraphs of the statement of claim. These paragraphs set out alleged breaches of trust and/or fiduciary duties committed by Darsan and *not by the various SPVs* (paras 127–176). Finally, in para 177, Salgaocar averred that he had lodged the Caveats to

Version No 1: 27 Oct 2020 (22:40 hrs)

prevent Darsan, *not the Companies*, from wrongfully disposing of the Properties. Further, in his affidavits filed in response to OS 727 and OS 945, Salgaocar took the same position that he pleaded in Suit 821, and requested that the Caveats be maintained pending the determination of Suit 821 (see [6] above). Mr Ang also brought my attention to two documents that supported my finding that the crux of the December 2003 Agreement was that Darsan held the shares in the SPVs on trust for Salgaocar. These were (a) Lakshmi's affidavit filed in support of her application to stay these proceedings and (b) Chandana's submissions for OS 727 and OS 945:

(a) Lakshmi deposed that Salgaocar's case was that Darsan held his shares in the SPVs "as [Salgaocar's] nominee shareholder and/or fiduciary and/or for the benefit of [Salgaocar] and/or in trust for him". She emphasised that under the December 2003 Agreement, Salgaocar "was to remain the sole beneficial owner of all the shares in the [SPVs]"; and that Darsan was to comply with all of Salgaocar's instructions relating to monies or assets held in the names of the SPVs. Lakshmi did not suggest that the December 2003 Agreement provided for the SPVs' assets to be held on trust for Salgaocar.

(b) In Chandana's submissions, she summarised Salgaocar's case by stating that Salgaocar's assets and interests, including the Properties, were held through the Singapore SPVs. Darsan was a shareholder and director of these SPVs. Chandana thus distinguished between the assets of the SPVs, which were held by the SPVs, and the shares of the SPVs, which were held by Darsan. The foundation of Salgaocar's case against Darsan pertained to the beneficial ownership of the shares in the SPVs.

Version No 1: 27 Oct 2020 (22:40 hrs)

While I recognised that both Lakshmi and Chandana were not party to the events surrounding the formation of the December 2003 Agreement, it was pertinent that their understanding of the basis of the claim in Suit 821 was no different from the plaintiffs' characterisation of the same (see [24] above).

30 I further found that Salgaocar did not advance any other ground, *ie*, apart from his alleged shareholding in the Singapore SPVs, for his claim to the Properties. To begin with, I found it significant that in addressing the points on separate legal personality noted at [33]–[43] below, the defendants raised the Reverse Piercing, Lifting the Veil and Shareholding Arguments (see [43] below). They did not identify any basis for Salgaocar's claim to the Properties apart from his alleged shareholding in the relevant Singapore SPVs. On the contrary, the Reverse Piercing and Shareholding Arguments were founded on his alleged shareholding in the relevant Singapore SPVs. I found this telling. If there were some other basis for Salgaocar's claim to the Properties, the defendants would have raised it when faced with the difficulty for their case presented by the separate legal personality of the relevant Singapore SPVs. However, they did not do so. This demonstrated that Salgaocar's claim to an interest in the Properties was founded on his alleged shareholding in the relevant Singapore SPVs.

31 More particularly, I found that it was not Salgaocar's case in Suit 821 (nor in OS 727 and OS 945) that the December 2003 Agreement provided for the SPVs' assets to be held on trust for Salgaocar. I reiterate that the defendants did not take this position in their submissions or in the hearings of OS 727 and OS 945 (see [19(a)(i)] above). Nor did Lakshmi suggest this in her affidavit (see [29(a)] above). I accept that it was pleaded in para 2(d) of the statement of claim in Suit 821 that under the December 2003 Agreement, Salgaocar would be "the sole beneficial owner of … all monies and/or investments and/or other assets

Version No 1: 27 Oct 2020 (22:40 hrs)

held by the SPVs", and that Darsan "would hold any interest he may have in the SPV Assets on trust for [Salgaocar]" (see [26] above). There were also other scattered references in the statement of claim that might be interpreted to mean that Salgaocar's case was that the SPVs' assets were held on trust for him, as in para 125 of the statement of claim (see [28] above). However, I came to the view that (1) Salgaocar's case could not be interpreted in this way and (2) if it was to be interpreted in this way, his claim to an interest in the Properties would not raise a serious question to be tried, for the following reasons:

(a) First, the SPVs were not named as parties to Suit 821. No reliefs were sought against them directly. Yet if Salgaocar's case was that the SPVs' assets were subject to a trust, the SPVs would surely have to be named and would have been named as parties to Suit 821. Significantly, Salgaocar did not name them.

(b) Secondly, it seemed that the December 2003 Agreement would only have created a trust over the SPVs' assets, which bound the SPVs, if the SPVs, *ie*, companies which are separate legal persons, had been party to the December 2003 Agreement. But they were not. The SPVs had not even been formed at the time of the December 2003 Agreement. Indeed, the Singapore SPVs were not even in contemplation then.

(c) Thirdly, having close regard to the flow of the statement of claim in Suit 821 (see [26]–[29] above), the substance of Salgaocar's case was that Darsan held the shares in the SPVs on trust for him. That was the foundation of the allegations of breach of trust and breach of fiduciary duty that were pleaded against Darsan, and Darsan alone.

(d) Fourthly, if Salgaocar beneficially owned the SPVs' assets, it was difficult to comprehend why it was also pleaded that the trust

Version No 1: 27 Oct 2020 (22:40 hrs)

extended to any beneficial interest that Darsan might have had in the SPVs' assets (see the last sentence of para 2(d) quoted at [26] above). Salgaocar would already have been the beneficiary of the trust over the SPVs' assets. This confusion illustrates the difficulty in comprehending Salgaocar's case.

(e) Fifthly, I found it very difficult to accept that the Salgaocar and Darsan, as parties to the December 2003 Agreement, would have intended that a trust would arise not only over the shares of the SPVs, but also over their assets.

(i) If Salgaocar was the beneficial owner of the shares in the SPVs, he would have had full control over the SPVs and their assets. The context is important. Salgaocar and Darsan were friends or at the very least close business acquaintances, when the alleged trust was created and the latter was obviously trusted. In this light, and bearing in mind that control of the shares would ensure control of the SPVs, there would have been no reason for Salgaocar to assert a trust over assets of companies that had yet to be formed. On the contrary, and critically, beneficial ownership of the assets would have undermined what appeared to be the likely purpose of incorporation, *ie*, to enable Salgaocar to control the assets without having title to the same in his name. It was obvious that the purpose of the December 2003 Agreement was to clothe Salgaocar with a degree of anonymity from the trading activities that were being undertaken by the SPVs. This would go towards explaining in part the informal manner in which the trust was created, with another reason for

Version No 1: 27 Oct 2020 (22:40 hrs)

the informality possibly being the obvious trust and confidence Salgaocar reposed in Darsan.

