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

**[2024] SGHC 324**

Originating Claim No 246 of 2023

Between

Concorde Services Pte Ltd (in liquidation)

*… Claimant*

And

(1) Ong Kim Hock
(2) Andy Ong Beauty Services Ptd Ltd

*… Defendants*

---

# JUDGMENT

---

[Companies — Directors — Duties]
[Damages — Assessment]
[Tort — Conspiracy — Unlawful means conspiracy]
[Trusts — Accessory liability — Knowing receipt]

## TABLE OF CONTENTS

# Concorde Services Pte Ltd (in liquidation)
# v
# Ong Kim Hock and another

**[2024] SGHC 324**

General Division of the High Court — Originating Claim No 246 of 2023
Mohamed Faizal JC
2–5, 9 July, 24 September 2024

17 December 2024 Judgment reserved.

**Mohamed Faizal JC:**

## Introduction

1 Going into business with the wrong people is akin to handing a scalpel to someone who does not know how to use it – it can quickly become a recipe for disaster. The case before me is emblematic of that reality. It stems from a business arrangement for a hairstyling business involving two (initial) friends that, in theory, held much promise. However, this unravelled quickly in the space of a few months, when the business started showing promising shoots of profitability and one party to the arrangement decided to take the business all for himself to the exclusion of the other. To exacerbate matters, for many years, the business did not seem to maintain any reliable financial documentation. Consequently, the financial accounts were nothing more than a caricature of reality and this rendered any attempt to understand (let alone, properly quantify)

the business' financial health for the purposes of an assessment of damages very much a process of educated guesses.

## Facts

### *Background*

2 Mr Chua Swee Kheng ("Mr Chua") was a "business developer" who "owned several businesses".[1] The first defendant, Mr Ong Kim Hock, was a hairstylist who, from 10 April 2002 to sometime in 2010, ran his own hairstyling studio under the name of "Andy Ong Hair Studio" ("AOHS").[2] He and the first defendant met during their time in the Singapore military during their national service and/or when serving their reservist obligations.[3] Sometime in 2010, the first defendant closed down AOHS. At around the same time, Mr Chua and the first defendant agreed to start a hairstyling and salon business together.[4]

3 The claimant was incorporated on 26 May 2010, with its principal activity listed as beauty salons and spas, and manpower contracting services.[5] Mr Chua and the first defendant were the only two directors and shareholders in the claimant, and they each held half of the shares in the claimant.[6]

---

1 Mr Chua Swee Kheng's ("Mr Chua") affidavit of evidence in chief ("AEIC") dated 20 May 2024 at para 16; and Mr Ong Kim Hock's ("Mr Ong") AEIC dated 17 May 2024 at para 17.

2 Mr Ong's AEIC at paras 12–16; and Defendants' bundle of documents ("DBOD") volume ("vol") 1 at p 58.

3 Mr Chua's AEIC at para 5; Mr Ong's AEIC at para 17; and Transcript of trial dated 4 July 2024 ("4 July Transcript") at p 31 lines 21–22.

4 Mr Chua's AEIC at para 11; Mr Ong's AEIC at para 19; and 4 July Transcript at p 10 line 16 to p 11 line 3.

5 Mr Chua's AEIC at para 17; and DBOD vol 2 at p 172.

6 Mr Chua's AEIC at para 1; Mr Ong's AEIC at paras 5 and 7 and p 76; and DBOD vol 2 at p 173.

4 Sometime in August 2011, a tender was submitted on behalf of the claimant to lease a space in the Mass Rapid Transit ("MRT") station (the "Premises") at Sembawang. The Singapore Mass Rapid Transit Corporation ("SMRT") awarded the tender to the claimant, and a lease agreement was entered into between SMRT and the claimant (the "Claimant's Lease").[7] The Claimant's Lease was for 36 months and commenced on 16 October 2011. The monthly rental was $15,000.[8] In May 2014, the Claimant's Lease was successfully renewed by the first defendant for another 36 months from 16 October 2014 at an increased monthly rental of $17,000.[9] The Claimant's Lease was terminated upon its expiry on 16 October 2017.[10] The circumstances of such termination will be discussed at some length below (at [27]).

5 On 2 September 2011, the claimant registered a sole proprietorship named Station 33 to carry out the hairstyling business.[11] Station 33 was wholly owned by the claimant. In November 2011, Station 33 commenced its business at the Premises.[12] The first defendant was mainly responsible for Station 33's day to day operations, and he worked as the head hairstylist at Station 33.[13] Excluding the first defendant, it appears that Station 33 typically employed about four hairstylists at any given time.[14]

---

7 Mr Chua's AEIC at para 21; Mr Ong's AEIC at para 36; DBOD vol 1 at pp 107–152.

8 DBOD vol 1 at p 143.

9 DBOD vol 1 at p 155.

10 Mr Ong's AEIC at p 245.

11 Mr Chua's AEIC at para 21; Mr Ong's AEIC at para 38 and Statement of claim dated 24 April 2023 ("SOC") at para 6.

12 Mr Chua's AEIC at p 45; and Mr Ong's AEIC at para 45.

13 Mr Ong's AEIC at para 46; and Transcript of trial dated 2 July 2024 ("2 July Transcript") at p 32 line 18 to p 33 line 11.

14 4 July Transcript at p 116 lines 18–20; Transcript of trial dated 9 July 2024 ("9 July Transcript") at p 5 lines 2–12; and 9 July Transcript at p 34 lines 8–11.

6 Around early 2012, barely a couple of months after the start of business, the relationship between Mr Chua and the first defendant deteriorated as a result of various disagreements.[15] Since then, it is undisputed that Mr Chua did not physically return to the premises of Station 33.[16] Station 33's business registration lapsed on 2 September 2016, and neither Mr Chua nor the first defendant renewed its registration. As such, Station 33's business registration was cancelled on 29 July 2017.[17]

7 The claimant is currently in liquidation as a result of compulsory winding up, effective 17 January 2020.[18] A company, known as A@risco Services Pte Ltd ("Arisco"), completed some renovation works to the Premises for the claimant in 2011, for the sum of $60,852.97 (excluding interest or costs of later applications).[19] Arisco was unable to recover this sum from the Claimant, and applied to wind up the Claimant. The application was granted.[20]

***Station 33's finances***

8 Even though its business registration was cancelled on 29 July 2017, Station 33's business operated from November 2011 to sometime in September or October 2017.[21] For the first few months, Station 33's earnings were typically deposited into Station 33's bank account (the "Station 33 Bank Account") with

---

15 Mr Ong's AEIC at para 54; 2 July Transcript at p 37 lines 1–17.

16 2 July Transcript at p 40 lines 17–21.

17 Mr Chua's AEIC at para 49; Mr Ong's AEIC at para 81; DBOD vol 1 at p 43; and 4 July Transcript at p 126 lines 17–22.

18 DBOD vol 1 at p 46.

19 Mr Ong's AEIC at para 214(e); and transcript of trial dated 3 July 2024 ("3 July Transcript") at p 28 lines 14–21.

20 Order of the court HC/ORC 487/2020 dated 17 January 2020 in HC/CWU 404/2019.

21 Mr Chua's AEIC at paras 49–50; and Mr Ong's AEIC at para 116.

United Overseas Bank Ltd ("UOB"). The signatories of the Station 33 Bank Account comprised the first defendant and Mdm Lim Ping Ping ("Mdm Lim"), who is Mr Chua's wife.[22] Both the first defendant and Mr Chua each deposited $100,000 into the Station 33 Bank Account which comprised the initial equity for Station 33.[23]

9 Separately, there is another bank account opened under the claimant's name with UOB (the "Concorde Bank Account"). Upon the claimant's incorporation, Mr Chua deposited $25,000 into the Concorde Bank Account to facilitate miscellaneous expenses for the business as well.[24] The signatories of the Concorde Bank Account comprise the first defendant, Mr Chua and Mdm Lim.[25]

*The cash takings*

10 When customers make payment to Station 33, whether by credit card, debit card or Network for Electronic Transfers payment ("NETS"), the money goes directly into the Station 33 Bank Account.[26] In theory, the cash takings of Station 33 should have been collected from the customer and kept in the cash register, before being subsequently banked into the Station 33 Bank Account. However, it is not in dispute that, from the start of 2012, none of Station 33's cash takings were deposited into the Station 33 Bank Account. Although a point-of-sale system was set up, whereby the cash takings from customers could

22 Mr Ong's AEIC at para 41; and DBOD vol 2 at p 149.

23 Mr Chua's AEIC at para 45; and Mr Ong's AEIC at para 187.

24 Mr Chua's AEIC at para 43.

25 Mr Ong's AEIC at para 32.

26 4 July Transcript at p 68 line 22 to p 69 line 8.

be logged,[27] such a system was not utilised by the first defendant.[28] After a customer paid in cash, either the first defendant, one Mr Peter Chong Chung Hong ("Mr Peter Chong") (whose involvement and role within Station 33 will be explained subsequently) or the other hairstylists employed at Station 33 collected the cash.[29] It is similarly not in dispute that such cash takings were eventually put into the possession of the first defendant.

11 As it will be apparent later, one of the primary issues in the present case is whether Station 33 was a profitable business, and the resolution of this question necessarily hinges on the quantum and whereabouts of these cash takings. It is the Defendants' case that Station 33 was not profitable, and the first defendant had used all the cash takings, including the rental payment received from subletting the Premises (see below at [12]), to pay for the workers' salaries, including their commission payments and Central Provident Fund ("CPF") employee contributions, foreign worker levies to the Ministry of Manpower and payments to Station 33's suppliers.[30] However, almost none of the purported levy bills, suppliers' invoices or salary vouchers underlying these supposed payments during Station 33's operation have been produced before the court. Instead, most of the documents that were tendered as part of the Defendants' bundle of documents related to the *second defendant's* operations instead of that of Station 33.

---

27 Transcript of trial dated 5 July 2024 ("5 July Transcript") at p 5 lines 10–11.

28 Mr Chua's AEIC at para 55.

29 4 July Transcript at p 70 line 1 to p 72 line 5.

30 Mr Ong's AEIC at para 52; and 4 July Transcript at p 69 lines 12–15.

*The rental payment received from subletting the Premises*

12 On 13 February 2012, the first defendant personally entered into a tenancy agreement with one Ye Lizhen for the latter to sublet a part of the Premises to operate her business known as "J.C. Skin" (the "Subletting Agreement").[31] Although the Subletting Agreement appears to suggest that the first defendant had personally entered into the Subletting Agreement, the first defendant claims that he was in fact doing so on behalf of Station 33 but had to put the tenancy agreement in his personal name as he wanted to avoid detection of such a subletting arrangement. This was because, pursuant to the agreement between SMRT and the claimant for the Claimant's Lease, subletting any part of the Premises would be forbidden.[32]

13 Based on the first defendant's own recollection, the Subletting Agreement went on for between ten to 18 months.[33] There does not appear to be any meaningful way to verify this since there is no independent corroboration of this, though I note that the latest cheque for rental payment issued by J.C. Skin to the first defendant was dated 10 May 2013, which suggests that the Subletting Agreement went on from at least February 2012 to May 2013.[34] In any event, only four months' worth of rental payment, totalling $20,000, was transferred directly to the Station 33 Bank Account.[35] The remaining amount of rental payments collected from J.C. Skin was transferred directly to the first

---

31 Mr Ong's AEIC at para 51; and Claimant's bundle of documents ("CBOD") at pp 283–293.

32 Mr Ong's AEIC at para 51; DBOD vol 1 at p 128.

33 4 July Transcript at p 94 line 17 to p 95 line 9.

34 Mr Ong's AEIC at p 147.

35 Mr Ong's AEIC at para 53; CBOD at pp 196, 201 and 205.

defendant's personal bank account.[36] According to the first defendant, the money received from the Subletting Agreement was similarly used to pay for Station 33's outgoing expenses, such as employees' salaries.[37]

*Management of the financial records*

14 Mdm Lim managed the accounting and finances for Station 33 from its registration (*ie*, 2 September 2011) to December 2011.[38] As a result, since Station 33 commenced its business in November 2011, only the financial records for the months of November and December 2011 were overseen by Mdm Lim. After December 2011, the first defendant's friend, Mr Peter Chong, was introduced by the first defendant to Mr Chua as a prospective employee. Mr Peter Chong was subsequently hired to take over the accounting of Station 33.[39] The subsequent financial documentation for Station 33 was prepared by Mr Peter Chong. The reason for Mdm Lim's departure from her role, and how exactly Mr Peter Chong came to be employed in Station 33, is disputed.

15 I pause to highlight that, according to the first defendant's version of events before this court, one of the disputes which led to the deteriorating relationship between the first defendant and Mr Chua was the issue of remuneration of certain employees, including Mdm Lim.[40] According to the first defendant, Mdm Lim was paid a monthly salary of $1,500 even though she worked 16 hours a week, which was starkly contrasted with the first defendant's

---

36 Mr Ong's AEIC at paras 52–53.

37 Mr Ong's AEIC at para 52.

38 Mr Chua's AEIC at paras 37, 38 and 46; and Mr Ong's AEIC at para 47.

39 Mr Chua's AEIC at para 38; and Mr Ong's AEIC at para 47.

40 Mr Ong's AEIC at paras 54–56.

remuneration despite his full-time obligation at the Premises.[41] I will discuss this issue in greater detail later. The first defendant was also unhappy that, allegedly, certain parties related to Mr Chua were given CPF contributions even though they did not work for Station 33.[42]

16 Additionally, Mr Chua had formed a team under the claimant to handle the backend operations of Station 33, which comprised Mdm Lim, Ms Shirley Chee Fung Mei (who subsequently served as the liquidator of the Claimant) ("Ms Shirley Chee"), Ms Belinda Ng ("Ms Belinda") and Mr Selvakumar A/L Marimuth ("Mr Selvakumar") (collectively, the "Team").

*Attempts to retrieve the records of Station 33*

17 On 1 April 2013, Mr Selvakumar sent an e-mail to Station 33's e-mail address, addressed to Mr Peter Chong, stating:[43]

> Hi Peter,
>
> Kindly bring back all the station 33 documents to salon 33 shop by today.
>
> All documents have to be there filed.
>
> If fail to do we will not hesitate to make a police report.
>
> Thanks.

18 On the morning of 20 April 2013, Mr Peter Chong replied with some of Station 33's general ledger details, and stated as follows:[44]

> Hi, Selva.

---

41 Mr Ong's AEIC at para 55.

42 Mr Ong's AEIC at para 56.

43 Mr Ong's AEIC at pp 1122–1123.

44 Mr Ong's AEIC at p 1122.

> This is the General Ledger detail from 1.1.11 to 20.4.13. There is some of the entries I need to double check with you again in this ledger. I cannot seem to generate the other reports that you ask me to. Maybe you can help have a look about it this morning?
>
> See you about 10.30am in the morning.

19 Shortly after, in the afternoon of the same day, Mr Peter Chong forwarded to Mr Selvakumar some of Station 33's balance sheets, the general ledgers from 2011 to 31 March 2013, and three profit and loss statements of Station 33, which I will collectively refer to as part of the financial documents prepared by Mr Peter Chong.[45] As is evident from the subsequent letters sent by Mr Chua to the first defendant, these documents produced by Mr Peter Chong were not satisfactory to Mr Chua and the Team. According to Mr Chua, both Ms Belinda[46] and Mr Selvakumar had attempted to retrieve the financial records and documents of Station 33, whether by way of e-mail or by physically going to the Premises, but to no avail. In fact, the Team had been allegedly "chased away" from the Premises by the first defendant at times.[47]

20 I now set out the letters that Mr Chua purportedly sent to the first defendant, requesting for Station 33's records or for further action or updates regarding the business. There was no response from the first defendant to any of these letters. He denies receiving any of the letters outlined below.[48]

21 On 7 March 2015, Mr Chua sent a letter to Station 33, addressed to Mr Ong, requesting, *inter alia*, the financial management records for Station 33 for the years 2012, 2013 and 2014, further information on the renewal of the

---

45 Mr Ong's AEIC at p 1122.

46 Mr Ong's AEIC at p 1120.

47 Mr Chua's AEIC at para 35.

48 Mr Ong's AEIC at para 155.

Claimant's Lease in 2014, and also the details of the Subletting Agreement (the "March 2015 Letter"):[49]

> 1. We wish to draw your attention to the fact that based on our records, from the day [Station 33] started its operations on 1st November 2011 till to date, *we have not received any financial and management records for Station 33 for the years 2012, 2013, and 2014.*
>
> *Further to our reminders, Ms. Belinda has continuously requested from you and Peter Chong for the monthly accounting and management records for nearly one year but there is no response from both of you.* Peter Chong was an account officer for Station 33 under your direct supervision.
>
> Given the disappointing response from you further in 2013 and 2014, Mr. SELVA visited the saloon several times to retrieve the accounting records for our relevant submission.
>
> *From our observation, it was found that you have not updated your financial records as required and you have also dismantled all CCTV monitoring system that were installed near the sales counter where the cash register was installed. Surprisingly without our knowledge you also have been subletting part of the Salon to others. The POS system was not maintained as it should have been. You gave us the reason that customers do not like to be captured/ monitored on CCTV when making payment.*
>
> *Without further delay on the completion of financial report, we requested Mr. SELVA to assist Peter to complete the accounts even though there are a lot of documents missing, misplaced and not properly filed. Mr. SELVA has again made several visits.*
>
> *As you are reluctant and not cooperative in giving the necessary documents Mr. SELVA was not able to help your office to complete the accounts. Subsequently, Peter has left Station 33.*
>
> 2. As the Director of Concorde Services PTE Ltd; and the Manager of Station 33 you are responsible to maintain and report to the main company on all management and financial records as required by the government departments.
>
> 3. We hold you responsible for not submitting the required information and demand you to provide us with the information below within 21 (twenty one) days from the date of this letter
>
> a. Reports for Submission

---

[49] CBOD at pp 1–2.

