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

[2024] SGHC 318

Originating Claim No 100 of 2023

Between

(1) Duke Bakery Pte Ltd

… *Claimant*

And

(1) Lin Liming
(2) Zhang Yongqiang
(3) Chng Chee Hong

… *Defendants*

And Between

(1) Chng Chee Hong

… *Claimant in counterclaim*

And

(1) Duke Bakery Pte Ltd

… *Defendant in counterclaim*

JUDGMENT

[Companies — Directors — Duties — Breach of director's duties]
[Contract — Breach]
[Restitution — Unjust enrichment]
[Damages]

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Version No 1: 13 Dec 2024 (10:29 hrs)

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Duke Bakery Pte Ltd
v
Lin Liming and others

[2024] SGHC 318

General Division of the High Court — Originating Claim No 100 of 2023
Hri Kumar Nair J
30 October, 1, 5–7, 11, 13–14 November, 6 December 2024

13 December 2024

Hri Kumar Nair J:

Introduction

1 The claimant, Duke Bakery Pte Ltd ("Duke Bakery"), was in the business of producing and selling confectionery and bakery products.[1] It operated a central kitchen and, as at August 2024, had 12 retail outlets.[2] The defendants were Mr Lin Liming ("Mr Lin"), its former director, Mr Zhang Yongqiang ("Mr Zhang"), its former Managing Director, and Mdm Chng Chee Hong ("Mdm Chng"), its former Finance Manager.

2 Duke Bakery brought against:

(a) Mr Lin and Mr Zhang,

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1 5AB160.

2 Affidavit of Evidence in Chief ("AEIC") of Iain Cameron Potter dated 16 September 2024 ("AEIC Potter") at p 32, para 3.13.

(i) a claim in unlawful means conspiracy to have Mdm Chng effect transfers of sums totalling $150,000 from Duke Bakery to Mr Lin;[3]

(ii) a claim for breach of their duties owed to Duke Bakery *qua* director;[4]

(b) Mr Lin, a claim for wrongful breach of the (alleged) Transfer Agreement,[5] as defined in the Statement of Claim (Amendment No. 3) dated 14 October 2024 (the "Transfer Agreement");[6] and

(c) Mdm Chng, a claim for breach of her duties owed to Duke Bakery as Finance Manager,[7] and/or breach of trust and/or breach of her employment contract.[8]

3 According to Duke Bakery, the Transfer Agreement, which was entered "orally or by way of conduct", included the following terms:[9]

(a) The shareholders of Junhao Investment Pte Ltd ("Junhao") (a corporate shareholder of Duke Bakery), which included Mr Lin, would periodically deposit sums of monies into Duke Bakery's account, wherein the total sum deposited by each shareholder would be proportionate to his or her respective shareholding in Junhao (the "Periodic Deposits").

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3 Statement of Claim (Amendment No. 3) dated 14 October 2024 ("SOC") at para 7.

4 SOC at paras 8, 9.

5 SOC at para 8B.

6 SOC at para 7.2.

7 SOC at para 6A.

8 SOC at para 10.5.

9 SOC at paras 7.2.1–7.2.5.

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(b) All sums transferred from each of Junhao's shareholders would constitute Periodic Deposits until Junhao's shareholders agreed otherwise.

(c) Junhao's shareholders would not be entitled to the return of the Periodic Deposits, whether in part or in whole, until Duke Bakery became profitable. Even then, the return of the Periodic Deposits was at the discretion of Duke Bakery.

The claims against Mr Lin and Mr Zhang

4 The claims against Mr Lin and Mr Zhang revolved around a loan of $150,000 (the "Loan") made by Mr Lin to Duke Bakery in January 2017. Mr Zhang caused Duke Bakery to repay the Loan to Mr Lin in instalments over several months in 2017. Duke Bakery claimed that the Loan was subject to the Transfer Agreement and, therefore, ought not to have been repaid.[10] Mr Lin denied the existence of the Transfer Agreement;[11] his case was that the Loan was a temporary one, and that he was entitled to repayment.[12]

5 The claims against Mr Lin were premised on the following assertions, the burden of which was on Duke Bakery to establish:

(a) the Transfer Agreement existed, and both Duke Bakery and Mr Lin were parties to the same;

(b) the Loan was subject to the terms of the Transfer Agreement; and

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10 SOC at paras 7.3A–7.4.

11 1DD at para 7.2.

12 1DD at para 7.1.

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(c) Mr Lin had, in breach of the Transfer Agreement as well as his duties as a director of Duke Bakery, caused Duke Bakery to repay him the Loan (by conspiring with Mr Zhang).

6 The claims against Mr Lin failed for several reasons.

7 First, Duke Bakery failed to establish the existence of the Transfer Agreement.

8 I do not accept the evidence of Duke Bakery's witnesses as to the existence of the Transfer Agreement. Duke Bakery's pleaded case was that the Transfer Agreement was entered "orally and/or by way of conduct".[13] No evidence of such oral discussions or conduct was found in its witnesses' Affidavits of Evidence in Chief ("AEICs"). Duke Bakery's indirect majority shareholder and principal witness, Mr Cai Duanhong ("Mr Cai"), gave inconsistent evidence. He initially said that the Transfer Agreement was known to all of Junhao's shareholders through either meetings – including one at Duke Bakery's factory – or messages in their WeChat group chat.[14] However, he later said that there was no meeting attended by all six Junhao shareholders and that the Transfer Agreement was reached through WeChat.[15] He then clarified that the agreement was not reached over WeChat but during sit-down meals which did not include all six shareholders.[16]

9 I also note that the terms of the Transfer Agreement were not referred to in any contemporaneous document, including in the WeChat messages adduced

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13 SOC at para 7.2.

14 Transcript (30 October 2024) at p 45 line 9 to p 46 line 3.

15 Transcript (30 October 2024) at p 46 lines 22–23, p 47 lines 17–23.

16 Transcript (30 October 2024) at p 47 line 28 to p 48 line 13.

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in evidence. This was despite WeChat being the primary means of communication between Junhao's shareholders and the directors and employees of Duke Bakery.