(ii) The SPVs, on Salgaocar's pleaded case in Suit 821, were not shell companies. They made investments, acquired assets and some carried on substantial businesses. For example, Great Newton purchased the land on which Newton Imperial stands in a collective sale and then developed and sold units in Newton Imperial in its own name as developer under the Housing Developers (Control and Licensing Act) (Cap 130, 1985 Rev Ed). Other SPVs carried on a shipping business and invested in ports in India. In other words, they were incorporated for business purposes and were carrying out legitimate businesses. I struggled to understand how it could be said that the assets in the names of these SPVs deployed or used by them for the purpose of what appeared to be legitimate commercial activities were not in fact theirs, but held on trust for Salgaocar. The facts are clearly distinguishable from those in *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 ("*Prest*"), a case cited by counsel for Lakshmi, Mr Liew Teck Huat ("Mr Liew"). In *Prest*, the UK Supreme Court held that two companies ("PRL" and "Vermont") held seven residential properties on resulting trust for the appellant's husband and the wife could therefore lay claim to the properties in seeking ancillary relief in matrimonial proceedings. Both PRL and Vermont were in the business of oil trading: see *Prest* at [11], [14] and [51]. There are several distinguishing features:

Version No 1: 27 Oct 2020 (22:40 hrs)

(A) First, the court concluded that the husband solely funded the acquisition of these properties. There was a paucity of evidence, as a result of the companies' and the husband's contumelious conduct in not complying with disclosure orders, that the companies had funded the purchases. This led the court to draw the conclusion that the husband had funded the purchases, which gave rise to a resulting trust. By contrast, in the present case, the Properties were acquired with funds that derived from the business activities of the various SPVs, starting with the trading profits of the BVI SPVs. On Salgaocar's case, these were *bona fide* business activities. If so, the profits thereby generated and the assets acquired as a result would have belonged to the SPVs, not Salgaocar.

(B) Second, *Prest* was a case of a resulting trust. The court there found that the absence of evidence to the contrary led to the conclusion that a trust imposed by equity arose. On the other hand, the trust in question here was an alleged express trust created by the December 2003 Agreement. This then begs the primary question as to why Salgaocar would have intended that trust to extend beyond the shares of the SPVs to their assets when control of the shares gave him effectively control over the assets. I have explained why there is no basis for such a view sufficient to raise a serious question to be tried at [(i)] to [(ii)] above.

(C) Thirdly, in delivering the principal judgment of the court, Lord Sumption JSC emphasised that six of the

Version No 1: 27 Oct 2020 (22:40 hrs)

> properties were acquired before the companies began operations, during a period where PRL's sole function appeared to have been to hold title to the properties and act as a channel for funding property purchases by related companies: see *Prest* at [11], [48] and [51]. Lord Sumption JSC also noted that the residential properties had nothing to do with the oil trading business: *Prest* at [51]. The companies were thus found to be holding the properties on trust for the husband. This again is not the case here. The assets were acquired in the course of the legitimate economic activity of these companies and as part of their business (at least on Salgaocar's case). The example of Great Newton Imperial, the developer of Newton Imperial, stands out in this regard. The facts in *Prest* are thus far removed from those here, where at least some of the SPVs were holding assets for the purposes of their business activities and acquired the same in the course of their operations.

32 In sum, I found that Salgaocar's claim to an interest in the Properties was founded on his contention that he was beneficially entitled to the shares in the relevant Singapore SPVs. Salgaocar's case was that Darsan held those shares on trust for him. This meant that Salgaocar would not have an interest in the Properties.

Separate legal personality

33 It followed that Salgaocar's claim to an interest in the Properties faced serious difficulties, in view of the fundamental principle that a company is a

Version No 1: 27 Oct 2020 (22:40 hrs)

separate legal person from its shareholders. This was established in *Salomon v Salomon & Company, Limited* [1897] AC 22, and is "the bedrock of company law not just in Singapore but also throughout the common law world": *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 ("*Beyonics*") at [75] (*per* Judith Prakash JA).

34 The principle of separate legal personality implies that even if one owns all of the shares in a company, one does not own the company's assets. Those assets belong to the company alone. This was recognised by the House of Lords in *Macaura v Northern Assurance Company, Limited, and Others* [1925] AC 619 ("*Macaura*"). In that case, Macaura sold timber to a company. He was the sole shareholder of the company. Subsequently, he insured the timber in his own name. Most of the timber was then destroyed in a fire. Macaura sought to claim on the insurance policies. The House of Lords unanimously held that he had no insurable interest in the timber because it had belonged to the company alone. Lord Buckmaster made the following observations at 626–627:

> Now, *no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein.* He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up. [emphasis added]

Lord Sumner remarked as follows (at 630):

> My Lords, this appeal relates to an insurance on goods against loss by fire. *It is clear that the appellant had no insurable interest in the timber described. It was not his. It belonged to the Irish Canadian Sawmills, Ltd., of Skibbereen, co. Cork.* … He stood in no "legal or equitable relation to" the timber at all. … *His relation was to the company, not to its goods*, and after the fire he was directly prejudiced by the paucity of the company's assets, not by the fire. [emphasis added]

Lord Wrenbury simply said (at 633):

Version No 1: 27 Oct 2020 (22:40 hrs)

> My Lords, this appeal may be disposed of by saying that *the corporator even if he holds all the shares is not the corporation*, and that *neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation*. [emphasis added]

35 The principle recognised in *Macaura* – that a shareholder of a company does not own its assets – has been endorsed in Singapore:

(a) In *Public Prosecutor v Lew Syn Pau and another* [2006] 4 SLR(R) 210, Sundaresh Menon JC (as he then was) observed at [194] that it was "firmly established" that "[t]he owner of a company does not own the company's assets. The company owns its assets".

(b) In *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 ("*Beckkett*"), the Court of Appeal applied *Macaura*. In that case, the appellant owned approximately 75% of the shares in a company ("SME") which in turned owned 99.9% of the shares in another company ("Asimco"). Asimco took out a loan from the respondent to purchase shares in two companies ("Adaro" and "IBT"), which was secured by a pledge of the appellant's shares in SME and Asimco's shares in Adaro and IBT. Asimco defaulted in repaying the loan, and the Bank thereafter sold the pledged shares. The appellant then sought to set aside the sale. The Court of Appeal held at [84] that the appellant had no standing to set aside the sale of the Adaro and IBT shares, because those shares belonged to Asimco and not the appellant.

36 Further, in the recent case of *Lakshmi Anil Salgaocar v Vivek Sudarshan Khabya* [2017] 4 SLR 1124 ("*Vivek*"), George Wei J ("Wei J") recognised and applied the principle that a shareholder of a company does not own its assets. Notably, *Vivek* also involved Lakshmi and engaged very similar issues to this case. It concerned Million Dragon Wealth Ltd ("MDWL"), a BVI-incorporated

Version No 1: 27 Oct 2020 (22:40 hrs)

company, which was also referred to in the statement of claim in Suit 821. I will therefore set out the facts and the reasoning in *Vivek* in some detail.

37 In *Vivek*, Lakshmi sued one Vivek Sudarshan Khabya ("Vivek"), the chief executive officer of MDWL. Prior to his passing, Salgaocar was the sole director and shareholder of MDWL. MDWL was in turn the sole shareholder of 22 BVI-incorporated companies, which each owned one unit in Newton Imperial (*ie*, the condominium development six units of which are the subject of OS 727: see [2] above): see *Vivek* at [3]. I will refer to the 22 units in Newton Imperial owned by MDWL's 22 subsidiaries as "the 22 Units". This point – that MDWL had 22 subsidiaries which owned a total of 22 units in Newton Imperial – was also pleaded in the statement of claim in Suit 821.

