

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 159

Suit No 1301 of 2018

Between

Lee Ker Min
(by Lee Kai Teck Roland, his
Litigation Representative)

... *Plaintiff*

And

Lee Gin Hong
(as the Executor and Trustee of
the Estate of Ng Ang Chum,
Deceased)

Lee Gim Moi
(as the Executor and Trustee of
the Estate of Ng Ang Chum,
Deceased)

... *Defendants*

JUDGMENT

[Partnership] — [Partners inter se] — [Sharing of profits and losses]
[Trusts] — [Constructive trusts]

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Lee Ker Min (by his litigation representative Lee Kai Teck Roland)
v
Lee Gin Hong (as executor and trustee of the estate of Ng Ang Chum, deceased) and another

[2020] SGHC 159

High Court — Suit No 1301 of 2018
Lai Siu Chiu SJ
10–14 February, 23 March, 6 April 2020

30 July 2020

Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 This claim involves a partnership dispute. Lee Ker Min (“the Plaintiff”), by his eldest son and litigation representative Lee Kai Teck Roland (“Roland”), is suing his eldest sister Lee Gin Hong (“the first defendant”) as well as his youngest sister Lee Gim Moi (“the second defendant”) to recover half of the partnership’s debt owed to a bank.

2 The two Defendants are sued personally as well as in their capacities as the executors of the estate of their late mother Ng Ang Chum (“the Deceased”) who passed away on 19 December 2014.

The facts

3 The partnership in question is Lee Huat Company (“Lee Huat” or “the Partnership”), which started as a sole-proprietorship in 1958. It is a retailer of motorcycles and motor scooters, spare parts and accessories as well as a workshop. Lee Huat operates at a shophouse in Upper Bukit Timah Road located at Nos. 873 to 875 (“the shophouse”). Prior to 1975, Lee Huat was a sole-proprietorship of the late Lee Kim Eng (“the father”) who started the business in 1958 and was the father of the Plaintiff and the Defendants.

4 On 4 February 1975, the Plaintiff joined Lee Huat as a partner. After the father passed away on 4 October 1981, the Deceased was registered as a partner. As the Deceased was illiterate, the business of Lee Huat was conducted/managed by the Plaintiff. In July 2014, the Plaintiff suffered a severe stroke that incapacitated him. Thereafter Lee Huat’s business was managed by Lee Kai Leong Jeffrey (“Jeffrey”) the Plaintiff’s second son. On 22 February 2016, Roland obtained an order of court under the Mental Capacity Act (Cap 177A, 2010 Rev Ed), to be appointed the Plaintiff’s litigation representative.

5 According to the Defendants,¹ the Deceased did not have any say in the management or running of Lee Huat which was always a profitable and cash orientated business. Neither did the Deceased share in the profits made by Lee Huat. The Defendants claimed that the Plaintiff took all the profits and only gave to the Deceased a monthly allowance of about \$1,000.

6 The Deceased had seven children and after they grew up and married, they moved out from the shophouse, save for the two Defendants who never

¹ See the second defendant’s affidavit of evidence in chief (AEIC) at para 6(b)

married. The second and first Defendants commenced working for Lee Huat in 1984 and 1989 respectively, as administration clerks until they resigned in August 2016. During their employment with Lee Huat, the Defendants were responsible for such matters as renewing the road taxes and certificates of entitlement and hire-purchase instalments of the motorcycles of Lee Huat's customers. These duties were described by the defendants as "inside" duties were opposed to "outside" duties, which comprised of the workshop and the selling/servicing of motorcycles/motor scooters and spare parts by the Plaintiff, who was assisted by Jeffrey. Lee Huat's business was usually transacted in cash save for dealings with sub-dealers for new motorcycles, hire-purchase instalment payments, sales of motorcycles or trade-in transactions.

7 According to the Defendants, after the demise of the father, the Plaintiff had a free hand in how he conducted Lee Huat's business. Apart from performing simple tasks such as sweeping the floor, cooking and making beverages as it was a family business, the Deceased took no part in the business of Lee Huat.

8 In or around 1994, the Plaintiff decided to set up LH Motor Pte Ltd ("LHMPL") in which he would park new motorcycles for trading. The Plaintiff held 70% of LHMPL's shares while the Deceased and the two Defendants each held 10%. The Partnership's business in the sale and purchase of new motorcycles was then moved to LHMPL.

9 The Plaintiff used the Partnership's monies for the initial capital investment in LHMPL. As and when LHMPL made sales, the money was either collected directly by the Partnership, or repaid by LHMPL to the Partnership.

10 The Defendants alleged that the Plaintiff also made use of the Partnership's monies, profits it made as well its overdraft facility with United Overseas Bank ("UOB's overdraft facility") and funds from its other banks for his and his family's expenses. The UOB overdraft facility for the sum of \$1.5m was obtained on 22 Aug 2000. It is payable on demand with an interest of 1.5% over UOB's prevailing prime rate. The facility and all monies owed by the Partnership was secured by a mortgage of a 3-storey semi-detached house at 59A Choa Chu Kang Road, Singapore 689482 ("59A CCK"), which is solely owned by the Plaintiff but acquired using Lee Huat's monies. The Plaintiff also acquired the following assets and/or businesses with the Partnership's funds:-

(a) In or about 1991, the Plaintiff and his wife Ng Lim Lee ("NLL") acquired a property at Blk 223, Choa Chu Kang Centre #13-249, Singapore 2368 ("Blk 223 CCK") at the price of \$106,700. The Plaintiff used at least \$123,999.50 from the Partnership to pay for the purchase of Blk 223 CCK and its expenses by making withdrawals from the Partnership's bank accounts with UMBC (which changed its name subsequently first to Sime Bank Bhd and then to RHB) and UOB.

(b) The construction of two semi-detached houses at Nos. 59 and 59A Choa Chu Kang ("59/59A CCK") for which the Plaintiff took at least \$890,253.82 from Lee Huat for the construction of 59A CCK. 59 CCK belonged to the Plaintiff's younger brother Lee Ker Leng.

(c) In or around October 2003, the Plaintiff purchased No 615 Balestier Road ("615 Balestier Road") for which he took at least \$605,131.50 from the Partnership. 615 Balestier Road was rented out, which rental was not/never paid to Lee Huat even though the mortgage

instalments payable to Hong Leong Finance were serviced by the Partnership.

(d) His investment in Everfit Motor Pte Ltd (“Everfit”) for which he took \$46,910 from Lee Huat.

(e) The Plaintiff took \$88,000 from the Partnership to invest in Bikelink Pte Ltd (“Bikelink”) and another \$50,000 to invest in Bikelink Agencies.

(f) With 6 other individuals, the Plaintiff invested in a partnership called "Cycle Trade Enterprise" ("Cycle Trade") using at least \$103,531.31 from the Partnership. Cycle Trade invested in two properties at No 1080 Serangoon Road, Singapore 328183 and No 21 Rowell Road in 2003 and 2004 respectively. A further sum of \$2,856.75 from Lee Huat was also spent on renovations at No 21 Rowell Road.

(g) His investment in Arrow Speed Auto Services (“Arrow Speed”) with 2 other partners for which he took \$5,000 from Lee Huat.

(h) His investment in No 34 Norris Road (“34 Norris Road”) for which he took \$294,627.73 from the Partnership.

(i) The Plaintiff used \$126,974.37 of the Partnership’s monies to pay for vehicles and/or their expenses for his personal or family’s use.

(j) In addition, at least \$222,614.35 was used by the Plaintiff for his and his family’s expenses.

11 It was the Defendants' case² that the Plaintiff, before he suffered a stroke, had discussed with them his intention to sell No 615 Balestier Road to pay off the UOB Overdraft Facility. In or around mid-2014, the Plaintiff met with a housing agent at the shophouse. He told the Defendants that he had received an offer to sell 615 Balestier for \$800,000.00 and asked the Defendants for details of the outstanding sum on the UOB Overdraft Facility as he intended to use the proceeds of sale to repay the loan. He mentioned that he was hoping to increase the sale price to \$1,000,000. However, the sale did not materialise for reasons not known to the Defendants.

12 In her affidavit-of-evidence ("AEIC"),³ the second Defendant tabulated the monies the Plaintiff had withdrawn from Lee Huat as follows:-

| Particulars | Amount the Plaintiff took | Profits/sums accounted for | Sums to be accounted for/ constructive trustee of |
|--------------------|----------------------------------|-----------------------------------|--|
| Blk 223 CCK | \$123,999.50 | \$251,665.16 | \$0 |
| 59A CCK | \$890,253.82 | \$0 | \$890,253.82 |
| 615 Balestier | \$605,131 .50 | \$475,000.00 | \$130,131.50 |
| Everfit | \$46,910.00 | \$190,000.00 | \$0 |
| Bikelink | \$88,000.00 | \$0 | \$88,000.00 |
| Cycle Trade | \$103,531.31 | \$0 | \$103,531.31 |

² See para 85 of the second Defendant's AEIC.

³ At para 39 of the second Defendant's AEIC.

| | | | |
|-----------------------|----------------|--------------|----------------|
| Arrow Speed | \$5,000.00 | \$0 | \$5,000.00 |
| 34 Norris Road | \$294,627.73 | \$0 | \$294,627.73 |
| Purchases of vehicles | \$126,974.37 | \$0 | \$126,974.37 |
| Family | \$222,614.35 | \$140,000.00 | \$82,614.35 |
| Others | \$92,500.00 | \$0 | \$92,500.00 |
| Total | \$2,599,542.58 | | \$1,813,632.78 |

13 Initially, the Deceased and the Defendants lived in the rooms above the shophouse. After the premises were compulsorily acquired by the Housing and Development Board (“the HDB”) in or around mid-1980s, all three moved to No 75 Chua Chu Kang Road (“75 CCK”) where the Defendants took care of the Deceased until she passed away. In recognition of their devotion to her for over 30 years, the Deceased bequeathed 75 CCK to the Defendants in her Will where they reside to this day.

14 The genesis of this litigation was a letter dated 29 January 2015 that the Defendants received from the Plaintiff’s solicitors, acting for the Plaintiff’s daughter Lee Ling Ling Jamie. The letter stated that the Partnership had a "substantial amount of overdraft", and requested that the Defendants make provision to set aside \$1.3m to deal with this issue.

15 The solicitors acting for the estate of the Deceased replied to the Plaintiff’s solicitors’ letter at [14] on 13 February 2015 stating that the Deceased had passed away and that to the Defendants’ understanding, the Deceased held 50% shares in the Partnership. They requested for the value of the Deceased’s

shares as at the date of her death on 19 December 2014. The Defendants were the executors of the Deceased's estate under her Will dated 15 January 2013. The Defendants applied for and were granted probate of her estate in 2015. They distributed her assets in accordance with the Deceased's Will in or about May and June 2016.

16 On 22 February 2015, the Defendants had a meeting with the Plaintiff's wife NLL, Jeffrey and Lee Kai Chuan Keith ("Keith") who is the Plaintiff's youngest son and an accountant. The following matters were discussed:

- (a) the Defendants highlighted that the Partnership's business had always been profitable year on year. Most of the UOB Overdraft Facility was used by the Plaintiff for his personal affairs. Shortly before his stroke, the Plaintiff told the Defendants that he intended to sell 615 Balestier Road to pay off the UOB Overdraft Facility; and
- (b) NLL, Jeffrey and Keith indicated they would not be dealing with the matter until the court appointed one of them as the Plaintiff's deputy.

17 The Estate's solicitors wrote to the Plaintiff's solicitors on 25 February 2015 to say that a substantial portion of the debt under the UOB Overdraft Facility was utilised by the Plaintiff for his personal use.

18 In the meantime, Jeffrey was in the process of formally taking over the business of the Partnership. He wrote to the HDB on 23 March 2015 seeking to transfer the tenancy of the shophouse to his personal name. After the shophouse was compulsorily acquired by HDB in 1994, it had been leased back to the Deceased in her sole name. As such, the second Defendant felt that Jeffrey had no basis to request that the lease be transferred to his name. However, as they are his aunts, the Defendants felt there was no need at that time to contest the

issue even though the lease was valuable, being situated in a prime location with a long history of being a successful motorcycle workshop; and the name Lee Huat was well known in the market. The cost of the lease from HDB was only \$1,499.07 per month.

19 The Defendants did not receive a response from the Plaintiff's solicitors on the issue of the lease. Instead, on or about 11 April 2015, the Estate's solicitors received a copy of the Partnership's balance sheet, profit & loss accounts and statement of rental account for the period of 1 January 2014 to 19 December 2014 ("the 2014 Accounting Records"). The 2014 Accounting Records showed that the Partnership was solvent and had earned net profits of \$78,259.02 for the period of 1 January 2014 to 19 December 2014.

20 Due to the increasingly tense relationship between the Defendants and the Plaintiff's family, the two sisters decided to resign from Lee Huat, which they did with effect from 1 August 2016. In the course of consolidating the records to be handed over to the Plaintiff's family, the Defendants discovered that the bank journal records from 1991 to June 1999 were missing. They alleged that throughout that period, both NLL and Jeffrey had access to the office of Lee Huat where the records were kept.

21 By a letter dated 6 May 2016, Roland as the Plaintiff's deputy, wrote to the Defendants to state that the Estate had an obligation to settle all debts of the Partnership. The Estate's solicitors replied to Roland on 16 May 2016 reiterating that "a very substantial portion of the UOB Debt was utilized by [the Plaintiff] for his personal affairs".