10 The evidence was also not consistent with the (alleged) terms of the Transfer Agreement. In this regard, it was Duke Bakery's pleaded case that Mr Lin was responsible for, and obliged to contribute, 20% of the Periodic Deposits to Duke Bakery.[17] However:

(a) At all times, Mr Lin only held 12% of Junhao's shares in his name.[18] According to the Transfer Agreement, the sum deposited by each shareholder of Junhao was intended to be proportionate to his or her respective shareholding in Junhao (see above at [3(a)]).[19]

(b) Mr Cai asserted that Mr Lin was allocated 20% of Junhao's shares, but Mr Lin had caused 8% of the shares to be put in the name of one Mdm Lee Chiayun ("Mdm Lee"). Mr Lin nonetheless remained responsible for contributing 20% of the Periodic Deposits.[20] I did not accept that evidence:

(i) the allegation was not pleaded or stated in Mr Cai's AEIC – it was only asserted by him under cross-examination; and

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17 SOC at para 7.2.2.

18 P1; see also 5AB176–5AB182.

19 SOC at para 7.2.1.

20 Transcript (30 October 2024) at p 50 line 24 to p 51 line 30; Transcript (5 November 2024) at p 123 lines 6–14.

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(ii) Mdm Lee transferred her 8% shares in Junhao to *Mr Cai* in July 2017 –[21] this was also not referred to or explained in Mr Cai's AEIC. Mr Cai explained under cross-examination that he acquired Mdm Lee's 8% as Mr Lin did not want them.[22] But this was not put to Mr Lin. Mr Cai's explanation was also not credible – why would Mr Lin give up 8% of Junhao's shares but remain responsible to contribute 20% of the Periodic Deposits to Duke Bakery? Mr Cai offered no rationale for such an arrangement.

11 Significantly, the only WeChat messages produced relating to Junhao's shareholders' contributions evidenced that Mr Lin was only asked to contribute loans in accordance with his 12% shareholding:

(a) On 28 December 2016, Mr Zhang sent a WeChat message to Mr Cai with a draft message to be sent to Junhao's shareholders, noting that Mr Lin's share of contributions was 12% and that Mdm Lee's was 8%.[23] Mr Cai did not respond to this message specifically, and importantly, he did not correct the share of contributions.

(b) On 21 January 2018, Mdm Chng sent a WeChat message to a group chat stating that a loan of $200,000 was required from Junhao's shareholders and of this sum, Mr Lin was to contribute $24,000, *ie*, 12% of that loan.[24] I note that this message was sent after Mdm Lee's 8% was transferred to Mr Cai in July 2017; this however was irrelevant on Duke

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21 P1; see also 5AB176.

22 Transcript (5 November 2024) at p 131 lines 14–18.

23 3AB299.

24 4AB336.

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Bakery's case since it took the position that, at all times, Mr Lin was responsible for 20% of the Periodic Deposits.

12 I therefore accept Mr Lin's evidence that he always owned only 12% of Junhao's shares.[25] In this regard, I also accept Mr Lin's evidence that Mdm Lee was the wife of Mr Cai's friend, one Mr Kuang Ge, and that Mdm Lee was holding the 8% of the shares on Mr Kuang Ge's behalf.[26] This evidence was not challenged.

13 I also accept that while Junhao's shareholders were, from time to time, asked to make loans to Duke Bakery, such loans were not made pursuant to the terms of the Transfer Agreement. Indeed, the table of loans produced by Duke Bakery showed that Junhao's shareholders did not contribute in proportion with their respective shareholdings.[27]

14 Second, there was no evidence to support the assertion that Duke Bakery was a party to the Transfer Agreement even if it existed. Mr Cai's evidence was that the terms were agreed to between the relevant shareholders of Junhao *before* Duke Bakery was incorporated.[28] It was therefore unclear how or why Duke Bakery became a party to the same.

15 Third, the evidence supported Mr Lin's case that the Loan was a "short-term loan" and that he was entitled to repayment.[29] In other words, even if the

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25 Transcript (7 November 2024) at p 86 line 16, p 89 lines 7–16.

26 Transcript (7 November 2024) at p 92 lines 13–18, 29–30.

27 P3.

28 Transcript (5 November 2024) at p 125 line 29 to p 126 line 29.

29 1st Defendant's Defence (Amendment No. 3) dated 17 October 2024 ("1DD") at para 7.1.

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Transfer Agreement existed, the Loan was not made pursuant to it. The circumstances surrounding the Loan were important:

(a) In late December 2016, Duke Bakery required $380,000 to open a new store in Bedok, and a sum of $150,000 was urgently required to pay a deposit to secure the store.[30]

(b) Mr Zhang reported to Mr Cai that as at 19 December 2016, Mr Lin had loaned a total sum of $500,000 to Duke Bakery out of the total loan from Junhao's shareholders of $2.12m.[31] In other words, Mr Lin had contributed 23.6%, which exceeded even Duke Bakery's case that Mr Lin was responsible for 20% of the Periodic Deposits.

(c) While Mr Zhang had sent a message on 26 December 2016 to Junhao's shareholders asking for contributions, no one had responded.[32]

(d) On 5 January 2017, Mr Cai asked Mr Zhang if Mr Lin had paid in a sum of $150,000 to Duke Bakery. Mr Zhang responded that no monies had been received, and Mr Cai said that he would check. He messaged Mr Zhang that same day stating that Mr Lin would transfer a sum of $150,000 to Duke Bakery that day.[33] The clear implication was that there had been at least one exchange between Mr Lin and Mr Cai in which the Loan was discussed. Significantly, while Mr Lin gave an account in his AEIC dated 11 September 2024 of his conversation with Mr Cai – in which Mr Lin agreed with Mr Cai to give the Loan at

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30 AEIC of Zhang Yongqiang dated 27 August 2024 ("AEIC Zhang") at paras 80–84; 3AB295.

31 3AB297.

32 AEIC Zhang at para 84; 3AB332.

33 3AB302–3AB304.

