

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 243

Suit No 1040 of 2017

Between

Ding Auto Pte Ltd

... Plaintiff

And

- (1) Yip Kin Lung
- (2) Mega Auto Pte Ltd
- (3) Chiun Tser Peng Andy

... Defendants

And

Mega Auto Pte Ltd

... Plaintiff in Counterclaim

And

Ding Auto Pte Ltd

... Defendant in Counterclaim

And

Ding Tang Ling

... Third Party in Counterclaim

GROUND OF DECISION

[Agency] — [fiduciary duties of agent]

[Trusts] — [knowing receipt of monies paid in breach of fiduciary duties]

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Ding Auto Pte Ltd
v
Yip Kin Lung and others

[2019] SGHC 243

High Court — Suit No 1040 of 2017

Mavis Chionh Sze Chyi JC

18–21, 26–28 December 2018, 2–4, 10–11 January 2019; 11, 20 March 2019

11 October 2019

Mavis Chionh Sze Chyi JC:

Introduction

1 The plaintiff in this case is Ding Auto Pte Ltd (“Ding Auto”), a company in the motor workshop business engaged *inter alia* in accident repairs and panel beating. According to the business profile maintained by the Accounting and Corporate Regulatory Authority (“ACRA”), its sole director is Ding Tang Ling (“Ding”), who is also the sole owner of the 80,000 shares in the said company.¹ Ding Auto brought the present suit against three parties. The first Defendant is Yip Kin Lung, who is also known as Jason, and whom all parties referred to as “Jason” during the trial. I will refer to him as “Jason” in these written grounds of decision. The second Defendant is Mega Auto Pte Ltd (“Mega Auto”), a

¹ Pp 111–113 of Ding’s affidavit of evidence-in-chief (“AEIC”).

company of which Jason is the sole director. According to Mega Auto's ACRA business profile, Jason holds 340,000 (or 97.14%) of the 350,000 shares in the company whilst one Rohaiyu binte Sharif ("Rohaiyu") holds the remaining 10,000 shares (2.86%).² The third Defendant is Andy Chiun Tser Peng ("Andy"), who is described by both himself and Jason as a former "partner" of Mega Auto until his departure from that company in June 2016.³

2 Ding Auto's suit against the three defendants sought to make them liable to account for various payments and withdrawals from the former's bank accounts which were alleged to be unauthorised and unlawful. At the conclusion of the trial, the total quantum of the allegedly unlawful payments and withdrawals was amended to \$350,372.80 after Ding Auto elected to withdraw a number of claim items. As against Jason, Ding Auto claimed *inter alia* the recovery of this amount from Jason and an account of all properties and/or benefits obtained from the use of these monies. The same reliefs were claimed against Andy. As against Mega Auto, Ding Auto claimed the recovery of the amount of \$212,277.38, being the sum total of the unlawful payments received directly by Mega Auto. Ding Auto pleaded a number of different bases for its claim, including breaches of fiduciary duties by Jason and Andy *vis-à-vis* Ding Auto; conspiracy by all three defendants (or any two of them) to injure Ding Auto by unlawful means; and the imposition of constructive trusts on each of the three defendants *vis-à-vis* the monies paid out of Ding Auto's bank accounts.

² Paras 123–126 of Ding's AEIC.

³ Paras 2–4 of Andy's AEIC; Paras 5–6 of Jason's AEIC.

3 The defendants denied Ding Auto’s claim. They also brought a counterclaim in which they alleged, firstly, that Ding Auto owed Mega Auto a total of \$166,463.08 (taking into account the withdrawal during the trial of two counterclaim items) for “work done and/or services rendered at the request of [Ding Auto], rental, salaries paid for and on behalf of [Ding Auto]”. Mega Auto also counterclaimed for the alleged wrongful retention and conversion of several items of workshop equipment.

4 In addition to the defence and counterclaim filed by all three defendants, Jason and Mega Auto issued third party proceedings against Ding. The statement of claim filed in these third party proceedings⁴ sought *inter alia* a declaration that Ding held the shares in Ding Auto as a nominee on behalf of and “in trust for” Mega Auto and that he owed the latter “fiduciary duties” as a “trustee”. It also sought various reliefs against a non-party – Ding Automotive Pte Ltd, another company set up by Ding – including an “account of profits earned by Ding Automotive Pte Ltd” and an order for the “delivery up” of its “assets and machinery.

5 At the conclusion of the trial, I gave judgement for Ding Auto against Jason and Mega Auto for the amounts of \$350,372.80 and \$212,277.38 respectively, while dismissing its claim against Andy. I also dismissed Mega Auto’s counterclaim as well as the claims brought by Jason and Mega Auto in the third party proceedings. As Jason and Mega Auto have appealed, I am setting out the grounds for my decision.

⁴ Tab 3 of the Bundle of Pleadings (“BOP”) for Third Party Action.

6 I will first summarise each side’s version of events and the key evidence presented by the parties.

The plaintiff’s version of events

7 Ding Auto was incorporated on 2 May 2013. Its case was that Ding had set up the company after leaving the employment of ST Kinetics. Having started with ST Kinetics as a panel beater and worked his way up to managing two of its STAR accident repair workshops, Ding had acquired substantial experience in the motor workshop business. When he left ST Kinetics after 23 years, in the wake of its decision to close down its STAR workshops at the end of December 2012,⁵ he was keen to open his own panel beating and accident repair business.⁶ His plan was to get onto the insurance companies’ panel of authorised workshops, which would ensure regular referral by these insurers of accident repair claims. He felt quite confident of being able to get his workshop on the insurers’ panel as he had built up good contacts with the insurance companies – and also core suppliers – within the industry.

8 During Ding’s period of employment with ST Kinetics, he had befriended Jason, whose company Mega Auto was one of the sub-contractors that STAR assigned or sub-contracted repairs, spray-painting and other jobs to. When Jason learnt of Ding’s business plans, he expressed interest in coming on board as an investor and shareholder in the new company. However, Ding refused his offer to do so after receiving negative feedback from insurance

⁵ P 161 of Ding’s AEIC.

⁶ Paras 13, 15–17 of Ding’s AEIC.

company representatives and motor parts suppliers on the possibility of Jason being a shareholder in his proposed new company.⁷

9 Subsequently, Jason offered to allow Ding Auto to operate from a unit leased by Mega Auto from the Housing Development Board (“HDB”) at Blk 10 #01-20 Sin Min Industrial Estate Sector C, in return for Ding Auto paying the rent payable to HDB.⁸ This unit had previously been occupied by one of Mega Auto’s workshops. Jason also offered Ding and Ding Auto help in the following ways. He told Ding that given Mega Auto’s existing operations and its many staff, he could help Ding with back-end operations such as accounts, payroll, tax returns, human resource (HR), and other financial and administrative operations.⁹ He also offered to extend loans to Ding Auto to enable it to set up its corporate bank accounts and to pay for initial expenses.¹⁰ He further offered to help Ding with his family expenses by suggesting that, for the short period before Ding Auto started receiving revenue from its jobs, Ding could be registered first as a Mega Auto employee and he (Jason) would help advance him some money in the form of his salary.¹¹ This arrangement would cease once Ding Auto’s business was up and running: Ding Auto would then repay all these loans from Jason once it started earning money.¹² Jason even arranged

⁷ Paras 18–20 of Ding’s AEIC.

⁸ Para 24 of Ding’s AEIC.

⁹ Para 23–24 of Ding’s AEIC.

¹⁰ Para 24 of Ding’s AEIC.

¹¹ Para 26 of Ding’s AEIC.

¹² Para 26 of Ding’s AEIC.

for Ding Auto to be provided with two second-hand computers which were then lying unused in Mega Auto's back-end office.¹³

10 Ding was very grateful for the offers of help. Having had only a few years of schooling in a Chinese school in Malaysia,¹⁴ his command of English was very poor, and he could not understand or prepare much of the paperwork required for back-end operations.¹⁵ He also had no experience in running the back-end operations of a company and was conscious of the fact that he would need either to outsource such matters or to get help from someone trustworthy. He was moved by what he perceived to be kindness on Jason's part¹⁶ and felt that he could trust Jason.¹⁷ Moreover, in his view, this was a "win-win" arrangement for both sides.¹⁸ The unit next to #01-10 – #01-22 – was also leased by Mega Auto from HDB and contained a spray-painting booth operated by Mega Auto's employees. All spray-painting required for Ding Auto's jobs could therefore be directed to Mega Auto at #01-22. More sophisticated diagnostic and electrical repair works which Ding Auto was not equipped to handle could also be directed to Mega Auto. As Jason also owned a car rental company (Costplus Car Rental Pte Ltd, "Costplus"), all car rental business arising from Ding Auto's accident repair cases could be referred to Costplus.¹⁹

¹³ Para 40 of Ding's AEIC; see also transcript of 26 December 2018 at p 97 lines 17 to 18.

¹⁴ Para 13 of Ding's AEIC.

¹⁵ Para 22 of Ding's AEIC.

¹⁶ Para 27 of Ding's AEIC.

¹⁷ Para 38 of Ding's AEIC.

¹⁸ Para 25 of Ding's AEIC.

¹⁹ Para 24 of Ding's AEIC.

11 As Ding was unfamiliar with the process of incorporating a company, Jason arranged for him to meet Lee Sye Choo (“Lee”). Lee ran a corporate secretarial firm that Jason was already a client of. At their meeting, Lee and Jason gave Ding a number of documents in English to sign.²⁰ Ding could not understand these documents but he signed them as he was told by Lee that he “needed to sign a lot of documents to register the company” with ACRA.²¹ Ding was unable to read the documents as they were in English, and they were not explained to him.²²

12 In cross-examination, Ding was referred to two *undated* documents which the defendants alleged he had signed during the meeting with Lee. One of the documents purported to announce Ding’s resignation as a director from Ding Auto; the other purported to be a “share transfer form” transferring his shares in Ding Auto to one Hisham bin Suaidi (“Hisham”).²³ It should be noted that in the latter document, Hisham’s particulars, the number of shares being transferred (80,000) and the date stated (20 June 2016) appeared to have been inserted separately at a different time from the rest of the contents of the document, as they appeared to have been typewritten and were in a different font. Ding agreed that the signatures on these two documents were his. He could not remember signing these documents during the meeting with Lee, as there had been a lot of documents placed before him then, and his grasp of written English was extremely limited. He also could not remember if the typewritten particulars in the “share transfer form” were present when he signed

²⁰ Para 28 of Ding’s AEIC.

²¹ See transcript of 26 December 2018 at p 108 line 24 to p 109 line 2.

²² See transcript of 26 December 2018 at p 107 line 23 to p 108 line 5.

²³ Pp 7–8, Vol 1 of the defendants’ bundle of documents (“1 DBD 7–8”).

the document. His understanding was that he was incorporating Ding Auto with himself as the sole director and shareholder; and Jason did not tell him anything contrary to this understanding.²⁴ Pursuant to the incorporation of Ding Auto, Ding was provided with a certificate certifying him to be the holder of one share in Ding Auto.²⁵

13 As to the reference in the “share transfer form” to the purported transfer of 80,000 shares in Ding Auto, it should be added that sometime in December 2014, Ding Auto’s issued share capital recorded an increase by an amount of \$79,999, to a total amount of \$80,000.²⁶ Ding’s evidence was that Jason had mentioned this increase in issued share capital to him and had told him that this was to “make the company look better” so that “people in the market would know that this was not a \$1 company”.²⁷ Jason gave him some documents to sign²⁸ but did not tell him to put up any money for the increase in issued share capital.²⁹ In any event, Ding subsequently found out from his counsel that no deposit of \$79,999 *per se* was ever made into Ding Auto’s bank accounts.³⁰ This was not denied by the defendants, their case (or more precisely, Jason’s case) being that the figure of \$79,999 was “paid for” by Mega Auto via its set-off of various “debts” which Ding Auto was alleged to owe it. Ding disputed

²⁴ Para 28 of Ding’s AEIC.

²⁵ Para 28 and p 167 of Ding’s AEIC.

²⁶ See transcript of 27 December 2018 at p 13 lines 8 to 24.

²⁷ See transcript of 27 December 2018 at p 14 line 20 to p 15 line 1.

²⁸ Pp 2247–2249, Vol 4 of Jason’s AEIC.

²⁹ See transcript of 27 December 2018 at p 16 lines 1 to 16.

³⁰ See transcript of 27 December 2018 at p 15 lines 4 to 8.

the defendants' case and denied in particular that Ding Auto had owed debts which could properly be set off by Mega Auto in this manner.³¹

14 Jason also helped to arrange for the opening of corporate bank accounts by Ding Auto. It was at Jason's suggestion that two bank accounts were opened: one at Oversea-Chinese Banking Corporation ("OCBC Bank") which was "used for customers' NETS and Credit Card payment facilities", and one at Standard Chartered Bank ("SCB") which was used for the "payment out of business expenses".³² It was also at Jason's suggestion that Andy, another Mega Auto staff named Wong Seng Kee ("Wong"), and Jason himself were added as signatories – along with Ding – for both bank accounts.³³ Each of the four men was authorised to sign cheques solely. Jason explained to Ding that this was to "facilitate the company operations" since Ding Auto's "back-end office" would in effect be located at Mega Auto's premises.³⁴ As to why Andy and Wong were added as signatories, Jason told Ding that this was because he (Jason) would be travelling out of Singapore from time to time, and having these two additional signatories "would make things easier".³⁵ Ding trusted Jason whom he regarded as "a good friend".³⁶ Ding was already familiar with Wong from his time in STAR, and he also knew Andy to be Mega Auto's HR manager. Accordingly, he agreed to Jason's suggestion that Andy and Wong be added as

³¹ See transcript of 27 December 2018 at p 19 line 11 to p 37 line 15.

³² Paras 33–34 of Ding's AEIC.

³³ Paras 33 and 35 of Ding's AEIC.

³⁴ Paras 33 and 35 of Ding's AEIC.

³⁵ See transcript of 20 December 2018 at p 19 lines 19 to 25.

³⁶ See transcript of 20 December 2018 at p 21 lines 9 to 20.

signatories. As Ding's English was poor, it was Jason who completed the account opening forms for both bank accounts.³⁷

15 Jason also suggested that the bank statements for Ding Auto's accounts be sent to his (Jason's) residential address at 2J Still Road.³⁸ This set of premises, apart from being Jason's residence, was also used by him to house Mega Auto's accounts personnel. Ding agreed to his suggestion as he needed Jason's help to "read any documents in English"³⁹ and he still fully trusted Jason⁴⁰ at this point.

16 It was not disputed that following Ding Auto's incorporation, Jason arranged for loans totalling \$50,000 to be made to it.⁴¹ These loans consisted of a sum of \$20,000 paid via a cheque from Mega Auto into Ding Auto's OCBC account on 31 May 2013; a sum of \$20,000 paid via a Mega Auto cheque into Ding Auto's SCB account on 28 June 2013; and a further sum of \$10,000 paid via another Mega Auto cheque into Ding Auto's SCB account on 10 July 2013.⁴² It was also not disputed that the loans totalling \$50,000 were repaid to Mega Auto by Ding Auto not long afterwards, via a cheque for \$30,000 drawn on Ding Auto's SCB account on 1 October 2013 and another cheque for \$20,000 drawn on the same SCB account on 11 October 2013.⁴³ Ding testified that at

³⁷ Paras 32, 34 and pp 132–150 of Ding's AEIC.

³⁸ Para 37 of Ding's AEIC.

³⁹ See transcript of 20 December 2018 at p 15 lines 4 to 10.

⁴⁰ Para 38 of Ding's AEIC.

⁴¹ See transcript of 20 December 2018 at p 42 lines 11 to 23.

⁴² Paras 23–23 of Jason's AEIC.

⁴³ See transcript of 21 December 2018 at p 53 line 22 to p 55 line 14; also para 25, pp 55, 62–63 of Jason's AEIC.

the time these repayments to Mega Auto were made from Ding Auto's account, he was not aware of them because from 2013 to the start of 2016, Jason had been handling Ding Auto's accounts and he did not show these accounts to Ding.⁴⁴ Bank statements and other correspondence were sent to the address at 2J Still Road. Ding himself did not see the bank statements. He only managed to obtain the bank statements for Ding Auto's accounts in the wake of his dispute with Jason in mid-2016, and it was only then that he found out about (*inter alia*) the withdrawal of the \$30,000 and the \$20,000.⁴⁵ In Ding's words, Jason "took the monies from [Ding Auto's] accounts himself".⁴⁶

17 In addition, shortly after the incorporation of Ding Auto, Ding was – as *per* Jason's suggestion – registered on Mega Auto's payroll for the months between June 2013 to March 2014;⁴⁷ and during this period, Mega Auto paid him every month a salary of \$4,000⁴⁸ plus CPF contributions.⁴⁹ According to Ding, however, he was not an employee of Mega Auto's:⁵⁰ these advances were loans from Jason to help him temporarily and were to be repaid once Ding Auto started making money.⁵¹ Ding did not know why Jason had chosen to put him on Mega Auto's payroll and to pay monthly advances including CPF contributions, instead of simply advancing him a lump-sum loan. Jason told

⁴⁴ See transcript of 20 December 2018 at p 30 line 10 to p 33 line 17.

⁴⁵ See transcript of 21 December 2018 at p 58 lines 14 to 17.

⁴⁶ See transcript of 20 December 2018 at p 55 lines 17 to 24.

⁴⁷ Paras 47 and 55 of Ding's AEIC.

⁴⁸ Para 55 of Ding's AEIC.

⁴⁹ See transcript of 20 December 2018 at p 65 lines 2 to 13.

⁵⁰ See transcript of 20 December 2018 at p 60 lines 12 to 21, p 63 lines 1 to 7.

⁵¹ See transcript of 20 December 2018 at p 62 lines 4 to 11, p 63 lines 1 to 7, p 69 line 14 to 18.

him that “the accounts [had] to be done this way”, and he did not question Jason.⁵² In any event, Ding reiterated that Jason was not helping him for free: apart from Ding Auto having to repay the loans, the understanding between the two men was that Ding Auto would also refer business such as spray-painting works and car rentals to Jason’s companies.

18 As noted earlier, insofar as the set-up and operations of Ding Auto were concerned, Ding’s plan at the outset was that it would carry out panel beating and accident repairs whilst directing any spray-painting works required to Mega Auto.⁵³ In the second half of 2013 shortly following the incorporation of Ding Auto, Ding’s recollection was that it received a total of 15 accident claim jobs⁵⁴ as well as some other non-claim jobs. Since the volume of business was not high at this point, Ding did all the work required for estimating the cost of repairs,⁵⁵ including receiving the accident vehicles from clients or tow truck companies, attending to clients at the workshop,⁵⁶ and negotiating with insurance companies or independent surveyors on the costs of repairs.⁵⁷ He did not hire any full-time office staff. As Jason had promised to help him with accounting and financial matters, he handed over to Jason’s staff – a Mega Auto accounts executive named Yvonne Yong Phui Peng (“Yvonne”) – all the correspondence, cheques, and cash payments received by Ding Auto for

⁵² See transcript of 20 December 2018 at p 66 line 8 to p 67 line 2.

⁵³ Paras 21 and 24 of Ding’s AEIC.

⁵⁴ See the table at p 21 of Ding’s AEIC for the list of accident claim jobs. The non-claim jobs are not listed in this table.

⁵⁵ Para 39 of Ding’s AEIC.

⁵⁶ Para 42 of Ding’s AEIC.

⁵⁷ Para 41 of Ding’s AEIC.

“processing”.⁵⁸ As and when any paperwork was required for HR matters, he would get assistance from Andy.⁵⁹ For the purchase and collection of spare parts required for *ad hoc* repair jobs, he “piggybacked on [the] trips” made by Mega Auto staff Ching Meng Hua⁶⁰ (“Ching”).

19 As for the actual panel beating and repair work, Ding denied that in the initial period following the incorporation of Ding Auto, Mega Auto had “seconded” its own workers to Ding Auto and continued to pay for their salaries while they carried out Ding Auto’s work.⁶¹ Ding testified that in the initial period after Ding Auto was set up, he sub-contracted⁶² such work out to part-timers such as a “Mr Goh”,⁶³ an “Ah Hin”,⁶⁴ and a Mega Auto worker named Qing Dong who did “overtime work” at Ding Auto to earn more money.⁶⁵

20 Ding worked very hard trying to get sales and business for Ding Auto, and in particular, in convincing the insurance companies to put the company on their panel of authorised workshops. In December 2013, he succeeded in getting a contract for Ding Auto to be an authorised workshop for Liberty Insurance.⁶⁶ This was followed by a contract with NTUC Income to be an authorised workshop for some 200 Corporate Travel Management corporate

⁵⁸ Para 43 of Ding’s AEIC.

⁵⁹ Para 43 of Ding’s AEIC.

⁶⁰ Para 43 of Ding’s AEIC.

⁶¹ See transcript of 26 December 2018 at p 50 lines 2 to 17.

⁶² See transcript of 19 December 2018 at p 79 line 18 to p 80 line 15.

⁶³ See transcript of 19 December 2018 at p 75 line 19 to p 76 line 13.

⁶⁴ See transcript of 19 December 2018 at p 79 lines 1 to 8.

⁶⁵ Para 123 of Ding’s AEIC.

⁶⁶ Para 44 of Ding’s AEIC.

vehicles.⁶⁷ By 2015, Ding Auto had also been added to the panel of authorised workshops for MSIG, Aviva and AIG.⁶⁸ As Ding Auto’s business picked up, it embarked in April 2014 on hiring its own workers.⁶⁹ By May 2014, it had hired a total of 6 workers, including panel beaters⁷⁰ as well as fulltime office staff who processed insurance claim matters (Anna Chua, (“Anna”)) and took care of procurement matters (Ching).⁷¹ Andy helped Ding with Ding Auto’s payroll and human resource matters by handling paperwork such as work permit applications, computing the pay due to the employees, and disbursing these payments to the employees.⁷²

21 While 5 of the 6 workers listed in Ding Auto’s CPF statement for May 2014⁷³ were formerly from Mega Auto, Ding denied defence counsel’s suggestion that it was a case of their having been “transferred” to Ding Auto.⁷⁴

It was not that they were transferred over from Mega Auto, but we hired them

22 As *per* Jason’s offer, Ding Auto started operating from Mega Auto’s former premises at #01-20. Ding denied defence counsel’s suggestion that

⁶⁷ See transcript of 19 December 2018 at p 4 line 20 to p 5 line 10.

⁶⁸ See transcript of 19 December 2018 at p 6 line 15.

⁶⁹ See transcript of 26 December 2018 at p 31 lines 10 to 13.

⁷⁰ See transcript of 26 December 2018 at p 34 lines 17 to 24.

⁷¹ Para 46 of Ding’s AEIC.

⁷² Para 49.1 of Ding’s AEIC.

⁷³ 1 DBD 99.

⁷⁴ See transcript of 26 December 2018 at p 39 line 4 to p 43 line 1.

Mega Auto workers who had previously worked for Mega Auto at #01-20 remained at the unit to do work for Ding Auto after the latter's formation.⁷⁵

23 On 28 September 2015, Ding Auto formally took over the HDB lease for #01-20.⁷⁶ Ding agreed that Ding Auto should pay rent in respect of #01-20 for the period it had occupied that unit prior to 28 September 2015;⁷⁷ this was, after all, the basis on which Jason had initially offered him the use of #01-20.⁷⁸ He believed that the rent had already been paid because Jason had been handling Ding Auto's accounts all along and would normally have ensured that whatever he had paid on Ding Auto's behalf would be repaid from Ding Auto's accounts.⁷⁹

24 As for #01-22, it was not disputed that the lease for this unit remained in Mega Auto's name, even until today. Ding denied the defendants' allegation that Ding Auto had occupied and operated the spray-painting booth at this unit from the time of its incorporation in 2013 until 2016.⁸⁰ His evidence was that if a Ding Auto job involved spray-painting, such spray-painting work would be directed to the spray-painting booth at #01-22, which was owned and operated by Mega Auto;⁸¹ and the spray-painting work would be done by Mega Auto staff.⁸² Even after Ding Auto finally hired its own spray-painters from April

⁷⁵ See transcript of 26 December 2018 at p 44 line 18 to p 47 line 1.

⁷⁶ Paras 26–27 of Ding's AEIC.

⁷⁷ See transcript of 21 December 2018 at p 34 lines 9 to 19.

⁷⁸ Para 24 of Ding's AEIC at p 13.

⁷⁹ See transcript of 21 December 2018 at p 36 lines 3 to 16.

⁸⁰ See transcript of 21 December 2018 at p 38 line 15 to p 40 line 2.

⁸¹ Para 66 of Ding's AEIC.

⁸² Para 66 of Ding's AEIC; also see transcript of 21 December 2018 at p 28 lines 1 to 6.

2014 onwards,⁸³ #01-22 continued to be in Mega Auto's possession. Ding Auto would send its spray-painters over to #01-22 to carry out spray-painting work there, paying Mega Auto a commission in return.

25 Insofar as the utilities bills for #01-20 and #01-22 were concerned, Ding acknowledged that there was only one PUB meter for both units, which was located within #01-20.⁸⁴ He agreed that the utilities, which had been billed under Mega Auto's name prior to Ding Auto moving into #01-20, had continued to be billed to and paid by Mega Auto up until the present day. According to Ding, he was "prepared to separate the meters", but by July 2016 he was not on speaking terms with Jason and/or Mega Auto; and although he had asked Mega Auto staff Ling Kok Wong ("Ling") about separating the meters, there was no response from Mega Auto.⁸⁵ In respect of Mega Auto's counter-claim for reimbursement of utilities payments for both #01-20 and #01-22, Ding agreed that Ding Auto should pay for the utilities in respect of #01-20. He disputed liability for the utilities in respect of #01-22 because (as mentioned earlier) he denied the defendants' allegation that Ding Auto had occupied #01-22 between 2013 and 2016. He noted that the electricity bill for #01-22 would be higher than that for #01-20. Nevertheless, he was willing to pay half of the amounts counter-claimed for reimbursement of utilities in respect of #01-20 and #01-22.

26 Insofar as the paint materials required for spray-painting work were concerned, Ding testified that Ding Auto did not purchase paint for its own use: instead, it would pay Mega Auto for the cost of the labour and the paint when

⁸³ See [27] below.

⁸⁴ See transcript of 27 December 2018 at p 66 lines 12 to 14.

⁸⁵ See transcript of 27 December 2018 at p 66 line 15 to p 69 line 25.

the latter took on such spray-painting work.⁸⁶ However, as Ding Auto started getting more and more business, Mega Auto was unable to handle all the spray-painting jobs which Ding Auto sent to it.⁸⁷ Mega Auto frequently ran out of paint⁸⁸ and ran short on staff.⁸⁹ Indeed, according to Ding, Mega Auto's paint shortage problem was largely caused by its poor payment record with paint suppliers, to the extent that it experienced difficulties ordering paint and had to resort to putting in orders in Ding Auto's name.⁹⁰ As for Mega Auto's staff shortage issues, these started to impact its ability to do the spray-painting work referred by Ding Auto "sometime in April 2014 onwards" and in turn "affected [Ding Auto's] ability to deliver the vehicles back to the customers in a timely manner".⁹¹ Some of the insurance companies Ding dealt with expressed unhappiness at the fact that spray-painting work was being sent to Mega Auto and asked why Ding Auto could not "do everything".⁹²

27 Sometime in April 2014, therefore, Ding had a chat with Jason about the issues of paint and staff shortages. Both verbally agreed the following.⁹³ Ding Auto would pay for whatever spray-paint it used for its spray-painting jobs. It would also hire and pay for its own spray-painters to undertake its spray-painting work. To this end, Ding Auto hired – in April 2014 – two

⁸⁶ See transcript of 21 December 2018 at p 17 lines 5 to 23.

⁸⁷ See transcript of 21 December 2018 at p 31 lines 20 to 25.

⁸⁸ Para 66 of Ding's AEIC.

⁸⁹ Para 68 of Ding's AEIC.

⁹⁰ See transcript of 21 December 2018 at p 14 line 17 to p 15 line 12.

⁹¹ Para 68 of Ding's AEIC.

⁹² See transcript of 19 December 2018 at p 82 line 21 to p 83 line 7.

⁹³ Para 72 of Ding's AEIC.

spray-painters (one of whom had hitherto worked as a spray-painter at Mega Auto).⁹⁴ It also continued to sub-contract spray-painting work out to “stand-in” spray-painters.⁹⁵ In addition, as Ding Auto’s spray-painting work continued to be done at #01-22, albeit by its own spray-painting workers, Ding Auto would pay Mega Auto “commission” for the use of its spray-painting booth. According to Ding:⁹⁶

[I]f we had to spray paint one car and we charged \$1,000 for spray painting and pay \$300 for the paint, the remaining \$700 would be split 50/50 between the two companies...[b]ecause we were using their spray painting booth.