22 In his email reply dated 20 May 2016, Roland took the position that the Estate's solicitors were in conflict of interest because they were the solicitors

who drafted the Will of the Deceased. The Defendants responded by letter dated 24 May 2016 disagreeing with Roland's position.

23 Roland sent a further letter to the Defendants dated 10 June 2016 alleging that they were running the business of Lee Huat after the death of the Deceased, when in actual fact (according to the Defendants), it was his brother, Jeffrey who did. Roland also asserted that 615 Balestier Road belonged to the Plaintiff personally and had nothing to do with Lee Huat. Further, Roland contended that the Estate must pay all the debts of the Partnership.

24 In their letter dated 12 July 2016 in reply to Roland's letter dated 10 June 2016, the Defendants pointed out that Roland well knew Jeffrey was running the business of Lee Huat and that they were mere employees. They added that Roland was aware that the Plaintiff had utilised the Partnership's assets to pay for 615 Balestier Road and, the Plaintiff must repay the monies he had taken from Lee Huat for his personal use.

25 In a further letter dated 4 August 2016 to Roland, the Defendants placed on record that they had met Roland, Jeffrey and NLL on 1 August 2016 at which they had tendered their resignation letters which Roland had accepted. Further, they had spent hours with Roland going through the Partnership's accounts and had shown him documents that proved the Plaintiff took monies from the Partnership for: (i) medical expenses; (ii) personal utilities bills; (iii) miscellaneous expenses, and they had handed over (iv) a file on 59A CCK and (v) a file on 615 Balestier Road.

26 By its letter dated 23 September 2016, the Plaintiff's solicitors demanded that the Defendants withdraw their allegation that the Plaintiff had used the Partnership's assets to purchase 615 Balestier Road and added that they

must bear half of the outstanding sum owed by the Partnership on UOB's Overdraft Facility. The Defendants replied to the letter on 29 August 2016 reiterating their position in their letter dated 12 July 2016, as above at [24].

27 By his letter dated 30 September 2016 to the Defendants, Roland asserted that he was unaware of how the Defendants had managed the Partnership.

28 In May 2017, Jeffrey visited the Defendants bringing with him HDB's letter dated 25 May 2017. HDB's letter requested evidence from Jeffrey that the executors of the Estate were agreeable to his taking over the motorcycle workshop operating at the shophouse.

29 The Estate's solicitors' letter to the HDB dated 11 August 2017⁴ pointed out that the last temporary occupation licence ("TOL") issued to the Deceased lapsed on 31 March 2015 and that the Defendants had informed the HDB on 10 March 2015 of the demise of the Deceased. The letter noted that the HDB had been dealing directly with Jeffrey to the exclusion of the Defendants subsequent to 10 March 2015 after Jeffrey wrote to the HDB to say he wanted to take over the TOL for the shophouse. Consequently, the Estate had nothing to do with the Partnership after the HDB allowed Jeffrey to take over the TOL and the operations of the business at the shophouse.

30 Under cover of the Plaintiff's solicitors' letter dated 23 October 2018,⁵ the Estate's solicitors received the expert report of Tee Wey Lih ("Tee") dated

⁴ At AB 132

⁵ At AB135

16 April 2018 (“Tee’s Report”);⁶ Tee is from Acres Advisory Pte Ltd. Relying on para 8.10 of Tee’s report, the letter stated that the Partnership’s liabilities were in the region of \$710,214 under the UOB Overdraft Facility excluding interest accrued after 19 December 2014. Further, Tee’s Report at para 5.61 stated that the Defendants had withdrawn a sum of \$20,000 from the Partnership’s UOB account on 20 December 2014 for the funeral expenses of the Deceased. The Plaintiff’s solicitors demanded that the Defendants repay half the overdraft amount plus the accrued interest as well as the aforesaid \$20,000. It should be noted at this juncture that Tee subsequently issued a supplementary report dated 24 May 2019 (“Tee’s Supplementary Report”)⁷ which will be addressed together with Tee’s Report when the court reviews Tee’s testimony.

31 In response to the Plaintiff’s solicitors’ letter at [30], the Defendants’ new/current solicitors wrote on 10 December 2018,⁸ rejecting the demands for repayment of the overdraft amount as well as the \$20,000 and giving the reasons therefor. The Defendants’ solicitors criticised Tee’s Report on many counts and pointed out that the Plaintiff’s conduct in withdrawing monies from the Partnership for his own personal use was a breach of trust and a breach of his fiduciary duties as a partner of Lee Huat. As such, it was for the Plaintiff to settle the liabilities under UOB’s Overdraft Facility. The letter added that the \$20,000 meant for funeral expenses for the Deceased had been credited back to Lee Huat’s UOB account. The letter asked for a response from the Plaintiff by 10 January 2019.

⁶ At AB6196- 6310

⁷ See AB6311-6341

⁸ At AB261-265

32 The response dated 13 December 2018⁹ from the Plaintiff’s solicitors was to inquire whether the Defendants’ solicitors had instructions to accept service of the writ of summons. On 21 December 2018, the Plaintiff filed this suit and the statement of claim.

The pleadings

33 In the statement of claim Amendment No 1 (“the SOC”), the Plaintiff referred to the overdraft facility of \$1.5m extended by UOB to the Partnership on 22 August 2000, which was repayable on demand. The Plaintiff stated that as at the date of the demise of the Deceased (19 December 2014), the amount of the overdraft was \$940,986.20. As of 30 November 2018, the overdraft sum had ballooned to \$1,110,221.20.

34 The Plaintiff alleged that the parties could not agree on the value and liabilities of the Deceased as at the date of her death, despite exchanges of correspondence between the parties’ solicitors. Consequently, the Plaintiff averred that he engaged Tee to go through the accounts of the Partnership and to produce a report as at 19 December 2014.

35 The Plaintiff relied on Tee’s Report to substantiate his allegation that the Defendants had breached the Partnership and the Partnership Act (Cap 391, 1994 Rev Ed) (“the Partnership Act”) in that they had failed to pay half of the overdraft amount of \$710,214 together with interest (from 19 December 2014) owed to UOB.¹⁰ With interest, the overdraft amount increased to \$940,986.20 as at 19 December 2014.

⁹ At AB266

¹⁰ At para 18 of the SOC

36 The Plaintiff further alleged that \$20,000 referred to at [30] was meant for the funeral expenses of the Deceased when such expenses should have been borne by the Estate.

37 The Plaintiff alleged that the Defendants' failure to pay half of the overdraft amount was a breach of s 9 of the Partnership Act. The section states:

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

38 The Plaintiff asserted that the Defendants had acted in bad faith in administering the estate of the Deceased in breach of trust and their fiduciary duties without regard for the debts of the Partnership when they were aware of the UOB Overdraft Facility. The Plaintiff alleged that the Defendants operated the UOB Overdraft Facility themselves, were employees of the Partnership and were directly involved with the accounts of the Partnership.¹¹ In the event that the Defendants had fully distributed the assets of the Estate without paying their share of the debts of the Partnership, the Plaintiff averred that they should be made personally liable for those debts.

39 The Plaintiff prayed for a declaration that as at the date of the death of the Deceased on 19 December 2014, the Partnership had a debt of \$740,214 and that the Defendants as the executors of the Deceased's estate pay half the said debt. The Plaintiff further claimed \$20,000 from the Defendants, as otherwise they would be unjustly enriched at the expense of the Plaintiff.¹²

¹¹ See para 28 of the SOC.

¹² At para 27 of the SOC

40 In the Defence and Counterclaim (“D&CC”) filed by the Defendants, they contended that the Deceased never received any profits from the Partnership while she was a partner, that the Plaintiff managed the business of the Partnership solely until he suffered a stroke in July 2014 after which Jeffrey took over the business.

41 The Defendants criticised Tee’s Report and asserted that his report on the accounts of the Partnership as at 19 December 2014 was inaccurate as Tee failed to take into account the substantial sums the Plaintiff had taken from the Partnership, which sums were the basis of the Defendants’ counterclaim. The Defendants asserted that the Plaintiff had withdrawn from the Partnership large sums from the UOB Overdraft Facility as well as from the Partnership’s other bank accounts (“the Misapplied Sums”) for his personal use, which were wholly unrelated to the Partnership, in breach of his fiduciary duties to the Partnership.

42 Particulars of the Misapplied Sums were provided in Annexures A and B to the D&CC. The total sum in Annex A is \$1,160,003.62 while in Annex B (which commencement date was May 1991), it is \$782,895.38. The two sums total \$1,942,899.00. Those sums far exceeded the UOB Overdraft Facility amount, which the Defendants claimed to be \$940,986.21 as at 19 December 2014.

43 The Defendants averred that they believed and relied on the accounts Roland had forwarded to them,¹³ which stated that the Partnership was solvent and profitable in 2014 before they distributed the assets of the Estate of the Deceased in July 2016. They denied the Plaintiff’s allegation that they prepared

¹³ See [18] *infra*

the accounts pointing out that the Plaintiff engaged an external bookkeeper Yeo Ah Hong (“Yeo”) every year to prepare the accounts of Lee Huat.

44 In the alternative, in the event the Estate is found liable for the overdraft amount of \$710,214 or any part thereof, the Defendants averred that the Estate is entitled to a set-off and counterclaim for the sums taken out from Lee Huat by the Plaintiff for his personal use for which the Defendants prayed for an inquiry to be held to determine the amounts. In the further alternative, the Defendants pleaded to be relieved from personal liability of their administration of the Estate under s 60 of the Trustees Act (Cap 337, 2005 Rev Ed)

45 The Defendants denied the Partnership paid for the funeral expenses of the Deceased; they asserted they paid the expenses. The Defendants further denied they operated the UOB Overdraft Facility. The Defendants added they had returned to the UOB account the \$20,000 cash that Jeffrey passed to them on:

- | | | |
|-----|------------------|-------------|
| (a) | 14 February 2015 | \$15,000.00 |
| (b) | 6 March 2015 | \$ 5,000.00 |

46 The Defendants further alleged that Lee Huat had over the years since 4 October 1981 up to 19 December 1984 made profits of \$2,250,896.98, which profits the Deceased never received. They alleged that the Plaintiff must have withdrawn and/or misapplied those profits since the Partnership had alleged net liabilities of \$710,214 as at 19 December 2014. The Defendants contended that pursuant to s 29 of the Partnership Act, the Plaintiff was liable to account to the Partnership for all private profits withdrawn from the Partnership for the period 4 October 1981 to 19 December 2014. The Defendants added that the Plaintiff held the Misapplied Sums and profits that he had taken from the Partnership as

constructive trustee and is liable to account to the Partnership and the Estate for the sums taken.

47 In the Reply and Defence of the Counterclaim filed by Roland on the Plaintiff's behalf, he did not admit that the Deceased was illiterate. Instead, Roland described the Deceased as a savvy business woman who was extremely smart and well versed with every aspect of Lee Huat's business of which she was a cheque signatory. Roland claimed that when the Deceased went to the shophouse every morning, she could handle the cashier's machine, collect payments from customers and gave them change as well as make payment to vendors. He claimed that apart from being a director and shareholder of LHMPL, the Deceased was the sole-proprietor of Chip Huat Electronic Co., Chip Huat Motor as well as Halford Impex.

48 It was pleaded that the Plaintiff only went to work at Lee Huat in the afternoons. Roland denied the Plaintiff managed Lee Huat solely and that the Deceased took no part in the management. He alleged that after the Plaintiff suffered a stroke in July 2014, the Deceased retained control while the Defendants, from whom Jeffrey took instructions, ran the entire business. Monies collected by Jeffrey were handed to the Defendants at the end of every business day. The Defendants also kept the cheque books of Lee Huat. They held pre-signed cheques of the Deceased that they used to withdraw monies from the UOB Overdraft Facility after the Deceased's demise. Roland alleged that the Defendants used Lee Huat's monies to purchase shares personally.

49 Roland disagreed that Tee's Report was inaccurate and that the Defendants had repaid the \$20,000 withdrawn from Lee Huat's UOB account for the Deceased's funeral expenses.

50 Roland also alleged that the Deceased had pre-signed cheques for the Partnership and the Defendants utilised those cheques to make withdrawals from the UOB Overdraft Facility account after the demise of the Deceased by backdating the cheques. He alleged that the UOB Overdraft account was operated by the Defendants who siphoned monies from the Partnership to buy shares in their own names. Thereafter, the second defendant opened another account for the Partnership with RHB bank with herself and Jeffrey as alternate signatories. Control of the RHB account was vested solely in the second Defendant who kept the cheque books.

51 Roland further alleged that the Defendants had never made full disclosure of the assets of the estate. He alleged that the Defendants relied on 2014 accounts that they had prepared themselves.

52 In short the Plaintiff denied all the allegations made by the Defendants.

The evidence

53 The court will deal with the evidence of the factual witnesses for both parties and then address the expert testimony separately.

(i) The Plaintiff's case

54 The Plaintiff had four witnesses namely Roland, Jeffrey, the expert Tee and a former employee of Lee Huat called Giam Cheng (“Giam”). On their part, both Defendants testified together with their expert who was Mun Siong Yoong (“Mun”) from Vallaris Deal Advisory Pte Ltd whose report was dated 6 December 2019 (“Mun’s Report”). Mun also issued a supplementary report dated 24 January 2020 (“Mun’s Supplementary Report”).

55 In his AEIC,¹⁴ Roland primarily repeated what was set out in the Reply and Defence to the Counterclaim,¹⁵ namely that the Deceased “was an extremely smart woman and well versed with every aspect of the partnership business” who was also the cheque signatory for the Partnership.