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Mr Cai's request and that it would be a short-term one –[34] there was no mention of any exchange between them in both Mr Cai's AEIC dated 16 September 2024 and his Supplementary AEIC ("SAEIC") dated 22 October 2024 (which he filed after having the opportunity to review Mr Lin's AEIC). This omission was significant.

(e) Further, in his WeChat message on 5 January 2017, Mr Cai instructed Mr Zhang that there was no need to issue another appeal to the other shareholders of Junhao and that "[i]t is mainly between us", *ie*, between Mr Cai and Mr Lin.[35] In other words, there was no need for the other shareholders to contribute, which was inconsistent with the terms of the Transfer Agreement.

16 The WeChat messages shortly after the Loan was made also supported Mr Lin's case that the Loan was a temporary one and not subject to the Transfer Agreement.

(a) On 13 February 2017, Mr Zhang sent a WeChat message to Mr Cai describing the Loan as a "temporary" one and that it had to be repaid.[36] This was consistent with Mr Lin's case. Significantly, Mr Cai did not respond to deny that the Loan was temporary. This exchange also suggested that Mr Zhang was not aware of the Transfer Agreement or that the Loan was made subject to it.

(b) In response to Mr Zhang's message, Mr Cai did not take the position that the Loan could not, or should not, be repaid on account of

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34 AEIC of Lin Liming dated 11 September 2024 at para 11.

35 3AB304.

36 3AB500.

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> the Transfer Agreement or otherwise. Instead, he suggested that the Loan be set-off against Mr Lin's *future* contributions, and *the balance repaid to Mr Lin*. This was because Mr Cai was concerned about there being too many transfers of funds to and from Duke Bakery.[37] In other words, Mr Cai took the position that the Loan could be repaid to Mr Lin and that the deduction was a matter of convenience. This position was entirely inconsistent with the Loan being subject to the terms of the Transfer Agreement.

17 For completeness, Mr Zhang did state, in the same WeChat exchange, that Mr Lin was agreeable to making deductions from the $150,000 to be returned, and receiving the balance thereafter.[38] But he clarified in his evidence that this was only a "suggestion", and Mr Lin ultimately demanded the return of the full sum of the Loan.[39] In any event, I note that there was no evidence that Mr Lin was asked to make, nor did he make, any further loan contributions to Duke Bakery thereafter such that any deduction(s) could be carried out.

18 Fourth, and importantly, the Loan was documented in a Letter of Agreement dated 11 January 2017 (the "Letter Agreement"), and its clear terms required Duke Bakery to repay the Loan by 10 February 2017.[40] This was consistent with Mr Lin's case and inconsistent with the Transfer Agreement.

19 I reject Duke Bakery's arguments that the Letter Agreement was invalid or unenforceable:

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37 3AB500.

38 3AB501.

39 Transcript (13 November 2024) at p 55 lines 1–8, p 65 lines 1–4.

40 3AB482.

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(a) When cross-examining Mr Lin, Duke Bakery's counsel suggested that the Letter Agreement was fabricated.[41] This was not pleaded, and no such allegation was made in Mr Cai's AEIC and SAEIC. Indeed, Mr Cai's AEIC did not even deal with the Letter Agreement[42] although he knew it was central to Mr Lin's case. Mr Cai belatedly disclaimed any knowledge of the Letter Agreement in his SAEIC.[43]

(b) In any event, the burden of proving that the Letter Agreement was fabricated was on Duke Bakery (see *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [157]), and it failed to discharge the same. No reason was offered as to why Mr Zhang and Mdm Chng (who had signed and witnessed the Letter Agreement respectively) would assist Mr Lin to fabricate it, and *when* they did so. Importantly, the assertions that the Loan was temporary and that Mr Lin was expecting repayment were supported by the contemporaneous WeChat messages (see above at [16(a)] and [17]). The repayments to Mr Lin were also recorded in Duke Bakery's general ledger,[44] therefore demonstrating that no attempt was made to hide or disguise them. Mdm Chng also testified that a copy of the Letter Agreement would be attached as a supporting document to the payment vouchers for the instalment repayments of the Loan.[45] This was unchallenged.

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41 Transcript (11 November 2024) at p 31 lines 18–24.

42 Transcript (11 November 2024) at p 34 lines 1–4.

43 Supplementary AEIC of Cai Duanhong dated 22 October 2024 ("SAEIC Cai") at paras 12, 15.

44 3CB202.

45 Transcript (14 November 2024) at p 49 lines 15–16.

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(c) I note that there was some discrepancy as to how the Letter Agreement was made: Mr Lin claimed that Mr Zhang or Mdm Chng had drafted it at his office,[46] while Mr Zhang claimed that it had already been drafted when he arrived at Mr Lin's office.[47] Mdm Chng was not asked any questions about this. Nonetheless, given the clear evidence above, the allegation that the Letter Agreement was fabricated was not established.

(d) Duke Bakery's assertion that Mr Zhang had, from January 2017, no authority to make payments over $3,000 without Mr Cai's approval[48] (which was not pleaded – what was pleaded was a $30,000 limit)[49] was irrelevant. There was no evidence that Mr Lin was aware of that limitation. In any event, Mr Zhang's evidence was that the $3,000 limit only applied to "operational expenses", which did not include loan repayments.[50]

(e) Finally, Mr Lin's[51] and Mr Zhang's[52] clear evidence was that Mr Lin insisted on the Letter Agreement being signed before he would extend the Loan. Given Duke Bakery's urgent need for, and its subsequent use of the proceeds of, the Loan, it did not lie in its mouth to

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46 Transcript (7 November 2024) at p 113 lines 10–25.

47 Transcript (13 November 2024) at p 52 line 27 to p 53 line 3; Transcript (14 November 2024) at p 1 lines 26–28.

48 AEIC of Cai Duanhong dated 16 September 2024 ("AEIC Cai") at para 31; Claimant's Closing Submissions dated 6 December 2024 ("Duke Bakery Submissions") at para 56.