> …
>
> i. Financial Statements (Profit and Loss Accounts and Balance Sheets)
>
> ii. Cash in Hand / Bank
>
> iii. Bank Records
>
> iv. Sales Records
>
> v. Stocks Records
>
> vi. Members Records
>
> vii. Etc.
>
> b. *As per our record, the tenancy agreement between Concorde Services and SMRT has expired on l5th October 2014 and renewed. As such we also need you to give us the current agreement with the SMRT.*
>
> c. The contractor's payment for renovation done for Station 33 is still outstanding and overdue. Attached please find the invoice from the contractor, and kindly arrange for payment and forward a copy of the payment details. Other outstanding payables include the costs incurred for Ms. Belinda, Mr. SELVA and others which amounted to S$12,000.00. The storage charges of all the saloon items prior to the business operations at SEMBAWANG MRT station are also amounting to S$7,500.00.
>
> d. *Please give us full details and agreements for the subletting of Station 33 and other related matters*.
>
> e. Employees' records including CPF and levy payment records.
>
> …
>
> [emphasis added]

22 On 20 April 2015, Mr Chua sent a follow-up letter to the letter reproduced in the preceding paragraph, stating that the first defendant would be given "30 days from the date of this letter to summit [*sic*] all the documents as

requested" and that the claimant would "not hesitate to take further action against [the first defendant] for the noncompliance [*sic*]".[50]

23 On 15 July 2015, Mr Chua sent a third letter to the first defendant, attaching two other letters for the first defendant's "immediate action": (a) a letter from the Inland Revenue Authority of Singapore ("IRAS") to the claimant requesting for the provision of "income tax form C-S" for the year of assessment 2014 by 10 August 2015; and (b) a summons letter from the State Courts, requiring attendance in court.[51] Another letter from IRAS, on 25 July 2016, was sent addressed to the claimant at its office regarding an offer to compound the offence of failing to submit its employees' income information for Station 33 for the year of assessment 2016, which included a summons for attendance in court as well.[52]

24 A fourth letter was sent by Mr Chua, on behalf of the claimant, to the first defendant on 13 October 2017. The letter is reproduced below:[53]

> Despite numerous reminders:
>
> 1. You have failed to submit the records of the above business.
>
> 2. You failed to comply with statutory requirements and resulted in actions taken by authorities including IRAS. Court attendance and fine was imposed.
>
> Furthermore, SMRT have given information that you had misconducted by instructing SMRT in awarding the new tenancy to your new business.
>
> Your irresponsible and fraudulent acts have jeopardized my business interest to the tune of hundreds of thousands of dollars.

---

50 CBOD at p 263.

51 CBOD at pp 264, 265 and 267.

52 CBOD at pp 266 and 268.

53 CBOD at p 269.

> I hereby authorised our company account / auditor, Ms. Shirley to take over all the documents / files related to [Station 33] on 14.10.2017.

***Incorporation of the second defendant***

25 The first defendant claimed that Mr Chua was an "absent business partner" who was "no longer interested [in] and/or no longer wanted" Station 33's business.[54] As the first defendant saw himself as the one who had experience as a hairstylist and the "know-how of running a hair salon business", and Station 33's business registration had expired in 2016 (and was to be cancelled soon enough), he decided to run such a business by himself.[55]

26 On 3 April 2017, the first defendant submitted a tender for the lease of the Premises under the name of Station 33 for a proposed monthly rental charge of $15,000.[56] In the "Remarks" section of the tender submission form, it was indicated that "[t]here will be a change of company name upon successful tender due to different ownership of the business".[57] At this time, Station 33's business registration had not been cancelled even though it was expired (see above at [6]). According to the first defendant, he intended to incorporate a new business to operate a new hair salon at the Premises. However, since he had yet to incorporate a new business at the time, he submitted the tender under Station 33's name instead.[58]

---

54 Mr Ong's AEIC at paras 86 and 88.

55 Mr Ong's AEIC at paras 86–88.

56 Mr Ong's AEIC at pp 238–243.

57 Mr Ong's AEIC at p 240.

58 Mr Ong's AEIC at paras 90–91.

27 A few days later, on 6 April 2017, SMRT sent a letter by courier to the Premises stating that the Claimant's Lease would be terminated upon its expiry on 16 October 2017.[59] Between 12 April and 22 May 2017, SMRT had discussions *via* e-mail with the first defendant and/or his nephew, Mr Johnson Ong, in relation to the key commercial terms for the tender.[60] On 25 April 2017, the second defendant, Andy Ong Beauty Services Pte Ltd, was incorporated by the first defendant, allegedly with the assistance of his sister.[61] The second defendant's Accounting and Corporate Regulatory Authority ("ACRA") profile was provided to SMRT to facilitate the lease agreement between parties.[62]

28 Subsequently, on 27 June 2017, SMRT sent a letter addressed to the second defendant regarding an offer for the lease of the Premises.[63] A lease agreement was entered into between SMRT and the second defendant (the "Second Defendant's Lease") for 36 months from 19 October 2017, at a monthly rental of $18,300 for the first year, $18,500 for the second year and $18,700 for the third year. On top of the monthly rental, the second defendant also had to pay additional rent of 0.5% of monthly gross sales generated.[64] As noted earlier, the Claimant's Lease was terminated on 16 October 2017 (see above at [4]). Shortly after, the Second Defendant's Lease of the Premises then commenced on 19 October 2017, *ie*, just three days after 16 October 2017. A three-day fitting period was granted by SMRT for the first defendant to carry

59 Mr Ong's AEIC at p 245.

60 Mr Ong's AEIC at paras 94–101 and at pp 263–270.

61 Mr Ong's AEIC at para 96.

62 DBOD vol 2 at p 140.

63 DBOD vol 1 at p 211.

64 DBOD vol 1 at p 260.

out "minor renovation such as changing a new signboard and minimum renovation work in the [Premises]" before the term commenced.[65]

29 On 1 June 2019, Mr Chua filed a police report against the first defendant, in relation to the first defendant's act of tendering for the lease of the Premises under the Claimant's name and then subsequently changing the name that the lease was under to the second defendant's.[66]

30 The Second Defendant's Lease was subsequently renewed twice:

(a) On 4 October 2020, the Second Defendant's Lease was renewed for another 36 months from 19 October 2020 to 18 October 2023, but at a discounted rental rate due to the COVID-19 pandemic at that time.[67] The monthly rental charge was $9,800 for the first year, $10,600 for the second year and $11,700 for the third year.[68]

(b) On 11 May 2023, the Second Defendant's Lease was renewed again for another 36 months from 19 October 2023 to 18 October 2026 for $13,688 per month.[69]

The Premises were still leased under the second defendant's name at the time of the trial.

---

65 DBOD vol 2 at p 140.

66 Mr Ong's AEIC at pp 475–476.

67 Mr Ong's AEIC at paras 121 and 123.

68 DBOD vol 2 at p 42.

69 Mr Ong's AEIC at para 124; and DBOD vol 2 at p 87.

31 The claimant commenced the present claim against the Defendants on 24 April 2023.[70]

## The parties' cases

### *The claimant's case*

32 In gist, the claimant's position in these proceedings is that Station 33 was profitable and the first defendant had, in breach of his duties owed to the claimant, misapplied the earnings of Station 33, and also wrongfully used or transferred the assets of Station 33 to the second defendant.

33 First, the first defendant owed fiduciary duties to the claimant, including that of good faith and/or fidelity, to act in the best interests of the claimant.[71] Not only was the first defendant a director of the claimant, but he was the one who solely managed Station 33's business to the exclusion of Mr Chua and the claimant's other representatives (who were allegedly "chased away" from the Premises; see above at [19]).[72] The first defendant was entrusted with extensive discretion to act in relation to Station 33's business and he had solely handled, prepared and/or kept all relevant financial documents and records of the business.[73] The claimant thus had no knowledge of the operations and financial status of Station 33.[74]

34 The first defendant had breached these duties by failing to account to the claimant for the profits made and/or assets derived in respect of Station 33's

---

70 Originating claim for HC/OC 246/2023 dated 24 April 2023.

71 SOC at para 16.

72 SOC at paras 16(1), 16(2) and 16(4).

73 SOC at paras 16(3) and 16(6).

74 SOC at para 16(5).

business while Station 33 was in operation.[75] As a result of the first defendant's duties to the claimant, the former held the profits made and/or assets derived in respect of Station 33's business on trust for the claimant and is liable to account for the same.[76] Further or alternatively, the claimant suffered loss which the first defendant is personally liable for.[77]

35 Next, the first defendant is also in breach of the same duties owed to the claimant by his wrongful use and/or transfer of profits, assets, business, goodwill, clientele, management staff and/or employees of the claimant to build up the business and/or to pay the operating expenses of the second defendant, or to use the money for other personal or collateral purposes.[78] The first defendant transferred, "lock stock and barrel", Station 33's assets to the second defendant.[79] Essentially, according to the claimant, the first defendant merely changed the shop sign at the Premises from "Station 33" to the name of the second defendant and continued operating the salon business at the same place.[80]

36 The claimant seeks damages (in the sum of a total of $2,498,000[81]) and/or an account of the profits and/or assets derived by the defendants from the claimant as a result of the following:[82]

---

75 SOC at paras 16–18.

76 SOC at para 17.

77 SOC at para 19.

78 SOC at paras 20–21.

79 Claimant's opening statement dated 23 June 2024 ("COS") at para 15.

80 COS at para 17.

81 Claimant's closing submissions dated 2 September 2024 ("CCS") at para 515.

82 SOC at pp 12–13.

(a) Unjust enrichment: The first and/or second defendant(s) have been unjustly enriched at the expense of the claimant (in relation to the profits, assets, business, goodwill, clientele and/or staff of the claimant) and are liable for the damages suffered and are to account to the claimant for the same. Notably, no unjust factor has been identified in the claimant's statement of claim or its written submissions.

(b) Dishonest assistance: In the statement of claim, the claimant initially pleaded that the first defendant dishonestly assisted the transfer of profits, assets and the like from the claimant to the second defendant, and, alternatively, that either or both defendants are also liable for dishonest assistance in so far as any of the benefits derived from the wrongful transfer or use of Station 33's profits, assets and the like were traceable to them.[83] However, none of these arguments were expounded upon in the claimant's written submissions.

(c) Knowing receipt: Similar to its claim in dishonest assistance, the claimant's pleadings in relation to the defendants' liability for knowing receipt were not completely elaborated on in their written submissions. In its statement of claim, the claimant pleaded that the second defendant is in knowing receipt of the benefits derived from any wrongful use or transfer of Station 33's assets, and, more broadly, in relation to both defendants as long as the said asset is traceable to them.[84] However, in the claimant's reply submissions, the claim in knowing receipt appears to be solely confined to the second defendant.[85]

---

83 SOC at paras 25 and 31.

84 SOC at paras 26 and 31.

85 Claimant's reply submissions dated 23 September 2024 ("CRS") at paras 129–130.

(d) Conspiracy: Both defendants had conspired, whether by lawful or unlawful means, such that the claimant suffered loss and damage as a result of the conspiracy.[86] However, only the claimant's reply submissions broadly discussed this claim, and only in relation to an *unlawful* means conspiracy.[87]

***The defendants' case***

37 According to the first defendant, Station 33's business was poor and, after their relationship deteriorated, Mr Chua had essentially abandoned the business and left the first defendant in the lurch. Despite the first defendant's alleged proposals to terminate the partnership and for his initial investment of $100,000 to be returned to him, Mr Chua was not amenable to that.[88] As such, the first defendant was "left with no choice" but to continue to run the business until the first expiry of the lease in 2014. In order to recoup his investment, and due to the fact that the first defendant had loyal and returning customers, the first defendant decided to continue running Station 33 even after 2014.[89]

38 The first defendant denies breaching any fiduciary duty owed to the claimant:

(a) The first defendant denies operating the Station 33 business to the exclusion of Mr Chua or any other representatives of the claimant.[90] The first defendant was in charge of the day-to-day operations of

86 SOC at paras 28–30.

87 CRS at para 134.

88 Defence (Amendment No. 3) dated 18 June 2024 ("Defence") at paras 24(d) and 24(f).

89 Defence at para 24(g).

90 Defence at para 20; and Defendant's opening statement dated 18 June 2024 ("DOS") at paras 41(a)(i) and 41(a)(ii).

Station 33, while it was Mr Chua himself (and/or Mdm Lim or even Mr Peter Chong) that was in charge of the administration and accounting of Station 33.[91]

(b) The first defendant did furnish documents relating to Station 33 to the claimant and/or Mr Chua, and the claimant evidently was able to disclose such documents belonging to Station 33 in the course of these proceedings.[92]

(c) The first defendant was unaware of his directorship in the claimant and he thus cannot be held liable for any breach of director's duties.[93]

39 The first defendant also could not have wrongfully used or transferred any of the claimant's alleged profit or assets for the following reasons:

(a) There was no profit to begin with, *ie*, Station 33 had incurred losses for almost the entire course of its existence.[94]

(b) The first defendant could not have transferred or used any of the claimant's or Station 33's alleged funds to pay for the second defendant's costs because Mr Chua and Mdm Lim were also signatories to either (or both) the Station 33 Bank Account and Concorde Bank Account. The accounts' passbooks, cheque books and/or bank cards were retained by Mr Chua and/or Mdm Lim.[95]

---

91 Defence at para 21.

92 DOS at para 41(a)(iii).

93 Defendants' closing submissions dated 29 August 2024 ("DCS") at para 65.

94 Defence at paras 24(h)–24(i); and DOS at para 41(b)(i).

95 Defence at para 45(d); and DOS at para 41(b)(iii).

(c) The setting up, renovations, equipment and the paid up capital of the second defendant were all paid for by the first defendant, not the claimant and/or Station 33. This was, as the first defendant claims, funded by the first defendant's sale of his condominium unit at Balestier, Singapore.[96]

(d) Any clientele and/or goodwill vested in Station 33 belonged to the first defendant. The first defendant brought his contacts and clientele to Station 33 from AOHS, and the customers visited Station 33 mostly because of the services provided by the first defendant. In any event, any goodwill vested in Station 33 ended when its business registration was cancelled in July 2017.[97]

(e) In relation to the staff, the first defendant hired new employees for the second defendant's business. According to the first defendant, only Mr Feng Zhen ("Mr Feng"), who was previously employed by Station 33, was re-employed by the second defendant because Mr Feng wanted to work with the first defendant. For completeness, I note that Mdm Chong Hui Xian ("Mdm Chong"), who was also employed by Station 33 at a point in time, was re-employed by the second defendant for much the same reason.[98]

40 By virtue of the above, since there was no underlying breach of duty or wrongful transfer and/or use of assets, the defendants are not liable for any claim in unjust enrichment, dishonest assistance, knowing receipt or conspiracy.

---

96 Defence at para 26; and DOS at para 41(b)(ii).

97 Defence at paras 45(a)–45(c); and DOS at para 41(b)(iv).

98 Defence at para 27; and Mdm Chong Hui Xian's ("Mdm Chong") AEIC at para 11.

41 The defendants also submit that, alternatively, the defence of acquiescence applies. Mr Chua and/or the claimant was, at all times, explicitly aware that the first defendant had: (a) tendered for the Premises on behalf of the second defendant; (b) incorporated the second defendant; and (c) had operated the second defendants' business at the Premises since September 2017. Notwithstanding this, Mr Chua allegedly "stood by for years without raising any objection".[99]

42 In the further alternative, if this court does find that the first defendant had breached his duties to the claimant, the claimant did not suffer loss and/or damage that the defendants are liable for.[100]

43 In the defendants' closing submissions, it was raised for the first time that the claim was potentially time-barred.[101] I note that such a defence was not pleaded. I also note that, in the first defendant's affidavit, he stated that Mr Chua himself "turned a blind eye" to the claimant's and Station 33's well-being, and that the entire suit was a conspiracy by Mr Chua and Ms Shirley Chee (the claimant's liquidator) to "fix" the first defendant.[102]

44 Finally, the defendants accept that, from October 2017 to May 2022, some of the second defendant's outgoing expenses were erroneously paid from the Station 33 Bank Account. Such expenses totalled $15,801.24. The first defendant accepts that such moneys should be returned as it was wrongfully

---

99 Defence at para 41; and DOS at para 45.

100 Defence at paras 64 and 79; and DOS at para 46.

101 DCS at para 172.

102 Mr Ong's AEIC at para 214.

used by the second defendant. The first defendant also indicates that he will be prepared to make restitution of this amount to the claimant.[103]

**The issues to be determined**

45 To my mind, the issues to be determined are as follows:

(a) whether the first defendant owed fiduciary duties to the claimant;

(b) if (a) is answered in the affirmative, whether the first defendant breached such duties owed to the claimant;

(c) whether the second defendant is liable as a knowing recipient of profits, assets, business, goodwill, clientele, and/or management staff and employees of the claimant;

(d) whether there was an unlawful means conspiracy between the defendants to injure the claimant; and

(e) if I find in favour of the claimant, then the appropriate remedy to be awarded to the claimant.

46 As I highlighted earlier (see above at [36(b)]–[36(d)]), it appears that the claimant has confined its submissions in relation to its claims in dishonest assistance and knowing receipt such that it is only pursuing a claim in knowing receipt against the second defendant, and its claim in conspiracy to only that of *unlawful* means conspiracy. I will therefore focus on those matters.

47 I also do not propose to address the claim in unjust enrichment. It is trite that, for a claim in unjust enrichment to be made out, there must be a "particular recognised unjust factor or event which gives rise to a claim", and a "general

---

103 DOS at para 42; and Mr Ong's AEIC at para 181.

notion of unconscionability or unjustness" is not sufficient (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [130] and [134]). Similar to the appellant in *Anna Wee*, the claimant in the present case failed to refer to a specific unjust factor underlying its claim in unjust enrichment, and there is no support for the argument in law that the enrichment was "unjust" (without more) (*Anna Wee* at [135]–[136]). For the avoidance of any doubt, this is not to say that I would have concluded that there are no recognised unjust factors that the claimant may point to for their present claim. My simple point is that this was not canvassed before me and, in that sense, there was nothing pleaded or argued by way of a recognised "unjust factor" for me to even consider and assess.

**The claim is not time-barred**

48 Before turning to the trunk of my analysis, I first address a preliminary point. The defendants, in their closing submissions filed about two months after the end of the trial, argue for the first time in the proceedings before me that the claim is time-barred. According to the defendants, the time bar operates because more than six years have elapsed "since the cessation of Station 33's business … in September 2016[,] if not July 2017".[104] The defendants proffer no further explanation, nor have they referred the court to any particular provision in the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act"). In response, the claimant merely state in its reply submissions that, since it "pleaded fraud … against the [d]efendants", the "time bar [does] not apply".[105]

104 DCS at para 172.

105 CRS at para 135.6.

49 I reproduce the relevant provision of the Limitation Act for ease of reference. Section 4 provides as such:

> **Limitation not to operate as a bar unless specially pleaded**
>
> **4.** Nothing in this Act shall operate as a bar to an action unless this Act has been *expressly pleaded as a defence* thereto in any case where under any written law relating to civil procedure for the time being in force such a defence is required to be so pleaded.
>
> [emphasis added]

50 It is "indisputable" that the defendant bears the burden to plead the defence on limitation (*IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 ("*Saimee*") at [34]). In *Saimee*, the limitation defence was raised at the pleading stage but not in the written closing and reply submissions of the party seeking to invoke the limitation defence. The Court of Appeal found that the limitation defence was adequately pleaded in that case, albeit sloppy, since the other party "would have been put on notice that evidence would have to be adduced at the trial to establish that his claim was brought within time" (*Saimee* at [35]). That reasoning does not apply in the present case. On these facts, there is nothing in the defence filed which even vaguely alludes to a potential time bar. Indeed, Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 9th Ed, 2022) at para 21.002 states that "the plea of the Limitation Act should be raised *expressly and unambiguously*" [emphasis added], though "it is sufficient to state the fact of raising the plea – the burden of proof on this point will then normally be transferred to the claimant to show that the action is not time-barred". In my mind, the defendants' tardy (or more accurately, non-existent) pleading of the limitation defence did not place the claimant on notice to adduce the relevant evidence during trial that the claim was not time-barred, and the defendants have plainly failed to discharge their burden of pleading the limitation defence. The above suffices to dispose of this point.

