IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 48

Civil Appeal No 138 of 2019

Between

(1) Toh Wee Ping Benjamin
(2) Goh Bee Heong

… *Appellants*

And

Grande Corporation Pte Ltd

… *Respondent*

In the matter of Suit No 331 of 2013
(Assessment of Damages No 23 of 2018)

Between

Grande Corporation Pte Ltd

… *Plaintiff*

And

(1) Cubix Group Pte Ltd
(2) Toh Wee Ping Benjamin
(3) Goh Bee Heong
(4) Cubix and Kosmic Pte Ltd
(5) AXXIS Group Pte Ltd
(6) AXXIS International Pte Ltd
(7) AXXIS Pte Ltd

… *Defendants*

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GROUNDS OF DECISION

[Civil Procedure] — [Pleadings]
[Civil Procedure] — [Striking out]
[Damages] — [Assessment]

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Toh Wee Ping Benjamin and another
v
Grande Corp Pte Ltd

[2020] SGCA 48

Court of Appeal — Civil Appeal No 138 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
21 February 2020

14 May 2020

Judith Prakash JA (delivering the grounds of decision of the court):

Introduction

1 The appellants in this appeal were two of the defendants in a High Court suit ("Suit 331") brought against them and several others by the respondent-plaintiff. Some years into the proceedings, the appellants' defence in Suit 331 was struck out by the High Court judge below ("the Judge") on the application of the respondent and interlocutory judgment for damages to be assessed was entered against the appellants. These damages were subsequently assessed in a further hearing before the same Judge.

2 The Judge found that the appellants jointly and severally owed the respondent certain sums described and claimed for in its statement of claim filed in Suit 331 ("the SOC"). These sums were compendiously referred to as

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"the Loans" and "the Sums Received" in the respondent's pleadings and we will use the same terms here.

3 The appellants appealed against the orders made for payment of the Loans and the Sums Received. After considering the parties' submissions, we allowed the appeal in part by setting aside the judgment for the Sums Received while maintaining the judgment for the Loans.

4 The resolution of the appeal involved a consideration of the effect of striking out a party's defence and the application of the rule concerning averments in a statement of claim that are not denied. The question that the appellants raised was whether the striking out of their defence entailed admission to the *entirety* of the respondent's SOC, including the damages claimed so as to prevent them from challenging the amounts pleaded.

The background

The parties and their story

5 The first appellant is Mr Toh Wee Ping Benjamin ("Mr Toh"). Mr Toh is the sole director and shareholder of Cubix International Pte Ltd ("Cubix International"), the first defendant in Suit 331. It is a company in the business of art and graphic design services. Mr Toh is also the sole director and majority shareholder of Cubix Group Pte Ltd ("Cubix Group"), an investment holding company and the second defendant in Suit 331. He holds 95% of its capital. The second appellant is Ms Goh Bee Heong ("Ms Goh"). Ms Goh holds 5% of the issued shares in Cubix Group. We shall sometimes hereafter refer to Mr Toh and Ms Goh jointly as "the appellants".

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6 The respondent is Grande Corporation Pte Ltd ("Grande"), a Singapore-incorporated investment holding company. Its director and sole shareholder is Mr Nemamkurral Vijaykumar Krishna ("Mr Krishna").

7 Discussions between Grande and Cubix Group took place between late December 2006 and mid-2007 on the possibility of doing business together. As a result, a company called Cubix and Kosmic Pte Ltd ("C&K") was incorporated in March 2007 as a joint venture company to carry on the business of development, production and exploitation of film and other media. Its shareholders were Grande and Cubix Group, holding one share each. On incorporation, Mr Toh was appointed its sole director.

8 The terms of the joint venture were recorded in a joint venture agreement ("the JV Agreement") entered into by Grande and Cubix Group on 18 July 2007. As part of the JV Agreement, Grande transferred to C&K on various dates sums totalling S$291,288 and US$458,000 as contributions to and/or loans for, the operating expenses of C&K. In the SOC filed in Suit 331, these sums were collectively called "the Loans".

9 Under the JV Agreement, Grande and Cubix Group undertook, *inter alia*, not to engage in any non-competitive conduct *vis-à-vis* C&K. Grande subsequently claimed that the funding, business, clientele, projects and staff of C&K were wrongfully transferred to three companies incorporated by Mr Toh and Ms Goh in or about 2008 and that, by reason of this wrongdoing, it was entitled to the return of all moneys it had transferred to C&K. The alleged recipient companies can be collectively referred to as "the AXXIS Companies".

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The initiation and conduct of Suit 331

10 On 15 April 2013, Grande and Mr Krishna commenced Suit 331 (formally known as Suit No 331 of 2013) against a total of 12 defendants including Cubix International, Cubix Group, Mr Toh, Ms Goh, C&K and the AXXIS Companies. In the SOC filed at that time, Grande sought the return of: (a) the Loan Sums; and (b) a separate amount of US$900,000. Several causes of action were pleaded by Grande against the various defendants. These included breaches of fiduciary duties and breaches of the JV Agreement.

11 On 14 June 2013, Cubix International, Cubix Group, Mr Toh, Ms Goh and the AXXIS Companies jointly filed a defence. It suffices for present purposes to note that Cubix Group, C&K and the AXXIS Companies did not take further steps in Suit 331. Cubix International, Mr Toh and Ms Goh amended their defence twice, the second time being on 18 April 2016. The claim was subsequently discontinued as against Cubix International.

12 With leave of the court, the SOC was amended on 4 April 2016 to (a) remove from the proceedings (i) Mr Krishna as the second plaintiff, and (ii) four parties who had originally been included as the sixth, seventh, eighth and ninth defendants; and (b) to expunge the claim for US$900,000, replacing it with a claim for "Sums Received". References to the SOC hereafter should be taken as references to that pleading in its amended form unless otherwise specifically indicated.

13 By the SOC, Grande sought various reliefs against the various defendants including reliefs against both the appellants on alternative bases which we paraphrase as follows:

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(a) A declaration pursuant to s 340 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act") that each of the appellants was personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of C&K as the court directed, including the Loans, and an order for such sums to be paid over to Grande forthwith;

(b) Further, or alternatively, the Loans as set out previously, *ie*, S$291,288 and US$458,000;

(c) Further, or alternatively, a declaration that the appellants held, whether as dishonest accessories or otherwise, all profits and/or other benefits (including but not limited to the Sums Received) derived from and/or traceable to:

(i) the wrongful use or use of the Loans; and/or

(ii) the transfer of the business, clientele and/or management staff and employees of C&K to the AXXIS Companies or other parties

as trustee or constructive trustee for and to the benefit of Grande and that he/she was liable for the same to Grande, and an order for payment thereafter to Grande of such sums as may be determined by the court upon the taking of such an account and inquiry, or alternatively damages to be assessed;

(d) Further, or alternatively, in relation to misrepresentation, damages to be assessed;

(e) Further, or alternatively, damages.