38 The 22 Units were leased out to tenants, and the rental income was paid into an escrow account held for MDWL. In essence, Lakshmi's action against Vivek concerned the rental income from the 22 Units. Her case was that Vivek and another party had "acted in concert … to deprive the Estate of its assets by, *inter alia,* misappropriating or seeking to misappropriate the rental income of the 22 subsidiaries of MDWL": see *Vivek* at [15].

39 Vivek applied for the court to strike out Lakshmi's claim, on the basis that Lakshmi had not been appointed as the administrator of Salgaocar's estate and thus had no capacity to act for the estate: see *Vivek* at [29]. The assistant registrar held that Lakshmi had no standing to sue Vivek and struck out the suit. Lakshmi appealed against this decision. On appeal, she argued that she had standing to sue Vivek as a beneficiary of Salgaocar's estate, relying, *inter alia*, on *Wong Moy v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*"). In that case, the Court of Appeal held that a beneficiary of an estate may, in certain

Version No 1: 27 Oct 2020 (22:40 hrs)

circumstances, sue to recover assets belonging to the estate, even if the beneficiary has not obtained letters of administration: see *Vivek* at [31].

40 Wei J dismissed Lakshmi's appeal. In short, he held that the principle in *Wong Moy* did not apply where a beneficiary sought to assert an interest in property that had not belonged to the deceased, nor belonged to the estate, but was held by a company owned by the deceased. In this regard, Wei J made the following pertinent remarks at [53]–[57] and [60] of *Vivek*:

> [53] What is clear about the *Wong Moy* line of authorities is that none of these cases involves a beneficiary seeking to assert an interest in income or assets which belongs to a company. …
>
> [54] The present case is different … the claims are based on allegations that the defendant has dealt with the funds and assets of *MDWL* and its 22 subsidiaries without authority.
>
> [55] Unlike *Wong Moy* … what stands between the beneficiaries of the Estate and the MDWL documents, rental income and the 22 units themselves *is not a trust but the corporate forms of MDWL and the 22 subsidiaries*. …
>
> [56] Whatever his reasons for doing so, *it is clear that [Salgaocar]* ***made a choice to have these assets held through corporate vehicles: separate legal entities who do not depend on their shareholder's natural life for their own life and personality. I wholly agree with the AR that the 22 units and the rental income they generate belong to the 22 subsidiaries and to MDWL respectively, which are legal entities separate from [Salgaocar]. The title in the 22 units and the rental income they generate did not belong to [Salgaocar], nor have they vested in the Estate by virtue of [Salgaocar's] passing.*** … Strictly speaking, the assets of the Estate are only the assets that belonged to *[Salgaocar]* prior to his demise – *the shares in MDWL. Even upon the grant of letters of administration, the administrator will not automatically gain title to the 22 units or to their rental income. He or she will instead gain title to the shares which, upon distribution, will entitle the beneficiaries to participate in the company as shareholders. They may then gain control of (and eventually, title to) the assets and income of MDWL, for example, by resolving to liquidate the company and distributing its assets.* …
>
> [57] Thus, an application of the *Wong Moy* authorities can only bring the plaintiff so far as *entitling her to sue to recover,*

Version No 1: 27 Oct 2020 (22:40 hrs)

> *protect or preserve the shares in MDWL, but not MDWL's income or assets.*
>
> …
>
> [60] Quite apart from any positions Shanmuga or the defendant may have taken in other proceedings, ***the point remains that the property and the profits of a company, even a single-shareholder-cum-single-director company like MDWL, belong to the company, and not to its shareholder*** (*Lee v Lee's Air Farming Ltd* [1961] 1 AC 12 at p 30). There being *no basis for treating [Salgaocar's] assets as MDWL's assets*, I do not think the *Wong Moy* line of authorities will assist the plaintiff to obtain the reliefs she seeks.
>
> [original emphasis omitted; emphasis added in italics and bold italics]

Wei J's reasoning in these passages was founded on the distinction between ownership of the shares of a company and ownership of its assets. The principle in *Wong Moy* did not apply because the former did not imply the latter. In *Vivek*, even if Salgaocar had owned the shares in MDWL, he did not own the 22 Units nor the rental income that they generated. Rather, title to the same vested in MDWL's 22 subsidiaries which owned the 22 Units.

41 In my judgment, the very same distinction – between ownership of the shares of a company and ownership of its assets – was critical in this case. Conceptually, the nature of Salgaocar's alleged interest in *Vivek* was no different from that asserted in OS 727 and OS 945 and in Suit 821: namely, ownership of the shares in the SPVs which owned assets. Even if Salgaocar had owned all the shares in the SPVs, he did not own their assets, including the Properties. The SPVs were separate legal entities that owned their assets alone. Notably, there was no appeal against Wei J's judgment. That would only suggest that Salgaocar's interest only extended to the shares in the SPVs and not their assets. This is pertinent because it further undercuts the notion that Salgaocar was the beneficial owner of the assets of the SPVs. As noted at [36]

Version No 1: 27 Oct 2020 (22:40 hrs)

above, MDWL was one such SPV referred to in the statement of claim for Suit 821. Therefore, if Salgaocar had a beneficial interest in the assets of the SPVs, he would have had a beneficial interest in MDWL's assets. Yet tellingly, it was not Lakshmi's case in *Vivek* that Salgaocar had beneficially owned MDWL's assets.

42 Furthermore, the properties owned by the first and second plaintiffs in OS 945, *ie*, the Waterford Units and the WCEGA Units, were in fact one layer further removed from Salgaocar's claim in Suit 821. This was because the direct shareholder of the first and second plaintiffs was not Darsan, but Singapore Star Properties Pte Ltd (which was owned by Darsan) (see [3] above). Thus, adopting the terminology used by Wei J in *Vivek* at [55] (see [40] above), what stood between Lakshmi's claim and the Waterford Units and the WCEGA Units was not just the corporate form of the first and second plaintiffs, which owned the Waterford Units and the WCEGA Units, but also that of Singapore Star Properties Pte Ltd, which owned the shares in the first and second plaintiffs.

43 For these reasons, I formed the preliminary view that the principle that a shareholder of a company does not own its assets created serious difficulties for Salgaocar's claim to an interest in the Properties. Nevertheless, Mr Liew sought to persuade me that there was a serious issue to be tried in relation to Salgaocar's claim to an interest in the Properties. To this end, Mr Liew raised three arguments, which I shall refer to as "the Reverse Piercing Argument", "the Lifting the Veil Argument" and "the Shareholding Argument". I will now address these three arguments in turn.