51 Nonetheless, for completeness, I would have found that the claim is not likely to have been time-barred. As a starting point, the entire claim would be caught by virtue of ss 6(2) and 6(7) of the Limitation Act. I reproduce these provisions below for ease of reference:

> **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.

52 As held by the Court of Appeal in *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Yong Kheng Leong*") (at [69]), the effect of s 6(7) is that "the entire s 6 [applies] to all claims for equitable relief, whether these be founded upon contract, tort, a trust or other ground in equity". The present claim, being founded on the first defendant's breach of his fiduciary obligations (which are akin to that of a trustee), and the second defendant's liability for knowing receipt and/or unlawfully conspiring with the first defendant, would fall within the provision. The claimant's action for an account of the claimant's assets would also be caught by s 6(2) of the Limitation Act. Nonetheless, the applicability of the time bar to these claims is subject to, *inter alia*, s 22 of the Limitation Act.

53 It is clear that the first defendant, as a director of the claimant, is a "Class 1" constructive trustee, *ie*, a person that held a position of a trustee and dealt with the trust property in breach of a trust, that is subject to the time bar

prescribed in s 22(2) of the Limitation Act (*Yong Kheng Leong* at [46] and [52]). This is distinct to a "Class 2" constructive trustee, who fraudulently acquired property over which he had never previously been impressed with trust obligations, and it is only because of that fraudulent conduct that he be held liable to account as if he were a constructive trustee (*Yong Kheng Leong* at [46]).

54 I return to the claimant's submission that since it "pleaded fraud", the time bar "does not apply". To my mind, the claimant was necessarily referring to s 22(1)(*a*) of the Limitation Act in particular, which provides that there will be no time bar where there is fraud, or a fraudulent breach of trust. In comparison, s 29 of the Limitation Act merely *postpones* the limitation period in the case of fraud or mistake. As such, if the defendants had adequately pleaded their limitation defence (which they did not), I proceed on the basis that the claimant would have relied on s 22(1)(*a*) to disapply the time bar. The relevant provisions are as follows:

> **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.*
>
> [emphasis added]

55 I note that the claimant did not *specifically* plead that the first defendant's breach of his fiduciary obligations was fraudulent, *ie*, the word "fraud" or "fraudulent" did not feature in that part of the claim. Nonetheless, for the purposes of s 22(1)(*a*) of the Limitation Act, it is sufficient if fraud is present even if it is not an element of the cause of action (*Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 ("*Lim Ah Leh*") at [201]). Indeed, as the court observed in *Lim Ah Leh* (at [201]–[202]), a breach of trust as a cause of action has no fixed set of elements – the court should thus determine if a breach of trust has been established, and if so, whether it is "fraudulent" within the meaning of s 22(1)(*a*) of the Limitation Act.

56 Having established the above, I would have found that the exception in s 22(1)(*a*) of the Limitation Act applies to the claim against the first defendant, such that the present claim is not time-barred. The meaning of "fraud" and "fraudulent" for the purposes of s 22(1)(*a*) entails "dishonesty", which is defined as if the trustee "acts in a way which he does not honestly believe is in the interests of the beneficiaries then he is acting dishonestly". In turn, "dishonesty" requires that: (a) "the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people"; and (b) the defendant "himself realised that by those standards his conduct was dishonest" (*Yong Kheng Leong* at [52], citing *Armitage v Nurse and others* [1998] Ch 241 at 260F and *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164 at [27]). Based on the particulars of the claimant's pleaded claim, it is clear that the first defendant objectively could not have been said to have acted honestly, and he must have known that his conduct was dishonest: not only did he siphon the cash takings from the claimant's registered business and convert its assets to his own use, but he also repeatedly failed to account for the trust property.

57 In contrast to the first defendant, the second defendant is a "Class 2" constructive trustee where such a constructive trust potentially arises as a result of the fraudulent or unlawful transaction. Such a claim would be subject to s 6(7) of the Limitation Act instead and the six-year time bar thereunder (*Yong Kheng Leong* at [51] and [69]). Nonetheless, the claim against the second defendant would not be time-barred either. The claimant's assets would have been wrongfully transferred and received by the second defendant, at the very *earliest*, on the day it was incorporated (*ie*, 25 April 2017). The present claim was brought on 24 April 2023 – a day shy of six years from the date the second defendant was incorporated.

58 Therefore, in the event the matter of limitation was properly pleaded (and I stress that it was not), I would still have likely found that the limitation period simply did not apply. Be that as it may, it is a moot point given the conclusions that I had arrived at earlier about the fact that the claimant was never put on notice that limitation was even an issue in this case and understandably never led any evidence that was focused on such matter.

**My decision on liability**

59 The claimant called only one witness, Mr Chua, and the defendants called three witnesses for the trial before me. These three defence witnesses comprise the first defendant, and two individuals who were employed by Station 33 and also by the second defendant at certain points in time. The evidence given by the two individuals – namely Mr Feng and Mdm Chong – was largely tangential to my decision on liability for reasons that I will explain later on. In my view, the case turns primarily on the evidence and accompanying documentation of the two key individuals, namely Mr Chua and the first defendant. If I prefer Mr Chua's evidence, it almost automatically follows that

the first defendant would be in breach of his directors' duties. In the same vein, if I accept the first defendant's version of events, there would be few breaches, and any such breach would be technical at best (save for the matter of the second defendant's expenses that were taken from Station 33's Bank Account, which the first defendant accepts that he is liable for and needs to return – see above at [44]).

60 On a balance of probabilities, I find Mr Chua's evidence to be much more cogent and plausible than that of the first defendant. It is also more aligned to the breadth of the evidence before me.

### *The first defendant was aware that he was a director of the claimant from the outset*

61 I now turn to the first issue to be determined – whether the first defendant owed duties to the claimant. It is trite that directors owe fiduciary duties to their companies, which include: (a) the duty to act honestly and in good faith in the best interests of their company; (b) the duty not to exercise their powers for an improper purpose such as feathering their own nests; and (c) the duty not to place themselves in a position in which there is a conflict between their duties to the company and their personal interests or duties to others (*DM Divers Technics Pte Ltd v Tee Chin Hock* [2004] 4 SLR(R) 424 at [80]). Such fiduciary obligations are "voluntarily undertaken … in the sense that [they arise] as a consequence of a fiduciary's conduct … where the fiduciary voluntarily places himself in a position where the law can objectively impute an intention on his or her part to undertake those obligations" (*Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [194]). It is undisputed that the first defendant was a director of the claimant, and it follows that he would owe fiduciary duties to the claimant. In this regard, in an attempt to legally make the

case that he owed no director duties to the claimant, the first defendant claimed that he was not even aware that he was a director (or a shareholder) of the claimant and thus cannot be bound by any such obligations.[106]

62 In the first defendant's oral evidence and written submissions, he painted the following picture:

(a) Mr Chua allegedly lied that the first defendant would be a director of *Station 33*, rather than a director of the *claimant*, in an attempt to "cheat" the first defendant.[107] In fact, the entire corporate structure where Station 33 was owned by the claimant was allegedly concocted by Mr Chua as a "trick" to "frame" the first defendant,[108] particularly since there was no "logical explanation" why such a corporate structure was necessary for a "simple hair salon business".[109] This point was made vociferously numerous times by the first defendant when he was on the stand.[110]

(b) In fact, the first defendant had informed Mr Chua that he was only interested in the hairstyling and salon business, and "explicitly" reminded Mr Chua to "remove [his] name from any company … after SMRT award [*sic*] any lease" to the claimant.[111] According to the first

106 Mr Ong's AEIC at paras 24 and 31; and DCS at para 46.

107 4 July Transcript at p 40 lines 17–25.

108 4 July Transcript at p 49 lines 18–25.

109 DCS at paras 62(a) and 62(e).

110 See, for example, 4 July Transcript at p 37 line 18 to p 38 line 8, p 43 lines 3–13, and p 49 lines 18–25; and 5 July Transcript at p 10 lines 14–17, p 46 lines 14–21.

111 Mr Ong's AEIC at para 24.

defendant, Mr Chua agreed to "take [the first defendant's] name out of [the claimant], because [the claimant] was just a shell company".[112]

(c) There was a "clear demarcation of responsibilities and duties" where Mr Chua was in charge of all the administrative and accounting matters and the first defendant was only involved in the day to day operations of Station 33.[113]

(d) In comparison to Mr Chua who was an "experienced businessman" that was "more educated and sophisticated", the first defendant claimed to be "barely literate, [he] could not speak or write in proper English and was ignorant of corporate matters".[114] Due to the first defendant's near-illiteracy and unfamiliarity with corporate documents and processes, he did not know he was registered as a director of the claimant. He harboured the mistaken impression that his signing of certain documents was merely to set up the claimant to procure the Claimant's Lease for the Premises.[115]

63 Four obvious points suggest that the first defendant's narrative as set out in the preceding paragraph is false. I deal with each in turn.

64 First, the entire account is simply irreconcilable with the first defendant's many concessions regarding his knowledge of the involvement of the claimant as part of the corporate structure. In particular, in various parts of his own affidavit, the first defendant admitted that he was informed by Mr Chua

---

112 4 July Transcript at p 25 lines 3–5.

113 DCS at para 47.

114 DCS at paras 49–51.

115 DCS at para 61.

that a company known as "Concorde" would be the vehicle that the investment for Station 33 would be parked in,[116] that this would be the corporate entity that would bid for the tender for the Premises[117] and the Claimant's Lease obtained in 2011 was indeed under the claimant's name.[118] The first defendant even knew that he was a signatory to the *Concorde Bank Account* (*ie*, the claimant's bank account) in mid-June 2010, and that this bank account was to be used for some of Station 33's financial transactions.[119] Even when taking the defendants' case at its absolute highest (which I do not accept for reasons that I will highlight below), it would have been obvious that the claimant was a corporate entity that, on a broad level, oversaw the hairstyling business. It also did not escape my attention that the first defendant's account in court that there was an express representation by Mr Chua to him that he was a director of *Station 33*, and not of the *claimant*, was conspicuously absent from his affidavit.

65 Second, and relatedly, the evidence very much suggests that the first defendant was, in fact, aware that he was a director of the claimant. Indeed, the first defendant repeatedly and categorically asserted in his affidavit that he had asked for his name to be removed as a director (since one cannot be "removed" as a shareholder as such) of the claimant after the Claimant's Lease was awarded (see above at [62(b)]).[120] It is immediately self-evident that it would be absurd for the first defendant to seek to be removed from a position that he claims to not even know that he occupied. His claim, that he had stridently insisted on having his name removed as a director of the claimant, therefore only proves

116 Mr Ong's AEIC at para 23.

117 Mr Ong's AEIC at paras 22, 23, 36 and 48.

118 DBOD vol 1 at pp 153–154.

119 Mr Ong's AEIC paras 32–33.

120 Mr Ong's AEIC at paras 24 and 39.

his awareness of his status as a director. To be clear, I do not accept that the first defendant had indeed made such a request to remove his name as a director to Mr Chua at the time. The only point I am making is that the first defendant cannot in the same breath claim that he was unaware of his directorship in the claimant while simultaneously contending that he had specifically requested to be removed as its director.

66 I would parenthetically note that even the first defendant's affidavit evidence, on its own, points inexorably to the fact that he knew full well that he was going to serve as a director of the claimant for the purposes of the business in question. To recapitulate, he claimed that he requested that his name be removed from the claimant's directors *after* SMRT awarded the lease. Such an averment simply did not make any sense. If he had any objections to being a director of the claimant, why did he not just refuse to serve as a director from the get-go? What would be the value or significance of only having his name as a director for the purposes of obtaining the lease? In the same vein, what would be the purpose, or value, of removing his name immediately after? In any event, if the first defendant's narrative was true, why did he not follow up on his desire to be removed as a director or liaise with ACRA to make the necessary changes?[121] All of this further reflects the fact that his actions, based on his own account in his affidavit, proves that he knew full well that he was serving as a director of the claimant, which is also the modality by which the hairstyling business would be run.

67 The third point is a logical one. I am unable to see how the corporate structure allegedly devised by Mr Chua, where the first defendant and Mr Chua would be co-directors and equal shareholders of the claimant which registered

---

121 CCS at para 309.

Station 33, would prejudice or "cheat" the first defendant in any way. The first defendant, throughout the entirety of his evidence, has not been able to point to how such a corporate structure in any way left him worse off (or left Mr Chua better off). It was a plain vanilla corporate structure that was entirely unexceptional. The first defendant has not made good the rather absurd assertion that "he cheated me into signing all these documents [making me a director of the claimant] to try and frame me".[122] Being a director of the claimant could not in any way "frame" the first defendant, or somehow put him in a worse off position, *unless* he was seeking to breach his duties to the claimant (and to hollow it of its funds) and was therefore not ready to be shackled with such duties to begin with.

68 Indeed, if nothing else, Mr Chua was effecting a corporate structure in which the first defendant was given much more power over the affairs of the company (*qua* director) than the first defendant even claims he sought. On this front, it defies logic that Mr Chua would have made the first defendant a joint shareholder (with equal shares) of the claimant, unless doing so gave voice to the specific agreement between the parties. This is especially if, as Mr Chua pointed out, he had contributed more financially than the first defendant in the business. Mr Chua had also invested an initial sum of $25,000 above and beyond the $200,000 that came in equal parts from Mr Chua and the first defendant (see above at [9]). Why would Mr Chua intentionally mislead the first defendant, or be incentivised to cajole him, into signing a deal that accorded the first defendant directorship powers which would have been to Mr Chua's own detriment (in that the first defendant now had say on how things were run *qua* director) unless the agreement struck between the parties was to make them

[122] 4 July Transcript at p 38 lines 1–2.

equal partners in the entire transaction? It would appear obvious that the only reason for Mr Chua to do this was because the parties had, in fact, come to such an agreement on how to operate the hairstyling business. If Mr Chua had ill-intended aims of freezing out the first defendant from the get-go, as the first defendant continually asserted in cross-examination, then it would have been much easier to facilitate that by leaving the first defendant's name out of the company, thereby allowing Mr Chua to have full control of the company at all times.

69 In the premises, it is clear to me that the first defendant knew at all times he was in fact a director of the claimant. Of course, I accept that it was probable that Mr Chua took primary charge of preparing the necessary paperwork for the corporate set up in 2011. Nonetheless, this had no causal connection with what the first defendant would have known about the corporate arrangements being made at the time. During these proceedings, the defendants harped on the fact that the first defendant "merely managed the day-to-day operations of Station 33" and worked as the head hairstylist of Station 33 while Mr Chua took primary charge of the administrative matters of the business.[123] Even if I accept that there was such a demarcation of responsibilities at the outset, it does not follow that the first defendant was in the dark about the existence and significance of his own position as a director of the claimant. Indeed, as Mr Chua pointed out on the stand, the first defendant was distinctly remunerated for his hairstyling work which is *additional* to any other responsibilities owed to the claimant and/or Station 33.[124] I also highlight that it appeared inconceivable that Mr Chua did not fully explain to the first defendant the

123 DCS at paras 51 and 53.

124 2 July Transcript at p 32 lines 18–22.

corporate structure involved, or that the first defendant was unaware of the papers that he signed (to serve as a director of the claimant).

70 To my mind, the reason the first defendant is now taking such a stance, *ie*, that he is unaware of his directorship in the claimant, is obvious. He is seeking to concoct a narrative of his oblivion of how he became (or was retained as) a director of the claimant, in order to be immunised from having fiduciary duties imposed on him in that capacity. I have little hesitation in rejecting the account of the first defendant in its entirety. As I have explained above, it is clear that his account of being an inadvertent director is hollow and contradicted by both logic and the evidence. For the very same reasons, I am also unable to accept any other part of the first defendant's allusions that he purportedly asked Mr Chua to remove his name as one of the claimant's directors. In my view, such an averment is a patently convenient *ex post facto* excuse conjured up in an attempt to distance the first defendant from being subject to any directors' duties.

71 The final point I would make on this front pertains to the first defendant's proficiency (or to be more precise, alleged non-proficiency) in the English language. The first defendant repeatedly made the point that he was unable to read and write "proper English", though he was able to handle "simple tasks … using English",[125] and was thus unaware of the nature of the documents he had signed. To be sure, I accepted that having had only a primary school education,[126] the first defendant was, in all likelihood, not particularly proficient in reading and writing in English. Nonetheless, I reject the first defendant's self-serving assertion that he did not have an adequate command of the English

125 4 July Transcript at p 4 lines 4–12.

126 Mr Ong's AEIC at para 9.

language to understand the documents he had signed. Indeed, the record is replete with numerous written payment vouchers that he issued in English.[127] In the same vein, his employment agreement, as simple as it is, is also written in English and does not appear to be based off a template, suggesting once more that he has a working understanding of written English.[128]

72 For what it is worth, it is also clear during the trial that the first defendant has a fairly decent command of spoken English. The first defendant had, at numerous times, insisted on answering questions in English before they had been interpreted,[129] to the point that the court – and even the first defendant's own counsel – had to explicitly request that he refrain from answering in English.[130] I would only add that such proficiency (both of written and spoken English) would have been likely necessary for anyone in the position of the first defendant, who has been running businesses in Singapore for over a decade,[131] and, in that capacity, needed to sign leases like the one he did with SMRT in 2014 (see above at [4]).

### *The first defendant misapplied Station 33's assets*

73 I now turn to the second issue of whether the first defendant breached his duties owed to the claimant. It goes without saying that, if the claimant's version of events is accepted, the first defendant's misapplication of Station 33's assets to the second defendant's benefit would amount to a breach of his

---

127 Mr Ong's AEIC at pp 143–146; and 4 July Transcript at p 93 lines 11–19. See also the payment vouchers and invoices issued under the second defendant.

128 Mr Ong's AEIC at p 65.

129 See, for example, 4 July Transcript at p 51, 64, 73, and 75–77.

130 4 July Transcript at p 77.

131 Mr Ong's AEIC at para 12.

fiduciary duty. In order to create a sensible schematic to address this issue, I will deal with this question in a chronological fashion, *ie*, in accordance to how the events unfolded sequentially.