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14 As it turned out, as the proceedings continued, the appellants committed a string of breaches of discovery obligations and court orders made in Suit 331. Hence, on 12 May 2017, Grande filed Summons No 2275 of 2017 seeking to strike out the defence of the appellants and the AXXIS Companies and for judgment to be entered in its favour ("the Striking Out Application"). The Striking Out Application involved three categories of documents relating to the AXXIS Companies that were the subject of a specific discovery order. Specifically, these documents consisted of the bank account statements of the AXXIS Companies for the period from 2008 to 2009, their financial statements for the same period, and documents evidencing the costs, expenses and revenue of the AXXIS Companies in relation to their projects.

15 The Judge granted the application in respect of the appellants and struck out the joint defence as against them. As a consequence, interlocutory judgment against them for damages to be assessed was entered for the respondent. The Judge's reasons are found in *Grande Corp Pte Ltd v Cubix International Pte Ltd and others* [2018] SGHC 13 (the "Striking Out Judgment") issued on 19 January 2018.

16 In the Striking Out Judgment, the Judge gave two main reasons for striking out the defence of the appellants. Firstly, the Judge found that the appellants had committed intentional, contumelious and inexcusable breaches of their discovery obligations (at [108]–[113]). Secondly, the Judge stated that the conduct of the appellants gave him "no confidence that they would defend [Grande's] claim in an honest and fair manner" and he struck out their defence on this basis as well (at [114]).

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17 In the Striking Out Judgment the Judge highlighted the significant inconsistencies in the positions taken by, *inter alia*, the appellants in respect of the AXXIS documents as follows (at [59]–[64]):

(a) First, they had taken shifting positions regarding when, and by whom, the documents were destroyed.

(b) Second, they had taken shifting positions regarding whether some of the documents even existed to begin with.

(c) Third, they had taken inconsistent positions regarding whether they had any undisclosed documents remaining in their possession, custody or control.

(d) Fourth, the most significant shift in their case was that they initially gave the impression that Mr Toh and Ms Goh *actually knew* what became of the AXXIS documents, but much later admitted that this was not the case at all.

18 After the Striking Out Judgment was issued, Grande applied for the defences of Cubix Group and the AXXIS Companies to be struck out as well. This application was allowed on 16 May 2018. On 24 July 2018, the Judge granted interlocutory judgment for Grande against Cubix Group and the AXXIS Companies with damages to be assessed.

The assessment of damages

19 Neither of the appellants appealed against the Striking Out Judgment. They did, however, contest Grande's claims at the assessment of damages

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hearing on 19 and 20 March 2019 before the Judge. We summarise briefly the arguments that were made to the Judge.

20 Counsel for Grande, Mr Dominic Chan, argued that the appellants must be taken to have admitted to *all* matters pleaded by Grande in the SOC. This was because their defence had been struck out and interlocutory judgment had been entered against them. Mr Mark Goh, counsel for the appellants, agreed that the *facts* pleaded in the amended SOC must be taken as proved, and that there could not be cross-examination for the purpose of establishing the pleaded facts to be untrue.

21 However, Mr Goh also made various points in respect of the quantum of damages payable by the appellants to Grande including:

(a) While Grande may have pleaded sufficient facts to establish its various causes of actions, it did not do so for the various remedies it had sought.

(b) Grande provided no evidence that Mr Toh and Ms Goh beneficially received the Loans and/or Sums Received in respect of the claim in unjust enrichment.

(c) Not all the Loans and Sums Received were disbursed after the pleaded misrepresentations had been completely made to Grande.

(d) Grande had not provided evidence of its other heads of loss.

22 After hearing the evidence and the submissions, the Judge issued his decision in *Grande Corp Pte Ltd v Cubix Group Pte Ltd and others* [2019] SGHC 146 ("the Assessment Judgment"). As stated earlier, the Judge found that

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the appellants were liable to the respondent for the following claimed in the SOC:

(a) the Loans comprising S$291,288 and US$458,000; and

(b) the Sums Received comprising US$270,000 and/or US$600,000–US$700,000.

23 The Judge agreed with "the plaintiff and [the appellants'] commonly accepted position that [the appellants] must be taken to have admitted to all the matters pleaded by the plaintiff in the statement of claim given that the defences of [Mr Toh], [Ms Goh], Cubix Group, and the AXXIS Companies had been struck out" (Assessment Judgment at [11]). These admissions included the pleaded sums of money that were the subject of various claims against the appellants (Assessment Judgment at [15]).

24 In respect of the Loans, Grande had pleaded in the SOC that Cubix Group and the appellants had, *inter alia*, committed breaches of the JV Agreement and/or breaches of fiduciary duties through the wrongful use of the Loans and the wrongful transfer of the Loans to the AXXIS Companies. On the basis of these two causes of action, the Judge held that the appellants and the Cubix Group were jointly and severally liable to Grande for all the Loans (Assessment Judgment at [19]). In addition, Grande also claimed return of the Loans on the basis that the money was transferred by Grande to C&K because of fraudulent misrepresentations made by Cubix Group and/or the appellants in their personal capacity. The Judge held that the appellants and the Cubix Group were also jointly and severally liable to Grande on this cause of action. Since the three causes of action represented the same loss, the collective amount recoverable was confined to the Loans (Assessment Judgment at [20]–[21]).

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25 The Judge noted that the Sums Received represented, *inter alia*, "the profits made by [the appellants] through their breach of fiduciary duties, as well as the sum retained by the AXXIS Companies in knowing receipt" (Assessment Judgment at [22]). Thus, the appellants and the AXXIS Companies were jointly and severally liable to Grande for the sum of US$270,000 and US$600,000, taking the lower end of the amount pleaded as "and/or US$600,000–US$700,000".

Parties' arguments on appeal

26 The appellants' primary argument in this appeal was that the Judge erred in holding that they "must be taken to have admitted to all matters pleaded in [Grande's] statement of claim" (Assessment Judgment at [9]) as their defence was struck out. They submitted that Grande bore the burden of proving that a given loss was the result of the appellants' wrongful act and that even though judgment was entered against them, they could not be deemed to have admitted to the *entire* contents of the SOC as that would render the assessment hearing below nugatory. In this regard, Mr Goh argued that the concession made by the appellants below that they "will not reopen the facts supporting the conclusion of the liability insofar as the truth of those facts are concerned" should *not* be misinterpreted as *carte blanche* for the Judge to award the Loans and Sums Received to Grande without considering the quality of the appellants' evidence.