28 Ding added that despite what had been discussed and agreed with Jason in April 2014, he came to know sometime later that Jason nevertheless instructed Mega Auto staff to continue placing orders for paint in Ding Auto’s name.⁹⁷ Furthermore, since an order of paint could be used for more than one job, it became impossible to tell whether it was Mega Auto or Ding Auto who had procured or used a particular paint colour or quantity.⁹⁸ In cross-examination, Ding disagreed with defence counsel’s suggestion⁹⁹ that Mega Auto had ceased doing any spray-painting work at #01-22 for the period of July 2013 to early 2016 and/or that Ding Auto was actually doing all spray-painting on behalf of Mega Auto during this period and charging it for such work.¹⁰⁰ He was shown Volume 16 (“Vol 16”) of the defendants’ bundle of documents

⁹⁴ Para 73 of Ding’s AEIC.

⁹⁵ Para 73 of Ding’s AEIC.

⁹⁶ See transcript of 21 December 2018 at p 89 lines 15 to 24.

⁹⁷ Para 75 of Ding’s AEIC.

⁹⁸ Para 76 of Ding’s AEIC.

⁹⁹ See transcript of 21 December 2018 at p 88 lines 1 to 16.

¹⁰⁰ See transcript of 21 December 2018 at p 90 line 8 to p 91 line 8.

(“DBD”), which contained invoices apparently issued by Ding Auto to Mega Auto in respect of spray-painting, panel beating and other repair works. It should be noted that this bundle of documents and numerous others were not provided to Ding Auto and its counsel during the discovery stage of these proceedings: indeed, a substantial number of documents were served on Ding Auto and its counsel only days before the start of the trial. It was not disputed that only some of the invoices in Vol 16 DBD had been signed by Ding.¹⁰¹ Ding testified that for those invoices which he had signed, he would have received the jobs at Ding Auto himself¹⁰² and could confirm that payment had been made to Ding Auto for these invoices.¹⁰³ He regarded only the invoices which he had seen and signed himself as “genuine” Ding Auto invoices.¹⁰⁴ For those invoices which had not been signed by him, he would not have approved their issuance and did not know who had signed off on these invoices. It appeared to him that these were jobs which had been received by Mega Auto itself and which had been carried out by Mega Auto’s workers.¹⁰⁵ He declined to confirm that payment for these other invoices had also been deposited into Ding Auto’s bank account, as he had not been provided with these documents prior to the trial.¹⁰⁶ It was Jason who had given instructions for the issuance of these invoices: Mega Auto’s employees “would not dare to issue these invoices without the instructions of Jason”.¹⁰⁷ He also recalled asking Jason about such invoices and

¹⁰¹ Pp 496-542 Vol 16 DBD.

¹⁰² See transcript of 27 December 2018 at p 145 lines 1 to 12.

¹⁰³ See transcript of 21 December 2018 at p 97 line 23 to p 98 line 13.

¹⁰⁴ See transcript of 26 December 2018 at p 117 lines 1 to 25.

¹⁰⁵ See transcript of 26 December 2018 at p 54 lines 18 to 25.

¹⁰⁶ See transcript of 21 December 2018 at p 97 line 23 to p 100 line 13.

¹⁰⁷ See transcript of 27 December 2018 at p 149 lines 9 to 10.

being told that they were “for internal records”,¹⁰⁸ but he himself did “not really understand these internal matters”.¹⁰⁹

29 Ding acknowledged with chagrin that this ignorance on his part was symptomatic of how he had handled the running of Ding Auto until his dispute with Jason in mid-2016. As he put it:

When I established the company...I only knew how to handle the workshop matters, for example, accepting the repair cases and so on. I did not know anything about accounting. Jason said that he was willing to help with the accounts and so I left everything to him...¹¹⁰

30 Insofar as the day-to-day running of Ding Auto was concerned, Ding’s evidence was that he himself took charge of the operational aspects of the work¹¹¹ and also of handling customers¹¹² and getting in more business.¹¹³ Jason, as *per* his offer of help to Ding, took care of Ding Auto’s accounting and other back-end matters:

Jason was the one helping to manage my accounts and my human resource issues, that would include CPF contributions. I am bad in English. I cannot even issue a cheque. I needed Jason’s help. We had already agreed that we would help each other...¹¹⁴

¹⁰⁸ See transcript of 27 December 2018 at p 148 line 25 to p 149 line 21.

¹⁰⁹ See transcript of 27 December 2018 at p 146 line 17 to p 147 line 18.

¹¹⁰ See transcript of 20 December 2018 at p 23 lines 4 to 9.

¹¹¹ See transcript of 27 December 2018 at p 46 line 24 to p 47 line 1.

¹¹² Para 42 of Ding’s AEIC.

¹¹³ Paras 95–97 of Ding’s AEIC.

¹¹⁴ See transcript of 20 December 2018 at p 67 lines 12 to 16.

31 Ding testified that until his dispute with Jason in mid-2016, he had been submitting the payments received by Ding Auto – as well as incoming mail and financial documents - to the Mega Auto back-end office, but he had not seen any receipts.¹¹⁵ Insofar as payments from “petty cash” of the company’s *ad hoc* expenses were concerned, Ding accepted the validity of payments where he had signed off on the petty cash vouchers.¹¹⁶ Whilst “in the past” Anna had helped him handle some of the petty cash claims, she was required to let him see the supporting documents for the payments so that he would know what they were paying for.¹¹⁷ He was not aware, however, that the petty cash float held in the office was actually \$2,500, as he had believed that it was \$1,000.¹¹⁸

32 Insofar as cheque payments were concerned, Ding saw the Ding Auto cheque-books only on the occasions when he was asked to issue cheques,¹¹⁹ but he was not shown any of Ding Auto’s accounts.¹²⁰ He had no idea what the true financial situation of Ding Auto was in the period of 2013 to early 2016.¹²¹ When he tried asking Andy and Yvonne about Ding Auto’s finances, they would simply refer him to Jason.¹²² When he did ask Jason about Ding Auto’s

¹¹⁵ See transcript of 26 December 2018 at p 73 line 25 to p 74 line 2.

¹¹⁶ See transcript of 26 December 2018 at p 133 line 19 to p 134 line 2.

¹¹⁷ See transcript of 26 December 2018 at p 130 lines 2 to 11, p 132 lines 4 to 15.

¹¹⁸ See transcript of 26 December 2018 at p 129 line 24 to p 130 line 1; also para 118 of Ding’s AEIC.

¹¹⁹ See transcript of 20 December 2018 at p 32 line 25 to p 33 line 2.

¹²⁰ See transcript of 26 December 2018 at p 73 line 2 to p 74 line 11.

¹²¹ See transcript of 20 December 2018 at p 33 lines 12 to 17.

¹²² See transcript of 26 December 2018 at p 74 lines 7 to 8.

finances, Jason would tell him that the company was not running profitably.¹²³ The only time Ding was briefly shown some accounts was at the end of 2013, when he asked Jason how the company was doing as they needed to issue salaries and bonuses to the staff: that was when Jason showed him some accounts in electronic form on his (Jason's) laptop.¹²⁴ He was not given a hard copy of the document and in any event did not understand what was shown to him on Jason's laptop,¹²⁵ as he did not know how to read financial documents such as audited accounts and balance sheets.¹²⁶

33 On 11 September 2014, Ding was asked by Jason to sign documents titled "Report of the Directors" and "Statement by the Directors",¹²⁷ which eventually became the 2013 year-end financials filed with ACRA. At the time Ding was asked to sign the documents, he was told by Jason that they were "for compliance submission purposes".¹²⁸ He was only shown a total of four pages without being given the full set of the company's financials;¹²⁹ and Jason told him that Ding Auto had "made a small profit just over \$1,000 in year 2013".¹³⁰

34 Ding had started out putting his trust in Jason, but as time went on and the latter failed to show him Ding Auto's accounts, he "started paying attention"

¹²³ See transcript of 26 December 2018 at p 73 line 23 to p 74 line 25; also para 57 of Ding's AEIC.

¹²⁴ See transcript of 26 December 2018 at p 77 line 20 to p 78 line 25.

¹²⁵ See transcript of 26 December 2018 at p 77 line 20 to p 78 line 25.

¹²⁶ See transcript of 26 December 2018 at p 112 lines 10 to 16.

¹²⁷ Pp 353–355 of Ding's AEIC.

¹²⁸ Para 106 of Ding's AEIC.

¹²⁹ Para 108 of Ding's AEIC.

¹³⁰ Para 108 of Ding's AEIC.

and having reservations.¹³¹ He did not immediately “appoint someone else” to take over the handling of the accounts from Jason since he had after all accepted Jason’s help so that he could “save [the] money” he would otherwise have had to spend getting someone to “do [the company’s] tax returns, the GST and so on”.¹³² However, things did not get better. If anything, they got worse. The following year, on 9 September 2015, he was again asked by Jason to sign similar documents – this time a total of three pages¹³³ – for “compliance submission purposes”. These documents were apparently subsequently filed with ACRA as the 2014 year-end financials. On this occasion, Jason informed him that Ding Auto had “made a loss of over \$70,000 for 2014”.¹³⁴ This did not make any sense to Ding, as he knew Ding Auto had been making claims and bringing in business.¹³⁵ Ding started to worry that the problem “seemed to stem from the quantum and nature [of] expenses incurred for [Ding Auto]”.¹³⁶ He asked Andy and Jason for clarification on issues such as whom they had authorised payments to and what Ding Auto’s outgoing expenses were, but Andy simply directed his queries to Jason¹³⁷ – who was “vague and elusive”.¹³⁸

35 At this point, Ding still did not want to quarrel, as he was conscious of the fact that Jason and Mega Auto “were [Ding Auto’s] neighbour”; and he

¹³¹ See transcript of 26 December 2018 at p 96 lines 15 to 20.

¹³² See transcript of 26 December 2018 at p 94 lines 7 to 21.

¹³³ Para 109 and pp 357–359 of Ding’s AEIC.

¹³⁴ Para 109 of Ding’s AEIC.

¹³⁵ See transcript of 26 December 2018 at p 100 lines 9 to 14.

¹³⁶ Para 99 of Ding’s AEIC.

¹³⁷ Para 99 of Ding’s AEIC.

¹³⁸ Para 109 of Ding’s AEIC.

“wanted to understand what was wrong before [he] took back the accounts”.¹³⁹ However, things came to a head sometime around the Chinese New Year period in 2016, when Jason told him that the company “would not be able to pay bonus and salaries to the staff”.¹⁴⁰ Ding chased Jason for an explanation as to how much monies Ding Auto had been receiving and what was being done with the monies received, but he did not receive any satisfactory response from Jason. When he asked Jason to return him the company’s books and records so that he could get someone else to handle Ding Auto’s finances, Jason refused¹⁴¹ – and instead started withholding the back-end assistance in order to hold him ransom.¹⁴² Business creditors and staff started to chase for payment.¹⁴³ In the meantime, Ding himself had no access to any of the company’s documents to verify its financial affairs. It was then that he grasped “the folly of trusting and relying on [Jason]”.¹⁴⁴

36 As he was not getting any clear answers from Jason about how Ding Auto’s monies were being spent, Ding decided to stop forwarding documents and cheque payments to the Mega Auto back-end office from early June 2016 onwards.¹⁴⁵ He had no access to Ding Auto’s bank statements, however, and did not know how much money was in the company’s bank accounts. He was shocked when a Ding Auto OCBC cheque issued to a customer for “loss of use

¹³⁹ See transcript of 26 December 2018 at p 100 lines 15 to 24.

¹⁴⁰ Para 133 of Ding’s AEIC.

¹⁴¹ Para 133 of Ding’s AEIC.

¹⁴² Para 136 of Ding’s AEIC.

¹⁴³ Para 134–136 of Ding’s AEIC.

¹⁴⁴ Para 137 of Ding’s AEIC.

¹⁴⁵ Para 93–94 of Ding’s AEIC.

payment” of \$300 was dishonoured in late July 2016.¹⁴⁶ This was the last straw for Ding: he now realised that Jason must not have managed Ding Auto’s finances properly.¹⁴⁷ He decided to tell Jason that he “wished to take back all the finances and accounts matters”.¹⁴⁸

37 Jason did a number of things as soon as Ding told him he wanted to “take back” Ding Auto’s “finances and accounts matters”. The very next day (4 August 2016), he told Ding that he would be removing the furniture from #01-20 because it belonged to him.¹⁴⁹ He also arranged for the removal of the two old computers which he had previously brought from the Mega Auto back-end office.¹⁵⁰ In addition, whereas Jason had previously helped Ding to file Ding Auto’s GST returns with the Inland Revenue Authority of Singapore (“IRAS”), it was around this time in August 2016 that Ding Auto began receiving letters from IRAS stating that the company had failed to file its GST returns and to pay outstanding GST.¹⁵¹ It was also around this time that Jason arranged for Anna and Foo Wung Toon (“Foo”) – who had been employed by Ding Auto since 2014 – to be re-hired as Mega Auto employees.¹⁵² In Ding’s view, Jason “(b)asically...wanted to cripple [Ding Auto’s] operations”.¹⁵³

¹⁴⁶ Para 139 of Ding’s AEIC.

¹⁴⁷ Para 140 of Ding’s AEIC.

¹⁴⁸ Para 141 of Ding’s AEIC.

¹⁴⁹ Para 141 of Ding’s AEIC.

¹⁵⁰ See transcript of 26 December 2018 at p 97 line 13 to p 99 line 19.

¹⁵¹ Para 141 and pp 460–463 of Ding’s AEIC.

¹⁵² Para 149 of Ding’s AEIC

¹⁵³ Para 141 of Ding’s AEIC.

38 Sometime in August 2016, Jason also abruptly handed a document to Ding for his signature.¹⁵⁴ A copy of this document is exhibited at pages 500 to 502 of Ding’s AEIC. In gist, it is entitled “Joint Venture Agreement” (“draft JVA”) and contained *inter alia* the following clauses:

THIS AGREEMENT dated this [*] day of [*] 2013 between –

A. [*] (NRIC No. [*]) of [*] (hereinafter referred to as “Party A1”) and [*] (NRIC No. [*]) of [*] (hereinafter referred to as “Party A1”) (both parties collectively referred to as “Party A”); and

B. MEGA AUTO PTE LTD (ACRA No. 2002090020W) a company registered in Singapore and having its registered office at 355 East Coast Road Singapore 428972 (hereinafter referred to as “Party B”)

WHEREAS, Party A and Party B are desirous of commencing a company (referred to as “New Co”) to take on such venture as may be profitable;

THIS AGREEMENT witness as follows:

1. New Co:

a. New Co shall be incorporated by Party A with Party A1 and Party A2 being the only shareholders and directors of New Co.

b. In consideration of Party B rendering such assistance as set out herein, Party A1 and Party A2 undertake that they shall not sell, assign or otherwise deal with their shares in New Co and shall pre-sign the following –

i. Share Transfer Forms for their respective shareholdings in New Co and shall give the same to Party B within 7 days of incorporation of New Co for Party B to use, in Party B’s absolute discretion;

ii. Letter of Resignation as directors of New Co and shall give the same to Party B within 7 days of incorporation of New Co for Party B to use in Party B’s absolute discretion.

c.

2. Undertakings by Party A:

¹⁵⁴ Para 152 and pp 500–502 of Ding’s AEIC.

a. Party A confirm and agree that Party A shall, at all material times, allow Party B, or any of Party B's nominated representative(s), access to New Co and all of New Co's records and/or accounts, including management accounts, whether Party B demands the same or not, and at any time Party B so requires.

b. Party A1 and Party A2 shall draw such salary as may be determined by Party B or, if Party B so agrees, at an amount which may be agreed in writing as between Party A1 and Party B or between Party A2 and Party B.

3. Particulars of Cooperation:

a. Party B shall provide the following to New Co and shall invoice New Co such amount(s) as may be agreed between New Co, Party A and Party B –

- i. Staff;
- ii. Management services;
- iii. Accounting services;
- iv. Software / Information Technology services;

b. Party B shall indemnify Party A or any one of them in the event that Party A or any one of them is required to execute any guarantee in respect of New Co, provided always that –

- i. a copy of each guarantee is provided by Party A to Party B;
- ii. approval in writing from Party B is obtained before the execution of each guarantee.

c. Party B shall provide to New Co premises at which to operate from at such rental rate as may be agreed between New Co, Party A and Party B.

d. Profit from New Co (after deducting all expenses, including but not limited to, salary, payments to Party B and such) as determined after each full calendar year of incorporation, shall be divided as follows –

- i. Party B shall be entitled to 85% of all such profit; and
- ii. Party A shall be entitled to 15% of all such profit, to be shared in such proportion as may be agreed to between Party A1 and Party A2.

e. Party A, jointly and severally, shall ensure that the payment of Party B's portion of all such profit shall be paid

within 3 months after the end of each full calendar year of incorporation.

4. Resignation:

a. Party A1 and Party A2 may resign from New Co by giving 3 months' notice to Party B.

b. Upon the end of the 3 months' notice period, the party resigning shall no longer be entitled to any benefit set out above, including, but not limited to, salary and share of profits.

c. Resignation of either Party A1 and/or Party A2 as a director shall be deemed to be an immediate resignation for the purposes of this part of this Agreement. In such an event, the party resigning shall immediately no longer be entitled to any benefit set out above, including, but not limited to, salary and share of profits.

5. Determination of this Agreement:

a. Party A shall not be entitled to determine this Agreement.

b. Party B may determine this Agreement by giving 1 month's notice to Party A1 and Party A2 (or any one of them).

c. By the end of the 1 month's notice period, Party A shall transfer all shares in New Co to such person(s) as may be nominated by Party B and Party A shall resign from the directorship of New Co.

39 As Ding did not understand the document, he brought it to his daughter Kelly and asked her what it was about. He did not sign the draft JVA in the end because Kelly warned him against signing it after she had gone through its terms.¹⁵⁵

40 Following Jason's unilateral removal of the computers from #01-20, Ding Auto lost all access to records relating to its clients, car repair information, claim records, and other related documentation.¹⁵⁶ Worst of all, Ding did not

¹⁵⁵ See transcript of 28 December 2018 at p 29 line 7 to p 30 line 13.

¹⁵⁶ Para 140 of Ding's AEIC.

have any of Ding Auto's accounting and other financial records. As Goh Boon Kok ("Goh"), the Certified Public Accountant engaged by Ding at his counsel's suggestion noted, Ding "did not even have a general ledger or the company's bank statements": Ding told Goh that Jason had "simply refused to return the originals or to extend copies to him" and that even the computers containing the electronic data on Ding Auto's claim cases had been unilaterally removed from the company's premises.¹⁵⁷ It was Goh who advised Ding to close Ding Auto's existing bank accounts at OCBC and SCB and to open a new bank account; and Goh even accompanied Ding to the banks to carry out these arrangements. By the time the OCBC and the SCB accounts were closed on 27 July 2016, there was only a sum of \$39.88 in the former account and \$1,011.36 in the latter. Ding deposited these sums – along with the cheques he had held back from Mega Auto's back-end office since June 2016 – into the new United Overseas Bank ("UOB") account which Goh helped him to open for Ding Auto.¹⁵⁸

41 Jason continued to ignore Ding Auto's requests for him to return its accounting and other financial records, even when the request was made to his lawyers by Ding Auto's counsel.¹⁵⁹ Ding had to get Goh's help to apply to the banks for copies of cheque images and bank statements.¹⁶⁰ Up until the commencement of these proceedings by Ding Auto in November 2017, Jason had continued to ignore the requests for him to return the company's accounting and other financial records.

¹⁵⁷ Para 4 of Goh Boon Kok's AEIC.

¹⁵⁸ Paras 142–145 of Ding's AEIC.

¹⁵⁹ Pp 512–519 of Ding's AEIC.

¹⁶⁰ Para 146 of Ding's AEIC.

42 Ding testified that for months after his dispute with Jason in August 2016, Ding Auto was “in big trouble with no money, no accounting or financial documents”.¹⁶¹ In October 2016 and November 2016, it received demand notes from IRAS for over GST payments.¹⁶² Creditors too were chasing for payment; and some suppliers – such as Chow Enterprises Pte Ltd – even sued Ding Auto for unpaid invoices dating back to January 2016.¹⁶³ Ding was obliged to go, cap in hand, to each creditor to explain the situation and to ask for more time to pay.¹⁶⁴ He also had to tell his wife and children of the dire situation and to confess that he could not pay for the household expenses as he had not received any salary for months.¹⁶⁵ Eventually, it was due to the support of his family members and friends that Ding Auto managed to pull through the crisis. His family members chipped in to raise money to pay off Ding Auto’s debts, and he also managed to obtain loans from some friends. His wife and daughter subsequently agreed to leave their own jobs to come and assist him in Ding Auto.¹⁶⁶

Summary of the plaintiff’s case against the defendants

43 The statement of claim filed on behalf of Ding Auto was lengthy and unfortunately at times rather confusing, but its case against the defendants may be summarised as follows.

¹⁶¹ Para 158 of Ding’s AEIC.

¹⁶² Pp 521–522 of Ding’s AEIC.

¹⁶³ Pp 466–482 of Ding’s AEIC.

¹⁶⁴ Para 161 of Ding’s AEIC.

¹⁶⁵ Paras 160–161 of Ding’s AEIC.

¹⁶⁶ Paras 162–165 of Ding’s AEIC.

44 Ding Auto’s case against the defendants was premised on Ding being the true – and the sole – owner of the company. Ding denied that he held the shares in the company on trust for Mega Auto, or that he was Mega Auto’s nominee. *Vis-à-vis* Jason, Ding Auto’s case was that pursuant to his offer to help Ding, he was in charge of¹⁶⁷ managing Ding Auto’s “office and finance back-end work”; handling Ding Auto’s finances (which included handling its bank accounts as one of the signatories to its bank accounts and handling all banking matters); maintaining its accounting records; handling its income and expense items as well as payments to creditors and collections from debtors; attending to the submission of various tax returns; handling cash flow; and attending to inventory matters. Ding’s evidence was that although he had not officially appointed Jason as a “manager”, Jason had – in taking charge of these matters – conducted himself as a manager and an agent of Ding Auto.¹⁶⁸ The assistance extended to Ding and Ding Auto by Jason – and through him, by Mega Auto – was not *gratis*, but was instead part of a “win-win” arrangement whereby Ding Auto would in return refer spray-painting and other jobs to Mega Auto and car rental business to Jason’s other company, Costplus.

45 *Vis-à-vis* Andy, Ding Auto’s case was that besides attending to payroll and human resource matters on its behalf, he would also sign cheques on its behalf for payment of business expenses, and generally assist Jason in managing Ding Auto’s “finance and office back-end work”;¹⁶⁹ further, that he too acted as a manager and an agent of Ding Auto in carrying out these various functions.

¹⁶⁷ Para 5 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁶⁸ Para 48 at p 25 of Ding’s AEIC.

¹⁶⁹ Para 49 of Ding’s AEIC.

46 Ding Auto’s case against Jason and Andy was based on a number of alternative causes of action. Firstly, it was Ding Auto’s case that in their capacities as managers and agents, Jason and Andy each owed Ding Auto a number of duties, including (*inter alia*)¹⁷⁰ a “duty to be honest and to act in good faith with proper care, skill and diligence when dealing with the affairs of [Ding Auto]”, a “duty to keep accurate accounts of all transactions undertaken on behalf of [Ding Auto]” and [to] be prepared at all times to produce these accounts” to Ding Auto or its director; and a “duty to account for all money and property received and to indemnify [Ding Auto]” for any monies he or Mega Auto had “wrongfully retained”.

47 Further or alternatively, Ding Auto asserted that both Jason and Andy were trustees of its assets and accordingly owed it fiduciary duties which included (*inter alia*)¹⁷¹ a “duty to act always *bona fide* in the interests of [Ding Auto]”, and a “duty to ensure that the affairs of [Ding Auto] [were] properly administered and that its assets, property and resources [were] not exploited or relocated or dissipated to the detriment of [Ding Auto’s] interests”.

48 It was asserted that Jason and Andy had both breached the above duties and acted “*mala fides* against the interest of [Ding Auto]” by (*inter alia*)¹⁷² making unauthorised withdrawals from Ding Auto’s bank accounts, authorising payment out of [its] funds to various parties (including Mega Auto) “without any proper basis or documentation or apparent benefit to [Ding Auto]”, and

¹⁷⁰ Paras 6 and 6A of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷¹ Paras 7 and 7A of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷² Para 8 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

improperly “diverting [Ding Auto’s] assets” to various parties including Mega Auto.

49 Generally, it was also Ding Auto’s case that Jason had removed all its accounting and financial records after his dispute with Ding in July 2016; that he had persisted in ignoring requests from Ding Auto and its lawyers for the return of these records;¹⁷³ and that he had also failed to provide any details of the alleged reasons or basis for the impugned withdrawals and payments until the present suit was well underway.

50 As against Mega Auto, it was Ding Auto’s case that Jason was its “directing mind and will”; that it (Mega Auto) had acted “within knowledge that [Jason] was acting in breach of his duties to” Ding Auto;¹⁷⁴ and that it was accordingly liable, “on the ground of knowing receipt”, to account as a constructive trustee for the cash cheques and payments made to it from Ding Auto’s account.¹⁷⁵

51 It was also asserted against Andy that he had “intentionally” or “with wilful recklessness” failed to query the unauthorised withdrawals and payments and “deliberately turned a blind eye to the nature of such irregular payments that an ordinary or honest person would so query [*sic*]”;¹⁷⁶ and that he was accordingly liable for “dishonest assistance” of Jason’s breach of duties.¹⁷⁷

¹⁷³ 7 AB 2637 to 2646 and 2733 to 2741.

¹⁷⁴ Para 9 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷⁵ Para 14A.3 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷⁶ Para 9A of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷⁷ Paras [14A.2.9] and [14A.4] of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

52 Further or alternatively, Ding Auto contended that all three defendants (or any two of them) had conspired to injure Ding Auto by unlawful means;¹⁷⁸ namely, by making “various unlawful cash and cheque withdrawals” from Ding Auto’s bank accounts while keeping its accounting and financial records “away from sight” of Ding to “conceal such fraud and the proceeds of such fraud”.

53 The “unlawful cash and cheque withdrawals” which formed the subject of Ding Auto’s claims against the defendants are listed in the table set out in [13] of the statement of claim (Amendment No. 2).¹⁷⁹ That the listed withdrawals and payments were made from Ding Auto’s bank accounts was not disputed by the defendants. It was also not disputed by the defendants that the cash cheques and other cheques relating to these withdrawals and payments were signed either by Jason or by Andy. The defendants alleged, however, that all these withdrawals and payments were properly made for legitimate reasons.

54 It was also not disputed by Jason that he had removed Ding Auto’s accounting and financial records following the dispute with Ding; that he had ignored the requests for the return of these records; and that he had disclosed documents to justify or support the impugned withdrawals and payments only after being sued by Ding Auto. Jason took the position that Ding Auto was truly owned by Mega Auto, and that in any event he had eventually provided documents in the discovery stage of these proceedings.¹⁸⁰

¹⁷⁸ Para [14A] of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁷⁹ Pp 208 to 214 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

¹⁸⁰ Paras 37–38 of Jason’s AEIC.

55 As a general observation at this juncture, it should be noted that in light of the removal of its accounting and financial records as well as the late stage at which documents were eventually disclosed by Jason, Ding Auto took the broad position that it was wholly unable to uncover any legitimate reason for these transactions. It should also be noted that *although Jason and the other two defendants alleged that these withdrawals and payments were all properly made for legitimate reasons*), neither Jason’s AEIC nor Andy’s AEIC elaborated on what these reasons were. What Jason did instead was to exhibit a large number of invoices, payment vouchers and other documents in Vols 1 to 4 of his AEIC,¹⁸¹ but beyond stating that “each withdrawal is justified” and that he had “sought to obtain documents supporting each withdrawal”,¹⁸² he did not explain the documents exhibited. It was left to counsel for Ding Auto and Ding to attempt to draw out – through cross-examination – Jason’s explanations as to these various documents. In the course of the trial, after Jason’s explanations for these various documents emerged, Ding and his counsel informed that they accepted the validity of some of the payments which had been included in the table at pp 208 to 214 of the statement of claim. Towards the end of the trial, this table was amended via the deletion of a number of claim items, which reduced the total value of the impugned transactions to \$350,372.80. For ease of reference, a copy of the amended table is appended as Annex A to these written grounds.

56 In respect of Mega Auto’s counter-claim for certain items of equipment which had allegedly been wrongfully retained and/or converted by Ding Auto,¹⁸³ Ding denied that the said items had been installed on Ding Auto’s

¹⁸¹ Pp 67-1867 of Jason’s AEIC.

¹⁸² Paras 29–30 of Jason’s AEIC.