*The first defendant's actions from late 2011*

74 As set out above, the parties advance quite distinct narratives of what transpired from about two months into the running of Station 33 (sometime in early 2012 when Mr Chua and the first defendant started to drift apart). The first defendant claims that it was Mr Chua who had abandoned Station 33 (from about sometime in May 2012),[132] whilst the claimant contends that it was the first defendant who took steps to effectively convert the claimant's resources to his own use, and to freeze Mr Chua out of the business.[133]

75 On balance, I accept the claimant's version of what transpired at the time. I further find, on a balance of probabilities, that the first defendant effectively treated Station 33 and, by extension, the claimant's receivables (the claimant's cash receivables, in particular) as his own assets, for his use as and when he pleased, by the turn of 2012.

(1) Missing cash receipts from January 2012

76 One of the biggest markers in this regard is the sudden conspicuous disappearance of all cash receipts from the business from January 2012. The bank statements tell a clear and indisputable story: in the first two months of business, namely in November and December 2011, cash receipts (*ie*, cash earnings) from the business amounted to about $18,979.40 and $23,798.37

132 Mr Ong's AEIC at paras 55 and 156(z).

133 Mr Chua's AEIC at paras 66–68.

respectively.[134] Over the subsequent six years, not a single further cent was deposited into the Station 33 Bank Account by way of *cash receipts*.[135] This was especially odd given the nature of a hairstyling business – one imagines that such a business may typically see slowly increasing revenue until it starts to establish a following and a loyal customer base, thereby potentially allowing for a more sustained uptick in revenue after. Instead, inexplicably, there were no recorded cash earnings to speak of for many years. To be fair, the first defendant does not deny that there were indeed cash takings by Station 33 even after December 2011. According to the first defendant, instead of banking in the cash takings, he kept it and used it to pay salaries, suppliers and the like.[136]

77 With respect, this is not the strong defence that the first defendant thinks it is. It is clear that, by January 2012, the first defendant had ultimate control of the cash receivables of Station 33. This proves one obvious point: by this point of time, the first defendant had effectively frozen the other investor out of the office, such that he, and only he, had access to the cash that was coming into the business. One can only surmise that this was, in all likelihood, a large sum of money every month. Given that reality, it would be inconceivable that Mr Chua would not have wanted the first defendant to account for such moneys and that Mr Chua would have been happy to allow the first defendant to use such moneys as he deemed fit, if Mr Chua had a choice. It would be even more improbable, if Mr Chua did have access to the cash register in the Premises, for him to allow the first defendant to singlehandedly decide, almost by fiat, that the latter would be the sole decision-maker on how the moneys would be spent each month, and that not a single cent was put in for six years, with no need to provide any form

134 Mr Chua's AEIC at p 40.

135 Mr Chua's AEIC at pp 40–46.

136 DCS at para 111.

of meaningful account as to where the money went. By all accounts, this must have been an extremely large sum of money. Taking December 2011's cash takings of $23,798.37 as a barometer (and I stress that this would likely be a conservative barometer), the unaccounted composite sum of cash takings from January 2012 to September 2017 (*ie*, the last full month Station 33 was in business) would have been in excess of $1.6m.

78 The first defendant suggests that he had no other choice but to retain the cash takings because to do otherwise would mean that he had no meaningful way to pay workers, suppliers and facilitate the purchase of goods and services. However, that argument simply does not pass muster. To be clear, I accept that the first defendant probably made payment for many of Station 33's outgoing expenses using such cash receipts. This, however, is beside the point. If, as the first defendant repeatedly asserts, Mr Chua and his Team were in charge of the administrative and accounting matters,[137] then such business expenses are obviously for them to take care of and that can be drawn down from the bank account against the cash receipts put into the account. There is no logical reason for the first defendant to effectively run one aspect of the business unsupervised and unaccounted for in the cloak of darkness, unless the aim was to shield away from view and to take a fairly sizeable chunk of such cash receipts for his own use. I would add that, if indeed the first defendant felt that that Mr Chua was making the former fend for himself in this manner, it is curious that the first defendant has not produced any correspondence in which he bitterly complains to Mr Chua about how he has been left to fend for himself, and his need to then use the cash receipts to pay off the necessary expenses of the business. In my

[137] Defence at para 21; and 4 July Transcript at p 95 lines 21–25.

view, the dearth of such correspondence strongly hints to the version of events being peddled by the first defendant being false.

(2) The Subletting Agreement

79 It speaks volumes that the sudden divergence of all cash receipts coincided with numerous other shenanigans on the part of the first defendant that sought to further fatten his pockets and simultaneously hollowed out Station 33's. One key example is the Subletting Agreement that commenced in February 2012 (see above at [12]). The first defendant claims this was done with Mr Chua's agreement,[138] but the entirety of the circumstances strongly suggests that the first defendant's actions were designed to divert funds away from the claimant. As an obvious marker of this, the contract was signed in the first defendant's personal capacity (even though the Premises were, strictly speaking, rented by Station 33 and the lease was under the claimant's name). The first defendant claims this was because he was conscious that subletting was disallowed under the lease agreement with SMRT.[139] With respect, this is a plainly disingenuous argument, especially when one takes cognisance of the following:

(a) If SMRT caught wind of the act of sub-leasing, then whether the Subletting Agreement was signed by the first defendant (in his personal name) or otherwise would be completely beside the point. The repercussions would flow to the claimant either way, whatever these might be, as there would be no plausible deniability available in those circumstances given that the first defendant was one of the two directors in charge of a very small corporate outfit and the Subletting Agreement

138 Mr Ong's AEIC at para 50; and DCS at paras 79–80.

139 Mr Ong's AEIC at para 51.

specifically would be for the premises that SMRT leased out to the claimant.

(b) Even if the aim of drafting such an agreement in his personal name allowed for plausible deniability on the part of Station 33 if SMRT caught wind of the arrangement, this did not even begin to explain why most of the rental moneys had been put in the first defendant's personal account, as opposed to the Station 33 Bank Account (see above at [13]).[140] It certainly did not explain why or how he could do so without Mr Chua's permission or acceptance (and there is no evidence that he brought to the court to suggest that he had obtained approval for this).

(c) The first defendant has a habit of portraying himself as being entirely in the dark about the significance of legal documents when it suited his purposes (see, for example, [62(d)] above), only to have an eye for legal technicalities when it suited him (as is the case here). The first defendant cannot have his cake and eat it: either he is a savvy operator who knew full well what he was doing when signing documents, or as he put it, he is someone who is "uneducated" and "barely literate" with no knowledge of business matters. More precisely, in this context, he cannot claim to have a nuanced understanding of the separate legal personality in deciding how to shield the corporate entity from liability when it suited him, only to then claim to be a babe in the woods who is completely lost in understanding the niceties of contracts when other contractual documents prove inconvenient for him.

---

140 CCS at para 379.

80 In any event, there is documentary evidence to suggest that the subletting had been done without the claimant's (and Mr Chua's) knowledge. In the March 2015 Letter, which lists numerous concerns about the first defendant's conduct over the years, the claimant noted that such subletting had been done without its (and Mr Chua's) knowledge.[141] I note that the first defendant conveniently claims that the various letters sent by the claimant was not received by him – this is a matter I will deal with at greater length later on (see [106] below). Suffice it to say, I disbelieve such a convenient attempt to disavow receipt.

(3) Dismantling of security cameras in Station 33

81 A further and obvious marker that provides an insidious gloss to the above series of events is the all-too-coincidental dismantling of the original security cameras at Station 33 that would have allowed one to remotely assess the front desk, and more significantly, the cash register area of the Premises, at around the same time the first defendant started diverting moneys away from the Station 33 Bank Account. Significantly, Mr Chua was able to access the original security cameras but was unable to do so after the cameras were replaced.[142] The first defendant suggests that he had replaced the previous cameras because they had broken down.[143] However, this reason is at odds with the contents of the March 2015 Letter, in which the claimant specifically highlights that the reason given by the first defendant for the dismantling of the security cameras was that "customers do not like to be captured/monitored on

141 Mr Chua's AEIC at p 54.

142 Mr Chua's AEIC at para 54.

143 Mr Ong's AEIC at para 156(t)–156(u).

CCTV when making payment".[144] I would add that such a reason seems perverse and incredible, given that it is common practice for most businesses to install CCTV cameras at payment stations in retail shops to ensure that moneys received can be accounted for – in that sense, it is precisely to monitor payment that such CCTV cameras are installed.

(4) Mr Peter Chong's employment

82 At about the same time, the first defendant introduced Mr Peter Chong to replace Mdm Lim in Station 33 as the accountant of the company.[145] Such a recommendation was puzzling to say the least since it is self-evident from his application form (that has been produced in evidence) that he was entirely unsuited for the role, having never done any accounting work in his professional life or having any educational qualifications to allow him to effectively discharge the role.[146] As alluded to earlier, the first defendant and Mr Chua proffered vastly different accounts of how Mdm Lim departed from her role and how Mr Peter Chong ended up replacing Mdm Lim. Mr Chua suggests that the first defendant was insistent on Mr Peter Chong's employment,[147] and the first defendant in turn suggests that this was because Mr Chua decided, "for reasons unknown" to him, that his wife would no longer assist on the accounts,[148] though both parties agree that it was the first defendant who provided his contact as a "friend".[149] It is clear that the much more cogent explanation was that offered by Mr Chua. It makes no sense for Mr Chua to have withdrawn Mdm Lim's

144 Mr Chua's AEIC at p 54.

145 Mr Ong's AEIC at para 47.

146 Mr Chua's AEIC at page 57.

147 Mr Chua's AEIC at para 38.

148 Mr Ong's AEIC at para 47.

149 Mr Chua's AEIC at para 48; and Mr Ong's AEIC at para 47.

services from an investment he had just procured, and for which, on the first defendant's account, Mdm Lim was being decently remunerated for (see above at [15]).[150] Similarly, there would be no reason for the first defendant to recommend a patently unsuitable candidate for such a role of preparing the accounts, unless these actions were part of a broader agenda to benefit his contacts and/or populate the business with "friendly" faces.

83 I would stress that each of the discrete pieces of evidence I have discussed in the preceding paragraphs (see above at [76]–[82]) cannot and must not be seen in isolation. Indeed, I accept that each of these developments, if they had occurred by themselves, may have a benign explanation. Individual jigsaw puzzle pieces by their nature can never give one a full picture. However, their significance becomes amplified when the discrete pieces are put together and one starts to see the bigger picture. When one puts the various pieces together and realises that almost all of these events conveniently happened in the space of a month at or around December 2011 to January 2012, or at the very least in the first half of 2012, the composite picture that emerges is clear: the first defendant was, at the time, taking multiple concurrent steps as part of a broader co-ordinated campaign to take control of the accounts and to take over the cash finances of Station 33.

(5) The first defendant's remuneration

84 Even on the first defendant's own account, it would appear that, by 2012, he had started to take significant liberties on how he could deal with Station 33 finances and was effectively re-writing, interpreting, and fashioning remuneration policies in his favour. It is not in dispute that there was an

150 CCS at para 369.

agreement between the claimant and the first defendant on how he ought to be paid. The agreement dated 23 October 2011 (the "October 2011 Agreement"), to the extent it relates to the first defendant's remuneration package, states, very simply as follows:[151]

> Andy Ong's monthly remuneration:
>
> 1. If company profitable, first S$5,000.00 nett goes to Andy Ong.
>
> 2. If company lost money, Andy will still get monthly S$2,000.00 nett.

85 The agreement goes on to state various other clauses including the basic salary for workers, overtime rates, and commission payments, but prefaces such a discussion with a statement that expressly notes that such "remuneration not applicable to An[d]y Ong". The nett effect of the October 2011 agreement on its face is self-evident: if the business is good, the first defendant gets $5,000; and if business is bad, he gets $2,000. That the upside is capped even in a good month is to be expected, since as an equity investor, in theory, all additional profits would still eventually accrue to him proportionately *qua* investor.

86 Despite the above, the available records (which are admittedly patchy) suggests that the first defendant paid himself elevated sums by way of remuneration, which were entirely out of sync with the October 2011 Agreement. I take a couple of examples to illustrate the point:

> (a) In June 2012, he paid himself a composite sum of $8,091.20, before CPF deductions (comprising an apparent basic pay of $3,000, overtime of $700 and commissions of $4,391.20).[152]

---

151 Mr Chua's AEIC at p 86.

152 Mr Ong's AEIC at p 66.

(b) In December 2012, he paid himself a composite pay of $6,160.75, before CPF deductions (comprising an apparent basic pay of $3,000 and commissions of $3,160.75).[153]

It is immediately apparent that the sums that the first defendant paid himself was much higher than had been contractually agreed in the October 2011 Agreement.

87 At trial, in order to rationalise such bizarre and idiosyncratic payment patterns, the first defendant asserted through his counsel that there had been an implicit understanding between Mr Chua and the first defendant that the latter should receive a $3,000 "basic pay" above and beyond what was stated in the October 2011 agreement.[154] According to the first defendant, the October 2011 Agreement reflected the first defendant's "entitlement to profit share" and that, because he was still an employee of Station 33, he was entitled to the basic salary of $3,000 for employees, and any overtime and commission payments.[155] In other words, on the first defendant's version of events, the minimum salary to be paid to the first defendant was, in fact, $5,000 ($2,000 + the hidden basic pay of $3,000), and the maximum would be $8,000 ($5000 + the hidden basic pay of $3000).

88 In coming up with such a bizarre explanation, an even more tangled and complex web forms. Taking the examples set out at [86] above, neither payment voucher provides any indication that the first defendant was paid either the $2,000 or $5,000 components that would have been due to him under the

153 Mr Chua's AEIC at p 87.

154 3 July Transcript at p 22 line 17 to p 23 line 9.

155 5 July Transcript at p 3 lines 15–25; and DCS at para 190.

October 2011 Agreement. Of course, this is above and beyond the obvious point that it is inexplicable that Mr Chua and the first defendant would have some sort of implicit understanding that neither side wanted to concretise in writing in the October 2011 Agreement. What benefit would having an oral agreement of even more remuneration components above and beyond a written agreement bring? All of this is then at odds with the fact that the October 2011 Agreement explicitly disallows the payments of commissions and overtime to the first defendant, and yet, he provided himself those compensation sums. Seen in the round, the explanation proffered by the first defendant does not actually explain anything. The obvious inference is that the first defendant's pay package has no connection to the October 2011 Agreement because he was simply making up his remuneration package as it went along. The above only serves to reinforce the point that the first defendant was liberally using the cash receivables of the claimant as his own personal piggy bank to dip into as and when he pleased.

(6) Mr Chua did not abandon Station 33

89 It is necessary for me to deal with the first defendant's version of events of what happened in early 2012 as well. As noted earlier, the first defendant claims that, contrary to Mr Chua's account, Mr Chua appeared to decide that the investment was just not worth his while and abandoned Station 33 at the latest by May 2012. Such an account simply does not make sense. It is undisputed that Station 33 commenced its operations at or around November 2011, and that Mr Chua (and also the first defendant) invested a sizeable six-digit sum at the time when Station 33 was initially set up (see above at [8]). It also seems clear that the company was at the outset doing relatively well for it appeared to be already generating profits in the first couple of months – a relatively impressive start for any such set-up. If so, it would have been illogical for him to then abandon such an investment altogether when it was just

in the process of getting kickstarted and generating profits. In any event, even if Mr Chua was planning to abandon it as he had lost interest, or otherwise felt that the collaboration between himself and the first defendant would not be fruitful, one would imagine that he would, at the very least, have discussed with the first defendant as to how he would be able to exit the business without too sizeable a loss. It would be unfathomable that any individual, not least an investor who put in more money than the first defendant did, would just decide to inexplicably walk away from such a significant investment in such a manner. Indeed, the first defendant has not been able to provide any reason for why Mr Chua would do so and I similarly am unable to conceive of any reason for him to do so.

90 I further observe that the first defendant's version of events as he claimed in his affidavit could not even be reconciled with his own narrative in court. In the course of cross-examination, the first defendant, for the first time, claimed that Mr Chua's main motivation was to facilitate an apparent grand plan to "kick [the first defendant] out" with a view to "leaving the business to [Mdm Lim]".[156] Indeed, the first defendant even went as far as to say that he could "prove that [Mr Chua] wanted to leave this to [Mdm Lim] and kick [the first defendant] out".[157] Not only is this plainly absent from his defence and affidavit, and also not at all explored with Mr Chua, it is a narrative that is so strange that it necessarily collapses under its own weight. I come back to the point I made earlier at [67]. If the aim of the entire exercise on the part of Mr Chua was to wrest control from the first defendant from the get-go and take over the company (and that was the first defendant's consistent position), why then insist on making the first defendant a director of the claimant with equal shares,

156 4 July Transcript at p 104 lines 5–7.

157 4 July Transcript at p 104 lines 12–13.

thereby cementing his authority formally? More to the point: if Mr Chua had the ulterior motive of pushing the first defendant out of the business, why would Mr Chua have to effectively mislead the first defendant into becoming a director of the claimant when the first defendant constantly insisted that he did not want such formal authority?

91 Furthermore, what would Mdm Lim know about the hairstyling business such that she would be able to meaningfully take over? It has always been the first defendant's evidence that he "was the one who had experience as a hairstylist, and the know-how of running a hair salon business", which was precisely why he decided to incorporate the second defendant and "not condone [his] absent business partner".[158] When faced with the claimant's counsel's question that even Mr Chua himself did not know much about the hairstyling business, the first defendant claimed that Mdm Lim was involved and that she knew how a hairstyling business was run as she "had friends who always went to other salons like Jean Yip".[159] The absurdity of the proposition is self-evident – it is akin to suggesting one possessed the necessary business acumen and savviness to set up a toy distribution company just because one has friends who regularly patronise and purchase toys from Toys 'R' Us. All this reflects the fact that the first defendant has a clear tendency to exaggerate, make spurious allegations and to allege a conspiracy where none exists. Such an odd factual assertion also cannot sit meaningfully with the primary suggestion on the first defendant's part that Mr Chua had effectively not bothered about the company anymore. Mr Chua cannot be blasé about Station 33, while simultaneously also being actively involved in trying to push the first defendant out of the business. To my mind, those two alternate factual realities cannot co-exist.

---

158 Mr Ong's AEIC at para 87.

159 4 July Transcript at p 14 lines 13–19.

92 Finally, it would be useful for me to also deal with a couple of other specific facets that the first defendant relied upon in setting out the narrative of what transpired in those years. I deal with each issue in turn.

(7) Mdm Lim's and other related persons' remuneration

93 The first defendant alleges that Mr Chua had employed Mdm Lim for accounting services for a sum of $1,500 monthly, even though she had only spent 16 hours a week on-site, and that CPF contributions were also made to certain persons related to Mr Chua despite them not contributing to Station 33's business (see above at [15]). The first defendant essentially insinuates that Mr Chua was leaking money in this manner. He relies on a CPF contribution slip suggestive of such a salary payment in making this argument.[160] It is significant to note that the first defendant, in fact, provides no evidence that such salary at that particular quantum was in fact paid, but only that the CPF contributions were made.