27 The respondent argued that the appellants had conceded at the hearing below that all facts and matters pleaded were proven facts which they could not challenge. In any event, since the appellants were deemed to have admitted to the pleadings, all the matters therein were *res judicata*. Further, sufficient

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evidence was adduced to prove the respondent's entitlement to the Loans and the Sums Received.

28 In addition, Grande argued that the decision of *Schonk Antonius Martinus Mattheus and another v Enholco Pte Ltd and another appeal* [2016] 2 SLR 881 ("*Enholco*") justified an award of damages that was proportionate and equitable in the circumstances having regard to the appellants' suppression of critical documents in the proceedings.

The issues and discussion

29 The main issue before us was what was the effect of the appellants' defence having been struck out? Specifically, were the appellants deemed to have acceded to the entirety of the SOC, including the quantum of loss payable? It is important to note in this regard that the appellants did not challenge the findings that the Judge had made as to certain causes of action having been made out. Their challenge, rather, was whether the amounts awarded could be legally linked to the causes of action.

30 To answer the appellants' contentions, we first considered the procedural rules governing the matter and then scrutinised Grande's SOC and the Judge's decision.

The procedural framework

31 The starting point was O 24 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") which contains the rules applicable to the discovery and inspection of documents in civil proceedings. Where a party to a proceeding fails to comply with his discovery obligations as in the present case, the rules

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equip the court with a variety of levers to regulate the discovery process and, by extension, the dispute resolution process.

32 One such lever is found in O 24 r 16(1) of the ROC which provides:

> **Failure to comply with requirement for discovery, etc. (O. 24, r. 16)**
>
> **16.**—(1) If any party who is required by any Rule in this Order, or by any order made thereunder, to make discovery of documents or to produce any document for the purpose of inspection of any other purpose, fails to comply with any provision of the Rules in this Order, or with any order made thereunder, or both, as the case may be, then, without prejudice to Rule 11(1), in the case of a failure to comply with any such provision, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed, or as the case may be, ***an order that the defence be struck out and judgment be entered accordingly.***
>
> [emphasis added in bold italics]

33 The power to strike out a defence is one that is exercised by the courts with circumspection and the principles governing it are fairly settled. As mentioned earlier, there was no challenge to the Judge's exercise of those principles when he struck out the appellants' defence. Thus, the concern placed before us was only as to the *consequences* that follow when a defence is struck out. For present purposes, the important words in O 24 r 16(1) are the last few, *viz*, "judgment be entered accordingly". What do those words mean?

34 It has been suggested that where a defence is struck out under O 24 r 16(1), the parties are placed effectively in the same position as if no defence had been filed from the very beginning, which is the regime set out in O 19 of the ROC. No authority has stated this explicitly but it would appear to be logical that once a defence is struck out, parties' rights and liabilities would echo those which would have pertained had no defence been filed at all especially since the

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rule authorising the striking out has no further provision on what is to be done thereafter. In written submissions for the assessment hearing, it was stated that the meaning of O 24 r 16(1) was that the court "shall give such judgment as the plaintiff appears entitled to on his statement of claim" which is the language employed in O 19 r 7(1) of the ROC.

35 While we agree that "judgment be entered accordingly" would imply that the judgment to be given would have to be correlated to the statement of claim, we do not agree that this simply imports O 19 r 7(1). Instead, in our view, it imports all of the rules in O 19 of the ROC dealing with default of defence from r 2 to r 8. Which one will apply to the particular case before the court will depend on the statement of claim filed in that case. If the claim is for a liquidated sum, then r 2 will apply and final judgment will be entered for the plaintiff. If the claim is for damages or an unliquidated amount, then r 3 will apply and interlocutory judgment for damages to be assessed will be entered against the defendant. If there is a mixed claim, then r 6 applies and there can be final judgment for the liquidated claim and interlocutory judgment for the unliquidated claim. Finally, if the claim is for a relief that is not monetary, for example, an injunction or declaration, r 7 would apply.

36 In the present case, the SOC contained liquidated claims, unliquidated claims for damages and claims for declarations. Some of these claims were alternative to the others. So O 19 rr 6 and 7 were applicable and though the Judge did not make direct reference to those rules in the Striking Out Judgment, in entering interlocutory judgment for damages to be assessed, he acted in accordance with r 6. It should be noted that in the Striking Out Application, Grande had asked for final judgment for S$291,288 and US$458,000 *or further or alternatively* interlocutory judgment for damages to be assessed *or further or*

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alternatively declarations that the appellants held certain sums and profits, *etc*, as constructive trustees for Grande. We would assume the Judge, in our view correctly, took the view that Grande's claims were substantively to recover monetary damages and thus did not make the declarations asked for when he decided the Striking Out Application. In our view, also correctly in view of the plethora of claims before him and their diverse nature, the Judge declined to enter final judgment for any liquidated sum but considered all the claims should be considered at a separate assessment hearing.

37 Having set out what sort of judgment a plaintiff is entitled to apply for when no defence is filed or a filed defence is struck out, we move on to consider the other ramifications on the defendant's position. This discussion relates to the parties' submissions both below and before us on the extent of the admissions made by a defendant who files no defence.

38 This required us to revisit basic principles of pleadings. One such principle is that every pleading must contain material facts and not evidence: O 18 r 7(1) of the ROC. While the law should *not* be pleaded, a party can raise any point of law: O 18 r 11. Pleadings must contain the necessary particulars for the claim or defence advanced: O 18 r 12(1). What a defendant should do in response to the facts pleaded in a statement of claim and the consequence of failing to do so are set out in O 18 r 13.

39 O 18 r 13 merits close attention and two sub-rules bear quoting:

> **Admissions and denials (O. 18, r. 13)**
>
> …
>
> (3) Subject to paragraph (4), every ***allegation of fact*** made in a statement of claim or counterclaim which the party on whom it is served ***does not intend to admit*** must be specifically

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> traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.
>
> (4) Any allegation that a party ***has suffered damage*** and any allegation as to ***the amount of damages*** is deemed to be traversed unless specifically admitted.
>
> [emphasis added in bold italics]

40 The import of O 18 r 13(3) in the circumstances of the appeal before us is that where a defence is struck out, only allegations of fact made in the statement of claim are deemed admitted. The corollary is that averments of law or points of law in a given statement of claim are *not* deemed admitted, much less erroneous assertions of them. Conclusions of law are the proper province of the court. As to averments that engage both issues of fact and law, the court must be satisfied on an examination of the statement of claim alone that the facts therein are sufficient to sustain the pleaded cause of action or claim. In relation to a claim for damages for instance, there would need to be facts that show damage has been suffered. For example, in a claim for damages for personal injury arising from negligence, the plaintiff must plead the type and extent of the injuries sustained. While failure to file a defence may mean admitting the facts that have been pleaded to substantiate damage, where the claim is for an unliquidated amount, the quantum of those damages will have to be assessed and cannot automatically follow as a matter of admission. On the other hand, if the claim is for a liquidated amount, non-filing of the defence will imply admission of the amount of the claim as well and allow the plaintiff to enter final judgment for that amount.