¹⁸³ Para 16 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

premises. It will be seen from Jason's AEIC that the most expensive of these items was a "Bench Rack 500 System Filter".¹⁸⁴ This was said by Jason to have been purchased at a price of \$10,000 from ST Kinetics; and he exhibited an invoice from ST Kinetics dated 23 August 2013 and addressed to Mega Auto at its 355 East Coast Road office.¹⁸⁵ Jason alleged that of the two units of "Bench Rack 500 System Filter" listed in the said invoice, one unit had been left at Ding Auto's workshop at #01-20. Ding gave evidence, however, that the "Bench Rack 500 System Filter" found on Ding Auto's premises was an item which Ding Auto had purchased from ST Kinetics – along with some other equipment – at a price of \$4,280. In his AEIC, he had stated that these various items of equipment had been purchased in April 2015. In cross-examination, he clarified that he recalled that the "Bench Rack 500 System Filter" and other equipment had been purchased from ST Kinetics in 2013, a few months after the incorporation of Ding Auto; and that ST Kinetics had only collected the payment sometime later.¹⁸⁶ The payment for these various pieces of equipment was made via a cheque drawn on Ding Auto's SCB account.¹⁸⁷ Ding added that ST Kinetics had sold him the "Bench Rack 500 System Filter" and other equipment at a steep discount because they had no more use for the equipment after closing down their STAR business; that in the end they had charged him a price far less than what the equipment was worth; and that they had provided an invoice sometime later when he asked for one.¹⁸⁸

¹⁸⁴ Para 44, Vol 1 and pp 2206–2211, Vol 4 of Jason's AEIC.

¹⁸⁵ P 2211, Vol 4 of Jason's AEIC.

¹⁸⁶ See transcript of 21 December 2018 at p 68 line 25 to p 79 line 6.

¹⁸⁷ P 438 of Ding's AEIC.

¹⁸⁸ See transcript of 21 December 2018 at p 77 line 2 to p 78 line 10.

57 As to Mega Auto’s counter-claim for outstanding payments allegedly due for “work done and/or services rendered..., rental, salaries paid for and on behalf of [Ding Auto]”,¹⁸⁹ this was also disputed by Ding Auto, save for the following matters. Ding acknowledged that Ding Auto should reimburse Mega Auto for payment of charges relating to his (Ding’s) mobile phone, as well as the mobile phones of Anna and Ching for the periods that these two staff were employed by Ding Auto. He also agreed that Mega Auto should be reimbursed for payments it had made on Ding Auto’s behalf in relation to purchase of stationery supplies, broadband and fax charges, and photocopier leasing charges.¹⁹⁰

58 I will next summarise the Defendant’s version of events.

The defendants’ version of events

59 The defendants’ main witness was Jason. Although the ACRA business profile showed him to be the owner of 97.14% of the shares in Mega Auto (with Rohaiyu holding the remaining 2.86%), Jason said that he had a “verbal partnership agreement” with Andy and three other individuals – Hisham, Wong and Ling – whereby he was to own 50% of Mega Auto while the other four men owned the remaining 50% in equal proportions.¹⁹¹ It was not disputed that the other four men were all employees of Mega Auto, and that they did not pay Jason any money for their alleged 50% shareholding. According to Jason, he had provided all the financing for Mega Auto but had entered into the “verbal partnership agreement” with the four men because he wanted to “reward” them

¹⁸⁹ Para 17 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

¹⁹⁰ See transcript of 26 December 2018 at p 95 line 10 to p 102 line 3.

¹⁹¹ Para 6 of Jason’s AEIC.

for working hard.¹⁹² It was “mutually agreed” amongst them that the shares of those who left Mega Auto would “pass back” to him. As Andy and Wong had left Mega Auto by the time of the trial, their shares had reverted to him, such that he now owned 75% of the shares in the company, while Hisham and Ling (who had remained with Mega Auto) continued to hold 12.5% each. As for Rohaiyu, she was said to be Hisham’s wife and to be holding her 2.86% shareholding on behalf of Hisham as part of his 12.5% shareholding due to his status as a bankrupt.¹⁹³

60 Jason claimed that when ST Kinetics closed its STAR business in December 2012, it was Ding who first approached him with a request to join Mega Auto. According to Jason, Ding had assured him that he had “contacts with motor insurers” and “would be able to convince them to place Mega Auto on the motor insurers panel” of authorised workshops.¹⁹⁴ Jason was interested in this “new business opportunity” and held several discussions with Ding. According to Jason, it was Ding who subsequently proposed that “a new company be incorporated and that no one with any connection with Mega Auto should be involved”:¹⁹⁵

[Ding] said that he needed to be the sole director and shareholder of this new company. Ding gave the reason for Mega Auto’s (and anyone connected with Mega Auto) exclusion as that insurance companies would not let Mega Auto be an authorised workshop as Mega Auto had over the years made third party claims against insurers through solicitors.

¹⁹² See transcript of 2 January 2019 at p 97 lines 28 to 32.

¹⁹³ See transcript of 2 January 2019 at p 93 line 8 to p 95 line 29 and at p 99 line 25 to p 100 line 28.

¹⁹⁴ Para 11 of Jason’s AEIC.

¹⁹⁵ Para 12 of Jason’s AEIC.

61 Jason claimed that over “various meetings” held between April to May 2013,¹⁹⁶ he (representing Mega Auto) and Ding came to a verbal agreement whereby Ding was to be “appointed as Mega Auto’s nominee director” in the new company¹⁹⁷ (which was eventually incorporated as Ding Auto). According to Jason, Ding also promised to hold the shares in the new company “as a trustee for and on behalf of Mega Auto”.¹⁹⁸ In return, Ding was to be employed by Mega Auto, who would pay him a monthly salary of \$4,000 and CPF contributions “until such time as when Ding Auto was financially able to pay Ding’s salary”. He was also to be entitled to “a 15% share of the net profits of Ding Auto over and above his salary”. However, he was required to “relinquish his share in Ding Auto to Mega Auto or anyone as may be directed by Mega Auto, and also to resign his appointment as Director”, as and when required by Mega Auto.¹⁹⁹ This was why Ding was asked to pre-sign an undated letter of resignation as director and a share transfer form which had the transferee and the amount of consideration for the transfer left blank.²⁰⁰

62 Jason also claimed that it was verbally agreed with Ding that Ding Auto would “be treated as a wholly owned subsidiary of Mega Auto and its assets and businesses would be the property of Mega Auto”, with the latter “[assisting] in the financial obligations and management of Ding Auto”.²⁰¹ Mega Auto

¹⁹⁶ Para 14 of Jason’s AEIC.

¹⁹⁷ Para 3 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

¹⁹⁸ Para 13(a) of Jason’s AEIC.

¹⁹⁹ Paras 13(j)–(l) of Jason’s AEIC.

²⁰⁰ Paras [18]–[20] and pp 28–29 of Jason’s AEIC.

²⁰¹ Paras [13(b)–(c)] of Jason’s AEIC.

would manage, *inter alia*, Ding Auto's bank accounts.²⁰² Ding, Andy, Wong and Jason himself were all signatories to Ding Auto's bank accounts, with any one signatory being able to operate the accounts. Ding Auto was supposed to pay Mega Auto a monthly management fee of \$5,000 (although Jason also claimed that Mega Auto never billed for its management fees because "Ding Auto was not able to make ends meet").²⁰³

63 In cross-examination, Jason admitted that he did not have any text messages or other documentation recording the verbal agreement outlined above.²⁰⁴ Jason's evidence was that the parties had engaged in "verbal discussions" because Ding did not read English and he himself did not write Chinese. Mega Auto had tried to reduce the verbal agreement with Ding into writing by getting a lawyer (one Ismail bin Atan, ("Ismail")) to draft the JVA.²⁰⁵ Jason claimed that he had handed Ding a copy of this draft agreement sometime in 2013, and that Ding had said he needed "to go back and check with the lawyers" but had kept on "delaying" such that the agreement was never signed.²⁰⁶

64 Jason agreed that he was the one who had given instructions to Lee to arrange for the incorporation of Ding Auto and who had paid for the related costs. Lee was at that time already company secretary for one of Jason's companies. As to the \$50,000 paid by Mega Auto into Ding Auto's bank

²⁰² Para 13(g) of Jason's AEIC.

²⁰³ Para 13(h)–(i) of Jason's AEIC.

²⁰⁴ See transcript of 2 January 2019 at p 113 lines 18 to 22.

²⁰⁵ Para 15 and pp 30–32 of Jason's AEIC.

²⁰⁶ See transcript of 2 January 2019 at p 112 lines 1 to 9.

accounts, Jason agreed that these were loans by Mega Auto which were fully repaid to it via cheques drawn on Ding Auto's SCB accounts on 1 October 2013 (for \$30,000) and on 11 October 2013 (for \$20,000).²⁰⁷

65 In addition to this initial loan, Jason alleged that Mega Auto helped to get Ding Auto's business started in the following ways. Firstly, insofar as Ding Auto's workshop premises were concerned, both sides were agreed that Ding Auto had operated from the unit at #01-20 after it was incorporated and that the HDB lease for this unit was assigned to Ding Auto on 28 September 2015. It will also be recalled that Ding had in his testimony asserted that Jason was the one who had suggested that Ding Auto could use these premises in return for its paying the rent payable to HDB;²⁰⁸ and that Ding had accepted that Ding Auto should pay Mega Auto rent for the period it occupied the unit prior to taking over the lease. Where the two sides differed was in respect of the unit #01-22 which housed Mega Auto's spray-painting booth: the defendants' position²⁰⁹ was that Ding Auto had also occupied this unit and operated the spray-painting booth since its incorporation until the breakdown of the relationship between Ding and Jason. Jason's AEIC gave no details of this alleged occupation of #01-22 by Ding Auto, although in cross-examination, he continued to maintain the same position while conceding that unlike #01-20, the lease for #01-22 had never been assigned to Ding Auto. He stated that this was "[j]ust precaution".²¹⁰

²⁰⁷ Paras 23–25 of Jason's AEIC.

²⁰⁸ Para 24 of Ding's AEIC.

²⁰⁹ Para 3(k)(iv) of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

²¹⁰ See transcript of 4 January 2019 at p 91 lines 13 to 25.

66 It was not disputed that unit #01-22 housed the only spray-painting facility which Mega Auto possessed (leaving aside its workshop at Corporation Road which in any event could only be used for CityCab taxis²¹¹). Following from the allegation that Ding Auto had occupied and operated the spray-painting booth at #01-22, Jason also alleged that after its incorporation in May 2013, Ding Auto received from Mega Auto the “first priority” referral of all of the latter’s spray-painting jobs.²¹² It was only if Ding Auto was unable to carry out spray-painting jobs that such jobs would be referred to others.²¹³

67 In fact, according to Jason, Ding Auto “was a sub-contractor for Mega Auto”: in addition to referring to Ding Auto all its spray-painting jobs, Mega Auto also passed along to it other repair works;²¹⁴ and there was a flexible arrangement between the two companies for each to pass the other panel-beating jobs it was too busy to cope with.²¹⁵ On top of all this, Mega Auto also “referred all its third-party accident claims to Ding Auto for it to settle with insurance companies and profit from that”.²¹⁶ In his AEIC, Jason did not elaborate on the reason(s) for Mega Auto doing so, although in the questions posed to Ding in cross-examination, it appeared that the defendants’ position was that this was done in order to enable Ding Auto to show the insurance companies that it had a good volume of business and thereby persuade them to put it on their panel of authorised workshops. Jason claimed that 95% of the invoices issued by Ding

²¹¹ See transcript of 3 January 2019 at p 4 line 18 to p 5 line 10.

²¹² See transcript of 3 January 2019 at p 5 line 25 to p 7 line 32.

²¹³ Para 32 of Jason’s AEIC.

²¹⁴ Para 33 of Jason’s AEIC.

²¹⁵ See transcript of 3 January 2019 at p 8 lines 13 to 18.

²¹⁶ Para 33 of Jason’s AEIC.

Auto to Mega Auto for the jobs referred were exhibited in Vol 16 of the Defendant's Bundle of Documents.²¹⁷

68 Insofar as manpower was concerned, Jason disputed Ding's evidence that Ding Auto had largely relied on freelance sub-contractors in the early stages of its operations. Jason alleged that the Mega Auto employees who had previously been stationed at unit #01-20 were all "seconded" to Ding Auto once it was set up, to do all its work.²¹⁸ It was Jason's evidence that the Mega Auto employees so "seconded" included Ding himself; and that it was only from April 2014 that some Mega Auto employees – including Ding and (later) two Malaysian employees – were "formally transferred to become employees of Ding Auto".²¹⁹

69 As noted earlier, the defendants' case was that it had been verbally agreed between Jason and Ding that Mega Auto would pay for Ding Auto's expenses and outgoings before reimbursing itself from Ding Auto's funds.²²⁰ According to Jason, the employees "seconded" to Ding Auto continued to be paid during the period of secondment by Mega Auto, who would in turn invoice Ding Auto for reimbursement of the employees' salaries, CPF and workers' levy. Reimbursement was done whenever Ding Auto had enough cash to do so; and it was "fully up to" Jason to decide "how or when the reimbursements were made".²²¹

²¹⁷ See transcript of 2 January 2019 at p 74 line 20 to p 75 line 5.

²¹⁸ Para 45 of Jason's AEIC.

²¹⁹ Paras 45 and 48 of Jason's AEIC.

²²⁰ Para 26 of Jason's AEIC.

²²¹ Para 46–47 of Jason's AEIC.

70 In this connection, Jason asserted that Mega Auto had refrained from seeking reimbursement of the salaries paid to “the seconded workers” for the months of January 2014 to March 2014 because “Ding Auto did not have sufficient funds to pay”. Nothing more was said in Jason’s AEIC about the salary payments for this period. However, based on the questions put to Ding by defence counsel in cross-examination, the defendants’ case was also that the amount due to Mega Auto for the “seconded workers” salaries for these three months was one of the amounts included in the “set off” it did of various debts allegedly due from Ding Auto in December 2014 in order to achieve the \$79,999 increase in Ding Auto’s share capital.²²²

71 According to Jason, Ding Auto’s staff salaries were paid in cash because Ding Auto suffered from cash flow problems.²²³ Andy was the one who would notify Mega Auto’s accounts staff Yvonne to issue cash cheques for the payment of Ding Auto’s staff salaries after computing the amounts payable. Andy’s evidence was that the cash cheques would be drawn on Ding Auto’s SCB account; and that if Ding Auto had insufficient funds, Mega Auto would pay first before getting reimbursed by Ding Auto. Andy also asserted that it was Jason who would decide when these cash cheques for salary payments would be “available” and also when Mega Auto would be reimbursed any salaries it had paid on Ding Auto’s behalf.²²⁴ Andy himself would hand out the cash payments – in Ding’s presence – to the workers at Ding Auto.²²⁵

²²² See transcript of 27 December 2018 at p 27 line 15 to p 37 line 15.

²²³ Para 50 of Jason’s AEIC.

²²⁴ Paras 15–16 of Andy’s AEIC.

²²⁵ Para 19 of Andy’s AEIC.

72 Jason admitted that as one of the signatories who could issue cheques drawn on Ding Auto's accounts, he owed a responsibility to Ding Auto to give an account of the cheques issued and the monies paid out from the accounts.²²⁶ However, he denied that he was either the manager or an agent of Ding Auto.²²⁷ Instead he described himself as "the owner" of the company. Whilst conceding that he had identified himself as "manager" of Ding Auto in the bank account opening forms²²⁸ and in the tax returns submitted to IRAS on Ding Auto's behalf,²²⁹ he insisted he had done so solely out of "convenience"²³⁰ and because he had "never come across job title called owner".²³¹ He also insisted that in relation to Ding Auto, he was really only "helping out at the backend office".²³²

73 Jason said that he showed Ding the annual financial reports for Ding Auto and explained them to him every year.²³³ Indeed, according to Jason, apart from the annual financial reports, he also showed Ding the profit and loss statements ("P&L statements"). Ding was not given copies of these P&L statements to take away,²³⁴ and none of these statements were adduced as evidence in the trial.²³⁵ Nevertheless, Jason insisted that he did discuss these statements with Ding when he showed them to him.²³⁶

²²⁶ See transcript of 2 January 2019 at p 146 lines 18 to 28.

²²⁷ See transcript of 2 January 2019 at p 147 line 30 to p 148 line 29.

²²⁸ See transcript of 2 January 2019 at p 149 line 10 to 149.

²²⁹ See transcript of 2 January 2019 at p 149 line 13 to p 153 line 15.

²³⁰ See transcript of 2 January 2019 at p 148 lines 25 to 29.

²³¹ See transcript of 2 January 2019 at p 150 lines 1 to 4.

²³² See transcript of 2 January 2019 at p 152 lines 20 to 26.

²³³ See transcript of 2 January 2019 at p 87 line 4 to p 88 line 24.

²³⁴ See transcript of 2 January 2019 at p 87 lines 1 to 11.

²³⁵ See transcript of 2 January 2019 at p 89 lines 19 to 32.

74 As to how the dispute between the parties came about, Jason had a different version of events. Jason claimed that he realised in early 2016 that “Mega Auto could no longer continue to support Ding Auto as it was consistently not profitable”;²³⁷ and that it was while various options were being considered that Ding made an offer in mid-2016 to buy Ding Auto from May Auto.²³⁸ According to Jason,²³⁹ he accepted this offer, and even agreed with Ding on the price of \$220,000.

75 According to Jason, this proposed sale of Ding Auto to Ding did not come about because the latter changed his mind and proceeded to open a new company, Ding Automative Pte Ltd, on 13 July 2016 and also to close Ding Auto’s bank accounts on 27 July 2016 after withdrawing the monies in these accounts.²⁴⁰ At first, Jason thought of using the share transfer form that was pre-signed by Ding to effect a transfer of Ding’s shares in Ding Auto to Hisham. It was at this point, however, that he realised it would not be possible to do so, “as Ding Auto’s Memorandum and Articles of Association required any share transfer to be approved by the board of directors and Ding was the only director of Ding Auto”.²⁴¹

76 Jason claimed that despite feeling disappointed with Ding, he had been prepared to do nothing and simply to “write-off Ding and Ding Auto as a bad

²³⁶ See transcript of 2 January 2019 at p 87 lines 2 to 10.

²³⁷ Para 54 of Jason’s AEIC.

²³⁸ Para 55 of Jason’s AEIC.

²³⁹ Para 55 of Jason’s AEIC.

²⁴⁰ Para 56 of Jason’s AEIC.

²⁴¹ Para 57 of Jason’s AEIC.

investment experience”.²⁴² He did not expect that Ding would decide to take legal action against him and Mega Auto. He did not deny having removed Ding Auto’s accounting and financial records; and in cross-examination, he agreed that he had ignored the requests from Ding Auto’s counsel for these accounting and financial records. His explanation for having ignored these requests was that he had felt “very angry” and “cheated” by Ding at the time,²⁴³ and also because he “did not deign [*sic*] fit to respond being aware that at all material times, [Ding Auto] is and/or was financially weak”.²⁴⁴

Summary of the defence, the counterclaim, and the claims made in the third party proceedings

77 The crux of the defence filed on behalf of all three defendants was the verbal agreement which Jason claimed he had entered into with Ding sometime in May 2013²⁴⁵ – which the defendants referred to as “a Profit-Sharing Agreement between Ding and [Mega Auto]”.²⁴⁶ To recap: according to Jason’s version of events, this agreement made Ding Auto a “wholly owned subsidiary” of Mega Auto’s, with Ding holding the shares in Ding Auto on trust for Mega Auto and also being appointed as the latter’s “nominee director” in Ding Auto. According to Jason, it was pursuant to this agreement that Mega Auto paid for various operating expenses on Ding Auto’s behalf. The withdrawals made from Ding Auto’s bank accounts were therefore, in the main, reimbursements to

²⁴² Para 57 of Jason’s AEIC.

²⁴³ See transcript of 3 January 2019 at p 26 line 30 to p 27 line 23.

²⁴⁴ Para 14 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP; see also transcript of 3 January 2019 at p 28 line 23 to p 31 line 20.

²⁴⁵ See [61]–[62] above.

²⁴⁶ Para 3 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

Mega Auto; and any other withdrawals which were not reimbursements to Mega Auto were payments made for goods and services supplied to Ding Auto.

78 Unlike the statement of claim which was rather lengthy and dense, the defence was short on particulars which I would have thought relevant and necessary to elucidate the defendants' case. The defence pleaded a general denial of Ding Auto's claims of agency, trusteeship, breaches of fiduciary duties, and conspiracy to injure. The defendants also pleaded that "[a]ll withdrawals from [Ding Auto's] Standard Chartered Account were for the proper and legitimate payments made on behalf of [Ding Auto]" and that "all transactions were legitimate and properly made in the course of the business of [Ding Auto] and are or were within the knowledge of Ding".²⁴⁷ However, *scarcely any particulars were provided in the defence of the actual reasons or purposes of the various withdrawals alleged by Ding to be unauthorised; and Jason's AEIC also provided no real particulars beyond those already appearing in the defence. Much of the defendants' explanation for the impugned withdrawals emerged in Jason's testimony in cross-examination.*

79 In respect of the impugned withdrawals from Ding Auto's bank accounts, Jason acknowledged that he had personally signed some of the cheques in question, and that he had also approved the issuance of all the other cheques which were signed by Andy.²⁴⁸ As alluded to earlier, he and the other two defendants alleged that these withdrawals and payments were all properly made for legitimate reasons – but neither he nor Andy furnished any explanation in their AEICs as to what these reasons were. Jason's explanations for the

²⁴⁷ Para 11D of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

²⁴⁸ See transcript of 4 January 2019 at p 7 lines 16 to 29.

documents which he said supported the various payments (exhibited in Vols 1 to 4 of his AEIC²⁴⁹) emerged only in cross-examination.

80 I will briefly summarise below Jason’s evidence about the impugned withdrawals and payments, according to the four categories in which Ding Auto’s counsel grouped the alleged reasons for withdrawal or payment.

81 The first category was what Ding Auto’s counsel referred to as “labour charges”. In brief, this category covered payments made in purported reimbursement of staff salaries paid by Mega Auto, both in respect of Mega Auto employees allegedly “seconded” to Ding Auto from July 2013 to April 2014 and Ding Auto employees from April 2014 to June 2016.²⁵⁰ A table listing the amounts of staff salary payments which Mega Auto claimed to have made – and for which it claimed to have reimbursed itself from Ding Auto’s accounts – is found at p 2212 of Jason’s AEIC.²⁵¹ The claim item number in the table at [13] of the statement of claim which each alleged reimbursement corresponds to is stated in the last row of this table. In perusing this table, it should be noted that the payments said to constitute reimbursements of staff salary payments were typically made to Mega Auto several months after the alleged salary payments. It should also be noted that these reimbursements to Mega Auto of staff salary payments were not always done on a monthly basis. There were at least two instances when a sum of money paid out of Ding Auto’s bank account was alleged by the defendants to have been a lump-sum reimbursement of several months’ worth of staff salary payments: namely, the cheque payment to

²⁴⁹ Pp 67-1867 of Jason’s AEIC.

²⁵⁰ See transcript of 3 January 2019 at p 96 line 4 to p 100 line 27.

²⁵¹ P 2212, Vol 4 of Jason’s AEIC.

Mega Auto of \$76,152.24 issued by Andy on 6 December 2013²⁵² (which was alleged to be in reimbursement of staff salaries paid by Mega Auto for the months of July and August 2013), and the cheque payment to Mega Auto of \$91,598.71 issued by Andy on 15 August 2014²⁵³ (alleged to be in reimbursement of staff salaries paid by Mega Auto for the months of October to December 2013).

82 In respect of the category of “labour charges”, the documents which Jason produced in respect of each purported reimbursement would typically consist of a remittance advice on Ding Auto’s letterhead, an invoice issued by Mega Auto to Ding Auto, and an unsigned document listing the names of the staff for whom Mega Auto claimed reimbursement of salary payments and the amount of salary claimed per staff.

83 The second of the four categories of disputed payments related to petty cash vouchers presented by Wong for reimbursement. Wong was one of the Mega Auto employees who – according to the defendants – was “seconded” to Ding Auto from July 2013 until the beginning of 2014. The petty cash vouchers in question related to the following claim item numbers in the table at para 30 of the statement of claim:²⁵⁴ 3, 4, 6, 7, 10 and 23.²⁵⁵ For these petty cash vouchers, again there was no explanation provided in Jason’s AEIC – or for that matter, in Andy’s and Wong’s AEIC – as to the items making up the total

²⁵² Claim item no. 16 in the table at p 208 of the Statement of claim (Amendment No. 2), Tab 16 BOP.

²⁵³ Claim item no. 57 in the table at p 209 of the Statement of claim (Amendment No. 2), Tab 16 BOP.

²⁵⁴ Pp 208–214 of the Statement of claim (Amendment No. 2), Tab 16 BOP.

²⁵⁵ See transcript of 3 January 2019 at p 109 line 17 to p 136 line 14.

amounts claimed in reimbursement. What Jason typically did for each of the payments alleged to be reimbursement of petty cash claims was to exhibit a Ding Auto petty cash payment voucher, another document on Ding Auto letterhead said to be a “petty cash record form”, and a number of receipts and invoices from different sources. Typically, these petty cash claims would include what appeared to *ad hoc* purchases of small items such as cushion seats and an antenna.²⁵⁶ Apart from *ad hoc* small purchases, two items which appeared in Wong’s petty cash claims were an item of \$300 for “petrol” and an item of \$70 for “cash card”²⁵⁷.

84 The third of the four categories related to purchases of spray-paint in the period *prior to* April 2014 (Ding Auto being prepared to accept payments made for spray-paint *after* April 2014²⁵⁸). This concerned the following claim item numbers in the table at para 30 of the statement of claim:²⁵⁹ 13, 20 and 22.²⁶⁰ In cross-examination, Jason alluded again to the defendants’ allegations about Ding Auto having taken over the spray-painting booth at #01-22 after its incorporation. His position was that these spray-paint purchases were charged to Ding Auto because:²⁶¹

The paint that has been purchased is not for Mega Auto vehicles. It is for Ding Auto vehicles... [O]ther than Mega Auto, there are also other vehicles coming in to Ding Auto to do spray painting.

²⁵⁶ Pp 100 and 102, Vol 1 of Jason’s AEIC.

²⁵⁷ P 106, Vol 1 of Jason’s AEIC.

²⁵⁸ See transcript of 3 January 2019 at p 104 lines 11 to 31.

²⁵⁹ Pp 208–214 of the Statement of claim (Amendment No. 2), Tab 16 BOP.

²⁶⁰ See transcript of 3 January 2019 at p 136 line 17 to p 146 line 23.

²⁶¹ See transcript of 3 January 2019 at p 137 line 27 to p 138 line 2.

85 The last of the four categories of disputed withdrawals or payments related to reimbursements made to Mega Auto, purportedly of rental for both units at #01-20 and #01-22 as well as miscellaneous items such as the utilities for both units, renovations, stationery supplies, broadband and fax charges, and various phone charges.²⁶² I have set out earlier Ding’s position in relation to rental charges and utilities.²⁶³ In respect of the renovations for which Mega Auto was reimbursed, these were allegedly carried out at #01-20 in May 2013.²⁶⁴ Ding’s position was that Ding Auto should not have had to pay for these renovations because it was already being charged rental by Mega Auto for #01-20 from the point it moved into the unit to the point it took over the lease; and any renovations carried out at the unit prior to its moving in were “necessitated by the fact that [Mega Auto] had to prepare the premises for a tenant to move in”.²⁶⁵ Jason disagreed as he maintained that:²⁶⁶

...Ding Auto is a subsidiary of Mega Auto and it has to stand on its own, that all the expenses that incur [*sic*] and requested by Ding Auto.

86 It should be added that Ding Auto’s counsel had originally mentioned a fifth category which did not concern any specific reasons given by the defendants for payment but instead concerned payments for which it was said no supporting documents had been produced.²⁶⁷ This category was said to concern claim item numbers 37 and 62 in the table at para 30 of the statement

²⁶² See transcript of 3 January 2019 at p 103 line 18 to p 104 line 19.

²⁶³ See [23]-[25] in these written grounds.

²⁶⁴ pp 301–303, Vol 1 of Jason’s AEIC; see also transcript of 4 January 2019 at p 98 line 3 to p 99 line 19.

²⁶⁵ See transcript of 4 January 2019 at p 99 lines 21 to 27.

²⁶⁶ See transcript of 4 January 2019 at p 99 lines 31 to 32.

²⁶⁷ See transcript of 3 January 2019 at p 103 line 30 to p 104 line 7.

of claim.²⁶⁸ Item 37 related to a petty cash item for \$500. This item was accepted as a valid payment by Ding after the explanations given by Jason in cross-examination.²⁶⁹ As for item 62, this related to a cheque payment for \$23,513.91 issued by Jason to Mega Auto on 12 September 2014.²⁷⁰ In cross-examination, Jason said that claim item 62 at page 209 of the statement of claim was the same item as claim item 74,²⁷¹ and that he had exhibited the supporting documents for claim item 74 at pages 745 to 767 of his AEIC.²⁷² In brief, this payment of \$23,513.91 to Mega Auto was said to be reimbursement of a number of items such as staff salaries and utilities.²⁷³

87 Mega Auto's counter-claim for monies allegedly due from Ding Auto concerned similar items relating to reimbursement of rental for both #01-20 and #01-22, utilities, and miscellaneous items such as stationery supplies and phone charges.²⁷⁴ In his AEIC, Jason clarified that the first two items originally included in this counter-claim were to be removed.²⁷⁵ The total amount of this counter-claim would accordingly be reduced to \$166,463.08.