49 SOC at para 4.

50 Transcript (14 November 2024) at p 20 line 25 to p 21 line 8.

51 Transcript (7 November 2024) at p 113 lines 19–22.

52 Transcript (13 November 2024) at p 56 lines 1–3.

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subsequently claim that it was not bound by the Letter Agreement or to repay the Loan.

20 I therefore accept Mr Lin's case that the Loan was a temporary, short-term one which he extended to Duke Bakery at Mr Cai's request.

21 I also note that Duke Bakery had made a repayment totalling $300,000 to Mr Cai and other shareholders (excluding Mr Lin), proportional to their shareholdings in Junhao, in December 2020.[53] This was only disclosed by Mr Cai under cross-examination. Mr Cai testified that he agreed to the repayments to pacify the other shareholders who were demanding repayments of their Periodic Deposits because Mr Lin had received repayment of the Loan –[54] which was convenient given that Mr Cai was the biggest beneficiary of this repayment as the largest shareholder of Junhao. No documents evidencing the amount repaid were produced – Mr Cai merely claimed that the sum was $300,000.[55] What was evident was that this repayment was not made with the consent of Mr Lin,[56] and, on Duke Bakery's own case, made in breach of the Transfer Agreement. The repayment only underscored the lack of merit in Duke Bakery's case against Mr Lin.

22 Given my findings, the claims against Mr Zhang must also be dismissed.

23 These claims were premised on:

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53 Transcript (5 November 2024) at p 29 line 23 to p 24 line 17, p 124 lines 3–22.

54 Transcript (5 November 2024) at p 124 lines 10–28.

55 Transcript (5 November 2024) at p 29 line 23 to p 24 line 17, p 124 lines 3–13.

56 Transcript (5 November 2024) at p 125 lines 2–10; Transcript (6 November 2024) at p 17 lines 21–26.

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(a) the Loan being subject to the terms of the Transfer Agreement and therefore not repayable; and

(b) Mr Zhang being in breach of his fiduciary duties to Duke Bakery for authorising the repayment of the Loan.

24 For the reasons set out above, the Loan was a temporary loan, and Duke Bakery was therefore under an obligation to repay the same to Mr Lin. In the circumstances, Mr Zhang's authorisation of the repayment could not have been in breach of his duties. I further note Duke Bakery's pleaded case that Mr Zhang had made the repayments although all outgoing transactions, except for operational expenses under $30,000, had to be approved by Mr Cai.[57] But there was no evidence of such a limitation being imposed on Mr Zhang. Duke Bakery's position that this term was somehow incorporated into Mr Zhang's terms of employment[58] was unsupported by the evidence.

25 I also find that Mr Zhang was not privy to any terms of agreement between the shareholders, much less the Transfer Agreement. In the circumstances, even assuming that the Loan was subject to the terms of the Transfer Agreement (which I do not find), Mr Zhang could not have known that he was facilitating a breach of the same by repaying the Loan.

26 Even if Mr Zhang had exceeded his authority in repaying the Loan (which I do not find), I find that Duke Bakery did not suffer any loss as it was contractually bound, pursuant to the Letter Agreement, to repay the Loan to Mr Lin. In this regard, Duke Bakery conceded that if it is found that Mr Lin was entitled to the repayment of the Loan, there can be no claim for damages as

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57 SOC at para 7.5.1.

58 Duke Bakery Submissions at para 55.

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against Mr Zhang.[59] Duke Bakery argued that Mr Zhang would still be in breach of his fiduciary and contractual duties,[60] but did not seek any relief in respect of the same.

27 I also dismiss the claim that Mr Lin and Mr Zhang had breached their duties to Duke Bakery by failing to disclose "the true state of matters concerning the Transfer of $150,000 pursuant to, *inter alia*, s 156 of the Companies Act".[61] It was unclear what Duke Bakery meant by this. In so far as the allegation was that Mr Lin and Mr Zhang had failed to disclose the repayment of the Loan, that was misconceived:

(a) Mr Lin was acting as lender to, and not as a director of, Duke Bakery in respect of the Loan. Further, given that Mr Lin had no executive role in Duke Bakery and that the repayment was in accordance with the terms of the Loan, it was unclear why he owed any duties of disclosure to Duke Bakery in respect of the repayment; and

(b) Duke Bakery had failed to articulate why Mr Zhang had a duty to disclose the repayment of the Loan or how he was in breach of that duty. As I have found:

(i) Mr Cai had authorised Mr Zhang to take the Loan from Mr Lin;

(ii) Mr Zhang had informed Mr Cai that Mr Lin was asking for repayment of the Loan; and

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59 Duke Bakery Submissions at para 77.

60 Duke Bakery Submissions at para 78.

61 SOC at para 9.

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(iii) Mr Cai did not prohibit Mr Zhang from making repayment, and only suggested, as a matter of convenience, that part of the repayment be set off against Mr Lin's future contributions.

28 I also note that the repayments to Mr Lin in 2017 were properly and unequivocally recorded in Duke Bakery's books,[62] and Duke Bakery's financial statements for the year ended 31 December 2017 were audited[63] and signed off by Mr Cai.[64]

29 It necessarily follows that the claim in conspiracy against Mr Lin and Mr Zhang fails as well.

30 Given my findings, I need not deal with the limitation defence raised by Mr Zhang,[65] which was not pursued in his closing submissions.

The claims against Mdm Chng

31 It was not disputed that Mdm Chng, while she was Finance Manager, misappropriated a significant sum from Duke Bakery. Duke Bakery's claims against Mdm Chng was for:

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62 3CB202.

63 4AB147–4AB150.

64 4AB146.

65 Defence of the 2nd Defendant (Amendment No. 4) dated 16 October 2024 ("2DD") at para 7.2(9).

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(a) the sum of $2,727.25,[66] being the difference of $423,682.25 allegedly misappropriated by Mdm Chng (the "Claim Amount")[67] and the sum of $420,955 repaid by her;[68] and

(b) damages of $405,898, being the loss of profits suffered by Duke Bakery on account of it being unable to use the misappropriated funds to open new stores.[69]

32 I note that Mr Cai's SAEIC stated the sum allegedly misappropriated by Mdm Chng as $424,042.14.[70] However, absent any amendment to Duke Bakery's pleading, its case was based on the Claim Amount. In any event, this did not make a difference given my findings below.