41 The Judge in the Assessment Judgment alluded to the rules of pleading, albeit without specific reference to O 18 r 13(3) and (4) of the ROC. According to the Judge, the consequence of the rules of admissions and denial in O 18 r 13

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when a defence was entirely struck out was that the defendants "must be taken to have admitted to *all matters* pleaded in the plaintiff's statement of claim" [emphasis added] including "pleadings of fact in relation to the heads of loss suffered" (Assessment Judgment at [12]).

42 With respect to the Judge, we think that the formulation "all matters" is too wide. A more accurate description as to the effect of failing to file a defence or having a defence struck out is that the defendant is deemed to have admitted to all *allegations of fact* in the statement of claim. This is consistent with the following excerpt from Chua Lee Ming gen ed, *Singapore Civil Procedure 2020, Vol 1* (Sweet & Maxwell, 2020) at para 19/7/11 on O 19 r 7 of the ROC:

> **Proof of plaintiff's case —** It has been decided that the court cannot receive any evidence, but must give judgment according to the pleadings alone … The reason for this, as explained in *Young v. Thomas* [1892] 2 Ch. 35, which was cited with approval in *Phonographic Performance Ltd. v Maitra & Ors.(Performing Right Society Ltd intervening)* [1998] 2 All E.R. 638, is that ***the facts*** stated in the statement of claim are taken to be admitted by the defendant … The rule that the court cannot receive any evidence should not be rigidly applied where the judge has to exercise a discretion whether to grant the relief sought …
>
> [emphasis added in bold italics]

43 Allegations relating to the law or points of law (such as the act of veil-piercing for example) if they are pleaded in the statement of claim are *not* deemed admitted. Assertions that *prima facie* engage both fact and law (such as sums of damages claimed under heads like "loss of profits" for example) may engage questions of mixed fact and law and should also be treated with caution. This position ties in with the requirement that only interlocutory judgment can be entered for unliquidated claims: there will have to be an assessment of the plaintiff's right to the claimed heads of damage and the quantum of the same.

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44 An apt illustration of the position of a claim for unliquidated damages may be found in *Zulkifli Baharudin v Koh Lam Son* [1999] 2 SLR(R) 369. There, the defendant failed to file a defence against the plaintiff's claim for, *inter alia*, aggravated damages arising out of a defamation action. The defendant applied to set aside the interlocutory judgment for damages to be assessed that had been entered against him. While the case was concerned with O 19 r 3 of the ROC, *ie*, default of defence to an unliquidated claim), the court also made reference to O 18 r 13 of the ROC and, having stated that the defendant was deemed to have admitted all the facts pleaded, noted that whether "the plaintiff has in fact suffered any damage and if so to what extent damages are aggravated are matters for assessment of the amount of money to compensate the plaintiff for the injury to his reputation" (at [17]).

45 This was also the position taken in the Malaysian case of *Kewangan Bersatu Bhd v Yap Ah Yit and others* [1998] 7 MLJ 442. The court there observed that a defendant who is subject to a judgment under O 19 r 3 of the Malaysian Rules of the High Court 1980 (PU(A) 50/1980) (M'sia), now known as the Rules of Court 2012 (PU(A) 205/2012) (M'sia), is still able to defend himself during the hearing of assessment of damages in respect of the quantum payable. This opportunity is not available to a defendant who is subject to a judgment obtained under O 19 r 2, which is a judgment for a liquidated sum only. In another Malaysian case, the defendants who failed to file a defence were deemed by the court to have admitted averments pleaded by the plaintiff. Nevertheless, they were allowed to give evidence in court but only for the purpose of mitigating the damages against them and not in respect of their defences (see *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah and others* [1995] 1 MLJ 39). The Malaysian cases are instructive as their rules

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in relation to default of defence for an unliquidated claim, and admissions and denials are in *pari materia* to O 18 r 13 and O 19 r 3 of our ROC.

46 A similar position has been taken in Singapore in relation to O 19 r 7, which deals with default of defence in other types of claims:

> **Default of defence: Other claims (O. 19, r. 7)**
>
> 7.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application ***the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.*** [emphasis added in bold italics]

O 19 r 7(1) of the ROC has been interpreted to mean that the court must be satisfied that the plaintiff is indeed entitled to the judgment and relief prayed for, which would require a determination whether the pleadings disclosed any cause of action (see *Malcolmson Nicholas Hugh Bertram and another v Mehta Naresh Kumar* [2001] 3 SLR(R) 379 at [8]).

47 On the basis of what we have said in the foregoing paragraphs, after their defence was struck out, the appellants were still able to contest whether damage had been suffered by Grande (at least to the extent that the pleaded facts were unclear about this) and what the quantum of damages should be. They were, effectively, in the same position as if they had an existing defence but had failed to specifically traverse the points about damages raised in the SOC. In fact, this is what happened: at the assessment hearing, Mr Krishna and the appellants gave evidence and submissions were made by counsel on both sides, and the Judge then assessed the damages.

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The pleadings

48 We then considered the pleadings and what facts they contained that were deemed to have been admitted by the appellants. This was not as straightforward a task as it should have been as the SOC is prolix and full of alternative causes of actions and allegations made on an "and/or basis" in respect of the appellants and the various corporate defendants in Suit 331.

The Loans

49 In relation to the Loans, para 16 of the SOC sets out Grande's allegations as to why, when and how certain sums of money were transferred to C&K. It bears quoting in full:

> 16. Pursuant to or in anticipation of entering into the JV Agreement, Grande transferred the following sums of money to C&K, ***being contributions to the operations and business of C&K and/or as loans for the operating expenses of C&K, repayable on demand***, from 25 April 2007 to 28 January 2008:-
>
> | | |
> |---|---|
> | (1) 25 April 2007 | S$50,000 |
> | (2) 3 May 2007 | S$37,950.00
(converted from US$25,000) |
> | (3) 3 May 2007 | US$25,000 |
> | (4) 1 June 2007 | S$104,448.00
(converted from US$68,000) |
> | (5) 1 July 2007 | S$68,850.00
(converted from US$45,000) |
> | (6) 12 July 2007 | S$30,040.00
(converted from US$20,000) |
> | (7) 1 August 2007 | US$68,000 |
> | (8) 3 September 2007 | US$45,000 |
> | (9) 6 September 2007 | US$50,000 |
> | (10) 26 September 2007 | US$50,000 |

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(11) 18 October 2007	US$50,000
(12) 24 October 2007	US$50,000
(13) 30 October 2007	US$50,000
(14) 16 January 2008	US$50,000
(15) 28 January 2008	US$20,000
Total	**S$291,288.00** and **US$458,000** … (collectively the "**Loans**").