88 As for Mega Auto's counter-claim for wrongful detention and/or conversion of certain items of equipment,²⁷⁶ Jason exhibited several invoices in

²⁶⁸ See transcript of 3 January 2019 at p 150 line 30 to p 104 line 7.

²⁶⁹ See transcript of 3 January 2019 at p 151 line 17 to p 153 line 20.

²⁷⁰ P 209 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

²⁷¹ P 210 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

²⁷² See transcript of 3 January 2019 at p 154 line 18 to p 155 line 20.

²⁷³ See transcript of 3 January 2019 at p 155 lines 12 to 27.

²⁷⁴ See the table at para 42, p 11 of Jason's AEIC.

²⁷⁵ Para 41 of Jason's AEIC.

²⁷⁶ Para 16 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

his AEIC. In respect of the costliest item (the “Bench Rack 500 System Filter”), Jason exhibited an invoice from ST Kinetics dated 23 August 2013.²⁷⁷ The invoice was addressed to Mega Auto at its 355 East Coast Road premises and showed *inter alia* the purchase of two units of the “Bench Rack 500 System Filter”, but Jason claimed that one of these units had been installed at Ding Auto’s premises at Blk 10 #01-20 Sin Min Industrial Estate. The other invoice, which was from a supplier called Deflex Systems Pte Ltd,²⁷⁸ showed the purchase of two units of “Boltless Rack C/W 3 Levels of 8mm Thick MDF Board & Twin Rivet Beam”, two rows of “2 Link Bays Ideal Longspan Shelving C/W 3 Levels of 12mm Thick Plywood & L-Beam”, and one unit of “Single Bay Heavy Duty Shelving C/W 2 Levels of 18mm Thick Plywood & Boxed Beam”. The Deflex invoice was dated 15 June 2010 and addressed to Mega Auto at Blk 10 #01-20 Sin Min Industrial Estate. As for the remaining item of equipment in the counter-claim (the “Metal frame installed ‘Bak Kua’ for panel beating”), no invoice was produced, but Jason maintained²⁷⁹ that he had purchased two pieces of this item of equipment for \$10,000 and installed one of the pieces at the #01-20 workshop.

89 As to the third party proceedings against Ding, the statement of claim filed on behalf of Jason and Mega Auto in these proceedings repeated the allegations made in the defence about Ding holding the shares in Ding Auto on Mega Auto’s behalf, and sought a declaration to this effect. It was also pleaded that he had breached his fiduciary duties to Mega Auto by “wrongfully convert[ing]” the equipment which formed the subject of the defendants’

²⁷⁷ P 2211, Vol 4 of Jason’s AEIC.

²⁷⁸ Pp 2209–2210, Vol 4 of Jason’s AEIC.

²⁷⁹ Para 44(e) of Jason’s AEIC.

Counterclaim and by “wrongfully divert[ing] and/or set[ting] up in competition with [Mega Auto] as regards the business of [Mega Auto] in motor repair”. The latter appeared to be a reference to the setting up of Ding Automotive Pte Ltd by Ding subsequent to his quarrel with Jason (although regrettably the statement of claim in the third party proceedings was as short on particulars as the defence and counterclaim). *Inter alia*, Mega Auto also prayed in the third party proceedings for orders that Ding transfer to it all his shares in Ding Auto, that an “inquiry... and/or account” be held into “the operations of [Ding Auto]”, that there be an “account of profits earned by *Ding Automotive Pte Ltd*”, that “[Ding Auto] and/or *Ding Automotive Pte Ltd*” account for and deliver up “the assets or machinery of [Mega Auto]”, and that “damages” be assessed.

The key issues to be determined

90 From the respective cases advanced by the parties at trial, it will be seen that the chief bone of contention between them was the nature of the relationships between the parties. Firstly, there was the issue of the relationship between Ding Auto and Mega Auto: whether Ding’s shares in Ding Auto were held on trust for Mega Auto such that the former was in substance the “wholly owned subsidiary” of the latter. Not only was this issue the focus of the third party proceedings, the nature of the relationship between the two companies formed an integral component of the parties’ respective cases about the disputed withdrawals from Ding Auto’s bank account, with the defendants describing these withdrawals as being largely “reimbursements” to Mega Auto for payments made on behalf of its “wholly owned subsidiary”, and Ding Auto repudiating any basis for such “reimbursements”.

91 Secondly, there was the issue of the relationship between Jason and Ding Auto, and between Andy and Ding Auto: whether each of them was either a

“manager and agent” of Ding Auto, or a “trustee” of its assets such that he owed the company fiduciary duties in respect of the disposal of its funds.

92 Separately, there was also Ding Auto’s alternative claim against all three defendants for conspiracy to injure it by unlawful means.

Whether Ding’s shares in Ding Auto were held on trust for Mega Auto

93 On the issue of whether Ding was the true owner of Ding Auto or whether his shares in Ding Auto were held on trust for Mega Auto, I found in Ding’s and Ding Auto’s favour. I rejected the defendants’ allegation that there had been a “verbal agreement” for Ding to hold the shares as “trustee” on behalf of Mega Auto. My reasons were as follows.

94 Firstly, as a matter of official record, Ding is – and has always been – the only shareholder of Ding Auto shown in ACRA’s register of members. The defendants did not – and could not – dispute this. Nor did they dispute that pursuant to section 196A(6) of the Companies Act (Cap 50, 2006 Rev Ed), entries in ACRA’s register of members would constitute *prima facie* evidence of the truth of the matters entered in the register. As such, Ding being the sole registered shareholder of Ding Auto, there was *prima facie* no-one else who owned an interest in Ding Auto.

95 Secondly, in the annual returns which Lee filed with ACRA on behalf of Ding Auto in 2014 and 2015, the company was expressly stated to be “an exempt private company at all relevant times *as defined under section 4(1) of the Companies Act* by virtue of it being *a private company of which no beneficial interest in its shares [was] held directly or indirectly by any*

corporation and having no more than 20 members".²⁸⁰ Jason admitted that he was the one who had instructed Lee to make this declaration about Ding Auto's status in the annual returns.²⁸¹ Jason sought to disclaim any knowledge of what the term "exempt private company" meant, claiming that he did not read the "fine print" in these annual returns.²⁸² However, I did not find his claims of ignorance credible. He could not deny that he had – in relation to Mega Auto – given instructions to his corporate secretary to make similar declarations about Mega Auto's status as an exempt private company in the annual returns submitted to ACRA.²⁸³ I did not find it believable that as Mega Auto's sole director²⁸⁴ and as an experienced businessman who had built up a "huge"²⁸⁵ motor workshop chain (to use the expression used by his counsel), he would have been totally ignorant of the declarations made in Mega Auto's annual returns as to its status and of what such declarations meant. I found that he would have been aware – from his experience in Mega Auto – of what an "exempt private company" was, and that this awareness would have informed his instructions to Lee on the making of similar declarations in Ding Auto's annual returns.

96 Thirdly, Jason agreed in cross-examination that Ding Auto's memorandum and articles of association followed "according to...the way" Mega Auto was "set up", and that they represented what he "wanted Doris to

²⁸⁰ See transcript of 2 January 2019 at p 121 line 22 to p 129 line 10; also 4 ABD 1225 and 5 ABD 1916.

²⁸¹ See transcript of 2 January 2019 at p 128 lines 10 to 26.

²⁸² See transcript of 2 January 2019 at p 126 line 27 to p 127 line 11.

²⁸³ See transcript of 2 January 2019 at p 129 line 24 to p 131 line 9.

²⁸⁴ P 124 of Ding's AEIC.

²⁸⁵ See transcript of 19 December 2018 at p 31 lines 11 to 22.

do for Ding Auto”.²⁸⁶ He was then obliged to acknowledge²⁸⁷ that clause 9 of Ding Auto’s articles of association²⁸⁸ – as registered with ACRA – provided that

... no person shall be recognised by the company as holding any share upon trust, and the company shall not be bound or be compelled in any way to recognise even when having notice thereof any equitable contingent future or partial interest in any share or unit of a share except only as by these articles or by law otherwise provided.

97 Clause 9 of Ding Auto’s articles of association thus appeared to preclude any arrangement whereby the shares in Ding Auto could have been held on trust by Ding for Mega Auto. Jason did not deny knowledge of clause 9 but claimed that nominee shareholders were a “common practice”, and that he had been told by a “business friend” that nominee shareholdings could be effected by having the legal owner of the company “sign the resignation of directors and also share transfer form”.

98 Jason’s allegations notwithstanding, I did not accept that the director’s letter of resignation and the share transfer form evidenced an agreement for Ding to hold the Ding Auto shares on trust for Mega Auto. I accepted Ding’s evidence that he could not read the documents he was asked to sign for the incorporation of Ding Auto, as they were in English and were not explained to him: he was simply told by Lee that he was signing documents to register the company.²⁸⁹ Ding’s extremely poor grasp of English and of business

²⁸⁶ See transcript of 2 January 2019 at p 117 lines 20 to 29.

²⁸⁷ See transcript of 2 January 2019 at p 117 line 21 to p 118 line 26.

²⁸⁸ 1 ABD 123.

²⁸⁹ See [11] above.

documentation was attested to by the accountant Goh, who interacted with Ding for more than a year and who observed²⁹⁰ *inter alia* that

...Mr Ding was unable to know or comprehend the contents of documents normally generated in the course of running a business or to operate a bank account... I explained to him the nature of the documents presented to him for signing, what documents were needed and what are resolutions. I also explained to Mr Ding in Mandarin, the nature of the documents presented for Mr Ding's signature in order to close the accounts of each bank. Mr Ding is unable to fully read and understand English documents.

99 Whilst Goh was called as a witness by Ding Auto, I did not think he had any reason to be less than truthful in his testimony. It was not disputed that Goh did not know Ding prior to being engaged to advise on Ding Auto's financial matters, and that their working relationship had already ended by September 2017,²⁹¹ well before the commencement of this suit. There was no reason, in other words, for Goh to help Ding by lying in his favour.

100 Conversely, I did not believe Lee's testimony about having explained the director's letter of resignation and the share transfer form to Ding. In the first case, Lee was obviously very much discomfited at being confronted about her actions in getting Ding to pre-sign these two documents, especially since they were undated and key details were left blank.²⁹² When asked whether it was her practice as a corporate secretary to "ask people to pre-sign documents", she was quick to insist that it was not – and that it was "a very exceptional arrangement".²⁹³ She was unable, however, to explain exactly why it was "a

²⁹⁰ Para 7 of Goh Boon Kok's AEIC.

²⁹¹ Para 20 of Goh Boon Kok's AEIC.

²⁹² Para 11 of Lee's AEIC.

²⁹³ See transcript of 11 January 2019 at p 9 line 22 to p 10 line 26.

very exceptional arrangement”, beyond asserting that “it’s a request from Jason”. She then sought to excuse herself by asserting that Ding had consented to signing the documents and that he could have refused to sign if he had thought that these documents were “not right”.²⁹⁴ In other words, it seemed to me that Lee had good reason to deny Ding’s claims about not having had the letter of resignation and the share transfer form explained to him. Indeed, having admitted that the act of getting Ding to pre-sign the documents was an “exceptional” one, she then sought to downplay the significance of these documents by claiming that they were merely meant for “safekeeping” by Jason for his “peace of mind” – an assertion which was never made in her AEIC. In short, therefore, I found Lee’s evidence about Ding’s signing of the two documents – and his understanding of their contents – to be highly unreliable.

101 In addition to the director’s letter of resignation and the share transfer form, Jason had also instructed his then lawyer Ismail in April 2013²⁹⁵ to draft the JVA for Ding’s signature. According to Ismail, Jason’s instructions at that point were that:

Jason / [Mega Auto] wanted to enter with a third party vis-à-vis a company which was to be incorporated (“New Co.”). The instructions given was that [Mega Auto] would be the owner of New Co and that the third party would be in a profit sharing agreement vis-à-vis the New Co’s business with Jason or a party to be nominated by Jason.

102 It should be noted that the draft JVA did not actually state that Ding would be holding the shares in the “New Co” on trust for Mega Auto (referred to in the draft as “Party B”). Instead, the draft JVA made reference to a “Party

²⁹⁴ See transcript of 11 January 2019 at p 10 lines 8 to 9.

²⁹⁵ Para 3 of Ismail’s AEIC.

A1” and a “Party A2” (also collectively referred to in the draft as “Party A”), and provided that both were to be “the only shareholders and directors of New Co”. It also provided²⁹⁶ that both “Party A1” and “Party A2” were to pre-sign share transfer forms and directors’ letters of resignation for Mega Auto to use at its “absolute discretion”; that they would not be entitled determine this Agreement”; that Mega Auto would be entitled to “determine this Agreement by giving 1-month’s notice” to both Party A and Party B or either of them; and that at the end of such 1-month’s notice period, Party A and Party B would transfer “all shares in New Co” to Mega Auto or its nominee before resigning from their directorships. Undoubtedly, therefore, the draft JVA did envisage an arrangement whereby Ding and another shareholder would hold shares but really only as Mega Auto’s nominees. It should be noted that in cross-examination, Jason explained that he had originally intended to “put one of [his] guys Wong Seng Kee inside this agreement...as him representing Mega Auto” but that this had not eventually materialised because

Ding told us that’s [sic] none of Mega people should be involved, and eventually, it become just a sole director and sole shareholder [sic].

103 I make four points in respect of the evidence about the draft JVA. Firstly, this draft JVA was never signed.

104 Secondly, it will be remembered that Jason had insisted that the draft JVA was handed to Ding sometime in 2013. It will also be remembered that Jason had initially claimed that when given the draft JVA in 2013, Ding had asked to consult a lawyer and had then delayed signing the document. Ding, on the other hand, had testified that Jason tried to get him to sign the document

²⁹⁶ 1 DBD 9-11.

only in August 2016 after they had quarrelled, and he had refused to sign it after his daughter explained its contents to him. On the whole, I was inclined to believe Ding’s version of events. If Jason had indeed given Ding the draft JVA to sign in 2013, it seemed to me highly improbable that Ding would have refused to sign it at that time or that he would have asked to consult a lawyer on it. After all, as at 2013, Ding still trusted Jason wholeheartedly and was willing to sign documents at his request without seeking advice and even without the benefit of translations – as evidenced by his signing the undated director’s letter of resignation and share transfer form when these were presented to him in May 2013.

105 Thirdly, and more pertinently, despite Jason’s initial explanation as to why Ding did not sign the JVA, I came to the conclusion that it was Jason himself who realised that having Wong – or indeed any Mega Auto employee – on record as a shareholder in the “New Co” would frustrate the prospect of the new company being appointed by insurance companies to their panel of authorised workshops. As Jason himself revealed, he was aware that insurers would not accept a company with Mega Auto ties as one of their authorised workshops, given Mega Auto’s track record in making third party claims against insurers.²⁹⁷ I concluded that whilst he might have started out wanting Mega Auto to own or to co-own the “New Co”, being a shrewd businessman, he would have come to realise fairly quickly that it was not viable to launch the “New Co” with a JVA naming a Mega Auto employee as one of its shareholders. This would explain why, despite having given Ismail instructions to draft the JVA, he never reverted to Ismail after receiving the draft.²⁹⁸

²⁹⁷ Para 12 of Jason’s AEIC.

²⁹⁸ See transcript of 28 December 2018 at p 110 line 24 to p 111 line 23.

106 Fourthly, and what was perhaps most telling, was that Jason’s own answer in cross-examination (extracted above at [102]) revealed that Ding had from the outset resisted the notion of “Mega people” having any ownership of his new company. In fact, Jason’s answer corroborated what Ding himself had asserted in his AEIC: that the insurers’ representatives had told him that if his new company were “in any way owned *directly or indirectly*” by Jason, it would not be approved as their authorised workshop – and that accordingly, “entering into a partnership arrangement with [Jason] or his entities was out of the question” from the outset.²⁹⁹ In the circumstances, it was not surprising that having for all intents and purposes jettisoned the idea of a JVA, Jason made no further attempt to document in some other form a trust in Mega Auto’s favour over the Ding Auto shares.

107 The defendants argued that Mega Auto had referred or directed jobs to Ding Auto, and that it was unbelievable this would have been done if Ding Auto were not in reality its wholly-owned subsidiary. However, the fact that Mega Auto might have referred jobs to Ding Auto was equally consistent with Ding’s assertion as to the “win-win” arrangement agreed between the two companies and was not necessarily probative of Mega Auto owning any beneficial interest in Ding Auto. Furthermore, it must be highlighted that one of the key points made by Ding Auto was that during the period of their association between 2013 and 2016, Jason – and through him Mega Auto – had taken more money out of Ding Auto’s coffers than they had contributed; and having reviewed the evidence adduced, I did find that there was basis for this charge. This is dealt with in the later part of these written grounds: see [215] to [219].

²⁹⁹ Paras 18–20 of Ding’s AEIC.

108 Finally, the conduct of both Ding and Jason subsequent to their quarrel in June 2016 provided further evidence that there was never any agreement for Ding to hold the Ding Auto shares as Mega Auto’s trustee. It was not disputed that in the aftermath of Ding’s and Jason’s quarrel and their parting of ways, Ding Auto was in dire straits. Goh corroborated Ding’s evidence as to Ding Auto having been left with no accounting records, bank statements or other financial documents.³⁰⁰ Ding Auto was in trouble with IRAS and exposed to sanctions because of its delay in filing returns (a fact acknowledged by Jason himself).³⁰¹ Ding Auto was also being pursued by creditors, even facing litigation by some of them.³⁰² Jason himself described Ding Auto as being “consistently not profitable”³⁰³ and “financially weak”.³⁰⁴ Faced with such a crisis, Ding chose to stay on and to pour resources into rescuing Ding Auto – to the extent of borrowing money from family members and friends, and persuading family members to quit their jobs to help him run the company. I did not think he would have taken on such onerous liabilities had he known himself to be a mere employee holding the shares on trust for Mega Auto – as Jason alleged. Conversely, Jason’s conduct in swiftly upping stakes and abandoning Ding Auto the moment Ding demanded to “take back the accounts” was entirely inconsistent with the narrative that Ding Auto belonged to his company Mega Auto. While he sought to explain away the lack of any efforts to recover Ding Auto as a commercial decision, this explanation rang false,

³⁰⁰ Paras 4–5, 10–11 of Goh’s AEIC.

³⁰¹ See transcript of 3 January 2019 at p 36 lines 25 to 30.

³⁰² Pp 466–482 of Ding’s AEIC.

³⁰³ Para 54 of Jason’s AEIC.

³⁰⁴ Para 14 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

especially since he also alleged in the same breath that a substantial volume of Mega Auto’s business had gone to Ding Auto.

109 To sum up, therefore, the official documentation on record established *prima facie* that Ding was the *only* owner of Ding Auto. The undated director’s letter of resignation and share transfer form did not in my view show that Ding had entered into an agreement with Mega Auto to hold the Ding Auto shares as its trustee, as I accepted Ding’s evidence that he had signed these documents without the benefit of any translation or explanation, and was unaware of their contents. As for the draft JVA, it was never signed because not only was Ding opposed from the start to Jason “or his entities” owning (or co-owning) Ding Auto, Jason himself came to realise that it would not be viable to launch the new company with a JVA naming a Mega Auto employee as a shareholder. He also clearly recognised, early on, that Ding was simply not agreeable to “Mega people” having any ownership of Ding Auto.

110 For the reasons set out above in [94] to [109], *I found that Ding’s shares in Ding Auto were not held on trust for Mega Auto. I was satisfied that he was the sole owner of Ding Auto, both legally and beneficially. Jason’s and Mega Auto’s claims against Ding in the third party proceedings could not be sustained; and I dismissed their claims accordingly. Insofar as they had sought reliefs such as an “account of profits” against Ding Automotive Pte Ltd (the new company set up by Ding), this portion of their claim in the third-party proceedings was also dismissed, as they did not show any evidential or legal basis for claiming such reliefs against a non-party.*

The relationship between Jason and Ding Auto: whether Jason was an agent of Ding Auto

111 This brings me to the question of Jason’s intentions *vis-à-vis* Ding Auto – and following from that, the nature of their relationship and whether he was either an agent of Ding Auto, or a trustee of its assets. I will deal with the issue of agency first.

112 As noted earlier, it was apparent from the evidence that Jason’s initial plan was to hold shares in Ding Auto: it was on this basis that he approached Ding³⁰⁵ and gave instructions to Ismail to draw up the JVA. It was also apparent that Jason’s real interest lay in gaining access to the market for authorised workshop claims: according to Ismail, in a conversation he had with Jason shortly after being instructed to draft the JVA in April 2013, Jason had informed him that he was planning “a change in business direction” whereby Mega Auto would switch the focus of its business from third party claims to authorised workshop claims.³⁰⁶

113 As I also noted earlier, it was equally apparent from the evidence that Jason had come to realise fairly quickly the impracticability of holding shares – either directly or indirectly – in Ding Auto: not only were the insurance companies opposed to appointing as an authorised workshop a company in which Mega Auto held any sort of interest (directly or indirectly), it transpired that Ding himself resisted the notion of Mega Auto having any ownership of his new company.

³⁰⁵ Para 20 of Ding’s AEIC.

³⁰⁶ See transcript of 28 December 2018 at p 120 line 9 to p 121 line 11.

114 Given these circumstances, and given his wide-ranging experience of the business world (Mega Auto being only one of his businesses), I inferred that Jason must also have realised that to access and to profit from the market for authorised workshop claims, there was strictly no need for him or Mega Auto to own any interest in Ding Auto. So long as he controlled the financial and administrative aspects of Ding Auto's operations (including the control of its bank accounts, its cash flow and the accounting records it maintained), it would not be difficult for him to use Ding Auto as a vehicle for accessing the authorised workshop claims market and making money from it. It would also have been clear to Jason at an early stage that Ding's ignorance of business processes, his poor English, and the trust he placed in Jason made him susceptible to manipulation.

115 The evidence of Jason's actions in relation to the setting up of Ding Auto bore out the above inferences. First, he got himself appointed as a signatory to Ding Auto's bank accounts – and ensured that the other two signatories, besides Ding, were Andy and Wong, both of whom were his trusted employees and who were moreover beholden to him for the Mega Auto shares he had allotted them. Tellingly, the cheques and cash cheques which made up the list of impugned withdrawals in Ding's Statement of Claim were all signed either by Andy or by Jason himself. If indeed Ding had agreed to being Mega Auto's nominee shareholder and director in Ding Auto, and if indeed he knew that all Ding Auto assets really belonged to Mega Auto, it should have been no problem for Jason to get Ding to sign cheques for whatever withdrawals or payments Mega Auto needed: why would Jason have needed to appoint two Mega Auto employees as cheque signatories – and why would he have needed to get all these disputed cheques signed either by Andy or himself? The only reasonable inference to be drawn from Jason's actions was that he knew Ding regarded Ding Auto as his

own company and would probably have questioned whether a particular payment was for Ding Auto's expenses before signing the cheque.

116 In addition, Jason arranged for Ding Auto's bank statements to be sent to his residential address³⁰⁷ at 2J Still Road (the premises also used by Mega Auto's accounts department), which effectively ensured that it was he – and not Ding – who had access to the bank statements. That Ding was cut off from access to the bank statements was corroborated by Goh, who gave evidence that when he first met with Ding in July 2016, Ding did not have any of Ding Auto's bank statements: Goh had to accompany him to the banks to purchase copies of the bank statements.³⁰⁸ Jason also suggested to Ding that it would be no trouble for Mega Auto to help with Ding Auto's accounts and other financial and administrative operations – which suggestion Ding was only too glad to accept.³⁰⁹

117 Not surprisingly, Jason refused – at least initially – to admit to having had control of Ding Auto's finances. In the defence, he denied handling Ding Auto's finances at all. Instead, he claimed in the defence that it was Ding who “had daily operational control of running and managing the business of [Ding Auto]... [I]t was Ding's role to see to the proper handling of [Ding Auto's] income, expense items, payment of creditors, collection of monies from debtors and banking matters... [and] also [to be] in charge of handling [Ding Auto's] cash flow funds”.³¹⁰ He described himself as having had a “supervisory role” –

³⁰⁷ Para 37 of Ding's AEIC.

³⁰⁸ Paras 4–5, 10–11 of Goh's AEIC.

³⁰⁹ Paras 23–24 of Ding's AEIC.

³¹⁰ Para 7 of the defence and counterclaim (Amendment No. 2) at Tab 20 BOP.

if at all. In cross-examination, he sought to talk down his role even further, claiming that he had just been “helping out at the backend office”, “helping out Ding Auto on the accounts”.³¹¹

118 Nothing could be further from the truth. As Goh noted, Ding did not have any of Ding Auto’s accounting or even bank statements as at July 2016, and needed Goh’s help to carry out basic banking transactions such as the closing of the OCBC and SCB accounts. There was simply no way in which Ding could have been “in charge” of “the proper handling” of Ding Auto’s financial operations. Indeed, Jason’s denial of having had control of Ding Auto’s finances was given the lie by his own witnesses. Andy, who had signed many of the disputed cheques listed in Ding Auto’s statement of claim, testified³¹² that he signed these cheques because Jason would have “given a green light” beforehand:

...Mega is paying me. *Jason is my boss. Right, so instruction given. And then with all these, therefore... I need to sign the cheque.* [emphasis added]

119 Andy’s evidence on this subject was corroborated by other witnesses. Yvonne, the Mega Auto accounts executive assigned to assist with Ding Auto’s accounts, testified that when she received any invoice for payment out of Ding Auto’s accounts, it was Jason who would give her instructions on whether to pay the invoice and whom to issue the cheque payment to.³¹³ Anna, previously the Assistant Manager at Ding Auto, testified that Ding Auto’s petty cash claims were handed over to Mega Auto’s accounts staff for payment, and that the

³¹¹ See transcript of 2 January 2019 at p 151 line 24 to p 152 line 26.

³¹² See transcript of 10 January 2019 at p 41 line 26 to p 42 line 5.

³¹³ See transcript of 11 January 2019 at p 35 line 16 to p 36 line 21.

accounts staff would have to wait for Jason’s approval to make such payment.³¹⁴

As she put it:

Without Jason approval, everything also cannot get.

120 In fact, it should be pointed out that despite the denials pleaded in his defence and the attempt in cross-examination to downplay his control over Ding Auto’s finances, Jason’s own AEIC admitted that it was “fully up to [him]” how and when reimbursements were made to Mega Auto from Ding Auto’s account – at least in respect of alleged payments by Mega Auto of the latter’s staff salaries.³¹⁵ It should also be pointed out that following days of cross-examination, *Jason did eventually admit that he was responsible for authorising and giving approval for all the cheques and cash cheques signed by Andy.*³¹⁶

121 The defendants sought to argue³¹⁷ that Ding’s ignorance of Ding Auto’s financial affairs was “feigned” because it was “unbelievable” that the owner of the company could have been so oblivious to what was going on. *Inter alia*, the defendants also submitted that because Ding had a personal bank account and credit cards, he must have been familiar with the opening and operation of corporate bank accounts. This seemed to me to be a *non sequitur*: there was no evidence of the circumstances in which Ding had opened his personal bank account and obtained credit cards – whether he had assistance from anyone, for example. There was also no evidence that the processes for opening and

³¹⁴ See transcript of 2 January 2019 at p 50 lines 12 to 27.

³¹⁵ Para 47 of Jason’s AEIC.

³¹⁶ See transcript of 4 January 2019 at p 7 lines 12 to 29.

³¹⁷ Paras 76 to 82 of the defendants’ closing submissions.

operating a corporate bank account mirrored those relating to a personal bank account.

122 Moreover, Ding's ignorance was not merely self-reported. Goh, in recounting his first visit to OCBC and Standard Chartered Bank together with Ding, gave evidence that:³¹⁸

At our first attendance, I realised Mr Ding was unable to know or comprehend the contents of documents normally generated in the course of running a business or to operate a bank account. Mr Ding did not understand and did not know what the bank needed to authenticate the representatives of the Company [Ding Auto]. I explained to him the nature of the documents presented to him for signing, what documents were needed and what are resolutions. I also explained to Mr Ding in Mandarin, the nature of the documents presented for Mr Ding's signature in order to close the accounts at each bank. Mr Ding is unable to fully read and understand English documents. I assured him that these are the correct documents and that he can proceed to sign on the documents presented to him for signing by each of the banks.

123 I had the opportunity to observe Ding in the witness stand for an entire week. He did indeed strike me as a rather simple – even fatuous – and credulous individual, easily confused (as evidenced by the rambling responses he gave at times in cross-examination) and easily led. This lack of sophistication was compounded by his inability to understand anything but the most basic written English and his general ignorance of business processes – as corroborated by Goh. I did not doubt that Ding would have taken at face value Jason's offer to assist with Ding Auto's financial and administrative operations. Nor did I doubt that he would have been only too glad to let Jason take charge of the company's financial and administrative operations, being conscious of his own

³¹⁸ Para 7 of Goh's AEIC.

inexperience in these areas and of the costs which he would have incurred in employing someone else to do the job.³¹⁹ As I said earlier,³²⁰ Ding's trust in Jason (whom he had befriended during his time in ST Kinetics) was one of the factors which I believed Jason would have considered in calculating that he did not need a signed JVA to use Ding Auto for his purposes.

