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

[2024] SGHC 22

Suit No 1130 of 2020

Between

Eugene Phoa (personal representative of the estate of Evelyn Phoa, @ Lauw, Evelyn Siew Chiang, deceased, and personal representative of the estate of William Phoa, deceased)

… *Plaintiff*

And

(1) Oey Liang Ho @ Henry Kasenda (sole executor of the estate of Wirio Kasenda @ Oey Giok Tjeng, deceased)
(2) Oey Liang Gie @ Jimmy Kasenda
(3) Salman Kasenda @ Oey Liang Hien @ Oei Liang Hien
(4) Ridwan Kasenda @ Oey Liang Ley @ Oei Liang Ley
(5) Joshua Huang Thien En
(6) Wellington Phoa
(7) Angeline Teh @ Angeline Phoa
(8) John Phoa (personal representative of the estate of Benjamin Phoa, deceased)

… *Defendants*

JUDGMENT

[Probate and Administration — Personal representatives — Standing]
[Limitation of Actions — Particular causes of action — Trust property]
[Restitution — Laches]
[Evidence — Proof of evidence — Presumptions]
[Trusts — Bare trusts]

TABLE OF CONTENTS

THE PARTIES **2**

THE PHOAS 2

THE KASENDAS 5

SUPRATECHNIC 7

THE PROCEDURAL HISTORY **9**

THE PARTIES' GENERAL POSITIONS **11**

EUGENE'S CLAIMED RELIEFS 11

LOT A SHARES 12

LOT B SHARES 13

LOT C SHARES 14

SUBSEQUENT PERIOD AFTER EVELYN'S DEATH 15

SUMMARY OF PLEADED CASES 16

SUMMARY OF THE RELEVANT DOCUMENTS 18

THE RELEVANT ISSUES **22**

WHETHER EUGENE HAS STANDING TO PURSUE THE CLAIMS IN THIS SUIT **23**

THE PARTIES' POSITIONS 23

MY DECISION: EUGENE DOES NOT HAVE STANDING TO PURSUE THE CLAIMS IN THIS SUIT 26

The applicable law *26*

(1) The process for extracting a resealed grant of foreign letters of administration 26

(2) The General Division of the High Court is bound by the Court of Appeal decision in *Teo Gim Tiong* and the related line of cases 28

(3) *Teo Gim Tiong* cannot be distinguished on the basis that the present case concerns the prior grant of foreign letters of administration 32

Eugene has commenced this Suit as a personal representative of the Estates 34

This is not a defect that can be rectified after trial 36

WHETHER EUGENE'S CLAIMS ARE TIME-BARRED 38

THE PARTIES' POSITIONS 38

THE APPLICABLE PROVISIONS 41

MY DECISION: EUGENE'S CLAIMS ARE TIME-BARRED 47

Sections 22(1) and 22(2) of the LA 47

Section 24A(3) of the LA 50

Section 29(1) of the LA 55

The Canadian proceedings did not affect the time-bar 58

The only claim that is potentially not time-barred 59

WHETHER EUGENE'S CLAIMS ARE BARRED BY LACHES 60

THE PARTIES' POSITIONS 60

MY DECISION: EUGENE'S CLAIMS ARE BARRED BY LACHES 64

The applicable law 64

Eugene had unjustifiably delayed commencing this Suit 65

There is clear prejudice to the defendants 71

NOTWITHSTANDING THE PROCEDURAL ISSUES, WHETHER EUGENE'S CLAIM IN RELATION TO THE LOT B SHARES SUCCEEDS 74

THE PARTIES' POSITIONS 74

MY DECISION: EUGENE'S CLAIM TO THE LOT B SHARES FAILS BECAUSE THEY HAD BEEN SOLD TO WIRIO IN 1979 75

The Surat is authentic, and a proper record of Evelyn's sale of the Lot B shares to Wirio *76*

(1) Eugene bears the burden of rebutting the presumption that the signature on the Surat is Evelyn's and has failed to do so 77

(2) Angela's explanation does not rebut the presumption 81

(3) In any event, Eugene has not successfully rebutted the defendants' expert evidence 82

Wirio's January 1983 Letter provides contemporaneous documentation of the sale *86*

Eugene himself acknowledges the sale of the Lot B shares in his own letters *86*

It is relevant that Evelyn did not procure a letter of confirmation in respect of the Lot B shares *88*

NOTWITHSTANDING THE PROCEDURAL ISSUES, WHETHER EUGENE'S CLAIM IN RELATION TO THE LOT C SHARES SUCCEEDS 89

THE PARTIES' GENERAL POSITIONS 89

MY DECISION: EUGENE'S CLAIM TO THE LOT C SHARES FAILS BECAUSE WIRIO NEVER BREACHED ANY DUTY AS A BARE TRUSTEE 90

Evelyn's Estate is not estopped from contending that Wirio was a trustee for Evelyn *90*

(1) The parties' specific arguments 90

(2) The doctrine of contractual estoppel can be applied in limited situations in Singapore 92

(3) In any event, there is no agreed term that the Lot C shares were to be transferred to Dr Teh 95

Wirio never breached any duty as a bare trustee over the Lot C shares *95*

(1) Wirio was a bare trustee over the Lot C shares 95

(2) Wirio and Evelyn agreed that, in exchange for $1,000 a month, Evelyn's interest in Supratechnic was limited to such payments 96

No findings in relation to alleged tax evasion 100

NOTWITHSTANDING THE PROCEDURAL ISSUES, WHETHER EUGENE'S CLAIM IN CONVERSION SUCCEEDS 100

CONCLUSION 101

Phoa Eugene (personal representative of the estate of Evelyn Phoa (alias Lauw Evelyn Siew Chiang), deceased and personal representative of the estate of William Phoa, deceased)
v
Oey Liang Ho (alias Henry Kasenda) (sole executor of the estate of Wirio Kasenda (alias Oey Giok Tjeng), deceased) and others

[2024] SGHC 22

General Division of the High Court — Suit No 1130 of 2020
Goh Yihan J
30–31 May, 1 June, 6–7 June, 13–15 June, 21 August, 27, 31 October 2023

29 January 2024 Judgment reserved.

Goh Yihan J:

1 HC/S 1130/2020 (this "Suit") concerns the beneficial interests of the deceased Mdm Evelyn Phoa ("Evelyn") in the shareholding of Supratechnic Pte Ltd ("Supratechnic"). In particular, this Suit concerns the claims of the estate of Evelyn ("Evelyn's Estate") and the estate of the deceased Mr William Phoa ("William" and "William's Estate") (collectively, "the Estates") to such interests against the Kasenda family. The disputed interests centre around two lots of shares in Supratechnic that are allegedly held on trust for Evelyn. The parties have referred to these lots as "Lot B" and "Lot C" shares, respectively, and I adopt this nomenclature in this judgment. Importantly, this Suit is brought by the plaintiff, Mr Eugene Phoa ("Eugene"), in his capacity as the personal

representative of the Estates, some 40 years after he first knew that there was a potential dispute with the defendants concerning the alleged trusts.

2 After taking some time to consider the matter, I dismiss Eugene's claims in their entirety. As I will explain, Eugene's claims fail for both procedural and substantive reasons. In relation to the procedural reasons, Eugene has no standing to pursue his claims as he had failed to extract the resealed foreign letters of administration for the Estates in Singapore. Further, Eugene's claims are also time-barred or barred by laches. In relation to the substantive reasons, I find that Eugene's claim against the Lot B shares fails because there is unrebutted evidence that those shares had been sold by Evelyn to the deceased Mr Wirio Kasenda ("Wirio"), who is the father of some of the defendants. I also find that Eugene's claim against the Lot C shares fails because Evelyn agreed in 1977 to forgo her rights to the shares in consideration for monthly payments of $1,000.

The parties

The Phoas

3 I begin with a description of the parties involved in this Suit. It is apt to start with Evelyn, whose beneficial interests in shares of Supratechnic are the subject of the present dispute. Evelyn had been resident in Singapore until around September 1976, when she emigrated with some of her children to Canada. She was a very successful businesswoman. While in Singapore, she engaged in various business interests, especially in real estate. She passed away in Canada intestate on 7 November 1981.[1]

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[1] Affidavit of Evidence-in-Chief of Eugene Phoa dated 3 October 2022 ("AEIC of Eugene") at paras 8, 134 and p 1482 para 6.

4 At the time of her death, Evelyn was survived by her five children and one son-in-law, who are:[2]

(a) her son, Eugene, the plaintiff;

(b) her son, the deceased Mr Wellington Phoa ("Wellington"), the sixth defendant, who passed away on 19 March 2021;

(c) her daughter, Ms Angeline Teh (alias Angeline Phoa) ("Angeline"), the seventh defendant;

(d) her then son-in-law and Angeline's then husband, Dr Teh Yew Fui ("Dr Teh");

(e) her son, the deceased Mr Benjamin Phoa ("Benjamin"), who passed away on 12 November 2007; and

(f) her son, William, who passed away on 4 April 2005.

5 Pursuant to the Canadian laws on intestacy, each of the five children were recognised as beneficiaries of Evelyn's Estate, with each being entitled to an equal one-fifth share.[3]

6 On 4 April 2005, William passed away, and Eugene was named as the personal representative in William's Last Will and Testament.[4]

7 On 11 October 2005, the Court of Queen's Bench of Alberta (Judicial District of Edmonton) authorised Eugene, Wellington, Angeline, and Benjamin

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2 AEIC of Eugene at paras 9–14.

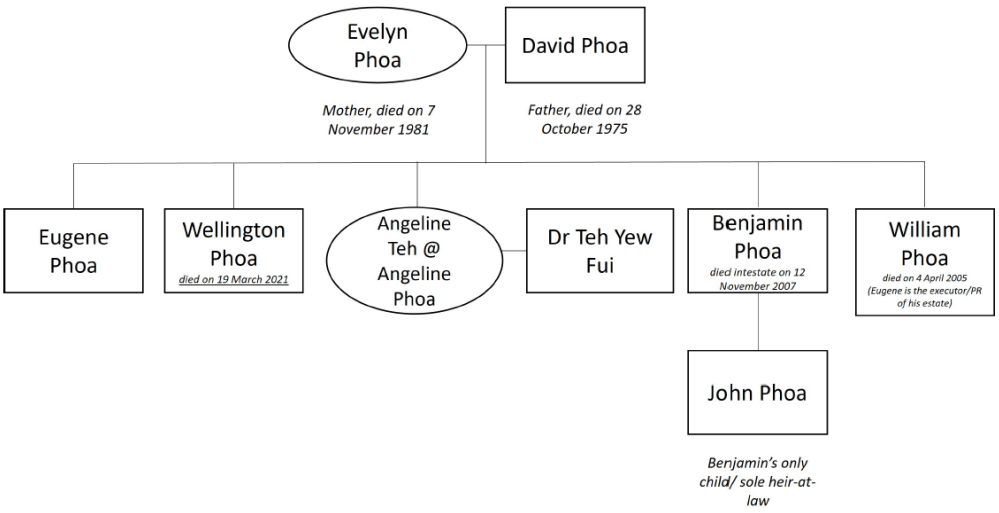
3 AEIC of Eugene at pp 1576–1578.

4 AEIC of Eugene at p 1585.

to be the personal representatives of Evelyn's Estate. William was not included because he had passed away by then.[5]

8 On 12 November 2007, Benjamin passed away intestate, leaving his only child, Mr John Phoa ("John"), the eighth defendant, as his sole heir-at-law, and also the personal representative of his estate.[6]

9 For ease of understanding, I reproduce the following graphical representation of the Phoas:[7]



10 As I mentioned earlier (see [1] above), Eugene makes the present claims in his capacity as personal representative of the Estates. In respect of Evelyn's Estate, Eugene claims to be the personal representative. In respect of William's Estate, Eugene also claims to be the personal representative, in so far as

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5 AEIC of Eugene at para 182.

6 AEIC of Eugene at p 1585.

7 Statement of Claim (Amendment No. 1) dated 9 June 2022 ("SOC A1") at Annex A.

William's Estate is a one-fifth beneficiary of Evelyn's Estate.[8] In this regard, Eugene's claims on behalf of the Estates are connected, in that should Evelyn's Estate fail to establish any beneficial interest in the shares of Supratechnic, William's Estate will accordingly not be entitled to any such interest.

11 Wellington, Angeline, and John are the sixth, seventh, and eighth defendants, respectively. In so far as they are all supportive of the claims against the substantive defendants, they are nominal defendants. However, for ease of instructing Singapore counsel and administrative expedience, Eugene has considered them "unwilling [p]laintiffs" and has included them to ensure that they are bound by the outcome of this Suit.[9]

The Kasendas

12 The Kasendas are relatives of the Phoas. They are descendants of Wirio and the deceased Mdm Onny Kasenda (alias Onny Widjaja Wirio Kasenda) ("Onny"), who was Evelyn's sister.

13 Wirio and Onny had several children. Although Eugene claims that Wirio and Onny had four biological children, the defendants claim that Wirio and Onny had six biological children.[10] The identities of the two other children have not been made known, but it is unnecessary to ascertain their identities because they are not involved in this Suit. The four identified children and their relevant family members are as follows:[11]

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8 SOC A1 at para 11.

9 SOC A1 at para 12.

10 Defence (Amendment No. 4) dated 2 December 2022 ("Defence A4") at para 11.

11 SOC A1 at para 14.

(a) their son, Mr Henry Kasenda (alias Oey Liang Ho) ("Henry"), the first defendant;

(b) their son, Mr Jimmy Kasenda (alias Oey Liang Gie) ("Jimmy"), the second defendant;

(c) their son, Mr Salman Kasenda (alias Oey Liang Hien) ("Salman"), the third defendant;

(d) their grandson and Salman's son, Mr Joshua Huang Thien En ("Joshua"), the fifth defendant;

(e) their son, Mr Ridwan Kasenda (alias Oey Liang Ley) ("Ridwan"), the fourth defendant; and

(f) their daughter-in-law and Ridwan's wife, Mdm Alin Kasenda ("Alin").

14 Alin's siblings were involved with Supratechnic as shareholders and/or directors at different points of time. Alin's brother, Mr Heng Aik Boon, was a shareholder between 1995 and 2014 (or 2015), and a director between 1 June 2004 and 15 September 2014. Alin's sister, Ms Audrey Heng, was a shareholder between 2004 and 2011 (or 2014).[12]

15 When Wirio passed away on 24 February 1996, Henry was named as the sole executrix of Wirio's estate. Onny passed away on or around 26 March 2009.[13]

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12 SOC A1 at para 15; Defence A4 at para 12.

13 SOC A1 at para 16.

Supratechnic

16 Supratechnic is a private company incorporated in Singapore on 11 April 1968. The business of Supratechnic included the manufacture, assembly, and sale of marine engines, boats and other industrial machinery and equipment products.[14]

17 At the time of its incorporation, the share capital of Supratechnic was $500,000 divided into 500 ordinary shares at $1,000 each. The original subscribers to the shares were as follows: (a) Wirio, for 100 ordinary shares ("Lot A"); (b) Tan Ping Gwan ("TPG"), for 100 ordinary shares ("Lot B"); and (c) Liem Sek Tjoan ("LST"), for 100 ordinary shares ("Lot C"). Therefore, there were 300 shares that were subscribed to in 1968, with the founding shareholders being Wirio, TPG, and LST.[15]

18 On 11 March 2016, Supratechnic was acquired by USPI Investment Pte Ltd, which is a wholly owned subsidiary of USP Group Limited ("USP Group"), for more than $14m. Supratechnic had issued a total of 6,000 shares then.[16] For convenience, I will describe this sale as being to "USP Group".

19 The change in the number of shares from 1968 to 2016 is significant because, according to Eugene, this increase of 5,700 shares led to the "unlawful dilution" of Evelyn's shareholding in Supratechnic. Eugene claims Evelyn's beneficial interest in the shareholding of Supratechnic was decreased from

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14 SOC A1 at para 3.

15 SOC A1 at paras 18–19.

16 SOC A1 at para 2.

66.66% to 3.34% as a result of these shares.[17] I will refer to this difference of 5,700 shares as the "Additional Shares".

20 The Additional Shares may be split into two categories. The first category comprises 3,000 shares, which Eugene claims were paid for from the retained earnings of Supratechnic. Eugene claims that Evelyn's Estate is entitled to this because the Kasendas agreed as such in 2004. The second category comprises 2,700 shares, which Eugene claims the Kasendas paid for using the profits of Supratechnic by improperly declaring them as directors' remuneration. This effectively meant that the shares were paid for by existing shareholders of Supratechnic. Eugene says this forms part of the claim for non-payment of dividends, which he refers to as "*De Facto* Dividends".[18]

21 Further, Eugene claims that between January 1981 and December 1985, Supratechnic did not recommend or record any dividends. However, Supratechnic allegedly paid directors' remuneration and fees to the Kasendas that appear grossly disproportionate to the financial performance of Supratechnic. I reproduce a table comparing the profits of Supratechnic with the directors' remuneration and fees during this period:[19]

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17 SOC A1 at paras 32 and 41A.

18 Plaintiff's Closing Submissions dated 26 July 2023 ("PCS") at paras 4–6.

19 SOC A1 at para 41H.

Financial Year	Profit After Tax	Retained Profit	Directors in Office	Total Funds Paid to Directors[5]	Funds Paid to Directors with inflation adjustment to 2021 equivalent[6] (Inflation %)
1980	S$63,445	S$24,291	Wirio Kasenda Jimmy Kasenda Onny Kasenda	S$162,400	S$329,590.80 (102.95%)
1981	S$35,229	S$59,520	Wirio Kasenda Jimmy Kasenda Onny Kasenda	S$219,000	S$410,822.10 (87.59%)
1982	S$140,131	S$202,151	Wirio Kasenda Jimmy Kasenda Onny Kasenda	S$316,500	S$571,345.80 (80.52%)
1983	S$32,608	S$244,560	Wirio Kasenda Jimmy Kasenda Onny Kasenda	S$280,000	S$500,248.00 (78.66%)
1984	S$36,483	S$300,875	Wirio Kasenda Jimmy Kasenda Ridwan Kasenda(D4)	S$356,000	S$619,902.80 (74.13%)
1985	S$17,905	S$302,992	Wirio Kasenda Jimmy Kasenda Ridwan Kasenda(D4)	S$445,316	S$771,643.56 (73.28%)

The procedural history

22 Because Eugene has brought this Suit in his capacity as the personal representative of the Estates, and because Evelyn passed away intestate in Canada, it is relevant to set out the events relevant to the Canadian letters of administration.