56 Roland claimed that the first Defendant had her own electrical appliance business called Chip Huat Electronic Co. that operated along the same stretch of shops from Lee Huat. The shop was also compulsorily acquired by the HDB at the same time as the shophouse. Roland claimed his two uncles were not on good terms with the first Defendant and refused to allow her to work at Lee Huat until pressured by the Deceased to do so in or around 1989.

57 Although they worked as administration clerks in Lee Huat, Roland deposed that the Defendants’ responsibilities and powers were essentially the same as directors. They were also the Deceased’s most trusted and beloved children as reflected in the fact that they were appointed the executors and trustees of the Estate and were the main beneficiaries under the Deceased’s Will.

58 Roland claimed the Plaintiff only went to work at Lee Huat in the afternoons because he usually woke up late having spent the previous night and the wee hours of that morning socialising and entertaining to generate business for Lee Huat. He claimed the Defendants ran the Partnership in its entirety in the mornings together with the Deceased.

¹⁴ At para 13

¹⁵ At para 2(i),(iii) and (vi).

59 He deposed that the Plaintiff employed Yeo as an external bookkeeper to finalise the Partnership's accounts on a yearly basis, and those accounts were prepared based on the handwritten data entries of the second Defendant.

60 Roland claimed that the Partnership's monies were controlled by the Deceased as the matriarch of the family. She would give her other children money from the Partnership including using \$50,790.02 from the Partnership's monies to bail out her eldest son Lee Kerk Hen ("Kerk Hen") from bankruptcy. He alleged that the first Defendant utilised \$233,921.56 of the Partnership's monies to buy shares for herself between 1997 and 2000.

61 Roland claimed that the net profits of the Partnership, like its capital, were divided equally between the Plaintiff and the Deceased although in some years, the Plaintiff contributed more towards the capital. He deposed that Lee Huat's former employee Giam would be able to testify to the *modus operandi* of the Partnership.

62 Roland alleged that because the UOB Overdraft Facility was secured by the Plaintiff's personal property at 59A CCK, the Defendants as the executors of the Estate of the Deceased had chosen to frustrate any attempts by him or his family to resolve the matter with UOB. The result was that interest continued to to run on the overdraft amount of \$940,986.20 (as at 19 December 2014) and the amount had ballooned to \$1,119,294.78 as of 28 February 2019.

63 Roland denied the Plaintiff had used significant sums of money from Lee Huat for his personal affairs let alone that the sundry debtor amounts were due from the Plaintiff. Hence he brought Tee in as the expert to review the balance sheet and other relevant documents of Lee Huat to determine the value

of the assets and liabilities and finalise the accounts between the Plaintiff and the Estate as at 19 December 2014.

64 Roland relied heavily if not totally on Tee’s Report for his contention that the Estate/the Defendants are liable to pay half plus the interest on, the UOB Overdraft Facility’s outstanding amount of \$710,214. Roland also relied on the AEIC of Jeffrey to support the Plaintiff’s claim, which he described as simple and straightforward and to which the Defendants had no defence. He accused the Defendants of acting *mala fides* and asserted their Counterclaim was unfounded and conjured up to deny and frustrate the Plaintiff’s claim.

65 At the outset, the court notes that Roland does not work and has never worked in Lee Huat; he works in a local bank. Neither did he live at the shophouse after he married in 2001. He therefore does not have any personal knowledge of the goings-on in the Partnership. During cross-examination, the following evidence was adduced from Roland:

- (a) he had limited knowledge of the business of Lee Huat, and even less of the business affairs of his father’s brothers including Kerk Hen, particularly on property ownership;
- (b) he did not know if the Plaintiff had other sources of income apart from Lee Huat but was aware the Partnership was the Plaintiff’s main source of income;
- (c) he was “not very sure” on matters relating to the immoveable properties held by the Deceased and why she bequeathed specific properties to the Defendants and to his uncle Kerk Hen;

(d) Chip Huat Electronic Co. that he claimed was the first Defendant's business was actually left to the Deceased by his grandfather and the first Defendant helped the Deceased to run it until its premises were compulsorily acquired by HDB.

66 In fact, cross-examination of Roland proved him wrong on several allegations including his claim that the Deceased used the Partnership monies to bail out his uncle Kerk Hen from bankruptcy. In actual fact, the Deceased did not give Kerk Hen any money from Lee Huat. She gave Kerk Hen (who is her eldest son) \$50,000 from the compensation sum paid by HDB for compulsorily acquiring Nos. 873 and 875 Upper Bukit Timah Road, which properties were jointly owned by the father and Kerk Hen.¹⁶

67 Roland was also unable to substantiate his other allegation¹⁷ that the Deceased paid \$39,395.52 on 12 July 1990 together with another \$11,394.50 on 5 September 1984 to the Official Assignee's office on behalf of Kerk Hen.

68 Equally, Roland's allegation that the first Defendant used the Partnership's monies to purchase shares was also unfounded. The Defendants' solicitors had written a lengthy letter dated 24 January 2020¹⁸ to the Plaintiff's solicitors with supporting documents to explain that the share purchases were made on the instructions of the Plaintiff. When the purchased shares were sold, the proceeds were returned to the Partnership's bank account, on the directions of the Plaintiff, together with the profits made. Similarly, for shares bought on behalf of the Deceased, the same *modus operandi* applied.

¹⁶ See HDB's letter dated 18 Nov 1994 addressed to the Deceased and the father at AB5378

¹⁷ At para 21 of his AEIC

¹⁸ At 2AB464 -470

69 Shares that the Defendants purchased for the Plaintiff that remained unsold were held by the Defendants who were ready to transfer them to the Plaintiff. Where the first Defendant purchased shares personally using cheques issued from Lee Huat’s bank account, she reimbursed the Partnership. After being pressed by the court,¹⁹ Roland eventually conceded that this complaint was frivolous.

70 In their letter dated 24 January 2020, the Defendants’ solicitors had invited Roland to withdraw “the several scandalous allegations....that are completely irrelevant to the issues in dispute”. Roland failed to do so notwithstanding the fact that the Defendants’ solicitors’ letter was sent to him almost three weeks before the commencement of trial.

71 The reason for the Plaintiff and the Deceased buying shares through the first Defendant²⁰ came to light when the first Defendant took the stand.²¹ She disclosed that unlike her, neither her brother nor her mother had a share trading account. She was not sure the second Defendant had one either. Hence, share purchases and sales were transacted through her trading account.

72 Roland’s comment in [59] above that the accounts were prepared based on the handwritten data entries (journal entries) done by the second Defendant was proved to be yet another frivolous complaint in his cross-examination – neither Tee nor Mun had complained that her journal entries were inaccurate or did not match the entries in the Partnership’s bank statements. Indeed, during

¹⁹ At transcripts p 64 on 10 Feb 2020

²⁰ DW2

²¹ Transcripts at p 406 on 13 Feb 2020.

cross-examination,²² Tee confirmed that there were no discrepancies between the bank statements and the bank journals.

73 Yet another frivolous allegation was the \$20,000 that Roland alleged the Defendants withdrew from the Partnership’s bank account for the funeral expenses of the Deceased. During cross-examination, Roland confirmed he was not maintaining the claim.²³

74 Nothing turns on Jeffrey’s testimony. In his AEIC, he deposed he started working at Lee Huat from around February 1999 until February 2017 when he started his own business at Lee Huat Motoring Pte Ltd (“Lee Huat Motoring”), which he incorporated in 2015. Jeffrey was in charge of the technical aspects of the Partnership’s business, which comprised of the selling of new and second-hand motorcycles as well as the repair of motorcycles. Jeffrey added that he would deposit cash collections into the Partnership’s bank account but he never encashed cheques for Lee Huat save for one occasion – when he withdrew \$20,000 for the funeral expenses of the Deceased in December 2014 which he believed the Defendants had not repaid. He claimed he played no part in the administration/management of the business being only a “manual labourer”²⁴ even though he was in charge of the workshop and (according to the second Defendant) he was the person responsible for getting Yeo²⁵ the bookkeeper to do the yearly accounts of the Partnership.

²² Transcripts at p 160 on 11 Feb 2020

²³ At transcripts p 65 on 10 Feb 2020

²⁴ At transcripts p 148 on 11 Feb 2020

²⁵ See [42] *infra*

75 During cross-examination, Jeffrey disagreed he had taken over the business of the Partnership even though he operates Lee Huat Motoring at the shophouse. Prior to incorporating Lee Huat Motoring, Jeffrey had operated his sole-proprietorship Lee Huat Motor at the shophouse as well. He disclosed he had taken over the annual TOL of the shophouse from the Deceased (pursuant to his letter of request to the HDB dated 23 March 2015²⁶) paying the HDB a monthly fee of about \$5,200.

76 Prior to the Plaintiff undergoing a bypass operation around April 2014, Jeffrey testified the Defendants had obtained pre-signed cheques from the Deceased. When he was cross-examined on the issue of the Plaintiff's making personal use of the Partnership's monies. Jeffrey's artless answer was "[m]y father had no savings, so of course he would use the company's money".²⁷ Other than that admission, Jeffrey like his brother, chose to deny the Defendants' allegations, even when as, in the case of his taking over the shophouse for Lee Huat Motoring's business in place of Lee Huat, it could not be disputed based on all the evidence before the court, which included his correspondence with the HDB in [18] and his own evidence in [74] above.

77 Giam²⁸ was the plaintiff's last witness. At 72 years of age, Giam is still selling new and second-hand motorcycles on Jeffrey's behalf at the shophouse. Nothing turns on his testimony or his cross-examination. Giam started working at Lee Huat when he was about 14–15 years old in the 1960s. He left the employment of the Partnership after working there for about 10 years when the

²⁶ At AB

²⁷ At transcripts p 155 on 11 Feb 2002

²⁸ PW4

Plaintiff was running the Partnership. Giam joined Bethlehem Shipyard in the 1970s for higher pay until he was retrenched in the 1990s. Thereafter he returned to work for the Partnership at the invitation of the Plaintiff and the Deceased. The Plaintiff was not only his employer but also a close friend. Consequently, it is not clear whether all the facts Giam deposed to in his AEIC were from his personal knowledge or told to him by the Plaintiff or the Plaintiff's son(s).

78 It was noteworthy from Giam's testimony that he echoed Roland's evidence that (i) the Plaintiff only went to work at Lee Huat in the afternoons because the Plaintiff entertained late into the night and that (ii) the Deceased was well versed in the business and would sign cheques even though on Giam's own evidence, she was illiterate. He repeatedly commented that Lee Huat was a family business in which "everyone" participated. The court views the calling of Giam as the Plaintiff's attempt to buttress the claim of Roland/Jeffrey that the Defendants managed and operated the business of Lee Huat.

(ii) The Defendants' case

79 The court now turns to the evidence presented for the Defendants' case before moving on to address the expert testimony of Tee and Mun.

80 The second Defendant was the primary witness for the Defendants' case. She filed a lengthy AEIC while the first Defendant filed a confirmatory AEIC adopting her younger sister's AEIC as her own evidence.

81 The second Defendant²⁹ was described by Roland as the best educated of the Plaintiff's siblings because she graduated from a polytechnic with a

²⁹ DW1

diploma in marketing. In the Plaintiff's closing submissions,³⁰ it was submitted that the second Defendant's testimony did not raise any defence to the Plaintiff's claim, which therefore stood unrebutted and must be accepted.

82 During cross-examination,³¹ the second Defendant disclosed that if the Plaintiff had not sued them, the Defendants would not have lodged a claim or counterclaim for all the monies the Plaintiff had withdrawn from the Partnership for his own use. They would have been content to let sleeping dogs lie.

83 In her AEIC,³² the second Defendant deposed that all the Deceased's bank accounts were joint accounts with either the first or second Defendant, or the Plaintiff. As at the date of her demise, the accounts were:

- (a) joint account with the second Defendant: \$175,723.93;
- (b) joint account with the first Defendant: \$91,186; and
- (c) joint account with the Plaintiff: \$33,771.58.

84 The Defendants asserted that the monies in the above accounts did not form part of the Estate but belong to the surviving joint account holder following the rule of survivorship under the terms and conditions of joint accounts for POSB Bank, UOB, Hongkong & Shanghai Banking Corporation Limited, Oversea-Chinese Banking Corporation Ltd and Standard Chartered Bank.

³⁰ At paras 173 - 179

³¹ Transcripts p 274 on 12 Feb 2020

³² At para 89

85 In the D&CC,³³ the Defendants had detailed in Annexures A and B details of the Misapplied Sums they claimed the Plaintiff took from the Partnership. The sums added up to \$1,942,899.00.

86 The second Defendant explained in her AEIC³⁴ how she had arrived at the figures set out in Annexures A and B. While she and the first Defendant were still working for the Partnership in 2015, she had access to the bank journals from 1991 to 2015. From those journals, she prepared handwritten and Excel records. After the Defendants tendered their resignations in August 2016, they discovered the bank journals from 1991 to June 1999 were missing when they were consolidating records in preparation for making a handover to the Plaintiff's family.

87 During cross-examination,³⁵ the second Defendant said she only copied "the big items" for her records. Consequently, Annexures A and B were not exhaustive of all that the Plaintiff took from the Partnership for his own and his family's use. The expenses paid by the Partnership included those incurred for Roland's wedding in January 2001 and the purchase of a motor vehicle for him.

88 As for private profits they alleged were taken by the Plaintiff,³⁶ the Defendants' claim pertained to the profits the Partnership made between 4 October 1981 and 19 December 2014 which total they said was \$2,250,896.98.³⁷ They did not quantify this claim against the Plaintiff in their

³³ At para 27

³⁴ At para 32

³⁵ Transcripts at p 307 on 12 Feb 2020

³⁶ Pleaded at para 31 of the D&CC

³⁷ See para 30(a) of the D&CC.