124 I would add that I did not find it unreasonable for Ding to think Jason's offer of help was a genuine one. As Ding explained in his evidence,³²¹ this was not a situation where he was getting Jason's and Mega Auto's help for free: he believed the arrangement was a "win-win" one for both Ding Auto and Mega Auto because of the spray-painting, car repair, and car rental jobs he would refer to Mega Auto.

125 On the evidence before me, therefore, I was satisfied that the arrangements put in place by Jason ensured he had full control of Ding Auto's accounts and financial operations. Not only was he able to sign off on cheque payments himself as a sole signatory, he was able to rely on Andy to do so on "instruction given"; and as Andy's, Yvonne's and Anna's testimonies showed (and as he himself later conceded in cross-examination), his approval was required before any payments could be made from Ding Auto's bank account.

126 This state of affairs would have been why Jason – or rather, Mega Auto through him – was willing to make loans to Ding Auto: he – and Mega Auto through him - knew there would be no problem getting "reimbursed" from Ding

³¹⁹ See [10] above.

³²⁰ See [114] above.

³²¹ See [10] above.

Auto's funds. For example, the \$50,000 which Mega Auto lent Ding Auto between May 2013 and July 2013 was fully repaid by October 2013 via cheques signed by Andy and drawn on Ding Auto's SCB account.³²²

127 Given Ding Auto's assent (through Ding) to having Jason act on its behalf in the management of its financial operations and specifically in the approval of payments from its Standard Chartered bank account, I also found that Jason was in fact acting as Ding Auto's agent in the management of its finances, and in particular, in the disposition of its funds from its bank account.

128 Neither counsel made any submissions on the legal issues pertaining to the issue of agency.

129 For a definition of the relationship of agency, I found the references in Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) ("*The Law of Agency*") to be helpful.³²³ *Inter alia*, Professor Tan alluded to the following definition offered by another academic:³²⁴

Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property. [emphasis in original]

130 As noted earlier, Jason was a recognised sole signatory to Ding Auto's bank accounts: he was able to sign off on cheque payments out of the company's

³²² See [16] above.

³²³ Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) ("Tan Cheng Han SC") at para 01.015.

³²⁴ GHL Fridman, *The Law of Agency* (Butterworths, 7th Ed, 1996).

SCB account; and he was obviously also in a position to instruct Andy – another recognised sole signatory – to sign off on cheque payments out of the said account. Even more importantly, his approval was required before payments could be made from Ding Auto’s bank account. In my view, there could be no doubt on the evidence adduced that Jason was able to affect Ding Auto’s “legal position in respect of strangers to [their] relationship by... the disposition of property”.

131 It should be added that “because the issue of whether an agency relationship exists is a matter to be determined objectively as a matter of law from what the parties said and did, they will be deemed to have consented to such a relationship even if they were ignorant of or did not intend the consequences of their action”.³²⁵ As the Court of Appeal (“CA”) put it in *Tan Yok Koon v Tan Choo Suan and another* [2017] 1 SLR 654 (at [194]), whilst “the fiduciary undertaking is voluntary in the sense that it arises as a consequence of the fiduciary’s conduct, and is not imposed by law independently of the fiduciary’s intentions”, this “is not to say that the fiduciary must be subjectively willing to undertake those obligations: the undertaking arises where the fiduciary voluntarily places himself in a position where the law can objectively impute an intention on his or her part to undertake those obligations”: It did not matter in this case that Jason might not have harboured any conscious intention to assume fiduciary responsibilities *vis-à-vis* Ding Auto: once he voluntarily took on control of the management of Ding Auto’s finances and particularly the disposition of its funds, he put himself in a position whereby the law could objectively impute an intention on his part to undertake fiduciary responsibilities to Ding Auto.

³²⁵ Tan Cheng Han SC at para 01.011.

132 In *The Law of Agency*, Professor Tan also noted³²⁶ that whilst a defining characteristic of agency has been said to be the control exerted by the principal over the scope of the agent’s authority,

the notion of control is a weak one because an agency relationship can arise even if the agreement between the parties gives full discretion to the agent in the exercise of the agent’s authority. Even without such an admittedly extreme arrangement, a principal’s legal right of control over an agent may be limited...

Principals also have control of agents to the extent that they can ordinarily terminate an agency relationship, thought if such termination is in breach of any agreement between the parties, the principal may be liable in damages for wrongful termination.

133 In the present case, whilst Ding Auto appeared to have left Jason to exercise his own discretion in managing the company’s financial operations, it clearly regarded itself as being able to terminate the agency relationship if it thought fit. It would appear that this was what in fact happened in June 2016 when Ding told Jason that he wanted to “take back all the finances and accounts matters”.³²⁷

134 Jason having been found to be Ding Auto’s agent in the management of its finances and in particular in the disposition of its funds, it should not be controversial that he owed – in that capacity – fiduciary duties to Ding Auto. As Lord Browne-Wilkinson held in *White and Carter v McGregor* [1962] AC 413, [1995] 2 WLR 187:

The paradigm of the circumstances in which equity will find a fiduciary relationship is where one party, A, has assumed to act in relation to the property or affairs of another, B. A, having

³²⁶ Tan Cheng Han SC at para 01.020.

³²⁷ Para 141 of Ding’s AEIC.

assumed responsibility, pro tanto, for B's affairs, is taken to have assumed certain duties in relation to the conduct of those affairs, including normally a duty of care. Thus, a trustee assumes responsibility for the management of the property of the beneficiary, a company director for the affairs of the company and an agent for those of his principal. By so assuming to act in B's affairs, A comes under fiduciary duties to B. Although the extent of those fiduciary duties (including duties of care) will vary from case to case some duties (including a duty of care) arise in each case.

135 It should also not be controversial that in Jason's case, in handling and disposing of the funds in Ding Auto's bank account, he owed at the very least a number of basic fiduciary duties. In this connection, I relied on Millett LJ's judgement in *Bristol and West Building Society v Mothew* [1998] Ch 1 (at 18); in particular, the italicised portion:

The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. *A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.* This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. [emphasis added]

136 Locally, our CA has endorsed the above passage in a number of judgements: see for example *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 at [136], where the CA stated that it was “trite that the various fiduciary duties such as the duty not to profit from position, the duty not to place oneself in a position of conflict of interest arise from this core obligation of loyalty that the fiduciary owes to the principal”.

137 It should also be highlighted that although he did not use the language of “fiduciary duties”, even Jason himself conceded in cross-examination that as

a signatory to Ding Auto's bank accounts who was able to issue cheques on the account, he owed a responsibility to Ding Auto to give an account of how he issued cheques and paid monies out of the account.³²⁸

138 To the above duties (*per* the italicised portion of Millett J's judgement above), I would add that in acting as Ding Auto's agent in the management of its finances, Jason also had a duty to keep and provide records of the financial transactions entered into on behalf of Ding Auto, particularly in relation to the payments made out of its bank account: see in this respect the judgement of Colman J in *Yasuda Fire and Marine Insurance Co of Europe Ltd v Orion Marine Insurance Underwriting Agency Ltd and another* [1995] 3 All ER 211 at 219. The obligation to provide "an accurate account in the fullest sense" would arise by reason of the fact that as Ding Auto's agent, Jason was entrusted with the authority *inter alia* to affect its legal rights and obligations in respect of the funds in its Standard Chartered bank account, by paying these funds out of the said account. Ding Auto was entitled to know exactly how its legal rights and obligations in respect of its funds had been affected, and thus to be provided with such records because – to quote Colman J – they would have "been created for preserving information as to the very transactions which the agent was authorised...to enter into". This duty to keep and to provide records was pleaded in Ding Auto's statement of claim,³²⁹ in addition to the other duties such as the duty to act in good faith³³⁰ and the duty "not to advance or promote [his] personal or other third party's (including [Mega Auto's]) interests to the

³²⁸ See transcript of 2 January 2019 at p 146 lines 12 to 28.

³²⁹ Paras 6.3 and 6.6 of the statement of claim (Amendment No. 2) at Tab 16 BOP.

³³⁰ Para 6.1 of the statement of claim (Amendment No. 2) at Tab 16 BOP.

prejudice of [Ding Auto or in conflict with the corporate or commercial interests of [Ding Auto]”.³³¹

Ding Auto’s alternative claims against Jason

139 It will be remembered that in its statement of claim, in addition to pleading that Jason had acted as its “agent”, Ding Auto also described him as its “manager”. It was not disputed that Jason had on various occasions identified himself as a “manager” of Ding Auto: for example, in the bank account opening forms³³² and in the tax returns submitted to IRAS on Ding Auto’s behalf.³³³ In cross-examination, Jason insisted that he was not really a “manager” of Ding Auto, and that he had applied the label to himself purely out of “convenience”.³³⁴ At the same time, he was obliged to concede that another party such as the bank would “probably” not know that he had simply used the label “manager” out of “convenience”.³³⁵

140 In my view, Jason’s testimony demonstrated that he was someone who was prepared to subvert official or formal documentation for his own purposes; who in effect saw such documentation as something to be manipulated for his own ends. This was consistent with the manner in which he purported to present at trial documents in support of his case, only to admit belatedly when challenged that these were not contemporaneous documents but documents created after the commencement of proceedings. The lists of employees

³³¹ Para 6.9 of the Statement of claim (Amendment No. 2) at Tab 16 BOP.

³³² See transcript of 2 January 2019 at p 149 line 10 to 149.

³³³ See transcript of 2 January 2019 at p 149 line 13 to p 153 line 15.

³³⁴ See transcript of 2 January 2019 at p 148 lines 25 to 29.

³³⁵ See transcript of 2 January 2019 at p 158 line 1 to p 159 line 3.

produced in support of the claim for reimbursement of “seconded” employees’ salaries was one example, as I will show later in these written grounds. Another example was the stack of invoices produced purportedly in support of Mega Auto’s counter-claim: it was only when it was pointed out to him in cross-examination that these invoices showed an address for Mega Auto which Mega Auto had moved to only in 2017 (subsequent to the dates claimed for the various reimbursements) that he admitted that these were “reprinted” invoices and that he had been unable to find the original invoices.³³⁶

141 Having said that, neither counsel made any submissions on whether in law the addition – or not – of the label of “manager” made any difference to the issue of agency. In the present case in any event, even without determining whether the label of “manager” was accurately applied to Jason, the evidence available was sufficient to prove that he had acted as Ding Auto’s agent in the management of its finances and particularly in the disposition of its funds. In the circumstances, I did not find it necessary to make any findings on the application of the label “manager”.

142 Ding Auto also pleaded in the alternative that Jason was a trustee of its assets and accordingly owed it fiduciary duties similar to the fiduciary duties which Jason was said to bear as its agent.³³⁷ As a preliminary point, I should point out that the alternative pleading of trusteeship appeared at first blush logically inconsistent with the pleading of agency. As Professor Tan observed

³³⁶ See transcript of 4 January 2019 at p 114 line 4 to p 115 line 22.

³³⁷ Paras 7 and 7A of the statement of claim (Amendment No. 2) at Tab 16 BOP.

in *The Law of Agency*,³³⁸ while there is some overlap between the duties that trustees and agents owe their beneficiaries and principals respectively,

... the relationships differ because the essence of trusteeship is the holding of property (including money) for the benefit of another, while in agency it is the ability to act on behalf of another. Put another way, whereas the agent's power to act is derived from the consent of the principal, the trustee's power to act stems from the vesting of property in him... Unlike a trustee, an agent need not hold any property on behalf of his principal.

143 In the present case, it was not Ding Auto's case that the *legal* ownership of its assets in any way vested in Jason such that he was constituted trustee of those assets on Ding Auto's behalf. In any event, having found in Ding Auto's favour on its claim of agency against Jason, I did not find it necessary to make any findings on this alternative claim of trusteeship, especially since neither counsel made any submissions on the applicable legal principles.

Whether Jason breached the fiduciary duties he owed Ding Auto as its agent

144 I will next deal with the question of whether Jason breached the fiduciary duties he owed Ding Auto as its agent.

145 I will begin with the duty to keep and provide records of all financial transactions as this can be dealt with fairly swiftly. It was plain to me that Jason was in breach of this duty. Despite Ding telling him in July 2016 that he wanted to "take back" Ding Auto's finances and accounts matters, and despite Ding Auto's counsel writing to him in August 2016 to ask for the company's accounts and other records, Jason refused to provide any records at all until after this suit was filed. Bearing in mind his readiness to declare at trial that he had documents

³³⁸ Tan Cheng Han SC at paras 02.015–02.017.

which could support every payment disputed by Ding Auto,³³⁹ there was simply no reason why he could not have provided to Ding Auto the records of the disputed financial transactions when these were first requested. These records were provided only in the course of the proceedings; and even then, they were disclosed in multiple lists at different stages – *right up to the trial stage* – with *a fifth (and by no means the last) list of some 3,900 pages of documents being disclosed a mere six working days before the trial.*

146 I should add that in my view, the agent’s duty to keep and provide records of all financial transactions carried out in exercise of his authority cannot be fulfilled simply by throwing at his principal voluminous records with no explanation as to how these records may be understood. This is common sense. In this connection, it must be pointed out that *in eventually disclosing the financial records which had been requested from him as early as mid-2016, Jason omitted any coherent explanation in his AEIC for the bulk of these records, leaving Ding Auto and its counsel to struggle to make sense of them at trial.* Thus, for example, in relation to the petty cash claims which formed one of the categories of disputed payments, Jason disclosed documents which showed claims by Wong of \$300 for petrol for a vehicle SGE9778X and \$70 for a cash card – but it was only in cross-examination that it was revealed³⁴⁰ that the said vehicle was Wong’s personal car, and that the \$300 for petrol and the \$70 for cash card were “employee perks” given by Mega Auto to its employees. It was also only in cross-examination that Jason offered an explanation as to why these Mega Auto “employee perks” were being paid by Ding Auto:

³³⁹ See transcript of 2 January 2019 at p 69 lines 7 to 10.

³⁴⁰ See transcript of 3 January 2019 at p 111 line 10 to p 115 line 7; also p 106, Vol 1 of Jason’s AEIC.

according to him, Wong was seconded to Ding Auto at the time Wong made the claims for these “employee perks”. Even then, he was obliged to concede that he actually had no evidence that Wong had been travelling in his car on Ding Auto business.

147 Whilst Jason was clearly in breach of his duty to keep and provide records of all financial transactions carried out in exercise of his authority as agent, the nub of Ding Auto’s complaint was really in respect of the disputed payments listed at pages 208 to 214 of the statement of claim. The reliefs prayed for by Ding Auto were really to do with getting an account of the amounts paid out and seeking recovery of these amounts.

148 I will deal next with the disputed payments and the question of whether Jason breached the fiduciary duties he owed Ding Auto as its agent in approving these payments.

Category of disputed payments: Reimbursement of alleged staff salary payments (i.e. the “labour charges”)

149 I start with the first of the four categories mentioned at [81] above. To recap, this category comprised the payments which – according to the defendants – were made in reimbursement of staff salaries paid by Mega Auto, both in respect of Mega Auto employees “seconded” to Ding Auto from July 2013 to April 2014 and Ding Auto employees from April 2014 to June 2016.³⁴¹ This was the category of payments which Ding Auto’s counsel dubbed “labour charges”. For a summary of this category of payments, regard may be had to exhibit P2. This is a table produced by Ding Auto’s counsel (based on a table

³⁴¹ See transcript of 3 January 2019 at p 96 line 4 to p 100 line 27.

originally found in Jason's AEIC) which sets out *inter alia* the amounts of reimbursement claimed by Mega Auto; the cheque number for each payment of such reimbursement by Ding Auto, the page numbers³⁴² in Jason's AEIC where documents allegedly supporting the reimbursement are exhibited; and in respect of each disputed reimbursement, the corresponding claim item number in the table at para 30 of the statement of claim.³⁴³

150 In respect of the alleged reimbursement of the salaries of Mega Auto employees "seconded" to Ding Auto from July 2013 to April 2014, the documents which Jason produced in respect of each purported reimbursement would typically comprise a remittance advice on Ding Auto letterhead, a Mega Auto invoice issued to Ding Auto, and an unsigned list of the staff for whom Mega Auto claimed reimbursement of salary payments.

151 By way of illustration, in respect of the Standard Chartered cheque for \$76,152.24 issued to Mega Auto by Andy on 6 December 2013, this was depicted in Jason's table³⁴⁴ as a reimbursement of the salaries paid by Mega Auto in respect of certain employees "seconded" to Ding Auto in July and August 2013. The documents produced by Jason in support of this payment consisted of a remittance advice dated 5 December 2013 for the cheque payment of \$76,152.24;³⁴⁵ an invoice dated 26 September 2013³⁴⁶ for the same amount, issued by Mega Auto to Ding Auto; and two unsigned documents listing the

³⁴² In respect of each of the payments, the relevant page numbers in the AEIC are handwritten in blue and red ink on P2.

³⁴³ Pp 208–214 of Ding Auto's statement of claim (Amendment No. 2), Tab 16 BOP.

³⁴⁴ P 2212, Vol 4 of Jason's AEIC.

³⁴⁵ P 235, Vol 1 of Jason's AEIC.

³⁴⁶ P 236, Vol 1 of Jason's AEIC.

names of the staff for whom Mega Auto claimed reimbursement of salary payments for July and August 2013 respectively, as well as the amount of salary claimed per staff.³⁴⁷ For the month of July 2013, Mega Auto claimed reimbursement of the full salaries of 11 “seconded” staff, including Ding himself; and for August 2013, reimbursement was claimed in respect of ten “seconded” staff, again including Ding.

152 It will be remembered that Ding’s position was that Jason had offered to help him with family expenses by registering him as a Mega Auto employee for the initial period following Ding Auto’s incorporation³⁴⁸ and lending him money in the form of salary advances, with such loans to be repaid once Ding Auto started earning income.³⁴⁹ According to Ding, because of the relatively low volume of business which Ding Auto received in this initial period, he did not start hiring any fulltime staff until early 2014, choosing instead to “piggyback” on Mega Auto’s staff for matters relating to finance and administration, and to sub-contract work to part-timers (as well as Qin Dong, a Mega Auto employee). Unsurprisingly, therefore, Ding asserted that there was no basis for Mega Auto’s claims as to having “seconded” nine or ten of its staff to Ding Auto in July and August 2013 – and certainly no basis for its claim to reimbursement of a total amount of \$76,152.24 for their salaries. Leaving aside variations in the amounts claimed by Mega Auto, Ding maintained substantially the same version of events *vis-à-vis* the staff salary “reimbursements” claimed by Mega Auto for the remaining period from September 2013 to April 2014.

³⁴⁷ Pp 237-238, Vol 1 of Jason’s AEIC.

³⁴⁸ Ding was registered on Mega Auto’s payroll for the months between June 2013 to March 2014: paras 47 and 55 of Ding’s AEIC.

³⁴⁹ Para 26 of Ding’s AEIC.

153 Having assessed the evidence before me, I concluded that Ding’s version of events was credible. I did not accept the evidence presented by Jason in support of the alleged staff salary “reimbursements”. My reasons were as follows.

154 Firstly, I did not consider the documents put forward by Jason to be reliable evidence. Taking again the example I alluded to above of the documents put forward to prove that the \$76,152.24 cheque issued to Mega Auto on 6 December 2013 was reimbursement of salaries paid by Mega Auto for employees “seconded” to Ding Auto in July and August 2013, I observed that the remittance advice did not state the purpose for which the cheque payment was being made by Ding Auto. Nor did the remittance advice show how the lump sum amount of \$76,152.24 was arrived at. The Mega Auto invoice carried a type-written description – “Sub-con charges for Jul & Aug 2013”, but there were no other type-written details to explain exactly what “Sub-con charges” were or how they had been computed. Again, only the lump sum amount of \$76,152.24 was stated, with no details as to how this amount was arrived at. The word “Salary” was handwritten next to these type-written words. However, there was no evidence as to when this handwritten word was added to the invoice, or whom it had been added by. There was also no explanation in the document itself as to whose “Salary” was being referred to. These observations applied to similar remittance advices and invoices exhibited in support of other payments alleged by the defendants to be reimbursement of staff salaries paid by Mega Auto.

155 The only apparent explanation as to what exactly the payment was for, and how it had been computed, came in the form of the unsigned, typewritten lists which purported to set out the names of the “seconded” employees and the relevant salary amounts which Mega Auto allegedly paid in July 2013 and

August 2013 respectively. However, it was revealed by Jason during cross-examination that *these lists – and similar lists exhibited in support of similar salary reimbursement items – were not contemporaneous records but had instead been produced by him sometime in the “beginning of 2018” when he was “compiling all the information for submission” in these proceedings.*³⁵⁰ This admission dealt a severe, if not fatal, blow to the credibility of these lists as evidence of the purpose for which the payments were made: not just because it caused me to doubt the accuracy of the information presented in them (especially since Jason offered no coherent explanation as to how the information was derived), but also because the admission came so belatedly (and reluctantly) in the trial, and only after he was pressed in cross-examination.

156 Secondly, it must be highlighted that Mega Auto was claiming the full salaries of these “seconded” employees for the period of their alleged secondment between July 2013 and March 2014. This would mean that the “seconded” employees were working fulltime at Ding Auto. I did not find it believable that there could have been so many Mega Auto employees deployed fulltime at Ding Auto during a period when the latter company was still in the process of establishing itself. Ding’s evidence – which was not refuted – was that it was only in December 2013 that he secured Ding Auto’s first contract as an authorised workshop for an insurance company.³⁵¹ Whilst Jason insisted that Mega Auto “referred all its third-party accident claims to Ding Auto for it to settle with insurance companies and profit from that”,³⁵² no evidence was produced of the actual volume of third-party accident claims allegedly referred

³⁵⁰ See transcript of 4 January 2019 at p 47 line 23 to p 49 line 21.

³⁵¹ Para 44 of Ding’s AEIC.

³⁵² Para 33 of Jason’s AEIC.

by Mega Auto to Ding Auto. In any event, I did not find it believable that Mega Auto would have transferred all its third-party accident claims to Ding Auto “for it to settle with insurance companies and profit from that”. It was not disputed that Ding Auto had plans to get on the insurers’ panels of authorised workshops. Jason was aware that a company which “made third party claims against insurers through solicitors” would not be welcomed by insurance companies as an authorised workshop.³⁵³ That being the case, I did not find it believable that Mega Auto would have referred all its third party claims to Ding Auto to settle with the insurers, since this would have put the insurers off appointing Ding Auto as an authorised workshop.

157 Moreover, an examination of the deposits received by Ding Auto in its OCBC account (the account used for incoming cash³⁵⁴) in this period revealed that its receipts were relatively modest compared to the amounts claimed by Mega Auto in the same period as reimbursement of “seconded” staff’s salaries. Again using as an example the claim for reimbursement of staff salaries for July and August 2013, it will be seen that a total amount of \$76,152.24 was claimed by Mega Auto for the salaries of staff “seconded” to Ding Auto in those two months. In contrast, the total deposits received in the OCBC account in August 2013 was just slightly over \$43,000.³⁵⁵ Even as at December 2013, the total deposits received in the OCBC account was just \$44,493.49. Whilst total deposits did spike to \$91,462.79 in March 2014, it was in the following month – April 2014 – that Ding Auto began hiring its own fulltime staff. It did not seem likely, therefore, that in the first several months after its setting-up, Ding

³⁵³ Para 12 of Jason’s AEIC

³⁵⁴ Para 13(h) of Jason’s AEIC.

³⁵⁵ 1 DBD 138.

Auto was generating a volume of business sufficient to warrant the fulltime “secondment” of ten to 11 employees from Mega Auto.

158 In respect of the Mega Auto employees with work permits who were said to have been “seconded” to Ding Auto, other evidence at trial appeared to be inconsistent with this alleged state of affairs. It will be remembered that Ding’s evidence was that Ding Auto did not employ any spray-painters of its own in 2013 and up until April 2014. According to Ding, prior to April 2014, Ding Auto would refer spray-painting work to Mega Auto at the latter’s spray-painting booth at unit #01-22. In contrast, Jason alleged that three of its spray-painters (Loy Yip Pin, Tiew Sieng Leng and Tan Lean Hong (“Tan LH”)) were among the employees “seconded” to Ding Auto.³⁵⁶ However, Jason conceded in cross-examination that for the period of alleged secondment, the employer named on their work permits was “Mega Auto”.³⁵⁷ It was not disputed – indeed, could not be disputed – by the defendants that the relevant subsidiary legislation under the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) (“EFMA”) would have barred Mega Auto from allowing these work permit holders to be employed by another person or business.³⁵⁸ Jason had no coherent response when this was pointed out to him.

159 In respect of Tan LH, the only one out of the three work permit holders to be called as a witness, although he claimed in his AEIC that he was “seconded to work at Ding Auto” when the company was incorporated, neither his AEIC nor his oral testimony gave any indication as to the exact dates when he was

³⁵⁶ See transcript of 3 January 2019 at p 90 line 6 to p 91 line 18; also pp 237–238 of Jason’s AEIC.

³⁵⁷ See transcript of 3 January 2019 at p 94 lines 6 to 9.

³⁵⁸ See transcript of 3 January 2019 at p 89 line 30 to p 93 line 32.

purportedly so “seconded”. Indeed, contrary to the allegation of fulltime “secondment”, a letter of reference issued to Tan LH by Mega Auto on 16 June 2014 stated that he had been “*working fulltime in this company [Mega Auto] since 15th of February 2012*”.³⁵⁹ In cross-examination, Tan LH also admitted that in 2013, during the period of alleged secondment, his leave applications were still being submitted to and approved by Mega Auto.³⁶⁰

160 I should add that although Anna purported to recall that Mega Auto had “deployed” Loy Yip Pin, Tiew Sieng Leng and Tan LH to Ding Auto in July 2013 to do spray-painting work, I did not find her evidence on this issue reliable. Leaving aside the inconsistencies I highlighted in the preceding two paragraphs, I noted that Anna also purported to recall – with much apparent confidence – that Foo was hired by Ding Auto at the same time in July 2013.³⁶¹ This was patently wrong, as both Ding³⁶² and Foo himself³⁶³ testified that Foo was hired by Ding Auto in *April 2014*. In addition, for reasons which I will explain later in these written grounds in relation to the disputed payments for spray-paint, I did not find it believable that Ding Auto had so much spray-painting work between July 2013 and March 2014 that it needed three full-time spray-painters to be “seconded” to it.

161 As to the non-work permit holders allegedly seconded to Ding Auto, there was likewise other evidence which appeared inconsistent with the

³⁵⁹ See transcript of 10 January 2019 at p 6 lines 7 to 15; 3 ABD 852.

³⁶⁰ See transcript of 10 January 2019 at p 5 line 15 to p 6 line 3.

³⁶¹ See transcript of 2 January 2019 at p 42 lines 13 to 32.

³⁶² Para 73 of Ding’s AEIC.

³⁶³ Para 2 of Foo’s AEIC.

allegation of fulltime secondment. Again taking as an example the claim for reimbursement of July 2013 and August 2013 staff salaries, it will be seen that Mega Auto claimed reimbursement for the full salary of its accounts executive Yvonne for these two months. Yet when Yvonne herself was cross-examined, she testified that her duties were not confined to assisting with Ding Auto's accounts but also included assisting with administrative work in Mega Auto and handling the book-keeping for Costplus (the car rental agency owned by Jason).³⁶⁴ That Yvonne's job scope included not just Ding Auto's account but also Costplus' and Mega Auto's in the period July 2013 to June 2016 was corroborated by Yvonne's supervisor Tan Eong Gaik.³⁶⁵

162 To take another example, Mega Auto also claimed reimbursement for the full salary of Anna whom it alleged was "seconded" to Ding Auto from July 2013 up until her being hired as Ding Auto's Assistant Manager in April 2014. However, it will be remembered that Ding's evidence was that for some time after Ding Auto's incorporation in May 2013 up to end-March 2014, there was "no real need for a full-time staff as business was slow...There was no need to hire any staff to sit at the computer for the whole month with no work to do".³⁶⁶ Whilst Anna's AEIC stated that she had been "seconded" to Ding Auto since July 2013, she admitted in cross-examination that "there was not much work when [she] joined [Ding Auto]":³⁶⁷ the work she had to do for Ding Auto merely consisted of closing the files which had been opened by Ding Auto in May 2013

³⁶⁴ See transcript of 11 January 2019 at p 27 lines 3 to 19.

³⁶⁵ See transcript of 4 January 2019 at p 123 line 16 to p 124 line 4.

³⁶⁶ Paras 41 and 45 of Ding's AEIC.