23 As I mentioned earlier (see [7] above), on 11 October 2005, the beneficiaries to Evelyn's Estate, which included Eugene, obtained the Canadian letters of administration. On 21 July 2006, they filed P 126/2006 ("P 129") with the Family Justice Courts (the "FJC"), to reseal the Canadian letters of administration in Singapore.[20] On 21 August 2006, the FJC granted an order-in-

[20] AEIC of Eugene at para 183.

terms for P 129, but the resealed grant of the Canadian letters of administration were not extracted. The extraction remained pending because Singapore still imposed estate duty tax for deaths in 1981. Thus, as Eugene himself explains, in order to extract the "Singapore probate papers", the Commissioner for Estate Duty (the "CED") of the Inland Revenue Authority of Singapore must either provide a certification of payment or a certificate of postponement (the "Certificate of Postponement") of the tax concerned.[21]

24 On 5 December 2006, because Eugene was unable to ascertain the value of Evelyn's Estate pending the resolution of a share dispute with the defendants, he wrote to the CED to request a postponement of estate duty until the question of beneficial ownership was resolved.[22] By February 2008, despite the exchange of subsequent correspondence with the CED, the CED had not decided on the postponement that Eugene requested.[23]

25 On 20 November 2020, Eugene commenced this Suit. However, by this time, he had yet to extract the resealed grant of the Canadian letters of administration. On 30 March 2022, the FJC informed Eugene's present solicitors that they refused Eugene's request for leave to extract the resealed grant of the Canadian letters of administration for Evelyn's Estate.[24]

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21 AEIC of Eugene at para 184.

22 AEIC of Eugene at para 185.

23 AEIC of Eugene at para 186.

24 Defendants' Supplementary Bundle of Documents dated 26 July 2023 ("DSBOD") at Tab 16.

26 On 18 August 2023, the CED issued the Certificate of Postponement. On 25 September 2023, the FJC allowed the extraction of the resealed grant of the Canadian letters of administration.[25]

27 Having canvassed the parties' backgrounds and the procedural history, I come to the parties' general positions.

The parties' general positions

Eugene's claimed reliefs

28 In his pleaded case, Eugene seeks the following reliefs in this Suit:[26]

(a) A declaration that prior to Evelyn's death in 1981, she held a 66.66% beneficial interest in the total shareholding of Supratechnic;

(b) a declaration that Wirio (and/or Henry as his executor), and Jimmy were express trustees for Evelyn's 66.66% beneficial interest in Supratechnic, and that all other defendants who became registered shareholders over time in respect of Evelyn's 66.66% beneficial interest were constructive trustees for such interest;

(c) as against the first to fifth defendants, an account, and payment to Eugene, of all benefits received by them in respect of the Lot B and Lot C shares, including but not limited to all dividends declared by Supratechnic over the years, as well as any and all profits derived therefrom;

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25 16th Affidavit of Eugene Phoa dated 28 September 2023 at Tabs 1 and 12–14.

26 SOC A1 at para 60.

(d) as against the first to fifth defendants, an account, and payment to Eugene, of 66.66% of all benefits received in respect of the Additional Shares issued over the years, including but not limited to all dividends declared by Supratechnic over the years, as well as any and all profits derived therefrom;

(e) disgorgement by the relevant defendants of the sale proceeds to USP Group (representing 66.66% of the total sale proceeds), or such other percentage of the sale proceeds as the court thinks fit, as well as any and all profits derived therefrom;

(f) alternatively, equitable compensation for breach of trust; and

(g) alternatively, damages for wrong conversion upon the sale of shares to USP Group.

29 In support of the reliefs that he seeks, Eugene outlines the following narrative, which the defendants largely deny. Eugene's case is primarily predicated on there being a trust over the Lot B and Lot C shares. Accordingly, should he fail to prove that such a trust exists, there is no need to discuss the breaches of trust which he alleges.

30 It will be convenient to divide the discussion below along the three lots of shares and incorporate the parties' general positions within.

Lot A shares

31 According to Eugene, the Lot A shares were issued in the name of Wirio as the legal and beneficial owner. Subsequently, at a date following Supratechnic's incorporation but before Evelyn departed Singapore for Canada, Wirio borrowed $100,000 from Evelyn. This loan was agreed upon on the basis

that the Lot A shares were to stand as security for repayment of that loan. Therefore, Evelyn had a beneficial interest over the Lot A shares. However, Wirio later repaid the loan and thus Evelyn's beneficial interest in the Lot A shares was relinquished and reverted to Wirio.[27] As such, Eugene does not make a claim in respect of the Lot A shares in this Suit. The defendants therefore do not take a position in respect of the Lot A Shares.

Lot B shares

32 As for the Lot B shares, Eugene's account is that these were first issued in the name of TPG as the legal and beneficial owner. In or around 1969 to 1970, TPG transferred his 100 shares to Mr Widjaja Hariman (alias Oei Hong Giam) ("Widjaja"). Subsequently, in or around 1974 to 1975, Widjaja sold these shares to Evelyn, with the intended arrangement being that Evelyn hold the shares on trust for Wirio. However, because of a rule that prohibited companies from having only one shareholder (*ie*, Wirio), the shares were registered in the name of Jimmy, who held them on trust for Evelyn. As a result, when Evelyn passed away in 1981, Jimmy held the Lot B shares on trust for the benefit of Evelyn's Estate.[28]

33 The defendants deny Eugene's account in relation to the Lot B shares. According to them, Evelyn sold these shares to Wirio sometime in or around 1979. This is confirmed by a "Surat Keterangan" (the "Surat"), which Evelyn allegedly signed in Kuala Lumpur, Malaysia, on or around 14 February 1981. Pursuant to the Surat, Evelyn supposedly declared that she sold 100 shares in Supratechnic to Wirio for the sum of $125,000 in three instalments of $30,000

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27 SOC A1 at paras 20–22.

28 SOC A1 at paras 23–26A; PCS at paras 80–82.

and a final payment of $35,000. In addition to the Surat, the defendants point to other contemporaneous evidence that record the sale. These include: (a) Wirio's letter dated 31 January 1983 ("Wirio's January 1983 Letter"); and (b) Eugene's letter dated 14 October 2003 ("Eugene's October 2003 Letter"), where he stated that Evelyn had told him that she was prepared to sell the Lot B shares to Wirio for $100,000.[29]

Lot C shares

34 As for the Lot C shares, Eugene's account is that they were originally issued in the name of LST as the legal and beneficial owner. In or around 1971 to 1972, LST sold the Lot C shares to Evelyn. Evelyn then arranged for the Lot C shares to be registered in Wirio's name to be held on trust for her, and it was Evelyn's intention for those shares to be, at a later time, held on trust by Wirio for Dr Teh. Dr Teh would then, under the latter arrangement, hold the beneficial interest of the Lot C shares on trust for Evelyn. Wirio's holding of the Lot C shares on trust for Evelyn was recorded in a Letter of Confirmation signed by Wirio on or around 15 February 1981 (the "February 1981 LOC").[30]

35 As such, when Evelyn died in 1981, Wirio held the Lot C shares on trust for the ultimate benefit of Evelyn's Estate. Subsequently, again by Eugene's account, any and all interests over the Lot C shares held by Dr Teh reverted directly to Evelyn's Estate by way of a document entitled "Assignment of Trust Interest" that Dr Teh and Evelyn's children executed on 18 April 2004.[31]

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29 Defence A4 at paras 15–17; AEIC of Eugene at EP-9 Tabs 199 and 216.

30 SOC A1 at paras 27–30.

31 SOC A1 at paras 31–31A.

36 The defendants do not dispute the February 1981 LOC. However, they say that Dr Teh had abandoned his alleged interest in the Lot C shares as he had attested to being unaware of such interest. In any event, the defendants argue that the purported assignment by Dr Teh to Evelyn's children pursuant to the "Assignment of Trust Interest" was not valid to assign any interest because such interest was non-assignable, being contracts of a personal nature. Indeed, by the defendants' account, the facts show that the parties did not contemplate that Wirio would hold the shares for anyone other than Dr Teh, as is clear from Wirio's January 1983 Letter.[32]

37 Further, the defendants say that given that Wirio's 1983 January Letter shows an agreement with Evelyn to transfer the trusteeship over the Lot C shares to Dr Teh, and it was Evelyn who failed to procure the transfer of those shares to Dr Teh, Evelyn's Estate cannot now insist that, despite such an agreement, Wirio continued to hold the Lot C shares on trust for Evelyn. This is wholly within the doctrine of contractual estoppel, or the principle that Evelyn's Estate cannot take advantage of Evelyn's own failure to procure the transfer of shares to Dr Teh.[33]

Subsequent period after Evelyn's death

38 The above account, in so far as it relates to Wirio's direct dealing with Evelyn, would capture only Wirio's alleged breaches of trust, if at all. In order to establish claims against the other defendants, Eugene argues that an institutional constructive trust should be imposed on each of the defendants who were in receipt of the Lot B and Lot C shares.[34]

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32 Defendants' Closing Submissions dated 26 July 2023 ("DCS") at paras 51–55.

33 Defence A4 at paras 20–20A.

34 SOC A1 at paras 48–49; PCS at para 241.

39 As against this, the defendants argue that even if they had received those shares, none of them could be said to have received them with such knowledge of Evelyn's alleged interest as to render their retention unconscionable. Ultimately, the defendants say that their actions from 2003 onwards must be considered against Eugene's inaction and tardiness in pursuing Evelyn's alleged interest in Supratechnic. It was reasonable for them to assume that the Phoas had decided not to proceed with any legal action, and there can be no basis to find that the defendants had acted improperly or dishonestly in relation to the alleged trust property.[35]

Summary of pleaded cases

40 In summary, Eugene's pleaded case in this Suit is as follows:

(a) The Lot B shares were held by Jimmy (from 1981 to 2009), Salman (from 2009 to 2016), or USP Group (from 2016 onwards) on trust for Evelyn's Estate.[36]

(b) The Lot C shares were held by Wirio, and later several members of the Kasenda family, on trust for Evelyn's Estate.[37]

(c) As trustees of the original Lot B and Lot C shares, Wirio and Jimmy each owed Evelyn duties as trustees. When Evelyn's shareholding in Supratechnic was diluted by the unlawful issuance of the Additional Shares, Wirio and Jimmy committed "fraudulent breaches of trust".[38]

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35 Defence A1 at paras 31 and 32; DCS at paras 153–156.

36 SOC A1 at paras 23–26A.

37 SOC A1 at paras 27–31.

38 SOC A1 at paras 36, 40, and 46.

(d) The defendants, who issued or received the Additional Shares, are constructive trustees of the Additional Shares. They acted dishonestly in so far as they were aware or recklessly indifferent to the issuance of the Additional Shares.[39]

(e) Upon the sale of all Supratechnic shares to USP Group, Evelyn's Estate is entitled to 66.66% of the sale proceeds. Wirio and Jimmy (as trustees of the original Lot B and Lot C shares) and the defendants generally (as constructive trustees of the Additional Shares) committed breaches of trust and fiduciary duties by, among others, selling the shares to USP Group, converting 66.66% of the sale proceeds, and depriving Evelyn's Estate of the use and possession thereof.[40]

41 On the other hand, the defendants' pleaded case is as follows:

(a) For the Lot B shares, by 15 February 1981, Evelyn had no legal or beneficial interest in them.[41]

(b) For the Lot C shares, the alleged trust arrangement between Dr Teh and Evelyn is void. In any event, from 1972 until Wirio's passing in 1996, Wirio held the Lot C shares on trust for Evelyn or Evelyn's Estate, pursuant to an alleged agreement between Wirio and Evelyn in 1977.[42]

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39 SOC A1 at paras 47–49.

40 SOC A1 at para 56.

41 Defence A4 at para 17.

42 Defence A4 at paras 19–27.

(c) When deciding to issue the Additional Shares, the members and directors of Supratechnic acted honestly and based on what they considered to be the interests of Supratechnic.[43]

(d) The claims against the defendants in respect of acts committed latest by 1993 are time-barred. Further, the claims against the defendants (save for Wirio and Jimmy) as constructive trustees are also time-barred.[44]

(e) The alternative claim for conversion is time-barred.[45]

Summary of the relevant documents

42 Apart from their pleadings, there are many documents that parties refer to in this Suit. I caveat that my listing of these documents at this point is not a finding on the merits as to their authenticity, which the parties dispute and which I will make a finding on later. This summary is merely for the ease of reference. The relevant documents, in chronological order, are as follows:

(a) An alleged agreement between Wirio and Evelyn in January 1977, where Wirio would pay $1,000 to Evelyn and/or her family each month. In exchange, Evelyn would forgo: (i) any updates in relation to the affairs of Supratechnic, including changes in the authorised share capital; (ii) any right to participate in the management or decision making process in Supratechnic; and (iii) entitlement to the profits and/or dividends that may be declared in respect of Supratechnic and any rights that may otherwise accrued to a registered shareholder of

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43 Defence A4 at para 38.

44 Defence A4 at paras 39A and 42A.

45 Defence A4 at para 47A.

Supratechnic, such as any right of pre-emption pursuant to the articles of association of Supratechnic.[46] The parties have referred to this as the "1977 Agreement".

(b) The Surat dated 14 February 1981, where Evelyn allegedly declared that she sold 100 shares in Supratechnic to Wirio for the sum of $125,000.[47] Eugene disputes the authenticity of the signature on the Surat, contending first that it was not signed by Evelyn because the signature did not match hers, but later admitting that he "cannot rule out the possibility that [Evelyn] did sign it".[48]

(c) The Letter of Confirmation dated on or around 15 February 1981, which Wirio signed and stated that he held 100 shares in Supratehnic on trust for Dr Teh. This was also signed by Angela as a witness.[49] I have referred to this as the "February 1981 LOC" (see [34] above).

(d) An alleged agreement in 1981, where Wirio agreed with Evelyn to transfer the trusteeship over the Lot C shares to Dr Teh. According to the defendants, this agreement is evinced by: (i) Wirio's January 1983 Letter; and (ii) the February 1981 LOC.[50] I will refer to this as the "Agreement to Transfer Trusteeship".

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46 Defence A4 at para 23.

47 Defendants' Bundle of Documents dated 16 May 2023 ("DBOD") at p 2.

48 AEIC of Eugene at paras 96–97; Certified Transcript 30 May 2023 p 159 at lines 14–16.

49 Agreed Bundle of Documents Vol 1 dated 16 May 2023 ("1AB") at p 45.

50 DCS at paras 12–13 and 192.

(e) A letter dated 13 January 1983 sent by Eugene to Wirio and Onny, where Eugene asked about their "understanding … of the agreement which [they] reached with [Evelyn] with regard to Supratechnic, particularly how much of it has been sold to [them] or to other people".[51] I will refer to this as "Eugene's January 1983 Letter".

(f) A letter dated 31 January 1983 sent by Wirio to Eugene, where Wirio stated, among others, that there had been agreements with Evelyn: (i) for Wirio to buy Jimmy's shares in Supratechnic for $125,000 in 1979 (*ie*, the Lot B shares); (ii) for Dr Teh to be the owner of the Lot C shares; and (iii) for Wirio to pay $1,000 to the Phoas each month.[52] I have referred to this as "Wirio's January 1983 Letter" (see [33] above).

(g) A letter dated 14 October 2003 sent by Eugene to Wirio and his family, where Eugene stated that Evelyn had told him that she was prepared to sell the Lot B shares to Wirio for $100,000.[53] I have referred to this as "Eugene's October 2003 Letter" (see [33] above).

(h) A letter dated 22 November 2003 sent by Ridwan to Eugene, where Ridwan stated that Wirio "purchased the first 100 shares from [Evelyn] (out of [Evelyn]'s 200 … shares) in 1979 for S$125,000".[54]

(i) A document entitled "Assignment of Trust Interest" executed by Dr Teh and Evelyn's five children on 18 April 2004, which stated that: (i) Dr Teh had held 100 shares in Supratechnic previously owned by

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51 1AB at pp 50–51.

52 1AB at p 52.

53 Defence A4 at paras 15–17; AEIC of Eugene at EP-9 Tabs 199 and 216; 1AB at pp 95–98.

54 DSBOD at Tab 61.

Wirio on trust for Evelyn; and (ii) these shares would be assigned to Evelyn's five children.[55]

(j) A letter dated 3 December 2004 sent by Eugene's former solicitors to, among others, the defendants, alleging that Wirio and Jimmy have committed breaches of trust.[56]

(k) Two letters dated 8 August 2005 and 28 September 2005 sent by the defendants' former solicitors, both of which denied Evelyn's alleged interest in Supratechnic.[57]

(l) An email dated 13 August 2011 sent by Ridwan to Wellington, where Ridwan stated that "[d]uring your last visit to Singapore, we showed you a document showing the sale of '100 Nos of shares' by [Evelyn] to [Wirio]".[58] The defendants claim this recorded the fact that Wellington was shown the Surat when he met Ridwan and Salman in 2006 or 2007.[59]

43 The parties make several references to the time between 2003 and 2011, as the parties were engaged in negotiations regarding the ownership of the Lot B and Lot C shares during this period.[60]

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55 1AB at pp 101–102.

56 1AB at pp 110–113.

57 1AB at pp 133 and 135.

58 1AB at p 148.

59 DCS at para 141.

60 PCS at paras 89 and 114; DCS at para 98.

The relevant issues

44 In addition to the substantive points raised as part of the parties' general positions, the defendants also raise several procedural arguments against Eugene's claims. In sum, taking these arguments on board with the substantive points, the relevant issues for my determination are as follows:

(a) whether Eugene has standing to pursue the claims in this Suit;

(b) whether Eugene's claims are time-barred;

(c) whether Eugene's claims are barred by laches;

(d) whether Eugene's claim in relation to the Lot B shares succeeds;

(e) whether Eugene's claim in relation to the Lot C shares succeeds; and

(f) whether Eugene's claim in conversion succeeds.

45 As will be clear, issues (a) to (c) are procedural in nature, whereas issues (d) to (f) are substantive. However, given the nature of the procedural issues, the defendants need only to succeed in any one of them for Eugene's claims in this Suit to be dismissed in their entirety. In the end, even though (as will be seen below) I decided in favour of the defendants in respect of the procedural issues, I will still deal with the substantive issues, in so far as it is necessary to dispose of the present case, given that the parties went through a full trial.

