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

**[2025] SGHC(A) 16**

Appellate Division / Civil Appeal No 75 of 2024

Between

Kok Kuan Hwa

… *Appellant*

And

Yap Wing Sang

… *Respondent*

Appellate Division / Civil Appeal No 76 of 2024

Between

Yap Wing Sang

… *Appellant*

And

Kok Kuan Hwa

… *Respondent*

In the matter of Suit No 905 of 2021

Between

Kok Kuan Hwa

… *Plaintiff*

And

(1) Yap Wing Sang
(2) Chang Cheng Group Pte Ltd
(3) TP406 Pte Ltd
(4) MS 136 Pte Ltd
(5) MS 166 Pte Ltd
(6) HOL 40 Pte Ltd
(7) NL 10 Pte Ltd
(8) TP 802 Investment Pte Ltd

… *Defendants*

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# JUDGMENT

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[Contract — Formation — Subsequent conduct]
[Contract — Formation — Whether the commercial plausibility of a contract may be considered]
[Contract — Formation — Certainty of terms]
[Trusts — Resulting trusts]

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# Kok Kuan Hwa
# v
# Yap Wing Sang and another appeal

**[2025] SGHC(A) 16**

Appellate Division of the High Court — Civil Appeal Nos 75 and 76 of 2024
Kannan Ramesh JAD, Debbie Ong Siew Ling JAD and Ang Cheng Hock J
10 July 2025

9 September 2025

**Ang Cheng Hock J (delivering the judgment of the court):**

## Introduction

1 The two protagonists in this case are businessmen who had collaborated to start food and beverage ("F&B") businesses, which eventually grew into a highly successful enterprise. Owing to a breakdown in their relationship, they decided to go their separate ways. To facilitate their split, they claim that they entered into an oral agreement in 2018, but both give different accounts of the terms of the agreement that was reached. At the heart of these appeals is whether an agreement was indeed reached between the two protagonists, and if so, which was the agreement between them. While the general principles surrounding the formation of contracts are relatively well-established, this is a case where the parties' *subsequent conduct* takes centre stage, and the crux of the issue in these appeals is whether such conduct suffices in showing that a contract had indeed been formed.

## Facts

### *The parties*

2 Before us are two cross-appeals against the decision of the Judge of the General Division of the High Court (the "Judge") in *Kok Kuan Hwa v Yap Wing Sang* [2025] SGHC 19 (the "GD"). The appellant in AD/CA 75/2024 ("AD 75") is Mr Kok Kuan Hwa ("Mr Kok"), while the appellant in AD/CA 76/2024 ("AD 76") is Mr Yap Wing Sang ("Mr Yap").

3 Mr Kok and Mr Yap set up F&B businesses in the late 1990s, running what is popularly described as "economy rice" stalls in coffeeshops throughout Singapore. They quickly expanded and added the business of managing coffeeshops and food courts. These businesses grew in an informal and *ad hoc* manner and eventually became a large and highly successful enterprise. Collectively, these businesses, and the entities that own them, make up what the parties have referred to as the "Chang Cheng Group". It is perhaps of some note that the name "Chang Cheng" was already being used by Mr Kok and his wife for several "economy rice" stalls they had been operating since the mid-1990s.

4 We emphasise that the term "Group" is used by the parties in an informal manner. It is used to describe various companies and other entities forming the enterprise in which Mr Kok and Mr Yap held interests. It is purely descriptive of the commercial understanding between the parties and bears *no* legal content. The parties' registered shareholdings in the entities making up the Chang Cheng Group do not necessarily match their contractually agreed interest in the capital and income of the Chang Cheng Group: GD at [7]–[8].

5 Before the Judge and on appeal, the parties disagree on the entities which make up the Chang Cheng Group. This is significant because the entities which



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are part of the Chang Cheng Group are subject to various agreements entered into by the parties across the years, the object of which is that their actual ownership interest may differ from their registered shareholding. In contrast, entities which do not fall under the Chang Cheng Group are not subject to these agreements. The following groups of entities are relevant for these appeals:

(a) *Operating Entities*: These Operating Entities operate coffeeshops, food courts and F&B stalls. It is undisputed that ten such Operating Entities form part of the Chang Cheng Group. These ten entities are listed in Annex 1 of the GD and bear particular significance in this case (see below at [14]). They are referred to as the "Annex 1 Companies".

(b) *Real Property Holding Entities*: As the Chang Cheng Group expanded over the years, real property was purchased and held by specific holding entities incorporated from 2005 to 2011. These companies acquired real property in the form of coffeeshops, food courts and F&B stalls, which were then leased out to the Operating Entities in the Chang Cheng Group. There were ten Real Property Holding Entities and they are listed in Annex 2 of the GD. We set them out here as follows: Aljunied 119 Pte Ltd, Hougang 631 Pte Ltd, MT59 Investment, MS 136 Pte Ltd, MS 166 Pte Ltd, NL 10 Pte Ltd, TP 201 Pte Ltd ("TP 201"), TP406 Pte Ltd, TP 802 Investment Pte Ltd and HOL 40 Pte Ltd. Mr Yap's case is that these entities do *not* fall under the Chang Cheng Group, while Mr Kok argues that they are part of the Group, save for TP 201. As both parties agree that TP 201 is not part of the Chang Cheng Group, any references below to the issue of whether the Real Property Holding Entities are part of the Chang Cheng Group should be read to exclude TP 201.



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(c) *CCGPL*: In 2010, the parties incorporated Chang Cheng Group Pte Ltd (*ie*, "CCGPL"). The parties transferred ownership of active and substantial entities in the Chang Cheng Group to CCGPL. In a commercial and administrative sense, CCGPL is the headquarters of the Chang Cheng Group. It is *not* the apex holding company of the entities in the Chang Cheng Group: GD at [8]. As far as it is relevant, CCGPL owned several Operating Entities (prior to the events detailed at [16] and [41] below). It also owns real property, as it purchased a property in 2012 at Woodlands which became the Chang Cheng Group's headquarters (the "Chang Cheng HQ Property"). As CCGPL is not solely in the business of operating F&B stalls, nor solely holding real properties, unlike the entities described at [5(a)]–[5(b)] above, the Judge treated CCGPL as being *sui generis*: GD at [16].