33 Mdm Chng admitted to misappropriating from Duke Bakery only the sum of $339,730.20 (the "Proven Amount"),[71] and therefore claimed that she had overpaid the sum of $81,224.80 to Duke Bakery (the "Excess Sum"), which she filed a counterclaim for.[72]

34 In summary:

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66 SOC at para 10.3.

67 SOC at para 10.1.

68 SOC at para 10.2; Defence of the 3rd Defendant (Amendment No. 2) dated 16 October 2024 ("3DD") at para 36.

69 Claimant's Opening Statement dated 28 October 2024 at para 13.

70 SAEIC Cai at para 25.

71 3DD at para 37(a); AEIC of Chng Chee Hong dated 16 September 2024 ("AEIC Chng") at para 28.

72 3DD at para 36 read with Counterclaim of the 3rd Defendant (Amendment No. 1) dated 16 October 2024 ("3D CC") at para 2(a); AEIC Chng at paras 32, 35.

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(a) Because of Mdm Chng's misappropriation, four charges of criminal breach of trust were preferred against her.[73]

(b) Mdm Chng pleaded guilty to two charges (the "Proceeded Charges") and the other two were taken into consideration.[74]

(c) The amount misappropriated in respect of the transactions detailed in the Proceeded Charges amounted to $240,376.72 (the "Admitted Amount"),[75] which was part of the Proven Amount and therefore admitted by Mdm Chng.

(d) However, Mdm Chng did not admit, in her pleading, to any misappropriation in respect of any other *specific transactions*. Nonetheless, she admitted to having misappropriated the Proven Amount as the investigations had so established.[76]

(e) It was therefore Duke Bakery's burden to prove that Mdm Chng had misappropriated monies in the individual transactions which made up the difference between the Claim Amount and the Admitted Amount, *ie*, $183,305.53 –[77] these were defined at trial as the "Category B" transactions, which comprised 100 transactions that had taken place from 2015 to 2018.[78]

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73 AEIC Chng at para 25.

74 3DD at para 32(a); AEIC Chng at para 27(a).

75 AEIC Chng at para 37(a).

76 3DD at para 36.

77 SAEIC Cai at para 33.

78 SAEIC Cai at para 34.

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(f) Nonetheless, even if Duke Bakery failed to prove its case in respect of the Category B transactions, it would, at the minimum, be entitled to maintain that Mdm Chng had misappropriated the Proven Amount given Mdm Chng's admission.

35 During the trial, and after discussions between counsel for Duke Bakery and Mdm Chng, Mdm Chng admitted to misappropriating the monies involved in 14 of the 100 Category B transactions, amounting to a sum of $82,793.38.[79] That left 86 Category B transactions in dispute, ranging from $32 to $15,520, the majority of which did not exceed $600.

36 I find that Duke Bakery failed to prove that Mdm Chng had misappropriated the monies in respect of the remaining Category B transactions. I will not go into all the individual transactions or sub-categories of transactions in detail. It suffices to say that:

(a) In most cases, Duke Bakery had no evidence that the monies were even taken by Mdm Chng, much less taken wrongfully by her.

(b) The assertion that payments allegedly made to third parties were in fact not received by them was not proven given that none of the third parties were called to give evidence.

(c) The fact that supporting documents could not be found to support some payments did not prove that the payments were wrongful. Indeed, Duke Bakery did not lead evidence that no documents were ever produced to support those payments or that Mdm Chng was responsible for the missing documents.

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[79] 3D1 at p 1.

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(d) The claims in respect of some transactions or sub-categories of transactions were clearly unsustainable. I highlight four examples:

(i) Mr Cai testified that some payment documents recorded commission payments to employees for selling "VIP cards", and that the payment vouchers were possibly fabricated as Duke Bakery did not have such an incentive scheme.[80] But Mr Zhang confirmed the scheme's existence,[81] and that evidence was not challenged. Mr Zhang also confirmed that he did not receive or hear of any complaints from Duke Bakery's employees that commissions had not been received by them,[82] suggesting that Mdm Chng did not misappropriate the monies.

(ii) Duke Bakery accused Mdm Chng of misappropriating the sum of $1,600, of which $600 was allegedly used to make payment for "NEA Licence". The payment voucher corresponding to this sum was supported by an e-mail evidencing an online payment made by one of Duke Bakery's employees, one Ms Chew Ming Tai ("Ms Chew"), who was in charge of Duke Bakery's kitchen licence. Mdm Chng was unable to remember how the payment for the licence was made, but testified that the payment of $600 by Duke Bakery was to reimburse herself or Ms Chew.[83] Duke Bakery argued that if Ms Chew made the payment, it should reimburse her directly "as opposed to a two-step process by which Mdm Chng would pay

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80 Transcript (5 November 2024) at p 103 line 29 to p 110 line 27.

81 Transcript (13 November 2024) at p 16 lines 10–18.

82 Transcript (13 November 2024) at p 24 lines 14–16, p 26 lines 20–24, p 27 lines 15–20.

83 Transcript (14 November 2024) at p 90 line 4 to p 91 line 13.

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> [Ms Chew], and be reimbursed by [Duke Bakery]".[84] But Duke Bakery's case was flawed as it led no evidence that it had directly reimbursed Ms Chew or that Ms Chew was not reimbursed by Mdm Chng.
>
> (iii) While Duke Bakery had accused Mdm Chng of making fictitious salary and other payments to its employees, no evidence was adduced that the said employees were even asked about those payments, much less that they did not receive the same.
>
> (iv) Duke Bakery highlighted that some reimbursements received by Mdm Chng for medical and transport claims were in excess of, or not consistent with, her contractual entitlements,[85] and therefore deemed these as misappropriations by Mdm Chng. But Mr Zhang testified that he was authorised to, and did occasionally, allow such claims above the contractual limits.[86]

37 I note that there were some third-party invoices used to support payments which appeared to be fabricated – different companies had the same phone and fax numbers and the invoices looked the same, or the invoices were from companies that did not exist.[87] But this alone was insufficient to prove that *Mdm Chng* had misappropriated those monies. There was no evidence that she produced these documents. In any event, these transactions (together with the

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84 Duke Bakery Submissions at para 107.