46 I begin my discussion with the procedural issues.

Whether Eugene has standing to pursue the claims in this Suit

The parties' positions

47 The defendants' position is that Eugene's claims should fail because he did not extract the resealed grant of foreign letters of administration for either of the Estates in Singapore. The defendants rely on the Court of Appeal decision of *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 ("*Teo Gim Tiong*") for the legal principle that an administrator may sue only in an estate's capacity after the extraction of the sealed grant of letters of administration. The defendants further rely on the High Court decision of *Re Ong Soon Chuan* [1999] 2 SLR(R) 380 ("*Re Ong Soon Chuan*"), as well as the Malaysian decision of *Issar Singh, Son of Bhola Singh and another v Samund Singh, Son of Mayiah* [1941] MLJ 28 ("*Issar Singh*") and say that the above-mentioned principle also applies to foreign letters of administration. This means that, until and unless the foreign letters of administration are resealed and extracted in Singapore, the personal representative has no standing to sue in Singapore on behalf of the estate.[61]

48 With the above legal principles in mind, the defendants submit that Eugene himself knew that until the foreign letters of administration were resealed and extracted in Singapore, he could not pursue the claims of the Estates. As it turned out, Eugene had sought the permission of the FJC to extract the resealed grant of foreign letters of administration for Evelyn's Estate on 14 March 2022, more than a year after commencing this Suit on 20 November 2020. However, the FJC refused his request because he had not paid estate duty on Evelyn's Estate or obtained a Certificate of Postponement from the CED. As

61 DCS at paras 38–39.

such, Eugene has no standing to bring this action in his capacities as the personal representative of the Estates. Further, relying on *Re Ong Soon Chuan*, the defendants argue that Eugene's failure to extract the letters of administration in Singapore before commencing action is not a mere procedural irregularity that can be cured by the court or a belated extraction.[62]

49 In response, Eugene clarifies that the beneficiaries to Evelyn's Estate, which include Eugene, obtained a letter of administration in Canada on 11 October 2005, with each of them named as an authorised administrator "of all rights of action of [Evelyn's] property". In 2006, the authorised administrators engaged solicitors to reseal the grant in Singapore. The application to do so was filed on 21 July 2006. On 21 August 2006, the FJC made an order in terms of the resealing, but the extraction remained pending clearance from the CED, because such duty was payable for a death in 1981. However, because Eugene was unable to ascertain the value of Evelyn's Estate pending the resolution of the share dispute with the defendants, he wrote to the CED on 5 December 2006 to request a postponement of estate duty until the question of beneficial ownership was resolved.[63] I observe that while Eugene raises several other facts, it remains that the CED never issued the Certificate of Postponement even when he commenced this Suit on 20 November 2020. The FJC therefore did not allow the resealed letters of administration to be extracted. Eugene was aware of this situation, but attributes this to an impasse between the CED and the FJC, which he had no means to resolve. Further, Eugene points out that, as of 20 November 2020, he had rights *qua* beneficiary of the Estates. He was also authorised to be a personal representative of the Estates based on the sealed Canadian letters of administration on

62 DCS at paras 40 and 42–43.

63 Plaintiff's Reply Submissions dated 21 August 2023 ("PRS") at paras 5–8.

11 October 2005, but had not been able to extract the resealed grant of the Canadian letters of administration in Singapore as it was pending clearance from the CED.[64]

50 With this background in mind, Eugene argues that as a starting point, the Singapore courts do not routinely require anterior verification processes before a plaintiff may commence a suit in a representative capacity. In particular, Eugene acknowledges that if a person dies intestate in Singapore, their estate vests in the Public Trustee and transfers only to the administrator upon the grant of the letters of administration. However, Eugene contends that there is nothing in the Probate and Administration Act 1934 (2020 Rev Ed) (the "PAA") that extends this position "extra-territorially". Thus, Eugene says that he has provided conclusive evidence on his representative capacity through the Canadian grant and is a properly authorised personal representative of the Estates. In the alternative, Eugene argues that if the court finds that he ought to have extracted the foreign letters of administration, then it should adjourn the proceedings for a reasonable time for him to do so in Singapore.[65] In doing so, Eugene urges me to depart from a line of cases beginning from the English Court of Appeal decision of *Ingall v Moran* [1944] 1 KB 160 ("*Ingall*"), in which the English courts denied the plaintiffs' claims because they did not obtain the appropriate letters of administration in the jurisdiction where the claims were brought.[66]

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64 PRS at paras 9–15.

65 PRS at paras 16–19.

66 PRS at paras 20–27.

My decision: Eugene does not have standing to pursue the claims in this Suit

51 In my judgment, Eugene does not have standing to pursue the claims in this Suit as the personal representative of the Estates. This is because he has knowingly failed to extract the resealed grant of foreign letters of administration for either of the Estates in Singapore. It is not open to Eugene to rely on the letters of administration he obtained in Canada on 11 October 2005, for the simple reason that foreign letters of administration are not the same as a Singapore one.

The applicable law

(1) The process for extracting a resealed grant of foreign letters of administration

52 In *Phoa Eugene (personal representative of the estate of Evelyn Phoa (alias Lauw Evelyn Siew Chiang), deceased and personal representative of the estate of William Phoa, deceased) v Oey Liang Ho (alias Henry Kasenda) (sole executor of the estate of Wirio Kasenda (alias Oey Giok Tjeng), deceased) and others* [2024] SGHC 16 ("*Eugene Phoa (Summons)*"), I explained (at [27]–[29]) the process for extracting a resealed grant of foreign letters of administration. It is helpful to set it out once again to provide the backdrop against which to understand the applicable law:

> 27 … The process for the extraction of sealed grant of letters of administration has been helpfully summarised by the learned Assistant Registrar Wong Hee Jinn ("AR Wong") in *Chye Hwa Luan and others v Do, Allyn T* [2023] SGHCR 10 ("*Chye Hwa Luan*"), as follows:
>
> > (a) To begin with, a person who dies with a valid will dies testate, while a person who dies without a valid will dies intestate. The term "personal representative" comprises both an executor (or executrix) – who executes the deceased's will – and an administrator (or

administratrix), who administrators the deceased's estate (see *Chye Hwa Luan* at [34]).

(b) In the context of an intestate death, a grant of letters of administration must first be obtained. The procedural steps that must be taken can be located in the Probate and Administration Act 1934 (2020 Rev Ed) (the "PAA"), the Family Justice Rules 2014, and the Family Justice Court Practice Directions dated 1 January 2015. In particular, an application for a grant of letters of administration must be made by an originating summons filed without notice supported by an affidavit exhibiting a statement in Form 51. The applicant must, within 14 days of filing the application, file an affidavit verifying the information in the Statement, exhibiting the Statement, the Schedule of Assets and all other supporting papers as the Registrar may require. The grant of letters of administration, which bears the court's seal, may be extracted after estate duty formalities have been completed (see *Chye Hwa Luan* at [34]–[35]).

(c) An administrator's authority to act on behalf of the deceased's estate is derived from the grant of letters of administration. Until the grant of the letters of administration, the deceased's real and personal estate vests in the Public Trustee, pursuant to s 37 of the PAA. There is a distinction between: (i) the grant of the application for letters of administration; and (ii) the extraction of the sealed grant of the letters of administration. It is upon the former that the property of the intestate is vested in the administrator, but only upon the latter that authority is conferred upon the administrator to administer the deceased's estate (see *Chye Hwa Luan* at [36]–[40], and the authorities cited therein, such as the High Court decision of *Singapore Gems Co v Personal representatives of the estate of Akber Ali Mohamed Bukardeem, deceased* [1992] 1 SLR(R) 362, where Chao Hick Tin J (as he then was) observed (at [19]) that "an administrator has not clothed himself with that status until he has *extracted* the grant" [emphasis added]).

28 In contrast, the extraction of resealed grant of *foreign* letters of administration differs because of the foreign origin of such letters. As provided for in s 47 of the PAA, where letters of administration are granted and sealed by a foreign court, they may be subsequently sealed by the FJC in Singapore (see s 47(1)). This process gives the letters of administration force and effect as if granted by the General Division of the High

> Court in Singapore (see s 47(2)). The nomenclature of "reseal" is used because the foreign letters of administration would have been sealed once by the foreign court, before they are resealed by the Singapore court. Further, foreign letters of administration will not *automatically* be resealed by the Singapore court, as the court will have to determine whether the deceased person was, at the time of their death, domiciled within the jurisdiction of the court from which the grant was issued. If the deceased person was not, at the time of their death, domiciled as such, the seal shall not be affixed unless the grant is such as the General Division of the High Court would have made (see ss 47(3)–47(4)). It remains, however, that until the resealed grant of foreign letters of administration are extracted, the administrator has no authority to administer the deceased's estate.
>
> 29 Therefore, in respect of all letters of administration, the process for an administrator to be clothed with authority to administer the deceased's estate requires: (a) the court to grant and *seal* the letters of administration; and (b) the administrator to *extract* the sealed grant of letter of administration, or the resealed grant of foreign letters of administration.
>
> [emphasis in original]

(2) The General Division of the High Court is bound by the Court of Appeal decision in *Teo Gim Tiong* and the related line of cases

53 I turn then to the Court of Appeal decision in *Teo Gim Tiong*, which I am bound by. In that case, Chao Hick Tin JA held that the respondent was not properly authorised to act for the estate concerned because she had not been granted letters of administration. In that case, the deceased had died intestate. The relevant statutory provisions were s 37(1) of the Probate and Administration Act (Cap 251, 2000 Rev Ed), which provided that where a person dies intestate, his real and personal estate vests in the Public Trustee, and s 37(4), which provided that the vesting ceases upon the grant of letters of administration in respect of the estate. Thus, upon the deceased's death, Chao JA held that only the Public Trustee could act for the estate in any matter until there was a grant of letters of administration. The learned judge observed (at [21]), citing the Court of Appeal decision of *Chay Chong Hwa and others v*

Seah Mary [1983–1984] SLR(R) 505 (at [8]), that "it is only when the grant is extracted that the person to whom the grant is made is finally clothed with the authority to deal with the estate". As such, Chao JA decided (at [22]) that because it was necessary to first obtain letters of administration before commencing a claim, the respondent's failure to do so meant that the claim was of no effect and a nullity, because the respondent had purported to act in a capacity that she did not in fact possess.

54 Importantly for present purposes, Chao JA regarded this principle as "well established" and cited *Ingall* in support (at [23]–[25]), which is a decision that Eugene has invited me to depart from. In *Ingall*, the plaintiff's son was killed in an accident due to the defendant's negligence. The plaintiff then issued a writ in the capacity of administrator of his son's estate under s 1 of the Law Reform (Miscellaneous Provisions) Act 1934 (c 41) (UK). Importantly, a claim on such a basis could be brought only by the person who was lawfully authorised to act for the estate. However, at the time when the writ was issued, the plaintiff had not yet obtained letters of administration. When the plaintiff was later granted letters of administration, he argued that he should be permitted, by the doctrine of "relation back", to cure the incapacity under which he brought the initial claim. The English Court of Appeal rejected this argument on the basis that an administrator is not entitled to sue until letters of administration are granted, since "until such grant there is no certainty that there is an intestacy, nor that if there is an intestacy any particular person will be administrator" (at 168). As such, when Chao JA cited *Ingall* in *Teo Gim Tiong*, it is clear that he had approved of the reasoning within and considered that it supported the binding principle advanced in *Teo Gim Tiong* itself.

55 Eugene submits that the "substantial injustice" caused by *Ingall* has been cured in the UK by virtue of an amendment to the English Rules of Court to

allow an amendment of capacity under the doctrine of "relation back", though the same doctrine has not been introduced in Singapore.[67] In my view, this does not assist his case, for two reasons. First, because of the Court of Appeal's approval of *Ingall* in *Teo Gim Tiong*, I am bound to follow it. Second, if the doctrine of "relation back" has not been adopted in Singapore, it would not be right for me to depart from *Ingall* for the very reason that "injustice" is caused by the lack of recognition of this doctrine in *Ingall*. On balance, adopting *Ingall* is not only consistent with *Teo Gim Tiong*, but also consistent with the fact that the doctrine of "relation back" does not apply in Singapore.

56 Further, Chao JA in *Teo Gim Tiong* also referred to the English Court of Appeal decision of *Finnegan v Cementation Co Ltd* [1953] 1 QB 688 ("*Finnegan*"), which Eugene again asks me to hold was wrongly decided.[68] I am unable to do that. In *Finnegan*, a workman died in an accident during his employment. His widow sued for damages under the Fatal Accidents Act 1846 (c 93) (UK) and the Fatal Accidents Act 1864 (UK). The widow was granted letters of administration in Ireland but not in England, where the claim had been brought. The widow had brought her claim as "administratrix of the estate of [the workman], deceased". Jenkins LJ held that the claim, in so far as it was brought in England and *qua* administratrix of the workman's estate, was a nullity. The learned judge further disagreed with the widow's argument that the claim could still be saved because she also brought the claim in her personal capacity. This is because the title-in-action and indorsement on the writ stated that the widow's claim is in her capacity as an administratrix without any mention that she was claiming in her personal capacity. Thus, in a passage that

67 PRS at para 25.

68 PRS at para 26.

Chao JA cited with apparent approval in *Teo Gim Tiong* (at [27]), Jenkins LJ said this (at 700–701):

> … an action commenced by a plaintiff in a representative capacity which the plaintiff does not in fact possess is a nullity, and, further, that it makes no difference that the claim made in such an action is a claim under the Fatal Accidents Acts which the plaintiff could have supported in a personal capacity as being one of the dependants to whom the benefit of the Acts extends. It follows in the present case that if the action was brought by this plaintiff in the representative capacity of administratrix of the estate of her deceased husband, and if she did not in fact possess that capacity, then her writ was a mere nullity and her claim must fail, because she omitted to pursue it in properly constituted proceedings within the prescribed period; and the period having run, the court will not take any step to validate proceedings which were ab initio defective.

57 Summing up the legal principles from these cases, Chao JA in *Teo Gim Tiong* held (at [30]) that these "were all cases in which the deceased had passed away before the action was instituted and the question was whether a plaintiff who had not yet obtained grant of administration could *commence* an action in the capacity of an administrator" [emphasis in original]. It is clear that the learned judge approved of this principle because he then relied on it to advance the relevant principle in *Teo Gim Tiong*, that this should also "apply to the situation where a person purported to *continue* an action on behalf of the plaintiff's estate where the plaintiff passed away intestate before the action was concluded" (at [30]) [emphasis in original].

58 Chao JA further explained (at [32]) that this principle was grounded in public interest, and it should not matter if "there is no obvious dispute over who is entitled to be the personal representative of an estate", as was the case in, among others, *Ingall* and *Finnegan*. In sum, the learned judge held that (at [32]):

> … In principle, unless and until letters of administration are granted it must be uncertain as to who may legitimately act for the estate; it would be question-begging to hold otherwise. As

> was astutely observed in the passage from *Ingall* cited above at [24], until such grant there is no certainty that the case is even one of intestacy, nor that, if it is a case of intestacy, any particular person is the administrator. Thus the obtaining of proper letters of administration is not a mere formality or technicality but a rule conveying substantive rights and as such should not be easily overridden.

59 The upshot of the above discussion is that, first, I decline Eugene's invitation to depart from *Ingall* and the line of cases following it, including *Finnegan*. In my view, it is clear that the Court of Appeal approved of these cases and transposed them into its reasoning in *Teo Gim Tiong*. I am therefore bound by these English cases through the authority of *Teo Gim Tiong*. Second, barring any further argument, the legal principle that an administrator can sue only in such a capacity upon the grant of letters of administration applies squarely in the present case. However, on this second point, Eugene argues that I should distinguish these cases because none of them concerned the prior grant of foreign letters of administration. In my view, I do not think this is a valid distinction for the following reasons.

(3) *Teo Gim Tiong* cannot be distinguished on the basis that the present case concerns the prior grant of foreign letters of administration

60 First, *Finnegan* concerned the grant of foreign letters of administration. In that case, the widow was granted letters of administration in Ireland but not in England, where the claim was brought. Given that Ireland and England are two different jurisdictions, the Irish letters of administration could not be used in England until they were resealed and extracted in England. Similarly, in *Issar Singh*, which the defendants rely on, the Malaysian court held that for letters of administration granted in the UK or any other part of the British Dominions, "an [a]dministrator acquires his rights only on the date when the [foreign] [l]etters of [a]dministration are resealed". This was cited with approval in

Re Ong Soon Chuan (at [5]). As such, I can see the sense in the position taken in *Re Ong Soon Chuan* and *Issar Singh* in this regard.

61 Second, foreign letters of administration do not have automatic legal force and effect in Singapore. In this regard, ss 47(1) and (2) of the PAA provide that foreign letters of administration must be resealed "with the seal of the Family Justice Courts" in order for it to have the "like force and effect, and have the same operation in Singapore, as if granted by the General Division of the High Court". This is not merely a formality. In so far as foreign letters of administration are akin to foreign judgments that are not automatically enforceable in Singapore, the resealing and extraction process of foreign letters of administration must be complied with. Indeed, the use of the word "may" in s 47(1) suggests that the court has a discretion to refuse to reseal a foreign grant (see the Appellate Division of the High Court decision of *WKR v WKQ and another appeal* [2023] SGHC(A) 35 at [39] and [67]). As the present facts show, there may be substantive reasons why a court may decline the resealing of foreign letters of administration, such as when there are unresolved issues as to the payable estate taxes. Further, the extraction is also important because it is only upon the extraction that authority is conferred upon a party to administer a deceased's estate (see the High Court decision of *Chye Hwa Luan and others v Do, Allyn T* [2023] SGHCR 10 ("*Chye Hwa Luan*") at [37]). Therefore, it cannot be that a court is to take foreign letters of administration at face value and to regard them as clothing a plaintiff with the capacity of a personal representative when the statutorily prescribed steps have not been taken to render them with legal force and effect in Singapore.

62 Third, as Chao JA emphasises in *Teo Gim Tiong*, the legal principle, that a personal representative can only sue in such a capacity after the letters of administration are obtained, is grounded in public policy. As such, it should not

matter even if the identity of the personal representative is undisputed. Therefore, in the present case, it does not matter that Eugene has obtained letters of administration in Canada with respect to the Estates, and that there is seemingly no dispute that he can so act in a Singapore action. This is because until and unless he has extracted the resealed grant of foreign letters of administration in Singapore, there remains some uncertainty, as Chao JA puts it in *Teo Gim Tiong* (at [32]), "that the case is even one of intestacy, nor that, if it is a case of intestacy, any particular person is the administrator" in relation to a claim in Singapore.

Eugene has commenced this Suit as a personal representative of the Estates

63 With the above legal principles in mind, I find that Eugene has commenced this Suit as a personal representative of the Estates and not in his personal capacity. I repeat the reasons I gave for reaching the same conclusion in *Eugene Phoa (Summons)* (at [56]–[63]), where I dismissed Eugene's application for the court to appoint him as a personal representative of the Estates *after* trial had ended. That application raised the very same issue as in the present case. In summary, these reasons are as follows:

(a) First, Eugene commenced this Suit as a personal presentative of the Estates, which is clear in the title-in-action (see *Eugene Phoa (Summons)* at [57]).

(b) Second, Eugene's pleaded case is that he is suing as a personal representative of the Estates (see *Eugene Phoa (Summons)* at [58]).

(c) Third, Eugene repeated his aforementioned pleaded position in all the interlocutory affidavits filed in this Suit (see *Eugene Phoa (Summons)* at [59]).

(d) Fourth, if Eugene was suing in his personal capacity, it would have made sense for him to seek an apportionment of any damages or disgorgement sought, but he did not do so (see *Eugene Phoa (Summons)* at [60]).

(e) Finally, Eugene is a Queen's Counsel who confirmed during cross-examination that he was not suing in his personal capacity (see *Eugene Phoa (Summons)* at [61]).

64 As such, the facts show that Eugene brought this Suit in his capacity as the personal representative of the Estates. Indeed, this was a position he consistently maintained in: (a) the Writ of Summons for this Suit, on 20 November 2020; (b) various affidavits, such as on 26 May 2021; (c) his Statement of Claim (Amendment No. 1), on 9 June 2022; and (d) his Closing Submissions on 26 July 2023.[69]

65 Therefore, since Eugene has not extracted the resealed grant of the foreign letters of administration in Singapore, it follows that he does not have standing to bring this Suit as the personal representative of the Estates. While Eugene may argue that this is a mere technicality, I have explained above why this is really a rule of substance grounded in public policy. Further, while Eugene complains that the defendants have known of this fact since before he commenced this Suit, it remains Eugene's burden to establish that he has the standing to commence this Suit. Indeed, a claimant's legal standing to commence an action is of paramount importance to the sustainability of the action and a failure to establish this can result in an action being struck out due to its disentitlement to the reliefs sought (see *Chye Hwa Luan* at [19]–[26]). For

[69] 22nd Affidavit of Joshua Huang Thien En dated 14 September 2023 at para 12.

instance, as the Court of Appeal observed in *Hin Leong Trading (Pte) Ltd (in liquidation) v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 253 (at [15]), striking out is warranted when there is an absence of legal standing, such that proceedings ought not, and indeed could not validly, have been brought at all.