6 Broadly, there were thus three main groups of entities which the parties held an interest in: (a) Operating Entities which operate F&B businesses, or manage coffeeshops or food courts, (b) Real Property Holding Entities which own real properties, and (c) CCGPL (which held both real property and Operating Entities). A key dispute of fact was whether CCGPL and the Real Property Holding Entities are part of the Chang Cheng Group: GD at [17].

7 The directors, partners and/or shareholders of the Operating Entities and Real Property Holding Entities were primarily Mr Kok, Mr Yap and/or Mr Kok's wife, Mdm Lim Lai Hiang, Delphine ("Mdm Lim"). CCGPL's shareholders likewise included Mr Kok, Mr Yap and Mdm Lim.

### *Pre-2011 agreements*

8 Before the relationship between the parties broke down completely in or around 2018, the parties operated on a highly informal basis. They entered into



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various agreements over the years relating to their stakes in the Chang Cheng Group, of which there is little contemporaneous record. In this regard, there is substantial dispute over various agreements *before* 2011:

(a) Mr Yap claimed that, in 1999, Mr Kok and Mr Yap had orally agreed to own the Chang Cheng Group in the proportion of 70% (Mr Kok) and 30% (Mr Yap) (the "Shareholding Agreement"). In contrast, Mr Kok's case was that, in 2001, the parties agreed that Mr Kok, Mdm Lim and Mr Yap would be entitled to 50%, 25% and 25% of their investments in the Chang Cheng Group (the "25% Agreement").

(b) For the Real Property Holding Entities, Mr Yap averred that there was a specific oral agreement reached with Mr Kok in May 2005 (the "2005 Agreement"), which was at or just before the time that the first property was acquired by them. Under this agreement, the parties had allegedly agreed that the Real Property Holding Entities were to be owned legally and beneficially by the parties in accordance with their registered shareholding in the companies, and that their interests in these companies were not subject to the Shareholding Agreement. In contrast, Mr Kok's case is that the Real Property Holding Entities (save for TP 201) are part of the Chang Cheng Group, and that this 2005 Agreement is pure fiction: GD at [29]–[66].

***The ownership of the Chang Cheng Group in and after 2011***

9 It is undisputed that, from 2011 onwards, it had been agreed between the parties that Mr Kok would hold a 50% interest, Mr Yap would hold a 25% interest, and Mdm Lim would hold a 25% interest in the Chang Cheng Group: GD at [18] (the "50:25:25 Arrangement").



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10 The parties' accounts differ on how the 50:25:25 Arrangement was reached by 2011. On Mr Kok's case, this had been the agreed upon arrangement since the 25% Agreement was formed in 2001 (see [8(a)] above). On Mr Yap's case, the 50:25:25 Arrangement was reached because in 2011, Mr Yap agreed to gift 5% of his interest in the Chang Cheng Group to Mdm Lim, while Mr Kok would gift 20% of his interest to Mdm Lim (the "2011 Agreement to Gift"). Either way, whether on the basis of the 25% Agreement or the Shareholding Agreement followed by the 2011 Agreement to Gift, by 2011, it was agreed between the parties that Mdm Lim had a 25% interest in the Chang Cheng Group, with Mr Kok and Mr Yap holding the remaining 50% and 25% respectively.

***2018 – the First Agreement vs the Share Sale Contract***

11 As already mentioned, the parties' relationship broke down by 2018. A series of negotiations and transactions ensued in that year, by which the parties sought to disentangle their shared ownership and management of entities in the Chang Cheng Group. These negotiations took place through an intermediary and mutual friend of the parties, Mr Cho Kim Wing ("Mr Cho"), and allegedly culminated in an agreement towards the latter part of 2018. The key dispute in these appeals is what the content of this agreement was, if any. Mr Kok and Mr Yap have offered competing versions of this alleged agreement:

(a) *The "First Agreement"*: Mr Kok claims that, in October 2018, the parties agreed for Mr Yap to relinquish his interests and resign from his appointments in the Operating Entities of the Chang Cheng Group, and in return, Mr Yap's interests in the Real Property Holding Entities and CCGPL would be fixed in accordance with his registered shareholding in those companies. Mr Kok has described this as the "First" Agreement because he claims that there were two other



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agreements which flowed from the First Agreement, both of which are not the subject of dispute on appeal.

(b) *The "Share Sale Contract"*: Mr Yap claims that, in early December 2018, the parties agreed for Mr Yap to transfer his shares in ten Operating Entities to Mr Kok and for Mr Yap to resign from his positions in them. In return, Mr Kok would fully and fairly compensate Mr Yap for his 25% share in the Chang Cheng Group.

12 At this juncture, we observe that the First Agreement effectively envisions Mr Yap giving up his interests in operational F&B businesses in exchange for retaining an interest in Real Property Holding Entities.

13 As for the Share Sale Contract, Mr Yap's case was that it was for Mr Kok to decide on the identities of the ten Operating Entities in the Chang Cheng Group in which Mr Yap would divest his shares. Eventually, according to Mr Yap, Mr Kok chose the Annex 1 Companies.

14 On 20 December 2018, Mr Yap transferred his shares in the Annex 1 Companies (see [5(a)] above) to Mr Kok and resigned from his offices in the Operating Entities and CCGPL. We will refer to the former as the "Transferred Shares".

15 The parties differ on the rationale behind the Transferred Shares and Mr Yap's resignations. As far as Mr Kok is concerned, Mr Yap was simply performing his obligations under the First Agreement. Whereas according to Mr Yap, he was performing his part of the Share Sale Contract by divesting his shares, and resigning from his positions, in the ten Operating Entities in the Chang Cheng Group selected by Mr Kok. Mr Yap claims that he was never



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fully and fairly compensated for his interests in the Annex 1 Companies, and he thus alleges that Mr Kok breached his obligations under the Share Sale Contract.

16 On 11 January 2019, CCGPL transferred the shares it held in six other Operating Entities ("Six Other Operating Entities") to Mr Kok and Mdm Lim. Following these transfers, CCGPL no longer held any interests in any Operating Entities, but it continued to own the Chang Cheng HQ Property located at Woodlands.