D&CC asking instead that the Plaintiff account for what he had taken. Lead counsel (“Mr Singh”) for the Plaintiff suggested to the second Defendant that she was not sure of the Defendants’ claim as the figures kept changing.

89 Mr Singh pointed out to the second Defendant that she had failed to give credit to the Plaintiff for sums that he had repaid the Partnership over the years. While she accepted that the Plaintiff had repaid certain sums to Lee Huat, the second Defendant said she did not know the amounts as they were not written in the journals. She was prepared to set-off his repayments against what the Plaintiff had taken from the Partnership. She testified that the Plaintiff would hand over to her his cash collections from the workshop. The sums that she received were not the exact or total takings from the “outside” operations of the Partnership but in round figures of \$5,000–\$6,000. The Plaintiff kept diaries where he recorded his total cash collections. She herself would then record the monies she received from him in her own diaries. She exhibited in her AEIC³⁸ the records that she made of the sums she received periodically from the Plaintiff usually of \$6,000.

90 It would appear from the yearly accounts of the Partnership produced in court that starting from 1981, while the Deceased was alive, the second Defendant and the Plaintiff took an equal share of profits and/or drawings from the Partnership. This was disputed by the second Defendant who pointed out that the accounts were prepared by the Plaintiff or at his behest, which he then submitted to the tax authorities. The second Defendant maintained the Deceased did not receive her share of the profits/drawings notwithstanding what was stated in the yearly accounts of Lee Huat. For that reason, she felt it was unfair

³⁸ See par 143 of her AEIC and exhibit LGM-3 Tab 88 pgs 1204 - 1207 (Vol 4C of bundle of AEICs at pgs 1975-1978)

that the Plaintiff's family wanted the Deceased to bear responsibility for half of the UOB Overdraft.³⁹ She said the Deceased left everything relating to the Partnership to the Plaintiff.

91 The second Defendant agreed she had signed the 2014 accounts prepared by Yeo as part of her duties. She clarified⁴⁰ she signed and submitted the tax returns on behalf of the Deceased (which would include her partnership in Lee Huat) and not on behalf of the Plaintiff. Mr Singh had pointed out to the second Defendant that although Yeo was engaged to prepare the books of accounts for Lee Huat, she was the one who provided the information and documents to him. Her response was she merely collated the information and passed it on to Yeo.

92 Contrary to Mr Singh's suggestion, the second Defendant was adamant that Jeffrey did not tell her that he registered a business with a name "quite similar" to Lee Huat. The court notes that the name is not "quite similar" to but exactly the same as Lee Huat's, undoubtedly to ride on the reputation and goodwill of Lee Huat in the market to Jeffrey's benefit. In addition,⁴¹ Jeffrey took over the assets of Lee Huat including its goodwill without paying a cent.

93 Nothing turns on the evidence of the first Defendant who confirmed what was stated in R&T's letter⁴² dated 24 January 2002 on her share purchases being made using Lee Huat's monies which were always repaid. It bears noting (as the Plaintiff and his counsel seem to have overlooked) that the share trading

³⁹ Transcripts at p 396 on 13 Feb 2020.

⁴⁰ During re-examination at transcripts p 400 on 13 Feb 2020

⁴¹ According to the Defendants.

⁴² See [67] *infra*

transactions are *not* part of the Plaintiff's claim. Hence, they are irrelevant for the court's purpose.

The expert testimony

94 I turn next to the evidence of the parties' experts starting with that of the Plaintiff's expert Tee.⁴³ Tee's Report was roundly criticised in the second Defendant's AEIC⁴⁴ for factual inaccuracies and for the following mistakes and/or omissions:

- (a) failing to fully account for the Plaintiff's personal use of the Partnership's monies;
- (b) disregarding the value of No 391A, Woodlands Road Singapore 677964 ("the Woodlands Property");
- (c) reducing the value of stock-in-trade from \$140,935 to \$60,066;
- (d) reducing the amount due from LHMPL to the Partnership from \$311,993 to \$27,159;
- (e) failing to account for private profits from Lee Huat taken by the Plaintiff;
- (f) not addressing the issue of bank withdrawals made prior to 2002 and;
- (g) not recognising the Plaintiff as a sundry debtor.

⁴³ PW3

⁴⁴ At para 125

The second Defendant’s criticisms will be revisited in the course of examining Tee’s testimony below.

95 Tee is an accountant by training. In his AEIC, he deposed that he provides *inter alia* “forensic accounting” services. In the course of preparing both Reports, Tee visited the shophouse on 8 September 2017.

96 Tee’s brief⁴⁵ was “to review the balance sheet ... as at 19 December 2014 and other relevant documents and render an Expert Report ... to state the nature and breakdown ... of the accounts and determine the value (where possible) of the assets and liabilities with a view to assist in the finalisation of the accounts between the Plaintiff and the Defendants”. Tee was also tasked “to investigate into the sundry debtor account and to determine (if possible) the breakdown and comment on the sundry debtor account.” The scope of Tee’s Expert Report was to provide a finalisation of the accounts as at 19 December 2014.

97 The background information contained in Tee’s Report⁴⁶ was provided by the Plaintiff’s family and primarily by Jeffrey.⁴⁷ Tee stated⁴⁸ that he did not independently verify nor audit the information made available to him by Jeffrey. Tee stated⁴⁹ he could not locate the following documents in the course of his review:

⁴⁵ See para 6 of his AEIC

⁴⁶ At AB6204-6205

⁴⁷ Tee’s evidence at transcripts p 160 on 11 Feb 2020

⁴⁸ At para 1.4 of Tee’s report

⁴⁹ At para 5.2 of Tee’s Report

- (a) general journals to account for transactions like partners' drawings, depreciation and amounts due from related third parties;
- (b) fixed assets schedule to account for the fixed assets of the Partnership;
- (c) inventory records to account for the stock in trade;
- (d) petty cash book;
- (e) deposits schedule to account for the deposits placed with utilities or telecommunication service providers;
- (f) sundry debtors schedule;
- (g) intercompany account to record the transactions between the Partnership and its related companies.

The court will comment on the significance of the missing documents later.⁵⁰

98 Tee agreed with the Defendants⁵¹ that the Partnership was solvent as at 19 December 2014 based on its balance sheet, which showed net assets of \$596,188 based on total assets of \$1,586,963 and liabilities of \$990,775. The profit for that year was \$78,259 and there was a significant sum of \$100,572 shown to be drawings.

99 Apart from the bank deposit, Tee reported the Partnership owned a 12 year old lorry which had a net book value of \$1/- in the 2014 accounts. Because

⁵⁰ See [194] *supra*.

⁵¹ At para 5.4 of Tee's Report

the lorry's certificate of entitlement ("COE") was valid until 30 April 2017, the vehicle had a residual COE value of \$12,409.23 as at 19 December 2014.

100 Tee's accounting treatment of the Woodland Property set out in [94(b)] above drew criticism from the second Defendant. The book value of the Woodland Property was \$237,851.75 and it was jointly owned by the Plaintiff and the Deceased. Tee rationalised that since it was a joint tenancy, the surviving owner namely the Plaintiff because the sole owner. It was not an asset of Lee Huat and the value to the Partnership would be zero.

101 As for the stock (motorcycles and consumables) of the Partnership valued at \$140,934.57 in the balance sheet as at 19 December 2014, Tee understood from Jeffrey that the Defendants had done a stock take but their list (if any) could not be located. The Partnership held stock of new motorcycles valued at \$20,200 and second-hand motorcycles valued at \$20,450. Consumables (accessories, motorcycle spare parts and oil) were book-valued at \$17,867.50. Tee however chose a higher value (based on a 2016 stock take) of \$19,415.63 as the value. The total value of all three items as at 19 December 2014 was \$60,065.63 which he rounded up to \$60,066. In contrast, Mun, the Defendants' expert accepted the Partnership's value of the stock in trade namely \$140,934.57 for his report.

102 Tee reported that prior to the Deceased's demise, there was a withdrawal of \$75,000 from the UOB Overdraft account on 12 December 2014. Although the 2014 balance sheet showed that LHMPL owed the Partnership \$311,993, Tee reported he could only account for the sum of \$197,131 that Lee Huat transferred to LHMPL in 2014. He did not know how the balance of \$114,862 arose. He noted that the amount owed by LHMPL according to Lee Huat of either \$311,993 or \$197,131 did not tally with the accounting records of

LHMPL, which showed that the company owed Lee Huat \$248,808. As LHMPL only had cash in the bank of \$27,158.88, it was Tee’s view that the maximum recovery to Lee Huat of the debt owed by LHMPL would be limited to \$27,158.88 regardless of the actual amount owed.

103 Tee’s treatment⁵² of the Partnership’s sundry debtors’ account, as stated earlier at [94(g)], drew the sharpest criticism from the second Defendant.

104 In relation to the second Defendant’s criticisms set out at [93], in Tee’s AEIC/Report, he explained that the transactions prior to 2002 that are to be found in Annex A of the D&CC had already been captured in the respective years in which they were incurred. Hence, those transactions would not form any part of the sundry debtor account. Tee opined that the Defendants were wrong to treat the pre-2002 withdrawals by the Plaintiff as new transactions that had not been accounted for. He stated that those transactions did not have any effect on his assessment of finalising the accounts of the Partnership as at 19 December 2014. Moreover, the sundry debtor account was only created in 2002 and as at 31 December 2001, it did not exist.

105 Under cross-examination⁵³ by Mr Toh, Tee explained that there was no need to look at any pre-2002 transactions because the 2001 balance sheet (which he accepted as accurate) of the Partnership for 2001 showed that the Plaintiff was not a sundry debtor.

106 To disprove Tee’s belief that the 2001 balance sheet was the “gospel truth” which he could rely on, Mr Toh drew Tee’s attention to Lee Huat’s

⁵² See Part 6 of his report at AB

⁵³ See transcripts at p 192 on 11 Feb 2020

balance sheet⁵⁴ as at 31 December 2001, which showed a bank overdraft amount of \$126,984.14. The figure was wrong because the UOB statement for the overdraft account for December 2001⁵⁵ showed a figure of \$442,110.36.

107 Tee's report⁵⁶ stated that the largest asset of the Partnership as at 19 December 2014 was the sundry debtor account showing a figure of \$815,712. He could not locate any documents giving a breakdown of the sundry debtor account. He could only identify trade receivables of \$75,568.90 but not the balance of \$739,143.10 (the correct figure should be \$740,143.10).

108 Tee's Report then dealt with the Plaintiff's withdrawals from the Partnership. He stated that the Plaintiff had deposited more monies into than he had withdrawn from, Lee Huat for the period 2002 to 2014. Indeed, he stated⁵⁷ that the Plaintiff deposited sums totalling \$541,665.16 into Lee Huat's account as shown in the table below:

| | Lee Huat's bank | Date | Amount |
|-------|------------------------|-------------|---------------|
| 1 | RHB | 1 Nov 2002 | \$251,665.16 |
| 2 | RHB | 6 July 2007 | \$100,000.00 |
| 3 | UOB | 28 Sep 2010 | \$190,000.00 |
| Total | | | \$541,665.16 |

⁵⁴ At p 577 of Tee's AEIC in vol 2 of the bundle of AEICs

⁵⁵ At AB633

⁵⁶ Para 17

⁵⁷ At para 6.12 of Tee's Report p 39

109 Tee's Supplementary Report dealt with the transactions listed in Annexures A and B in the D&CC. He set out a table⁵⁸ summarising what he said were deposits made by the Plaintiff into and the withdrawals he made from Lee Huat; he concluded that the Plaintiff had deposited \$1,016,665 into Lee Huat and withdrawn \$992,524. The Plaintiff was therefore not a sundry debtor nor accountable for the sundry debt of \$815,712 stated in the balance sheet of Lee Huat as at 19 December 2014. The table is as follows;

| Deposits | Amount | Withdrawals | Amount |
|-----------------|-----------------------|-----------------------------------|---------------------|
| | \$1,016,665.00 | | \$784,101.00 |
| | | Cycle Trade Enterprise | \$100,675.00 |
| | | The plaintiff's vehicles | \$28,611.00 |
| | | Plaintiff's personal properties | \$13,947.00 |
| | | No 223, CCK | \$3,193.00 |
| | | Jeffrey's expenses | 19,843.00 |
| | | Roland's expenses | \$35,954.00 |
| | | Expenses of Plaintiff's son Keith | \$6,200.00 |
| Total | \$1,016,665.00 | | \$992,524.00 |

⁵⁸ At para 5.2

110 During cross-examination by Mr Toh, Tee revealed he had discussions with Yeo. Relying on what he was told (by Yeo as well as Jeffrey), Tee arrived at the following conclusions⁵⁹ with which counsel for the Defendants took issue:

Arising from the discussion with Mr. Yeo, it would appear to me that his work done is very limited – most (if not all) of the accounts were in fact prepared by the [Defendants].

My investigation into the affairs of [Lee Huat] has indicated that 2014 accounts were not prepared by Mr. Yeo, the “bookkeeper”. They are more likely to have been prepared by the [Defendants].

The court pointed out to Tee that hearsay evidence is not admissible as the truth of what was said by a party who does not testify cannot be verified.