³⁶⁷ See transcript of 2 January 2019 at p 21 lines 9 to 15.

and June 2013 for some own damage and third party claims.³⁶⁸ Indeed, even as at March 2014, Anna evidently still had enough bandwidth and time on her hands that she was able to help out at two different workshops: according to her, not only was she helping out at Ding Auto, she also took on the job of “the admin girl” at the Mega Auto workshop at Block 21 Sin Ming.³⁶⁹

163 In the circumstances, even if I were to assume for argument’s sake that there were Mega Auto staff assisting in Ding Auto operations from time to time prior to April 2014, there would appear to be grave doubt as to whether they were simply “doing Ding Auto’s work” (as Jason put it³⁷⁰). This point was pertinent because Jason had taken pains to stress during his evidence that Mega Auto was “not making profit from the supply of labour” to Ding Auto and was simply charging Ding Auto the “same cost” it incurred in seconding its employees.³⁷¹ Clearly, this could not be true if Ding Auto were actually paying for the full salary of a Mega Auto employee concurrently deployed in more than one company or workshop.

164 I make two final points in respect of the alleged reimbursement of the salaries of Mega Auto employees “seconded” to Ding Auto from July 2013 to April 2014. The first concerns what appeared to be inconsistencies between the salary amounts stated in the unsigned employees’ lists created by Jason in 2018 and the actual salaries of the employees in question. For example, Anna’s monthly take-home salary (nett of CPF) – according to Anna herself – was

³⁶⁸ See transcript of 2 January 2019 at p 21 lines 14 to 26

³⁶⁹ See transcript of 2 January 2019 at p 36 line 22 to p 37 line 15.

³⁷⁰ See transcript of 4 January 2019 at p 65 line 30 to p 66 line 2.

³⁷¹ See transcript of 4 January 2019 at p 65 line 30 to p 66 line 2; also see transcript of 3 January 2019 at p 94 lines 6 to 19.

\$3,199.³⁷² In contrast, for the month of July 2013, Anna’s salary was stated in Jason’s list to be \$4,651.³⁷³ Jason’s responses when asked in cross-examination to explain the discrepancy were quite incoherent. *Inter alia*, he claimed that the figure of \$4,651 shown in his list was derived by adding the employer’s contribution to CPF to the \$4,000 figure. When it was pointed out to him that this still did not yield the figure of \$4,651 shown in his list, he said an amount representing the “skills development levy” also had to be added. This presented a further conundrum since adding the amount shown for skills development levy in the corresponding CPF records – \$66.27 – would have caused Anna’s salary to overshoot the \$4,651 figure stated as her salary in Jason’s list. This then led Jason to claim that the figure to be added for skills development levy was not the \$66.27 shown in the CPF statement, but a figure of \$10 – which would neatly bring Anna’s salary figure to the \$4,651 shown in his list. Unfortunately, he was unable to explain exactly how he got this \$10 figure beyond alleging that “[i]t is generate [*sic*] from the...[p]ayroll software”.

165 The second point concerns what appeared to be discrepancies in the salaries of various employees as stated in Jason’s lists, in that the salary amount shown in Jason’s lists for a particular employee appeared to differ from month to month. For example, in respect of Ching, Jason’s lists showed a salary of \$2,229.73 in July 2013; \$2,361.88 in August 2013; and \$1,906.90 in September 2013.³⁷⁴ When cross-examined about this, Jason claimed that it was because Ching had “overtime”, and “those who has [*sic*] overtime every month, their

³⁷² See transcript of 2 January 2019 at p 60 lines 26 to 31.

³⁷³ P 237, Vol 1 Jason’s AEIC.

³⁷⁴ P 747, Vol 2 Jason’s AEIC.

salary will be different”.³⁷⁵ It must be noted, however, that Jason offered no evidence as to which of the employees in his lists were paid overtime. Even the salaries stated for administrative staff like Anna and Yvonne showed different amounts for different months. For example, Jason’s lists showed a salary amount of \$4,652.73 for Anna in July 2013,³⁷⁶ this rose to \$4,645.58 in August 2013,³⁷⁷ and came down again to \$4,651 in September 2013.³⁷⁸ Yvonne – who appeared in Jason’s lists for only two months – was shown as having a salary of \$2,571.63 in July 2013³⁷⁹ and \$2,570.58 in August 2013.³⁸⁰ It must also be highlighted that in all the documents produced by Jason, no details could be found of the “overtime” amounts allegedly paid to employees.

166 The above two points reinforced the strong impression which I had of the conveniently vague – indeed, what I would term “slippery” – nature of Jason’s evidence on the subject of reimbursement of salary payments. Knowing very well Ding Auto’s case regarding the absence of any “seconded” employees prior to April 2014, and having in his possession all the Ding Auto accounting and financial records, he should have been able to furnish a cogent and detailed breakdown of the salary payments for which he claimed Mega Auto was entitled to reimbursement. Instead, he chose simply to enclose voluminous documents in his AEIC without any explanation of their contents; and it was only through cross-examination – not just of Jason himself but of other defence witnesses as

³⁷⁵ See transcript of 4 January 2019 at p 41 lines 29 to 30.

³⁷⁶ P 237, Vol 1 Jason’s AEIC.

³⁷⁷ P 238, Vol 1 Jason’s AEIC.

³⁷⁸ P 747, Vol 2 Jason’s AEIC.

³⁷⁹ P 237, Vol 1 Jason’s AEIC.

³⁸⁰ P 238, Vol 1 Jason’s AEIC.

well – that multiple anomalies and inconsistencies were spotted in these documents.

167 I turn next to the payments said to be in reimbursement of the Ding Auto staff salaries allegedly paid on its behalf by Mega Auto from April 2014 to June 2016.³⁸¹ The documents produced by Jason in purported support of these payments would typically comprise the following: a Ding Auto payment voucher stating the cheque amount and carrying a brief description of the payment as being “Accrual – Payroll Clearing” of “Salary” for a particular month; a short email from Andy to Yvonne requesting cheque payment of a lump sum for “Ding Auto salary” or “Ding Auto payroll”, but with no breakdown or details of the Ding Auto employees whose salaries were allegedly being paid or of the individual salary amounts; and an unsigned, typewritten list stating the names of the employees being paid and their salaries. This last document would have been created by Jason sometime in 2018, after the defendants were sued by Ding Auto.

168 By way of illustration, in respect of the Standard Chartered cheque for \$13,581.46 issued to Mega Auto by Andy on 20 May 2014, this was depicted in Jason’s table³⁸² as a reimbursement of the Ding Auto staff salaries paid by Mega Auto for the month of April 2014. The documents produced by Jason in support of this payment consisted firstly of an email dated 7 May 2014 from Andy to Yvonne, titled “Salary for Ding Auto”, requesting her to raise a cheque to “reimburse” him for the amount of \$12,594.50 salary payout in cash to Ding

³⁸¹ See transcript of 3 January 2019 at p 96 line 4 to p 100 line 27.

³⁸² P 2212, Vol 4 of Jason’s AEIC.

Auto for month April 2014”.³⁸³ In this particular example, Andy followed up the first email with another email on 10 May 2014 requesting Yvonne to “add \$986.96 for salary payout to Ding Auto”, thereby making for a total reimbursement amount of \$13,581.46. No details were given to Yvonne of the Ding Auto staff for whom this “salary payout” was made. The second document produced in support of the payment of \$13,581.46 was a Ding Auto payment dated 14 May 2014 and prepared by Yvonne.³⁸⁴ Apart from the amount to be paid (\$13,581.46), this payment voucher stated the “Account Name” for the payment as being “Accrual – Payroll Clearing” and the “Description” of the payment as being “Salary – Apr 14”. No other details of the payment were stated in the payment voucher. Finally, the typewritten list created by Jason in 2018 was also attached.³⁸⁵ This set out the names of the Ding Auto staff whose salaries Mega Auto claimed reimbursement for, as well as the corresponding salary amounts. For April 2014, a total of 6 individuals were listed, including Ding himself.

169 I make the following points about the defendants’ contention that Mega Auto had paid Ding Auto staff salaries between April 2014 and June 2016. Firstly, it will be remembered Ding gave evidence that as Ding Auto’s business started picking up, it started employing its own staff from April 2014 onwards. It was not disputed that Andy – whom Ding turned to for help with HR matters – was the one who would arrange to pay the Ding Auto staff their salaries *in cash*. Considering that Ding Auto’s total staff salary payments each month

³⁸³ P 513, Vol 1 Jason’s AEIC.

³⁸⁴ P 512, Vol 1 Jason’s AEIC.

³⁸⁵ P 514, Vol 1 Jason’s AEIC.

usually went into five figures (albeit the lower end of that range), this seemed a rather odd way to do things.

170 There were also several inconsistencies between Andy’s and Jason’s explanations as to the reasons for paying Ding Auto staff in cash. Andy claimed that it was because salary was a “very sensitive and private” matter, and they wanted to protect the confidentiality of “each and every worker’s salary”.³⁸⁶ Jason, on the other hand, claimed that it was because Ding Auto’s “cash flow is not strong”. Neither explanation made any sense. As to the issue of confidentiality, it was not disputed that Mega Auto itself paid its staff via GIRO.³⁸⁷ The defendants did not explain why payment in cash was the only option available to Ding Auto if it wanted to protect the “confidentiality” of its employees’ salary information. As to the issue of cashflow, the justification provided by Jason again rang false. If it was the case (as Jason claimed) that Mega Auto would generally “pay first” because of Ding Auto’s allegedly weak cash flow, then it should not been an issue for Mega Auto to deposit funds into Ding Auto’s account to allow it to pay its staff salaries by GIRO. There was no reason why they had to resort to the unusual – and risky – system of having Andy lug large amounts of cash to Ding Auto each month to pay the employees.

171 It was also not disputed that the Ding Auto employees were not required to sign any documents to acknowledge receipt of their salaries.³⁸⁸ This was again most unusual, considering the amounts of cash Andy had to tote around

³⁸⁶ See transcript of 10 January 2019 at p 48 lines 1 to 19.

³⁸⁷ See transcript of 10 January 2019 at p 48 lines 20 to 30.

³⁸⁸ See transcript of 10 January 2019 at p 49 line 25 to p 50 line 5.

(from a low of \$8,513.81 in February 2016 to a high of \$28,124.08 in June 2015³⁸⁹).

172 Overall, the use of large cash cheques allegedly to pay Ding Auto salaries and the absence of any acknowledgements from staff for these payments were rather suspicious. In my view, these facts supported Ding Auto’s assertion that Jason was drawing from its bank account far more funds than could be justified for its legitimate operating or business expenses.

173 In this connection, it should also be highlighted that an examination of Jason’s lists of employees versus Ding Auto’s CPF records from April 2014 onwards revealed discrepancies between the Ding Auto employees listed by Jason – and their salaries – and those registered in the company’s CPF records. Taking the month of June 2015 as an example, a lump sum of \$28,124.08 was withdrawn from Ding Auto’s bank account via cash cheque on 6 July 2015, purportedly to reimburse Mega Auto for payment of Ding Auto staff salaries in June 2015.³⁹⁰ Neither the payment voucher nor Andy’s email in respect of this “reimbursement” gave any details of the Ding Auto employees whose salaries had alleged been paid by Mega Auto. The list produced by Jason in 2018 to support this payment purported to show a total of 10 Ding Auto employees³⁹¹ and a total amount of \$28,124.08 paid for their salaries in June 2015. However, Ding Auto’s CPF statement for June 2015³⁹² showed only six employees registered for that month, with a total ordinary wage amount of \$10,230.54. No

³⁸⁹ See exhibit P2.

³⁹⁰ Pp 1254-1255, Vol 3 Jason’s AEIC.

³⁹¹ P 1256, Vol 3 Jason’s AEIC.

³⁹² 1 DBD 114.

explanation was offered by the defendants as to why Mega Auto was claiming to have paid salaries to individuals not registered as Ding Auto's employees in the latter's CPF records. I also noted that Mega Auto disclosed its own CPF records only for the period June 2013 to April 2014;³⁹³ and furthermore, that even the CPF records it disclosed for this period were all redacted, in that other than the individuals it claimed were "seconded" to Ding Auto during the said period, the names of all its other employees were blanked out. This forestalled any comparison being drawn between Jason's unsigned lists of employees (and their alleged salaries) and Mega Auto's record of registered employees (and their salaries). This lack of transparency on Mega Auto's part was telling, given that Mega Auto – and Jason – would have known early on in these proceedings about Ding Auto's allegation that they were siphoning monies from its bank account for their own purposes.

174 In respect of Kenny Ding Sing Yew ("Kenny"), Ding's son), who was employed at Ding Auto from May 2014 to August 2016, it should also be noted that both Kenny and Ding asserted that he received only the CPF contribution payable on his notional salary during his period of employment.³⁹⁴ Jason and Andy disputed this, claiming that Ding had requested that Kenny's salary be handed over directly to him (Ding). On the whole, I found Jason's and Andy's story to be rather unbelievable. There appeared to be no sensible reason why Ding should have made such a request in relation to a grown-up son in his late twenties. In any event, Kenny himself provided an explanation as to why he had received only the CPF portion of his salary during the period of employment. Kenny explained that he had worked only on a part-time basis at

³⁹³ 1 DBD 77-97.

³⁹⁴ See para 2 of Kenny's AEIC.

Ding Auto; that he was mainly engaged in the “sales line”, referring clients to the company; and that he had agreed with his father he would receive only CPF contributions and no other portions of his salary from Ding Auto. According to Kenny, he was agreeable to this arrangement because he was aware that his father had just started the business,³⁹⁵ and he was deriving an income from elsewhere anyway, which was why he only worked part-time for Ding Auto.³⁹⁶ I found Kenny’s explanation to be cogent and Kenny himself to be an honest witness who did not try to embellish his evidence to help Ding’s and Ding Auto’s case. I accepted Kenny’s and Ding’s assertion, therefore, that Kenny was not paid any portions of his salary other than CPF contributions.

175 Rather damningly, when asked in cross-examination for evidence that the employees named in his lists had actually received the precise salary amounts recorded against their names, Jason admitted that he had no such evidence.³⁹⁷

176 I make one final observation in respect of both the payments which were allegedly reimbursements to Mega Auto of the salary payments to employees “seconded” to Ding Auto from July 2013 to April 2014, as well as the payments which were allegedly reimbursements of salary payments to Ding Auto employees from April 2014 to June 2016. I have already stated earlier my finding that the unsigned lists of employees, which were created only in 2018, were of little if any evidential value. As for the remittance advice, payment vouchers and Andy’s emails, even assuming these were documents produced

³⁹⁵ Paras 2 and 7 of Kenny’s AEIC.

³⁹⁶ Para 8 of Kenny’s AEIC.

³⁹⁷ See transcript of 4 January 2019 at p 60 line 19 to p 61 line 21.

contemporaneously with the disputed payments, they were very sketchy records which provided no details at all of the alleged purpose(s) of the payments. As I have pointed out, none of these documents contained any details of the relevant employees and salary amounts. The fact that these documents were so shorn of specifics even when the payments were for sizeable amounts (for example, \$76,152.24 for July to Aug 2013, \$91,598.71 for Oct to Dec 2013, \$28,124.08 for June 2015) lent credence to Ding Auto's contention that records were left deliberately vague so as to allow Jason leeway to make substantial payments from its account to Mega Auto – without providing any real particulars, and without leaving an obvious paper trail.

177 It will be recalled that Jason had conceded during the trial that it was “fully up to [him]” how and when reimbursements were made to Mega Auto from Ding Auto's account for the staff salaries allegedly paid by the former.³⁹⁸ Jason also conceded that he was responsible for authorising and giving approval for all the cheques and cash cheques signed by Andy.³⁹⁹

178 *As Ding Auto's agent in the management of its finances and particularly in the disposition of its funds, Jason owed Ding Auto fiduciary duties. These duties were to act in good faith; not to make a profit out of his trust; not to place himself in a position where his duty and his interest might conflict; and not to act for his own benefit or the benefit of a third party (Mega Auto) without the informed consent of his principal (Ding Auto). To sum up in respect of the category of disputed payments dubbed “labour charges” by Ding Auto's counsel: having regard to the matters set out in [149] to [177], I was satisfied*

³⁹⁸ Para 47 of Jason's AEIC.

³⁹⁹ See transcript of 4 January 2019 at p 7 lines 12 to 29.

that Jason had – in signing off on and/or authorizing these payments – breached his fiduciary duties as Ding Auto’s agent; and that he was well aware of what he was doing.

Category of disputed payments: Petty cash vouchers presented by Wong for reimbursement

179 The next category of disputed payments related to petty cash vouchers. In the course of the trial, counsel clarified on behalf of Ding Auto that it was prepared to accept payments in reimbursement of petty cash claims where there was evidence of the petty cash vouchers having been signed off by Ding.⁴⁰⁰ The petty cash claims in dispute concerned those presented by Wong for reimbursement from Ding Auto. These petty cash vouchers related to claim item numbers 3, 4, 6, 7 and 10 in the table at [30] of the statement of claim⁴⁰¹ as well as claim item number 23.⁴⁰² In support of each of these alleged petty cash reimbursements, Jason would typically exhibit in his AEIC a Ding Auto petty cash payment voucher, another document on Ding Auto letterhead said to be a “petty cash record form”, and multiple receipts and invoices from different sources.

180 As with the alleged salary payments by Mega Auto, so too with these petty cash claims, there was again no explanation provided in Jason’s AEIC – nor in Andy’s and Wong’s AEIC – about the items making up the amounts claimed in reimbursement. Thus for example, in respect of claim item number 3 where Andy had issued a cash cheque on 26 August 2013 for an amount of

⁴⁰⁰ See transcript of 3 January 2019 at p 105 lines 4 to 7.

⁴⁰¹ Pp 208-214 of the statement of claim (Amendment No. 2), Tab 16 BOP.

⁴⁰² See transcript of 3 January 2019 at p 110 lines 5 to 7 and at p 131 lines 18 to 23.

\$1,200.33, whilst the payment voucher exhibited in Jason's AEIC⁴⁰³ appeared to show that this sum was a "petty cash" reimbursement made to Wong on 10 August 2013, no breakdown and no details were given of how this lump sum was arrived at. It was left to opposing counsel and the court to wade through the bundle of receipts and other attached documents to attempt to make sense of them.

181 For claim item number 3, apart from what appeared to be *ad hoc* purchases of small items such as cushion seats and an antenna,⁴⁰⁴ there were two petty cash claims by Wong for an item of \$300 for "petrol" and an item of \$70 for "cash card".⁴⁰⁵ No explanations were volunteered in Jason's, Andy's and Wong's AEICs as to what these petty cash payments to Wong were for. When asked in cross-examination about these two items, Jason said that they were claimed by Wong because *as a Mega Auto employee*, he was entitled to "employee's perks" which included a monthly payment of "\$300 of petrol" for his *personal vehicle* and another monthly payment of "cash card of \$70".⁴⁰⁶

182 That Wong was claiming from Ding Auto the "employee's perks" given to him as part of his terms of employment with Mega Auto was plainly anomalous. This was all the more so given Jason's admission that Wong remained a Mega Auto employee at the time he claimed these two items from Ding Auto,⁴⁰⁷ and that there was no evidence to show Wong had actually

⁴⁰³ P 95, Vol 1 of Jason's AEIC.

⁴⁰⁴ Pp 100 and 102, Vol 1 of Jason's AEIC.

⁴⁰⁵ P 106, Vol 1 of Jason's AEIC.

⁴⁰⁶ See transcript of 3 January 2019 at p 111 line 10 to p 114 line 25.

⁴⁰⁷ See transcript of 3 January 2019 at p 112 lines 31 to 32.

incurred petrol or cash card expenses while travelling on Ding Auto's business.⁴⁰⁸

183 Jason argued that it was proper for these Mega Auto "employee's perks" to be paid by Ding Auto because Wong was "seconded" to Ding Auto at the material time, and these "perks" were provided to "motivate" the employees.⁴⁰⁹ I have set out earlier my findings as to the defendants' allegations about "seconded" employees. I would add that even if I were to assume for the sake of argument that Wong was assisting in Ding Auto operations at the material time, there was no evidence that Ding Auto had agreed to pay him not only his salary but also "employee perks" given as "extras" to boost staff morale. Given Jason's status as an agent of Ding Auto and the fiduciary duties he owed it, he had a duty to obtain Ding Auto's informed consent to paying such "employee perks" – especially where they were not miniscule amounts (as in the case of Wong's petrol allowance and cash card allowance). It was not denied that Ding's concurrence to such payments was never sought. Instead, rather astonishingly, Jason had permitted a state of affairs whereby Wong approved his own claims for the payment of his petrol and cash card "perks".⁴¹⁰

184 I make similar observations in respect of the claims for Mega Auto employees' medical expenses which appeared in some of Wong's petty cash claims: see for example claim item no. 4 in the table at para 30 of the statement of claim.⁴¹¹ Jason's position was that Mega Auto employees were "*entitled* to

⁴⁰⁸ See transcript of 3 January 2019 at p 113 lines 19 to 27.

⁴⁰⁹ See transcript of 3 January 2019 at p 113 line 28 to p 115 line 7.

⁴¹⁰ See e.g. pp 106 and 121, Vol 1 of Jason's AEIC.

⁴¹¹ See p 208 of the statement of claim (Amendment No. 2), Tab 16 BOP; also p 121, Vol 1 of Jason's AEIC.

medical claims”, and that such claims were to be “billed to Ding Auto on a cost to cost basis”⁴¹² for the periods when these employees were “seconded” to Ding Auto. Again, I would point to my earlier findings on the defendants’ allegations about “seconded” employees. Even if I were to assume for the sake of argument that the employees who had submitted such claims were assisting in some Ding Auto operations at the material time, there was no evidence that Ding Auto had agreed to pay these Mega Auto employees not only their salaries but also “employee perks” such as medical expenses. On the contrary, whilst Ding did not agree that Ding Auto had accepted the “secondment” of Mega Auto employees prior to April 2014, he did testify that some Mega Auto employees occasionally assisted in some Ding Auto jobs; that he had been asked on a few occasions to approve medical claims by these individuals; and that he had approved these as he had not wanted to bicker with the defendants over the small sums involved.⁴¹³ In other words, there was no system in place whereby Mega Auto employees were automatically “entitled” to reimbursement of their medical claims on the basis that they had been (to use Jason’s words) “involved in [Ding Auto] job”.⁴¹⁴ Given Jason’s status as an agent of Ding Auto and the fiduciary duties he owed it, he had a duty to obtain Ding Auto’s informed consent to paying such “employee perks”. He did not.

185 As for the remaining petty cash claims, no explanation was offered by the defendants of the expenses represented in the various receipts in Jason’s AEIC. Indeed, many of the receipts were simply issued for cash payment;⁴¹⁵

⁴¹² See transcript of 3 January 2019 at p 126 lines 4 to 18.

⁴¹³ Para 120 and p 382 of Ding’s AEIC.

⁴¹⁴ See transcript of 3 January 2019 at p 113 lines 6 to 7.

⁴¹⁵ See e.g. pp 105, 140, 143, 156, 158 and 189, Vol 1 of Jason’s AEIC.

and no explanation was offered as to the notations scrawled on some of these receipts.

186 To recap: *as Jason was acting as an agent for Ding Auto in the management of its finances and particularly in the disposition of its funds, he owed it fiduciary duties which included a duty to act in good faith; not to make a profit out of his trust; not to place himself in a position where his duty and his interest might conflict; and not to act for his own benefit or the benefit of a third party (Mega Auto) without the informed consent of his principal (Ding Auto). In respect of the category of petty cash claims disputed by Ding Auto: having regard to the matters set out in [179] to [185], I was satisfied that Jason had breached these fiduciary duties in authorizing these payments; and that he was well aware of what he was doing.*

Category of disputed payments: Purchases of spray-paint prior to April 2014

187 The third of the four categories of disputed payments related to purchases of spray-paint in the period *prior to* April 2014 (Ding Auto being prepared to accept payments made for spray-paint *after* April 2014⁴¹⁶). This concerned claim item numbers 13, 20 and 22⁴¹⁷ in the table at para 30 of the statement of claim.⁴¹⁸

188 As mentioned earlier, Jason contended that Ding Auto had taken over the spray-painting booth at #01-22 after it was set up and that three of Mega Auto's spray-painters (Loy Yip Pin, Tiew Sieng Leng and Tan LH) were

⁴¹⁶ See transcript of 3 January 2019 at p 104 lines 11 to 31.

⁴¹⁷ See transcript of 3 January 2019 at p 136 line 17 to p 146 line 23.

⁴¹⁸ Pp 208-214 of the statement of claim (Amendment No. 2), Tab 16 BOP.

“seconded” to Ding Auto to do spray-painting work for Ding Auto.⁴¹⁹ Jason claimed that Mega Auto passed all its “bodywork” jobs (which he defined as jobs “that require spray painting”⁴²⁰) “*first priority... to Ding Auto*”.⁴²¹ Jason contended that the invoices in Vol 16 DBD evidenced 95% of the jobs - including spray-painting jobs – which Mega Auto had referred to Ding Auto.⁴²² It should be noted that this third category of disputed payments concerned payments from Ding Auto’s bank account for spray-paint in the period before April 2014; and only some of the invoices in Vol 16 DBD were for the period before April 2014. In Jason’s version of events, since Ding Auto had taken over the spray-painting booth at #01-22 after being set up and since it was getting the bulk of Mega Auto’s spray-painting jobs, it followed that Ding Auto would need to purchase spray-paint for itself even in the period before April 2014.

189 In contrast, Ding’s evidence was that Mega Auto continued to possess and to operate the spray-painting booth at unit #01-22 even after Ding Auto was set up, and that Ding Auto did not at any point take over this unit.⁴²³ Prior to April 2014, if a Ding Auto job involved spray-painting, the work would be directed to the spray-painting booth at #01-22,⁴²⁴ and the spray-painting work would be done by Mega Auto staff.⁴²⁵ Prior to April 2014, therefore, Ding Auto did not purchase spray-paint for its own use, but for the spray-painting jobs it

⁴¹⁹ See transcript of 3 January 2019 at p 90 line 6 to p 91 line 18; also pp 237–238 of Jason’s AEIC.

⁴²⁰ See transcript of 3 January 2019 at p 7 lines 27 to 29.

⁴²¹ See transcript of 3 January 2019 at p 5 lines 25 to 32.

⁴²² See transcript of 3 January 2019 at p 6 line 3 to p 7 line 7.

⁴²³ See transcript of 21 December 2018 at p 38 line 15 to p 40 line 2.

⁴²⁴ Para 66 of Ding’s AEIC.

⁴²⁵ Para 66 of Ding’s AEIC; also see transcript of 21 December 2018 at p 28 lines 1 to 6.

directed to Mega Auto at #01-22, it would pay Mega Auto for the cost of the paint and labour involved.⁴²⁶ Ding Auto eventually hired its own spray-painters from April 2014 onwards when it started getting more business and Mega Auto was unable to handle all the spray-painting jobs sent over;⁴²⁷ and it was also from April 2014 that Ding Auto started making its own purchases of spray-paint.⁴²⁸ Despite the new arrangements put in place in April 2014, according to Ding, he subsequently discovered that Jason had instructed Mega Auto staff to continue to order spray-paint in Ding Auto's name.⁴²⁹

190 As to the invoices in Vol 16 DBD which Jason claimed evidenced all the jobs – particularly spray-painting jobs – referred by Mega Auto to Ding Auto, it was not disputed that only some of the invoices in Vol 16 DBD (at pp 496 to 542) had been signed by Ding.⁴³⁰ For those invoices which Ding had signed, he agreed that he would have received these jobs at Ding Auto himself.⁴³¹ However, this did not assist the defendants with regard to this third category of disputed payments, as the invoices at pp 496 to 542 of Vol 16 DBD were for jobs done in 2015, whereas this category of disputed payments concerned payments from Ding Auto's account for spray-paint in the period before April 2014. For those invoices which had not been signed by Ding, he asserted that he would not have approved their issuance: these job, according to him, were jobs which had been received by Mega Auto itself and which had

⁴²⁶ See transcript of 21 December 2018 at p 17 lines 18 to 23.

⁴²⁷ See [72]–[73] of Ding's AEIC, also see transcript of 21 December 2018 at p 31 line 20 to p 32 line 3.

⁴²⁸ Para 72 of Ding's AEIC.

⁴²⁹ Para 75 of Ding's AEIC.

⁴³⁰ See transcript of 27 December 2018 at p 139 line 24 to p 140 line 15.

⁴³¹ See transcript of 27 December 2018 at p 145 lines 1 to 12.

been carried out by Mega Auto's workers.⁴³² It was Jason who had given instructions for the issuance of these invoices, as Mega Auto's employees "would not dare to issue these invoices without the instructions of Jason".⁴³³ Ding had asked Jason about the creation of such invoices and had been told that they were "for internal records".⁴³⁴ He did not really understand what Jason meant by this and had left things to Jason since Jason had promised to help him with financial and administrative matters.

191 Having reviewed the evidence, I concluded that the disputed spray-paint purchases could not have been made by Ding Auto for its own use. My reasons were as follows.

192 Firstly, as regards the defendants' allegation that three of Mega Auto's spray-painters had been "seconded" to Ding Auto since July 2013 to do spray-painting work for the latter, I have set out earlier my finding that this allegation was not borne out, and I have explained my reasons for the finding.⁴³⁵

193 Secondly, I did not believe that Ding Auto took over possession and operation of the spray-painting booth at unit #01-22 in the period prior to April 2014, or indeed at any point. It was not disputed that the HDB lease for this unit remained in Mega Auto's name at all material times. From Jason's testimony, it appeared that between May 2013 and June 2016, unit #01-22 was the only spray-painting booth which Mega Auto had to cater to the spray-

⁴³² See transcript of 26 December 2018 at p 54 lines 18 to 25.