### *The end of common ownership in several Real Property Holding Entities*

*2020 – the Second Agreement*

17 From November to December 2020, the parties had further negotiations concerning Mr Kok's purchase of Mr Yap's shareholdings in CCGPL and four Real Property Holding Entities. The parties then agreed to various transfers of shares in the four Real Property Holding Entities with the end result that Mr Kok and Mr Yap no longer held interests in the same companies. As foreshadowed earlier, this is described by Mr Kok as the "Second Agreement".

18 It is undisputed that the parties duly performed the Second Agreement in December 2020, and that it is not the subject of dispute: GD at [23]. Nevertheless, this agreement is relevant as it forms part of the factual matrix on which Mr Kok relies in respect of his case on the existence of the First Agreement (see [51]–[57] below).

*2020 – the Third Agreement*

19 Mr Kok also contended that, on 5 December 2020, the parties agreed that Mr Yap would sell his interests in the remaining six Real Property Holding Entities and CCGPL to Mr Kok based on their valuations (the "Third



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Agreement"). Mr Yap, however, claimed that he had never accepted Mr Kok's offer.

**Decision below**

20 The Judge dismissed Mr Kok's claim and allowed Mr Yap's counterclaim in part: GD at [4].

21 The Judge began by determining that the Real Property Holding Entities (save TP 201) were part of the Chang Cheng Group. He found that the parties' contractual relationship prior to 2011 was governed by the Shareholding Agreement and not the 25% Agreement: GD at [29], [66], [72] and [83]. Nevertheless, as pointed out earlier (see [9] above), from 2011, there was no dispute that the parties' intentions were that Mr Kok and Mr Yap's interests in the Chang Cheng Group would be in the ratio of 50% to 25%, with the remaining 25% to be held by Mdm Lim. In reaching this position, the Judge appeared to have accepted the existence of the 2011 Agreement to Gift: GD at [220].

22 As for the post-falling out arrangements, the Judge rejected both the First Agreement and the Share Sale Contract. On the facts, he found that Mr Kok had failed to prove that the parties entered into the First Agreement, and Mr Yap had similarly failed to prove the existence of the Share Sale Contract. The Judge found that Mr Yap did not intend, in December 2018, that the Transferred Shares be an unconditional benefit, *ie*, a gift, to Mr Kok, and that consequently, the Transferred Shares were held on resulting trust for Mr Yap. Mr Kok was thus liable to deliver up the Transferred Shares to Mr Yap for no consideration: GD at [84], [128] and [141]–[145].



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23 The Judge also declined to grant a declaration that the parties had entered into the Third Agreement, as he found that no such contract was formed: GD at [148], [166], [173]–[174] and [196]–[197].

24 The Judge granted Mr Yap a declaration that he was the legal and beneficial owner of his registered shareholdings in the remaining six Real Property Holding Entities that were not subject to the Second Agreement. In other words, the Judge found that Mr Yap's interests in these Real Property Holding Entities were equal to his registered shareholding at all times. This was because both the Shareholding Agreement in 1999 and the 2011 Agreement to Gift did not have any proprietary effect (whether legal or equitable) on Mr Yap's shareholding in the Real Property Holding Entities:

> (a) Before 2011, the parties' shareholdings and shares were contractually governed by the Shareholding Agreement concluded in 1999 (see [8(a)] above). However, the Shareholding Agreement could have no *proprietary* effect on the parties' shares in the Real Property Holding Entities as they were incorporated from 2005 to 2011, after the Shareholding Agreement. This was because, under common law, a contract under which one party agreed to confer proprietary rights upon another person in future property did not have automatic proprietary consequences in relation to future property: GD at [203]–[206], relying on Richard Calnan, *Proprietary Rights and Insolvency* (Oxford University Press, 2nd Ed, 2016) at paras 5.19 and 5.21. Therefore, the Shareholding Agreement, which was intended to apply to all the entities in the Chang Cheng Group, including the Real Property Holding Entities incorporated from 2005 to 2011, could have no proprietary effect on the shares of the entities not in existence at the time the Shareholding Agreement was concluded, including the Real Property Holding



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Entities: GD at [209]–[210]. The Shareholding Agreement also had no *equitable* effect on Mr Yap's interests in the Real Property Holding Entities, as Mr Yap had failed to plead this: GD at [211]–[212]. The result was that Mr Yap's proprietary interest in each Real Property Holding Entity was equal to his registered shareholding or interest in that Real Property Holding Entity: GD at [219].

(b) As for the purported gifts under the 2011 Agreement to Gift (see [10] above), the Judge found that these were imperfect gifts which also had no proprietary or equitable effect on the parties' ownership in the entities comprising the Chang Cheng Group, including the Real Property Holding Entities. While Mr Yap's intent to make a gift to Mdm Lim of 5% of the Chang Cheng Group extended to Mr Yap's interest in the Real Property Holding Entities which were then in existence, this donative intent was never carried through to an actual gift. This was because Mr Yap's donative intent did not appear to be accompanied by a declaration of an absolute gift, acceptance by the donee, or delivery of possession to the donee. Hence, equity could not act to restrict Mr Yap's absolute ownership of his shares in the Real Property Holding Entities: GD at [220]–[225].

(c) Since the Shareholding Agreement in 1999 had no proprietary effect on the Real Property Holding Entities and could not limit Mr Yap's proprietary interests to 30%, the 2011 Agreement to Gift could not act to further reduce Mr Yap's interest to 25% as the 2011 Agreement to Gift was predicated on Mr Kok holding 70% and Mr Yap holding 30% in the Real Property Holding Entities, a state of affairs which did not exist in the first place.



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25 Mr Yap also alleged that the parties had entered into the 2005 Agreement, under which the parties agreed to own the shares in each Real Property Holding Entity "legally and beneficially" according to their registered shareholding. The Judge found that this was a bare allegation as no contemporaneous or objective evidence of this oral contract had been adduced: GD at [226].

26 Taken together, even though Mr Yap had failed to prove the existence of the 2005 Agreement, the Judge found that Mr Yap's proprietary interest in each Real Property Holding Entity was equal to his registered shareholding given that both the Shareholding Agreement and the 2011 Agreement to Gift had no proprietary effect on Mr Yap's shareholding: GD at [227]–[228].