111 As for the Woodlands property at [94(b)], Mr Toh informed Tee that it had been purchased by the Partnership in 1991 and this was reflected in the balance sheet of Lee Huat for 1991.⁶⁰ Thereafter, the Woodlands property appeared in the yearly accounts of Lee Huat as a partnership asset up to 2014. Tee was aware that the Woodlands Property was tenanted and the rental was reflected in the Partnership’s accounts for the years 1995 to 2014. There was therefore no reason to write off the Woodlands property from the balance sheet as Tee had done.

112 Tee sought to justify his action on the basis that the Plaintiff inherited the Woodlands Property under the right of survivorship of a joint tenancy. Mr Toh queried Tee why he was going beyond his scope of work which was to look at the state of the accounts of Lee Huat as at 19 December 2014. Tee responded

⁵⁹ At paras 7.5 & 8.1 of Tee’s report

⁶⁰ At p 555 of Tee’s AEIC

he was “concerned about recoverability”.⁶¹ The court pointed out to Tee that recoverability was not his task/function. Further, it was incomprehensible to the court how a 30 year old leasehold property belonging to the Partnership could overnight be reduced to zero value. Tee’s response was that that was his understanding of a joint tenancy.

113 As for the stock in trade, Mr Toh pointed out that the value may have been progressively reduced over the years but the lowest figure was Tee’s of \$60,066. Mr Toh questioned Tee why he did not utilise the stock in trade figure prepared by the Partnership for 2013 of \$159,254. Tee said the fluctuations in value had no “relevance”. In any case, he said he did not have sufficient information to arrive at a better/correct value and \$60,066 was his best estimate.

114 As for his figure of \$76,568.80 for sundry debtors which he believed would be trade receivables, Tee explained it would very likely be from LHMPL. He felt there was no way that the Partnership could recover the debt. Hence, he had “no choice but to actually write [it] down”.⁶² In this regard, Mr Toh drew Tee’s attention to Mun’s report which showed that from 2002 to 2014, according to the bank journals, the Partnership had transferred a total of \$5,053,839.00 to LHMPL. Tee said he did not know why the transfers were made or what happened to the funds transferred. He was reminded that the Plaintiff held 70% of the shares in LHMPL. Although the court also reminded him that it was not within his purview as an expert witness, Tee maintained that as an accountant, he had to consider the prospect of recoverability of the loans from LHMPL and he believed the sums were not recoverable.

⁶¹ At transcripts p 168 on 11 Feb 2020.

⁶² Transcripts at p 174 on 11 Feb 2020.

115 Tee's report⁶³ contained the following summary of the transfer of funds from Lee Huat to LHMPL from 2012 to 2014:

| Year | Transfers from LHMPL to Lee Huat | Transfers from Lee Huat to LHMPL | Net sum of transfer from Lee Huat to LHMPL | Amount due from LHMPL in Lee Huat's balance sheet |
|--------------|---|---|---|--|
| 2012 | 0.00 | 437,839.15 | 437,839.15 | 0.00 |
| 2013 | 150,000.00 | 399,397.35 | 249,397.35 | 0.00 |
| 2014 | 0.00 | 197,131.00 | 197,131.00 | 311,993.00 |
| Total | 150,000.00 | 1,034,367.50 | 884,367.50 | 311,993.00 |

Even by his own analysis, Tee knew that LHMPL owed \$884,367.50 to the Partnership as at 2014. Although the Plaintiff held 70% of the shares in LHMPL, Tee did not accept that LHMPL was an investment of the Partnership. While he acknowledged that they were related companies because of the Plaintiff's ownership in both entities, Tee said there was no holding and subsidiary relationship between LHMPL and Lee Huat and he would not agree that the loans to LHMPL were related party loans (which they were).

116 Tee contradicted Jeffrey's denial (at [75]) and agreed that Jeffrey had taken over the business assets and goodwill of Lee Huat and transferred it to Jeffrey's own business, using Lee Huat's name. The court is unable to comprehend or accept Tee's added comment⁶⁴ that there was "no relevance in

⁶³ At para 6.4

⁶⁴ Transcripts at p 184 on 11 Feb 2020

terms of ... the assets being transferred to Lee Huat Motor Pte Ltd and [LHMPL], the two are different entities”. He testified he understood from Jeffrey that only the assets of Jeffrey’s sole-proprietorship Lee Huat Motor were transferred to Lee Huat Motoring. Questioned by the court⁶⁵ and after some pressing, Tee admitted he did not/could not verify whether what Jeffrey told him was true. Apparently, Roland had told Tee that he did not know the whereabouts of the Partnership’s assets.

117 Tee disagreed that his writing-off the trade receivables from LHMPL in effect meant that he was allowing the Plaintiff’s family to manipulate the legal entities by transferring the business and the benefit of the Partnership out to themselves and at the same time hold the Estate liable for the Partnership’s liabilities. However, he accepted the accuracy of the items listed in Annexures A and B in the D&CC.

118 Mr Toh questioned Tee’s unequal treatment of the two partners of Lee Huat. In his AEIC,⁶⁶ Tee deposed that the Deceased had used the Partnership’s monies to pay her personal income tax and to top-up her medisave account with Central Provident Fund (“CPF”). Although the Plaintiff did the same, Tee did not take the Plaintiff’s withdrawals into account. Tee’s explanation when his attention was drawn to a cheque for \$3,375 that the Partnership issued to the Comptroller of Income Tax on behalf of the Plaintiff was, it was an “oversight” on his part. His explanation is unconvincing and untrue as the entry immediately after that⁶⁷ in his Appendix 21 was the entry on 28 July 2008 showing the

⁶⁵ Transcripts at p 185 on 11 Feb 2020

⁶⁶ At paras 49 to 51

⁶⁷ See AB2839

Deceased used a cheque from Lee Huat to pay her income tax of \$1,078.81, which Tee referred to. Tee could not possibly have missed seeing the entry relating to the Plaintiff above that of the Deceased.

119 Tee’s “oversight” of the Plaintiff’s usage of the Partnership’s funds to pay his income tax stretched all the way back to 1999. When Mr Toh suggested to him that Tee was specifically instructed by Roland’s/the Plaintiff’s family to omit from his report the Plaintiff’s usage of the Partnership monies for personal income tax and CFP contributions, he prevaricated claiming he had forgotten the instructions he received two years ago. He conceded that in any case the Partnership funds that the Deceased used to pay her income tax and the CPF board are not the subject of the Plaintiff’s claim.

120 The focus of Tee’s Supplementary Report⁶⁸ was Annex A of the D&CC. It was his rebuttal to Annex A. In his conclusion⁶⁹ for the Supplementary Report, Tee stated that the Plaintiff has taken from the Partnership sums totalling \$992,524. Tee also stated⁷⁰ that the Plaintiff deposited \$1,016,665 into the Partnership’s bank account so in effect he did not owe anything to the Partnership. The court will return to this issue in the findings.

121 Tee’s Report⁷¹ also tabulated sums totalling \$52,201.14 as having been withdrawn from the Partnership to pay for shares purchases. When cross-examined, Tee confirmed that he was given a copy of the letter dated 24 January

⁶⁸ At exhibit TWL-1 tab 3 pgs 150-163 of his AEIC

⁶⁹ At Para 5.2 p 11 of the Supplementary Report or at p 161 of Tee’s AEIC

⁷⁰ At para 5.1 p 11 of the Supplementary Report or at p 161 of Tee’s AEIC

⁷¹ At tab 10 p 665.

2020⁷² from the Defendants' solicitors. Despite the lengthy explanation therein that the share purchases were made on behalf of the Plaintiff by the first Defendant or, if made by the first Defendant and/or the deceased, the sums withdrawn from the Partnership were repaid, Tee made no attempt to correct his report on this issue in the course of his examination-in-chief. It bears remembering that Roland⁷³ had conceded that this claim was frivolous, as above at [69]. Tee's (lame) excuse was he had not verified the contents of the Defendants' solicitors' letter of 24 January 2020.

122 The court turns its attention next to the evidence of the Defendants' expert Mun. He is a chartered accountant as well as a chartered valuer and appraiser who has appeared in Singapore courts as well as at the Singapore International Arbitration Centre as an expert witness. Mun's brief from the Defendants was:

- (a) to review the Partnership's financial statements from 1981 to 2014 to ascertain if the Partnership was solvent as at 19 December 2014; and
- (b) to review and respond to the reports of the Plaintiff's expert Tee.

123 Unlike Tee, Mun did not visit the shophouse in the course of preparing his two reports but he interviewed the Defendants.

⁷² At 2AB 464

⁷³ At [66]

124 Mun’s Report analysed the profit and loss as well the balance sheets of the Partnership from financial year 2010 until the period 1 January to 19 December 2014. He arrived at the following conclusions after his analysis:

- (a) the Partnership was profitable every year between 2010 and 19 December 2014;
- (b) the Partnership was in a net asset position every year over the period 2010 to 19 December 2014, with net assets increasing every year;
- (c) there was a significant increase in UOB Overdraft from \$434,663 in 2013 to \$940,981 by 19 December 2014; and
- (d) the UOB Overdraft increase corresponded to increases in Lee Huat’s sundry debtors from \$555,667 in 2013 to \$815,712 on 19 December 2014 while the sums due from LHMPL increased to \$311,993 by 19 December 2014.

125 Mun could only account for \$81,031 of the \$311,993 due from LHMPL whereas Tee’s figure was \$197,131. The difference was due to Tee’s inclusion of sundry related transfers within 2014 despite the fact that the Partnership’s financial statements recognised Sundry Debtors as a separate account from what was due from LHMPL. Mun noted that in arriving at the figure of \$197,131, Tee had included transactions that had the word “Sundries” in their description, which Tee mentioned related to the Sundry Debtor account. As the Partnership classified Sundry Debtors and what LHMPL owed separately, Mun pointed out the transactions should not be double counted in the analysis of what was due from LHMPL. The double counted transactions amounted to SGD116,100. If those were omitted, Tee would have arrived at Mun’s figure of \$81,031.

126 Mun’s Report pointed out that there was an understating of the UOB Overdraft Facility amount in the 2014 balance sheet when compared with UOB’s bank statements.⁷⁴ Hence, Mun adjusted the overdraft amount in the balance sheet upwards to match the balances in the bank statements. The overdraft figure for 2014 (as at 19 December 2014) was revised to \$940,986. Mun’s analysis showed that Lee Huat had net assets of \$596,188 as at 19 December 2014

127 After he had examined the bank journals, Mun found multiple transfers from the Partnership to LHMPL. He opined that Lee Huat’s sundry debtor account was largely due from LHMPL. He therefore assumed that the understatement of UOB’s Overdraft also amounted to an understatement of the Sundry Debtor account balances, and adjusted them upwards by the same amount. The adjusted amount for sundry debtors as at 19 December 2014 was \$815,712.

128 Mun recalculated the balance sheet of the Partnership for the years 2010 to 19 December 2014 after making adjustments to its plant, property and equipment (“PPE”) as well as the UOB Overdraft and sundry debtors account. His calculations⁷⁵ showed Lee Huat had a net asset position of \$400,889 as at 19 December 2014.

129 Mun reviewed the sum of \$739,143 that Tee had written off from the sundry debtors account⁷⁶. He opined that it was not trade in nature but a form of debt financing from Lee Huat to LHMPL. Mun disagreed with Tee that this

⁷⁴ See [104] *infra*

⁷⁵ See exhibit 5.4 in Mun’s AEIC p 19

⁷⁶ See [103] *infra*

amount is irrecoverable. He considered it a related party transaction as the Plaintiff owns 70% shares in LHMPL and is a partner of Lee Huat.

130 Mun disagreed with Tee⁷⁷ that only \$27,158 is recoverable from LHMPL and the difference of \$284,835 should be written off. Mun said before the write-off, the following issue needed to be resolved first:

why LHM had a net liability position on [19 December 2014] despite receiving (1) SGD5,053,839 from the Partnership in sundry-related transfers from FY2002 to FY2014; and (2) SGD81,031 non-sundry related transfers [by 19 December 2014]

131 Mun opined that bank journals and bank statements of LHMPL need to be examined to ascertain how the \$311,993 owed by LHMPL in the balance sheet of the Partnership can be reconciled with the \$284,835 loan balance in LHMPL's books.

132 Mun's Report stated that the Partnership's adjusted balance sheet reflects a net asset position as at 19 December 2014, i.e. the Partnership is solvent.

133 Mun noted that the Partnership has on its balance sheet the Woodlands Property which was not depreciated over time but carried at cost of \$237,852. If that leasehold property was depreciated, the total asset balance would be smaller, reducing its net asset position. Even so, the Partnership would still be in a net asset position as at 19 December 2014 and the years prior thereto even if the Woodlands Property was fully depreciated. Although he had requested for it, Mun was not provided with the breakdown or ageing of the Sundry Debtors

⁷⁷ At p 26 of Mun's AEIC

account. Without those items, the recoverability of the sundry debts or lack thereof cannot be assessed. He therefore did not make any adjustment for the Sundry Debtors account.

134 To ascertain whether the Partnership's funds had been used for the Plaintiff's personal affairs as alleged by the Defendants, Mun examined the Partnership's bank journals for such transactions, and attempted to reconcile those records against the Partnership's UOB and RHB bank statements. He stated he was provided with an incomplete set of banking statements namely, UOB bank statements from January 1992 to December 2006 and from January 2011 to October 2017, while the RHB bank statement he had were from January 1994 to December 2006, and January 2011 to June 2016.