⁴³³ See transcript of 27 December 2018 at p 149 lines 9 to 10.

⁴³⁴ See transcript of 27 December 2018 at p 148 line 25 to p 149 line 21.

⁴³⁵ See [158]-[160] above.

painting needs of its numerous workshops (as the only other spray-painting booth it had was at its Corporation Road workshop which serviced City Cab vehicles solely).⁴³⁶ I did not find it believable that Jason – being the calculating businessman that he was – would have ceded possession and control of the spray-painting booth at #01-22 to Ding Auto, especially when he was well aware that he did not have any documentation in place recording Mega Auto’s alleged beneficial interest in Ding Auto.

194 Although neither counsel addressed the evidence in any detail in their submissions, I make two further points about other pieces of evidence adduced during the trial. The first concerned the Ding Auto company profile.⁴³⁷ While Mega Auto’s counsel placed great emphasis in cross-examination on this document (spending at least one day in cross-examining Ding about it), I was of the view that counsel had misapprehended the significance of this document. This was a brochure which represented Ding Auto as being “equipped” *inter alia* with a spray-painting booth and employing two spray-painters. Ding admitted in cross-examination that he had been trying to convince insurance companies to appoint Ding Auto as its authorised workshop, that a friend of his (a “Mr Teo”) had helped him prepare this brochure, and that his staff had forwarded the brochure to various insurance companies a few months after Ding Auto’s incorporation.⁴³⁸ Ding also admitted that his friend had prepared the document based on the information he (Ding) provided.⁴³⁹ He admitted that in including photographs of the spray-painting booth at #01-22 and in representing

⁴³⁶ See transcript of 3 January 2019 at p 1 line 19 to p 5 line 22.

⁴³⁷ 1 DBD 355-365.

⁴³⁸ See transcript of 19 December 2018 at p 83 line 8 to p 95 line 12.

⁴³⁹ See transcript of 19 December 2018 at p 90 lines 13 to 21.

that Ding Auto had spray-painting capabilities, he was misrepresenting Ding Auto's position to the insurance companies⁴⁴⁰ (since his evidence was that prior to April 2014, he had no spray-painters of his own and had referred spray-painting work to Mega Auto at *their* booth at #01-22). He also added that while he had prepared the brochure for use in applying to be appointed as the insurers' authorised workshop, he had discovered that it "was not that easy to be successful" in obtaining such appointment. In all, having considered the brochure as well as Ding's testimony, what it appeared to show at best was that in his keenness – perhaps even desperation – to secure Ding Auto's appointment as an insurers' authorised workshop, Ding foolishly misrepresented to the insurers the extent of his company's resources at that point in time. I did not find that the brochure proved Mega Auto had ceded possession and control of #01-22 to Ding Auto after the latter's incorporation.

195 The other piece of evidence concerned Anna's assertion that she was responsible for issuing some of the 2013 invoices in Vol 16 DBD. I did not consider this to be of much evidential value *vis-à-vis* the question of whether Ding Auto was conducting spray-painting operations at #01-22 in the period pre-April 2014 and thus buying spray-paint for its own use. This was because Anna admitted in cross-examination that she had not actually attended to any of the customers or owners whose vehicles were allegedly the subject of the invoices she had issued.⁴⁴¹ Anna claimed that cars coming into Ding Auto's workshop would have been attended to by Ching, but this assertion was unhelpful, since there was no evidence adduced before me as to Ching's

⁴⁴⁰ See transcript of 19 December 2018 at p 88 line 14 to p 89 line 1821.

⁴⁴¹ See transcript of 2 January 2019 at p 21 line 28 to p 22 line 25.

involvement in this area, and Ching himself was not available as a witness (having passed away before the trial).

196 Although Anna also claimed that the spray-painting work in these invoices was carried out by Mega Auto spray-painters “deployed” to Ding Auto, I have explained earlier why I found her evidence in this respect unreliable.⁴⁴²

197 In the circumstances, I preferred the version of events advanced by Ding Auto. I was satisfied that in the pre-2014 period, Ding Auto did not employ spray-painters of its own and instead referred any spray-painting work to Mega Auto’s spray-painting booth at #01-22, where the spray-painting was done by Mega Auto employees. During this period, Ding Auto did not buy spray-paint for its own use and instead paid Mega Auto for the cost of the paint and labour in the spray-painting jobs it referred to the latter. From April 2014 onwards, as its business picked up, Ding Auto embarked on employing its own fulltime staff; and these included its own spray-painters whom it would send over to #01-22 to carry out the spray-painting work. It was in this post-April 2014 that Ding Auto began paying for its own paint purchases.

198 Against this factual matrix, I also found as a fact that the pre-April 2014 invoices in Vol 16 DBD, which Jason relied on in support of the defendants’ case, really represented jobs received by Mega Auto and carried out by its own staff (including its own spray-painters), using its own spray-painting facilities at unit #01-22; and that Jason had arranged for Ding Auto to issue invoices to Mega Auto for these jobs. In my view, there were very plausible reasons why he should have chosen to do so. Ding’s and Ding Auto’s case theory, as put to

⁴⁴² See [160] above.

Jason in cross-examination⁴⁴³ – was that Jason had arranged for Ding Auto to invoice Mega Auto in respect of these jobs and transferred various sums into Ding Auto’s bank account in purported payment for those jobs in order to provide himself with a pretext to transfer out even larger sums from this account. This case theory was not a baseless one. It drew support in particular from a comparison of the amounts deposited by Mega Auto into Ding Auto’s OCBC account in purported payment of the invoices in Vol 16 DBD versus total deposits into the same account in the same month, and versus the amounts withdrawn from the same account in the same month. At least two interesting facts emerged from this comparison.

199 In the first place, the payments for the Vol 16 DBD invoices into Ding Auto’s OCBC account often constituted at best a modest portion of total deposits in that account for the same month. In the second place, there were – not infrequently – months in which the withdrawals from the same account tended either to outstrip or to match the total deposits in that account for the same month. Thus, for the month of August 2013, Mega Auto deposited a sum of \$11,898.40 in Ding Auto’s OCBC account in purported payment of a number of Ding Auto invoices.⁴⁴⁴ Looking at the OCBC bank statement,⁴⁴⁵ it would appear that this represented only one-quarter of the total deposits of \$43,572.54 in that account for August 2013 (which amount would have included deposits from other customers).

⁴⁴³ See transcript of 4 January 2019 at p 77 lines 12 to 27.

⁴⁴⁴ 16 DBD 3.

⁴⁴⁵ 1 DBD 138.

200 The following month (September 2013), Mega Auto remitted a sum of \$15,461.50 to Ding Auto’s OCBC account.⁴⁴⁶ This accounted for just one-fifth of the total deposits of \$71,710.44 in the same account for September 2013.⁴⁴⁷ Conversely, a total sum of \$80,040.66 was withdrawn from this account in September 2013, the bulk of this being a sum of \$50,000 and another of \$30,000. These two sums were paid via cheques on 10 September 2013 and 27 September 2013 into Ding Auto’s SCB account,⁴⁴⁸ *from which account all the disputed payments were subsequently made.*

201 The following month (October 2013), only a sum of \$1,355.60 was deposited by Mega Auto into Ding Auto’s OCBC account,⁴⁴⁹ but the Mega Auto voucher for this payment showed that it was made in “reimbursement of sales collection” and thus not related to spray-painting work (as Jason himself admitted in cross-examination).⁴⁵⁰ This meant that for the month of October 2013, Mega Auto payments for alleged spray-painting work formed *no* part of the total deposits of \$27,750.65 in Ding Auto’s OCBC account.⁴⁵¹ However, in the same month, a total of \$50,040.66 was withdrawn from this OCBC account. The bulk of this was a cheque payment for \$50,000 which was deposited into Ding Auto’s SCB account on 8 October 2013.⁴⁵²

⁴⁴⁶ 16 DBD 28.

⁴⁴⁷ 1 DBD 140.

⁴⁴⁸ 1 DBD 221.

⁴⁴⁹ 16 DBD 53

⁴⁵⁰ See transcript of 3 January 2019 at p 144 line 2 to p 145 line 2.

⁴⁵¹ 1 DBD 140.

⁴⁵² 1 DBD 221.

202 The following month (November 2013), a sum of \$3,563.30 was deposited by Mega Auto into Ding Auto's OCBC account in purported payment for spray-painting and other works.⁴⁵³ This accounted for just over one-tenth of total deposits of \$31,553.45 in the same account for November 2013.⁴⁵⁴ Conversely, a total sum of \$50,782.07 was withdrawn from this account in November 2013, the bulk of this being a sum of \$50,000 which was paid via cheque on 27 November 2013 into Ding Auto's Standard Chartered account.⁴⁵⁵

203 For December 2013, a sum of \$25,797.70 was deposited by Mega Auto into Ding Auto's OCBC account in purported payment for spray-painting and other works.⁴⁵⁶ This accounted for just over half of the total deposits of \$44,493.49 in the same account for December 2013.⁴⁵⁷ A total sum of \$40,040.66 was withdrawn from this account in December 2013, the bulk of this being a sum of \$40,000 which was paid via cheques on 28 December 2013 into Ding Auto's SCB account.⁴⁵⁸

204 For the months of January 2014 and February 2014, total withdrawals from Ding Auto's OCBC account in each month fell below total deposits for that month, but in March 2014, total withdrawals again outstripped total deposits.⁴⁵⁹ The deposits from Mega Auto in purported payment of Ding Auto invoices for spray-painting and other works in this period again formed a

⁴⁵³ 16 DBD 63.

⁴⁵⁴ 1 DBD 140.

⁴⁵⁵ 1 DBD 222.

⁴⁵⁶ 16 DBD 79.

⁴⁵⁷ 1 DBD 146.

⁴⁵⁸ 1 DBD 222.

⁴⁵⁹ 1 DBD 147–152.

modest portion of the total deposits received by Ding Auto in this period in its OCBC account.⁴⁶⁰

205 The above examples, whilst not exhaustive, did reveal a pattern of deposits and withdrawals by Mega Auto which tended to support Ding Auto's case: namely, that Jason had arranged for Ding Auto to bill Mega Auto for the jobs in the Vol 16 DBD invoices, and transferred various sums into Ding Auto's account in purported payment for those jobs, *so as to provide himself with a "cover" for withdrawing even larger sums from this account.*

206 It should also be remembered that the plan was for Ding Auto to secure a place on the insurance companies' panels of authorised workshops: not only was this Ding's plan for Ding Auto, this fitted in with Jason's own agenda of gaining access to the market in authorised workshop claims by using Ding Auto as his vehicle while he controlled its finances and accounts. In this connection, Jason himself acknowledged that Ding Auto needed to build up a certain volume of business before the insurance companies would consider appointing it as an authorised workshop. Having Ding Auto issue invoices for supposed spray-painting and other jobs would certainly have helped to pad the figures for the company's business volume.

207 To sum up *in respect of this third category of disputed payments: given the findings I have made above at [188] to [206], I accepted that Ding Auto was not operating the spray-painting booth at #01-22 in the period before April 2014 (or indeed at any other time); that it was not doing spray-painting jobs of its own and/or on behalf of Mega Auto in the pre-April 2014 period; that it was*

⁴⁶⁰

16 DBD 143.

justified in disputing the payments made from its account for spray-paint in this period; and that it was more probable than not that the spray-paint purchases in the pre-April 2014 period were for the benefit of Mega Auto which continued to operate the spray-painting booth at #01-22 in that period. In arranging for the payments in these circumstances, Jason had breached the duties he owed Ding Auto as its agent; namely, the duty to act in good faith; not to make a profit out of his trust; not to place himself in a position where his duty and his interest might conflict; and not to act for his own benefit or the benefit of a third party (Mega Auto) without the informed consent of his principal (Ding Auto).

Category of disputed payments: “Back-charges” of rental and utilities for #01-20 and #01-22 and other miscellaneous items

208 The last of the four categories of disputed payments related to payments made to Mega Auto, purportedly in payment of rental for both units at #01-20 and #01-22 as well as miscellaneous items such as the utilities for both units, renovations, stationery supplies, broadband and fax charges, and various phone charges.⁴⁶¹

209 In respect of the rental, it will be remembered that Ding Auto took over the HDB lease for #01-20 when the lease was renewed on 28 September 2015. In the course of the trial, Ding Auto’s counsel informed that Ding Auto was willing to pay the rent levied by HDB on #01-20 for the period when it had occupied the unit prior to 28 September 2015. Counsel also informed that Ding Auto was also willing to accept the following other items in this category of payments.⁴⁶²

⁴⁶¹ See transcript of 3 January 2019 at p 103 line 18 to p 104 line 19.

⁴⁶² Para 26 of Closing Submissions filed on behalf of Ding Auto and Ding.

- (a) half of the monthly utilities bills incurred for #01-20 and #01-22;
- (b) half of the payments required for the hire-purchase leasing of the photocopier machines and the related photocopying charges;
- (c) reasonable telephone, fax and Internet charges for the numbers 64534227, 64575884, and 64589523; and
- (d) the cost of stationary purchases (pro-rated accordingly and with supporting receipts).

210 Following from the above, the key contested item in this category related to the rental which Mega Auto purported to charge Ding Auto for #01-22. I have earlier set out at [188] to [206] the reasons why I concluded that Ding Auto did not take over possession and operation of the spray-painting booth at unit #01-22 prior to April 2014, or at any point. In the circumstances, I held that Mega Auto was not entitled to “back-charge” Ding Auto rental for #01-22.

211 As to the utilities, it was not disputed that #01-20 and #01-22 shared the same meter, and that a single utilities bill was issued monthly for both units. Ding Auto was prepared to pay for half of the utilities bills instead of seeking a breakdown of how much electricity and water were consumed by #01-20 individually. I found this to be a fair solution, as it seemed doubtful in any event whether a breakdown of the consumption rates as between the two units could have been possible (given the single common meter in use). A similar rationale would appear to me to apply in respect of the photocopier leasing charges, it not being disputed that the use of the photocopier was shared between #01-20 and #01-22.

212 As to the charges for telephone, mobile phones and other related devices, there was some dispute over Mega Auto’s attempt to “back-charge” Ding Auto for phone bills relating to mobile phones registered to Anna and Ching.⁴⁶³ Ding Auto’s eventual position, as I understood it, was that it would pay for the mobile phone bills of these individuals for the periods for which they were shown in the CPF records to be employed by Ding Auto. I found this to be a fair solution as well.

213 *As Jason acted as an agent for Ding Auto in the management of its finances and particularly in the disposition of its funds, insofar as he approved the purported reimbursements to his own company Mega Auto of rental for #01-22 and other items not specifically accepted by Ding Auto, I found that he had breached the duties he owed Ding Auto: namely, the duty to act in good faith; not to make a profit out of his trust; not to place himself in a position where his duty and his interest might conflict; and not to act for his own benefit or the benefit of a third party (Mega Auto) without the informed consent of his principal (Ding Auto).*

General observations about Jason’s and Mega Auto’s pattern of behaviour

214 Having dealt with the different categories of disputed payments, and having scrutinised the evidence adduced, I would also make the following general observations about Jason’s and Mega Auto’s pattern of behaviour. I bring them up at this juncture because they fortified the conclusions I came to above regarding Jason’s real agenda.

⁴⁶³ See transcript of 27 December 2018 at p 97 lines 14 to 25.

215 Firstly, whilst Jason claimed repeatedly that Mega Auto had directed a large part of its own business to Ding Auto,⁴⁶⁴ there was no evidence before me of the size of this alleged diversion of business. Conspicuously, Jason failed to put forward any Mega Auto accounts or other records which could have substantiated his claims about the generous diversion of business to Ding Auto. This reticence was peculiar given that he had filed a four-volume AEIC that ran into more than 2,000 pages and another 17 volumes of DBD. I very much doubted, therefore, the veracity of these claims as to the substantial diversion of business to Ding Auto.

216 Secondly, whilst Jason claimed that Mega Auto had benefited Ding Auto by diverting to it substantial business, the evidence showed that the amounts which Mega Auto claimed – and which Jason approved – in “reimbursement” of staff salaries, rental, and other alleged expenses far outstripped the amount of monetary benefit supposedly received by Ding Auto. Thus, for example, the deposits made by Mega Auto into Ding Auto’s OCBC account between July 2013 and December 2013, in alleged payment for spray-painting and other jobs referred to Ding Auto, came to a total of \$56,811.90 (excluding credit card reimbursements of just over \$1,000).⁴⁶⁵ In contrast, for the same period, the “reimbursements” to Mega Auto by Ding Auto for alleged staff salary payments alone (what counsel called “labour charges”) totalled \$183,763.03.⁴⁶⁶ Adding the “reimbursements” of rental for the same period would bring this figure to

⁴⁶⁴ See e.g. [33] of Jason’s AEIC; also transcript of 2 January 2019 at p 166 lines 2 to 3.

⁴⁶⁵ See transcript of 3 January 2019 at p 147 lines 4 to 19.

⁴⁶⁶ See transcript of 3 January 2019 at p 147 lines 20 to 32.

more than \$220,000⁴⁶⁷ – a figure starkly in excess of the amount apparently received by Ding Auto from the invoices in Vol 16 DBD for the same period.

217 When confronted with the above in cross-examination, Jason argued that one should look not only at the deposits made by Mega Auto into Ding Auto’s account but also at “the total sales of the company”:⁴⁶⁸ according to him, at least part of the revenue making up Ding Auto’s bank balance would have been due to customers who had previously patronised Mega Auto’s workshop at #01-20 continuing to give their custom to Ding Auto after it took over operations at #01-20.⁴⁶⁹ In other words, according to Jason, Mega Auto had actually given Ding Auto many more customers *beyond those found in the invoices in Vol 16 DBD*.

218 I did not find the above explanation at all credible. At the start of his cross-examination, Jason had been confident in asserting that the invoices in Vol 16 DBD represented 95% of all the jobs passed by Mega Auto to Ding Auto:⁴⁷⁰ there was no mention at all of there having been any significant number of jobs from customers outside of those in the Vol 16 DBD invoices. Nor, in any event, was there any evidence of the number of these alleged Mega Auto customers. Moreover, when asked whether it was possible to distinguish in Ding Auto’s bank statements between the payments by “a customer who has never gone to Mega Auto” and those by “a former Mega Auto client”, Jason

⁴⁶⁷ See transcript of 3 January 2019 at p 148 lines 1 to 3.

⁴⁶⁸ See transcript of 3 January 2019 at p 148 lines 20 to 21.

⁴⁶⁹ See transcript of 2 January 2019 at p 170 line 18 to p 172 line 29.

⁴⁷⁰ See transcript of 3 January 2019 at p 148 lines 20 to 21.

conceded that he was unable to distinguish the two kinds of payments in the bank statements.⁴⁷¹

219 In short, the story which the invoices and bank statements appeared to tell was exactly as counsel had put it to Jason in cross-examination: that whatever monies Mega Auto might have put into or contributed to Ding Auto’s coffers was far exceeded by what it got itself paid out of those coffers.

220 As an aside, I should add that the defendants’ counsel attempted to introduce in his closing submissions a “Table A” which purported to refer to a number of invoices and other documents in an attempt to relate them to the “back-charges” levied against Ding Auto and to explain the basis for these “back-charges”. “Table A” constituted in effect new evidence from the defendants which was not put to Ding Auto’s witnesses during the trial. This was a fundamental and a highly regrettable violation of the *Browne v Dunn* (1893) 6 R 67 principles; and I rejected any attempt by the defendants to rely on “Table A” to support their case.

Findings on causation and loss in respect of the four categories of disputed payments from Ding Auto’s bank account

221 In summary, my finding in respect of the four categories of disputed payments from Ding Auto’s bank account was that save for the items which Ding Auto admitted in the course of the trial it should be paying, these payments were issued or approved by Jason in breach of the fiduciary duties he owed Ding Auto as its agent. The total amount of the payments issued or approved by Jason in breach of his fiduciary duties had originally been pleaded in the statement of

⁴⁷¹ See transcript of 2 January 2019 at p 173 lines 108 to p 172 line 29.

claim (Amendment No. 2) as \$976,280.96, but this was amended by counsel at the close of the trial to \$350,372.80, after taking into consideration the total amount of the payments Ding Auto admitted it should pay. Out of this amended figure of \$350,372.80, Ding Auto calculated that a total sum of \$212,277.38 had been paid to Mega Auto for various purported “reimbursements”. The deletions and computations which resulted in the respective figures of \$350,372.80 and \$212,277.38 are shown in the table labelled “Annex A”⁴⁷² in the closing submissions filed on behalf of Ding Auto and Ding. The defendants’ counsel did not challenge the accuracy of these computations.

222 Neither counsel made any submissions on the law relating to the reliefs pleaded by Ding Auto⁴⁷³ in respect of Jason’s breach of fiduciary duties.

223 For a complaint of loss to succeed in a claim for breach of fiduciary duty, that loss must be shown by the plaintiff to have been suffered as a result of the defendant’s default; or to paraphrase Lord Browne-Wilkinson in *Target Holdings Ltd v Redferns* [1996] 1 AC 421 ((“*Target Holdings*”), at 434), “some causal connection” between the defendant’s breach of fiduciary duty and the loss to the plaintiff “for which compensation is recoverable, viz. the fact that the loss would not have occurred but for the breach”. There are cases where the facts will speak for themselves, in that proof of the breach will also be proof (at least *prima facie*) of the plaintiff’s loss. I considered the present case to be such a case: once it was shown that Jason had issued or approved payments out of Ding Auto’s bank account totalling \$350,372.80 in breach of his fiduciary duties, this also meant – at least *prima facie* – that Ding Auto had suffered a loss

⁴⁷² Pp 59–66 of Closing Submissions filed on behalf of Ding Auto and Ding.

⁴⁷³ Pp 42–43 of the statement of claim (Amendment No. 2) at pp 225–226, Tab 16 BOP.

to the value of the funds so disposed by Jason (assessed as at the date of judgment); and the onus then shifted to Jason to satisfy me that that loss was not in fact suffered or that he should escape liability on some other basis: see in this respect *Meagher, Gummow and Lehane's Equity: Doctrine and Remedies* (JD Heydon, MJ Leeming and PG Turner eds) (Butterworths LexisNexis, 5th Ed, 2015) at paras 23-175, 23-180 and 23-185; also the judgement of the Hong Kong Court of Final Appeal ("HKCFA") in *Libertarian Investments Ltd v Thomas Alexej Hall* [2014] 1 HKC 368 ("*Libertarian Investments*"), where it was held (*per* Ribeiro PJ, at [93]):

Where the plaintiff provides evidence of loss flowing from the relevant breach of duty, the onus lies on a defaulting fiduciary to disprove the apparent causal connection between the breach of duty and the loss (or particular aspects of the loss) apparently flowing therefrom.

224 In the course of the trial and in counsel's closing submissions, there was no real attempt by Jason and his counsel to address the above issues. Having regard to the evidence available at the close of the trial, I was satisfied that Ding Auto had suffered a loss to the value of the funds disposed of by Jason in breach of his fiduciary duties (\$350,372.80).

225 Loss and causation having been shown, there arose on Jason's part an obligation to account for the loss by provision of equitable compensation. As the HKCFA put it in *Libertarian Investments* (*per* Ribeiro PJ, at [87])

Equitable compensation rests on the premise that the basic duty of a trustee or fiduciary who has misappropriated assets or otherwise caused loss or damage to the trust estate in breach of his duty is to restore the lost property to the trust (together with an account of profits if applicable). Where restoration in specie is not possible, the Court may order equitable compensation in place of restoration. As Lord Browne-Wilkinson stated [in Target Holdings]:

If specific restitution of the trust property is not possible, then the liability of the trustee is to pay sufficient

compensation to the trust estate to put it back to what it would have been had the breach not been committed...

[emphasis added]

226 It should be added that “compensation” in these circumstances is “restorative” in the sense of restoring the parties to the position which they occupied before the breach of fiduciary duties – as opposed to being “compensatory” in the sense of dealing with all consequent loss.

227 It is clear from Ribeiro PJ’s remarks (above) that in cases where a defaulting fiduciary such as an agent has extracted funds for his own unauthorised purposes, equitable compensation may not always be limited to the restoration of the exact sum extracted. Thus in *Nant-Y-Glo and Blaina Ironworks Company v Grave* [1878] 12 Ch D 738, it was held that a director – being in a fiduciary position to his company – could not retain a consideration received by him from the promoters as an inducement to become a director; and that if the consideration had been a gift of fully paid-up shares, he could be compelled not only to restore the shares, but also to account to the company for the highest value to be attributed to them since they had been in his possession. In the same way, where a defaulting agent has benefited from his own breach of fiduciary duties, he is obliged to account to his principal for any benefits so received. In *FHR European Ventures LLP and others v Cedar Capital Partners LLC* [2014] 4 All ER 79 (“*FHR European Ventures*”), at [33], Lord Neuberger observed in delivering the judgement of the Supreme Court of the United Kingdom (“UKSC”) that it was a fundamental principle of the law of agency that:

[t]he agent owes a duty of undivided loyalty to the principal, unless the latter has given his informed consent to some less demanding standard of duty. *The principal is thus entitled to the entire benefit of the agent’s acts in the course of his agency.* The principal is wholly unaffected by the fact that the agent may

have exceeded his authority. *The principal is entitled to the benefit of the agent's unauthorised acts in the course of his agency*, in just the same way as, at law, an employer is vicariously liable to bear the burden of an employee's unauthorised breaches of duty in the course of his employment. *The agent's duty is accordingly to deliver up to his principal the benefit which he has obtained, and not simply to pay compensation for having obtained it in excess of his authority.* [emphasis added]

228 In the present case, I have earlier found that there was no basis at all for the various payments issued or approved by Jason out of Ding Auto's bank account: contrary to Jason's claims, these payments did not go towards any legitimate Ding Auto business expense or operational costs. It was clear that Jason had enjoyed the use of the monies paid out in this manner. The bulk of the monies would appear either to have been channelled into his own company Mega Auto or to have been used for some other purpose to his benefit (for example, in the case of petty cash reimbursements for petrol and cash card allowances, providing "employee perks" to Mega Auto employees as a "morale booster"). Where cash cheques were issued, however, the entire range of uses to which these cash amounts might have been put was not immediately apparent. In the circumstances, I concluded that Jason was obliged to account to Ding Auto for the precise extent of the benefits he had obtained from the total amount of \$350,372.80 paid out from its bank account. I therefore ordered that Ding Auto was to have judgement against Jason for the restoration of the amount of \$350,372.80; and further, that Jason was to account to Ding Auto for any benefits obtained from the use of the \$350,372.80.

Findings on Ding Auto's claim against Mega Auto for knowing receipt of monies paid out in breach of fiduciary duties

229 I address next Ding Auto's claim against Mega Auto for the recovery of monies paid to it and for it to give an account of the monies and benefits

received.⁴⁷⁴ Of the amended total amount of \$350,372.80 which formed the subject of its claim against Jason, Ding Auto calculated that a total of \$212,277.38 was paid to Mega Auto for various purported “reimbursements”. It was Ding Auto’s case that Jason was its “directing mind and will”; that it (Mega Auto) had acted “within knowledge that [Jason] was acting in breach of his duties to” Ding Auto;⁴⁷⁵ and that it was accordingly liable, “on the ground of knowing receipt”, to account as a constructive trustee for the cash cheques and payments made to it from Ding Auto’s account.⁴⁷⁶

230 The closing submissions of both counsel did not deal with the law relating to recipient liability.

231 In *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 (“*George Raymond Zage*”), the CA set out the elements required to establish knowing receipt. These were (at [23]):

...(a) a disposal of the plaintiff’s assets in breach of fiduciary duty; (b) the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and (c) knowledge on the part of the defendant that the assets received are traceable to a breach of fiduciary duty.

232 In respect of the elements of disposal and receipt (*per* (a) and (b) in the above extract), having regard to my earlier findings, I was satisfied that the payments totalling \$212,277.38 were made and/or approved by Jason in breach of his fiduciary duties as Ding Auto’s agent; and that these monies were directly received by Mega Auto into its account.

⁴⁷⁴ P 42 of the statement of claim (Amendment No. 2) at Tab 16 BOP.

⁴⁷⁵ Para 9 of the statement of claim (Amendment No. 2) at Tab 16 BOP.

⁴⁷⁶ Para 14A.3 of the statement of claim (Amendment No. 2) at Tab 16 BOP.