94 The self-evident answer is that the CPF contributions were made for such individuals to expand the possible pool of foreign workers for the business. In this regard, the first defendant does not dispute that the business relied on the employment of foreigners for it to be effectively run.[161] Indeed, the evidence of Mr Feng, one of the employees at Station 33 and later at the second defendant, effectively makes the point that all the hairstylists in Station 33, to his knowledge, were non-Singaporean.[162] It was in that context that some local

160 Mr Ong's AEIC at paras 55–56.

161 Mr Chua's AEIC at para 41.

162 9 July Transcript at p 17 lines 22 to 25.

employees were necessary, and Mr Chua's testimony was that their CPF contributions were paid out of his own pocket.[163]

95 I should stress that I would make no observation as to the legality or desirability of such a practice, since that question is not strictly speaking before me. The only point is that it is clear that the actions of Mr Chua would have been benign *from the first defendant's perspective*, and it is therefore unbelievable that the latter would have taken issue with this. Indeed, the first defendant's account on this appears absurd. The first defendant claims that, sometime in *May 2012*, as a result of him taking issue with the payments to Mdm Lim,[164] he confronted Mr Chua, and Mr Chua subsequently refused to continue working on the administrative side of the business.[165] However, the accounts clearly suggest that Mr Chua, and his associates including Mdm Lim, were clearly not in the picture by *January 2012* (*ie,* around four months before the first defendant allegedly confronted Mr Chua about Station 33's payments to parties such as Mdm Lim). As explained earlier, the absence of these parties and/or Mdm Lim was also the only reasonable explanation for how the first defendant could get away with using all the cash receipts of the business for himself in the first place. If so, just by way of chronological logic, it is impossible that an argument that post-dated such non-involvement could be the cause of such non-involvement.

(8) The first defendant did not seek access to the Station 33 Bank Account

96 Next, upon learning of the possibility of a significant rent increase in 2014, the first defendant claims to have engaged both Mr Chua and Ms Shirley

163 Mr Chua's AEIC at paras 41–42.

164 Mr Ong's AEIC at para 55.

165 Mr Ong's AEIC at paras 57–59.

Chee about the possibility of fresh capital infusion.[166] With respect, this narrative simply does not correspond with practical reality. By the first defendant's own account, by this time, he had not had access to the Station 33 Bank Account to undertake transactions for years and was forced to rely on the cash receipts to run the business.[167] If so, then of what use would any additional infusion of capital (that would go into the Station 33 Bank Account) be, if the first defendant had not even dealt with the more urgent matter of making arrangements with Mr Chua to allow him fuller access to the money found in the Station 33 Bank Account? If there was any conversation to be had at that time (assuming I accept the first defendant's version of events), it would have been obvious that the most pressing and dominant issue would be to demand access to that bank account in order to run the business properly, and to ask Mr Chua to take his obligations to the claimant and to Station 33 seriously. All of these suggest that no such conversation happened and the first defendant is just making this entire narrative up.

97 For what it is worth, it seems clear that the first defendant was seemingly suddenly flush with cash during this time, a state of affairs that would be very much in line with the observations above. This would explain how he was, in the midst of Station 33's purported financial challenges, able to purchase a landed property for a sum of over $2.3m in March 2013.[168] The first defendant does not dispute that he in fact purchased such a property. To date, the first defendant has not responded to the rather damning query by the claimant as to how he was able to afford such a pricey property at the time unless he was effectively siphoning significant sums of money from a lucrative business that

166 Mr Ong's AEIC at paras 61 and 65.

167 4 July Transcript at p 91 lines 12 to p 92 line 8.

168 Mr Chua's AEIC at para 79; and CCS at para 103.

he had frozen Mr Chua out of. It would certainly be odd that he could do so if the claimant was bleeding money as first defendant asserts. Nonetheless, given that there was little led by way of evidence as to how such property was procured, and the circumstances in which it was procured, I did not give significant weight to this. I would only observe that the clear fact that the first defendant had the money to purchase that property about a year or two after he took over the cash receipts was not inconsistent with the idea that the cash receipts that he misappropriated likely constituted a sizeable amount.

98 It consequently follows from all that I have set out above that I do not accept the first defendant's evidence that Station 33's business was so bad sometime in 2012, that Mr Chua's alleged sudden abandonment of the business led to the first defendant seriously thinking of packing it up and calling it a day.[169] I also do not accept that the first defendant was simultaneously concerned about how Station 33 and/or the claimant may be in breach of the lease agreement with SMRT such that the lease agreement may be terminated early.[170] Why should he even be remotely concerned about this if, as he claims, he had seemingly assumed that he was not a director (or a shareholder) of the claimant in any event? As an aside, why should this even be a factor if, as early as 2005, he was advised by his sister on the fact that the beauty of doing business through the conduit of such a corporate entity would be that it shields him from personal liability? Indeed, according to the first defendant, between 2002 and 2005, his sister advised and assisted him with the incorporation of AOHS and the changing of AOHS from a sole proprietorship to a private limited company so

169 Mr Ong's AEIC at para 70.

170 Mr Ong's AEIC at para 51.

that "[his] liability would be limited and [he] would be able to sell the company should there be a need to".[171]

99 For the reasons above, I find it is clear that, from early 2012 onwards, the first defendant was acting in breach of his duties *qua* director of the claimant in taking the proceeds from the business (both in terms of cash receivables from the business, and in terms of the proceeds from the Subletting Agreement) and dealing in them in ways that rendered him both unaccountable to the business, and allowed him to take part of the profits for himself, as encapsulated by how he paid himself generous sums of money above and beyond what was agreed to be his remuneration framework.

*The renewal of the lease of the Premises in 2014*

100 The next significant chronological data point lies in the renewal of the lease in 2014. To recapitulate, the Claimant's Lease in 2011 had been for a monthly rental sum of $15,000, and by the first renewal in 2014, the rental was increased to $17,000, *ie*, an increase of $2,000.[172] It would be of some utility to study the motivations for such an extension. In my judgment, this itself provides a further useful and telling insight into what actually transpired at Station 33 and its true financial health.

(1) The first defendant's reasons for the renewal of the Claimant's Lease

101 According to the first defendant, he had serious reservations with renewing the lease. Based on his account, business was poor, and given Mr Chua's apparent disinterest, there was little point in continuing to run the

171 Mr Ong's AEIC at para 14.

172 Mr Ong's AEIC at para 74.

business.[173] Indeed, he observed in his own affidavit that, based on the claimant's accounts (which I will discuss in due course), the hairstyling business was a losing concern bleeding tens of thousands of dollars, and by April 2014, had made a nett loss of some $71,166.64.[174] Nonetheless, in the first defendant's telling of the matter, he claimed that because he "had loyal and returning customers who would visit Station 33 to request for [his] services", and because he had "hopes of recouping [his] investment", he decided nonetheless to extend the Claimant's Lease at the increased rent.[175]

102 Having considered the evidence and having considered the entirety of the first defendant's testimony, I am of the view that neither of these reasons were primary motivators for his renewal of the lease. For one, the first defendant had repeatedly made the point that he no longer wanted to run a business,[176] and claimed to be haemorrhaging tens of thousands of dollars by running Station 33.[177] In fact, the first defendant testified that he only wanted to be a hairstylist that worked for someone else.[178] The first defendant painted such a dire picture of his ability, and disdain, towards running a business that he claimed that when he was running AOHS many years back, he was so bad at it that his sister and brother-in-law had assisted him to manage the business in various capacities.[179] In short, going by his own contentions, it would have been obvious to him that the business would go inevitably deeper into the red under

---

173 Mr Ong's AEIC at paras 75–76.

174 Mr Ong's AEIC at para 168.

175 Mr Ong's AEIC at para 76.

176 Mr Ong's AEIC at paras 18–20; and 4 July Transcript at p 13 lines 10–13.

177 Mr Ong's AEIC at paras 160–162.

178 4 July Transcript at p 14 lines 2–12.

179 4 July Transcript at p 8 line 2 to p 9 line 23.

his watch, especially when the lease was extended at a significantly elevated cost. If the first defendant's point is that the business was a fundamentally flawed one that kept on losing money and was being run by someone who was clearly ill-suited to run a business, how would continuing the business do anything except bleed the investment dry? It was baffling that the first defendant, by his own account and with such a grim outlook, would seek to then continue to operate the business at a significant net loss over the years.

103 I would also observe that these actions completely contradict his own assertion that he had no desire to run a business and would much rather be an employee somewhere else. There was nothing stopping him from packing up shop and working for someone else. He could even bring his "loyal customers" with him, given that, by his own account, these clients would be willing to move with him.[180] It was obvious, in my view, that the most obvious and commonsensical explanation was that the first defendant was not telling the truth, and was making (and thereby pocketing) significant profits as a result of the cash sales, even taking into account the payments he had to make on the side to employees and/or suppliers. Indeed, I note that this would explain why he did not appear to take any steps at the time to try and convince Mr Chua to unlock the funds available in the Station 33 Bank Account – he simply did not need it, and having any such a conversation would, for obvious reasons, prove to be inconvenient as questions would immediately be asked by Mr Chua about the siphoning of (likely very large) cash deposits for many years. All of this is above and beyond the obvious point that it would have been anomalous for the first defendant to even be willing to be involved in the lease negotiations from 2014, given that it was his own position that all administrative matters were not for

[180] 4 July Transcript at p 83 lines 17–20.

him to resolve. Therefore, as someone who claims to be completely lost on all things business-related, it would seem odd that he did not insist on getting Mr Chua into the picture at that time.

104 I further accept Mr Chua's evidence that he was kept in the dark about the renewal of the Claimant's Lease in 2014 until after such renewal was done.[181] Even if I accept the first defendant's account that Mr Chua was somewhat uninterested about the investment sometime in the first few months of the business (which again I should highlight that I do not), one would have expected that if Mr Chua's input had been sought about the renewal, he would inevitably have asked inconvenient questions about the viability of the business. Such a conversation could go one of two ways: if the business was good, Mr Chua would understandably seek his part of the profits (and ask the first defendant to account for the missing cash sums); if business was bad, Mr Chua would veto any attempt to use his funds to extend the lease to chase a lost cause, lest his entire capital be extinguished in this manner. In all likelihood therefore, the first defendant kept Mr Chua in the dark about the matter until after the lease was extended. This also seems broadly in line with what was suggested by the claimant and/or Mr Chua in the March 2015 Letter, which suggested that they needed the lease agreement for their records because they simply were not involved in the lead-up to the extension. It would appear extremely unlikely that Mr Chua would have taken a *laissez-faire* approach if there were substantive discussions on the renewal of the Claimant's Lease, given that it was his own money that was partly at stake.

[181] 2 July Transcript at p 53 line 15 to p 54 line 3.

(2) The letters from the claimant

105 I would, at this juncture, discuss the documentary evidence. In particular, the March 2015 Letter paints a compelling account of Mr Chua being a frustrated investor who has been frozen out of Station 33's operations and who has been deprived of all of the accounts in the possession of the first defendant (see above at [21]). It highlights the lack of transparency in how the first defendant operated Station 33, and strongly corroborates Mr Chua's account. Indeed, this letter was followed up by another letter on 20 April 2015, which broadly made similar points and stressed the need for the first defendant to cooperate so that there would be a clearer picture of the financial state of the business (see above at [22]). As alluded to earlier as well, the first defendant claims that he never received these letters, and that, if he was truly uncooperative as the claimant alleges, it is anomalous that no written communications were made at an earlier time by the claimant.[182]

106 I had little hesitation in accepting Mr Chua's version of accounts. It would be quite unbelievable to suggest that Mr Chua had manufactured these letters for the purposes of these proceedings. Indeed, the letters were themselves not entirely well-crafted such that it would be quite odd if these were fabricated for these proceedings, and these letters do not even include the more incendiary allegations (such as the first defendant pocketing the cash receipts for years on end) that would have been the obvious allegations to make if indeed the letters were manufactured for the present claim. I therefore am of the view that these letters are likely to be genuine and were indeed sent to the first defendant. I do not need to make a finding on whether the first defendant did indeed receive the letters from 2015, since, even if he did not, these letters would still have served

[182] Mr Ong's AEIC at para 156.

as contemporaneous evidence of Mr Chua's understanding of the events at the time. In any case, the fact that Mr Chua could produce (extremely defective) accounts of Station 33 up till 2014, in line with the demands set out in the 2015 letter, essentially proves the fact that he was given the accounts after these letters were sent. Indeed, the entire correspondence in 2015, including court summonses being sent to the first defendant and repeated chaser letters (see above at [21]–[23]), have an obvious ring of truth to them and I have no reason to disbelieve that all of these documents were in fact sent to the first defendant.

107 To reiterate, I make no finding on whether the first defendant even actively put his mind to these matters when the letters were sent to him in so far as I have no reason to conclude that the first defendant would even bother about such letters even if he received them, given his clearly lackadaisical attitude about matters of corporate governance. However, to the extent he did not know about the letters, it was not because they were not sent but because it was very likely that he did not care less even if he received them.

*The renewal of the lease of the Premises in 2017*

108 The next issue of significant chronological reference is the renewal of the lease in 2017. By this time, Station 33's business registration had lapsed. For context, it is also useful to highlight that the lease price was significantly enhanced and staggered such that it was an average of $18,500 per month across three years, with an additional monthly rent of 0.5% of the gross turnover (or revenue) (see above at [28]). To illustrate the significance of this increase, I note that in a hypothetical month where the revenue was $40,000, the monthly rent would come up to around $18,700, or a close to 25% increase from the initial rent of $15,000 in 2011. This particular event was again worth studying in some detail, as it provides a useful insight into the true state of affairs.

109 The first defendant claimed that, by this time, he was purportedly "tired of single-handedly sustaining and operating the business without any help, or contribution" from Mr Chua.[183] With that in mind, since he "had experience as a hairstylist, and [also] the know-how of running a hair salon business",[184] he decided to strike it out on his own with the second defendant. I would only point out the matters I already raised earlier about the obvious contradiction between the first defendant's claims to be uninterested in running businesses, to be chalking up massive losses, and to be entirely incompetent in understanding corporate affairs such that he required assistance for this matter, only to declare an avowed motivation for continuing to renew a lease in order to run a business at ever increasing rental rates. That the first defendant almost immediately set up the second defendant in 2017, around when Station 33's business registration was cancelled, essentially disproves his very contention about his utter contempt for the business-related aspects of a hairstyling salon. It lays bare the lack of credibility underlying two specific aspects of his accounts: (a) his apparent confusion about how to run a hair salon business and his avowed lack of business savviness; and (b) his suggestion that he was somehow completely lost when, according to his narrative, Mr Chua jumped ship in late 2011 or early 2012.

110 Given the above, it does not take much to conclude that, unless he was committed to the idea of throwing money down the drain, the first defendant was lying about the financial health of the business and painting a picture of an unviable business when it was in fact making profit. In fact, in the course of cross-examination, the first defendant appeared to make a Freudian slip. When asked about why he decided to continue leasing the Premises in 2017 (albeit

183 Mr Ong's AEIC at para 86.

184 Mr Ong's AEIC at para 87.

under the name of the second defendant), he implicitly acknowledged he was making profits. He stated that he renewed the lease as, when he did his calculations (including sub-leasing the premises), his earnings would be akin to "the amount [he] would get from working for others".[185] Put another way, even based on his own concession and self-interested account, the first defendant was not losing money – in fact, the earnings he would receive would mirror the anticipated salary he could receive working for another party. While it would be unnecessary to comment on the veracity of the assertion about the quantum of profit, this proves that the entire narrative of Station 33 being a losing concern was false and is indicative of the entirely illusory nature of the first defendant's narrative that he had continually invested in managing a losing concern.

(1) The tender submission form was filled up on behalf of Station 33

111 A further point I would note is the fact that when the tender submission form was filled up, it appeared to be filled up on behalf of Station 33 (see above at [26]). The first defendant's suggestion that he somehow had a third party (namely, his nephew, Mr Johnson Ong) fill up the form, and that the first defendant was unaware of the specifics of the form, appear far-fetched. This is especially when one studies the lease renewal application carefully. The excuse given by the 1st defendant appeared to me to be implausible given that, on a close inspection, the handwriting found on the tender form bears striking similarities with the first defendant's handwriting (which the court is empowered to compare, under s 75 of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act")). As a simple example, the strokes used by the first defendant to write his name and his designation ("Director") are exactly the same in the

185 5 July Transcript at p 13 line 22 to p 14 line 8.

tender form, as it is in the actual lease that had been signed sometime later by the first defendant.[186]

112 Nonetheless, this is a red herring as, in my view, it did not concern the court whether anyone else (be it Mr Johnson Ong or otherwise) was involved. I say this because when the first defendant made the lease renewal application, he made an annotation on the document to indicate that "there will be a change of company name upon successful tender due to different ownership of the business".[187] If so, the issue is not whether he misrepresented the situation to SMRT or otherwise when seeking a tender for Station 33 (because to be fair, he did try to explain, albeit in a confusing manner, that it would not be Station 33 that would run the premises but a new entity), but whether he had acted in breach of his duty to the claimant in doing so. In assessing that, regardless of whether it was the first defendant who filled up the form or whether it was represented to SMRT that the Premises would be run by a new company moving forward, the mere act of tendering for the Premises for the purposes of setting up the second defendant would *ipso facto* amount to a breach of his fiduciary duty to the claimant. This is because the entire decision-making process was, at its core, about taking business away from the claimant. The mere act of setting up a new company in this manner and taking away what was effectively the claimant's business, essentially served as the breach of duty on the part of the first defendant, not any specific misrepresentation to SMRT in the tender submission form.

---

186 See, by way of comparison, Mr Ong's AEIC at pp 240 and 323.

187 Mr Ong's AEIC at p 240.

(2) Conversion of Station 33's assets

113 It follows, almost as a matter of course, that more breaches of director duties occurred upon the setting up of the second defendant. It would be obvious that unless major renovations were done and an overhaul of the entire premises undertaken, almost all of the assets of the second defendant would have been wrongfully converted from the properties of the claimant. Indeed, this was clearly what happened. The first defendant suggested that he underwent a major renovation in 2017, as well as an overhaul of the equipment. None of this was borne out at all. Quite astonishingly, the first defendant claims to be unable to recall who in fact renovated the Premises and that he did not retain any document relating to the renovation works.[188] This was a poor and entirely absurd explanation. Even if it may have been perfectly reasonable for one not to recall the name of their renovation contractor off-hand, one could very easily check their records or make a few phone calls and find out. This would have been an extremely quick exercise. There would have been a litany of phone records, messages, invoices and/or bank statements to prove who the contractor was, and what payments were made (on a broad level, at least). That the first defendant is unable to produce any of this, or even the name of the entity or individual(s) that assisted with the renovations, leaves me with little doubt that he did not do anything to renovate Station 33 and, in fact, merely converted all of the assets paid for by the claimant for the defendants' use.