## The parties' cases on appeal

### *Mr Kok's appeal in AD 75*

27 Mr Kok has two grounds of appeal. First, he submits that the Judge erred in finding that the First Agreement was never concluded. Mr Kok argues that the Judge failed to accord sufficient weight to the parties' subsequent conduct, two further pieces of evidence, and the commerciality of the First Agreement, which support the existence of the First Agreement.

28 Second, even if the First Agreement was never formed, Mr Kok argues that the Judge erred in finding that the Transferred Shares were held on resulting trust for Mr Yap. As Mr Yap had intended for Mr Kok to take the Transferred Shares absolutely when the shares were transferred in December 2018 in return for consideration under either the First Agreement or Share Sale Contract, a resulting trust could not have arisen over the shares.



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***Mr Yap's appeal in AD 76***

29 Mr Yap appeals on three grounds. First, while Mr Yap submits that the Judge erred in finding that the parties did not enter into the 2005 Agreement, his arguments are directed at asking that the court find that the Real Property Holding Entities were never intended by the parties to be part of the Chang Cheng Group. This was also his position during the hearing before us. In this connection, Mr Yap relies on various pieces of evidence which he claims shows that the parties never intended that the Real Property Holding Entities would be part of the Chang Cheng Group.

30 In any case, we observe that the effect of either of the above two alternative arguments being accepted by the court would be a finding that the parties always intended that Mr Yap's registered shareholding or share in the Real Property Holding Entities would equate to his actual interests in those entities and not be subject to the Shareholding Agreement of 1999. Mr Yap persisted in these arguments despite the Judge having found that the Shareholding Agreement could not affect the proprietary interests in the shares of the Real Property Holding Entities since the first of these entities were only incorporated in 2005 (see [24] above). Mr Yap's concern is that, unless the Judge's findings in this aspect of the case are overturned, he might well face a personal claim for breach of the Shareholding Agreement for not giving effect to the intentions of the parties that the agreement would apply to the Real Property Holding Entities.

31 Second, Mr Yap contends that the Judge erred in finding that the parties did not enter into the Share Sale Contract. He argues that there was no uncertainty in the terms of the Share Sale Contract, and the evidence suggests



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that not only was the Share Sale Contract entered into, it was also partially performed by Mr Yap's transfer of the Transferred Shares to Mr Kok.

32 Third, Mr Yap highlights four *additional* Operating Entities, in which he contends he had either transferred his shares to Mr Kok, or which Mr Yap had given up office in. Therefore, Mr Yap submits that the court should make a declaration that Mr Yap has a 25% beneficial interest in these four entities. Alternatively, the court should declare that Mr Kok holds his shareholdings or shares in those entities on resulting trust for Mr Yap.

**The issues in the appeals**

33 The following issues arise for consideration by this court.

(a) In relation to Mr Kok's appeal in AD 75, the court has to determine:

(i) whether the First Agreement was entered into; and

(ii) if neither the First Agreement nor the Share Sale Contract was entered into, whether the Judge was right in finding that the Transferred Shares were held on resulting trust for Mr Yap.

(b) In relation to Mr Yap's appeal in AD 76, the issues before the court are:

(i) whether the Real Property Holding Entities are part of the Chang Cheng Group, or alternatively, whether the 2005 Agreement was entered into;

(ii) whether the Share Sale Contract was entered into; and



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(iii) whether the Judge should have declared that Mr Yap held a beneficial interest in four additional Operating Entities brought up by Mr Yap only on appeal.

34 We first address the issues raised in AD 75 before considering the issues raised in AD 76.

**AD 75 (Mr Kok's appeal)**

35 The first issue is whether the First Agreement was entered into in October 2018. Mr Yap's appeal in AD 76 raises a competing version of the agreement which was reached (*ie*, the Share Sale Contract), albeit at a slightly later date, in early December 2018. If this court finds that the First Agreement exists, then it must follow that the Share Sale Contract cannot exist, and *vice versa*. Of course, it is possible, as the Judge found, for this court to conclude that neither the First Agreement nor the Share Sale Contract exists. But as we explain below, we do not think that the Judge was right in reaching this conclusion.

***The First Agreement is made out based on the parties' subsequent conduct***

36 Based on the available evidence – namely, the parties' subsequent conduct – we are satisfied that the First Agreement has been proven by Mr Kok.

*Subsequent conduct can be taken into account in assessing contract formation*

37 As far as the legal position in Singapore is concerned, it appears to us that subsequent conduct is relevant when determining if a contract has been *formed*.



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(a) In *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 ("*Simpson Marine*"), the Court of Appeal observed that a distinction was drawn where subsequent conduct was used to determine if a contract had been *formed*, as opposed to when it was used to *interpret* a contract. For the former, evidence of subsequent conduct had "traditionally been regarded as admissible and relevant". In contrast, as regards the latter, evidence of subsequent conduct was likely inadmissible as it did not elucidate the parties' objective intentions or relate to a clear and obvious context: at [78]. However, this was *obiter* since the Court of Appeal did not hear full arguments on this issue and eventually declined "to reach any firm views on the admissibility, relevance and probative value of subsequent conduct for the purpose of either contract formation or interpretation": at [79].

(b) In *The "Luna" and another appeal* [2021] 2 SLR 1054 ("*The Luna*"), the Court of Appeal drew "an important distinction" between the approach to be taken in determining the existence of a contract as compared to its interpretation: at [30]. The Court of Appeal then cited the above remarks in *Simpson Marine* and appeared to agree with them in respect of when evidence of subsequent conduct may be taken into consideration, noting that the distinction was "justified on the basis of principle and authority": at [33]–[34]. When dealing with the formation of a contract, the court held that it was "not limited by the more restrictive approach applied to the interpretation of a contract" and could "take into account *all the relevant circumstances of the case*" [emphasis added]: at [38].

(c) In *Lim Siau Hing @ Lim Kim Hoe and another v Compass Consulting Pte Ltd and another appeal* [2023] SGCA 39, in the context



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of whether subsequent conduct could be considered, the Court of Appeal reiterated that, where the issue related to the existence of a particular term and not its interpretation, there were no restrictions on the evidence which the court may consider: at [97].