66 Therefore, in the present case, Eugene cannot say that the defendants kept this point until the end of trial. The defendants are not mounting a fresh defence, for which they bear the burden of proving. Instead, Eugene knowingly commenced this Suit despite not extracting the resealed letters of administration. Indeed, there seems to be evidence that he knew this could be an issue. Thus, it does not lie in his mouth to complain that the defendants did not bring this issue up early enough for him to respond.

67 Further, even if the defendants had not contested the issue of standing, a court must nevertheless be satisfied that parties have standing to bring and/or defend claims, because the parties before the court must be competent to advance their claims. In my view, it must be right that the court can require parties to establish that they have standing to bring and/or defend claims before the court.

68 For all these reasons, I find that Eugene does not have standing to commence the present Suit. This Suit is therefore a nullity from the start.

This is not a defect that can be rectified after trial

69 As for Eugene's request that I stay the proceedings so that he can rectify matters with the CED and the FJC, I decline to do so. First, even if I were to stay the proceedings, the defect had occurred *when* Eugene commenced this Suit without extracting the resealed letters of administration. As such, it is too late

for Eugene to do anything at this point of time. Indeed, as the High Court held in *Re Ong Soon Chuan* (at [5(c)]):

> … if a plaintiff brings an action in a representative capacity as administratrix, then that action is a nullity if she was not at that date by law administratrix with a proper grant. Even if she obtains a grant within a week, a month or a year afterwards it does not relate back. The writ is a nullity from the beginning.

Thus, by this reasoning, Eugene never had capacity to begin this Suit. There is thus nothing for him to rectify since these proceedings were a nullity from the start.

70 Further, this is not a defect that can be cured by O 15 r 7(2) of the Rules of Court (2014 Rev Ed) (the "ROC 2014"). As the Court of Appeal opined in *Teo Gim Tiong* (at [39]), although the ROC 2014 had removed the distinction between nullities and irregularities, such that any mistake in practice or procedure would be regarded as an irregularity that could be rectified by the court, a defect as to standing to act on behalf of a deceased's estate "was a substantive one that went to the root of the [party's] right to act for the estate … and was not a mere omission or mistake in practice or procedure".

71 In any event, even if it is possible for me to stay the proceedings, it must be recalled that the trial has ended, and parties have tendered their respective submissions. There is nothing left for the parties to do. All that remains is for the court to deliver its judgment. It would be highly prejudicial to the defendants, who have finished the trial, to now be confronted with a new application for proceedings to be stayed so that Eugene can shore up an unsatisfactory part of his case. While Eugene may again describe this as a "technicality", he has chosen to run his case in a particular way, and he has to live with the legal consequences. Also, taken to its logical conclusion, if I were to stay the proceedings now, then it follows that the defendants can equally ask

for the same to shore up what they now see as unsatisfactory aspects of their case *after* the trial. This cannot be right. Indeed, in *Teo Gim Tiong*, where the Court of Appeal granted a stay, the question was whether an offer to settle was validly accepted and could be enforced. The parties had not gone through an expensive and extended trial process.

72 For all these reasons, I find that Eugene has no standing to pursue his claims in this Suit. As such, for this reason alone, I dismiss his claims against the defendants entirely.

Whether Eugene's claims are time-barred

The parties' positions

73 Apart from the lack of standing, the defendants argue that Eugene's claims for breaches of trust are also caught by the statutory limitations under ss 6(2), 6(7), and/or 22(2) of the Limitation Act 1959 (2020 Rev Ed) (the "LA"). In essence, the defendants say that because this Suit was commenced on 20 November 2020, only the alleged causes of action for breach of trust that accrued on or after 20 November 2014 would fall within the six-year limitation period. As such, because the alleged breaches of trust were committed outside of the limitation period, the defendants submit that Eugene's claims are time-barred. More specifically, the defendants point out that, in so far as the alleged breaches are concerned, the last issuance of additional Supratechnic shares occurred in 1993, and the last dividends in respect of Supratechnic's shares were allegedly declared in 2013. Both alleged breaches, which constitute the tail-end of the other breaches alleged by Eugene, therefore fall outside of the limitation period. More than that, the defendants say that Eugene has not discharged his

burden of proving that he comes within the exceptions to the six-year limitation period as prescribed in ss 22(1), 24A(3)(*b*), and 29(1)(*a*) and (*b*) of the LA.[70]

74 Further, in relation to Eugene's alternative claim for conversion, the defendants argue that this claim is time-barred based on s 7(1) of the LA. This is because, on Eugene's case, if there was conversion, the first conversion would have taken place when the defendants disavowed Evelyn's alleged interest in the Supratechnic shares on 8 August 2005. Thus, since Eugene did not sue within the six years from that date, his alleged claim for further conversion by the sale of the shares to USP Group in 2016 is time-barred under s 7(2). Also, any title that Eugene may have had to the shares would also be extinguished by s 7(2) of the LA.[71] In their Reply Submissions, the defendants extend the s 7(2) argument even further to say that Eugene's entire case on limitation fails at the outset because s 7(2) has extinguished whatever title Evelyn might have had in the Supratechnic shares.[72]

75 Eugene's response is to rely almost exclusively on the exceptions under ss 22(1)(*a*), 22(1)(*b*), s 24A(3), and s 29(1) of the LA. First, with regard to s 22(1)(*a*) of the LA, Eugene argues that the defendants' actions that resulted in breaches of trust were fraudulent or involved fraud. In particular, Eugene says that each of the defendants "was either a party to the breach, or privy". Thus, Ridwan and Salman allegedly admitted to the Phoas' interest in Supratechnic during negotiations in 2003. Yet, despite this admission, Ridwan and Salman

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70 DCS at paras 59–61.

71 DCS at paras 103–105.

72 Defendants' Reply Submissions dated 21 August 2023 ("DRS") at para 233.

continued to manage Supratechnic dishonestly and fraudulently in a manner that would breach their trustee duties.[73]

76 Next, for s 22(1)(*b*) of the LA, Eugene points out that his primary claim is to recover the sale proceeds of the trust property which are in the possession of Ridwan, Salman, and Joshua. This therefore *prima facie* comes within the exception in s 22(1)(*b*), "where no limitation applies to an action by a beneficiary of a trust against the trustee seeking to recover proceeds of the trust property in the possession of a trustee".[74] I observe that Eugene has framed his reliance on s 22(1)(*b*) in a particular manner that mirrors only the "possession" limb of the provision. Indeed, this was how he had pleaded his reliance on this limb in his Reply, where he says that s 22(1)(*b*) applies as his "claim is to recover proceeds *in the possession* of the Kasendas Defendants" [emphasis added].[75] This has legal implications that I will explain below.

77 Further, if ss 22(1)(*a*) and 22(1)(*b*) do not apply, Eugene argues that he is still entitled, pursuant to s 29(1) of the LA, to a postponement of the time at which limitation starts to run. This is because s 29(1) is triggered by the defendants' "fraudulent acts and fraudulent concealment of such acts". Eugene points out that he could not and did not discover the *extent* of the fraud until the commencement of this Suit, and that he had made further discoveries during the trial.[76] I pause to observe that there is a difference between discovering the fraud *per se* and discovering the *extent* of the fraud, and Eugene's argument appears to be primarily premised on him being able to ascertain the true extent of the

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73 PCS at para 281.

74 PCS at para 282.

75 Reply (Amendment No. 3) dated 31 March 2023 at para 22B.1.

76 PCS at para 283.

fraud after the commencement of this Suit. In the alternative, Eugene argues that s 24A(3) of the LA applies because further breaches were only discovered as recently as 2023, and so any applicable limitation period would expire only three years after the discovery of the breach resulting in damages.[77]

78 Finally, Eugene argues that, in the event that the six-year limitation period pursuant to s 22(2) of the LA applies, this does not impact his claim for the recovery of a portion of the sale proceeds in 2016. Eugene's position therefore is that each new breach constitutes a new action from which a new limitation period starts to run. Section 22(2) also "only *prima facie* prohibits claims from breaches [six] years from the date of commencement of the Canadian proceedings", which commenced on 13 March 2018.[78] In my view, leaving aside the imprecision of what it means to say that s 22(2) "*prima facie* prohibits" (as opposed to simply "prohibits"), it appears that Eugene is saying that his claims for breaches of trust from 2012 onwards are not time-barred because Evelyn's Estate commenced the Canadian proceedings against the defendants in March 2018.

79 Interestingly, Eugene makes no argument in response to the defendants' arguments regarding ss 6 or 7 of the LA.

The applicable provisions

80 Having set out the parties' respective positions, I first set out the relevant provisions from the LA that the parties have relied on:

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77 PCS at para 284.

78 PCS at para 285.

Limitation of actions of contract and tort and certain other actions

6. … (2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

…

(7) Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

Limitation in case of successive conversions and extinction of title of owner of converted goods

7.—(1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of 6 years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention under subsection (1) has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Limitation of actions in respect of trust property

22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

> (*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

> **Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**
>
> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> …
>
> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> > (*a*) 6 years from the date on which the cause of action accrued; or
> >
> > (*b*) 3 years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (*a*).
>
> **Postponement of limitation period in case of fraud or mistake**
>
> **29.**—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> > (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
> >
> > (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or
> >
> > …

81 Having set out the provisions, I turn to address some preliminary points. First, Eugene does not respond to the defendants' arguments regarding ss 6(2), 6(7), 7(1), and 7(2) of the LA. This suggests that he accepts that his claims are time-barred, albeit subject to any exceptions. More specifically, in so far as the defendants argue that Eugene's alternative claim in conversion is time-barred by the operation of s 7(1) of the LA, Eugene has not addressed this point at all

in either his Closing Submissions or his Reply Submissions. Indeed, it is curious that Eugene does not address his alternative claim in conversion *at all*, not just whether it is time-barred. Thus, I will take it that Eugene has abandoned his claim in conversion or, at the very least, has not advanced a proper case in support of his pleaded claim in conversion. This is sufficient for me to not only hold that Eugene's alternative claim in conversion is time-barred, but that it is dismissed for lack of any substantiation in his submissions.

82 Second, as the defendants rightly point out, Eugene does not explicitly deny that his claims are time-barred. Instead, Eugene primarily contends that he should be able to rely on the exceptions under the LA. To this, Eugene does say, albeit only as a "final alternative", that the six-year limitation period under s 22(2) has no impact on his claim for recovery of a portion of the sale proceeds of Supratechnic in 2016.[79] Thus, to that *limited* extent, Eugene takes the position that that particular claim is *not* time-barred. To be fair to Eugene, I will consider this particular claim separately even though that was not the primary case that Eugene makes against the defendants' arguments on limitation.

83 Third, Eugene has proceeded on the basis that s 22(1) of the LA applies to *all* of the defendants. Eugene originally did not address the distinction between "Class 1" and "Class 2" constructive trustees as set out in the Court of Appeal decision of *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*"). It was only in his Reply Submissions that Eugene addressed this important distinction pointed out by the defendants in their Closing Submissions. Eugene insists that this distinction does not matter in this Suit. He explains his understanding that, in "modern trust jurisprudence and based on the endorsed descriptions of such classes" in the

[79] PCS at para 285.

cases, "Class 1" refers to "institutional constructive trusts", whereas "Class 2" relate to "remedial constructive trusts". His case has been made on the basis of institutional constructive trusts, such that s 22(1) applies to all the defendants.[80]

84 With respect, I am of the view that Eugene's understanding is incorrect. To begin with, the distinction between "Class 1" and "Class 2" constructive trustees does not map onto the distinction between "institutional constructive trusts" and "remedial constructive trusts". The latter distinction has its own controversies, and it is not necessary to discuss them in this case. It is also not clear if Eugene is right that his case has been solely made on the basis of institutional constructive trusts, since he refers to "valid express trusts" over the original Lot A, Lot B, and Lot C shares.[81] This would have affected at least Wirio and Henry (as the executor of the former's estate). For present purposes, the defendants are correct that this distinction between "Class 1" and "Class 2" constructive trustees is important to determine the applicable limitation period to trustees. Thus, as the Court of Appeal held in *Panweld* (at [46]):

> … If a person holds property in the position of a trustee … and deals with that property in breach of that trust, he will be a Class 1 constructive trustee; whereas a wrongdoer who fraudulently acquires property over which he had never previously been impressed with any trust obligations, may, by virtue of his fraudulent conduct, be held liable in equity to account as if he were a constructive trustee. But the latter is not a case of someone who had ever in reality been a trustee of that property; and it is only by virtue of equity's reach that such a person is regarded as a Class 2 constructive trustee.

In other words, as the defendants rightly point out, a "Class 1" constructive trust arises when a party *voluntarily* "assume[s] the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust";

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80 PRS at para 54.

81 PCS at p 16.

whereas a "Class 2" constructive trust arises "as a direct consequence of an unlawful transaction which is impeached by the plaintiff".[82]

85 The significance of this in relation to the applicable limitation period to trustees is, as held by the Court of Appeal in *Panweld* (at [51]), that "only Class 1 constructive trusts fall within the ambit of [s 22 of the LA]". Thus, "Class 1" constructive trustees, as well as express trustees, are subject to the six-year limitation period in s 22(2) unless any of the exceptions in s 22(1) apply (see *Panweld* at [49]). In contrast, "Class 2" constructive trustees are subject to the six-year limitation period in s 6(7) of the LA (see *Panweld* at [51] and [69]). This fundamental distinction therefore undermines Eugene's argument that s 22(1) applies to *all* the defendants. This is because Eugene's pleaded case is that Jimmy and Wirio are the express trustees of the Lot B and Lot C shares, respectively, whereas Ridwan, Salman, and Joshua are "constructive trustees of the Additional Shares" by reason of their "imputed" knowledge.[83] Importantly, as the defendants point out, it is *not* Eugene's pleaded case that Ridwan, Salman, and Joshua had "previously been impressed with any trust obligations" independent of the alleged constructive trust.[84] Therefore, the effect of *Panweld* is clear: only Wirio and Jimmy are "Class 1" constructive trustees and subject to s 22 of the LA, whereas Ridwan, Salman, and Joshua are "Class 2" constructive trustees and are subject to s 6(7) of the LA instead. Thus, in so far as Eugene has not relied on the correct statutory exceptions against Ridwan, Salman, and Joshua, his claims against them, in so far as they are premised on "any matter which arose more than six years before the commencement of" the present Suit, are time-barred (see s 6(2) of the LA).

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82 DCS at para 63.

83 SOC A1 at paras 47.2, 56, and 60.2.

84 DCS at para 65.

My decision: Eugene's claims are time-barred

Sections 22(1) and 22(2) of the LA

86 With these three preliminary observations in mind, I turn first to consider whether Eugene can rely on s 22(1) of the LA to defeat the limitation defence mounted by the defendants. As I said earlier, Eugene cannot rely on s 22(1) against Ridwan, Salman, and Joshua. At the most, Eugene can only rely on s 22(1) against Wirio, Henry (*qua* executor of Wirio's estate), and Jimmy. If Eugene cannot successfully invoke s 22(1), then s 22(2) will apply to bar his claims against Wirio, Henry, and Jimmy on the basis that "an action by a beneficiary … in respect of any breach of trust … shall not be brought after the expiration of 6 years from the date on which the right of action accrued".

87 First, in order to rely on s 22(1)(*a*) of the LA, Eugene must prove that there was "fraud or fraudulent breach of trust" to which Wirio, Henry, and Jimmy were parties to. This much is clear from the provision itself:

> **Limitation of actions in respect of trust property**
>
> **22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> > (*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; …

88 The parties agree that "fraud" in this context means "dishonest by the ordinary standards of reasonable and honest people" (see *Panweld* at [52]–[53]).[85] Yet, Eugene has failed to discharge his burden of adducing cogent evidence to satisfy the court that fraud has in fact taken place (see the Court of Appeal decision of *Alwie Handoyo v Tjong Very Sumito and another and*

[85] PRS at para 55; DCS at para 67.

another appeal [2013] 4 SLR 308 at [161]). In this regard, Eugene relies on the following acts of the defendants, which were allegedly done in full knowledge of the beneficial interest of Evelyn's Estate, to make out his allegation of fraud: (a) increasing the number of shares registered to the defendants; (b) drawing out declared and *De Facto* Dividends, without any transfer to the Estates; (c) concealing and actively misleading the Phoas as to the number of shares and their worth during negotiations from 2003 to 2011; (d) concealing and failing to pay any sale proceeds (or dividends) to the Phoas in respect of beneficial interest admitted while the communications between 2003 and 2011 were ongoing; and (e) during the course of this Suit, continuously refusing to provide any information about their acts while in management of Supratechnic.[86]

89 However, in so far as the evidence is concerned, Eugene has not adduced sufficient evidence to show that Wirio, Henry, and Jimmy were "dishonest by the ordinary standards of reasonable and honest people" and that they "realised that by those standards [their] conduct was dishonest" (see *Panweld* at [52]). First, Eugene's pleaded particulars in relation to Wirio do not even concern him as they relate to matters *after* Wirio's death.[87] I would think that it is not possible to engage in dishonesty after having passed on. Second, in so far as Henry is concerned, Eugene has not advanced any evidence to show that Henry knew about the alleged trust arrangements between Wirio or Evelyn, and that the Supratechnic shares were the subject of a trust. On the stand, Henry testified that he did not discuss with Ridwan the communications between Ridwan and Eugene in 2003.[88] Third, as for Jimmy, Eugene has likewise not

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86 PRS at para 55.

87 Reply (Amendment No. 3) dated 31 March 2023 at para 22F.

88 DCS at para 71; Certified Transcript 7 June 2023 at p 74 lines 6–14 and p 83 lines 2–10.

advanced any evidence to show that Jimmy knew that he held the Lot B shares on trust for Evelyn. On the stand, Jimmy testified that he did not know the matters pertaining to Evelyn's alleged interest in Supratechnic. He was also unable to recall anything about Supratechnic's shares issuance.[89] Further, there is also no evidence that he discussed with Ridwan about the communications between Ridwan and Eugene in 2003.

90 As such, I find that Eugene cannot rely on s 22(1)(*a*) of the LA against Wirio, Henry, or Jimmy.

91 Second, in order to rely on s 22(1)(*b*) of the LA, Eugene must show that the "trust property or the proceeds thereof [are] in the possession of the trustee" (otherwise known as the "possession limb" as coined by the High Court in *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 ("*Lim Ah Leh*") at [236]). This much is clear from the words of the provision:

> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

While the provision contains a second limb that relates to trust property or proceeds that were "previously received by the trustee and converted to his use", (otherwise known as the "conversion limb" according to *Lim Ah Leh* at [236]), Eugene does not rely on this limb either in his pleadings or his Closing Submissions. While Eugene appears to now rely on the conversion limb of s 22(1)(*b*) in his Reply Submissions in so far as he alludes to proceeds being "previously received by the Kasendas",[90] I pay no heed to this because this was nowhere in his pleaded case. Indeed, it would prejudice the defendants for

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89 DCS at para 72; Certified Transcript 7 June 2023 at p 86 line 10 to p 87 line 3.