Version No 1: 27 Oct 2020 (22:40 hrs)

The Reverse Piercing Argument

The parties' submissions

44 First, Mr Liew submitted that the principle of "reverse piercing" applied with the consequence that Darsan and/or his nominees held the Properties on constructive or resulting trust for Salgaocar. I should say at the outset that I struggled to follow the logic of this argument. What I understood Mr Liew to be contending was this. Salgaocar had established and controlled an array of companies (*ie*, the SPVs) of which he was the *alter ego*. The principle of reverse piercing could thus be applied, with the result that the court could find, notwithstanding the separate legal personality of the relevant Singapore SPVs, that Darsan and/or his nominees held the Properties on trust for Salgaocar. There was therefore a serious issue to be tried in relation to Salgaocar's claim to an interest in the Properties.

45 In reply, the plaintiffs submitted as follows:

(a) First, the defendants had not cited a single case in which the principle of reverse piercing had been applied.

(b) Secondly, it was not Salgaocar's case that he was entitled to rely on the principle of reverse piercing to sue Darsan.

(c) Thirdly, the defendants did not provide any analysis on how the principle of reverse piercing justified Salgaocar's claim against Darsan.

46 I did not accept the Reverse Piercing Argument. Before giving my reasons, I shall first clarify the concept of reverse piercing.

Version No 1: 27 Oct 2020 (22:40 hrs)

The concept of reverse piercing

47 The concept of reverse piercing derives from US jurisprudence. I note that writers have distinguished two types of reverse piercing: "insider reverse piercing" and "outsider reverse piercing": see Jeff H Y Chan, "Should 'reverse piercing' of the corporate veil be introduced into English law?" (2014) 35(6) Comp Law 163–171 ("*Chan*") at 163, citing Gregory S Crespi, "The Reverse Pierce Doctrine: Applying Appropriate Standards" (1990–1991) 16 Journal of Corporation Law 33 ("*Crespi*") at 37. *Chan* defines "standard piercing", insider reverse piercing and outsider reverse piercing, as follows (at 163):

> In a standard piercing of the corporate veil claim, it would be *the company's creditors or contractors who ask the court to pierce the corporate veil*, with the aim of *holding the shareholders personally liable for their debts*. …
>
> The key distinction [between insider and outsider reverse piercing] relates to *the identity of the persons seeking corporate disregard and their opponents*. "Insider reverse piercing" involves *a dominant shareholder or other controlling insider who attempts to disregard the separate legal personality to avail the insider of corporate claims against third parties*. … In contrast, "outsider reverse piercing" refers to the case where *a third party sues against the corporate insider and attempts to pierce the corporate veil to subject corporate assets to its claim*.
>
> [emphasis added]

In all three cases of "piercing", the court is invited to disregard the company's separate legal status. Yet the parties seeking "corporate disregard" are different. In cases of standard piercing and outsider reverse piercing, a third party (*ie*, a party who is not a shareholder or a corporate insider) invites the court to disregard the separate legal personality of the company, to hold the shareholder liable for corporate obligations (standard piercing) or to hold the company liable for the shareholder's obligations (outsider reverse piercing). By contrast, in cases of insider reverse piercing, it is a shareholder or corporate insider who

Version No 1: 27 Oct 2020 (22:40 hrs)

invites the court to disregard the separate legal personality of the company. This distinction is important.

48 The courts appear to have allowed standard piercing and outsider reverse piercing in appropriate cases:

(a) *Standard piercing*: In *Children's Media Ltd and others v Singapore Tourism Board* [2009] 1 SLR(R) 524 ("*Children's Media*"), the Court of Appeal upheld the High Court's decision to hold the direct and indirect shareholder of two companies liable for the companies' liabilities, on the basis that he was the companies' *alter ego*: see *Children's Media* at [3] and [9]. It has been suggested that it was not necessary to disregard the separate legal personality of the companies to hold the shareholder liable: see Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) ("*Corporate Law*") at para 06.046 at footnote 94. Nonetheless, the case was argued and decided on the basis that the corporate veil should be lifted. It is thus authority that the courts will allow standard piercing in appropriate cases.

(b) *Outsider reverse piercing*: In the classic cases of *Gilford Motor Co Ltd v Horne* [1933] Ch 935 ("*Gilford*") and *Jones v Lipman* [1962] 1 WLR 832, the English courts held a company liable in respect of obligations owed by the shareholder. I note that it has been suggested by judges and academics that the result in these two cases may be explained without disregarding the separate legal personality of the relevant companies: see, *eg*, *Corporate Law* at para 06.036; *Prest* at [69]–[73] (*per* Lord Neuberger of Abbotsbury PSC). Yet again, it appears that these cases were decided on the basis that the corporate veil should be

Version No 1: 27 Oct 2020 (22:40 hrs)

> lifted: see *Prest* at [29] (*per* Lord Sumption JSC, noting that *Gilford* is "authority for what it decided, not for what it might have decided"). They thus appear to stand as authority that the courts will allow outsider reverse piercing in appropriate cases.

It has been observed that the courts have not expressly distinguished between standard piercing and outsider reverse piercing: see Edwin C Mujih, "Piercing the corporate veil: where is the reverse gear?" (2017) 133 LQR 322–337. This is perhaps because, as noted at [47] above, both standard piercing and outsider reverse piercing involve third parties, *eg*, creditors of the company, who invite the court to disregard a company's separate legal status.

49 However, the present case did not involve standard piercing or outsider reverse piercing. The defendants' case was that Salgaocar beneficially owned the shares in the relevant Singapore SPVs; and was entitled to claim an interest in the Properties on that basis (see [32] above). In other words, the putative shareholder was inviting the court to disregard the separate legal personality of the companies in question. This was thus a case of insider reverse piercing (see [47] above). Moreover, and significantly, this was not a case where the defendants relied on a statutory provision that might have permitted insider reverse piercing (in effect). If a statutory provision is involved, the proper approach to what may be construed as an insider reverse piercing claim will likely turn on the interpretation of the relevant provision. It may be that the provision will allow insider reverse piercing (in effect) (see the analysis of *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852 ("*DHN*") in [61(a)(i)] below). But this was not such a case. The defendants did not invoke any statutory provision. Their position was that the court should allow insider reverse piercing at common law. To be clear, it is this

Version No 1: 27 Oct 2020 (22:40 hrs)

non-statutory form of insider reverse piercing which I was concerned with and which I will address in the following discussion.

50 In my judgment, the concept of insider reverse piercing was unsupported by relevant authority and contrary to principle. I therefore did not accept the Reverse Piercing Argument. I will now elaborate on my reasons.

Insider reverse piercing is unsupported by relevant authority

51 I shall first examine the position under Singapore law, before turning to the English cases and the two US cases cited by the defendants.

Singapore law

52 As the plaintiffs argued (see [45(a)] above), the defendants did not cite any Singapore case where our courts have endorsed or applied the principle of (insider) reverse piercing. In advancing the Reverse Piercing Argument, Mr Liew relied on *Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2015] SGHC 52 ("*Koh Kim Teck*"). However, for the following reasons, I considered that *Koh Kim Teck* did not support the Reverse Piercing Argument.