[emphasis added in bold italics]

50 For completeness, it should be highlighted that in para 9 of the SOC, the first sum of S$50,000 remitted on 25 April 2007 was also pleaded, in the alternative, as being the subject of a separate loan agreement. The relevant portions of the SOC read:

> **Loan Agreement for S$50,000**
>
> 9. In or around mid-April 2007, Grande and Cubix agreed that each party was to inject S$50,000 each into the initial share capital of C&K. By way of the Loan Agreement ("Loan Agreement"), Grande lent S$50,000 to Cubix Group for their share of the capital injection into the joint venture company C&K.
>
> …
>
> 13. Further or alternatively, this S$50,000 ***forms part of the Loans*** (as defined in [16] below, and listed at [16(1)] below).
>
> [emphasis added in bold italics]

51 In effect, para 16 of the SOC contained the following factual averments:

(a) Grande transferred sums of money to C&K as contributions to its operations or as loans for its operating expenses in anticipation of the joint venture;

(b) the sums transferred were repayable on demand;

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(c) the sums were transferred between 25 April 2007 and 28 January 2008 (with the exact amounts and dates set out); and

(d) the total amounts loaned were S$291,288 and US$458,000.

When their defence was struck out the appellants were deemed to have admitted to the transfers of these amounts, the fact that the money came from Grande and that the purpose of the transfers was as loans for C&K's business in view of the proposed joint venture. In the assessment hearing, the appellants could not and, to be fair, did not challenge these admissions.

52 Having pleaded the basic facts relating to the Loans, in para 16, Grande pleaded that the Loans remained outstanding and C&K was required to immediately repay the same to Grande. Those allegations were allegations of fact and have thus also been admitted by the appellants.

53 Then, in paras 19, 19A, 19B, 20, 21-23, 29 and 30 of the SOC, Grande set out the six alternative bases on which it claimed that the appellants were *personally* responsible for the repayment of the Loans (or in the alternative, damages for loss of the Loans) albeit the same had been extended to C&K pursuant to a joint venture between Grande and Cubix International to which on the face of it the appellants were not party. The Judge found that the bases in paras 19, 19A and 19B (breach of contract and breach of fiduciary duties through the wrongful use of the Loans) and the basis in para 21-23 (that the Loans were made by Grande based on fraudulent misrepresentations made by the appellants) had been made out. The Judge did not deal with the basis pleaded in para 20 (liability under s 340 of the Companies Act), nor that pleaded in para 29 (conspiracy) or that pleaded in para 30 (dishonest assistance). Grande did not cross-appeal or assert in its respondent's case that the assessment could

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be justified on one or more of these three heads as well. Accordingly, we did not consider them either and confined ourselves to considering whether the pleaded (and admitted) facts in paras 19, 19A and 19B, and 21-23 made out those claims.

54 In the examination of the causes of action in respect of which damages were assessed, we found that the more straightforward claim was that in fraudulent misrepresentation. This was set out in paras 21 and 23 of the SOC:

> 21 Misrepresentation: Further or alternatively, the JV Agreement was entered into by Grande, or the Loans were transferred by Grande to C&K, ***based on the following representation(s), made on the part of [Mr Toh and/or Ms Goh] acting as the agent, representative or employee of Cubix Group***, to Grande, in the course of the negotiations between Grande and Cubix Group between late December 2006 to July 2007 leading up to the entering of the JV Agreement, as well as on or before each of the dates set out in [16] above wherein a request would be put in for the disbursement of each tranche of the Loans from Grande to C&K.
>
> **Misrepresentation(s)**
>
> (1) That Grande would be the joint venture partner for the Singapore Media Hub Joint Venture, and would share risks and expenses equally, and that C&K would be the joint venture vehicle;
>
> (2) That Cubix Group would match the contributions or the Loans made by Grande to C&K on or before March 2008;
>
> (3) That the Loans, or such part thereof, were for the business or operating expenses of C&K, and would be used for such purposes only;
>
> (4) That the Loans, or such part thereof, were loans repayable by C&K on demand of Grande.
>
> In reality, Cubix Group ***never intended, and did not***, share any of the risks or expenses of the joint venture, and ***never intended and did not*** match the contributions or Loans made by Grande to C&K, and ***never intended and did not*** use the Loans or any part thereof for the business or operating expenses of C&K, and ***never intended and did not*** return any of the Loans. The entire joint venture was fully funded by

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> Grande, and Cubix Group had used or misused all the Loans not for C&K, but for purposes in connection with the AXXIS Companies or other collateral purposes. ***Such representation(s) were made fraudulently and either well knowing that they were false and untrue or recklessly not caring whether they were true or false, and were relied on by Grande to their detriment when they entered into the JV Agreement and/or transferred the Loans to C&K.*** Grande ***thereby suffered loss and damage*** as a result of the said misrepresentation(s).
>
> …
>
> 23 Further or alternatively, the representation(s) in [21] above were made by [Mr Toh and Ms Goh] ***in their personal capacity*** to Grande. Such representation(s) were made fraudulently and either well knowing that they were false and untrue or recklessly not caring whether they were true or false, and were relied on by Grande to their detriment when they transferred the Loans to C&K. Grande thereby suffered loss and damage as a result of the said misrepresentation(s).
>
> [emphasis added in bold italics]

55 The essential elements for a claim for fraudulent misrepresentation are well-settled and have been summarised as follows (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

(a) there must be a representation of fact made by words or conduct;

(b) the representation must be made with the intention that it should be acted upon by the plaintiff;

(c) it must be proved that the plaintiff had acted upon the false statement;

(d) the plaintiff suffered damage by doing so; and

(e) the representation must be made with the knowledge that it is false.