114 Indeed, I would be astonished if anything more than superficial refinements were effected to the premises, since it is not disputed that the Premises was closed for just three days (see above at [28]).[189] It would be

188 Mr Ong's AEIC at p 111.

189 DBOD vol 2 at p 142.

impossible for the first defendant to effect anything more than *de minimis* changes in such a short period of time. His claim in any event that he did not use or transfer *any* of Station 33's assets in the start-up of the second defendant is plainly unbelievable. It would come as no surprise that the first defendant did not in fact provide any receipts for the purchase of new equipment in 2017, since presumably all the necessary equipment and fixtures were already in place for him to take over. In any event, he has not provided any evidence to suggest that he disposed of all of Station 33's assets, nor would it, with respect, have been logical (from a financial and practical standpoint) to do so. All of this quite squarely suggests that the entire shift from Station 33 to the second defendant was nothing more than a change in name and not in substance. It was essentially effecting a change in signage and little else other than cosmetic changes.[190] In this connection, it was not lost on me that it was explicitly agreed with SMRT at the time that the only renovation required (apart from the putting up of a new signage) was the need to perform "touch up painting on wall and ceiling".[191]

115 In those circumstances, I have little hesitation in finding that the first defendant effectively converted the claimant's assets to his own by subsuming almost the entirety of the assets and business previously owned by the claimant. It may be that in those three days, he could have effected some minor touch-ups and potentially brought in some new minor equipment, but, on a balance of probabilities, most, if not all, of the primary equipment would have remained the same.

116 All of this then leads to perhaps the most audacious of breaches on the part of the first defendant. Having already hollowed out the cash receipts for

190 Mr Ong's AEIC at para 128.

191 DBOD vol 2 at p 139.

many years, once he started to run the second defendant, he then proceeded to drain literally every cent out of the Station 33 Bank Account. It would be recalled that, initially, he was only able to appropriate the cash receipts as the nature of how the bank account was structured meant that at least two signatories had to sign off on any withdrawal (see above at [8]). This made it impossible for him to withdraw money generally on his own from the Station 33 Bank Account. However, this did not apply to General Interbank Recurring Order ("GIRO") withdrawals from the Station 33 Bank Account, which were automated.[192] Accordingly, from the time the second defendant took over the Premises, all utilities were paid for by way of deductions from the Station 33 Bank Account until it was hollowed out entirely.[193]

117 The first defendant does not even bother to clothe such a breach of duty under the guise of inadvertence, boldly asserting that because Station 33 was "no longer a going concern", and that he "no longer intended to keep the account alive", he thus "utilised the remaining funds [therein] to pay for the utilities of second defendant".[194] This was a shocking admission, and betrays the fact that the first defendant very much intended to drain Station 33 of all its resources, down to the very last cent.

118 The first defendant then glibly suggests that he is "prepared to make restitution" of such sums that were used for the second defendant's operations.[195] With respect, this is a hollow statement bereft of any contrition whatsoever. This was, to my mind, an obvious case of the first defendant being willing to give

192 5 July Transcript at p 37 lines 5–25.

193 Mr Ong's AEIC at para 179.

194 Mr Ong's AEIC at para 178.

195 Mr Ong's AEIC at para 181.

back the money only because his hand was caught in the cookie jar (or in this case, caught taking the moneys from the Station 33 Bank Account) and even on his case, the breach is plain for all to see and impossible to ignore. It is an audacious attempt to portray magnanimity when he simply would have no choice anyhow – if he did not effect such restitution, it would have been impossible for any court to not make such an order given that it is incontrovertible that he was hollowing out the Station 33 Bank Account to benefit himself and the second defendant. The fact that he did not immediately repay the sums in full upon the matter being discovered and even had the temerity to characterise his position as one in which he is "prepared" to make restitution (presumably if so ordered) itself betrays the complete nonchalance of the first defendant of his illegal actions.

(3) Clientele and goodwill vests in the first defendant

119 Finally, I have demurred from making any finding that the first defendant, and/or the second defendant, is liable for the loss of goodwill and clientele of the claimant.

120 The concept of "goodwill" is usually discussed in the context of the tort of passing off, though its definition there would still be useful for our present purposes. Although the notion of "goodwill" is notably "ephemeral and hard to define", the Court of Appeal observed that it presents with two essential features: (a) the "association of a good, service or business on which the plaintiff's mark, name, labelling, etc (referred to as the plaintiff's "get-up") has been applied with a particular source"; and (b) this association is an "attractive force which brings in custom" (*Novelty Pte Ltd v Amanresorts Ltd and another* [2009] 3 SLR(R) 216 at [39]). As such, "goodwill" exists "in a name when that name will bring in customers for the business which is carried on under that

name" (*Guy Neale and others v Nine Squares Pty Ltd* [2013] SGHC 249 at [148]).

121 In my view, the nature of the hairstyling business in the present case is such that the personality (in this case, the first defendant) largely defines the business. It is not disputed by Mr Chua and/or the claimant that the first defendant brought his connections and clientele over from AOHS to Station 33,[196] and that these loyal and returning customers would follow the first defendant.[197] In comparison, the claimant did not show any evidence of goodwill that may be distinctly attached to the Station 33 name. In such circumstances, it would not have been unfair, in the absence of anything in the agreement between the parties, for the first defendant to quit the business, before moving on to another business somewhere else or to be an employed hairstylist elsewhere, and to bring his clientele with him in the process. I am chary, in the absence of any contractual provision barring him from so doing, to suggest that such actions *per se* would amount to a breach of any duty as a director of the company. In any event, I note that the claimant has not provided any evidence or jurisprudence to suggest that any other position would be appropriate.

*Other observations*

122 I make three other observations about this case which further reinforced my views above. The first is the point about the motivations of the claimant in bringing the present claim. In doing so, the first defendant makes barbed insinuations including:

196 Mr Ong's AEIC at para 25.

197 4 July Transcript at p 83 lines 17–20.

(a) Mr Chua allegedly used the services of associated entities, such as Arisco (which was allegedly owned by Mdm Lim at the material time), without the first defendant's knowledge for the renovation of the Premises in 2011.[198]

(b) Certain persons related to Mr Chua were remunerated by the claimant, such as Mdm Lim's salary for her accounting services in the initial months of Station 33's business; and

(c) The liquidator and Mr Chua were purportedly "in cahoots" and intended "to fix [the first defendant]".[199]

123 In relation to point (c) of the preceding paragraph, I first provide some context to the first defendant's submission that the liquidator and Mr Chua are conspiring to "fix him". The first defendant asserts the following: (a) Mr Chua intentionally withheld payment to Arisco, which strategically led to the claimant's winding up;[200] (b) the liquidator of the claimant has "acted in conflict" as she is not only acquainted with Mr Chua, but she was the corporate secretary and accountant for the claimant, the corporate secretary of Arisco (which is the company that applied to wind the claimant up), and also the appointed liquidator of the claimant;[201] and (c) certain circumstances appeared, to the first defendant, to indicate a conspiracy between the liquidator and Mr Chua. Such circumstances include the fact that only the first defendant was made a party to the present claim, even though Mr Chua was also a director in

198 Mr Ong's AEIC at para 214(b).

199 Mr Ong's AEIC at paras 214(v) and 214(ee).

200 DCS at paras 200–205.

201 DCS at paras 206–209.

the claimant.[202] As such, the defendants urge this court to draw an inference as to the *mala fides* of these proceedings against the first defendant.[203]

124 With respect, all of this is beside the point and does not affect my findings on the first defendant's liability for breaching his fiduciary duties to the claimant. The question before me is not whether Mr Chua himself had acted inappropriately (though I did struggle to understand why it was a problem for Mr Chua to utilise associated companies for their services, as long as these were fairly priced), but whether the *first defendant* had acted in breach of his legal duty *qua* director. If indeed Mr Chua had hypothetically acted inappropriately in any way, this is a matter for the company and/or the first defendant to separately take action on.

125 In a similar vein, I struggle to see how the first defendant's allegations against the liquidator affect my findings that the first defendant had indeed misapplied Station 33's assets and failed to account for the same to the claimant. For completeness, I note that the first defendant also highlights the fact that the liquidator was not called as a witness in these proceedings and could not be cross-examined.[204] The liquidator also did not file an affidavit of her evidence-in-chief for the trial. In my view, the liquidator's evidence would likely have been superfluous in the present case as there does not appear much that she can add to the discussion. Indeed, the first defendant has not raised anything that only the liquidator can comment on, which Mr Chua would not be better placed to take a position on.

---

202 DCS at para 210.

203 DCS at para 211.

204 DCS at para 31.

126 The second observation relates to the first defendant's insistence that, in the absence of any proof, it would take the position that none of the letters by Mr Chua that were sent to the first defendant would be acknowledged as being received, and that the defendants would dispute the authenticity of such documents.[205] Not only did he take this position *vis-à-vis* all of the correspondence sent by Mr Chua which served as contemporaneous evidence supporting the claimant's case (see [106] above) – which, in my view, was clearly sent to him – but more oddly, he even took that position for documents that appear to have been sent to the claimant under the first defendant's direction. As a simple example, the first defendant even took the position that the claimant's accounts that it submitted for this hearing should be formally proved and be given no weight otherwise, even though the data therein were prepared by Mr Peter Chong and forwarded to the claimant from Station 33 in 2013 under the pain of threats for non-compliance.[206] This was despite the fact that the defendants also did not call Mr Peter Chong as a witness to dispute any of this, and that the first defendant would have obviously been the only party to be in possession of the *actual accounts at Station 33* to disprove what the claimant was suggesting. In this regard, I would again highlight the obvious point that Mr Peter Chong was the first defendant's friend, and not Mr Chua's. I highlight this not to suggest that the accounts had any integrity to them (as I will explain later, they do not) but only to emphasise the fact that the first defendant's approach to the litigation itself reflected the fact that he was being less than candid in his narration of what transpired.

---

205 2 July Transcript at p 57 lines 2–21; 4 July Transcript at p 80 line 22 to p 81 line 2; and DCS at para 70.

206 2 July Transcript at p 152 lines 1–19; and Mr Ong's AEIC at p 1122.

127 The final observation I would make pertains to Mr Chua's account that the first defendant was someone who would, at times, characterise all contributions made by others as unqualified gifts to him for which there was no *quid pro quo*. There was some reason to give weight to Mr Chua's characterisation of the first defendant. First, Mr Chua's recollection of an incident in 2010 in which Mr Chua had lent the first defendant $50,000 when the latter was in financial difficulties, which the first defendant later claimed was an unqualified gift (a matter Mr Chua was not challenged on in cross-examination).[207] Second, during his cross-examination, the first defendant even claimed that Mr Chua would give "free renovation service[s] to Station 33".[208] This was not the position taken when Mr Chua took the stand, in which he claimed that the claimant would engage these contractors (the rather obvious implication being that the claimant would have to pay for it).[209] There was therefore some basis for Mr Chua's claim that the first defendant possessed a marked tendency to mistake (or mischaracterise) investments or assistance given by third parties as being without any conditions that he can use and exploit for his own benefit, even if this did not feature significantly in my conclusions in this case.

### *The first defendant failed to account to the claimant*

128 I now consider the claim that the first defendant failed to account to the claimant for the profits made and/or assets derived by the business of Station 33. One of the specific duties that a (custodial) fiduciary is subject to is the duty to keep accounts of the trust assets and to allow the beneficiaries to inspect them

---

207 Mr Chua's AEIC at para 7.

208 4 July Transcript at p 63 lines 17–22.

209 2 July Transcript at p 120 lines 22–24.

as requested. I pause here to note that such a duty to account is continuous, on demand, and does not simply have to be discharged at the time of distribution of the trust assets (*Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 ("*Lalwani*") at [16]–[20]). At the core of such a duty, the accounting process is "a means to hold the trustee accountable for his stewardship of trust property", and accordingly, "the trustee must by this accounting process *give proper, complete, and accurate justification and documentation for his actions as a trustee* [which requires] information as to the current status of, and past transactions that relate to, each of the constituent trust assets actually received by the trustee" (*Lalwani* at [23]) [emphasis added].

129 In response to the claimant's allegation, the first defendant makes the following arguments:

(a) The first defendant had, at all times, provided Mr Chua and the Team access to Station 33's records. The first defendant points to the fact that the claimant was able to disclose some of Station 33's financial documents and the claimant's own financial documents (which must have also been reflective of Station 33's accounts and finances since the claimant did not have any other business other than Station 33).[210] Mr Peter Chong had also complied with Mr Selvakumar's request for financial documentation.[211]

(b) The first defendant did inform Mr Chua of the Subletting Agreement and the revision of rental rates for the Premises.[212]

---

210 DCS at paras 72–74.

211 DCS at paras 75–76.

212 DCS at paras 77–83.

130 With respect, all the above misses the point. It does not matter that *some* documentation was provided at some point. As noted earlier, such a duty to account is on demand and a continuing one. Thus, even if, as the first defendant contends, the documents were provided at one point by Mr Peter Chong and the claimant had possession of *some* financial documents, this does not change the reality that the first defendant had breached such a duty. More importantly, as the first defendant himself conceded, he did not keep any record of his receipt of the cash takings of Station 33 or the rental payments pursuant to the Subletting Agreement that he received in his personal bank account. Despite claiming that he used these moneys for certain outgoing expenses, he failed to produce any record or the original underlying document of any of the salary vouchers, bills, or invoices from suppliers that he allegedly applied the moneys to.[213] In my judgment, it is clear that the first defendant failed to provide proper, complete, and accurate justification and documentation for his actions as a fiduciary.

***The defence of acquiescence is not made out***

131 The first defendant alludes to having a defence of acquiescence *vis-à-vis* the claimant. The argument runs along the following grain. The second defendant tendered for the lease of the Premises in 2017 and started its business in the same year and it was undisputed that the claimant and/or Mr Chua would have been aware of this reality by that point of time.[214] Yet, the claimant allegedly "did not take any steps to prevent [the first defendant] from incorporating [the second defendant or to] tender for the lease of the Premises",

---

213 See, for example, 4 July Transcript at p 72 line 8 to p 74 line 6, and 4 July Transcript at p 94 line 17 to p 96 line 25.

214 CBOD at p 269; and 2 July Transcript at p 90 lines 4–24.

and did not "raise any objection" until this claim was filed.[215] As such, according to the defendants, the claimant and/or Mr Chua are taken to have acquiesced to the actions taken by the defendants.

132 With respect, such an argument is untenable. The law of acquiescence has been set out as follows (*Genelabs Diagnostics Pte Ltd v Institut Pasteur and another* [2000] 3 SLR(R) 530 at [76], citing *Halsbury's Laws of England* vol 16 (4th Ed Reissue) at para 924):

> The term acquiescence is … properly used where a person having a right and seeing another person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to it being committed; a person so standing-by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may reasonably be inferred from it and is no more than an instance of the law of estoppel by words or conduct …

133 In *Koh Wee Meng v Trans Eurokars Pte Ltd* [2014] 3 SLR 663 ("*Koh Wee Meng*") at [120], the court observed that there are two types of situations in which the defence of acquiescence might be established: (a) where a claimant abstains from interfering while a violation of his legal rights is in progress; and (b) where a claimant refrains from seeking redress when a violation of his rights, which he did not know about at the time, is brought to his notice. With respect to the second scenario, the defendant only needs to plead that the claimant, having a right, and with knowledge of their right, "stood by and saw the defendant dealing with property in a manner inconsistent with the right of the plaintiff" (*Koh Wee Meng* at [119], citing *S Pathmanathan v Amaravathi* [1979] 1 MLJ 38).

---

215 Mr Ong's AEIC at para 138.

134 This court has also held that acquiescence is "premised *not on delay*, but on the fact that the plaintiff has, *by standing by and doing nothing*, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights" [emphasis added] (*Eller, Urs v Cheong Kiat Wah* [2020] SGHC 106 at [102], citing *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 at [114]).

135 With the above in mind, there is no basis at all to suggest that the claimant had acquiesced to the defendants' course of action. Indeed, the bevy of documentary evidence, from the many letters sent by the claimant and/or Mr Chua to the first defendant over the years to the police report filed in 2019 all plainly show that the claimant and/or Mr Chua were adamant that the first defendant's actions were unacceptable. It was therefore clear that the claimant and/or Mr Chua took issue with the first defendant's actions at all times, and even made that unambiguously clear in the 13 October 2017 letter.

136 To be sure, I accept that ideally, the claimant and/or Mr Chua ought to have acted with more haste in asserting its rights. It is admittedly not ideal that the claimant and/or Mr Chua did not act promptly after October 2017 to assert its rights after finding out about the first defendant's converting of the claimant's property for his own use by changing the name of the shop at the Premises from Station 33 to the second defendant's. In many ways, Mr Chua's own conduct was found somewhat lacking and the snail's pace at which Mr Chua dealt with the many breaches on the part of the first defendant provided the latter with the opportunity to effectively ride roughshod over the company and to have it operate as his own fiefdom. Be that as it may, none of this, strictly speaking, changes the evidential or legal landscape for the liability of the first defendant. This is because such delays, to the extent they do not result in a limitation period coming into play (which, as I noted above, was not even

pleaded), or otherwise necessitate the invoking of the equitable doctrine of laches (and there clearly is no question of that applying here), are simply irrelevant when considering the matter of whether any cause of action that is otherwise engaged would be extinguished. Mr Chua may have not been active in running the company and may himself have been a lackadaisical director in so far as he seemed completely content to take a back-seat approach even when obvious breaches were committed by the first defendant, but it nonetheless remained the case that the first defendant was the one committing the wrongdoing.

***The evidence of the other two defence witnesses is largely tangential***

137 As alluded to earlier, the defendants also called two other witnesses to the stand. In my view, their evidence was largely tangential, since the primary point of their evidence is that a fair number of employees did not move over from Station 33 to the second defendant (a matter that is not really in dispute) Their evidence was, in my view, not critical to the resolution of the issues before the court for the reasons I will provide below. I will nonetheless deal with specific aspects of their evidence.

138 The first witness is Mr Feng. He was employed by Station 33 from sometime in May 2016, and subsequently moved over to the second defendant when it was incorporated.[216] He continues to be employed by the second defendant.[217] His evidence largely revolved around the transition of the business from Station 33 to the second defendant and the fact that just two of four

---

216 Mr Feng Zhen's AEIC at paras 4 and 10.

217 Mr Feng's AEIC at para 1.

hairstylists employed by Station 33 (*ie*, himself and Mdm Chong) moved over with the first defendant when the second defendant was set up.