38 Taking the above together, we are of the view that the Court of Appeal appears to have accepted that subsequent conduct may be taken into account where the issue is contract formation. Indeed, several High Court decisions have adopted such a reading of *Simpson Marine* and *The Luna* (see, for example, *Peck Wee Boon Patrick and another v Lim Poh Goon and others* [2024] 5 SLR 1234 at [95]; *Spamhaus Technology Ltd v Reputation Administration Service Pte Ltd* [2023] SGHC 294 at [36]; *Chiang Ai Ling v Tan Kian Chye and another* [2024] SGHC 330 at [42]). As the issue in this case is whether the parties' subsequent conduct shows that the First Agreement was indeed formed (as opposed to its interpretation), our view is that the parties' subsequent conduct may be considered in resolving this issue. We therefore are unable to agree with the Judge that it is "unclear" if subsequent conduct can be taken into account when determining if a contract has been concluded: GD at [116].

39 Nevertheless, the Judge was prepared to assume in favour of Mr Kok on this point of subsequent conduct being relevant and proceeded to consider the subsequent conduct of the parties, before concluding that the First Agreement did not exist: GD at [116]–[128].

40 In our view, the Judge erred in his assessment of the subsequent conduct. In short, the following three instances of subsequent conduct do support Mr Kok's case that the parties entered into the First Agreement. They are: (a) the events that occurred from December 2018 to January 2019; (b) Mr Yap's



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failure to demand payment for the Transferred Shares; and (c) the Second Agreement.

*Events from December 2018 to January 2019*

41 Mr Kok relies on four events which took place from December 2018 to January 2019 (the "Dec 2018 to Jan 2019 Events") to prove that the First Agreement was formed in October 2018. These include the fact that: (a) Mr Yap transferred his shares in the ten Annex 1 Companies to Mr Kok (*ie*, the Transferred Shares); (b) Mr Yap resigned from all his offices as director or secretary in CCGPL, the ten Annex 1 Companies, and other Operating Entities; (c) Mr Yap retained his shares in CCGPL; and (d) CCGPL transferred its shares in the Six Other Operating Entities to Mr Kok and Mdm Lim.

42 The Judge held that these events were of little weight in proving the existence of the First Agreement as they were equally consistent with the terms of the alleged Share Sale Contract: GD at [119] and [122]. With respect, we do not agree.

43 In our judgment, the four events, taken together, cannot be adequately explained by the Share Sale Contract and are instead probative of the terms of the First Agreement. According to Mr Kok, the First Agreement requires Mr Yap to relinquish his interests in all Operating Entities (including the ten Annex 1 Companies) but not in the Real Property Holding Entities and CCGPL. As we observed above (see [12]), the First Agreement effectively envisioned Mr Yap giving up his interests in operational F&B businesses in exchange for retaining his interests in the Real Property Holding Entities, and through them, the properties. We find that the Dec 2018 to Jan 2019 Events are consistent with this as they essentially aim to achieve this result. Specifically, it bears noting that CCGPL is unique as it previously held shares in Operating Entities *and* the



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Chang Cheng HQ Property (see [5(c)] above). Thus, once CCGPL transferred its interests in the Six Other Operating Entities to Mr Kok and his wife, the result is that Mr Yap would no longer hold any interests, whether directly or indirectly, in any of the Operating Entities, but would continue to hold an indirect interest in the Chang Cheng HQ Property through his shares in CCGPL.

44 In other words, the combined effect of the Dec 2018 to Jan 2019 Events is that Mr Yap has exited the Operating Entities, in terms of shareholding as well as his ability to oversee their management as a director. At the same time, he retained his interest in CCGPL, which was specifically restructured so that it held only real property and not shares in the Six Other Operating Entities. This is strongly probative of the terms of the First Agreement.

45 In contrast, we find that events (c) and (d) at [41] above cannot be adequately explained by the Share Sale Contract. There was no requirement under the Share Sale Contract for CCGPL to transfer away its shares in the Six Other Operating Entities. Mr Yap's response is that, after he resigned as a director of CCGPL, CCGPL's decision to transfer its shares in the Six Other Operating Entities was a decision entirely under the control of Mr Kok and his wife, who were directors of CCGPL. He could not control what CCGPL did. But this is an untenable response. This is because there is no evidence that Mr Yap, who remains as a shareholder in CCGPL, even objected to CCGPL transferring all its shares in the Six Other Operating Entities to Mr Kok and Mdm Lim. Mr Kok's counsel confirmed the same during the hearing before us, and Mr Yap's counsel did not dispute this. One would surely have expected Mr Yap, as a shareholder of CCGPL, to raise some concern if Mr Kok and Mdm Lim were causing CCGPL to transfer away valuable assets in the form of the shares in the Six Other Operating Entities. Not only that, those shares were transferred by CCGPL to Mr Kok and his wife (Mdm Lim). Yet, there was no



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complaint by Mr Yap, which could only indicate that these transfers were consistent with an arrangement he had agreed to.

46 In these circumstances, we find that the Dec 2018 to Jan 2019 Events are probative of the existence of the First Agreement. The intentional manner in which CCGPL was restructured, the specificity with which it was done, and the lack of evidence of any objection by Mr Yap to the restructuring of CCGPL, support the existence of the First Agreement.

*Mr Yap's failure to demand payment after giving up his shares in the Operating Entities*

47 We also agree with the submission that Mr Yap's failure to demand any payment from Mr Kok after his exit from the Operating Entities until more than two and a half years later does support the existence of the First Agreement.

48 Mr Yap transferred the shares in the ten Annex 1 Companies in December 2018 (see [14] above) and did not seek payment until 19 July 2021, by way of a letter of demand of that date from Mr Yap's lawyers to Mr Kok's lawyers ("Letter of Demand"). If indeed Mr Yap had transferred away those shares because he was under the impression that the parties had entered into the Share Sale Contract as he claimed, Mr Yap would surely have expected to get paid for giving up his interests. Indeed, based on Mr Yap's own case regarding the Share Sale Contract, Mr Kok was obliged to pay him seven months after the transfer (*ie*, in July 2019). This was never done. Yet, inexplicably, Mr Yap only sought payment from Mr Kok on 19 July 2021 through the issuance of the Letter of Demand. For a transaction of such magnitude, it is hard to fathom why Mr Yap would not have demanded payment earlier. In our view, Mr Yap's conduct is consistent with the First Agreement, under which he would *not* be paid for giving up his interests in the Operating Entities. Rather, his consideration would



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be by way of being given interests equal to his registered shareholding in the Real Property Holding Entities, instead of being restricted to only a 25% interest as per the intentions expressed in the Shareholding Agreement, as modified by the 2011 Agreement to Gift.