90 PRS at para 53.

Eugene to now change tack after the trial since they now cannot adduce evidence to counter his reliance on this limb.

92 Turning then to the "possession limb" of s 22(1)(*b*), Eugene's reliance on this limb fails for the simple reason that, in so far as "proceeds" refer to the proceeds of sale of the Supratechnic shares to the USP Group in 2016, Eugene has not adduced any evidence that Wirio, Henry, or Jimmy ever received any proceeds of sale. Therefore, I find that Eugene cannot rely on s 22(1)(*b*) against these three defendants.

93 In summary, I find that Eugene cannot rely on s 22(1) against Ridwan, Salman, and Joshua. I also find that Eugene cannot rely on ss 22(1)(*a*) or 22(1)(*b*) of the LA against Wirio, Henry, or Jimmy.

Section 24A(3) of the LA

94 Turning now to Eugene's argument that s 24A(3) of the LA applies because further breaches were discovered only as recently as 2023, I disagree that it applies. To begin with, s 24A(3)(*b*) provides that an action is time-barred three years from the date on which the plaintiff had "the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action". For reasons that I will now develop, Eugene cannot rely on s 24A(3)(*b*) because he already possessed the requisite knowledge to bring an action against the defendants more than three years ago.

95 In *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*"), the Court of Appeal held that a "reasonable suspicion" or "reasonable belief rather than absolute knowledge is enough to start time running" under s 24A (at [41] and [47]). Also, "knowledge" under this provision is not restricted to actual knowledge, but also includes constructive knowledge

under s 24A(6), which is "knowledge which [a plaintiff] might reasonably have been expected to acquire… from facts observable or ascertainable by him" or "from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek". Indeed, this is entirely in line with the policy rationale behind s 24A, which came into force on 26 June 1992.

96 For context, s 24A of the LA was introduced in response to the developments in England. Although the English position had been that a cause of action accrued only when the damage was discoverable, the House of Lords in *Pirelli General Cable Works Ltd v Oscar Faber and Partners* [1983] 2 AC 1 was constrained to follow a prior House of Lords decision of *Cartledge v E Jopling & Sons Ltd* [1963] AC 758, that a cause of action accrued as soon as a wrongful act caused personal injury beyond what can be regarded as negligible, even when that injury was unknown to and cannot be discovered by the sufferer. In response, the Latent Damage Act 1986 (c 37) (UK) was introduced to overcome the undesirable effects of that line of authorities. In Singapore, pursuant to the recommendations in the Singapore Academy of Law Law Reform Committee, *Discussion Paper of the Sub-committee on Civil Law and Civil Proceedings* (24 August 1989) (Secretary: Jeffrey Chan Wah Teck), Parliament suggested amending the LA to include, among other provisions, s 24A. In this regard, the policy rationale was summarised as follows (see *Singapore Parliamentary Debates, Official Report* (29 May 1992) vol 60 at col 32 (Shunmugam Jayakumar, Minister for Law):

> What it does is to extend the limitation periods for personal and non-personal injury claims by providing an alternative starting date for the limitation period, ie, the date the aggrieved person has knowledge of the damage. The limitation period would be computed from the date that expires later. It also seeks to balance the interest of potential defendants by providing that no action may be brought after 15 years from the date of the breach of duty even though the damage or injury has not and could not be discovered.

97 Further, the fact that s 24A only came into force on 26 June 1992 is important because s 24C(1)(*a*) of the LA provides that it does not "enable any action to be brought which was barred by [the LA] immediately before [this date]". This means that Eugene, as he also admits, cannot rely on s 24A(3)(*b*) to extend the limitation period for alleged causes of action which were time-barred immediately before 26 June 1992. This would relate to the dividends declared and the Additional Shares that were issued six years before 26 June 1992.[91]

98 With these principles in mind, I find that Eugene's argument that he knew of the extent and occasions of the alleged breaches only in March 2023 to be untenable. This is because knowledge for the purposes of s 24A does not mean "absolute certainty" or knowledge of "the details of what went wrong" (see *Lian Kok Hong* at [47]). Since s 24A(3) of the LA came into force on 26 June 1992, only events that happened after this date are relevant. I therefore do not, for present purposes, take into account Wirio's January 1983 Letter, which Eugene alleges is fraught with serious irregularities. Based on the facts presented to me by the parties, it is clear that the three-year limitation period prescribed under s 24A(3), if it starts to run at all, would have started either on 14 October 2003 or 3 December 2004. This is because by 14 October 2003, Eugene had at least a reasonable belief of the factual essence of his complaint against the defendants, as alleged in Eugene's October 2003 Letter. In that letter, Eugene had alleged that "[the defendants'] family's actions in increasing the capital of Supratechnic and attempt to grossly reduce the percentage equity of [Eugene's] family, constitutes a breach of the trust agreements … and is … actionable in law".[92] Also, by 3 December 2004, Eugene had already instructed

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91 PRS at para 58.

92 1AB at p 96.

his then-solicitors to issue a letter of demand alleging breach of trust against the defendants. While Eugene argues that the relief sought in this Suit is different from that in this letter of demand,[93] the fact remains that Eugene already knew that there was a breach of trust, and it does not matter that the reliefs he sought from the same cause of action might be different.

99 In this regard, I also disagree that it is relevant that Eugene only knew of the quantum of the drawdown of the directors' remuneration in full was only available through the non-party discovery in March 2023. I also disagree that it is relevant that Eugene only knew at trial in June 2023 that the moneys were actually extracted profits. This is because, as *Lian Kok Hong* makes clear, what is needed is not absolute knowledge but reasonable belief. It is clear that Eugene had reasonable belief more than three years before 2023.

100 In this regard, I agree with the defendants that two facts suggest Eugene's reasonable belief long before the limitation period. First, based on Eugene's case, the Kasendas expressly acknowledged the Phoas' alleged beneficial interest in Supratechnic in September 2003 but failed to provide an account of the trust or pay any dividends to them. Therefore, Eugene would have had a reasonable belief or suspicion from 2003 onwards. Second, Eugene had alleged breaches of trust in: (a) his October 2003 Letter; and (b) a letter from his former solicitors dated 3 December 2004, which suggests that Eugene would have had a reasonable belief or suspicion latest by 2004 onwards.[94]

101 In addition to the above-mentioned points, I also do not accept the following points raised by Eugene.

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93 PRS at para 68.

94 DRS at para 253.

(a) First, Eugene submits that based on the defendants' case that he has no standing to bring this Suit, the "clock does not start" if "the 'right' has not yet accrued".[95] He relies on the High Court decision of *Lee Han Tiong and others v Tay Yok Swee* [1996] 2 SLR(R) 833 (at [13]) for this principle, where the court held that where "a cause of action arises in favour of the estate of a deceased person at or after his death an administrator can only bring an action when he has obtained a grant under the seal of the court" and "[a] cause of action does not accrue unless there is someone who can bring an action". However, these remarks were made in the context of s 19 of the LA, which provides that an administrator's claim for the recovery of land shall date back to the death of the deceased person, as if there was no interval of time between the death of the deceased person and the grant of letters of administration. I do not think the court's observations can be extended beyond that context.

(b) Second, Eugene submits that the causes of action in this Suit involve multiple breaches over time.[96] Even if this is the case, I do not think that Eugene has discharged his burden of proving that he only had reasonable belief at the latest three years before 2023.

102 For these reasons, I find that Eugene's claims are also time-barred under s 24A(3)(*b*) of the LA.

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95 PRS at para 60.

96 PRS at para 61.

Section 29(1) of the LA

103 Turing now to Eugene's reliance on s 29(1) of the LA, I find that the time bar has not been postponed. This is because there is no fraud or fraudulent concealment of a right of action. To start, ss 29(1)(*a*) and 29(1)(*b*) of the LA provide as follows:

> **Postponement of limitation period in case of fraud or mistake**
>
> **29.**—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
>
> (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or
>
> …
>
> the period of limitation shall not begin to run until the claimant has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

104 I begin with s 29(1)(*a*). For s 29(1)(*a*) to be properly invoked, fraud must be an element of the cause of action (see the High Court decision of *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] SGHC 273 ("*SW Trustees*") at [46]–[58]; see also *Lim Ah Leh* at [201(a)]). This is supported by the express wording of s 29(1)(*a*), where the cause of action must be "based upon the fraud of the defendant", which can be contrasted against s 22(1)(*a*), where the cause of action need only be "in respect of any fraud or fraudulent breach of trust" (see *SW Trustees* at [57]). Further, although fraud may extend to common law fraud or equitable fraud, it does not extend to dishonesty (see *SW Trustees* at [58]).

105 Applied to the facts of the present case, there is simply no fraud on the part of the defendants. As I mentioned earlier (see [93] above), Eugene has not established a case of fraud against Wirio, Henry, or Jimmy under s 22 of the LA. The same applies here. As against Ridwan, Salman, and Joshua, I find that Eugene has similarly not established such a case. First, as against Ridwan, I accept the defendants' submission that Ridwan has never acknowledged that Evelyn's Estate has an interest in 100 Supratechnic shares, but nevertheless made a without prejudice offer to settle the matter amicably.[97] Second, as against Salman, I accept the defendants' submission that Salman's conscience was not affected, in so far as any involvement he had was limited to Ridwan consulting him regarding the without prejudice offer.[98] Finally, as against Joshua, I accept the defendants' submission that Joshua joined Supratechnic as a director only on 11 March 2013 and had no reason to doubt the reassurances provided by Salman and Ridwan with regard to Eugene's January 1983 Letter, Wirio's January 1983 Letter, and the February 1981 LOC.[99]

106 I turn now to s 29(1)(*b*) of the LA. For s 29(1)(*b*) to be properly invoked, there must be a fraudulent concealment of the right of action, which is not limited to the common law sense of fraud or deceit, and includes "unconscionability in the form of a deliberate act of concealment" if the wrongdoer "knowingly or recklessly committed a wrongdoing in secret without telling the aggrieved party" (see the Court of Appeal decision of *Chua Teck Chew Robert v Goh Eng Wah* [2009] 4 SLR(R) 716 at [27], citing the Court of Appeal decision of *Bank of America National Trust and Savings Association v Herman Iskandar* [1998] 1 SLR(R) 848 at [73]–[75]). The plaintiff must show

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97 DCS at paras 91(a)–91(c) and 154(c).

98 DCS at para 154(b).

99 DCS at para 154(d).

that the party against whom the limitation period is sought to be postponed fraudulently concealed the cause of action (see *SW Trustees* at [66]). Further, unlike s 29(1)(*a*), "fraud" in s 29(1)(*b*) is not limited to the common law sense of fraud or deceit, and includes unconscionability in the form of a deliberate act of concealment if the wrongdoer knowingly or recklessly committed a wrongdoing in secret without telling the aggrieved party. The period of limitation begins when the deception could have been discovered with reasonable diligence of the plaintiff (see *SW Trustees* at [66]).

107 Applied to the facts of present case, I find that there was no fraudulent concealment. My analysis at [105] above with regard to s 29(1)(*a*) applies equally here.

108 Even if there was any fraudulent concealment, Eugene should have discovered this with reasonable diligence, as is required (see the High Court decision of *Symphony Ventures Pte Ltd v DND Bank ASA, Singapore Branch* [2021] 5 SLR 1213 at [40]). First, on Eugene's own pleaded case, Jimmy and Wirio were trustees of the Lot B and Lot C shares, and were obliged to account to Evelyn and Evelyn's Estate for the shares she had in Supratechnic. The parties had communicated in 1983. If Eugene had not received any response from Wirio, and if Eugene had not received any account of the trust or dividends, Eugene would have been put on inquiry in 1983. Second, even if Eugene had not been put on inquiry in 1983, he would nevertheless have been put on inquiry by way of the letter sent by Eugene to Wirio on 14 October 2003 and the letter sent by Eugene's former solicitors on 3 December 2004. The first letter clearly demonstrates Eugene's knowledge that Evelyn intended to sell the Lot B shares to Wirio. Similarly, in the second letter, Eugene alleges that Wirio and Jimmy have committed breaches of trust. It cannot therefore be said that

there was any fraudulent concealment that Eugene did not discover with reasonable diligence.

The Canadian proceedings did not affect the time-bar

109 As for Eugene's argument that his commencement of the Canadian proceedings stopped the limitation period for Singapore, I dismiss it. This argument is a non-starter. It cannot be right that a plaintiff can sue outside Singapore for breach of trust and use that suit to stop the limitation period in Singapore for that breach.

110 This legal position is supported by s 22(2) of the LA, which provides that "an action … in respect of any breach of trust … shall not be brought after the expiration of 6 years from the date on which the right of action accrued". In turn, s 2(1) defines "action" to include "a suit or any proceedings in a court". Meanwhile, s 2(1) of the Interpretation Act 1965 (2020 Rev Ed) defines "court" as "any court of competent jurisdiction in Singapore". The combined effect of these provisions is that an action in respect of any breach of trust cannot be brought in Singapore six years after the right of action accrued. This suggests that the LA contemplates only actions brought in Singapore. It is therefore not open to a plaintiff to circumvent this by adopting a course of action that is not provided for as an exception in the LA.

111 Further, the bringing of an action stops the running of time for the purposes of that action only (see Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 9th Ed, 2022) at para 2.001). Therefore, assuming that the Canadian law of limitation is the same as that in Singapore, the commencement of the Canadian proceedings stops time only for the calculation of the limitation

period in Canada. It has no effect on the limitation period in Singapore, which is governed by the LA.

The only claim that is potentially not time-barred

112 From the foregoing, the only claim that is not time-barred is Eugene's claim that the sale of the Supratechnic shares took place in 2016.

113 However, Eugene's claim appears to be that the sale proceeds were not given to Evelyn's Estate, and *not* that the sale itself was fraudulent (see [40(e)] above). Indeed, in his AEIC, he confirmed that he was "aware of the proposed USP Group sale before it happened and took no action to stop the transaction".[100] This was because it was in the interest of Evelyn's Estate for the sale to proceed, so that: (a) the Kasendas would have the funds to pay any favourable judgment obtained by Eugene; and (b) the Kasendas would hopefully give Evelyn's Estate a portion of the sale proceeds.[101] Under cross-examination, Eugene confirmed that he did not object to the sale of the shares *per se*, but only to the Kasendas' alleged failure to distribute the sale proceeds to Evelyn's Estate:[102]

> Q: Mr Phoa, in 2015, you found out through your nephew, I believe, that there was an impending sale of the Supratechnic shares, all of them, to the USP Group; correct?
>
> A: Yes. Yes, your Honour.
>
> Q: And your position is not that that sale by itself is objectionable but rather that they haven't -- they, as in the Kasendas -- have not accounted for the sale proceeds; is that right?

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100 AEIC of Eugene at para 214.

101 AEIC of Eugene at para 215.

102 Certified Transcript 31 May 2023 at p 131 lines 9–13.

A: Yes, my Lord.

Therefore, since the wrongdoing alleged by Eugene is the Kasendas' alleged failure to distribute the sale proceeds to Evelyn's Estate, the time for limitation would begin to run only when the Kasendas allegedly breached their duty to distribute the sale proceeds to Evelyn's Estate.

114 While it is trite that the time starts running from an alleged breach, the present facts do show how this may run contrary to the policy of limitations, which is to prevent a defendant from having to defend a claim based on facts that he may no longer be able to disprove. This is because an action for breach of trust is predicated on there being a trust in the first place. The policy of limitation would also be defeated if Eugene's position represents the law. This is because a party who does not know it was a trustee would be subject to potential actions every time it commits a "breach" that it never knew was a breach. The information in relation to the formation of the trust may become eroded over time as well. For all the reasons given above, I find that Eugene's claims are time-barred.

Whether Eugene's claims are barred by laches

The parties' positions

115 The defendants further submit that Eugene's claims are also barred by the doctrine of laches, which is preserved via s 32 of the LA. First, the defendants submit that there is no good reason for Eugene's inordinate delay of 37 years – between 1983 and 2020 – before he finally commenced legal action in Singapore. In this regard, Eugene knew of Evelyn's interest in Supratechnic from the outset. There was at least a question to be asked as to the extent of Evelyn's interest in Supratechnic by the time of Eugene's

January 1983 Letter.[103] In this Letter, Eugene wrote to "Mr and Mrs Kasenda" asking for, among other things, their understanding as to the arrangement between Evelyn and Wirio.[104] In response, in Wirio's January 1983 Letter, Wirio allegedly told Eugene that, among other things, there were arrangements reached with Evelyn for: (a) Wirio to buy the Lot B shares for S$125,000; (b) Dr Teh to own the Lot C shares; and (c) Wirio to pay $1,000 monthly to the Phoas.[105] As I will come to later, Eugene denies ever having received this letter.

116 Be that as it may, the defendants' second submission is that even if Eugene never received Wirio's January 1983 Letter, Eugene would still be guilty of laches. This is because Eugene could have known of the increases in Supratechnic's share capital as this was publicly available information. Moreover, Eugene himself attests to knowing, by 1983, that his mother had "200 out of 300" shares, which constituted a majority interest in Supratechnic. Thus, even on Eugene's own case that there was "a sort of vague reference from [his] aunt [*ie*, Onny] that there was a sale", this should have prompted Eugene to press for particulars of the sale and not let matters lie since 1983. Beyond this, the defendants say that Eugene also cannot deny that at the latest by 2005, he knew that there was a dispute as to the holding of the Lot B and Lot C shares through letters from the defendants' former solicitors dated 8 August 2005 and 28 September 2005,[106] both of which denied Evelyn's alleged interest in

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103 DCS at paras 107–111.

104 1AB at p 51.

105 1AB at p 52.

106 1AB at pp 133 and 135.

Supratechnic. Finally, none of the reasons advanced by Eugene to explain his inaction and delays are satisfactory.[107]

117 In the light of Eugene's inaction and delays, the defendants say that they are prejudiced in their ability to defend the claims. In particular, they are not able to call Wirio or Onny as witnesses to rebut Eugene's claims due to their passing. As such, it would be unconscionable to allow Eugene's claims to proceed.[108]

118 In response, Eugene argues that the doctrine of laches does not apply to his claims. First, there is no unexplained delay on his part. Eugene only suspected something awry with the existing trust arrangements after the defendants stopped making payments to the Phoas in mid-2002. The parties dispute the purpose of these payments – while Eugene argues that they were advances on dividends, the defendants argue that the payments were pursuant to the 1977 Agreement.[109] In any event, Eugene argues there is nothing in Eugene's January 1983 Letter that suggested he was aware of any potential disputes arising from the trusts. Moreover, Eugene says he never received Wirio's January 1983 Letter, possibly due to a change in address. Instead, as soon as the payments to the Phoas stopped, Eugene took all necessary and reasonable actions. This included a face-to-face meeting between Eugene, William, and Ridwan in late 2003 to discuss the defendants' intention to purchase Supratechnic shares from the Phoas. This was followed by written correspondence. When the parties could not reach an agreement on the value of

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107 DCS at paras 115–125.