233 In respect of the element of knowledge (*per* (c) in the above extract), the CA in *George Raymond Zage* cited the decision of the English Court of Appeal in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437, highlighting in particular Nourse LJ's observation that "[t]he recipient's state of knowledge must be such as to make it unconscionable for him to retain the benefit of the receipt". In this connection, the Court cautioned against a rigid approach (at [32]), noting that

[U]nconscionability is a malleable standard that is not free from difficulty in its application. The degree of knowledge required to impose liability will necessarily vary from transaction to transaction. In cases where there is no settled practice of making routine enquiries and prompt resolution of the transactions is required it seems to us clear that clear evidence of the degree of knowledge and fault must be adduced. We are also inclined to agree that the test, as restated in *Akindele*, does not require actual knowledge. This would be contrary to what we believe was the spirit and intent of Nourse LJ's formulation: it seems to us that actual knowledge of a breach of trust or a breach of fiduciary duty is not invariably necessary to find liability, particularly when there are circumstances in a particular transaction that are so unusual, or so contrary to accepted commercial practice, that it would be unconscionable to allow a defendant to retain the benefit of receipt. The test of unconscionability should be kept flexible and be fact centred.

234 In *George Raymond Zage*, the rogue lawyer responsible for the depredation of the funds paid by the appellants into his law firm's client account had – *inter alia* – given the second respondents (DeFred, a jewellery retailer) a cash cheque for \$270,000 in payment for items purchased from them. The cash cheque carried the words "DAVID RASIF & PARTNERS – CLIENT'S ACCOUNTS". This cash cheque was accepted and encashed by the first respondent (Ho, a director and shareholder of the second respondent). The CA held that Ho, being a sophisticated businessman, must have known that the lawyer was applying funds from his client's account to pay for his personal investments; and this "was not, on the face of it, a

method of payment that a person with Ho's background and experience could properly regard as legitimate". The CA found it "perturbing" that Ho did not ask why the lawyer was using funds from his client's account and instead immediately encashed the cheque. The CA's conclusion (at [51]-[52]) was that:

Taking into account all the objective circumstances...DeFred's knowledge, imputed to it by Ho, that the Cash Cheque was drawn on the DRP's client account representing proceeds belonging to third parties made it unconscionable for it to retain the benefit of the Cash Cheque... In this case, Ho read and understood the meaning of the words "CLIENT'S ACCOUNTS" on the Cash Cheque. Therefore, DeFred is liable to account to the appellants as trustee for the sum transferred in the Cash Cheque i.e. \$270,000.

235 In the present case, what was noteworthy was that despite his apparent obfuscation of the true extent of his shareholding in Mega Auto, Jason ultimately did not dispute that he was the "directing mind and will" of Mega Auto. Indeed, based on Jason's own evidence and that of his own witnesses (Andy, Yvonne and Anna), Mega Auto was very much his creature and his alter ego: as he himself admitted in the course of the trial, he and Mega Auto were "interchangeable".⁴⁷⁷ In the circumstances, Jason's knowledge that there was no basis for the payments to Mega Auto totalling \$212,277.38 had to be imputed to Mega Auto; and this imputed knowledge made it unconscionable to Mega Auto to retain the benefit of the said payments. Mega Auto was liable to account to Ding Auto as trustee for the amount of \$212,277.38 transferred to it in breach of Jason's fiduciary duties. I therefore gave judgement for Ding Auto against Mega Auto for this amount of \$212,277.38 and ordered that Mega Auto should also account for any benefits obtained from the use of these monies.

⁴⁷⁷ See transcript of 2 January 2019 at p 67 lines 19 to 22.

236 As noted previously, this amount of \$212,277.38 actually formed part of the total figure of \$350,372.80 claimed by Ding Auto in respect of the disputed payments. I did not think that Mega Auto was prejudiced by my orders in respect of this amount of \$212,277.38, as there is clear case law authority restricting a plaintiff from recovering in the aggregate from one or more defendants an amount in excess of his loss: see for example *Personal Representatives of Tang Man Sit v Capacious Investments Ltd* [1996] 1 All ER 193 (at 199).

Findings on Mega Auto’s counter-claim for monies allegedly due from Ding Auto

237 I next address Mega Auto’s counter-claim. The first part of its counter-claim related to monies allegedly due from Ding Auto, which it quantified at \$166,463.08 (as amended at trial).⁴⁷⁸ This part of the counter-claim concerned items relating to “reimbursement” of rental for both #01-20 and #01-22, utilities, and miscellaneous items such as stationery supplies and phone charges,⁴⁷⁹ which were similar to the items forming the subject of at least two of the categories of disputed payments in Ding Auto’s claims. I have earlier explained my finding that in respect of these categories of disputed payments, save for the items which Ding Auto admitted in the course of the trial it should be paying, there was no basis at all for the said payments, and they were issued or approved by Jason in breach of the fiduciary duties he owed Ding Auto as its agent.⁴⁸⁰ For the same reasons, insofar as Mega Auto’s counter-claim for \$166,463.08 in allegedly outstanding “reimbursements”, save for the items specifically

⁴⁷⁸ Para 41 of Jason’s AEIC.

⁴⁷⁹ See the table at para 42, p 11 of Jason’s AEIC.

⁴⁸⁰ See [208]-[213].

admitted by Ding Auto as being payable, I found no basis for the purported “reimbursements”.

238 Ding Auto admitted a number of items in the counter-claim totalling \$48,677.81 in value, mainly relating to rental in respect of unit #01-20 in the period prior to 28 September 2015 and its share of the utilities bills. Accordingly, I ordered that this amount should be paid by Ding Auto to Mega Auto and dismissed the rest of the counter-claim for monies allegedly due from Ding Auto.

Findings on Mega Auto’s counter-claim for the return of equipment

239 As for Mega Auto’s counter-claim for the return of various items of equipment, I did not find it to be made out on the basis of the evidence available. In respect of the “Bench Rack 500 System Filter”, the invoice exhibited by Jason was actually addressed to *Mega Auto at its 355 East Coast Road office*.⁴⁸¹ there was no evidence that either of the two units mentioned in the invoice was in fact the unit found at Ding Auto’s workshop at #01-20. In contrast, the invoice exhibited by Ding was addressed to Ding Auto at #01-20 and showed the purchase of one unit of “Bench Rack 500 System Filter”.

240 As for the “Boltless Rack C/W 3 Levels of 8mm Thick MDF Board & Twin Rivet Beam”, the “2 Link Bays Ideal Longspan Shelving C/W 3 Levels of 12mm Thick Plywood & L-Beam”, and the “Single Bay Heavy Duty Shelving C/W 2 Levels of 18mm Thick Plywood & Boxed Beam”, the invoice exhibited was addressed to *Mega Auto* at #01-20 and dated 15 June 2010 – a full three years before Ding Auto was set up. There was no evidence to prove that these

⁴⁸¹ P 2211, Vol 4 of Jason’s AEIC.

items were still at #01-20 when Ding Auto was set up and/or that Ding Auto took over possession of these items.

241 No invoice was produced for the remaining item of equipment (the “Metal frame installed ‘Bak Kua’ for panel beating”). There was in any event no evidence to show that this item was still at #01-20 when Ding Auto was set up and/or that Ding Auto took over possession of this item.

242 In the circumstances, I found that Mega Auto had failed to prove its counter-claim for the return of the various pieces of equipment. I therefore dismissed this part of its counter-claim as well.

Other issues and findings not subject to appeal

243 *Vis-à-vis* Ding Auto’s claims against Andy, I dismissed these on the basis that there was insufficient evidence to prove that Andy too had acted as an “agent” of Ding Auto in the management of its finances and the disposition of its funds, and/or that he was subject to similar fiduciary duties as those borne by Jason. I also dismissed the claim that Andy had engaged in a conspiracy with Jason and/or Mega Auto to cause injury to Ding Auto by unlawful means as there was insufficient evidence to support a finding of the requisite intention on Andy’s part. In any event, both counsel barely made any reference to Andy’s role in the course of their submissions; and my dismissal of the claims against him is not the subject of any appeal.

244 As for Ding Auto’s claim in the alternative of unlawful conspiracy *vis-à-vis* Jason and Mega Auto, having found in Ding Auto’s favour on its claim of agency as against Jason and on its claim of knowing receipt as against Mega Auto, I did not find it necessary to make any finding on this alternative claim.

245 Finally, I should state that although parties spent some time going over the JAE invoices and arguing about whether they showed that JAE had granted Mega Auto credit terms in its purchase of spare parts, I did not find the evidence of these invoices to be germane to my decision on the key issues in dispute.

Consent order

246 As mentioned earlier, Ding Auto was agreeable to paying half of the utilities bills issued in respect of #01-20 and #01-22. It was further agreed between the parties – and recorded by way of a consent order – that Ding Auto, Jason and Mega Auto would take steps within 30 days from the date of my judgement to separate the supply of electricity and water to the two units.

Costs

247 Ding Auto having obtained judgement against Jason and Mega Auto, it was awarded the costs of the action, such costs to be taxed on a standard basis if not agreed within 14 working days.

248 The claim against Ding in the third-party proceedings having been dismissed, Jason and Mega Auto were also ordered to pay Ding’s costs in those proceedings, such costs to be taxed on a standard basis if not agreed within 14 working days.

249 Ding Auto’s claims against Andy having been dismissed, it was ordered to pay Andy his costs of defending those claims, such costs to be taxed on a standard basis if not agreed within 14 working days.

Mavis Chionh Sze Chyi
Judicial Commissioner

Sam Hui Min Lisa (Lisa Sam & Company) for the plaintiff and third
party;
Ooi Oon Tat (Judy Cheng & Co) for the first, second and third
defendants.

Annex A

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	<u>The party signing the SCB Cheque</u>
S/N	<u>Cheque Date</u>	<u>Clearance/ Deposit Date</u>	Deposit (S\$)	Withdrawal (S\$)		
				Cash	Cheque	
1.		27.06.2013	20,000.00			-
2.		10.07.2013	10,000.00			-
3.	<u>10.08.2013</u>	12.08.2013		1,200.33 600.13		Cash cheque
4.	<u>26.08.2013</u>	28.08.2013		818.70 757.3		Cash cheque
5.		10.09.2013	50,000.00			-
6.	<u>06.09.2013</u>	12.09.2013		338.90 163.95		Cash cheque
7.	<u>17.09.2013</u>	26.09.2013		586.35 554.25		Cash cheque
8.		27.09.2013	30,000.00			-
9.	<u>26.09.2013</u>	01.10.2013			30,000.00	Mega Auto Pte Ltd
10.	<u>02.10.2013</u>	07.10.2013		321.10 223.75		Cash cheque
11.		08.10.2013	50,000.00			-
12.	<u>02.10.2013</u>	11.10.2013			20,000.00	Mega Auto Pte Ltd
13.	<u>01.11.2013</u>	15.11.2013			2,966.10	Targo Singapore Pte Ltd
14.	<u>12.11.2013</u>	16.11.2013		427.70 367.80		Cash cheque
15.		21.11.2013	50,000.00			-
16.	<u>05.12.2013</u>	06.12.2013			76,152.24 62,610.32	Mega Auto Pte Ltd
17.	<u>06.12.2013</u>	09.12.2013		452.90 352.40		Cash cheque
18.		23.12.2013		160.00		Cash cheque
19.		26.12.2013	40,000.00			-
20.	<u>31.12.2013</u>	17.01.2014			887.89	Tonita Company Pte Ltd
21.		17.01.2014			171.20	Lee Heng Radiator trading & Repairer
22.	<u>31.12.2013</u>	17.01.2014			4,519.42	Targo Singapore Pte Ltd
23.	<u>20.01.2014</u>	24.01.2014	30,000.00	879.35 373.30		Cash cheque
24.	<u>13.02.2014</u>	17.02.2014		6,000.00		Cash cheque
25.	<u>13.02.2014</u>	17.02.2014			28,436.87 14,153.98	Mega Auto Pte Ltd
26.	<u>03.03.2014</u>	10.03.2014		689.15		Cash cheque

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
S/N	Cheque Date	Clearance/ Deposit Date	Deposit (S\$)	Withdrawal (S\$)		
				Cash	Cheque	
27.	25.02.2014	40.03.2014		439.80		Cash cheque Chiun Tser Peng Andy
28.		13.03.2014	55,000.00			-
29.	17.03.2014	17.03.2014		30,696.82 16,952.53		Cash cheque Yip Kin Lung
30.	13.03.2014	17.03.2014		300.00		Cash cheque Yip Kin Lung
31.	13.03.2014	17.03.2014		800.00		Cash cheque Yip Kin Lung
32.	17.03.2014	21.03.2014		463.50		Cash cheque Yip Kin Lung
33.	31.03.2014	08.04.2014		402.50		Cash cheque Yip Kin Lung
34.	10.04.2014	10.04.2014		700.00	700.00	Cash cheque Chiun Tser Peng Andy Hue Kuang Lan
35.	17.04.2014	21.04.2014	40,000.00	1,180.85		Cash cheque Chiun Tser Peng Andy
36.		14.05.2014	30,000.00			-
37.	14.05.2014	16.05.2014		500.00		Cash cheque Chiun Tser Peng Andy
38.	14.05.2014	16.05.2014		302.80		Cash cheque Chiun Tser Peng Andy
39.	14.05.2014	20.05.2014		13,581.46 1,739.00		Cash cheque Chiun Tser Peng Andy
40.	28.05.2014	02.06.2014		960.10		Cash cheque Chiun Tser Peng Andy
41.		06.06.2014	40,000.00			-
42.	05.05.2014	07.06.2014		12,590.43 959.50		Cash cheque Chiun Tser Peng Andy
43.	09.06.2014	10.06.2014		959.50		Cash cheque Yip Kin Lung
44.	06.06.2014	14.06.2014		347.55		Cash cheque Yip Kin Lung
45.	23.06.2014	08.07.2014		232.85		Cash cheque Yip Kin Lung
46.	04.07.2014	04.07.2014		13,459.27 959.50		Cash cheque Yip Kin Lung
47.	10.07.2014	14.07.2014		658.95		Cash cheque Yip Kin Lung
48.		17.07.2014			195.00	Long Pang Leasing -
49.		17.07.2014			267.50	JJ Carmen Singapore Pte Ltd -
50.	17.07.2014	17.07.2014			3,277.00	Yip Kin Lung Yip Kin Lung
51.		18.07.2014	50,000.00			-
52.	18.07.2014	24.07.2014		1,073.70		Cash cheque Yip Kin Lung
53.	30.07.2014	06.08.2014		731.85		Cash cheque Yip Kin Lung
54.	06.08.2014	07.08.2014		15,361.42 2,927.88		Cash cheque Chiun Tser Peng Andy
55.		14.08.2014	70,000.00			-
56.	28.05.2014	15.08.2014		200.00		Cash cheque Chiun Tser Peng Andy
57.	13.08.2014	15.08.2014			91,598.71 72,766.27	Mega Auto Pte Ltd Chiun Tser Peng Andy

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
S/N	Cheque Date	Clearance/ Deposit Date	Deposit (S\$)	Withdrawal (S\$)		
				Cash	Cheque	
58.	14.08.2014	23.08.2014		519.45		Cash cheque Chiun Tser Peng Andy
59.		03.09.2014	60,000.00			-
60.	25.08.2014	03.09.2014		596.10		Cash cheque Chiun Tser Peng Andy
61.	02.09.2014	04.09.2014		19,365.34 1,750.34		Cash cheque Chiun Tser Peng Andy
62.	12.09.2014	12.09.2014 09.10.2014			23,613.95 17,566.37	Mega Auto Pte Ltd Yip Kin Lung
63.	11.09.2014	16.09.2014		717.80		Cash cheque Yip Kin Lung
64.		18.09.2014	40,000.00			-
65.	17.09.2014	19.09.2014		925.60		Cash cheque Chiun Tser Peng Andy
66.		22.09.2014			32.10	Precision Automech Pte Ltd -
67.	12.09.2014	22.09.2014			4,906.92	Targe Singapore Pte Ltd Chiun Tser Peng Andy
68.	12.09.2014	22.09.2014			357.06	Tonita Company Pte Ltd Chiun Tser Peng Andy
69.	19.09.2014	25.09.2014		1,200.00		Cash cheque Chiun Tser Peng Andy
70.	24.09.2014	25.09.2014		463.60		Cash cheque Yip Kin Lung
71.		01.10.2014		2,404.00		Cash cheque -
72.	03.10.2014	03.10.2014		18,903.42 1,830.49		Cash cheque Chiun Tser Peng Andy
73.		08.10.2014	30,000.00			-
74.		09.10.2014			23,613.95	Mega Auto Pte Ltd -
75.	30.09.2014	11.10.2014		423.15		Cash cheque Yip Kin Lung
76.	08.10.2014	21.10.2014		237.00		Cash cheque Yip Kin Lung
77.	17.10.2014	04.11.2014		200.00		Cash cheque Chiun Tser Peng Andy
78.		04.11.2014			960.00	Standard Corporate Services Pte Ltd -
79.	23.10.2014	04.11.2014		502.00		Cash cheque Yip Kin Lung
80.		04.11.2014			140.00	Long Pang Leasing -
81.		06.11.2014	30,000.00			-
82.	05.11.2014	08.11.2014		21,997.91 1,537.91		Cash cheque Yip Kin Lung
83.	12.11.2014	13.11.2014		1,277.65		Cash cheque Chiun Tser Peng Andy
84.		13.11.2014			500.00	LGS Leather -

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
S/N	Cheque Date	Clearance/ Deposit Date	Deposit (S\$)	Withdrawal (S\$)		
				Cash	Cheque	
						Pte Ltd
85.	<u>24.11.2014</u>	25.11.2014		1,274.05		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
86.	<u>24.11.2014</u>	01.12.2014			419.12	Tonita Company Pte Ltd <u>Chiun Tser</u> <u>Peng Andy</u>
87.		03.12.2014	20,000.00		-	-
88.		03.12.2014	30,000.00		417.00	Jing Neng Entertainment Pte Ltd -
89.	<u>03.12.2014</u>	04.12.2014		23,429.63 1,254.08		Cash cheque <u>Yip Kin Lung</u>
90.		04.12.2014			444.45	Feng Ga Industrial (Pte) Ltd -
91.		05.12.2014			37.45	SLT Auto Parts Pte Ltd -
92.		09.12.2014	25,000.00		-	-
93.	<u>09.12.2014</u>	10.12.2014			29,725.23 17,779.66	Mega Auto Pte Ltd <u>Yip Kin Lung</u>
94.	<u>08.12.2014</u>	12.12.2014		741.65		Cash cheque <u>Yip Kin Lung</u>
95.		18.12.2014	20,000.00		-	-
96.		19.12.2014	10,000.00		-	-
97.	<u>17.12.2014</u>	26.12.2014		343.70		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
98.		29.12.2014			420.00	Rica Leasing Pte Ltd -
99.		05.01.2015			415.00	Jing Neng Enterprise -
100.	<u>31.12.2014</u>	08.01.2015	40,000.00	282.00		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
101.	<u>13.01.2015</u>	14.01.2015			49,526.04 10,116.55	Mega Auto Pte Ltd <u>Chiun Tser</u> <u>Peng Andy</u>
102.	<u>12.01.2015</u>	16.01.2015		295.50		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
103.	<u>09.01.2015</u>	16.01.2015		409.00		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
104.		16.01.2015		3,400.00		Cash cheque -
105.		21.01.2015	20,000.00		-	-
106.	<u>24.01.2015</u>	<u>30.01.2015</u>			6,142.66	Targe Singapore Pte Ltd <u>Chiun Tser</u> <u>Peng Andy</u>
107.	<u>26.01.2015</u>	30.01.2015		338.20		Cash cheque <u>Chiun Tser</u> <u>Peng Andy</u>
108.	<u>06.02.2015</u>	06.02.2015	30,000.00	23,492.53 1,291.22		Cash cheque <u>Yip Kin Lung</u>
109.		06.02.2015			4,304.00	Koh Chai Lim

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	<u>The party signing the SCB Cheque</u>
S/N	<u>Cheque Date</u>	<u>Clearance/ Deposit Date</u>	Deposit (S\$)	Withdrawal (S\$)		
				Cash	Cheque	
110.	<u>09.02.2015</u>	09.02.2015		8,940.00 7,040.00		Cash cheque Yip Kin Lung
111.	<u>03.02.2015</u>	10.02.2015		470.40		Cash cheque Yip Kin Lung
112.		14.02.2015	15,000.00			-
113.	<u>11.02.2015</u>	16.02.2015		340.65		Cash cheque Chiun Tser Peng Andy
114.		05.03.2015	25,000.00			-
115.	<u>06.03.2015</u>	07.03.2015		20,321.34 1,247.29		Cash cheque Chiun Tser Peng Andy
116.		11.03.2015	1,000.00 (cash)			-
117.		12.03.2015	10,000.00			-
118.		17.03.2015	15,000.00			-
119.		06.04.2015	15,000.00			-
120.	<u>06.04.2015</u>	07.04.2015		21,549.01 2,231.50		Cash cheque Chiun Tser Peng Andy
121.		15.04.2015	10,000.00 (cash) 10,000.00 (cash)			-
122.	<u>06.04.2015</u>	22.04.2015			117.70	Tonita Company Pte Ltd Yip Kin Lung
123.		23.04.2015	6,000.00 (cash) 9,000.00			-
124.		27.04.2015	13,000.00		1,999.90	Ching Heng Hua -
125.		29.04.2015	5,000.00 (cash)		2,224.00	Koh Chai Lim -
126.	<u>28.04.2015</u>	30.04.2015		1,334.89 743.89		Cash cheque Yip Kin Lung
127.	<u>08.04.2015</u>	06.05.2015	20,000.00 (cash)	2,033.13 1,769.73		Cash cheque Yip Kin Lung
128.	<u>22.04.2015</u>	06.05.2015		1,529.04		Cash cheque Chiun Tser Peng Andy
129.	<u>06.05.2015</u>	06.05.2015		10,767.51		Cash cheque Chiun Tser Peng Andy
130.	<u>06.05.2015</u>	06.05.2015		9,435.73 4,385.73		Cash cheque Chiun Tser Peng Andy
131.	<u>06.05.2015</u>	07.05.2015			648.10	Goldenlink Coatings Pte Ltd Chiun Tser Peng Andy
132.	<u>07.05.2015</u>	19.05.2015		700.56		Cash cheque Chiun Tser Peng Andy
133.		21.05.2015	20,000.00			-

S/N	Cheque Date	Clearance/ Deposit Date	Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
			Deposit (S\$)	Withdrawal (S\$)		
				Cash Cheque		
134.	19.05.2015	22.05.2015		4,592.39	Cash cheque	Chiun Tser Peng Andy
135.		25.05.2015	25,000.00 (cash)		-	-
136.		03.06.2015	50,000.00		-	-
137.	05.06.2015	05.06.2015		25,309.06 8,896.72	Cash cheque	Yip Kin Lung
138.	06.01.2015	05.06.2015		24,399.41 1,390.54	Cash cheque	Yip Kin Lung
139.		09.06.2015	10,000.00		-	-
140.		16.06.2015	10,000.00 (cash)		-	-
141.	15.06.2015	17.06.2015		1,340.61	Cash cheque	Yip Kin Lung
142.	18.06.2015	19.06.2015		500.00	Cash cheque	Yip Kin Lung
143.		30.06.2015	15,000.00		-	-
144.	06.07.2015	06.07.2015	30,000.00 (cash)	28,124.08 8,672.62	Cash cheque	Chiun Tser Peng Andy
145.		14.07.2015	30,000.00		-	-
146.	16.07.2015	21.07.2015		997.83	Cash cheque	Yip Kin Lung
147.	23.07.2015	23.07.2015 24.07.2015	20,000.00	10,952.20 5,163.25	Mega Auto Pte Ltd	Yip Kin Lung
148.	24.07.2015	31.07.2015		3,657.05	Targo Singapore Pte Ltd	Chiun Tser Peng Andy
149.		03.08.2015	30,000.00 (cash)		-	-
150.	30.07.2015	03.08.2015		1,887.35	Cash cheque	Chiun Tser Peng Andy
151.	05.08.2015	06.08.2015		23,807.85 6,491.50	Cash cheque	Chiun Tser Peng Andy
152.	20.08.2015	21.08.2015		1,778.40	Cash cheque	Yip Kin Lung
153.		24.08.2015	35,000.00		-	-
154.	24.08.2015	26.08.2015 25.08.2015		22,466.34 12,120.98	Mega Auto Pte Ltd	Yip Kin Lung
155.		03.09.2015	15,000.00		-	-
156.	03.09.2015	04.09.2015		19,466.68 1,190.56	Cash cheque	Yip Kin Lung
157.	07.09.2015	10.09.2015		2,180.41	Cash cheque	Chiun Tser Peng Andy
158.	16.09.2015	21.09.2015		1,969.16	Cash cheque	Yip Kin Lung
159.		23.09.2015	10,000.00		-	-
160.		30.09.2015	30,000.00		-	-
161.		05.10.2015	9,000.00 (cash)		-	-
162.	03.10.2015	06.10.2015		1,540.82	Cash cheque	Chiun Tser Peng Andy
163.		15.10.2015	20,000.00		-	-
164.	19.10.2015	20.10.2015		1,347.64	Cash cheque	Chiun Tser

S/N	Cheque Date	Clearance/ Deposit Date	Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
			Deposit (\$)	Withdrawal (\$)		
				Cash Cheque		
						Peng Andy
165.		27.10.2015	25,000.00		-	-
166.		02.11.2015	25,000.00		-	-
167.	05.10.2015	04.11.2015		20,712.40 5,575.54	Cash cheque	Chiun Tser Peng Andy
168.	04.11.2015	06.11.2015		21,077.43 3,896.00	Cash cheque	Chiun Tser Peng Andy
169.	05.11.2015	11.11.2015		1,313.62	Cash cheque	Chiun Tser Peng Andy
170.		19.11.2015	10,000.00		-	-
171.	17.11.2015	20.11.2015		837.19	Cash cheque	Yip Kin Lung
172.		04.12.2015	17,000.00		-	-
173.	07.12.2015	07.12.2015		17,475.35 3,001.50	Cash cheque	Chiun Tser Peng Andy
174.		14.12.2015	10,000.00		-	-
175.	16.12.2015	17.12.2015	35,408.44 (cash)	35,213.94 19,821.44	Cash cheque	Chiun Tser Peng Andy
176.	30.12.2015	30.12.2015	11,786.05 (cash)	11,718.77 5,592.45	Cash cheque	Yip Kin Lung
177.		06.01.2016	13,000.00		-	-
178.	06.01.2016	07.01.2016		13,441.56 1,931.50	Cash cheque	Chiun Tser Peng Andy
179.		08.01.2016	3,000.00		-	-
180.		15.01.2016	1,000.00		-	-
181.		19.01.2016	3,000.00 (cash)		-	-
182.	19.01.2016	19.01.2016		1,601.02	Cash cheque	Chiun Tser Peng Andy
183.		28.01.2016	5,000.00 (cash) 4,000.00		-	-
184.		04.02.2016	14,000.00 (cash)		-	-
185.	01.02.2016	23.02.2016	20,000.00	391.43	Cash cheque	Yip Kin Lung
186.	23.02.2016	29.02.2016		573.40	Cash cheque	Yip Kin Lung
187.	20.01.2016	29.02.2016		1,403.13	Cash cheque	Yip Kin Lung
188.	18.02.2016	01.03.2016		820.00	Cash cheque	Yip Kin Lung
189.		04.03.2016	5,000.00		-	-
190.	07.03.2016	07.03.2016		8,513.81 959.50	Cash cheque	Chiun Tser Peng Andy
191.		08.03.2016		2,621.29	Cash cheque	-
192.		10.03.2016	6,000.00		-	-
193.		18.03.2016	8,000.00 (cash)		-	-
194.		30.03.2016	7,000.00		-	-
195.	04.12.2015	07.04.2016	10,000.00	2,394.11	Cash cheque	Chiun Tser

			Standard Chartered Bank Account No. 01-0-817632-0		Payee Details	The party signing the SCB Cheque
S/N	Cheque Date	Clearance/ Deposit Date	Deposit (\$)	Withdrawal (\$)		
				Cash	Cheque	
						<u>Peng Andy</u>
196.		22.04.2016	6,000.00	1,000.00	Cash cheque	-
197.		25.04.2016		1,000.00	Cash cheque	-
198.		27.04.2016	15,000.00 (cash)		-	-
199.		06.05.2016	20,000.00 (cash)		-	-
200.		07.05.2016		12,088.54	Cash cheque	-
201.		18.05.2016	10,000.00		-	-
202.		20.05.2016		3,089.88	Cash cheque	-
203.		30.05.2016	12,000.00 (cash)		-	-
204.		30.05.2016	10,000.00		-	-
205.		02.06.2016	22,000.00		-	-
206.	<u>07.04.2016</u>	<u>02.06.2016</u>		4,207.50 1557.50	Cash cheque	Chiun Tser Peng Andy
207.	<u>29.01.2016</u>	07.06.2016		44,958.70 2,710.00	Cash cheque	Chiun Tser Peng Andy
208.		08.06.2016		1,000.00	Cash cheque	-
209.		14.06.2016	3,000.00		-	-
210.		21.06.2016	1,000.00		-	-
			Total	217,705.69 619,114.13 <u>595,210.42</u>	406,871.1 9 380,370.5 4 <u>381,070.5</u> 4	
			Grand Total	S\$624,576.88 S\$999,484.67 S\$976,280.96 <u>S\$350,372.80</u>		