53 In *Koh Kim Teck*, the plaintiff opened an account with the defendant bank, to conduct investment activities, in the name of a company. According to the plaintiff, he had set up the company, and conducted his investment activities with the bank using the company, on the defendant's advice: see *Koh Kim Teck* at [3] and [10]. After losing all the funds in the account with the defendant, the plaintiff sued the defendant in tort alleging that the latter had breached its duty of care to him in, *inter alia*, rendering advice to him: see *Koh Kim Teck* at [17]–[18]. The plaintiff also claimed that the company was his *alter ego* in its dealings with the defendant ("the *alter ego* averment"): see *Koh Kim Teck* at [10].

Version No 1: 27 Oct 2020 (22:40 hrs)

54 The defendant applied to strike out the plaintiff's action. The assistant registrar ("the AR") dismissed the application. The defendant appealed, and the matter thus came before Aedit Abdullah JC (as he then was) ("Abdullah JC").

55 Abdullah JC upheld the AR's ruling that the plaintiff's claim that the defendant breached a tortious duty of care to him disclosed a reasonable cause of action: see *Koh Kim Teck* at [35]–[60]. Abdullah JC then turned to consider, "[f]or completeness", whether the *alter ego* averment should be struck out on the basis that it was an impermissible act of reverse piercing. Abdullah JC first clarified the concept of reverse piercing at [61] as follows:

> 61 … The difference between a typical case where the court is asked to pierce the corporate veil of a company, and a case of "reverse piercing", is that *in the latter, it is not a third party who is seeking to hold a shareholder or controller of the company liable for the company's liabilities. Rather, the shareholder himself asks the court to disregard the separate legal personality of the company,* so as to enable him to *pursue claims against a third party that had dealt with the company.* … [original emphasis omitted; emphasis added in italics]

It is clear from this passage that when Abdullah JC spoke of reverse piercing, he had insider reverse piercing (as defined at [47] above) in mind.

56 Abdullah JC noted that it did not seem that any case of (insider) reverse piercing had been brought before the Singapore courts before: see *Koh Kim Teck* at [62]. He then made the following observations at [63]:

> It is inappropriate to strike out an action that contains a point of law which requires serious argument. However, if the court is satisfied that the issue of law is *unarguable and unsustainable*, it may proceed to determine that question (see Singapore Civil Procedure at para 18/19/6). In my view, the issue of "reverse piercing" does require serious argument, and *is certainly not unarguable and unsustainable. This is an issue better resolved at another forum.* Thus, I am also not inclined to strike out the alter ego averment on the basis that it is an impermissible attempt at "reverse piercing" the corporate veil.

Version No 1: 27 Oct 2020 (22:40 hrs)

[emphasis added]

57 In my judgment, *Koh Kim Teck* did not assist the defendants:

(a) First, *Koh Kim Teck* did not strongly support the principle of (insider) reverse piercing. Abdullah JC did not apply that principle or endorse it, but simply opined "[f]or completeness", having decided that the plaintiff's claim disclosed a reasonable cause of action, that a reverse piercing claim was "not unarguable and unsustainable" on the facts.

(b) Secondly, the facts of that case were very different from those here. Critically, the plaintiff in *Koh Kim Teck* averred that the defendant had advised him to establish the company to carry on his banking and investment activities. On those facts, it is perhaps understandable why the plaintiff's argument that the court should disregard the separate legal personality of the company was "not unarguable and unsustainable". In this case, however, the defendants' own case was that it was Salgaocar who devised the intricate corporate structure involving multiple layers of SPVs (see [44] above). This was a carefully planned and calibrated web of companies conceptualised by Salgaocar (at least on his case). In such circumstances, for the reasons given at [74] below, the argument that the court should disregard the separate legal personality of companies seemed far less palatable.

(c) Finally, the defendants had to establish a serious question to be tried in relation to Salgaocar's claim to an interest in the Properties, and not just that the claim was "not unarguable and unsustainable". In my judgment, the test of "a serious question to be tried" imposed a more exacting standard than that of being "not unarguable and unsustainable".

Version No 1: 27 Oct 2020 (22:40 hrs)

58 I therefore considered that, as a matter of Singapore law, the concept of insider reverse piercing had no basis in authority.

English law

59 Similarly, it seemed that English law also did not recognise insider reverse piercing. Notably, *Macaura* was essentially an insider reverse piercing claim: see *Chan* at 164. In *Macaura*, the shareholder was implicitly asking the court to disregard the separate legal personality of the company that he had sold timber to in arguing that he had an insurable interest in the timber, notwithstanding that it was the company that owned the timber (see [34] above). As noted above, the House of Lords roundly rejected the shareholder's claim.

60 Similarly, the English Court of Appeal rejected an insider reverse piercing claim in *Tunstall v Steigmann* [1962] 2 QB 593 ("*Tunstall*"). In *Tunstall*, a landlord had leased premises to a tenant. She then served a notice to quit on the tenant, and relied on a statutory provision to oppose the tenant's application for a new tenancy. However, the provision would only have applied if the landlord was to occupy the premises to carry on a business. Yet before the case was heard, the landlord disposed of her business to a company (*Tunstall* at 600). She was virtually the sole shareholder of the company and had complete control over it (*Tunstall* at 598). The landlord argued that notwithstanding that the company owned the business, she was carrying on the business through the company and accordingly the statutory provision applied. The Court of Appeal rejected this argument. Ormerod LJ made the following remarks at 600:

> *It is the limited company which will carry on the business in the future*, and if she acts as the manager of the business, it is for and on behalf of the limited company. In my judgment *the fact that she holds virtually the whole of the shares in the limited company and has complete control of its affairs makes no difference to this proposition*. … It is to be assumed that the

Version No 1: 27 Oct 2020 (22:40 hrs)

> landlord in this case assigned her business to the limited company for some good reason which she considered to be of an advantage to her. ***She cannot say that in a case of this kind she is entitled to take the benefit of any advantages that the formation of a company gave to her, without at the same time accepting the liabilities arising therefrom***. [emphasis added in italics and bold italics]

Danckwerts LJ expressed similar sentiments (at 607):

> As Ormerod L.J. pointed out, *if persons choose to conduct their operations through the medium of a limited company with the advantages in respect of responsibility for debts thereby conferred, they cannot really complain if they have to face some disadvantages also.* [emphasis added]

In my judgment, these remarks encapsulated an important objection in principle to insider reverse piercing, and I will elaborate on this point at [74] below.

61 For completeness, I noted that the defendants cited two English cases in support of its submission on reverse piercing: *DHN* and *Beckett Investment Management Group Ltd and others v Hall and others* [2007] ICR 1539 ("*Hall*"). Both of these cases involved parent companies seeking to rely on provisions which, on their face, did not afford the parent company relief. Having perused *DHN* and *Hall*, my views on these cases were as follows:

(a) In *DHN*, the English Court of Appeal granted a parent company compensation under a statutory provision for the compulsory acquisition of land owned by the company's subsidiary. The court held that the companies in the group formed a single economic entity, and pierced the corporate veil of the companies on that basis: see *DHN* at 860 (Lord Denning MR), 861–862 (Goff LJ) and 867–868 (Shaw LJ); *Corporate Law* at para 06.061. However, I noted the following points.