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56 Based on the material terms of the JV Agreement which were quoted in the SOC, it appeared that save for the fourth representation on the repayment of the Loans in para 21 of the SOC quoted above, the remaining representations had been incorporated into the express terms of the JV Agreement. It is not necessary to go into an analysis of the precise terms of the JV Agreement save to note that none of this, *ie*, the fact that the pleaded representations had been incorporated into the contract or otherwise, obviated Grande's cause of action in misrepresentation. As we highlighted in *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [76], s 1 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) states that:

> Where a person has entered into a contract after a misrepresentation has been made to him, and —
>
> (*a*) *the misrepresentation has become a term of the contract*; or
>
> (*b*) the contract has been performed,
>
> or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (*a*) and (*b*).
>
> [emphasis added]

57 In our assessment, it was plain from the facts pleaded in the SOC that the requisite elements for a claim in misrepresentation had been made out:

(a) It was an admitted fact that the appellants, in their personal capacities, made the four representations stated in para 21 of the SOC. While it was less clear whether they made the representations as agents, representatives or employees of Cubix Group, it was not necessary for a finding on this point in the light of para 23 of the SOC (see above at [54]).

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(b) The four representations were actionable representations of fact. As noted in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [12], a statement as to a person's intention or state of mind, is no less a statement of fact and a misstatement of it can constitute a misrepresentation of fact: *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483.

(c) It was a fact that the representations were made "in the course of the negotiations between Grande and Cubix Group … leading up to the entering of the JV Agreement, as well as on or before each of the dates … wherein a request would be put in for the disbursement of each tranche of the Loans". Thus, they were clearly made with the intention of being relied upon and were relied upon by Grande to its detriment.

(d) Finally, it was admitted as a fact that the appellants never intended to and did not fulfil any of the representations and thus acted fraudulently in the sense described in the *locus classicus* of *Derry v Peek* (1889) 14 App Cas 337.

58 In the circumstances, we were satisfied that in respect of the claim for misrepresentation, the appellants were jointly and severally liable for the Loans, being the appropriate measure of damages assessed by the Judge and awarded to Grande (see above at [13(d)]). As the Judge found (at [20] of the Assessment Judgment), the Loans were transferred to C&K because of the appellants' fraudulent misrepresentations and would not have been remitted otherwise. On the face of it therefore, this was the loss caused to Grande by the misrepresentations. The Judge also found that there was insufficient evidence to establish the assertion by the appellants that some of the misrepresentations were made *after* the transfers of the money. This finding of fact had to stand as

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the appellants did not establish that it was against the weight of the evidence before the Judge.

59 We then moved on to consider the claim for breach of contract and breach of fiduciary duties respectively. We had more difficulty discerning the factual basis of these claims from the SOC. The first relevant paragraph of the SOC is para 19, which reads:

> Grande's claims against Cubix Group: Grande's claims against Cubix Group **as a joint venture partner** are as follows:-
>
> (1) Contract: **In breach of the JV Agreement**, Cubix Group, and/or [Mr Toh and/or Ms Goh] acting as the agent, representative or employee of Cubix Group:-
>
> (a) failed, refused and/or neglected to match the above contributions (i.e. the Loans) by March 2008, or at all;
>
> (b) failed, refused and/or neglected to appoint director(s) or representative(s) from Grande onto C&K's board of directors;
>
> (c) failed, refused and/or neglected to carry out the primary business and operations of the joint venture and/or failed, refused and/or neglected to use or apply the Loans for or towards such purposes;
>
> (d) breached the non-competition clauses under the JV Agreement by soliciting and/or enticing away from C&K the business or custom of the customer(s) or business partner(s) of C&K, in favour of the AXXIS Companies;
>
> In the circumstances, there is a **total failure of consideration and/or Cubix Group had been unjustly enriched** at the expense of Grande, and Cubix Group have had and received the Loans to the use of Grande. Further or alternatively, Grande have suffered loss and/or damage;
>
> …
>
> [emphasis added in bold]

60 The threshold problem faced by Grande was that neither Mr Toh nor Ms Goh was a party to the JV Agreement and that contract contained nothing

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which suggested that they were to bear personal liability in any way in respect of the joint venture. It is an entrenched principle of company law that a company has a separate legal personality independent of that of its owner. In order for the appellants to bear personal liability for the Loans, which was the substance of Grande's claim in para 19 of the SOC, Grande would have to show that the corporate veil of Cubix Group should be pierced and the contract should be treated as a contract between Grande and the appellants. Recognising this, Grande pleaded as follows:

> 24. Lifting corporate veil of Cubix Group: Further or alternatively, [the appellants] were together the 100% shareholders of Cubix Group, while [Mr Toh] was the sole director of Cubix Group, **and they had used Cubix Group as a device, facade or sham or agent or *alter ego* to commit breach of contract, fiduciary duties or trust** (as pleaded in [19] above), **fraudulent misrepresentation** (as pleaded in [21] above) or **conspiracy** (as pleaded in [29] below) on Grande. As such, the corporate veil of Cubix Group should be lifted to make [the appellants] and Cubix Group jointly and severally liable to Grande for all the claims of Grande against Cubix Group.
>
> 25. Further or alternatively, [Mr Toh] was the controlling or majority shareholder (95%) and sole director of Cubix Group, and as the controlling mind had used Cubix Group **as a device, facade or sham or agent or *alter ego* to commit breach of contract, fiduciary duties or trust** (as pleaded in [19] above), **fraudulent misrepresentation** (as pleaded in [21] above) or **conspiracy** (as pleaded in [29] below) on Grande. As such, the corporate veil of Cubix Group should be lifted to make [Mr Toh] and Cubix Group jointly and severally liable to Grande for all the claims of Grande against Cubix Group.
>
> [emphasis added in bold]

61 In so far as the pleadings aver that "the corporate veil of Cubix Group should be lifted", it is eminently a question of *mixed fact and law* for the court to decide whether in any particular case the existence of a company should be treated as a sham and legal liability should be affixed instead to the owner of that company. The court must be satisfied that there is sufficient basis to sustain

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such a conclusion. It is well-established that "veil-piercing" is an *exceptional* exercise of the court's jurisdiction by which it effectively ignores the independent status of corporate vehicles as separate legal entities. The appellants cannot be deemed to have admitted to the piercing of the corporate veil of Cubix Group and the consequences that follow simply because their defence was struck out. It should also be noted that, on the face of it, Ms Goh was only a small minority shareholder in Cubix Group and the SOC itself described Mr Toh as the controlling mind of the company, so even if the veil was pierced it would be unlikely that personal liability would be placed on her as a result of the exercise. The facts as pleaded were far from clear enough, even if admitted, to allow the invocation of such an exceptional remedy. They would have had to be explored in more detail in a trial before a court could come to a conclusion on the matter. We were therefore of the view, with respect, that the Judge erred in finding the appellants personally liable for any breach of contract on the part of Cubix Group. We noted other possible flaws in Grande's pleading for purported breaches of contract but in the light of our decision in relation to piercing of the corporate veil it is not necessary to explore these further.