49 For completeness, we note that Mr Yap claims that he did in fact request payment prior to July 2021. He claims that he made oral demands for payment from Mr Kok on four occasions. However, as pointed out by Mr Kok, these claims that there were oral demands only surfaced for the first time when Mr Yap was being cross-examined. They were never mentioned in Mr Yap's pleadings or in his affidavit of evidence in chief. Indeed, these four instances were not even highlighted in the Letter of Demand when Mr Yap formally sought payment for the first time. We had little hesitation in rejecting Mr Yap's evidence in this regard as lacking in credibility.

50 Accordingly, we find that Mr Yap's failure to demand payment is probative of the existence of the First Agreement.

*The Second Agreement*

51 It is common ground between the parties that there was a Second Agreement in December 2020 which was duly performed. Under this agreement, the parties agreed to go their separate ways in relation to four of the ten Real Property Holding Entities – MT59 Investment, TP 201, Hougang 631 Pte Ltd and Aljunied 119 Pte Ltd (see [17] above) (with the caveat that TP 201 was not considered by the parties as part of the Chang Cheng Group). A series of sale and purchase agreements resulted, the effect of which was that both parties ceased to be interested in the same entities. Mr Kok relinquished his shares in Aljunied 119 Pte Ltd and Hougang 631 Pte Ltd, while Mr Yap relinquished his shares in TP 201 and MT59 Investment.



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52 We agree with Mr Kok that the Second Agreement proceeded on the basis that Mr Yap held interests in these four Real Property Holding Entities equal to his registered shareholdings or agreed share (as opposed to only 25%), and that this supports the existence of the First Agreement. For example, Mr Yap held a 26% share in MT59 Investment and received a sum of $1,665,349.68 for this 26% share. In other words, Mr Yap's interests under the Second Agreement were valued on the basis of his registered shareholding or agreed share as opposed to a 25% shareholding, and the parties transacted on this basis accordingly. In the same vein, with the agreement of Mr Yap, Mr Kok disposed of his shares in Aljunied 119 Pte Ltd and Hougang 631 Pte Ltd to Mr Cho on the basis that Mr Kok held only a 35% interest in each of these two companies, which was equal to Mr Kok's registered shareholding, instead of a 50% interest as *per* the parties' intentions under the Shareholding Agreement, as modified by the 2011 Agreement to Gift. In the circumstances, we find that the Second Agreement is probative of the terms of the First Agreement. In particular, the Second Agreement is probative of Mr Kok's obligation under the First Agreement to fix Mr Yap's interests in the Real Property Holding Entities and CCGPL in accordance with his registered shareholding or agreed share (instead of 25%).

53 The Judge accepted that the Second Agreement was consistent with the First Agreement. However, he found that the Second Agreement did not support the existence of the First Agreement as the Second Agreement was "equally consistent" with Mr Yap's case that the parties' interest in the Real Property Holding Entities equalled their registered shareholding from the outset: GD at [126]. With respect, we find that the Judge had erred in this regard. Before the Judge, Mr Yap's case that the parties' interest in the Real Property Holding Entities equalled their registered shareholding was premised on two arguments: the fact that the Real Property Holding Entities were not part of the Chang



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Cheng Group, and the 2005 Agreement. But the Judge rejected both arguments: GD at [29]–[66] and [226]–[227]. Having rejected Mr Yap's case and given that the parties performed the Second Agreement on the basis of Mr Yap having interests equal to his registered shareholdings in the four Real Property Holding Entities, we are of the view that the Second Agreement should have been regarded as being probative of the existence of the First Agreement.

54 For completeness, we are cognisant that while the Judge had decided against Mr Yap on both arguments, he nevertheless found that Mr Yap owned a proprietary interest in the Real Property Holding Entities equal to his registered shareholding: GD at [219]. As we summarised at [24] above, this was because the Shareholding Agreement and the 2011 Agreement to Gift, both of which were intended to apply to entities under the Chang Cheng Group, could not apply to the Real Property Holding Entities. An agreement to confer proprietary rights upon another person in property that would only come into existence in the future was only a contract, and did not have proprietary consequences in relation to that future property. Therefore, the Shareholding Agreement had no proprietary effect on the shares in the Real Property Holding Entities. The 2011 Agreement to Gift, which was predicated on the legal effect of the Shareholding Agreement, was similarly of no effect, leaving aside the issue of imperfect gifts: GD at [203], [210]–[212] and [220]–[225].

55 We do not think this militates against Mr Kok's position that the Second Agreement (and its due performance) was consistent with the First Agreement. The fundamental point remains that, before the Judge, Mr Yap's primary case was that the Real Property Holding Entities were not part of the Chang Cheng Group and that the parties had entered into the 2005 Agreement, and hence that Mr Yap owned the Real Property Holding Entities in accordance with his registered shareholding or agreed shares *because that was the parties' express*



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*intentions*. On appeal, Mr Yap reiterates these arguments and even argues that the Judge's reasons for finding that Mr Yap owned a proprietary interest in the Real Property Holding Entities equal to his registered shareholding were erroneous. As will be seen, we do not accept these arguments (see [71]–[73] below). In these circumstances, the fact that the Judge *ultimately* held that Mr Yap owned interests in the Real Property Holding Entities that are equal to his registered shareholding does not assist Mr Yap, and the Second Agreement remains probative of the First Agreement.

56 As an aside, we observe that the First Agreement provides Mr Yap with the practical benefit of insulating him from claims or challenges to his ownership being in accordance with his registered shareholding (see *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [70], referring to *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1991] 1 QB 1). That said, as Mr Yap did not dispute the enforceability of the First Agreement based on the absence of consideration, we need say no further on this point.

57 Taking these three pieces of evidence of subsequent conduct together, we are of the view that the Judge erred in finding that the First Agreement was not concluded.

*The other pieces of evidence relied on by Mr Kok*

58 We turn to briefly address the remaining three pieces of evidence relied on by Mr Kok to prove the existence of the First Agreement. We find that they are not probative of the First Agreement.