(i) First, the single economic entity theory was implicitly rejected by the Court of Appeal in *Adams v Cape* [1990] Ch 433

Version No 1: 27 Oct 2020 (22:40 hrs)

("*Adams*") at 536E–G. In that case, the Court of Appeal rationalised *DHN* as turning on the construction of the relevant statutory provision. The court also reaffirmed the separate legal personality of subsidiary companies in corporate groups.

(ii) Secondly, the single economic unit theory has now been rejected by the Singapore Court of Appeal in *Beyonics* at [75] as being "contrary to both principle and authority". Thus, even if *DHN* supported the defendants' position that English law recognised insider reverse piercing, that would not have assisted the defendants. The basis of the decision in *DHN*, the single economic unit theory, had been rejected in Singapore. There was therefore little basis for the defendants to rely on *DHN* to contend that insider reverse piercing should be recognised in Singapore.

(b) In *Hall*, the English Court of Appeal considered a covenant in an employment contract which restrained former employees of a company from giving advice to any client of "the company", which advice was provided by "the company" in the ordinary course of business. On the facts, the company, a holding company, did not in fact provide advice to clients. The advice was provided by its subsidiary. The court interpreted the term "the company" in the covenant to include reference to the subsidiary of the holding company. It seemed plain that *Hall* did not involve disregard of the separate legal personality of the parent and subsidiaries companies, but simply turned on a broad interpretation of the covenant in the employment contract. I therefore did not consider that *Hall* was authority for insider reverse piercing.

Version No 1: 27 Oct 2020 (22:40 hrs)

62 For all these reasons, I concluded that insider reverse piercing was not recognised under English law.

US law

63 Insider reverse piercing has been allowed in the US, most notably by the Supreme Court of Minnesota: see *Chan* at 166. The defendants relied on two decisions of that court. I will now address these two cases.

64 In *Beverly Roepke et al v Western National Mutual Insurance Company* 302 NW 2d 350 (Minn, 1981) ("*Roepke*"), a widow claimed survivors' benefits under insurance policies on six vehicles owned by a company. Her late husband was the sole shareholder of the company, and had passed away in an accident while driving one of the company's vehicles. The insurance policies for the vehicles provided coverage for survivors' benefits. However, they identified the company, not the shareholder, as the sole named insured. This was significant because the Minnesota no-fault statute only entitled the widow to survivors' benefits if her late husband was an "insured" under the insurance policies.

65 The court observed at [2] that, under Minnesota law, "[t]he concept of piercing the corporate veil is equitable in nature": a sole shareholder would be regarded as the same as the company "if the equities of [the] case so require". The court noted that the case before it was one of (insider) reverse piercing: "an insider (or someone claiming through him) attempting to pierce the corporate veil from within the corporation". The court then reasoned at [3] as follows:

> [3] In the instant case, decedent was the president and sole shareholder of the named insured corporation. He treated the insured automobiles as his own and used them for family purposes. These facts, coupled with the fact that no shareholder or creditor would be adversely affected, persuade us that *the purpose of the no-fault act … [to] provid[e] insurance for persons and not vehicles, is best fulfilled by piercing the*

Version No 1: 27 Oct 2020 (22:40 hrs)

> *corporate veil* and by holding that decedent was an "insured" under the corporate policy. [emphasis added]

66 Four years later, the Minnesota Supreme Court revisited the topic of insider reverse piercing in *Cargill Inc v Sam Hedge and Hedge Farm Inc and Annette G Hedge* 375 NW 2d 477 (Minn, 1985) ("*Cargill*"). In *Cargill*, the defendant and his wife had assigned their interest in a farm to a company in which the wife was the sole shareholder. A creditor of the defendant obtained judgment against him, and sought to enforce it by selling the farm. Under Minnesota law, a statutory provision exempted from seizure or sale the home occupied by the debtor and the land upon which it was situated. The wife duly intervened in the execution proceedings, and applied to exempt from execution the portion of the farm constituting the couple's homestead.

67 The court observed that the right to a homestead exemption from seizure and sale of property was a constitutional right under the Minnesota Constitution (at 478). After referring to *Roepke*, the court held that the couple was entitled to assert the homestead exemption against the creditor on the basis that reverse piercing was appropriate. The court emphasised three points (at 479–480).

(a) First, there was a "close identity between the [couple] and their corporation": it was an *alter ego* of the couple.

(b) Secondly, there were "strong policy reasons for a reverse pierce, much stronger than in *Roepke*, namely, furtherance of the purpose of the homestead exemption … for a debtor's home to be a 'sanctuary'".

(c) Thirdly, no shareholder or creditor would be adversely affected. The court did not regard the impact on the creditor to be significant. It appears that this was because the creditor did not know of the company

Version No 1: 27 Oct 2020 (22:40 hrs)

when it extended credit to the defendant. Credit was not extended on the basis that the farm was owned by a company.

68 In relation to *Roepke* and *Cargill*, my views were as follows:

(a) First, it appeared that Minnesota law adopted a broad approach to the issue of whether a company's separate legal personality could be disregarded: the test was whether the equities of the case required it (see [65] above). A similar test – namely, what justice requires – was rejected by the English Court of Appeal in *Adams* at 536G. Such a broad test also did not appear to reflect Singapore law. In *Beyonics*, the Court of Appeal observed at [75] that generally, "piercing the veil is justified by abuse of the corporate form or if it is necessary for the veil to be lifted to give effect to a legislative provision". Therefore, given that *Roepke* and *Cargill* were founded on a more expansive test for disregarding the separate legal personality of a company than that under Singapore law, I considered that it would not be appropriate to allow an insider reverse piercing claim here on the basis of those cases. I also found it difficult to reconcile *Roepke* with *Macaura*, given that the facts of these cases were rather similar. Both involved claims on insurance policies where it was asserted that the shareholder could recover notwithstanding that the policies only appeared to provide coverage for the company. As noted at [35(b)] above, our Court of Appeal applied *Macaura* in *Beckkett*. The reasoning and result in *Macaura* thus seemed to accord with Singapore law. I therefore considered that, to the extent that *Roepke* could not be reconciled with *Macaura*, I was bound to apply *Macaura*.

(b) Secondly, the decisions in *Roepke* and *Cargill* appeared to turn on the construction of the relevant statutory provisions in those cases. In

Version No 1: 27 Oct 2020 (22:40 hrs)

both cases, the Minnesota Supreme Court accounted for the purpose of the relevant provisions – the no-fault statute in *Roepke* and the homestead exemption in *Cargill* (see [65] and [67(b)] above) – in advancing key state policies, in allowing insider reverse piercing: see *Crespi* at 42. It is unclear if the court would have allowed reverse piercing in the absence of such statutory provisions (see *Chan* at 169). Importantly, the present case did not involve a statutory provision: the defendants sought non-statutory reverse piercing. *Roepke* and *Cargill* were thus distinguishable from the case at hand.

69 For these reasons, I concluded that *Roepke* and *Cargill* did not support the defendants' insider reverse piercing claim.

70 In summary, having surveyed the position under Singapore, English and US law, I came to the view that the non-statutory form of reverse piercing invoked by the defendants was unsupported by relevant authority.