108 DCS at paras 126–131.

109 PCS at para 309.

Evelyn's beneficial interests in Supratechnic, Eugene engaged lawyers and exchanged legal correspondence between 2004 and 2005.[110]

119 Further, in 2006, Eugene engaged a law firm to commence proceedings to re-seal the extracted Canadian letters of administration in Singapore. However, Eugene was not prepared to litigate by this time. On the stand, he testified that he did not possess knowledge of the true value of the Supratechnic shares, which inhibited his ability to assess whether there would be a commensurate return in the event of litigation and the associated costs.[111] There was then continued correspondence between the parties from September 2008, following which Ridwan first made an offer to purchase Evelyn's Supratechnic shares for $160,000 in November 2008, and Ridwan later made another offer to purchase the same for $210,000 in September 2011. However, Eugene did not accept these offers because he could not ascertain the true objective value of the Supratechnic shares.[112]

120 Eugene did not take much further action until he commenced the Canadian proceedings in 2018. He offers several reasons for this: (a) in 2005, William was ill and later passed away; (b) in 2011, the parties were in negotiations consistently; (c) after September 2018, he was faced with his own poor health and the COVID-19 pandemic; and (d) he could not ascertain Supratechnic's worth because the company's financial information was not publicly available, and that the defendants were not "forthcoming with any information to justify their valuations".[113] In sum, Eugene submits that it would

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110 PCS at paras 286–287.

111 Certified Transcript 31 May 2023 at p 94 lines 2–25.

112 PCS at paras 288–289.

113 AEIC of Eugene at para 207.

not be reasonable to expect him to have commenced action against the defendants any earlier than 2016, which is when the defendants sold Supratechnic to USP Group.[114]

121 In any event, Eugene submits that the defendants were at all material times aware that the Phoas were "handicapped" by the absence of any financial information about Supratechnic, which impeded their ability to make an informed decision on the offers from the defendants. Since the defendants have acted dishonestly, unfairly, and fraudulently throughout the course of the dispute, they should not be allowed to make use of the equitable doctrine of laches.[115]

My decision: Eugene's claims are barred by laches

The applicable law

122 In *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464, the Court of Appeal (at [44]) cited the High Court decision of *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46] and explained when the doctrine of laches may be invoked:

> … there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted … This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim is brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced. …

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114 PCS at paras 290–297.

115 PCS at paras 298–299.

123 From this passage, two elements must be considered before the doctrine of laches can be invoked: (a) the length of the claimant's delay; and (b) the prejudice to the defendants and whether it would be unjust or unconscionable to allow the claim to be brought (see the High Court decision of *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 ("*Tan Kow Quee*") at [33] and [38]). The significance of these two elements were explained in *Tan Kow Quee* (at [33]) as follows:

> … A claimant in equity is bound to pursue his claim without undue delay. Equity, it is said, aids the vigilant and not the indolent. This stems from the fact that as much as equity is found in flexible applications of the law designed to secure a just result, it is apt to seek recourse in equity when the conscience is pricked and where no other innocent interest is affected. The longer the delay, the less likely are these considerations to be valid. The basis for the equitable intervention of the court is ultimately found in unconscionability. …

124 Importantly, the Court of Appeal in *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 (at [113] and [117]) explained that the rationale for this doctrine is *viglantibus, non dormientibus, jura subveniunt*, that equity aids the vigilant and not the indolent. This doctrine stems "from the flexible nature of the equitable jurisdiction of the court, which can be invoked in certain situations to bar claims where the conscience is pricked and where no other innocent interest is affected" [emphasis in original omitted]. This is to control flagrant abuses of procedure.

Eugene had unjustifiably delayed commencing this Suit

125 With these principles in mind, I agree with the defendants that Eugene had unjustifiably delayed commencing this Suit.

126 First, on Eugene's own case, he had asked questions about the extent of Evelyn's interest in Supratechnic in his January 1983 Letter. This is evident from the following paragraph of the letter, which was addressed to Wirio and Onny:[116]

> I am sorry to have to bring up a business question, but I guess it must be done sooner or later. If you have the time, could you please let me know what your understanding is of the agreement which you reached with Mom with regard to Supratechnic, particularly how much of it has been sold to you or to other people, how much Mom still owns, how much the purchase price is and how much you have paid so far. Also, could you please let me know the arrangement with regard to payment, i.e. how much for each payment, and how far apart the payments are suppose [*sic*] to be. Mom has all this recorded in her filing cabinet, which I still have, but rather than just go over the files, I would appreciate it if you could let me know what your understanding of the matter is.

127 Leaving aside Wirio's January 1983 Letter, which Eugene argues he did not receive, this letter shows that Eugene already had questions about the trust arrangement as of 13 January 1983. Even if he did not receive Wirio's January 1983 Letter, I do not find it likely that Eugene would have spent the next *twenty years* merely "wondering whether there was a sale".[117] This is especially since, on 13 January 1983, Eugene had asked a series of questions that pertained to the particulars of the trust arrangement. Eugene explains that he did not suspect anything was wrong until the Kasendas stopped making payment in mid-2002.[118] However, if Eugene had already been receiving the payments pursuant to the 1977 Agreement and yet proceeded to send the January 1983 Letter, then it is inexplicable that Eugene would be satisfied with

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116 1AB at pp 50–51.

117 Certified Transcript 31 May 2023 at p 55 lines 19–25.

118 PCS at para 286.

the Kasendas' non-response for the next 20 years when nothing had changed in the meantime.

128 As such, I find that it is more likely that Eugene had received Wirio's January 1983 Letter. To this, Eugene raises a number of reasons why he did not receive the letter. I reject them. In particular, I do not think much importance should be placed on how Wirio framed his dating of the letter. If the argument is that Wirio should have dated his letter in the DD/MM/YYYY format, then he did indeed do that when referring to the dates of payments in the 1977 Agreement.[119] Instead, I find that there are good reasons to infer that he had received the letter. First, during cross-examination, Eugene simply said that he does not recall receiving the letter, in contrast to his stronger stance in his AEIC that he "had never seen this letter prior to this Suit".[120] These are different positions. To draw an analogy to a related context, saying that one did not sign a document is quite different from saying that one does not recall signing a document (see the High Court decision of *Super Group Ltd v Mysore Nagaraja Kartik* [2019] 4 SLR 692 at [117]). Similarly, saying that one has never seen a letter is not the same as saying one does not recall receiving a letter. Second, there was a carbon copy of Wirio's January 1983 Letter. This suggests that the original had been sent to Eugene. Of course, this does not mean that Eugene indeed received the letter, but I infer that he did from the veracity of his questions in Eugene's January 1983 Letter. I do not think that Eugene would have been satisfied with the Kasendas' silence in the face of his questioning. Rather, I think that Eugene probably received Wirio's January 1983 Letter and

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119 1AB at p 52.

120 DCS at para 113(a); AEIC of Eugene at para 99; Certified Transcript 31 May 2023 at p 56 lines 8–21.

decided it was more worth his while to accept the monthly payment of $1,000 per month.

129 To this extent, Wirio's January 1983 Letter clearly provides that the Kasendas had in "1979 … made an arrangement with Enci Eve [*ie*, Evelyn] to buy Jimmy's shares in Supra for S$125,000", among other arrangements.[121] If Eugene had disagreed with Wirio's assertion of those arrangements with Evelyn, as he maintains now, then he ought to have taken steps to pursue the matter at the time. Thus, I agree with the defendants that if Eugene harboured any real belief and resolve in prosecuting Evelyn's alleged interest in Supratechnic, he would have done so at any time after 1983.

130 Moreover, even if I were to ignore all of the above, it is undisputed that by 2005, Eugene had disputed the holding of the Lot B and Lot C shares. He had received letters from the defendants' former solicitors dated 8 August 2005 and 28 September 2005, which denied Evelyn's alleged interest in Supratechnic. Indeed, in a letter dated 9 September 2005, Eugene's former solicitors in Singapore said this:[122]

> By paragraph 4(a) of our fax of 13 July 2005, our clients had enquired if your clients accept the following well known and long accepted fact, namely that as of the date of her death, Evelyn Phoa was the beneficial owner of 66.66% of the total issued share capital of Supratechnic Pte Ltd. Our clients instruct us that your clients' denial of this basic fact *means that recourse to litigation to resolve our client's claim is now inevitable*.
>
> [emphasis added]

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121 1AB at p 52.

122 1AB at p 134.

These words speak for themselves. Eugene had contemplated litigation in 2005. However, he sat on his hands until he commenced the Canadian proceedings in 2018.

131 While it is true that the Phoas and the Kasendas then resumed communications in September 2008, the fact remained that Eugene never commenced any legal action against the Kasendas. However, this was not pursuant to any agreement between the two sides to keep legal proceedings in abeyance. Indeed, in a letter dated 14 October 2003, Eugene made clear his intention to litigate the issue if the parties were unable to amicably settle their dispute: [123]

> … Also, on a personal basis, I frankly do not have the time to enter into protracted negotiations about this matter. This will, in all likelihood, probably be the only letter I will write to you on the subject, and if we cannot settle this matter on an amicable basis very quickly, I will simply let the Courts decide what is fair in the circumstances.

In the circumstances, given the position taken by Eugene in 2003, which is contrasted against his inaction for several years after, it is only fair for the Kasendas to assume that Eugene changed his mind about commencing legal proceedings against them after all these years.

132 While Eugene explains that he had held his hands because he did not have access to financial information of Supratechnic to decide whether he should commence action, the fact is that he was clear in his letter dated 14 October 2003 that he "will personally spend whatever money is necessary to ensure that [the Phoa] family obtains its fair entitlement".[124] In any event, it is

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123 1AB at p 95.

124 1AB at p 98.

not true that Eugene did not know the financial worth of Supratechnic, which affected his decision regarding commencing legal action. Indeed, in that letter, Eugene had arrived at his own figure of $4m as the value of Evelyn's alleged interest in Supratechnic:[125]

> You mentioned to Bill and to me when we met in Edmonton [in September 2003], that the paid-up capital of Supratechnic is now $6 million, and that is true paid-up capital, i.e. cash was put into the company for issue of those shares. … If the $6.0M paid up capital of Supratechnic came from the profits of the company, then perhaps my family's entitlement should be for at least for a full 2/3 of that amount - $4.0M. - with a continuing share of profits to the present day.

Again, this passage speaks for itself. Eugene was prepared, in 2003, to accept this basis of valuing Supratechnic shares because he had concluded in his letter dated 14 October 2003 that "then perhaps my family's entitlement should be for at least for a full 2/3 of that amount", which is $4m.

133 Further, even if, contrary to his own letter, Eugene did not accept this valuation, he could very well have ascertained the information for himself. On 23 August 2011, a third-party valuer appointed by Eugene prepared a report to value Evelyn's alleged interest for the purpose of computing estate duty.[126] The valuer stated that based on Evelyn's "67% deemed interest in the 300 shares through a constructive trust, [Evelyn's] interest in [Supratechnic] at the time of her death would be worth S$269,828".[127] Indeed, on the stand, Eugene admitted that the ball was in his court to start an action by September 2011, which was when the final offer of $210,000 came, and he did nothing of the sort:[128]

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125 1AB at pp 97–98.

126 14th Affidavit of Eugene Phoa dated 29 June 2023 at pp 14–38.

127 14th Affidavit of Eugene Phoa dated 29 June 2023 at p 16 para 23.

128 Certified Transcript 31 May 2023 at p 117 line 25 to p 118 line 17.

> Q: And then 1AB/152, on 13 September 2011 Ridwan wrote to Wellington again with yet a further revised offer of … sequentially it was prior to the one I just showed you. So this was the prior offer of $210,000. Then at 1AB/154 was Wellington's response thereto. So this was the final position which was, if you are not prepared to go up beyond 200k, we will have no choice but to proceed legally. There were no further discussions to settle; correct?
>
> A: Correct.
>
> Q: So --
>
> A: As far as I'm aware, yes.
>
> Q: As far as I'm aware as well. So, Mr Phoa, the ball was left in your court to take it forward; correct?
>
> A: In terms of?
>
> Q: To sue them?
>
> A: If we wanted to sue them at that point, yes.

134 Thus, in the light of the above, there was simply no good reason for Eugene's delay in commencing action against the defendants.

There is clear prejudice to the defendants

135 Above all, there is clear prejudice to the defendants caused by Eugene's delay. First, as a result of his delay, the defendants cannot call Wirio or Onny to rebut Eugene's claims. Both of them would have known the circumstances surrounding the alleged holding and details of the arrangements concerning the Lot B and Lot C shares. Thus, if Eugene, who knew of the potential problems as early as 1983, had commenced action before Wirio's passing in 1996, then Wirio would have able to respond to Eugene's case. Further, even if I take 2003 to be the later date that Eugene should have commenced his action, it remains that had Eugene done so before Onny's passing in 2009, then the defendants could have called Onny to the stand to rebut his allegations.

136 In sum, the evidence and explanations that could have been provided by Wirio and Onny cannot now be obtained because of Eugene's unjustified delay. Moreover, this delay – be it from 1983 or 2003 – has resulted in the loss of relevant documentary evidence. In fact, even Eugene testified that he no longer had the documents evidencing the alleged trust arrangements that Evelyn purportedly kept (which Eugene referred to in Eugene's January 1983 Letter), and that "there is a very strong possibility they have been cleared out" as "it's been 50 years".[129]

137 It must also not be forgotten that the defendants' witnesses, with the exception of Joshua, who had no first-hand knowledge of the events, are all old and sickly. This means that they cannot effectively defend against Eugene's assertions. I find this to be similar to the High Court decision of *Quek Hung Heong v Tan Bee Hoon (executrix for estate of Quek Cher Choi, deceased) and others and another suit* [2014] SGHC 17 (at [129]), where the court explained the significance of the death of key witnesses:

> In terms of evidence, the only thing that changed since the plaintiff discharged the mortgage in 1981 is the death of the key witnesses. This has indeed greatly prejudiced the defendants in their ability to defend the claim. The plaintiff's delay has deprived the defendants of the direct evidence of the only other witnesses with personal knowledge of the circumstances in which the Property was purchased. The father, brother and mother would have been able to explain clearly and from personal knowledge the circumstances in which the Property was purchased, the significance of the documents which are now put before me, the purpose behind the plaintiffs' payments over the years as well, perhaps, as to produce other documents or give other evidence which are not before me but which would be probative of the issues at hand.

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129 Certified Transcript 30 May 2023 at p 96 lines 21–24.

138 In this situation, it is unconscionable to allow Eugene to pursue his claims against the defendants. Taking a step back, the defendants are well justified, since 2003 at the latest, to assume that Eugene would not take action against them. No one should have to live under the threat of litigation forever. This is the entire premise of limitation periods and laches. It is also to be noted that whereas new limitation periods attach to each new breach, the facts here make that unfair. This is because the alleged new breaches all build on previous breaches stretching many years back, leading ultimately to the dispute about Evelyn's beneficial interest in the Supratechnic shares. While limitation periods cannot prevent this, the doctrine of laches exists precisely to avoid this kind of unconscionable consequence. It cannot be that the defendants need to defend a claim founded on an alleged breach that occurred today by having to refer back to events which occurred many decades prior.

139 For all these reasons, I also hold that Eugene's claims are defeated by the doctrine of laches.

140 In the circumstances, Eugene's claims fail for three procedural reasons: (a) his lack of standing; (b) his claims being time-barred; and (c) his claims being defeated by laches. This is due to Eugene's decision to delay taking action until many years have passed, despite having had doubts as to the beneficial ownership of the Supratechnic shares since 1983 or, at the latest, 2003. In fact, so as to commence his action in Singapore within (so he thought) time, he did not even ensure that he possessed the basic requirement of standing. While it is never satisfactory to deny a claim on procedural (loosely speaking) grounds alone, this is an apt case to do so. However, in any event, I would still have dismissed Eugene's claims on substantive grounds as well, to which I now turn.

Notwithstanding the procedural issues, whether Eugene's claim in relation to the Lot B shares succeeds

The parties' positions

141 In relation to the Lot B shares, Eugene's case is that Evelyn had a beneficial interest over 200 of the 300 issued shares in Supratechnic as at her death on 7 November 1981. Thereafter, the beneficial interest continued uninterrupted, with Evelyn's Estate being the beneficiary. Accordingly, Eugene first submits that there have been valid express trusts over the Lot B and Lot C shares at the outset. His narrative is that in the early years after Supratechnic was incorporated in 1968, it faced financial turmoil. This led Wirio to turn to Evelyn for financial help. Based on evidence by Angeline, Evelyn agreed to provide $100,000 to Supratechnic in exchange for a beneficial interest in Wirio's registered shareholding in Supratechnic. This would be Lot A, which as I mentioned earlier (see [31] above), is not relevant in this Suit. Later, Evelyn agreed to buy out the other founding shareholders of Supratechnic, *ie*, TPG and LST. This would then form the Lot B and Lot C shares. Crucially, by Eugene's account, the Lot B shares were held jointly by Wirio and Jimmy on trust for Evelyn, and this trust was constituted on or around 15 March 1975. While Wirio procured the trust arrangement, it was ultimately Jimmy who was the registered shareholder. Hence, Eugene submits that either they were both joint trustees or Jimmy was the sole trustee but Wirio owed "similar parallel fiduciary duties, even if they are not arising directly from being a trustee".[130] Given this premise, Eugene then argues that the defendants breached their trustee duties through their actions over the years, which culminated in the sale of Supratechnic to USP Group in 2016.[131]

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130 PCS at para 84.

131 PCS at para 208.

142 The defendants do not challenge the existence of a trust in favour of Evelyn. Indeed, the defendants pleaded that "[i]n or around 1979, all interests in the Original Lot B Shares were purchased by Wirio Kasenda for Jimmy Kasenda".[132] Instead, the defendants argue that Eugene's claim to the Lot B shares fails because Evelyn's interests in those shares had been purchased by Wirio from Evelyn in 1979. The defendants base this conclusion on primarily the Surat, which Eugene has challenged to be inauthentic. However, apart from the Surat, the defendants also point to Wirio's January 1983 Letter, where he wrote that "in 1979, we have made an arrangement with [Evelyn] to buy Jimmy's shares in Supra for S$125,000".[133] Both the Surat and Wirio's January 1983 Letter therefore provide an unambiguous record that Wirio had purchased the interest in the Lot B shares. Moreover, the defendants allege that Eugene had accepted this sale in his own letters dated 13 January 1983 and 14 October 2003. Finally, Evelyn did not procure a similar letter confirming that Evelyn had an interest in the Lot B shares when she had done exactly that in respect of the Lot C shares, in which she asserts had not been sold. The fact that Evelyn did not do this shows that the Lot B shares were indeed sold.[134]

My decision: Eugene's claim to the Lot B shares fails because they had been sold to Wirio in 1979

143 In my judgment, Eugene's claim to the Lot B shares fails because they had been sold to Wirio in 1979. I have come to this conclusion because: (a) the Surat is authentic and a proper record of Evelyn's sale of the Lot B shares to Wirio; (b) Wirio's January 1983 Letter provides contemporaneous documentation of this sale, even if Eugene never received it; (c) Eugene himself

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132 Defence A4 at para 17(a).

133 1AB at p 48.

134 DCS at paras 167–188.

acknowledges the sale of the Lot B shares in his own letters; and (d) it is relevant that Evelyn did not procure a letter of confirmation in respect of the Lot B shares similar to what she did for the Lot C shares. I explain each of these reasons below.