59 First, Mr Kok relies on the evidence of his former solicitor, who testified that Mr Kok had told him in July 2020 of the existence of the First Agreement.



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He also relies on a file note which the former solicitor prepared of his meeting with Mr Kok, purportedly recording Mr Kok's instructions about the First Agreement. The Judge decided that such evidence was inadmissible hearsay: GD at [106]–[112]. We agree with the Judge's analysis. Indeed, in Mr Kok's case for AD 75, it is notable that while he argues that the file note was credible and reliable, he does not *expressly* dispute the Judge's finding on its inadmissibility. During the hearing, counsel for Mr Kok maintained that the file note was admissible as evidence of the former solicitor's instructions given by Mr Kok, which showed Mr Kok's state of mind. We are unable to agree. The file note was made in July 2020, while the First Agreement was alleged to have been made in October 2018. We agree with the Judge that there was a "significant gap of almost two years" and that this piece of evidence cannot assist Mr Kok: GD at [111]. More significantly, evidence of Mr Kok's state of mind is of very little weight on the issue of whether the First Agreement was formed. The analysis must be based on the objective evidence, and Mr Kok's subjective state of mind is of little assistance.

60 Second, Mr Kok relies on an audio recording to prove the First Agreement. The audio recording is of a conversation between Mr Kok and Mr Cho on 15 October 2021, that was surreptitiously made by Mr Kok. The Judge placed little weight on this for several reasons, including the undisputed fact that Mr Kok and Mr Cho were both intoxicated during the meeting, and that the statements in the audio recording were, at best, vague references to the First Agreement: GD at [103] and [105]. On appeal, the thrust of Mr Kok's submissions appears to be that, although Mr Cho had been drinking, the audio recording remains reliable as Mr Cho "retained mental acuity". We disagree and find no error in the Judge's assessment on the reliability of the audio recording, given Mr Cho's intoxicated state. Moreover, the audio recording was made some three years after the First Agreement, and Mr Kok himself admitted that



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he recorded the conversation "solely" for the purpose of commencing an action against Mr Yap: GD at [101]–[102]. The Judge also accepted Mr Cho's evidence that he had responded to Mr Kok at that meeting in a manner intended to humour the latter: GD at [104]. In our view, these were all factors that were rightly considered by the Judge in assessing the weight to be given to the audio recording. Given this, we reject the argument that the Judge had erred in assessing the evidential value of the audio recording.

61 Third, the parties heavily disputed the commercial plausibility of the First Agreement. The Judge found that Mr Yap did not have any incentive to enter into the First Agreement as he would be giving up an interest worth about $3.8m in the Operating Entities in exchange for around $2.8m in the Real Property Holding Entities. He was thus worse off by about $1m: GD at [94]. On appeal, Mr Kok submits that the Judge had failed to consider the long-term appreciation of the Singapore real estate market. Mr Kok claims that Mr Yap stood to gain from the First Agreement as his interests in the Real Property Holding Entities would appreciate over time. In response, Mr Yap maintains that the First Agreement is commercially implausible from his point of view. He points to the past profits of the Operating Entities and asserts that he would not have given up a substantial shareholding in them for a slight increase in his share of the Real Property Holding Entities, where the latter has drastically lower profits.

62 As can be seen, both parties have gone to some length to deal with the commercial plausibility of the First Agreement. We observe that it is not uncommon for the courts to take into account the commercial plausibility of a purported agreement in determining if the said agreement exists (see, for example, *Max Master Holdings Ltd and others v Taufik Surya Dharma and*



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*others and another suit* [2016] SGHC 147 ("*Max Master*") at [37] and *Teo Seng Kee Bob v Arianecorp Ltd* [2008] 3 SLR(R) 1114 at [79]–[80]).

63 However, this should not be mistaken as the court scrutinising and assessing the degree of commercial attractiveness of an agreement from the position of the parties. We emphasise that the court may look to the commercial plausibility of a contract if it assists the court in weighing the inherent probabilities of the existence of such a contract. Where a contract is more rational or more in line with the parties' business interests, the commercial sensibility of a contract may contribute to the factual inference that, on a balance of probabilities, the contract was formed (see *Max Master* at [88]). Closer scrutiny by the court may be warranted where the purported agreement is alleged to be absurd or illogical (see, for example, *Tan Chin Hock v Teo Cher Koon and another and another appeal* [2022] 2 SLR 314 at [55]–[59]; *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [176]–[178]; *Lim Beng Cheng v Lim Ngee Sing* [2015] SGHC 282 at [50]). However, the court will not weigh the value of the proffered consideration in deciding whether it is likely that a party might have accepted an offer. Parties may have a myriad of motivations for wanting to enter into agreements, and we do not think it appropriate for the court to undertake an assessment of whether an agreement is more commercially attractive than another, from the point of view of the parties, to determine whether a disputed contract might have been concluded. Where there is sufficient evidence that a contract has been made, the court will not hesitate to uphold the existence of such a contract, even if there may exist some unusual features or apparent disadvantages to one party to the transaction. The court will have to proceed on the basis that the parties have, by virtue of entering the contract, agreed to bear the accompanying risks, often for reasons best known to themselves.



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64 In the present case, we are of the view that the commercial plausibility of the First Agreement is a neutral factor that does not point to the existence or otherwise of the First Agreement. Under the First Agreement, Mr Yap would experience an immediate loss, on paper, of around $1m. Yet, Mr Yap may also stand to gain from any long-term appreciation of the real properties held by the Real Property Holding Entities, as suggested by Mr Kok. Taken together, the terms of the First Agreement are not so absurd or illogical from the perspective of commercial parties that it cannot be believed that Mr Yap would have entered into the agreement. Accordingly, we decline to place weight on this factor.

***In any case, no resulting trust arose***

65 The second issue in AD 75 is whether the Judge correctly found that the Transferred Shares are held by Mr Koh on resulting trust for Mr Yap. We do not need to decide this issue given our finding that the parties entered into the First Agreement. Nevertheless, we will address this briefly as we find that the Judge had erred in law by finding that a resulting trust arose, if the First Agreement and Share Sale Contract were both found not to exist. We take this opportunity to clarify that the presumption of resulting trust may be rebutted in a situation such as the present.