85 Duke Bakery Submissions at para 120.

86 Transcript (13 November 2024) at p 31 lines 10–12.

87 3CB100, 3CB88–3CB93.

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Proven Amount) would not come close to proving the sum of $423,682.25, *ie*, the Claim Amount, to meet Duke Bakery's claim for $2,727.25.

38 The clear impression I had from the evidence was that Duke Bakery had done a review of its documents for the period 2015 to 2018, and decided (initially) to claim misappropriation, and conspiracy to misappropriate, *against all the defendants*, for any transaction that looked suspicious, could not be explained or where supporting documents could not be found. This was done without evidence that the defendants had taken or benefitted from the monies. This approach became unstuck at the door-step of trial when Duke Bakery, in the face of the lack of evidence, abandoned its claim against Mr Lin and Mr Zhang for their alleged participation in the misappropriation by Mdm Chng, and reduced the sum claimed against Mdm Chng by more than $100,000.

39 Duke Bakery was essentially asking the court to infer that Mdm Chng had misappropriated monies in respect of transactions it could not explain, had no supporting documents for or where the payees reflected in the documents had (allegedly) informed it that no payment had been received. The evidence suggested that Duke Bakery lacked proper financial controls, including allowing the issuance of cash cheques and cash payments, which Mdm Chng appeared to have exploited. But that was insufficient to draw the inference that she had misappropriated the Claim Amount. Indeed, as noted above, some of Duke Bakery's claims were unsustainable (see above at [36(d)]). Neither did it call to give evidence: (a) the firm which had carried out the review of its accounts (*ie,* Golden Earth Consultancy), which meant that the methodology and robustness of its review were not explained or tested; or (b) the payees to testify that they did not in fact receive payment, which meant that those assertions were hearsay.

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40 In the circumstances, I dismiss Duke Bakery's claim against Mdm Chng for the sum of $2,727.25.

41 I nonetheless record my reservations about Mdm Chng's evidence. As pointed out by Duke Bakery, Mdm Chng would concede to having misappropriated increasing amounts when confronted.[88] I found her evasive, particularly when she was asked about the amount she had taken. In a WeChat conversation with Mr Cai on 23 September 2018, *ie* after her employment with Duke Bakery was terminated,[89] she stated that "based on [her] own calculations", she had taken "about $380,000", which suggested that she had access to some records.[90] At trial, Mdm Chng denied taking this sum, claiming that it was based on "computations without data".[91] But under cross-examination, she claimed for the first time that she had kept a physical record of the monies misappropriated in a file in Duke Bakery's office.[92] She also did not explain how she was able at the trial to identify specific transactions by which she had misappropriated monies that did not relate to the Proceeded Charges (see above at [35]).

Damages

42 Given my findings above, no issue of damages arises against Mr Lin and Mr Zhang. In any event, my findings in respect of the damages claim against Mdm Chng below, where relevant, apply to the claims against Mr Lin and Mr Zhang as well.

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88 Duke Bakery Submissions at para 150.

89 AEIC Chng at para 6.

90 7CB289.

91 Transcript (14 November 2024) at p 114 lines 8–19.

92 Transcript (14 November 2024) at p 52 line 2 to p 53 line 15.

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43 With respect to Mdm Chng, it was undisputed that she did misappropriate the Proven Amount (*ie*, $339,730.20) over the period 2015 to 2018. The issue was whether Duke Bakery suffered any loss of profits on account of it not being able to open new stores because of Mdm Chng's misappropriation.

44 Duke Bakery claimed that it had a plan, based on oral discussions that took place around July 2014, of opening 40 stores as soon as possible (the "Plan").[93] Mr Lin denied the existence of the Plan and claimed there were no discussions about the same.[94] Mr Zhang and Mdm Chng denied knowledge of the Plan.[95] As such, the defendants contended that no damages were suffered.

45 I find the existence of the Plan, for which there was scant evidence, a red herring. Duke Bakery had to establish that it intended to open *some* stores and that Mdm Chng's misappropriation caused it to shelve those plans.

46 In this regard, there was some evidence that Duke Bakery intended to increase the number of its stores:

(a) In or around 19 December 2015, Mr Zhang announced to Duke Bakery's directors a plan to expand its production capability by June 2016 to meet the production requirement of 25 stores. At that time, Duke Bakery had 14 stores.[96]

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93 SOC at paras 12A–12B.

94 1DD at para 12B.

95 2DD at para 12B.2; 3DD at para 40B.

96 AEIC Cai at para 28.

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(b) In or around 26 December 2016, Mr Zhang announced to Duke Bakery's directors a plan to open an additional six to seven stores in 2017.[97] At that time, Duke Bakery had 15 stores.[98]

47 However, there was no or insufficient evidence to prove that the failure to open more stores was on account of the lack of funds caused by Mdm Chng's misappropriation:

(a) Duke Bakery's evidence comprised only of bare assertions. For example, Mr Cai simply testified that "by reason of the Defendants' acts, [Duke Bakery] did not have the funds to carry out the Plan as intended and in fact had to close some of its stores due to its lack of funds, with its total store count fluctuating at around 14 stores".[99] No details were given. Duke Bakery did not produce any detailed plans to open new stores, or any analysis of its finances that those plans could not be carried out on account of the lack of funds. In fact, as will be seen below, Mr Cai's account was also inaccurate.

(b) It was not disputed that Duke Bakery was, at this relevant period, not dependent on being profitable to open stores. Its *modus* was to ask for loans from the shareholders of Junhao to open new stores. However, there was no evidence that the shareholders were asked for funds to open new stores in the period 2015 to 2018 (corresponding to the period of Mdm Chng's misappropriation), save in respect of the opening of the store in Bedok in 2017, for which Mr Lin provided the Loan.