62 We turned next to Grande's pleading on breach of fiduciary duties, which had two aspects. First, Grande claimed against *Cubix Group* for breach of fiduciary duties as follows:

> 19 Grande's claims against Cubix Group: Grande's claims against **Cubix Group as a joint venture partner** are as follows:-
>
> …
>
> (2) Fiduciary duties/Trust: In breach of their duties of good faith and fidelity and/or fiduciary duties **to Grande**, and/or in breach of trust, Cubix Group, or [Mr Toh and/or Ms Goh] as **the agent, representative or employee of Cubix Group**:-

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> (a) used, or caused to be used, the Loans to build up the business and/or clientele, and/or to pay the operating expenses, of the AXXIS Companies or for other personal or collateral purposes instead of using them for C&K or alternatively, used the Loans for purposes in anticipation of the AXXIS Companies being incorporated subsequently; and/or
>
> (b) transferred, or caused to be transferred, the business, clientele, and/or management staff and employees of C&K to the AXXIS Companies or other parties.
>
> In the circumstances, **Cubix Group** are liable to account to Grande for, and **Grande** is entitled to trace, the profits and/or other benefits derived from the wrongful use or use of the Loans and/or derived from the transfer of the business, clientele and/or management staff and employees of C&K to the AXXIS Companies or other parties. Further or alternatively, Grande have suffered loss and/or damage.
>
> [emphasis added in bold]

The portion of para 19 cited above was unnecessarily complicated by the reference to the appellants as agents or representatives or employees of Cubix Group when the purpose of the pleading was to state why it was alleged that *Cubix Group* was liable to account to Grande. In our view, there was nothing in that paragraph that could serve to assert that the appellants personally owed fiduciary duties to Grande. Therefore, we did not dwell on para 19 as it was concerned only with the alleged liability of Cubix Group.

63 Grande's claim against the appellants *personally* for the breach of their alleged fiduciary duties as alleged joint venture partners was contained in para 19A:

> 19A Grande's claim against [the appellants] personally in breach of fiduciary duties as joint venture partners: Further or alternatively, Grande on one hand, and [Mr Toh and/or Ms Goh] on the other hand, **were in the position of joint venturers and their relationship was one of trust and confidence**. [The appellants] *personally* owed fiduciary duties to Grande,

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> including but not limited to the duty of good faith and/or fidelity to Grande, to act in the best interest of Grande, a duty not to act in a manner contrary to the interests of Grande, not to allow conflict of interest and duty to occur and/or to manage the business honestly in the best interests of the enterprise, C&K …
>
> [emphasis added in bold]

64 Paragraph 19A avers that the appellants owed fiduciary duties personally to Grande. This was purportedly founded on the basis of them being joint-venturers *vis-à-vis* Grande and was particularised in the same paragraph as follows:

> **Particulars**
>
> Grande reposed a high degree of trust and confidence in [the appellants], the operators and/or managers of the joint venture, C&K, by virtue of their relative and respective positions and/or special circumstances, as follows:
>
> (1) Grande had no nominee director on the board of C&K;
>
> (2) Grande had no relevant experience in the business of development, production, distribution and exploitation of film, television, digital and interactive media whereas [the appellants] were experienced in this industry;
>
> (3) Grande entrusted [the appellants] with extensive discretion to act in relation to the joint venture, C&K;
>
> (4) Grande looked solely to [the appellants], on behalf of Grande, for the appropriate advice and recommendations concerning C&K;
>
> (5) Grande had no knowledge of the arrangements made by [the appellants] on behalf of C&K with third parties (save for [the appellants'] updates which were predominantly by way of email and/or teleconference);
>
> (6) [The appellants] incurred the expenditure necessary for the purposes of the joint venture, C&K, and they paid the sums due in those respects;
>
> (7) Grande trusted and relied on [the appellants] to prepare all relevant invoices and accounts of C&K.

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65 While many of these averred particulars are deemed admitted facts, it was *equally* a fact that the appellants were not parties to the JV Agreement. The question was what the legal consequence of these factual averments was. There are certain accepted categories of fiduciary relationship, for example, solicitor and client or director and company. Outside of such categories, it is always for the court to decide whether the relationship between parties is such that one owes the other fiduciary duties. This is a question of mixed fact and law. When two companies decide to undertake a joint venture and form a new corporate vehicle for that purpose, it is not usually the case that the individuals running either of the two corporate joint venture partners owe fiduciary duties to the other joint venture partner even where they take up leadership positions in the joint venture vehicle.

66 Counsel for Grande, Mr Chan, explained to us that this pleading was based on the finding of the court in the case of *Ross River Ltd and another v Waverley Commercial Ltd and others* [2014] 1 BCLC 545. In that case, the Court of Appeal of England & Wales upheld the decision of the trial court that an individual who was a director of company A, which was in a joint venture with company B, himself owed fiduciary duties to company B because of the trust it reposed in him. This was a decision taken after a full trial. Notwithstanding that there was English case authority for Grande's position, it did not mean that simply by admission of the pleaded facts the appellants were fiduciaries *vis-à-vis* Grande in relation to the management of C&K. The Judge would have had to come to that conclusion as a matter of Singapore law after considering the facts and all relevant authorities. The Judge seems to have assumed, rather than found, that the appellants were fiduciaries when he stated in the Assessment Judgment (at [19]) that the appellants had committed a breach of fiduciary duties through the wrongful use of the Loans and the wrongful

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transfer of the Loans to the AXXIS Companies. We therefore have some doubt as to whether breach of fiduciary duties on the part of the appellants was a proper ground for liability for the Loans.

Sums Received

67 In respect of the Sums Received, the key pleading in the SOC stated:

> 19C. *Further or alternatively*, as a result of the matters set out in paragraphs 19A and 19B above, [the appellants] are **liable to account to Grande for any and all profits and/or other benefits derived from or traceable to**:- (i) the wrongful use or use of the Loans; and/or (ii) the transfer of the business, clientele and/or management staff and employees of C&K, and such profits and/or other benefits **which include but are not limited to the sums of US$270,000** received by the AXXIS Companies, [Mr Toh and/or Ms Goh] in the year of 2009 evidenced by an email dated 8 May 2010 from [Mr Toh] to the CAD's Damian Low **and/or US$600,000 – US$700,000** received by the AXXIS Companies, [Mr Toh and/or Ms Goh] evidenced by an email dated 7 May 2010 from Joshua Pang to the CAD's Damian Low (collectively, the "**Sums Received**"). Further or alternatively, [the appellants] have been unjustly enriched at the expense of Grande, and are liable to account to Grande for the same.
>
> [emphasis added]

68 Read in context, para 19C is basically saying that as a result of the breaches of fiduciary duties by the appellants (the problems of which we have already delineated above), they were *liable to account* to Grande for all the profits and benefits traceable to any wrongful use of the Loans or the diversion of business linked to C&K. This was plainly a conclusion of legal consequence, specifically the remedial consequences of a purported breach of fiduciary duties, rather than an averment of facts.