Insider reverse piercing is contrary to principle

71 Furthermore, in my judgment, the concept of insider reverse piercing was contrary to the foundational principle of company law that a company is a separate legal entity from its shareholders (see [33] above). Admittedly, the courts have recognised exceptions to that principle by lifting the corporate veil in some cases. But in my view, the exceptions were limited and unified by an underlying rationale (at least in cases which did not involve the interpretation of a statutory provision). The rationale was that of preventing a shareholder or controller of the company from abusing its separate legal personality to the detriment of third parties: see Tan Cheng-Han, "Veil piercing – a fresh start" [2015] JBL 20-36. This rationale was clear from the following authorities:

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) As noted at [68(a)] above, the Court of Appeal noted in *Beyonics* at [75] that a company's separate legal personality is only disregarded if there is "*abuse of the corporate form* or if it is necessary for the veil to be lifted to give effect to a legislative provision" [emphasis added].

(b) In the landmark decision of *Prest*, the UK Supreme Court appeared to understand the English cases on piercing the veil in a similar way. Lord Sumption JSC (with whom Lord Neuberger of Abbotsbury PSC agreed) opined that two principles – the concealment and evasion principles – explained the cases: see *Prest* at [28] and [60] (albeit that cases of concealment did not involve piercing the veil at all: see *Prest* at [28] and [61]). Lord Mance JSC and Lord Clarke of Stone-cum-Ebony JSC broadly agreed with Lord Sumption JSC's analysis: see *Prest* at [97]–[99] and [103]. Critically, the concealment and evasion principles both presuppose abuse of the corporate form by a shareholder or corporate insider, who interposes a company to conceal his or her identity or to defeat a pre-existing right or frustrate its enforcement: see *Prest* at [28]. I note, however, that Baroness Hale of Richmond JSC understood the cases in a different way, as "examples of the principle that the individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business": see *Prest* at [92]. Nonetheless, this formulation again implies that a company's separate legal personality may only be disregarded if a shareholder or corporate insider abuses the corporate form, to the detriment of third parties.

72 In accordance with this rationale, courts have lifted the corporate veil to benefit third parties. Yet in a case of insider reverse piercing, it is a shareholder or corporate insider, not a third party, who seeks to benefit from disregard of a

Version No 1: 27 Oct 2020 (22:40 hrs)

company's separate legal personality. In my view, absent some statutory basis, it would not be principled to allow insider reverse piercing for two reasons.

73 First, the corporate veil is generally pierced only if it is necessary to do so to achieve a public policy imperative: see *Prest* at [35], [62] and [103] (*per* Lord Sumption JSC, Lord Neuberger PSC and Lord Clarke JSC respectively). In some cases, a creditor or other third party will have no means of recourse against the company unless the corporate veil is pierced. The courts will thus disregard the company's separate legal status in order to grant the third party its remedy. Critically, however, a shareholder, in particular a sole shareholder (as Salgaocar claimed to be), will have remedies that do not require piercing of the corporate veil. On the facts, as the plaintiffs submitted,Salgaocar could have commenced a derivative action in the name of Great Newton in relation to the Newton Imperial Units which he alleged were wrongfully transferred to Darsan and his wife (see [9(a)] above). In respect of the Waterford and WCEGA Units, Salgaocar's remedy would have been to recover title to the shares of the Companies and so gain control of their properties. Again, there would have been no need to lift the corporate veil. In short, the law specifically provides means for a shareholder to recover assets in the name of the company. I thus found it difficult to accept that it would generally be necessary to disregard the separate legal personality of the company to grant a shareholder relief. In that light, the concept of insider reverse piercing appeared suspect.

74 Secondly, in my view, allowing insider reverse piercing would enable a shareholder or corporate insider to enjoy the benefits that flow from the separate legal personality of a company without any of its disadvantages. This point was made by Ormerod and Danckwerts LJJ in *Tunstall* (see [60] above), and is well captured in the following passage from *Chan* (at 168):

Version No 1: 27 Oct 2020 (22:40 hrs)

> … the criticism that corporations are expected to "take the rough with the smooth" remains unassailable. *The fundamental concern of this reciprocity objection lies in the choice of business form by the shareholders. Every business form has its own advantages and disadvantages.* A sole proprietorship may be appropriate to small businesses while a partnership firm is suitable for some modes of business for professionals. In either case, the investors have to bear the consequences of not enjoying any separate legal personality and are thus exposed to unlimited liability. *On the other hand, shareholders of a company enjoy the benefits of limited liability but they also have to accept the negative consequences of this separate legal person.* In operating the business in the form of a company, the shareholders are presumed to have carefully considered the pros and cons of the available business structure and have made a wise and positive choice. *If shareholders are allowed under the reverse piercing doctrine to deny the existence of the corporation simply because it later proved disadvantageous in a particular circumstance, this would severely undermine the significance of the choice of the business form.* [emphasis added]

I agreed with these remarks. Where one chooses to conduct one's affairs using a company, one takes advantage of the independent legal status of the company and the consequences that flow from that, including the fact that the property of the company does not belong to the shareholder and *vice versa*. It did not seem correct as a matter of principle that, having chosen to claim the benefits of separate legal personality, a shareholder could then avoid the disadvantages of the same by inviting the court to allow insider reverse piercing. Here, Salgaocar chose to have the Properties held through the relevant Singapore SPVs (just as how, in *Vivek*, he "made a choice to have … assets held through corporate vehicles": see *Vivek* at [56], quoted at [40] above). He presumably did so to enjoy the benefit of the SPVs' separate legal personality, including the benefit that any liabilities that were incurred by the SPVs would be borne by them alone; and to distance himself from the economic activities of these companies. In my view, he had to take the consequences of that choice, one of which was that he did not have an interest in the Properties.

Version No 1: 27 Oct 2020 (22:40 hrs)

75 Thus, I concluded that insider reverse piercing was contrary to principle and unsupported by relevant authority. I therefore did not accept the Reverse Piercing Argument. I then turned to consider the Lifting the Veil Argument.

The Lifting the Veil Argument

76 Having relied on reverse piercing in his first set of submissions, Mr Liew then contended, in his supplementary submissions, that this was a "classic case of lifting the corporate veil". According to Mr Liew, the principle underpinning the law on lifting the corporate veil was that fraud unravels everything: *Prest* at [18] (*per* Lord Sumption JSC). On the facts, Darsan was using the corporate veil of the relevant Singapore SPVs to perpetrate a fraud on Salgaocar by refusing to return the Properties to the defendants. Accordingly, the separate legal personality of the relevant Singapore SPVs should be disregarded; and there was therefore a serious issue to be tried over Salgaocar's claim to an interest in the Properties.

77 I did not accept this argument. First, as noted at [48] above, the courts have lifted the corporate veil when a *third party* seeks to (1) hold a shareholder or insider liable for the company's liabilities (standard piercing) or (2) hold the company liable for the shareholder's obligations (outsider reverse piercing). However, on these facts, Salgaocar, who claimed to be the sole beneficial shareholder of the relevant Singapore SPVs, was inviting the court to disregard their separate legal personality. It was therefore an insider reverse piercing claim, and subject to the objections from authority and principle raised above.