The Surat is authentic, and a proper record of Evelyn's sale of the Lot B shares to Wirio

144 First, I find that the Surat is authentic and is a proper record of Evelyn's sale of the Lot B shares to Wirio. Evelyn signed the Surat in Kuala Lumpur on or around 14 February 1981. She declared as follows in the document (as translated):[135]

> Official Statement
>
> I, the undersigned, Evelyn S. C. Phoa hereby solemnly declare to have sold 100 shares in Supratechnic Pte. Ltd. Singapore to Mr. Jimmy Kasenda and to have received payment of S$125,000.- paid in instalments as follows:
>
> On 1/7 1979: S$30,000.-
>
> " 1/1 1980: S$30,000.-
>
> " 1/7 1980: S$30,000.-
>
> and the outstanding balance of S$35,000.- is paid today, as such, fail payment has been made.
>
> Kuala Lumpur, dated 14 February 1981
>
> <signature affixed>
>
> Evelyn S. C. Phoa

Thus, the Surat on its face shows that Evelyn had sold the Lot B shares to Wirio in 1979, with the payment for the sale to be made in four instalments, the fourth being $35,000, which was made on the day Evelyn signed the Surat.

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135 Defendants' Bundle of Documents at p 2.

(1) Eugene bears the burden of rebutting the presumption that the signature on the Surat is Evelyn's and has failed to do so

145 Naturally, Eugene contests the authenticity of the Surat, by alleging that Evelyn's signature is not genuine. An important issue that arises is the party who bears the burden of proving or disproving the fact that the signature on the Surat belongs to Evelyn. In this regard, Eugene says that because he has formally challenged the authenticity of the Surat, the defendants bear the burden of formally proving such authenticity.[136] However, the defendants say that Eugene bears the burden of rebutting the presumption under s 92 of the Evidence Act 1893 (2020 Rev Ed) (the "EA"), which provides that a signature on a document that is thirty years old is presumed to be in that person's handwriting.[137] To this, Eugene argues that by his issuance of a notice of non-admission, the defendants bear the burden of proving the document, including the conditions to trigger the presumption.[138]

146 The resolution of this issue requires me to determine: (a) whether the defendants can rely on s 92 of the EA in response to Eugene's challenge of the authenticity of the Surat; and (b) whether s 92 of the EA applies, and the effect of this. In my view, s 92 applies such that Eugene is the one who bears the burden of rebutting the presumption.

147 As a starting point, s 92 provides as follows:

> **Presumption as to documents 30 years old**
>
> **92.** Where any document purporting or proved to be 30 years old is produced from any custody which the court in the particular case considers proper, the court may presume that

136 PCS at para 91.

137 DRS at para 73(c).

138 PRS at para 96.

> the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.
>
> *Explanation.*—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.
>
> …

148 I start with the question of whether the defendants are entitled to rely on the presumption in s 92 in response to Eugene's challenge of the authenticity of the Surat. Eugene has done so by filing a notice of non-admission, which is one of several ways a party can put in issue the authenticity of a document (see the Court of Appeal decision of *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 ("*CIMB Bank*") at [36]). Once Eugene did this, the defendants must discharge their burden of proving that the Surat is indeed authentic. For the court to determine the authenticity of the Surat, the defendants must produce the original Surat into evidence. The defendants did this, albeit belatedly, because they only located the original Surat closer to the trial in 2021.[139]

149 However, the mere production of the original document is not sufficient, by itself, to establish the document's authenticity (see *CIMB Bank* at [50]–[51], citing the High Court decision of *Jet Holding Ltd and others v Cooper Cameroon (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 at [146]). This is because the "production of a document purporting to have been signed or written by a certain person is no evidence of its authorship" and "[t]here has

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[139] PCS at para 94; Certified Transcript 1 June 2023 p 54 lines 4–14.

to be an evidentiary basis for finding that a document is what it purports to be" (see *CIMB Bank* at [51]). Therefore, because Eugene has challenged the authenticity of the Surat, and in particular the authenticity of the signature, in order for the defendants to discharge their burden of proof, the defendants must show that the signature was in fact Evelyn's.

150 This brings me to the second question: whether s 92 of the EA applies. More specifically, the question is whether the defendants can show that the signature was Evelyn's by relying on the presumption in s 92 of the EA, instead of proving the making, execution, or existence of the document by evidence of the person or persons who made it, or a person who was present when it was made. Although s 69 of the EA provides that a signature on a document that is alleged to be in a person's handwriting must be *proved* in that person's handwriting, this provision does not require proof only by way of direct evidence, *ie*, testimony from signatures or a witness to the signatories (see *CIMB Bank* at [56]). While direct evidence would usually be the strongest available to a party, the failure to adduce direct evidence is not necessarily fatal to proving a document's authenticity (see *CIMB Bank* at [57]). Instead, a party may rely on indirect or circumstantial evidence to establish authenticity, even where direct evidence would have been available (see *CIMB Bank* at [61]). However, the court did not consider if a party can rely on a presumption within the EA to establish authenticity when this is disputed.

151 In my view, the defendants can rely on s 92 of the EA in the present case. First, although s 63 of the EA requires the contents of documents to be proved by primary or secondary evidence, I do not think that this prevents parties from relying on presumptions to discharge their burden of proof. In this regard, it must be recalled that the presumptions are an evidential tool to assist parties in discharging their burden of proof. If a presumption is validly invoked,

the court may presume that the party has proved a fact that they have the legal burden of proving. It cannot be the case that s 63 of the EA handicaps parties by preventing them from relying on presumptions that are set out in the EA.

152 Second, and relatedly, this interpretation of s 92 of the EA is supported by the other provisions in its section. Section 92 is located within a section on "Presumptions as to documents" in the EA, which spans from ss 81 to 92. Significantly, s 81 relates to the presumption "as to *genuineness* of certified copies". By this section, the court is to "presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact". If a party were to challenge the authenticity of such a document by filing a notice of non-admission of a document, it would be curious if the presumption in s 81 is defeated merely by such a filing. This would render the presumption raised in s 81 a dead letter, since it can be easily circumvented by a challenge of authenticity. In my view, s 92, being in the same section in the EA, should be interpreted in like manner.

153 Third, the reasoning in *CIMB Bank* does not appear to limit the defendants' reliance on s 92. The court made clear that the proof of authenticity of a signature may be established using direct, indirect, or circumstantial evidence. Insofar as an evidentiary presumption is a statutory tool that may assist parties in proving facts, and given the court's wide interpretation of the methods in establishing proof of authenticity of a signature, I am of the view that the defendants can rely on s 92 of the EA.

154 With this in mind, I find that s 92 applies in the present case. There are two requirements for s 92 to be established: (a) the age of the document; and (b) that it has been produced from proper custody (see the High Court decision

of *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [103]). Both these requirements have been satisfied in the present case. This is because: (a) the Surat is, on its face, more than 30 years old and hence purports to be so; and (b) it was produced from "proper" custody as defined in the explanation to s 92, because Joshua found the Surat at Salman's home after Wirio's belongings were moved to Salman's home following Wirio's death. Therefore, the defendants are entitled to rely on the presumption raised in s 92 to prove the authenticity of the signature and, with that, the authenticity of the Surat itself. The burden now shifts to Eugene to disprove the presumption that the signature on the Surat is Evelyn's. In as much as Eugene has not adduced much evidence (especially expert evidence) to do this, but was content to challenge the *defendants'* expert evidence attesting to the authenticity of Evelyn's signature, I find that Eugene has not rebutted the presumption in s 92. I therefore conclude that the signature in the Surat was Evelyn's and hold that the Surat is authentic.

(2) Angela's explanation does not rebut the presumption

155 In this regard, Angela's evidence that she did not witness Evelyn sign the Surat or receive payment of $35,000 when she was with Evelyn at the material time does not prove that Evelyn did not sign the Surat. I agree with the defendants that Angela's evidence is not that she was with Evelyn all the time when they were in Kuala Lumpur. Indeed, she did not even arrive at Kuala Lumpur with Evelyn in February 1981. Thus, it is entirely possible that Evelyn signed the Surat in the absence of Angela.

(3) In any event, Eugene has not successfully rebutted the defendants' expert evidence

156 In any event, were it necessary for me to have done so, I do not think that Eugene has successfully rebutted the defendants' expert evidence on the authenticity of Evelyn's signature.

157 First, while Eugene's counsel, Mr Raeza Ibrahim ("Mr Raeza"), ably challenged the credentials of the defendants' expert, Mr William Pang ("Mr Pang"), I do not think he has done so successfully. In this regard, during the cross-examination of Mr Pang, Mr Raeza referred to the High Court decision of *Pang Swee Kang v Low Chui Ying Foreen and another* [2012] SGHC 12 ("*Pang Swee Kang*"), where Mr Pang had previously testified as a handwriting expert.[140] The court in *Pang Swee Kang* preferred the evidence of the other expert over Mr Pang, for the following reasons (at [19]):

> …
>
> (a) Mr Pang's report failed to comply with Order 40A of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). This was a very serious defect. Although I allowed its correction by oral evidence-in-chief, the damage was already done. At the time of forming his opinion and writing his report, the important requirements were not in his mind.
>
> (b) The bulk of Mr Pang's experience was in graphology. His apprenticeship in document examination and forensic examination only commenced in 2004 and he received his certification in 2006. In contrast, Mr Yap from HSA had about 20 years' experience in forensic document examination, and he had handled more than 3,900 cases and had testified in court on more than 70 occasions. His report also complied with Order 40A of the Rules.
>
> (c) Mr Yap had carefully set out 27 signatures of the Husband against the impugned signature. He convincingly explained, and it was evident from the Comparison Chart, that the Husband's signature had a large natural variation in many

140 Certified Transcript 15 June 2023 at p 119 line 6 to p 121 line 12.

> respects and in many different parts of his signature, *viz*, in the size, the slant and the formation and relative positioning of the strokes. The debate over the "2" figure exceeding the height of the inverted "e" was settled in my mind when Mr Yap was able to refer me to some signatures, like S6, S4 and S25 where the same could be seen. Mr Pang also conceded that the specimen signatures "exhibited a wide range of variation" and he considered this normal. He also accepted that the signatures were pictorially similar, which he defined as "some level of pictorial resemblance that is observable and cannot be attributed to coincidence or chance."
>
> (d) Mr Pang referred to certain details like the inverted "e" being elliptical in shape in the impugned signature whereas the specimen signatures resembled a "boat" structure. A look at Mr Yap's Comparison Chart immediately revealed that Mr Pang's reliance was misplaced. There were so many variations to the inverted "e". Similar comments on the details of the impugned signature when checked against the Comparison Chart showed that his conclusion was not borne out by the specimen signatures. The weakness of Mr Pang's conclusion was that each feature he pointed out in the impugned signature was only compared against one other signature without reference to the many other sample signatures.

158 Eugene, in his Closing Submissions, suggests that Mr Pang's evidence in this Suit should be disregarded as a result of the court's observations in *Pang Swee Kang*. In particular, he points to how Mr Pang's evidence had been rejected for non-compliance with procedural requirements in *Pang Swee Kang*.[141] I do not accept this argument. For this court to draw an inference about Mr Pang's credibility based on observations made in *Pang Swee Kang* would clearly be an instance of similar fact evidence. But the requirements for similar fact evidence to be admissible, which are located in ss 14 or 15 of the EA, are not satisfied on the facts, because the evidence is not being used to prove a person's state of mind. Further, I accept Mr Pang's explanation that, in his field of work, there is no formal certification process, and the qualification of an

141 PCS Annex G at para 2.

expert is based primarily on experience. I am satisfied that Mr Pang possesses the necessary expertise, given his 23 years of experience in forensic handwriting work, as informed by an impressive list of experience providing such evidence to other courts.

159 Second, Mr Pang concluded that "there is strong support for the hypothesis that" the Surat was signed by Evelyn.[142] I accept this conclusion for the following reasons. Primarily, I accept Mr Pang's assessment that the signature of the Surat, when compared against known sample signatures that the defendants obtained from corporate documents that Evelyn's company filed from 1974 to 1976, was consistent with Evelyn's "handwriting … habits and style and there were no acute changes noting subtle natural variations".[143] I, however, do not attribute much weight to Mr Pang's conclusion that the paper used was acid paper and hence the document was likely made in the 1980s. This is because, as I questioned Mr Pang during the trial, the fact that a paper is manufactured in 1980 does not mean it cannot be used at a time when such paper type is no longer in wide use. Put another way, a person in the 2000s can use a paper from the 1980; this does not mean that the document so produced was made in the 1980s.

160 Third, despite Mr Raeza's best efforts, I do not think that Mr Pang's assessment was seriously impeached. As a starting point, the Court of Appeal in *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 (at [26]) cited *Halsbury's Laws of Singapore* vol 10 (Butterworths, 2000) with approval as follows (at para 120.257):

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142 Affidavit of Evidence-in-Chief of Pang Chan Kok William dated 4 October 2022 at p 20 para 7.3.

143 Affidavit of Evidence-in-Chief of Pang Chan Kok William dated 4 October 2022 at p 20 para 7.1.

> The court should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences. While the court is not obliged to accept expert evidence by reason only that it is unchallenged … if the court finds that the evidence is based on sound grounds and supported by the basic facts, it can do little else than to accept the evidence.

161 In this regard, I find that Eugene has not successfully impeached Mr Pang's assessment, because I reject the following arguments he has made:

(a) First, Eugene submits that Mr Pang's evidence does not comply with, among others, O 40A rr 2 and 3 of the ROC 2014.[144] I do not think that Eugene has discharged his burden of proving as such.

(b) Second, Eugene submits that Mr Pang's methodology – a "purely visual side-by-side comparison of the signatures" – was unsatisfactory. He also submits that Mr Pang's account is affected by the small number of sample signatures against which to compare Evelyn's signature in the Surat.[145] I accept Mr Pang's explanation that each case is different, and a smaller number of specimens is needed in the present case because Evelyn's signature is very stylised and unique and written in one continuous stroke with no hesitation. I also do not think that it is material that there appears to be variations in the way that certain letters in the signature on the Surat appeared. In this regard, I accept Mr Pang's explanation that these variations came within the confines of "natural variation". He also explained, which I accept, that some variation is expected given that the samples were written five or

144 PCS Annex G at para 2.

145 PCS Annex G at paras 6–9.

six years earlier, and so the variation of the writer could be slightly increased.

162 Ultimately, I can do no better than refer to the Court of Appeal decision of *Abhilash s/o Kunchian Krishnan v Yeo Hock Huat and another* [2019] 1 SLR 873 (at [88]), where the court remarked that "while the court is not obliged to unquestioningly accept expert evidence, even if it is unchallenged, the court would be slow to substitute its views for those of the expert's in the absence of good grounds". In the present case, there are no good grounds for me to reject Mr Pang's evidence.

163 For all these reasons, I find that the Surat is authentic, and a proper record of the Lot B shares being sold to Wirio.

Wirio's January 1983 Letter provides contemporaneous documentation of the sale

164 Second, Wirio's January 1983 Letter also provides contemporaneous documentation of the sale. Regardless of whether Eugene received this letter, Wirio's January 1983 Letter is a record of the sale. Since Eugene has not filed any notices of non-admission of authenticity to this letter, Eugene is deemed to have admitted to the authenticity of this letter by virtue of O 27 r 4(2) of the ROC 2014.

Eugene himself acknowledges the sale of the Lot B shares in his own letters

165 Third, Eugene himself acknowledges the sale of the Lot B shares in his own letters. In his January 1983 Letter, Eugene had asked for Wirio's and Onny's understanding of "the agreement which you reached with [Evelyn] with regard to Supratechnic, particularly how much of it has been sold to [Wirio] or

to other people".[146] These words speak for themselves. Eugene was clearly concerned about an agreement that was entered into for the sale of Evelyn's shares in Supratechnic.

166 Further, in Eugene's October 2003 Letter, Eugene said that Wirio had "completed his purchase of one-third share in Supratechnic".[147] This is yet again another reference to the sale of the Lot B shares from Evelyn to Wirio. More specifically, it would appear that Eugene accepted the sale as such, but that his real complaint was that Wirio had not paid over the purchase price of $100,000:[148]

> …
>
> your point No. 1 certainly states the correct position AFTER (and if) your father had completed his purchase of a one-third share in Supratechnic (out of my mother's two-thirds shares). The price for the sale of the one-third share, which I agreed (soon after my mother's death) to honour because my mother had indicated to me before her death, that that was something she was prepared to do, was agreed at S$100,000.00 If the full $100,000.00 was paid, the last payment would have been made not earlier than around 1992 or a little later (I base this on the small amounts of money I received from time to time, from your mother). However, for the reasons I give below, I now believe that the S$ 100,000.00 has never been paid, and as such, I do not believe that your family can rightfully claim, either in law or in equity, ownership to the one-third interest which your father agreed to purchase.

However, even if true, the failure on Wirio's part to pay does not mean that the sale is invalidated. It may open Wirio to damages, but it does not undo the contract. It is clear that the beneficial interest in the subject of sale immediately

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146 1AB at pp 50–51.

147 1AB at p 95.

148 1AB at pp 95–96.

vests in the buyer upon entry into the sale (see the High Court decision of *Tjong Very Sumito v Chan Sing En and others* [2012] SGHC 125 at [129]).

167 Accordingly, even by Eugene's own account, there was a sale of the Lot B shares from Evelyn to Wirio.

It is relevant that Evelyn did not procure a letter of confirmation in respect of the Lot B shares

168 Finally, I find that the sale of the Lot B shares is further supported by the fact that Evelyn did not procure a letter of confirmation similar to the February 1981 LOC for the Lot C shares. As I mentioned earlier (see [34] above), Eugene's account is that Wirio held the Lot C shares on trust for Evelyn, and this arrangement was documented in the February 1981 LOC. If it was indeed the case that Evelyn similarly did not sell the Lot B shares, it is conceivable that she would have documented this in another letter of confirmation. Evelyn could have asked Angela to prepare this when they met in Kuala Lumpur. Indeed, as evident from the lack of formality in the February 1981 LOC, it would not have been administratively difficult for Angela to prepare this document. However, Angela confirmed that the only business transacted during the Kuala Lumpur trip was the preparation and signing of the February 1983 LOC for the Lot C shares. The absence of a similar letter of confirmation in relation to the Lot B shares is therefore explicable because Evelyn had already sold her interest in those shares.

169 For all these reasons, Eugene's claim to the Lot B shares fails because they had been sold to Wirio in 1979.

Notwithstanding the procedural issues, whether Eugene's claim in relation to the Lot C shares succeeds

The parties' general positions

170 Turning now to the Lot C shares, Eugene's general case is that the trust over the Lot C shares at the outset, with Wirio as an express trustee, is proven by way of express or implied admission. This is because the defendants have pleaded that, subject to: (a) the cessation of the trust on Wirio's death (arising from the alleged 1977 Agreement); and (b) other defences such as illegality and contractual estoppel, "Wirio … held these Original Lot C shares on trust for Mdm Evelyn Phoa". Further, the trust is also admitted into the evidence by the defendants' negotiation to purchase the beneficial interest equating to 100 shares, as set out in the communications from 2003 to 2011.[149]

171 In response, the defendants argue that Eugene's claim to the Lot C shares fails for three reasons. First, Evelyn's Estate is estopped from contending that Wirio was a trustee for Evelyn by virtue of the Agreement to Transfer Trusteeship to Dr Teh. Second, there was no breach of trustee duties due to the 1977 Agreement between Wirio and Evelyn which provided for Wirio to pay Evelyn $1,000 a month until his death, in substitution of any alleged shareholder rights that may have accrued to the shares. Thus, Wirio was at best a bare trustee and did not breach his bare trustee duties. Third, the alleged trust over the Lot C shares is unenforceable as being contrary to public policy as it was created for the purpose of tax evasion. So long as any one of these reasons succeed, Eugene's claim to the Lot C shares will fail.[150]

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149 PCS at para 114.