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69 Having examined the pleadings, we found that there was no factual basis for Grande's claim for the Sums Received and Grande was therefore not entitled to the same. There were two main reasons for this.

70 First, para 19C of the SOC notably omitted the *source* of the Sums Received. It is a fact, deemed admitted by the appellants, that two sums of money were received by the AXXIS Companies. It was, however, difficult to find that the amount of the second sum was admitted because the pleading was vague and embarrassing in that it did not specify an exact amount but rather a range – US$600,000–US$700,000. What then could one make of the admission? Further, the SOC was silent on how any part of that sum or of the other US$270,000 was connected to Grande. In fact, counsel for Grande, Mr Chan, candidly admitted, both before the Judge and before us during the hearing of the appeal, that the source of the Sums Received was not disclosed on the pleading. In our view, the failure to plead the source of the Sums Received was fatal to Grande's claim for the Sums Received.

71 It was suggested to us that Grande's claim for the Sums Received was supported by e-mail correspondence, as stated in para 19C. Having examined the e-mails, it was plain to us that they did not address the factual gap relating to the source of the funds and, thus, were unhelpful.

72 Second, while the Judge had awarded both the Loans and the Sums Received to Grande, it appeared to us, although the SOC was not entirely clear in this regard, that the Sums Received were *not* separate and distinct from the Loans but that the two pleaded sums were in fact overlapping claims in the alternative.

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73 In this regard, Mr Chan clarified before us that the claims for the Loans and the Sums Received were alternative claims. The account of profits sought by Grande in respect of the Sums Received in para 19C of the SOC was a proprietary remedy (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [129]). In effect, Grande was seeking to trace the value of the Loans into the Sums Received, the latter being the substitute of the original assets (*Foskett v McKeown* [2001] 1 AC 102 at 127 affirmed in *Caltong (Australia) Pty Ltd (formerly known as Tong Tien See Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal* [2002] 2 SLR(R) 94 at [53]). This being the case, it followed that Grande could not be entitled to recover both the Loans and the Sums Received since that would constitute a double recovery for the same loss. Therefore, with respect, we could not uphold the Judge's award of the Sums Received to Grande. It would have saved everyone some delay and expense had the SOC been more clearly drafted and if counsel had advised the Judge that the claims were alternative not cumulative.

Other arguments mounted by the appellants

74 Our decision on the claim for fraudulent misrepresentation is ample ground to uphold the Judge's decision on the Loans. Nonetheless, the appellants raised a number of secondary arguments (in relation to both the Loans and Sums Received) which can be summarised as follows:

(a) the appellants are not estopped from raising issues as to whether Grande was entitled to the various reliefs sought and whether Grande had satisfied its burden of proof since the Judge has not made any conclusive findings on these issues;

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(b) the Judge disregarded Grande's admission that it had no proof of it paying the Sums Received;

(c) the Judge disregarded the appellants' evidence that they did not receive any part of the Loans or the Sums Received;

(d) Grande had only maintained its claim for damages to the exclusion of all other relief and hence the Judge erred in awarding the Sums Received; and

(e) Grande's claim for the Loans constitutes reflective losses and hence the Judge erred in awarding the same.

75 In our view, none of these arguments had any merit. Our brief reasons are as follows:

(a) This was not a case that engaged the doctrine of issue estoppel. Issue estoppel arises "when a court of competent jurisdiction has *determined some question of fact or law*, either in the course of the same litigation … or in other litigation which raises the same point between the same parties" [emphasis added]: *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [100] approving *Watt (formerly Carter) v Ahsan* [2008] 1 AC 696 at [31]. The true crux of the present matter was what *facts* were deemed admitted by the appellants in the absence of any defence, which is an enquiry that though closely tethered to the one issue estoppel is concerned with, is nevertheless one that is logically and contextually distinct.

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(b) The question of proof or evidence was irrelevant in relation to the admitted facts in the SOC and in so far as further evidence could be given on the assessment, the Judge considered the same and made findings on it.

(c) Contrary to the appellants' suggestion, it was evident from the record of proceedings that Grande did not make any of the alleged concessions in respect of the relief it was seeking.

(d) The prohibition against a claim for reflective loss was not engaged since Grande's claims in fraudulent misrepresentation and conspiracy were for Grande's own loss.

76 Finally, for completeness, we also rejected Grande's argument in respect of *Enholco*. It was submitted that where a claimant has failed to prove the quantum it has sought, the court may "nonetheless consider whether the *available* evidence allows it to arrive at a figure that is proportionate and equitable…" [emphasis in original] (*Enholco* at [24]).

77 In that case, the trial judge had fixed an award in favour of the respondent for the appellant's breaches of duties, including the duty of loyalty which caused a definite loss of future profits. This was mostly due to the technical evidential difficulties faced by the respondent company as the appellant director had "gone to extraordinary lengths to destroy evidence that was contained in his computer" (*Enholco* at [24]). We agreed, on appeal, with the trial judge's approach but adjusted the quantum of award of equitable compensation upwards.

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78 While it may well be the case that Grande would face evidential problems *proving* its losses in the light of the appellants' contumelious conduct detailed in the Striking Out Judgment, that was not the enquiry before us given the procedural trajectory that this case took. In the present case, because the admitted facts in the SOC alone were sufficient to sustain the claim for the Loans in the absence of a defence, the concerns in respect of evasion of liability undergirding *Enholco* are not present. In any event, the evidential lacuna in *Enholco* was confined to the proof of the *quantum* of losses, not causation (at [22]). There was no basis for the extension of the principle therein to the present case.

Conclusion

79 For the reasons given above, we allowed the appeal in part with costs to the appellants which we fixed at $15,000 plus reasonable disbursements to be taxed if not agreed. We set aside the part of the Judge's decision below in relation to the Sums Received but affirmed the Assessment Judgment in respect of the Loans. The cost orders below were not disturbed.

80 In closing, we emphasise that pleadings form the foundation upon which the evidence and arguments in a civil dispute are built. As we noted in *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 at [35], pleadings fulfil two essential functions. First, they serve to inform each party of the case of the opposing party which would have to be met before and at the trial. Second, pleadings apprise the court of the salient factual and legal issues at play. In a rather unusual case such as the present where the defence is struck out, the reliability of that foundation is thrown into sharp relief

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and plaintiffs will stand or fall by how clearly and adequately they have pleaded the essential facts.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Goh Aik Leng Mark and Ng Boon Gan (VanillaLaw LLC)
for the appellants;
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for the respondent.

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