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97 3AB321.

98 AEIC Zhang at para 188; AEIC Cai at para 83.

99 AEIC Cai at para 83.

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(c) Duke Bakery increased its number of stores from 14 in 2015 to 15 in 2016, and reduced them to 14 in 2017 and 13 in 2018.[100] However, Mr Zhang explained that the closure of stores was on account of a number of factors, including the losses incurred for individual stores or poor foot traffic (for the stores at Suntec City Mall and International Plaza), renovation of the malls the stores were in (for the store at Liang Court), or relocating the store to a different location within the same mall (for the stores at United Square and Citylink Mall).[101]

(d) More importantly, Mr Zhang testified that Duke Bakery wanted to open new stores but was simply unable to find suitable locations. He explained that securing space was challenging as malls were concerned about their tenant-mix and would not agree to lease a unit if other bakeries were already operating there. Mr Zhang had personally looked at five proposed locations and found them all unsuitable for different reasons.[102] This evidence was not challenged. In other words, Duke Bakery's failure to open new stores was not on account of Mdm Chng's misappropriation.

48 Duke Bakery also put forward contradictory evidence. Mr Cai deposed that in or around January 2019, after Duke Bakery had replaced Mdm Chng, Junhao's shareholders were no longer required to transfer funds to Duke Bakery for its continued operations as it was able to fund its own operations.[103] However, no additional stores were opened after January 2019 – the number of

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100 AEIC Zhang at para 188; AEIC Cai at para 83.

101 Transcript (14 November 2024) at p 29 line 1 to p 30 line 1.

102 Transcript (14 November 2024) at p 30 lines 2–19.

103 AEIC Cai at para 78.

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stores in fact fell from 13 at the end of 2018 to 11 in 2020, 10 in 2021 and 2022, before rising to 13 in 2023.[104]

49 Further, Mdm Chng had paid $244,955 (out of the sum of $420,995) in restitution in 2018.[105] On Duke Bakery's case, that would have been sufficient to open *two* additional stores[106] – but none were opened and no evidence was led as to how the funds were used.

50 Instead, in 2020, Mr Cai applied Duke Bakery's funds towards repaying some of the loans from Junhao's shareholders, including repayments to himself (see above at [21]).

51 The above findings dispose of the claim for damages as pleaded.

52 Further, and in any event, I find Duke Bakery's computation of damages problematic and subject to error.

53 Mr Iain Cameron Potter ("Mr Potter"), Duke Bakery's expert, simply took the sum of the misappropriated funds, isolated it from Duke Bakery's operations, and then assessed how many stores could have been opened with those monies.[107] In his report, he stated that he assumed the misappropriated funds would have been reinvested by Duke Bakery in its business in order to open additional outlets and conversely, would not have been distributed to shareholders or used to pay down debts owed.[108] Mr Potter then assessed Duke

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104 AEIC Potter at p 32, para 3.13.

105 AEIC Cai at para 73.

106 AEIC Cai at para 85.

107 Transcript (7 November 2024) at p 8 lines 6–17.

108 AEIC Potter at p 28, paras 3.2(a), 3.2(b).

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Bakery's losses by calculating the additional pre-tax profits that it would have generated from the additional outlets that it could have opened with the allegedly misappropriated funds, less the additional pre-tax profits that could have been generated by outlets that could have been opened with the repaid funds (but were not).[109]

54 In other words, the damages were calculated on the basis that the misappropriated funds would be *exclusively* used to open stores, and not for Duke Bakery's other expenses and liabilities. Mr Potter also did not assess the misappropriated funds in the context of Duke Bakery's actual financial position. I find this approach artificial.

55 Further, the computation of damages was based on several assumptions that were not established, including that:

(a) Mdm Chng had misappropriated the sum of $423,682.25. I have found that Duke Bakery had only established the Proven Amount, which is a difference of about $84,000. This adversely affected the computation of damages in two ways:

(i) it over-stated the computation of profit per store as Mr Potter had "written back" the amount of $423,682.25 allegedly misappropriated and treated that sum as part of Duke Bakery's earnings;[110] and

(ii) it over-stated the amount of cash lost which could otherwise have been used to open new stores.

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109 AEIC Potter at p 28, para 3.4.

110 AEIC Potter at p 29, para 3.5(c).

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(b) The sum of $424,042 – the revised sum allegedly misappropriated that was higher that the pleaded sum of $423,682.25 – comprised of the sums of $183,224, $54,310, $136,263, and $50,255 allegedly misappropriated in the years 2015, 2016, 2017 and 2018 respectively.[111] Mr Potter calculated the loss of profit by first categorising the misappropriated sums into different types of expenses such as asset-related, variable, fixed per outlet and fixed, and then adjusting the historical accounts to "write back" the amounts.[112] But there was no evidence to support these figures. Mr Potter accepted his calculations would be affected if the amounts were different.[113]

(c) All the monies misappropriated would have been used to open new stores. There was no evidentiary basis for this.

(d) Capital of $100,000 was required to open a new store in 2019.[114] Mr Potter was asked to assume this figure, but there was no evidence to support this. Indeed, Mr Cai testified that in the period 2014 to 2018, the "starting capital" needed to open each store fluctuated at $105,056.[115] Mr Cai relied on a undated written analysis produced by Mr Zhang after March 2017, but that document gave three different figures depending on the type and size of the store, which ranged from $105,056 to $384,851.39.[116] Mr Potter was therefore asked to assume a figure even lower than the cost of setting up the smallest (or least costly) store.

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111 Supplementary AEIC of Ian Cameron Potter dated 22 October 2024 at p 21.

112 AEIC Potter at p 30–31, paras 3.8–3.10.

113 Transcript (7 November 2024) at p 5 line 22 to p 6 line 11.

114 AEIC Potter at p 32, para 3.15.

115 AEIC Cai at para 85.

116 3AB241.