78 Further, as noted at [73] above, the courts have not lifted the corporate veil unless it is necessary to do so. As noted above, I did not think that it was necessary to lift the corporate veil to afford Salgaocar a remedy:

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) With regard to the Newton Imperial Units, taking Salgaocar's claim at its highest, it was essentially a claim by a shareholder of Great Newton against Darsan as an officer of the company, for having transferred the Newton Imperial Units to himself and his wife. The allegation in substance was that Darsan had wrongfully transferred the assets of Great Newton in breach of duty. Recourse therefore had to lie with Great Newton which had allegedly suffered the loss. In the event that Great Newton was unable to sue, as noted above, it would have been open to Salgaocar to bring a derivative action in its name for the loss suffered. However, on this basis, Salgaocar would not have been entitled to maintain a caveat against the Newton Imperial Units in his own name.

(b) In respect of the Waterford and WCEGA Units, Salgaocar's remedy would have been to recover title to the shares of the Companies and thereby recover the properties that they owned. Again, there would have been no need to lift the corporate veil.

79 Moreover, in cases which do not involve the interpretation of a statutory provision, the corporate veil is usually pierced when the purpose of setting up the relevant companies was to perpetrate a fraud. That is generally the form of abuse of the corporate form that is addressed by piercing the veil (see *Beyonics* at [75], quoted at [68(a)] above). However, on Salgaocar's case, all the SPVs here were set up for legitimate purposes. As noted at [31(e)(ii)] above, Salgaocar claimed that they were established to make investments, acquire assets and carry on substantial businesses. They were not established to perpetrate fraud. This formed the foundation for the defendants' resistance to the plaintiffs' reliance on the rule in *Foster* (see [19(a)(ii)] above). Thus, in my view, the traditional basis for piercing the corporate veil did not apply.

Version No 1: 27 Oct 2020 (22:40 hrs)

80 For these reasons, I was unable to accept the Lifting the Veil Argument. I therefore turned to consider the Shareholding Argument.

The Shareholding Argument

81 In brief, Mr Liew argued that Salgaocar had a caveatable interest in the Properties simply by virtue of the fact that he owned shares in the relevant Singapore SPVs.

82 I did not accept this argument. It again ran contrary to the fundamental distinction between ownership of the shares of a company and ownership of its assets, which flows from the principle of separate legal personality.

83 Mr Liew relied on two Malaysian cases: *Mahadevan & Anor v Patel* [1975] 2 MLJ 207 ("*Mahadevan*") and *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 ("*Aik Ming*"). I formed the following views on *Mahadevan* and *Aik Ming*:

> (a) In *Mahadevan*, the respondent, the managing director of a company, lodged a caveat against land owned by one Ratnavale. Ratnavale had received a loan, and it was intended that there would be a charge over his land to secure the loan. Mr Liew argued that *Mahadevan* established that it was not necessary for a party to have a proprietary interest in land to lodge a caveat against the same. This is because, Mr Liew submitted, the court accepted that even if the company had granted the loan, and acquired a beneficial interest in the land, the respondent would have a caveatable interest by virtue of his position as managing director, notwithstanding that it was the company, not the respondent, who had an interest in the land. In my judgment, however, *Mahadevan* did not assist Mr Liew. Critically, it was disputed whether

Version No 1: 27 Oct 2020 (22:40 hrs)

it was the managing director or the company who had given the loan. As Mr Ang pointed out, the managing director's position was that he, and not the company, had given the loan to Ratnavale and thus acquired an interest in the land. The managing director had lodged the caveat on this basis. For these reasons, I considered that *Mahadevan* did not strongly support Mr Liew's contention that Salgaocar would have been entitled to lodge a caveat against the Properties even if he did not have a proprietary interest in the Properties.

(b) In *Aik Ming*, the court observed that it "may become necessary … at some future time to determine the circumstances, if any, in which a director or even a shareholder may be recognised as having a caveatable interest in [land] owned by a company". Mr Liew relied on these remarks. However, they were clearly *obiter*; and, in any case, left the question of whether a shareholder should be recognised as having a caveatable interest in land owned by the company open for decision.

For these reasons, I came to the view that neither of the two authorities that Mr Liew relied on supported the Shareholding Argument.

84 Further, even if *Aik Ming* left open the question as to whether a shareholder has a caveatable interest in land owned by the company, that question has since been resolved. It has now been held in Malaysia that a shareholder does not have a caveatable interest in land owned by the company. In *Natsafe (M) Sdn Bhd v Loi Teak Kuong* [2005] 6 MLJ 454 ("*Natsafe*"), a dispute arose between the shareholders of a company. The shareholders then entered into a settlement agreement. As the company was in financial difficulties, it agreed to sell land it owned to a third party. The sale could not be completed, however, because the defendant lodged a caveat against the

Version No 1: 27 Oct 2020 (22:40 hrs)

property. The court allowed the plaintiff's application to remove the caveat, making the following remarks at [24]:

> It is trite law that *the plaintiff*, a limited company incorporated under the Companies Act 1965, *and its shareholders are two separate legal entities … the property is registered in the name of the plaintiff and not the shareholders of the plaintiff … as a shareholder of the plaintiff, the defendant has no caveatable interest, at all, in the property.* [emphasis added]

In my judgment, the law in Singapore was the same. A shareholder does not have a caveatable interest in land owned by a company he holds shares in simply by virtue of his shareholding. I thus did not accept the Shareholding Argument. I would observe that *Natsafe* was not brought to my attention by Mr Liew.

Conclusion

85 In conclusion, for the reasons above, I was unable to accept the three arguments that Mr Liew raised to persuade me that there was a serious question to be tried in relation to Salgaocar's claim to an interest in the Properties.

86 I found that, even if all of Salgaocar's contentions were accepted, he would only have owned the shares in the relevant Singapore SPVs. He would not have had an interest in the Properties. I therefore found that Salgaocar's claim to an interest in the Properties did not raise a serious question to be tried. It followed that the Caveats had to be set aside. In the premises, there was no need for me to express a view on the other issues raised by the parties in these applications, including whether the December 2003 Agreement was unenforceable under the rule in *Foster* and whether Suit 821 had been automatically discontinued by operation of law under O 21 r 2(6) of the Rules of Court.

Version No 1: 27 Oct 2020 (22:40 hrs)

87 For all the above reasons, I granted orders in terms of the prayers sought by the plaintiffs. Upon hearing the parties after I delivered oral judgment in this matter, I stayed these orders pending the disposal of applications to be filed by the defendants for a stay pending appeal.

Kannan Ramesh
Judge

Ang Cheng Hock SC, Ramesh Kumar s/o Ramasamy Koh Zhen-Xi Benjamin and Soon Shao Wei, Jerald (Allen & Gledhill LLP) for the plaintiffs;
Liew Teck Huat, Kanapathi Pillai Nirumalan and Dafril Phua Izzad (Niru & Co LLC) for the third to sixth defendants in OS 727 and the second to fourth and sixth defendants in OS 945;
Yap Han Ming Jonathan and Cai Zhenyang Daniel (Drew & Napier LLC) for the second defendant in OS 727 and the fifth defendant in OS 945.

Version No 1: 27 Oct 2020 (22:40 hrs)