139 On balance, it seemed to me that he was doing his best to downplay the business of Station 33. He claimed that Station 33's business was poor,[218] he was paid just $1,600 a month on average (including commissions), though it could at times go as high as $1,800.[219] His salary was also paid by the first defendant in cash.[220] There is no documentary evidence available to support this narrative, whether in the form of payment vouchers, or ledger entries. When Mr Feng moved to the second defendant, the documentary evidence showed his overall compensation package (including commissions) went up very significantly over the next few months: as examples, in January 2018 it was $3,258; in February 2018, it was $3294.45; and in March 2018, it was $3,143.[221] These were undergirded by a basic salary of $2,600.[222]

140 On the face of it, this suggests that Station 33's business was a lot better than Mr Feng let on: either he was given a massive pay rise as business was doing well at the time (therefore disproving his averment that business was not good) or he was lying about his salary at Station 33 to paint a dire picture of the financial health of Station 33. Either way, there were obvious question marks regarding his evidence. In this regard, I would note that Mr Feng testified that it was the first defendant who gave him the payment vouchers and took these

218 9 July Transcript at p 5 lines 18–24.

219 9 July Transcript at p 11 lines 3–11.

220 9 July Transcript at p 10 lines 17–21.

221 Mr Feng's AEIC at pp 9–11.

222 Mr Feng's AEIC at p 5.

vouchers back after they were signed by Mr Feng,[223] yet the first defendant, to date, has not provided such payment vouchers, or any other related documents from Station 33, as evidence. In his affidavit, Mr Feng tried to explain away such an inordinate increase in salary on the grounds that he was also made a "floor manager" immediately upon the move from Station 33 to the second defendant.[224] However, that narrative is itself something he disavowed in oral evidence, as he confirmed that he was only "made a manager *subsequently*" [emphasis added] and not at the time when the second defendant started its business.[225] Given these conflicting issues in his evidence, I accorded his evidence little weight.

141 The second witness is Mdm Chong, a former employee of Station 33 from 2012 to 2016,[226] and of the second defendant from 1 October 2019 to early 2024.[227] Much like Mr Feng Zhen's evidence, her evidence appeared to suggest that business was poor,[228] though again it does not sit well with the thrust of the evidence. As a simple example, if business was not good, it is hard to understand how four hairstylists could be hired at full salaries undertaking the work in question, or why the first defendant would accept Mdm Chong's return to the business at a later point. Such a business model simply did not make sense and was obviously unsustainable. I also note that, in her evidence, it was suggested that Mr Selvakumar was always at the office, even more so than Mr Peter

223 9 July Transcript at p 12 lines 4–11; and 9 July Transcript at p 21 lines 20–25.

224 Mr Feng's AEIC at para 11.

225 9 July Transcript at p 16 lines 6–13.

226 Mdm Chong's AEIC at paras 4 and 9.

227 Mdm Chong's AEIC at paras 13–14.

228 9 July Transcript at p 41 lines 10–25.

Chong.[229] This was despite the fact the latter was the full-time employee doing the accounts of Station 33, and this version of events appears to be inconsistent and contradicted by the first defendant's own account which suggests that it was Mr Peter Chong who would be at the premises,[230] including at times dealing with the money, and that Mr Selvakumar was tasked with coming to the office to collect the accounts.[231] All of this again just makes plain that it would simply not be feasible to place any weight on her evidence, save on the point of the number of individuals who were employed and that had moved over to the second defendant, which no one, broadly speaking, disagrees with.

142 In the premises, I accorded their evidence little weight, and did not consider their evidence to be especially probative of the issues before the court.

***Unlawful means conspiracy***

143 In order to establish a claim in unlawful means conspiracy, the claimant must establish the following elements (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

---

229 Mdm Chong's AEIC at paras 6–7.

230 4 July Transcript at p 70 lines 14–22

231 Mr Ong's AEIC at para 78.

(e) the plaintiff suffered loss as a result of the conspiracy.

144 I also note that it is possible, in law, for there to be a conspiracy between a company and its controlling director (*ie*, the defendants) to damage a third party (the claimant) by unlawful means (*Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [22]). In *Chew Kong Huat and others v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167 ("*Chew Kong Huat*"), Mr Chew was the managing director of both Ricwil and Sintalow. Mr Chew had breached his fiduciary duties by procuring Sintalow to supply certain goods to a company that was meant to be supplied by Ricwil. As such, Mr Chew had arranged it such that the burden was borne by Ricwil, while the benefit was received by Sintalow (*Chew Kong Huat* at [32]). The Court of Appeal found that there was indeed an unlawful means conspiracy between Mr Chew and Sintalow, who had to have intended to injure or damage Ricwil since the damage to Ricwil was a necessary corollary of the profit accruing to Sintalow through the conspiracy (*Chew Kong Huat* at [35]).

145 With the above in mind, in my view, the claim in unlawful means conspiracy is made out in the present case. The unlawful act underlying the conspiracy is the first defendant's breach of his fiduciary duty to the claimant. The two defendants must also have intended to injure the claimant as the first defendant's conversion of assets from the claimant to the second defendant necessarily means that the claimant's assets were depleted for the second defendant's benefit. The second defendant, being a company, would be attributed with the state of mind of the person who is its directing mind and will under its constitution (*Sumifru Singapore Pte Ltd v Felix Santos Ishizuka and others* [2022] SGHC 14 at [66] and *MKC Associates Co Ltd and another v Kabushiki Kaisha Honjin and others* (*Neo Lay Hiang Pamela and another, third parties; Honjin Singapore Pte Ltd and others, fourth parties)* [2017] SGHC 317

at [287]). In the light of the above, and given that the first defendant is the sole director and shareholder of the second defendant,[232] it is clear that both defendants acted in concert with the intention to cause damage to the claimant.

***Knowing receipt***

146 In relation to a claim in knowing receipt, the elements required to be established are: (a) a disposal of the claimant's assets in breach of fiduciary duty; (b) the beneficial receipt by the second defendant of assets which are traceable as representing the assets of the claimant; and (c) knowledge on the part of the defendant that the assets received are traceable to a breach of fiduciary duty (*Caltong (Australia) Pty Ltd (formerly known as Tong Tien See Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal* [2002] 2 SLR(R) 94 at [31]). More precisely, in relation to (c), the test has been restated such that the recipient's state of knowledge had to be such as to make it unconscionable for him to retain the benefit of the receipt (*George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 at [23]).

147 As I had found earlier, there is a disposal of the claimant's assets in breach of the first defendant's fiduciary duty, and these assets have indeed been converted to the second defendant's use. As noted above at [145], given the constitution of the second defendant,[233] the second defendant's state of mind is attributable to the first defendant and the second defendant would have the knowledge that its receipt of these assets is traceable to the first defendant's

232 Mr Ong's AEIC at para 6.

233 Mr Ong's AEIC at para 6.

breaches of his fiduciary duties towards the claimant such that it is indeed unconscionable for the second defendant to have retained those benefits.

***Conclusion on liability***

148 For the reasons above, I find as follows:

(a) The first defendant breached his fiduciary duties of good faith and fidelity to the claimant to act in the latter's best interests by misappropriating the cash earnings of Station 33, and wrongfully using and/or transferring the assets of Station 33 to the second defendant.

(b) The first defendant had also clearly failed to account to the claimant for the business assets.

(c) The second defendant is liable as a knowing recipient of the assets traceable to Station 33.

(d) Both the defendants are liable for unlawful means conspiracy.

**My decision on damages**

149 The next question pertains to the issue of damages that arises from the breaches as set out above.

***Substitutive compensation to be awarded***

150 To recapitulate, the claimant essentially seeks damages, or an order that the first defendant accounts for all profits and/or benefits derived from the breach. The defendants offer no position on the quantum of or nature of remedy, given their case that Station 33 incurred losses. It is trite that an account of profits and damages are alternative remedies, and the aggrieved party should

elect which remedy to pursue (*Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd and another (First Currency Choice Pte Ltd, third party)* [2010] 1 SLR 189 ("*Main-Line*") at [26]). In my view, the manner in which the statement of claim is structured,[234] and the claimant's submissions,[235] makes clear that the primary remedy sought is that of damages rather than an account of profits.

151 The appropriate remedy to be awarded also depends on the nature of the fiduciary duty breached. Breaches of fiduciary duty can be divided into two main categories: custodial breaches and non-custodial breaches (*Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Sim Poh Ping*") at [99]). A custodial breach of fiduciary duty "involves the stewardship of assets", it is "a breach of fiduciary duty resulting in the misapplication of the principal's funds or trust funds" (*Sim Poh Ping* at [106]). The present case, involving a director misapplying the claimant's assets, is clearly a *custodial* breach of fiduciary duty. In such circumstances, one appropriate remedy is that of substitutive compensation (*Sim Poh Ping* at [109] and [111]), which entails the first defendant restoring the value of the misapplied assets. I find that such a restorative award (as opposed to a reparative award that seeks to "repair" any loss caused to the principal or trust, see *Sim Poh Ping* at [125]) is indeed most appropriate in the present case, and is also aligned to the claimant's approach to damages where they have essentially sought the return of the claimant's property (*eg*, the cash takings and rental income from the Subletting Agreement).

234 SOC at pp 12–13.

235 CCS at pp 61–62.

152 Finally, I also note the principle of full satisfaction which seeks to prevent double recovery. Once a claimant fully recoups his loss, it cannot thereafter pursue another remedy he might have and which he might have pursued earlier, as "having recouped the whole of his loss, any further proceedings would lack a subject matter" (*Main-Line* at [34]). In the circumstances, I find that the substitutive compensation for the first defendant's breach of his fiduciary duty and the second defendant's knowing receipt of Station 33's assets will allow the claimant to recoup its losses. I thus do not award any damages for the claim in unlawful means conspiracy. In any event, the claimant does not submit on the appropriate remedy for their claim in unlawful means conspiracy, and how such a remedy may fall in step with the rest of the damages sought.

***Preliminary observations on the evidence***

*Applicable principles to the measure of damages*

153 Before delving into the appropriate quantum to compensate the claimant, I make a few observations regarding the evidence before me. The documentary evidence before me is admittedly patchy, which may largely be attributed to the first defendant's course of conduct over the years of shielding the cash earnings from Mr Chua and/or the claimant. Notably, the law *does not* demand that the claimant provide complete certainty of the exact amount of damages suffered (*Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*") at [28]). In *McGregor on Damages* (Sweet & Maxwell, 17th Ed, 2003) at para 8-002, cited with approval in *Robertson Quay* at [28]:

> [W]here it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely

> nominal damages. As Vaughan Williams L.J. put it in *Chaplin v Hicks* [[1911] 2 KB 786], the leading case on the issue of certainty: "The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages." *Indeed if absolute certainty were required as to the precise amount of loss that the claimant had suffered, no damages would be recovered at all in the great number of cases. This is particularly true since so much of damages claimed are in respect of prospective, and therefore necessarily contingent, loss.*
>
> [emphasis in original]

Ultimately, as summarised by Devlin J in the English High Court decision of *Biggin & Co Ld v Permanite, Ld* [1951] 1 KB 422 (at 438), "where precise evidence is obtainable, the court naturally expects to have it … [w]here it is not, the court must do the best it can".

154 I also note the well-known English case of *Armory v Delamirie* (1722) 1 Stra 505 ("*Armory*"), which concerned the determination of property rights in a stolen jewel that was not produced at trial by the defendant. The principle in *Armory* is that, where the defendant refuses to produce the goods such that their value remains unknown, then there is a presumption against the defendant that the goods converted bear the highest value of goods of their type (*Halsbury's Laws of Singapore* vol 18 (LexisNexis, 2019 reissue) at para 240.564). However, the Singapore International Commercial Court has recently declined to resort to the principle in *Armory*, as it preferred to rely on illus (*g*) of s 116 of the Evidence Act to draw an adverse inference that the evidence which could be and was not produced would, if produced, be unfavourable to the person who withholds it (*Kiri Industries Ltd v Senda International Capital Ltd and another* [2023] 3 SLR 140 at [8]–[9], and also see *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*") at [19]).

155 Illustration (*g*) of s 116 of the Evidence Act provides as follows:

> **Court may presume existence of certain fact**
>
> **116.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The court may presume –
>
> …
>
> (*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it …

156 Illustration (*g*) of s 116 of the Evidence Act allows the court to draw an adverse inference as to any fact flowing from the nature of the evidence that would likely have emerged if evidence that could and should have been produced by a party is not so produced. Indeed, it is "plain common sense" that a party's failure to produce evidence which would elucidate a matter is that the party fears that the evidence would be unfavourable to it (*Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 ("*Chan Pik Sun*") at [115]). The relevant principles governing the drawing of such an adverse inference are as follows (*Chan Pik Sun* at [116], citing *Sudha Natrajan* at [20] and *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [43]):

> (a) In certain circumstances, *the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue* in the matter before it.
>
> (b) *If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*

> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.
>
> [emphasis added]

157 In claims involving fraud, damages are not restrained by foreseeability and the claimant can recover all the direct losses that flow from a fraudulently induced transaction *(Vita Health Laboratories Pte Ltd and others v Pang Seng Meng* [2004] 4 SLR(R) 162 ("*Vita Health*") at [91]–[93]). In such cases, a mechanical approach to the quantification of damages should be eschewed in favour of a flexible one (*Vita Health* at [93]). As V K Rajah JC (as he then was) observed, the "multi-faceted dimensions of fraud require pragmatism and malleability from the court in fashioning the appropriate remedy", and, invariably, "creative accounting may require creative remedies" (*Vita Health* at [93]). Indeed, when accounts are falsified, "there will necessarily be different approaches in measuring loss", and there is "no universal test in view of the many imponderables competing for primacy; an inflexible approach cannot achieve justice" (*Vita Health* at [94]).

158 With the above in mind, I have little hesitation in rejecting the first defendant's suggestion that damages should be nominal as the claimant would not be able to forensically assess what damages flow from his breach. Of course, the first defendant is entirely correct to say that the claimant has been unable to quantitatively show how much exactly has been wrongfully excluded from the

bank accounts. However, there is an obvious irony that the first defendant has hidden the money and then asserts that, because the claimant does not know how much was in fact not deposited, the claimant should get nothing. If the first defendant's proposition that he would be insulated from paying damages in such a situation is correct, he essentially would be rewarded for his guile in being an errant director who made sure he left no significant paper trail (at least none that was disclosed in these proceedings) in siphoning the moneys.

159 Nonetheless, despite the above, I acknowledge that the claimant's state of evidence, its proposed approach to calculating the quantum for damages in certain aspects, and indeed its entire written submissions, are unhelpful and unsatisfactory. I highlight a few examples, some of which I touch on later in more detail when dealing with the quantum of damages to be awarded:

(a) In relation to the proposed amount of cash takings that have been misappropriated by the first defendant, the claimant provided *three* vastly different values for this, without any explanation as to how certain sums were derived, and which were even inconsistent with certain undisputed facts (see below at [167]). For instance, the claimant submits for the first time in the closing submissions that Station 33 was in operation for "6 years and 10 ½ month[s]", when it has been undisputed up till this point that the Station 33 was in operation for about five years and 10 months (from November 2011 to sometime in September or October 2017).[236] No reason or source was provided for this assertion. Indeed, just a page or two before this, the claimant accepts that

[236] CCS at para 497.

Station 33 was in existence for around a month and a half short of six years.[237]

(b) In relation to the issue of conversion of goodwill and assets, the claimant simply urged the court to "take [the loss of goodwill and assets] into consideration into its assessment of the total loss"[238] and did not even attempt to fashion some value for the court to consider.

(c) There was also no attempt at all to deal with the defendants' contention, and the likely reality, that the first defendant did use some of the business earnings to make certain payments to Station 33's employees and suppliers.

(d) Only the first 38 of 64 pages of the claimant's closing submissions were footnoted with their intended references. Following that, all the citations only pointed the court to a "Pg" and a "No.", without explaining what "No." referred to (for example, whether "No." referred to a paragraph number or line number), nor did counsel for the claimant even bother to identify the source document of these citations. Moreover, there were at least 534 paragraphs within the 64 pages of written submissions, as each "paragraph" arbitrarily consisted of a couple of sentences. The font type and size were also inconsistent across certain pages making it somewhat challenging to follow the claimant's submissions even beyond the issue of damages.

---

237 CCS at para 485.

238 CCS at para 516.

For this reason, the benefit of doubt is given in the defendants' favour where it is unclear how any computation is arrived at or whether the claimant's position can be defended.

*Hearsay*

160 For completeness, to any possible suggestion that the accounts provided by the claimant should be excluded for being hearsay, it is not clear to me that the argument as a matter of law is correct. To recapitulate, these financial documents were produced by the claimant and of which some were supposedly prepared by Mr Peter Chong even though the latter was not called as a witness in these proceedings. Mr Chua's evidence is that these financial documents were indeed extracted from the documents Mr Peter Chong provided.[239] To the extent I accept Mr Chua's evidence, then it would seem that s 32(1)(*b*) of the Evidence Act squarely applies, and s 32(1)(*b*)(iv) specifically allows for such hearsay evidence of business records to be admissible:

> **32**.—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> **when it relates to cause of death;**
>
> …
>
> **or is made in course of trade, business, profession or other occupation;**
>
> (b) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> (i) any entry or memorandum in books kept in the ordinary course of a trade, business, profession or other occupation or in the discharge of professional duty;

239 2 July Transcript at p 145 lines 4–25.

> (ii) an acknowledgment (whether written or signed) for the receipt of money, goods, securities or property of any kind;
>
> (iii) any information in market quotations, tabulations, lists, directories or other compilations generally used and relied upon by the public or by persons in particular occupations; or
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,
>
> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based on information supplied by other persons;

161 Despite the above, pursuant to s 32(3) of the Evidence Act, the court may still exclude such material if it is of the view that it would not be in the interests of justice to treat the material as relevant. In suggesting that there is some potential lack of integrity in the evidence, the first defendant disputed the authenticity of the documents adduced in the trial and submitted that none of the financial documents of Station 33 that were allegedly prepared by Mr Peter Chong and disclosed in this trial were, in fact, the financial documents that were provided by Mr Peter Chong to Mr Selvakumar in the e-mail exchange from 2013 (see above at [19] and [126]). With respect, in my view, this does not get the objection very far. The first defendant, the only individual who would be in possession of the actual accounts, should be able to easily rebut that. In the premises, I am of the view that the evidence in question appears to be admissible.