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(e) All types of stores were equally profitable, which enabled Mr Potter to calculate a figure for profit per store which he then used in his analysis. However, as Mr Potter conceded, the profit may vary depending on the type of store.[117] What Mr Potter therefore did was to adopt the costs of setting up the smallest (or least costly) store and then assume that all types of stores were equally profitable. This had the (potential) effect of over-stating the profit per store.

(f) No costs would be incurred to renovate Duke Bakery's central kitchen or purchase new equipment or delivery vans to meet the increased production for the new stores.[118] The evidence suggested that some costs would be incurred to renovate the central kitchen, buy equipment and to deliver the increased production of bread. Mr Zhang testified that Duke Bakery's central kitchen could only support the production of bread for 14 stores (and not 18 stores as per his AEIC), and that it would need to be reconfigured to increase its production to support more stores.[119] He added that Mr Cai decided against the reconfiguration as that would disrupt existing operations, and would be too costly –[120] which was further evidence against Duke Bakery not opening new stores on account of the misappropriation.

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117 Transcript (7 November 2024) at p 76 line 4 to p 77 line 22.

118 Transcript (7 November 2024) at p 77 lines 23–27.

119 Transcript (14 November 2024) at p 4 line 21 to p 7 line 26.

120 AEIC Zhang at para 182; Transcript (14 November 2024) at p 10 line 27 to p 12 line 12.

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Mdm Chng's counterclaim

56 Mdm Chng pleaded that the Excess Sum, *ie*, $81,224.80, was unjust enrichment that Duke Bakery kept, and relied on "a total failure of consideration between the parties" as the unjust factor.[121] In her closing submissions, she sought to supplement this by relying on mistake and exploitation of weakness as other unjust factors.[122] This was a departure from her pleaded case.

57 The inquiry for a failure of basis has two parts: first, what was the basis for the transfer in respect of which restitution is sought; and second, did that basis fail?: see *Benzaline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 at [46].

58 Mdm Chng's case was that she transferred the sums totalling $420,955, in reliance of a promise by Duke Bakery that it would not commence criminal and/or civil proceedings against her, which she alleged was orally and expressly communicated to her.[123] At the very least, she had "a legitimate expectation that if she pays restitution, she would not be sued for it (at least as far as civil proceedings are concerned)".[124]

59 However, there was no evidence, beyond her say so,[125] that Duke Bakery made such a promise to her. Neither was such an assertion put to Duke Bakery's witnesses. In fact, Mdm Chng confirmed in her evidence in court that Duke Bakery did *not* make any promise not to report her to the police if she paid it

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121 3D CC at paras 1, 1(c).

122 3rd Defendant's Closing Submissions ("Chng Submissions") at paras 72, 73.

123 Chng Submissions at paras 71(a)–71(b); Supplemental AEIC of Chng Chee Hong dated 16 October 2024 ("SAEIC Chng") at para 22.

124 Chng Submissions at paras 71(c).

125 SAEIC Chng at para 22, 25(c).

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more.[126] There was also no reason why Mdm Chng was entitled to have the legitimate expectation that she claimed to have.

60 Instead, I find that Mdm Chng paid the Excess Sum to Duke Bakery in the *hope* that it would not escalate matters. In a WeChat conversation on 17 September 2022, Mdm Chng effectively admitted that the payments were made to persuade Duke Bakery not to take action against her:[127]

> Although the $300,000+ that should have been returned had been fully returned before the company reported to the police …, I still continued to return some money to the company on a regular basis. I thought to myself that one day when the investigation results come out, if I return more money to the company than I should, I will treat it as begging you to give me a chance, to revoke the charges against me! The extra money that I repaid to the company will be treated as compensation to the company! will remember this lesson forever! …

She admitted that she continued making payments to Duke Bakery "out of fear that [Duke Bakery] would report [her] to the Police and/or pursue civil legal action against her" and that she wanted to de-escalate the matter.[128]

61 For completeness, the above finding also applies to dismiss Mdm Chng's claim on the ground of mistake. Mdm Chng was not operating under any mistake when she made restitution. Further, as I indicated above, I was not convinced that she did not know how much she had misappropriated. There was also no evidence that Duke Bakery had taken advantage of her in any way.

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126 Transcript (14 November 2024) at p 117 lines 6–13.

127 P7 at p 5AB1112A.

128 SAEIC Chng at paras 21–22, 25(b)–25(c).

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62 In the circumstances, there was no failure of basis relating to Mdm Chng's payment of the Excess Sum. I also find that Duke Bakery received the Excess Sum believing that it represented monies misappropriated by Mdm Chng and that it was entitled to the same. It was not unjust for Duke Bakery to receive the Excess Sum.

63 I therefore dismiss Mdm Chng's counterclaim.

Costs

64 Based on the Costs Schedules submitted by the parties, I order that Duke Bakery pays costs (excluding disbursements) to:

(a) Mr Lin in the sum of $95,000;

(b) Mr Zhang in the sum of $120,000; and

(c) Mdm Chng in the sum of $75,000. This takes into account the costs payable by Mdm Chng to Duke Bakery for her unsuccessful counterclaim.

For the avoidance of doubt, the above includes the costs arising from Duke Bakery's amendments to its statement of claim allowed on 11 October 2024, for which costs of the amendments and consequential costs were ordered in favour of the defendants.

65 The parties are directed to attempt to agree on the quantum of disbursements, and failing that, are to write to the court within 14 days listing

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the items they cannot agree on and their submissions in relation to the same (limited to five pages).

Hri Kumar Nair
Judge of the High Court

Cai Enhuai Amos, Teo Ying Ying Denise (Zhang Yingying), Lim Yun Heng and Jolene Song Zhu Yi (Yuen Law LLC) for the claimant and the defendant in counterclaim;
Tan Cheng Kiong (CK Tan Law Corporation) for the first defendant;
Phua Hoon Chong Justin (Justin Phua Tan & Partners) for the second defendant;
Che Wei Chin (Fervent Chambers LLC) for the third defendant and the claimant in counterclaim.

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