135 Notwithstanding the incomplete bank statements that he received, Mun was able to ascertain that between 1991 and 2014, \$2,594,039 of the Partnership's monies were used by the Plaintiff as personal expenses, comprising approximately 900 expense items. Of those, he was able to reconcile the largest 450 expense items by value, which made up approximately 95% of the total expenses of \$2,594,039. Of that amount, \$2,174,876 could be reconciled against the Partnership's available bank statements or both bank statements and journals, while a further \$243,472 could be reconciled against bank journals only. Mun concluded that at least \$2,418,348 appeared to have been drawn by the Plaintiff for personal expenses between 2002 and 2014 as opposed to \$992,524 identified by Tee for the period 2002 to 2014. Due to time constraints, 450 items of expenses amounting to \$175,691 were not traced.

136 On the Defendants' allegation that the Plaintiff took out private profits from the Partnership, Mun analysed and compared records of the cash collections earned by the workshop against the second Defendant's diary entries

of the cash she received from the Plaintiff. Mun went through records spanning from 1 January 2007 to 31 December 2013 of the workshop's collections and from 1 January 2011 to 31 December 2014 of the workshop deposits. He compared the two and ascertained therefrom that every year, between 2011 and 2013, the workshop deposits were at least \$150,000 less than the workshop collections.⁷⁸ Even taking into account the salaries and bonus expenses for the years 2011 to 2013 with the figures for those items ranging from \$86,500 to \$92,800, there was still a difference between those figures and the \$150,000, which remained unexplained. Hence Mun concluded, it is possible the unexplained difference was cash withdrawals from the Partnership.

137 Whilst Tee's Supplementary Report⁷⁹ estimated that the Plaintiff had withdrawn sums totalling \$992,524 from the Partnership for his personal use, Mun's estimate was \$2,418,348. Their figures are set out below:

| Period | Mun's estimate | Tee's estimate | Difference |
|---------------|-----------------------|-----------------------|-------------------|
| 2002 -2014 | \$978,462 | \$992,524 | (\$14,062) |
| 1991-2001 | \$1,439,886 | N/A | \$1,439,886 |
| Total | \$2,418,348 | \$992,524 | \$1,425,824 |

138 Mun disagreed with Tee's opinion that since the sundry debtor account only came about in 2002, the borrowings by the Plaintiff before that date were irrelevant. Mun did not apply the same limitation on the basis that the scope of his engagement did not only consist of an assessment of the sundry debtors account and, withdrawals suspected to be the Plaintiff's personal expenses had

⁷⁸ See Mun's table at exhibit 5.15 at p 32 of his AEIC

⁷⁹ See [116] *infra*

begun before 2002. Hence, Mun included transactions from 1991 to 2014. His estimate of the Plaintiff's withdrawals was \$1,439,886, which was more than those from 2002 to 2014 as can be seen in the table above.

139 Mun concluded⁸⁰ that the Partnership would be insolvent as of 19 December 2014 if the UOB Overdraft classified under Current Liabilities is to be paid within 12 months but it would be solvent if that overdraft was not recalled within 12 months.

140 During cross-examination, Mun testified that his brief did not include looking into the monies that the Plaintiff had allegedly put into the Partnership.⁸¹ Mun observed that there was no indication whether the sums deposited by the Plaintiff were to repay sums he had *taken out* of Lee Huat. If it was done as equity or capital, the sums should not be offset against the sums the Plaintiff took out from the Partnership.

141 Mun referred to the balance sheet of Lee Huat as at 31 December 2013,⁸² which showed that the Plaintiff made a drawing from the Partnership of \$100,571.90 which could possibly equate to the partner's drawing of \$100,572.00 shown in Mun's cash flow statement.⁸³ That drawing also appears in the balance sheet of Lee Huat as at 19 December 2014,⁸⁴ below the opening balance of Partner's capital amounting to \$618,500.65. Consequently, Mun

⁸⁰ At p 18 para 18 of his report (volume 3 of the bundle of AEICs p 702)

⁸¹ See [104] *infra*

⁸² At AB3347

⁸³ At exhibit 5.5 at p 20 of Mun's Report

⁸⁴ At AB 3350

thought the figure could be a capital injection in January 2014 but he could not be sure as both partners were still alive in January 2014.

142 Unlike Tee who gave it a zero value, Mun assessed the Woodlands Property as having a residual value of \$86,381 as of 19 December 2014 when he adjusted the balance sheets of the Partnership from 2010 to 19 December 2014.⁸⁵ The 30 years lease expired in April 2020. Instead of using a straight-line depreciation over 30 years to get the value of the Woodlands Property as at 19 December 2014, Mun explained during cross-examination that his figure factored in workshop renovations, fixtures and fittings.

143 When questioned by Mr Singh⁸⁶ whether a debt which is irrecoverable (as in this case from LHMPL) should be disregarded, Mun disagreed. He opined that recoverability of a debt is different from finding that a debt is owed.

144 There was nothing new adduced from Mun during his cross-examination that altered what was stated in Mun's report.

The issues

145 The issues the court must decide are:

- (a) whether the Partnership was solvent as at 19 December 2014;
- (b) whether there appears to be sums that the Plaintiff ought to account to the Partnership, being sums that the Plaintiff had withdrawn from the Partnership for his personal use; and/or

⁸⁵ See p 15 of Mun's Report Exhibit 5.4

⁸⁶ Transcripts p 498 on 14 Feb 2020

(c) do the private profits that the Plaintiff withdrew from the Partnership constitute assets of the Partnership?

The submissions

(i) *The claim for \$20,000.*

146 Even though Roland himself had conceded⁸⁷ that he was not pursuing the claim and the Defendants had highlighted the dates⁸⁸ when they returned the \$20,000 in two tranches to Lee Huat's UOB account, the Plaintiff's closing submissions⁸⁹ adopted an ambivalent stand on the claim – neither accepting it was paid nor denying it was paid. It is clear to the court that this claim is baseless. The Defendants' two payments of \$15,000 and \$5,000 on 14 February and 6 March 2015 respectively are shown at AB1089 and AB1093 (and exhibited as tab 93 in the second Defendant's AEIC). AB1089 is Lee Huat's UOB statement for the month of February 2015, which showed three cash deposits of \$5,000 each on 14 February 2015 whilst AB1095 is the Partnership's UOB statement for the month of March 2015. According to the second Defendant (whose testimony was neither challenged nor rebutted), the deposit of \$15,000 on 6 March 2015 included the repayment of the balance \$5,000 of the \$20,000 Jeffrey had withdrawn and passed to the Defendants on 20 December 2014 as reflected in UOB's December 2014 bank statement⁹⁰.

⁸⁷ See [72] *infra*

⁸⁸ At [42] *infra*

⁸⁹ At paras 93 & 94

⁹⁰ At AB1082

(ii) *The Plaintiff's claim on the UOB overdraft*

147 The Plaintiff's stand⁹¹ was that the Defendants had not raised a defence to his claim of \$355,107 (being half of the UOB Overdraft sum of \$710,214) apart from contending that the Plaintiff must account for the alleged "misapplied sums" and "private profits" in their counterclaim which the Plaintiff asserted was an afterthought.

148 On the other hand, in their closing submissions, the Defendants contended that the Plaintiff's claim is based on Tee's opinion and his two reports all of which they dispute because of the following items:

- (a) Tee's complete removal of the values of workshop renovations (\$38,527) and the Woodlands Property (\$237,852)⁹² from his adjustments on "fixed assets";
- (b) Tee's reductions under "current assets" of:
 - (i) Stock-in-trade from \$140,935 to \$60,066;⁹³
 - (ii) Sundry debtors from \$815,712 to \$76,569; and⁹⁴
 - (iii) Amount due from LHMP from \$311,993 to \$27,159.⁹⁵

If Tee's adjustments in (a) to (b) totalling \$1,506,492 are disregarded, the Plaintiff's claim fails as the difference of \$1,304,171 (\$1,506,492 less Tee's

⁹¹ At para 177 of the Plaintiff's closing submissions

⁹² See [93(b)] and [99]

⁹³ See 93(c)] and [98]

⁹⁴ See [93(g)], [103] and [112]

⁹⁵ At [101]

total reductions of \$202,321) far exceeds the Plaintiff's claim of \$355,107 (50% of \$710,214) even after factoring in the Plaintiff's unfounded claim of \$20,000. None of the Plaintiff's witnesses testified on the assets of the Partnership.

149 Mun, on the other hand, had treated the workshop renovations and Woodlands property in [142] as part of the Partnership's PPE. Mun noted that the 2014 accounting records of Lee Huat did not take depreciation into account. As such, he adopted a straight-line depreciation and found that as at 19 December 2014, the PPE should be valued at \$86,381.

150 The Defendants submitted that Mun's opinion should be preferred as it was wrong of Tee at law to find that the Woodlands property was not partnership property merely because it was held as joint tenants between the Plaintiff and the Deceased and the Plaintiff had the right of survivorship. They relied on the definition of "partnership property" in s 20(1) of the Partnership Act, which states:

All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement....

151 The Defendants submitted that s 20(1) is reinforced by s 21 of the Partnership Act which states:

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

152 The Defendants pointed out that in the books of accounts of the Partnership, the Woodlands property was always reflected. Roland himself in

his supporting affidavit filed to support his application to be appointed the Plaintiff's deputy⁹⁶ had listed the Woodlands property as being held under Lee Huat Company. Further, Tee's Report listed rental income received by the Partnership from the Woodlands property.

153 It was manifestly unfair therefore (according to the Defendants) and it offended justice for Tee to deprive the Partnership of the Woodlands property by giving it to the Plaintiff and, at the same time, look to the Defendants to bear half the liabilities of the Partnership. It is to be noted that in the Plaintiff's closing submissions,⁹⁷ he acknowledged and accepted that the Woodlands property had a residual value of \$42,567 as at 19 December 2014.

154 The Defendants felt it was equally unreasonable of Tee to reduce the value of the stock-in-trade from \$140,935 to \$60,066 using a methodology which they asserted was arbitrary and illogical. Tee admitted⁹⁸ he did not have sufficient information to make an accurate assessment of the stock. What he did was to take the value in a list of second-hand motorcycles as at 24 December 2014 and the value in a list of consumables based on a stock take in 2016 and arbitrarily added the two figures together.

155 Tee's arbitrariness is to be compared with Jeffrey's figure for stock, which was \$140,934.57 and which he himself gave to the Defendants. As Jeffrey had been managing the workshop and indeed took over the workshop for his own business, his figure would be more accurate and should be accepted.

⁹⁶ At p 637 of the second Defendant's AEIC referring to para 11 of Roland's affidavit filed on 26 Nov 2015 in FC/OSM 284 of 2015

⁹⁷ At para 144

⁹⁸ At transcripts p 169-170 on 11 Feb 2020

Even then, it was the lowest stock figure of Lee Huat for the five years preceding 2014.

156 The Defendants added that even more arbitrary was Tee's reduction of the sundry debtors figure from \$815,712 to \$76,569 and the reduction of the debt owed by LHMPL from \$311,993 to \$27,159 because he considered the debts irrecoverable. Tee's task as an expert was not to assess the recoverability as the court had reminded him.⁹⁹ Yet, in the Plaintiff's closing submissions,¹⁰⁰ he persisted in his argument that Tee's scope of works encompassed recoverability under the umbrella of valuation of the Partnership.

157 Moreover, the un rebutted evidence adduced from the second Defendant was that the Partnership traded new motorcycles through LHMPL which would repay Lee Huat's advances when it made sales. The only reason that LHMPL became insolvent (according to the Defendants) was due to the fact that Jeffrey, in the course of taking over the Partnership's business moved all the assets of LHMPL to his business Lee Huat Motoring Pte Ltd without paying a cent. I would add that it is naive of Roland¹⁰¹ to expect the court to believe his evidence that he did not know what happened to the stock-in-trade, let alone accept Jeffrey's testimony that he did not take over assets of the Partnership when the Plaintiff's own expert Tee recognised that it was done¹⁰² and, that the Plaintiff should pay the Partnership for the same. In other words, Jeffrey took over the assets and was the cause of the insolvency of LHMPL. He and Roland studiously avoided talking about what happened to the assets belonging to Lee

⁹⁹ At transcripts p 182 on 11 Feb 2020.

¹⁰⁰ At para 156

¹⁰¹ See [115] *infra*

¹⁰² At para 8.8 of Tee's Report.

Huat and LHMPL – did the secondhand and new motorcycles vanish into thin air?

158 The Defendants submitted that the court should accept Mun’s opinion (which it does) that the debt of LHMPL should not be written off as the Plaintiff is a 70% shareholder of LHMPL as well as a partner of Lee Huat. Hence, the advances made to LHMPL are related party transactions. No explanation was given by the Plaintiff as to why LHMPL was in a net liability position despite receiving from Lee Huat \$5,053,839 over the years 2002–2014 in sundry-related transfers and \$81,031 in non-sundry related transfers in November 2014.¹⁰³

159 The Defendants’ submissions noted that the Plaintiff did not dispute that he had made withdrawals from the Partnership’s funds for his personal use but only that he had deposited more funds than what he withdrew from the UOB overdraft account.¹⁰⁴ In their Counterclaim,¹⁰⁵ the Defendants had alleged that the Plaintiff withdrew \$1,160,003.62 (based on Annex A) and a further \$782,895.38 (in Annex B) for a grand total of \$1,942,899.00.

160 Tee’s Report¹⁰⁶ stated that between 2002 and 2014, the Plaintiff deposited into the Partnership’s accounts with RHB and UOB sums totalling \$1,016,665 and withdrew therefrom \$784,101. The Defendants criticised Tee’s leaving out the withdrawals made by the Plaintiff *before* 2002. The court accepts

¹⁰³ At Mun’s Report at [31].