150 DCS at paras 190–191.

My decision: Eugene's claim to the Lot C shares fails because Wirio never breached any duty as a bare trustee

Evelyn's Estate is not estopped from contending that Wirio was a trustee for Evelyn

(1) The parties' specific arguments

172 In particular, as to their first reason premised on contractual estoppel, the defendants say that at a 1981 meeting in Kuala Lumpur, Evelyn and Wirio agreed that the Lot C shares were to be transferred to Dr Teh. Wirio then performed the Agreement to Transfer Trusteeship by preparing a blank transfer form in Dr Teh's favour for the Lot C shares.[151] Further, there is the Letter of Confirmation dated 15 February 1981, where Wirio confirmed that he was holding onto 100 shares in Supratechnic for Dr Teh, and not Evelyn.[152] This arrangement to transfer the shares to Dr Teh is also corroborated by Eugene's pleadings, such as when he pleaded that it was Evelyn's intention for the shares to be registered in Wirio's name, and at a later time, for the same shares to be held on trust for Dr Teh.[153] Therefore, since Wirio performed all of his obligations under the Agreement to Transfer Trusteeship by preparing a blank transfer form in Dr Teh's favour, it was then left for Evelyn or Dr Teh to take the remaining steps to complete the transfer to Dr Teh. Without those steps, Evelyn's Estate cannot argue that Wirio remained Evelyn's trustee.[154]

173 These facts, the defendants argue, engage the doctrine of contractual estoppel in that the Agreement to Transfer Trusteeship was premised on an

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151 1AB at p 48.

152 1AB at p 45.

153 SOC A1 at paras 28–29.

154 DCS at paras 192–193.

agreed state of future affairs, that is, Dr Teh would be the owner of the Lot C shares. In this regard, the defendants rely on *Chitty on Contracts* (H G Beale gen ed) (Sweet & Maxwell, 32nd Ed, 2017) at para 4-116, which provides as follows:

> This form of "estoppel" is said to arise when contracting parties have, in their contract, agreed that a specified state of affairs is to form the basis on which they are contracting or is to be taken, for the purposes of the contract, to exist. The effect of such "contractual estoppel" is that it precludes a party to the contract from alleging that the actual facts are inconsistent with the state of affairs so specified in the contract.

174 Also, the defendants submit that contractual estoppel can be raised in relation to a future state of affairs and not merely past events. They rely on the English High Court decision of *Credit Suisse International v Stichting Vestia Groep* [2014] EWHC 3103 (comm) ("*Stichting*"), in which the English High Court held (at [307]) that there is "no reason … that the doctrine should be confined to [an agreement as to the past or present state of affairs], or that the law should adopt a different approach where parties have made an agreement about a state of affairs in the future". In the defendants' submission, that is precisely what is contemplated here: the Agreement to Transfer Trusteeship was premised on an agreed state of future affairs, namely, that Dr Teh would be the owner of the Lot C shares.[155]

175 Eugene's response is simply that there is no term in the purported agreement that Wirio's trusteeship over the shares came to an end with the parties' entry into the Agreement to Transfer Trusteeship. Moreover, the defendants' argument does not take reference from any term setting out a state

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155 DCS at para 195.

of affairs, but is premised on the alleged failure to complete an act, which would be better analysed as a breach of contract.[156]

(2) The doctrine of contractual estoppel can be applied in limited situations in Singapore

176 The parties both refer to the High Court decision of *BXH v BXI* [2020] 3 SLR 1368 (at [106]), where the court cited *Chitty on Contracts* (H G Beale gen ed) (Sweet & Maxwell, 33rd Ed, 2019) at para 4-116, which is substantially similar to the extract at [173] above. However, although the court accepted the argument that the plaintiff was estopped from denying the existence of an agreement, the court observed (at [109]) that "nothing turns on the precise difference between contractual estoppel and estoppel by convention in this case". In this regard, the court did not expressly endorse the doctrine of contractual estoppel.

177 The more appropriate decision to refer to is the High Court decision of *Tradewaves Ltd and others v Standard Chartered Bank and another suit* [2017] SGHC 93 ("*Tradewaves*"), where the court examined whether the doctrine of contractual estoppel applies in Singapore. In summary, based on a survey of the authorities, the court found that the doctrine of contractual estoppel applies in Singapore (at [129]–[141]):

(a) First, in the Court of Appeal decision of *Orient Centre Investments Ltd and another v Société Générale* [2007] 3 SLR(R) 566 ("*Orient Centre*") (at [50]–[51]), the court appeared to have accepted that contractual estoppel is part of Singapore law. Indeed, the court had referred to the English Court of Appeal decision of *Peekay Intermark*

156 PCS at paras 114–125.

Ltd v Australia and New Zealand Banking Group Ltd [2006] 2 Lloyd's Rep 511 ("*Peekay*"), which had accepted the doctrine of contractual estoppel as part of English law.

(b) Second, in the Court of Appeal decision of *Als Memasa and another v UBS AG* [2012] 4 SLR 992, the court (at [25]) referred to *Orient Centre* and held that non-reliance clauses cannot immunise the bank from liability for unauthorised transactions. Later (at [29]), the court observed in *obiter dicta* that "it may be desirable for the courts to consider whether financial institutions should be accorded full immunity for such 'misconduct' by relying on non-reliance clauses", but did not make a determination on this.

(c) Third, in the Court of Appeal decision of *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 (at [79]), the court held that "it is unnecessary for us to rule on the submissions that were made on the doctrine of contractual estoppel". The court in *Tradewaves* interpreted this as not "'overrul[ing]' or disagree[ing] with the decision of the Court of Appeal in *Orient Centre* where the doctrine of contractual estoppel was applied" (at [141]).

178 I respectfully adopt the High Court's interpretation regarding the status of the doctrine of contractual estoppel in Singapore. With that being said, I think that a survey of the authorities suggests that the doctrine of contractual estoppel does not apply in as wide a manner as the defendants have suggested. In particular, this doctrine has been applied only in the context of non-reliance clauses. For instance, in *Orient Centre*, the court noted (at [51]) that "even if Goh had made the representation concerning capital preservation and income return, it would not have assisted the appellants … as they have represented and

warranted that they did not rely on any representation given by any of SG's officers". Similarly, in *Tradewaves*, the court's discussion of contractual estoppel was limited to the specific example of non-reliance clauses. In particular, the court's analysis proceeded as follows (at [129]):

> Non-reliance terms have given rise to the concept known as contractual estoppel whereby a customer may be estopped from raising true facts contrary to the contractual term. For example, a customer may be estopped from establishing that in fact a bank had made a representation or recommendation even though that did truly occur.

179 Further, there is good reason not to apply the doctrine of contractual estoppel in as wide a manner as the defendants have suggested. It is clear even from the English authorities that the doctrine of contractual estoppel applies in a situation where parties bind themselves to a particular state of affairs through the use of contractual terms. In *Peekay*, Moore-Bick LJ explained (at [57]) that "[i]t is common to include in certain kinds of contracts an express acknowledgment by each of the parties that they have not been induced to enter the contract by any representations other than those contained in the contract itself". Also, as explained in the English Court of Appeal decision of *First Tower Trustees Ltd and another v CDS (Superstores International) Ltd* [2019] 1 WLR 637 (at [47]), "as a matter of contract parties can bind themselves at common law to a fictional state of affairs in which *no representations have been made or, if made, have not been relied on*" [emphasis added]. Quite contrary to this, the defendants' submissions require me to find that parties may be estopped without a need to refer to any particular contractual term. Indeed, they rely simply on the fact that the Agreement to Transfer Trusteeship was entered into. This cannot be the case. In so far as the effect of a contractual estoppel is to prevent parties from resiling from a particular position that they have agreed upon, I do not think that referring to a situation generally will

suffice. This creates much uncertainty as to the precise legal position that parties have come to an agreement on.

180 Therefore, I do not accept the defendants' submissions that the doctrine of contractual estoppel applies in the present case.

(3) In any event, there is no agreed term that the Lot C shares were to be transferred to Dr Teh

181 In any event, there is no agreed term that the Lot C shares were to be transferred to Dr Teh. I agree with Eugene that the defendants' argument does not take reference from any term setting out a state of affairs but is premised on the alleged failure to complete an act. This would be better analysed as a breach of contract. Indeed, if this is sufficient to estop Evelyn's Estate from arguing against what actually happened, this would take contractual estoppel too far and supersede the analysis by way of breach of contract.

182 Accordingly, I find that the defendants have not proven that Evelyn's Estate is estopped from contending that Wirio was a trustee for Evelyn.

Wirio never breached any duty as a bare trustee over the Lot C shares

183 Although I do not agree with the defendants on their argument of contractual estoppel, I nevertheless find that Eugene's claim for the Lot C shares would fail because Wirio never breached any duty as a bare trustee over the Lot C shares.

(1) Wirio was a bare trustee over the Lot C shares

184 I agree with the defendants that Wirio was a bare trustee over the Lot C shares. This is confirmed by Eugene's Statement of Claim (Amendment No. 1),

wherein he states that "Lot C shares … [were] to be registered in the name of Wirio Kasenda on trust for Mdm Evelyn Phoa … [and then] for Dr Teh".[157] Notably, there were no other terms of the alleged trust pleaded. The sole term of the alleged trust was simply that Wirio was to hold onto the Lot C shares. Thus, this is similar to the High Court decision of *Ching Chew Weng Paul v Ching Pui Sim and others* [2010] 2 SLR 76, where the sole term of the trust was for the defendants to hold onto shares on trust for the beneficiary. The court held that this was a bare trust, and the defendants were bare trustees.

185 In the case of a bare trust, the trustee is a "mere repository of the trust property" and he "owes no active duties to the beneficiary save to convey the trust property as and when the beneficiary directs him to do so" (see the Court of Appeal decision of *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [107]). Since Evelyn, her Estate or Dr Teh never requested an account of the Lot C shares during Wirio's lifetime, he could not have breached any duties as a bare trustee. Therefore, there cannot be any associated dishonest assistance or knowing receipt by the other defendants.

(2) Wirio and Evelyn agreed that, in exchange for $1,000 a month, Evelyn's interest in Supratechnic was limited to such payments

186 In any event, I find that Evelyn agreed in 1977 to forgo her rights to the Lot C shares in exchange for Wirio making monthly payments of $1,000. It is undisputed between the parties that Wirio made monthly payments of $1,000 during his lifetime, and these payments were later made by Onny and Ridwan. This is clear from the following. First, in his January 1983 Letter, Wirio wrote that he "commit [*sic*] to pay monthly S$1,000/- for The Phoa fam. in Canada"

157 SOC A1 at para 28.

and that "[i]n fact this has been done since Jan. 1977". He also explained that "every 6 mth [*sic*] I will transfer S$6,000.- to Canada".[158] Second, there is evidence that this arrangement was carried out. In Eugene's January 1983 Letter, he acknowledged Wirio and Onny for "the enclosed cheque for Canadian $2,922.04",[159] which would be equivalent to about S$5,030 at the time. There were also five bank remittances discovered by the defendants, which pertained to payments made between 1990 and 1993, which was before Wirio died. These were all characterised by Onny as a "debt" in the accompanying notes.[160] Thus, while the defendants have not been able to uncover all the records showing the payments due to the passage of time – which, as I have noted above, makes it unconscionable for Eugene to pursue these claims, in addition to them being statutorily time-barred – I am prepared to accept that these payments continued uninterrupted until at least Wirio's passing in 1996. This is because Eugene only raised his complaint of non-payment in his October 2003 Letter, with no other complaint made before that.[161] Eugene himself says that "there was no reason for [him] to have been put on any inquiry till the Kasendas' position on a sale of Lot B shares was put forth in October 2003".[162] If so, an estimated sum of $228,000 would have been paid by Wirio to the Phoas until he passed away in 1996. This is not an insignificant sum.

187 In my judgment, there is no good reason for Wirio to have paid this amount over the years if he was merely the bare trustee of the Lot C shares.

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158 1AB at p 48.

159 1AB at p 46.

160 DCS at para 204(b); 1AB at pp 60, 62, 63, 65, and 67.

161 DCS at para 204(d); 1AB at p 97 para 7.

162 PRS at para 64.

First, while the parties offered different views on the purpose of the monthly payments, it is telling that Evelyn did not ask Wirio about Supratechnic's affairs. Instead, Angeline testified that Evelyn "had no time for whatever my uncle wanted her to do" and she "had no interest in [Wirio's] business other than lending him money when he requested.[163] In this regard, Eugene says that Ridwan agreed that Wirio would update Evelyn on Supratechnic's affairs in his letter dated 17 September 1977, which postdated the entering of the 1977 Agreement, allegedly in January 1977.[164] However, this does not prove that Evelyn continued to be interested in Supratechnic as an investor because this letter came very close to the 1977 Agreement. It is likely that Wirio only did this because it was so close to the 1977 Agreement. It is therefore more likely that Wirio and Evelyn had agreed to the monthly payment of $1,000 to extinguish Evelyn's rights to the shares other than such payment.

188 Second, while Eugene argues that the existence of the 1977 Agreement is not proven, I find that this was recorded in Wirio's January 1981 Letter. Eugene does not dispute the authenticity of the letter but only that he never received this. Also, while Eugene argues that the terms of the 1977 Agreement was not proven by witnesses, Ridwan's uncontradicted evidence in his AEIC is that:[165]

> … Onny Kasenda told me that her recollection was that it was a promise that Wirio Kasenda had made to Evelyn Phoa and that the payments were something that was agreed to do so that Wirio Kasenda can freely run the family business in Supratechnic. Onny Kasenda also said her recollection was that such payments would stop once Wirio Kasenda passed on, after which whatever arrangement between the families in relation to

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163 Certified Transcript 30 May 2023 at p 47 lines 13–19.

164 PCS at para 137.2.

165 AEIC of Ridwan Kasenda (alias Oey Liang Lee) dated 4 October 2022 at para 28(a)(iii).

> the Supratechnic would also end. She also explained to me that she only continued to make payments to the Phoas after my father passed away as she wanted to help the Phoas however she can;

189 Although Eugene complains that the phrase "freely run the company" is too general as to capture an agreement for Evelyn to forgo her entitlement to the profits and dividends in Supratechnic,[166] Ridwan goes on to say in his AEIC that his recollection was that "such payments would stop once [Wirio] passed on".[167] If these payments were in respect of Supratechnic's profits and dividends, then there would be no reason why they would stop after Wirio's passing, since the controlling factor is Supratechnic, and not Wirio. This part of Ridwan's evidence was not challenged during cross-examination.

190 Third, the fact that the monthly payments were fixed as opposed to variable does not square with Eugene's account that they were meant to account for Supratechnic's profits and dividends. This is because if indeed the payments were to account for profits and dividends, they would fluctuate depending on the profits and dividends declared. It would make little sense for Wirio to agree to a fixed sum of $1,000 per month when Supratechnic was not even doing well in the 1970s and 1980s. This is more consistent with what Onny wrote in the notes accompanying the latter monthly payments that they were to fulfil a "debt" as opposed to "account" for anything.

191 As such, I find that Wirio and Evelyn agreed that, in exchange for $1,000 a month, Evelyn's interest in Supratechnic was limited to such payments. Further, Evelyn also agreed that she would forgo any profits and dividends in

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166 PCS at para 138.

167 AEIC of Ridwan Kasenda (alias Oey Liang Lee) dated 4 October 2022 at para 28(a)(iii).

the shares after Wirio's death. This appears to be a far more plausible account of why some $228,000 (at the least) was transferred by Wirio to the Phoas when Supratechnic was not doing well in its initial years. Eugene's claim to the Lot C shares therefore fails on this basis.

192 More broadly, the fact that Eugene and the defendants have to refer to what they heard from others as to the terms of this 1977 Agreement proves this bigger point that it is now unconscionable to allow Eugene, who has unjustifiably held his hands over this matter for decades, to make a belated claim against the defendants. The defendants have conducted their affairs thinking that they are free of any claims. It is not right for Eugene to accuse them of being difficult by not providing documents when it is clear that the passage of time would make even locating these documents difficult. Also, it is not right to expect the defendants to defend themselves properly when key witnesses have passed away.

No findings in relation to alleged tax evasion

193 Given my decision above, I make no findings as to the defendants' allegation that the alleged trust, even if it existed, is illegal as it was constituted to evade tax.

Notwithstanding the procedural issues, whether Eugene's claim in conversion succeeds

194 For completeness, while it appears that Eugene has abandoned the point in his Closing Submissions and Reply Submissions, I also find that even if not time-barred or prohibited by laches, Eugene's claim in conversion would fail. This is because "conversion is a common law action and the common law [does] not recognise the equitable title of the beneficiary under a trust" (see the English

Court of Appeal decision of *MCC Proceeds Inc v Lehman Bros International (Europe)* [1998] 4 All ER 675 at 691). Therefore, as Professor Gary Chan notes in his seminal textbook, "the mere holding of an equitable or beneficial interest in an asset does not confer upon the holder thereof an immediate right of possession" (see Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 11.040).

195 In the present case, neither Evelyn's nor William's Estates had actual possession of the shares in Supratechnic. It must follow that neither has a right to intermediate possession of the shares to sue in conversion. Eugene's claim in conversion therefore fails.

Conclusion

196 For all these reasons, I dismiss Eugene's claims entirely. In summary, Eugene's claims fail for both procedural and substantive reasons. In relation to the procedural reasons, Eugene has no standing to pursue his claims as he failed to extract the resealed foreign letters of administration for the Estates in Singapore. Eugene's claims are also clearly time-barred or barred by laches. In relation to the substantive reasons, I find that Eugene's claim against the Lot B shares fails because there is unrebutted evidence that those shares were sold by Evelyn to Wirio, who is the father of some of the defendants. I also find that Eugene's claim against the Lot C shares fails because Evelyn agreed in 1977 to forgo her rights to the shares in consideration for monthly payments of $1,000.

197 In closing, I thank all counsel for their able assistance in this Suit. Indeed, both Mr Raeza and counsel for the first to fifth defendants, Mr Joseph Lee, advanced their cases at trial and in the ancillary applications robustly but always fairly and reasonably. I am grateful for that.

198 Unless they are able to agree, the parties are to make submissions on costs within 14 days of this decision, limited to ten pages each.

Goh Yihan
Judge of the High Court

Raeza Khaled Salem Ibrahim, Hoon Wei Yang Benedict and Kimberly Ng Qi Yuet (Salem Ibrahim LLC) for the plaintiff;
Lee Sien Liang Joseph, Chan Junhao Justin, Ow Jiang Meng Benjamin, Yong Walter, Ling Ying Hong Samuel and Dyason Isabel Mary (LVM Law Chambers LLC) for the first to fifth defendants;
The sixth to eight defendants absent and unrepresented.