162 Section 32(4) of the Evidence Act is also relevant:

> (4) Except in the case of subsection (1)(*k*), evidence may not be given under subsection (1) on behalf of a party to the proceedings unless that party complies —

> (*a*) in the case of criminal proceedings, with such notice requirements and other conditions as may be prescribed by the Minister under section 428 of the Criminal Procedure Code 2010; and
>
> (*b*) *in all other proceedings, with such notice requirements and other conditions as may be prescribed in the Rules of Court or the Family Justice Rules.*
>
> [emphasis added]

163 As the defendants point out, the claimant failed to give notice to the defendants as to its reliance on these documents as hearsay evidence, pursuant to O 15 r 16(7) of the Rules of Court 2021 ("ROC").[240] Consequently, non-compliance of that rule would mean that "evidence may not be given under" s 32(1) of the Evidence Act. Nonetheless, as observed by the Court of Appeal, such non-compliance can be cured by the court's discretion (under O 3 r 2 of the ROC); whether such discretion will be exercised hinges on the extent to which the non-compliance causes prejudice to the opposing party which would render it unfair for the hearsay evidence to be admitted (*Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [138]). In my view, I am unable to see how the lack of notice prejudiced the defendants in any way. The defendants were aware from an early point that that these financial documents were intended to be relied on by the claimant (and which were filed in the claimant's bundle of documents prior to the trial), and yet they elected not to call Mr Peter Chong as a witness, who was a friend of the first defendant, to dispute the contents of these documents, or to actually show their own documents which would disprove the point made by the claimant.

---

240 DCS at para 132.

164 In any event, I do not place any weight on such documentation in assessing damages. The reason for this is because, both based on the findings above and on a careful read of the records, it is plain that the business records provided had little to no credibility to them. Simply put, the books were cooked by the first defendant. If so, then these accounts produced by the claimant, even if they were filial to the contents of the documents Mr Peter Chong sent to the claimant, would not reflect Station 33's true financial state. Instead, these documents paint a false picture intended precisely to depict Station 33's business as that of a losing concern, and/or to reflect that it was a small business with little turnover. Such lack of confidence of the integrity of the accounts would apply to both income and expenses. The income set out would, for obvious reasons, often completely ignore cash sales, and therefore be a significantly depressed quantum. As for expenses, some expenses, *eg*, directors' remuneration and salaries are likely to be inappropriately influenced by some of the factors I set out at [86] above of a fluid approach taken by the first defendant to determine his own compensation. In the same vein, some other expenses set out in the accounts appear to be clear caricatures: as an example, the accounts suggest that in the financial year ending 2014, total staff salaries were around $10,935,[241] an impossible number in today's context for a hairstyling salon (or indeed, any business for that matter). That would mean each employee (assuming that there were four employees) would be earning slightly less than $230 a month. It is impossible to accept that data point with a straight face. In the premises, any reliance on the accounts as presented to me, and whether filial to the underlying data provided by Mr Peter Chong, is misplaced.

---

[241] Mr Ong's AEIC at p 895.

165 For those reasons, I have little choice but to try and fashion an outcome based on educated estimates on the evidence before me. In particular, in so doing, I note that only the November and December 2011 records would be untainted by possible tampering, and therefore represent the most reliable documents that one can meaningfully place reliance on. In this regard, I note that, in these months, notwithstanding that these were early days, profits were already being generated, until suddenly, and quite inexplicably, the reported earnings dipped precipitously, and a seemingly profitable business was suddenly racking up quite significant losses most months. When the documents were studied further, it becomes even clearer that for the first couple of months (*ie*, November and December 2011), sales could easily exceed $2,000 a day on some days,[242] and yet, this did not even happen for even a single day in 2012.[243]

***Category 1: Add cash takings***

166 First and foremost, I deal with the cash takings of Station 33 that were taken by the first defendant. To recapitulate, based on the bank statements of Station 33, the average of the two available data points, being the cash takings of November and December 2011 (*ie*, $18,979.40 and $23,798.37), is $21,388.88. It is also undisputed that Station 33 was in operation between November 2011 and September 2017, *ie*, approximately five years and 10 months, or 70 months. Hence, cash takings were not deposited into the Station 33 Bank Account for 68 months.

167 The claimant provided three inconsistent positions in their closing submissions for the appropriate amount of compensation for the cash takings of

---

242 CBOD at pp 111–112.

243 CBOD at pp 112–116.

Station 33. Without any explanation by the claimant, of why any of these would be principled positions to take, I can only assume these are alternative positions. Nonetheless, I disagree with all three positions put forward by the claimant:

(a) First, the sum of $1.8m. This appears to be based on the profit and loss statements prepared by Mr Peter Chong, which I decline to rely on for the reasons outlined above at [164]. As such, I disagree with this proposed sum by the claimant.

(b) Second, the sum of $1,122,916.20. The claimant appears to have derived this number by multiplying $21,388.88 by 52.5 months (four years and four and a half months). There is no explanation provided as to how the claimant derived the multiplier of 52.5 months. With respect, there is no basis for the multiplier, and it seems to be fashioned entirely out of nowhere.

(c) Finally, the sum of $1,753,888.16. The claimant asserts that Station 33 was in operation for "6 years and 10 ½ months", and thus multiplied $21,388.88 by that number of months.

168 I agree with the claimant's approach only in so far as they derived a sum of $21,388.88 for the monthly cash takings of Station 33. After multiplying this sum by 68 (being the number of months Station 33 was in operation for, excluding the two months where the cash takings were deposited in the Station 33 Bank Account), I arrive at the sum of $1,454,443.84. For the ease of calculation, I will round this value off to $1,454,440.

***Category 2: Add rental income from the Subletting Agreement***

169 With respect to the Subletting Agreement, it is undisputed that the monthly rental income was $5,000. I also make the following findings:

(a) The Subletting Agreement had gone on for 16 months. While the first defendant testified that the Premises was sublet for ten months (and the claimant appears to accept this in their submissions[244] despite their position taken at trial that the arrangement went on for 18 months[245]), he was unsure of the exact duration and ultimately accepted that it could have gone on for 18 months. In the evidence before me, the latest cheque issued by J.C. Skin to the first defendant was dated 10 May 2013.[246] I note that, based on the other cheques or payment vouchers issued by J.C. Skin pursuant to the Subletting Agreement, it usually makes payment for the month's rent during that month itself. In other words, based on the available payment vouchers before me, the Subletting Agreement likely persisted from February 2012 to May 2013 at the very least.

(b) Only four months' worth of rental payments, totalling $20,000, were transferred directly to the Station 33 Bank Account.[247] The remaining amount of rental payments collected from J.C. Skin was transferred directly to the first defendant's personal bank account.[248]

---

244 CCS at para 515.

245 4 July Transcript at p 95 lines 5–11.

246 Mr Ong's AEIC at p 147.

247 Mr Ong's AEIC at para 53; CBOD at pp 196, 201 and 205.

248 Mr Ong's AEIC at paras 52–53.

170 Based on the above, the total amount of rental income to be compensated to the claimant is $60,000 (*ie*, $5,000 x 16 – $20,000).

***Category 3: Add conversion of assets***

171 The claimant did not provide any proposed sum for this head of compensation, and merely urged the court to take this point into consideration "in its assessment of the total loss".[249] I find that the appropriate amount to be compensated for the conversion of assets of Station 33 is $76,654.21, comprising the following two facets:

(a) In 2019, Arisco commenced a suit against the claimant for $60,852.97 for unpaid renovation works done to the Premises (see above at [7]). As noted earlier, the second defendant only required *three days* of fitting and minor touches to the Premises before starting its business. In these circumstances, one can assume that in essence, all of the renovations, fittings and furniture of the claimant were simply taken over by the defendants. As such, I find that this would be a reasonable estimate of the physical assets of Station 33 that was wrongfully converted to the second defendant's use.

(b) I also include the amount of $15,801.24. This is the sum that was drained from the Station 33 Bank Account for the second defendant's outgoing expenses, which the first defendant accepts in any event that it should be properly returned to the claimant.[250]

---

249 CCS at para 516.

250 Mr Ong's AEIC at para 181.

(c) I note that the claimant also claims that its *employees* were also wrongfully transferred to the second defendant. However, it is undisputed that Mdm Chong and Mr Feng both voluntarily joined the second defendant (and Mdm Chong, in particular, requested to work with the first defendant at the second defendant only after having left Station 33 for some time). It is unclear if any other employees, or previous employees, from Station 33 ended up employed by the second defendant. Moreover, the claimant has provided no reasonable basis for me to quantify damages in this aspect. In the circumstances, I decline to take this point into consideration for the purposes of an assessment of damages.

172 For ease of calculation, I will round $76,654.21 off to $76,660.

***Category 4: The first defendant's salary is a red herring***

173 The claimant also urged the court to take into consideration the excess salary taken by the first defendant.[251] I disagree with this. In my view, the first defendant's over-paying of his own salary is a red herring. Although he was clearly paying himself over and beyond the agreed amount, the claim is for the compensation of the claimant for the misapplied and/or wrongfully transferred cash earnings, rental income, and the assets of Station 33. In other words, such a transfer of Station 33's moneys to the first defendant is internal in nature, as it is not revenue but is also not an expense (at least, not an expense that can be taken into account in this claim). Taking this into account would have the effect therefore of essentially double recovery.

[251] CCS at para 513.

***Category 5: Subtract employees' salaries and commission payments***

174 According to the evidence of the first defendant, Mr Feng and Mdm Chong, broadly speaking, Station 33 employed about four hairstylists at any given time (excluding the first defendant).[252] The employees were allegedly only paid in cash, and, conveniently, none of Station 33's salary vouchers are before the court. In the circumstances, I can only extrapolate a reasonable value from the employees' salary vouchers of the *second defendant* in 2018, which is the closest in time to when Station 33 was still in operation.

175 In 2018, other than Mr Feng, Mdm Chong and the first defendant, there were three other hairstylists employed by the second defendant. These three hairstylists similarly had a basic salary of $1,600, and were paid monthly commission payments of various amounts. Based on an average of their monthly salaries, these hairstylists were paid approximately $2,000 a month (see Annex 1 below). In arriving at this figure, I do not rely on Mdm Chong's monthly pay as only her salary vouchers from October 2019 onwards are available, which is at least two years since Station 33 ceased its operations and would thus be even less reflective of the state of affairs in Station 33. Mr Feng's salary is also omitted from my calculations since he received a basic salary of $2,600, which is higher than the basic salary (of $1,600) of the hairstylists employed at Station 33.

176 Based on the above, I find that a reasonable marker for the amount the first defendant had paid, in cash, for the workers' salaries and commissions is $560,000 (*ie*, $2,000 multiplied by 70 months, and multiplied by four employees). Although the first two months of cash takings appear to have been

252 4 July Transcript at p 116 lines 18–20; 9 July Transcript at p 5 lines 2–12; and 9 July Transcript at p 34 lines 8–11.

properly deposited into the Station 33 Bank Account (see above at [166]), there is no evidence that these two months' worth of salaries and other outgoing expenses were not similarly covered by the first defendant. As such, I resolve this in the defendants' favour by retaining the multiplier of 70 months, rather than 68 months.

177 For completeness, I decline to consider any salary paid to Mr Peter Chong while computing this area of damages. There is no evidence led in relation to Mr Peter Chong's remuneration. It is unclear whether Mr Peter Chong was similarly paid his salary in cash like the other hairstylists, and whether he was remunerated in accordance with the same payment policy as the other employees. In the absence of any base value to even work with or extrapolate from, I am unable to take Mr Peter Chong's likely salary into consideration.

***Category 6: Subtract foreign worker levies***

178 Similar to the issue I faced when computing the likely amount paid for the workers' salaries, the foreign worker levy bills for Station 33 are also not before me and I can only extrapolate a fair value from the second defendant's foreign worker levy bills. When the second defendant had just started its business, it employed five employees,[253] and consistently paid $1,330 a month in foreign worker levy payments from January to March 2018.[254] I assume that most if not all of the second defendant's employees are foreigners as well.

179 Neither side led any evidence on how the applicable levy quantum was calculated. As such, the second defendant's levy bills in early 2018 are the

253 9 July Transcript at p 22 lines 20–25.

254 DBOD vol 4 at pp 246–248.

closest estimate of the foreign worker levy bills paid by Station 33, and any doubt has been resolved in the defendants' favour (since, in all likelihood, the foreign worker levy bill for Station 33, which had four foreign employees at any given time before it ceased operations, would be lower than that of the second defendant which employed five foreign employees). I thus find that the first defendant had likely used the cash takings of Station 33 to pay for the claimant's foreign worker levy bills, which totals at $93,100 (*ie*, $1,330 multiplied by 70 months).

180 For completeness, although the first defendant stated that he used the cash takings for CPF payments as well, all the hairstylists employed at Station 33 were foreigners and there would be no such contribution by the employer. I also note that it is undisputed that any remuneration and CPF payments for Mdm Lim and/or the Team for their services to the claimant were ultimately taken from the $25,000 that Mr Chua had placed in the Concorde Bank Account,[255] and I thus do not take these into account when assessing damages.

***Category 7: Subtract payments to suppliers***

181 Again, there are no invoices or payment vouchers from Station 33's business and I have to rely on those from the second defendant that were closest in time to when Station 33 was still in operation. The evidence here is difficult to navigate, as the invoices from multiple months are missing from the record, and certain months featured many handwritten invoices that were often unintelligible or were unclear whether they were truly outgoing expenses of the second defendant. I acknowledge that these may not be the complete record of

255 Mr Chua's AEIC at para 42.

invoices and receipts for even the second defendant's business. Nonetheless, in view of the state of the evidence before me, this provides the fairest estimate of the amount that would have been paid to Station 33's suppliers (see below at Annex 2). I summarise my observations below:

| **Month (2018)** | **Total amount paid to suppliers, including phone bills of the business (approximated from Annex 2)** |
|---|---|
| January | $2,400 |
| February | Multiple unintelligible invoices. |
| March | Multiple unintelligible invoices. |
| April | $2,700 |
| May | $1,700 |
| June | Only one invoice produced before the court. |
| July | $1,700 |

182 Based on the above, as a rough approximate, the monthly payments to suppliers was around $2,125, which I round up to 2,150 for ease of calculation. Multiplying this by 70 months, I arrive at the sum of $150,500.

***Conclusion on damages***

183 The total amount of damages to be awarded to the claimant is reproduced in the following table. The values in the "Amount" column are added up to form the total amount of damages to be awarded to the claimant. The values in brackets in the same column have been subtracted from the total damages to be awarded.

| S/N | Item | Amount |
|---|---|---|
| 1 | Cash takings of Station 33 | $1,454,440 |
| 2 | Income from the Subletting Arrangement | $60,000 |
| 3 | Converted Station 33's assets | $76,660 |
| 4 | Payment of workers' salaries and commission | ($560,000) |
| 5 | Payment of foreign worker levy bills | ($93,100) |
| 6 | Payment to suppliers | ($150,500) |
| Total: | | $787,500 |

184 In view of the second defendant's liability for knowing receipt, I also order that it be jointly and severally liable for the amount above.

185 Given that there is no agreement on interest, pursuant to O 17 rr 5(1)(*b*) and 5(2) of the ROC, I order simple interest at 5.33% per annum, calculated from the date of this judgment until the date of payment.

**Conclusion**

186 For the above reasons, I award the claimant a sum of $787,500 (with interest) against the first and second defendants.

187 If costs are not otherwise agreed, the parties are to file submissions on costs, limited to no more than ten pages each, within two weeks of the issuance of this judgment.

Mohamed Faizal
Judicial Commissioner

Christopher Gill (Chris Gill & Co) (instructed), Manickavasagam s/o R M Karuppiah Pillai (Manicka & Co) for the claimant;
Ng Khai Lee Ivan and Phyllis Wong Shi Ting (Infinitus Law Corporation) for the first and second defendants.

**Annex 1: Alleged monthly salaries (2018) for the hairstylists employed by the second defendant**

| Date (2018) | Employee A's salary ($) | Employee B's salary ($) | Employee C's salary ($) |
|---|---|---|---|
| January | 2181.00 | 1842.73 | 2151.18 |
| February | 2048.97 | 2167.25 | 1626.39 |
| March | 1999.84[256] | 1840.00 | 1998.00 |
| April | 2080.30 | 1916.70 | 1946.95 |
| May | 2133.62 | 1853.25 | 2079.60 |
| June | 1967.23 | 1888.38 | 1935.39[257] |
| July | 2143.36 | 1816.83 | 2002.08 |
| August | 2093.00 | 1824.83 | 1948.65 |
| September | 2066.65 | 1849.32 | 2110.42[258] |
| October | 2071.94 | 1930.86 | 2042.94 |
| November | 2085.00 | 1994.12 | 2070.58 |
| December | 2152.80 | 1978.69 | 2170.00 |
| **Average** | **2085.31** | **1908.58** | **2006.85** |

[256] See DBOD vol 5 at p 7. Although the salary voucher featured an amount payable of "1914.59", this appears to be an error in computation and the correct amount to be paid is $1,999.84.

[257] See DBOD vol 5 at p 34. Although the salary voucher featured an amount payable of "1905.39", this appears to be an error in computation and the correct amount to be paid is $1,935.39.

[258] See DBOD vol 5 at p 37. Although the salary voucher featured an amount payable of "2100.42", this appears to be an error in computation and the correct amount to be paid is $2,110.42.

**Annex 2: Alleged suppliers' invoices (2018) to the second defendant**

| **Month (2018)** | **Item description** | **Amount paid ($)** |
|---|---|---|
| January | Phone bill from Singtel | 198 |
| | Hair products from Mondora | 1254.04 |
| | Thermal paper rolls from PJ Supplier | 70 |
| | Hair lotions from Way Company | 197.74 |
| | Bleach powder and colour from Revolution Trading | 303 |
| | Items from United Nail | 326 |
| **Total for January:** | | **2348.78** |
| April | Phone bill from Singtel | 198 |
| | Pedicure products from PNC Singapore Traders | 214 |
| | "Bioma" from Navarro Trading | 797.28 |
| | Hair products and cleansers from Tazlo & Co | 801.80 |
| | Salon equipment from Tai Wah Distributors | 659.12 |
| | Super glue from EPS Enterprise | 27 |
| **Total for April:** | | **2697.20** |
| May | Phone bill from Singtel | 198 |
| | Nail polish from PNC Singapore Traders | 90.45 |

| **Month (2018)** | **Item description** | **Amount paid ($)** |
|---|---|---|
| | Salon equipment from Tai Wah Distributors | 663.40 |
| | Hair products from Way Company | 202.87 |
| | Safety mark drivers from LED Lighting | 288.90 |
| | Hair products from Tazlo & Co | 243.96 |
| **Total for May:** | | **1687.58** |
| July | Phone bill from Singtel | 92.52 |
| | Hair product from Hyunmoo Intl | 320 |
| | Hair products from Mondora | 630.23 |
| | Hair tonic from Natural Herbal Hair Care | 408 |
| | Kinetic peroxide from Salon Specifics | 154.08 |
| | “Base soak” (no name of supplier indicated) | 58.80 |
| **Total for July:** | | **1663.63** |