¹⁰⁴ See the Reply to the D&CC at para 18(ii)

¹⁰⁵ At para 27 and in Annex A

¹⁰⁶ At para 6.11

the criticism as no valid reasons were proffered for Tee's deliberate omission, which was aimed at reducing the Plaintiff's indebtedness to Lee Huat.

161 In his AEIC,¹⁰⁷ it is noteworthy that Tee acknowledged additional withdrawals made by the Plaintiff as set out in the Defendants' Annex A amounting to \$208,423 and sums totalling \$29,636 as withdrawals in Annex B. Even on Tee's evidence, the Plaintiff's total withdrawals of \$1,022,160 according to Annexures A and B exceeded his deposits (\$1,016,665) by \$5,495.

162 The court has already alluded to Tee's ¹⁰⁸ illogical justification¹⁰⁹ for excluding withdrawals by the Plaintiff *before* 2002. He had said:

Since transactions prior to 2002 have no impact on the findings and conclusion to the Expert Report, they were not considered..

No authorities or recognised accounting principles were cited by Tee to support his bald statements and his reasoning. Not surprisingly, Tee's flawed reasoning was criticised in the Defendants' closing submissions,¹¹⁰ not to mention that it was based on his misplaced belief that the balance sheets were accurate. As was pointed out to him by Mr Toh,¹¹¹ the balance sheets did not/may not contain the gospel truth.¹¹²

¹⁰⁷ At para 28

¹⁰⁸ At paras 21 and 22

¹⁰⁹ See [101] *infra*

¹¹⁰ At paras 104-107

¹¹¹ See [105] *infra*

¹¹² See transcripts at p 191 lines 12-15 and pg 192 line 6.

163 Tee had wrongly assumed that the workshop renovations were for the shophouse. Mun had explained during cross-examination¹¹³ that the renovations cannot be for the shophouse (as it was compulsorily acquired) but must be for the property on Lee Huat’s balance sheet, which would be the Woodlands property.

164 In his closing submissions, the Plaintiff cited *Chip Thye Enterprises Pte Ltd (in liquidation) v Phay Gi Mo and Others* [2004] 1 SLR(R) 434 (“*Chip Thye’s case*”) to support his argument that Mun was wrong to state that inter-company loans should not be written down.

(iii) *The Defendants’ Counterclaim*

165 In the Plaintiff’s Reply submissions, the Defendants were roundly criticised for their counterclaim. The Plaintiff asserted that the Defendants departed from their pleaded case – which was only that Tee’s Report was not accurate; they did not deny his valuation. They had also abandoned their head of claim for an account and inquiry for “Misapplied Sums”. Instead, they substituted the abandoned claim with a claim for a liquidated sum of \$1,977,632 or \$1,813,633. In their Opening Statement, the Defendants’ claim was for \$1,107,261.50 but at paragraph 18 of their closing submissions, the Defendants’ claim was for \$1,222,618.

166 The Plaintiff added that Defendants’ figure for Private Profits also changed. At paragraphs 29–31 of the D&CC, the figure claimed was for \$2,250,896.98 which the second Defendant clarified in court should be half that amount. Yet, in paragraph 17 of their closing submissions, that was not what

¹¹³ At transcripts p 484 on 14 Feb 2020

the Defendants claimed. They said an account or inquiry was only necessary if the court found that the Plaintiff had taken cash (apart from bank withdrawals) from the Partnership that he had not accounted for. The Plaintiff argued that the Defendants had not adduced any evidence that he had taken cash from the Partnership apart from bank withdrawals.

167 The Plaintiff pointed out that having heard evidence that both the Plaintiff and the Deceased received their share of annual profits from Lee Huat, the Defendants then changed tack and asserted the sum of \$596,187.77 stated as net assets in the balance sheet of 2014 was a “pile of cash”¹¹⁴ sitting somewhere in the Partnership. Consequently, the Plaintiff submitted, the Defendants were unclear of what they are claiming.

168 The above submission is a misreading of the evidence. What the Defendants meant is based on Mun’s findings¹¹⁵ that there was a significant difference between the collections and deposits in the time the Plaintiff ran the workshop amounting to a shortfall of \$506,170.37 in profits. The Defendants therefore believed that the shortfall was the cash taken out by the Plaintiff.

169 The Plaintiff argued that the Defendants had not made out their claim in constructive trust. It was wrong of the Defendants to contend that all monies that the Plaintiff withdrew from the Partnership were held by him on constructive trust. There was no evidence of wrongdoing or dishonesty on the Plaintiff’s part. The evidence showed he did not hide those withdrawals from the knowledge of the second Defendant or the Deceased. As the Defendants

¹¹⁴ See second Defendant’s testimony at transcripts pgs 382 &383 on 12 Feb 2020

¹¹⁵ At p 32 of Mun’s Report

pointed out,¹¹⁶ this defence was never pleaded by the Plaintiff. Accordingly, the court gives it no credence.

170 The Plaintiff submitted that dishonesty is a necessary ingredient to find a constructive trust (*Royal Brunei Airlines Sdn Bhd v Philip Tan Kok Ming* [1995] 2 AC 378 (“*Royal Brunei Airline*”). The court will return to this authority later.¹¹⁷

171 Indeed, the Plaintiff accused the Defendants of attempting to mislead the court by setting out only the withdrawals from the bank journals and not the deposits he had made. There was also no evidence from the Defendants that the Plaintiff was not allowed to use the Partnership monies for his personal expenses, after all it was a family business.

172 Not surprisingly, the Defendants’ Reply submissions took issue with the Plaintiff’s arguments set out in [164] to [169].

173 The Defendants pointed out that their D&CC¹¹⁸ merely stated they admitted what was set out in the statement of claim as the extracts taken from Tee’s Report; they disputed that Tee’s Report is accurate.¹¹⁹

174 The Defendants’ Closing submissions and Reply submissions where relevant, will be referred to in the course of the court’s findings below.

¹¹⁶ At para 35 of their closing submissions.

¹¹⁷ See [205] *supra*

¹¹⁸ At para 14

¹¹⁹ At para 16 of the D&CC

The findings

(i) Breach of fiduciary duties

175 It is clear on the evidence that the Plaintiff made no distinction between his own funds and the Partnership's monies. Indeed, he treated Lee Huat's monies as his own piggy bank. Because he was the boss,¹²⁰ no one dared to question the Plaintiff let alone his illiterate mother who, in any event, was unaware of what he did. The fact that Lee Huat is a family business is no excuse or justification at law, for the Plaintiff to utilise the Partnership's funds for his personal use.

176 The Plaintiff's argument to the contrary in [169] is unsustainable at law. As a fellow partner, the Plaintiff owed fiduciary duties to the Deceased. Such duties include not taking the Partnership's monies for his own personal use or, to make private profits to the exclusion of his partner (per Belinda Ang J in *Ang Tin Gee v Pang Teck Guan* [2011] SGHC 259 at [83] and [84]).

177 The Defendants had also relied on an extract from *Poh Lian Development Pte Ltd v Hok Mee Property Pte Ltd and Others* [2009] SGHC 153 where Lee Seiu Kin J cited (at [26]) the following extract from Millet LJ's judgment in *Bristol and West Building Society v Mothew* [1998] 1 Ch 1, where he said:

A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. 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

¹²⁰ According to the second Defendant at p 3 of transcripts on 13 Feb 2020

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.

The above extract from *Bristol and West Building Society v Mothew* was cited with approval by the Court of Appeal in *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 where (at [192]) the appellate court added “the hallmark of a fiduciary obligation is that the fiduciary is to act in the interests of another person”.

178 The Plaintiff’s acquisition of the immovable properties and other assets itemised in [10] above using the Partnership’s monies was in clear breach of his fiduciary obligations to the Deceased.

179 *Chip Thye’s case* cited by the Plaintiff in [164] is not relevant and would not assist the Plaintiff. In that case, the liquidator of an insolvent company alleged that the company’s directors had breached their fiduciary duties by transferring debts due from the fourth defendant to a related insolvent company causing recoverability problems. The directors attempted to argue that the company was solvent when the debt was transferred out but the court disagreed and held that the liquidator was right to take recoverability into consideration and that the company was already insolvent at the time the directors made the transfer.

180 The court now turns to the testimony of the two experts.

181 Contrary to paragraph 2 of his AEIC and paragraph 1.6 of Tee’s Report, in rendering his report/opinion, Tee did not discharge his duty to the court nor

did he adhere to his professed claim that his duty to the court overrode any obligation to the party (the Plaintiff) who engaged him.

182 In fact, Tee’s Report and Supplementary Report were blatantly slanted in favour of the Plaintiff. Tee went to the extent of filing two affidavits¹²¹ to support the plaintiff’s application for summary judgment on the basis that the Defendants had not raised any doubt or triable issues to the Plaintiff’s claim. The O 14 application did not succeed.

183 Tee paid lip service to O 40A r 2 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which states:

- (1) It is the duty of an expert to assist the Court on the matters within his expertise.
- (2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

184 The court does not accept Tee’s reasoning that the debt owed by LHMPL should be reduced to the amount (\$27,159) recoverable from LHMPL. Recoverability does not equate to indebtedness. Contrary to his claim, Tee’s scope of works was *not* on recoverability of debts but the extent of indebtedness of or to, Lee Huat to ascertain its financial position as at 19 December 2014.

185 The court’s dim view of Tee’s partiality in favour of the Plaintiff is reinforced by his statement¹²² that “[i]nterest is due and owing on the overdraft facility with UOB and both the Plaintiff and the Defendant should share the same equally”. His statement completely overlooked the fact that the

¹²¹

¹²² At para 69 of his AEIC

Deceased's liability as a partner of Lee Huat ceased on the date of her demise – 19 December 2014. Any further interest accrued after that date was not the responsibility of the Deceased and should be borne solely by the Plaintiff and now his sons.

186 Tee had stated¹²³ that the Plaintiff had deposited sums totalling \$1,016,665¹²⁴ into the Partnership's accounts between January 2002 and December 2014 based on the following breakdown:

- (a) \$475,000 from the rental of 615 Balestier Road;
- (b) \$251,665 from the sale proceeds of Blk 223 CCK;
- (c) \$190,000 from the sale of his investment in Everfit;
- (d) \$100,000 from his personal savings account and;
- (e) \$40,000 that Jeffrey repaid for the expenses of his wedding.

The Defendants disputed items (b) and (e) above. The second Defendant had deposed in her AEIC¹²⁵ that when she questioned the Plaintiff on the source of (b), he refused to answer which he would not have done if the sum was indeed from the sale of Blk 223 CCK. Roland himself had admitted during cross-examination¹²⁶ that he had no evidence on whether the sale proceeds were deposited into the Partnership's bank account. Item (e) was another assertion by Tee which Jeffrey did not corroborate and which the second Defendant disputed

¹²³ At paras 6.11–6.14 of Tee's Report and at para 3.2 of Tee's Supplementary Report

¹²⁴ See [159] *infra*

¹²⁵ At para 44

¹²⁶ Transcripts pg 82 on 11 Feb 2020

in her AEIC¹²⁷. Deducting items (b) and (e) from \$1,016,665, the difference is \$724,999.84.

187 In the Defendants' closing submissions,¹²⁸ they set out the following table showing that the Plaintiff owed at least \$1,222,618 to the Estate pursuant to ss 24(1) and 43 of the Partnership Act:

| | | Sum(s) \$ | Reference |
|---|---------------------|------------------|-----------------------|
| | Assets | | |
| 1 | Misapplied sum | 1,977,632 | |
| 2 | Adjustment for PPE | 86,381 | |
| 3 | Cash | 90,017 | Tee's Report para 8.5 |
| 4 | Stock in trade | 140,935 | |
| 5 | Sundry debtors | 815,712 | |
| 6 | Due from LHMPL | 311,993 | |
| 7 | Deposits | 2,290 | Tee's Report para 8.5 |
| | Total Assets | 3,424,960 | |
| | Liabilities | | |
| 8 | UOB overdraft | 940,986 | Tee' Report para 8.5 |

¹²⁷ At para 78

¹²⁸ At para 18

| | | | |
|---|----------------------------|------------------|-----------------------|
| 9 | Other creditors & accruals | 38,738 | Tee's Report para 8.5 |
| | Total liabilities | 979,724 | Tee's Report para 8.5 |
| | | | |
| | Total Assets | 3,424,960 | |
| | Less Liabilities | 979,724 | |
| | Net Assets | 2,445,236 | |
| | Half net assets | 1,222,618 | |

188 Section 43 of the Partnership Act states:

Retiring or deceased partner's share to be a debt

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

189 In regard to the Misapplied Sums in column 1 above the Defendants gave the following breakdown¹²⁹ in their closing submissions¹³⁰:

| | Category | Partnership monies Plaintiff used | Profits the plaintiff attempted to account for | Defendants' position on plaintiff's accounting | Sums the Plaintiff did not account for | If the court agrees with the Plaintiff |
|---|----------------|-----------------------------------|--|--|--|--|
| A | Blk 223 CCK | 123,999.50 | 251,665.16 | Disagreed | 123,999.50 | 0 |

¹²⁹ At para 140

¹³⁰ See [11] *infra* where the figures were first set out.

| | | | | | | |
|---|------------------|---------------------|----------|----------------------------|---------------------|---------------------|
| B | 59A CCK | 890,253.82 | \$0 | | 890,253.82 | 890,253.82 |
| C | 615 Balestier Rd | 605,131.50 | 475,0000 | Agreed | 130,131.50 | 130,131.50 |
| D | Everfit | 46,910 | 190,000. | Agreed | 0 | |
| E | Bikelink | 88,000 | 0 | | 88,000 | 88,000 |
| F | Cycle Trade | 103,531.31 | 0 | | 103,531.31 | 103,531.31 |
| G | ArrowSpeed | 5,000 | 0 | | 5,000 | 5,000 |
| H | 34 Norris Rd | 294,627.73 | 0 | | 294,627.73 | 294,627.73 |
| I | Others | 92,500 | 0 | | 92,500 | 92,500 |
| J | Cars | 126,974.37 | 0 | | 126,974.37 | 126,974.37 |
| K | Family | 222,614.35 | 140000 | Only in respect of 100,000 | 122,614.35 | 82,614.35 |
| | Total | 2,599,542.58 | | | 1,977,632.58 | 1,813,633.08 |

190 The evidence adduced in court clearly showed that the Plaintiff withdrew from the Partnership funds in excess of the principal amount of the overdraft sum of \$710,214 as at 19 December 2014. At the risk of repetition, Tee unlike Mun, failed to take into account the Plaintiff's pre-2002 withdrawals, the value of the renovations carried out at as well as, the Woodlands property and the correct (higher) value of Lee Huat's stock-in-trade. It bears remembering that the Plaintiff's witnesses and the defence to the D&CC did not dispute he had withdrawn monies from the Partnership for his own use; his

defence¹³¹ was that monies he deposited into the UOB account exceeded his withdrawals.

191 Earlier, the court had also taken issue with Tee's deliberate discounting of the Plaintiff as a sundry debtor for all drawings from the Partnership before 2002. Equally, the court cannot without more, accept Tee's reasoning to reduce the outstanding debt owed to the Partnership by LHMPL in order to fit in with LHMPL's means to repay the debt.

192 It was not surprising therefore that Mr Toh¹³² put to Tee (who disagreed) that throughout his two reports, Tee had generally exceeded his scope as an expert and made conclusions just to support his client's case. Consequently, the court does not give any credence to Tee's testimony or to his two reports.

193 To reinforce the court's finding, one only needs to refer to Tee's treatment of the Woodland's property.¹³³ Tee's view that the Plaintiff inherited the property under the rule of survivorship in a joint tenancy is contrary to s 21 of the Partnership Act set out earlier at [151].

194 In the light of the many shortcomings in his evidence as well as in Tee's Report and Supplementary Report as highlighted earlier,¹³⁴ the court is of the view that's Mun testimony and expert reports are to be preferred. Mun offered

¹³¹ At para 18(ii) of the Defence to the Counterclaim

¹³² Transcripts at p 212 on 11 Feb 2020

¹³³ At [97] *infra*

¹³⁴ At [93], [96], [99], [100], [101], [103], [106], [107], [109], [111], [112], [113], [114], [115] and [117].

a more objective and balanced analysis of the accounts of the Partnership as at 19 December 2014.

195 I have no doubt that the missing documents identified in [97] by Tee (which corroborates the second Defendant’s allegation in [20]) and by Mun in [133] were taken away by Roland and/or his brother Jeffrey as they would have shown the extent/quantum of the Plaintiff’s drawings from and his indebtedness to, Lee Huat not to mention the stock in trade of Lee Huat and LHMPL that has gone “missing”. It bears repeating that Roland’s youngest brother Keith is an accountant.

196 The court is of the view that it would be totally unjust if Tee’s reductions of LHMPL’s debt to the Partnership are accepted as Jeffrey has taken the benefits of the Partnership’s and LHMPL’s assets for his business – he enriched himself while Roland had Tee write off the inter-company loans of LHMPL. At the same time, Roland sued the Defendants/the Estate for the outstanding debt of the Partnership.

197 In the Plaintiff’s closing submissions,¹³⁵ it was submitted that the equitable defences of laches, delay and acquiescence would bar the Defendants’ from pursuing their counterclaim for an account and inquiry after 39 years, notwithstanding the Plaintiff did not plead these defences. The court’s short answer to this submission is that parties are bound by their pleadings. These defences are not available to the Plaintiff as they were never pleaded.

¹³⁵ At para 186

198 The same ruling applies to the Plaintiff's other submission¹³⁶ that the Defendants themselves, had accepted that LHMPL was insolvent as, in the Schedule of Assets for probate of the Estate, they had declared that her 10,000 shares in LHMPL was a negative \$3.16. The Defendants countered this submission¹³⁷ by pointing out that the Defendants' witnesses were not challenged on this point, it was not pleaded anywhere in the Plaintiff's pleadings and it was not referred to by any of the Plaintiff's witnesses. The Defendants complained they were caught by surprise by this submission, which breached the rule in *Browne v Dunn* (1893) 6 R 67. In any event, the Defendants argued, this submission was untenable as the Defendants obtained the negative value of \$3.16 from the accounts of LHMPL provided by the Plaintiff's family to their solicitors¹³⁸.

199 The Defendants had accused the Plaintiff's family (not without justification) of mounting a campaign to pressure them to pay off the UOB Overdraft using the Estate's funds in the belief that the Estate was "a substantial one worth \$5.7m and the [Defendants] as beneficiaries and Trustees have benefited immensely".¹³⁹ This was a misconception and unfounded belief on the part of Roland. The Deceased inherited No 75 CCK from her late husband and that immoveable property accounted for the bulk of her estate as she returned the two properties at Serangoon Road to her eldest son Kerk Hen (who was the original owner) and the latter's son. The said properties had been transferred to

¹³⁶ At para 136

¹³⁷ At para 24 of the Defendants' closing submissions

¹³⁸ See [18] *infra*

¹³⁹ At para 5 of Roland's AEIC

the Deceased by Kerk Hen when he encountered financial difficulties at one time.¹⁴⁰

200 For their many years of service to the Partnership, the first and second Defendants' last drawn salaries were only \$1,600 and \$2,500 per month respectively, by the time of their resignation.¹⁴¹ If they have to pay half of the UOB overdraft, the Defendants say they will be forced to sell No 75 CCK where they are living.

201 As for the Deceased, her signature in her Will dated 13 January 2013¹⁴² does not appear to reflect a woman who was business savvy as Roland and Giam claimed. Her signature was shaky and typical of the signatures of illiterate persons. It is not believable that an illiterate person like the Deceased would have made regular drawings from the Partnership as recorded in the books of accounts alluded to earlier.¹⁴³ It was the second Defendant's evidence¹⁴⁴ that the Deceased had no knowledge of the Plaintiff's usage of the Partnership's monies for his own ends. The profits of Lee Huat may well have been distributed and drawings made but the Deceased's purported drawings were most probably taken by the Plaintiff who gave her back a monthly allowance of around \$1,000. If indeed the Deceased had taken her share of the Partnership's profits and an equal amount of drawings as the Plaintiff, she would have had far more assets and cash than what was in the Estate.

¹⁴⁰ See para 19 of the second Defendant's AEIC.

¹⁴¹ See para 23 of the second Defendant's AEIC.

¹⁴² At AB5279

¹⁴³ At [89]

¹⁴⁴ Transcripts at pg 270 on 12 Feb 2020

202 It is absurd of the Plaintiff to refuse to admit that the Deceased was illiterate¹⁴⁵ when his own witness Giam¹⁴⁶ admitted she was illiterate. It is even more absurd for the Plaintiff's two sons to expect the court to believe their claim (as well as Giam's claim) that the Plaintiff only went to work at Lee Huat in the afternoons¹⁴⁷ and the Defendants as well as the Deceased ran the business. The court prefers the evidence of the Defendants as being more credible to that given by the Plaintiff's witnesses.

203 Consequently, in answer to the three issues in [144] above, the court states as follows:

- (a) was the Partnership solvent as at 19 December 2014? It was.
- (b) whether there appears to be sums that the Plaintiff ought to account to the Partnership, being sums that the Plaintiff had withdrawn from the Partnership for his personal use. Yes.
- (c) do the private profits that the Plaintiff withdrew from the Partnership constitute assets of the Partnership? Yes the private profits were the assets of the Partnership.

204 The court finds it disgraceful and deplorable that the Plaintiff's sons/family have chosen to sue their paternal aunts and their grandmother's estate after the Plaintiff was incapacitated by a stroke and at the same time, refuse to repay or account for all/any of the monies the Plaintiff took from the

¹⁴⁵ At para 2(vi) of the Reply to the D&CC

¹⁴⁶ See [75] *infra*

¹⁴⁷ As pleaded in para 2(iv) of the Reply to the D&CC.

Partnership. Even by the Plaintiff's expert's own calculations¹⁴⁸, the sums he took of \$992,524 (which figure Mun opined should be much higher¹⁴⁹) far exceeds the Plaintiff's claim against the Estate (50% of \$710,214). The court is also mindful of Mun's evidence in [140] that if the deposits the Plaintiff made were by way of capital injection, they have to be discounted in any event. As the Defendants pointed out in their closing submissions,¹⁵⁰ the burden of proof is on the Plaintiff to prove the deposits he made to Lee Huat's UOB account were the Plaintiff's repayments of monies he had taken; the Plaintiff did not discharge that burden. This would apply to the \$251,665.16 deposit that Roland claimed represented the repayment of the sum (\$123,999.50)¹⁵¹ the Plaintiff took from the Partnership for the purchase of Blk 223 CCK.

205 Further, as was pointed out by the Defendants,¹⁵² it was wrong of Tee to adopt a running account approach to the Plaintiff's withdrawals and deposits. That is not how the law treats a breach of fiduciary duty by a partner. A party who breaches his fiduciary duties cannot as the Plaintiff attempted to do, profit from his wrongdoing. Consequently, any profits/gains that the Plaintiff made from his investments using Lee Huat's monies cannot be credited to him as part of the monies refunded. Those profits belong to Lee Huat and should not feature in the equation. An example in this regard would be the Plaintiff's investment in Everfit using \$46,910 for which he reaped \$190,000 in return. The Plaintiff is not entitled to be given credit for the profit \$143,090 (\$190,000 - \$46,910).

See [108] *infra*

¹⁴⁹ See [135] *infra*

¹⁵⁰ At paras 129 & 133

¹⁵¹ See item A at table at [187]

¹⁵² See paras 136 & 137 of the Defendants' closing submissions

206 It is absurd of the Plaintiff to submit¹⁵³ that the Defendants had failed to produce an iota of evidence to show that the Plaintiff had breached his fiduciary duties. The evidence adduced in court is overwhelming to say the least.

(ii) *Constructive trustee*

207 The Plaintiff's submission¹⁵⁴ that dishonesty is a necessary ingredient to found a constructive trust is a misreading of Lord Nicholls judgment in *Royal Brunei Airlines*. Lord Nicholls said (at p 389) that dishonesty is synonymous with lack of probity and simply means not acting as an honest person would in the circumstances, which would best describe the Plaintiff's conduct.

208 This case is not like *Barnes v Addy* (1874) LR 9 Ch App 244 (from which case the Plaintiff's Reply submissions¹⁵⁵ cited the judgment of Lord Selborne LC) and *Sumitomo Bank Limited v Thahir Kartika Ratna and Others and another Matter* [1992] 3 SLR(R) 638 where the court had to determine if (apart from the wrongdoer) third parties or agents (such as solicitors) should be imposed with actual or imputed knowledge so as to make them constructive trustees. Here it is the Plaintiff himself who owed fiduciary duties to his partner-mother and who knew for a fact (judging by his conduct) that monies he took from Lee Huat needed to be returned to the Partnership. Why else would he pay into the UOB overdraft account the proceeds of sale of 615, Balestier Road (in part) and Everfit?

¹⁵³ At para 310 of its closing submissions

¹⁵⁴ At [169]

¹⁵⁵ At para 57

209 The monies that the Plaintiff took from Lee Huat is a “debt” under s 43 of the Partnership Act¹⁵⁶ owed to the Deceased, and now the Estate. Until that debt is settled and repaid, the Estate is not obliged to pay half the outstanding UOB Overdraft accrued as at 19 December 2014.

210 The court notes that the Defendants put forward various figures for their claims for Misapplied Sums and Private Profits all of which have been set out earlier. For that reason, it is best to hold an inquiry to trace/recover those sums. In the light of what the second Defendant told the court¹⁵⁷ that she would have been content to let sleeping dogs lie, it is for the Defendants to decide if they wish to pursue their remedy for an inquiry.

211 Consequently, this court rules in favour of the Defendants. The Plaintiff’s claim is dismissed with costs to the Defendants to be taxed on a standard basis unless otherwise agreed. In regard to costs, the court notes that on 6 April 2002, the Defendants (but not the Plaintiff) filed a Costs Schedule.

212 The Defendants are awarded interlocutory judgment against the Plaintiff on their Counterclaim with costs also on a standard basis. An inquiry is to be held to determine and the Plaintiff must account to the Estate for, the sums withdrawn by him from the Partnership. Costs of the inquiry are reserved to the Registrar holding the inquiry.

¹⁵⁶ See [187] *infra*

¹⁵⁷ At [81]

213 In the light of the court's findings, it is unnecessary to grant the Defendants their alternative second prayer for relief under s 60 of the Trustees Act.¹⁵⁸

214 Finally, the court grants a declaration that the Plaintiff holds all and any sums determined at the inquiry as constructive trustees for the Partnership.

Lai Siu Chiu
Senior Judge

Bachoo Mohan Singh (BMS LLC) (as counsel), Narayanan Vijay
Kumar (Vijay & Co) for the Plaintiff;
Toh Jun Hian Jonathan & Wong Shi Yun (Rajah & Tann Singapore
LLP) for the Defendants.

¹⁵⁸ See [43] *infra*