66 A resulting trust may arise where a person makes a voluntary payment or transfer of property to another person, which gives rise to a rebuttable presumption that the transferor did not intend to make a gift to the recipient and the property should be held on trust for the transferor. This presumption may be rebutted by evidence of the transferor's intention to make an outright transfer: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708, endorsed in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [34]. Similarly, the presumption can be



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rebutted by any evidence that the transferor's intention was that the transferee should take the beneficial interest of the property, including where the transferor paid money *in the mistaken belief that he was discharging a valid contractual obligation*: *Snell's Equity* (John McGhee and Steven Elliott gen eds) (Sweet & Maxwell, 34th Ed, 2020) at para 25-012.

67 In this case, the Judge held that a resulting trust arose because Mr Yap had not intended that the Transferred Shares would unconditionally benefit Mr Kok (*ie*, as a gift and without consideration): GD at [143]–[144]. But the presumption of resulting trust may be rebutted by any evidence showing that there was an intention to transfer the beneficial interest in the property to the recipient. A transferor may intend to pass the beneficial interest in a property to another *at the time of the transfer* on the basis of a contract that is later found not to have been concluded as a matter of law. Therefore, the mere fact that there was no intended gift of the Transferred Shares does not mean that a resulting trust arose over them. Indeed, as a matter of fact, it is undisputed that, at the time of the transfer, Mr Yap had intended to transfer the beneficial interest in the shares to Mr Kok pursuant to what he believed was an agreement with Mr Kok, who would provide consideration for the transfer. This is borne out by both the parties' pleadings and their affidavit evidence. Mr Yap's intention to benefit Mr Kok therefore precludes a resulting trust from arising.

**AD 76 (Mr Yap's appeal)**

68 Turning to AD 76, we find that there is no merit in all three grounds of Mr Yap's appeal.



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***The 2005 Agreement was not entered into***

69 As observed above at [29]–[30], Mr Yap's case comprises two main planks:

(a) First, counsel for Mr Yap devoted a substantial portion of both his written submissions and his allotted time during the hearing to challenging the Judge's finding that the Real Property Holding Entities are part of the Chang Cheng Group. Mr Yap had argued in the proceedings below that the Real Property Holding Entities are not part of the Chang Cheng Group (and thus not subject to the Shareholding Agreement). The Judge rejected this because he came to the opposite conclusion that the Real Property Holding Entities were part of the Chang Cheng Group: GD at [29]–[66].

(b) Second, Mr Yap avers that the parties entered into the 2005 Agreement, under which they orally agreed for the Real Property Holding Entities to be legally and beneficially owned by the parties in accordance with their registered shareholding. The Judge rejected this as Mr Yap had failed to produce any contemporaneous or objective evidence of the contract: GD at [226].

70 The effect of either of Mr Yap's arguments being accepted is that Mr Yap's registered shareholdings and shares in the Real Property Holding Entities would equate to his actual interests in those companies and not be subject to the Shareholding Agreement. As Mr Yap's counsel admitted during the hearing, unless the Judge's findings on this aspect of the case are overturned, he faces a potential personal claim from Mr Kok for breach of the Shareholding Agreement for failing to give effect to the intentions of the parties that the agreement would apply to the Real Property Holding Entities.



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71 Having reviewed the evidence and considered the submissions made on appeal, we take the view that there is no basis to disturb the Judge's finding on either ground. In relation to the 2005 Agreement, we agree with the Judge that Mr Yap has not provided any contemporaneous or objective evidence of the contract. Indeed, Mr Yap could not even recall the terms agreed upon: GD at [226].

72 As for whether the Real Property Holding Entities are part of the Chang Cheng Group, the Judge was satisfied that the parties intended that the Real Property Holding Entities (save TP 201) would be part of the Chang Cheng Group and subject to the Shareholding Agreement. This was because they were incorporated for the benefit of the Operating Entities, their purchase was funded by the profits from the Chang Cheng Group, and they were operationally and administratively integrated into the Chang Cheng Group: GD at [29]–[66]. This is in contrast to Mr Yap's case that ownership of the Operating Entities would be governed by the Shareholding Agreement and the 2011 Agreement to Gift (which applied to entities in the Chang Cheng Group), while the Real Property Holding Entities would be regulated by the 2005 Agreement as these entities were not part of the Chang Cheng Group. We find no reason to disturb the Judge's findings. In any event, as we have found that the First Agreement was entered into (see [57] above), this would be consistent with the Judge's finding that the Real Property Holding Entities were part of the Chang Cheng Group. From a commercial perspective, the whole purpose of the First Agreement was for Mr Kok and Mr Yap to disengage from each other such that Mr Yap would only hold interests in the Real Property Holding Entities, and not the Operating Entities, within the Chang Cheng Group.

73 But in any case, the more significant point here is that the Judge held that, legally speaking, the Shareholding Agreement could not have any



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proprietary consequences on the shares of the Real Property Holding Entities because these companies were incorporated years *after* the formation of the Shareholding Agreement in 1999. In other words, even though the Judge found that the Shareholding Agreement was intended to apply to entities in the Chang Cheng Group, it could not apply to the Real Property Holding Entities which were incorporated after the Shareholding Agreement was formed. In the same vein, the 2011 Agreement to Gift could have no proprietary or equitable effect on the parties' interests in the Real Property Holding Entities since these transfers were imperfect gifts. We have detailed the Judge's reasons for these findings at [24] above. We should also highlight that neither party has appealed against the Judge's finding on the lack of proprietary effect of the Shareholding Agreement and the 2011 Agreement to Gift. While Mr Yap had originally argued in his appeal that the Judge should have found that the parties had made an equitable assignment of the future shares in various Operating Entities by way of the Shareholding Agreement in 1999, he subsequently withdrew this ground of appeal in his reply in AD 76. In any case, even if he had proceeded with this submission, it would have failed because Mr Yap had failed to plead facts supporting any such equitable assignment.

74 Further, and in any event, given our conclusion that the First Agreement existed, and that this agreement governed the interest Mr Yap would hold in the Real Property Holding Entities, this would now supersede the parties' arrangements under the Shareholding Agreement and the 2011 Agreement to Gift. This was not contested by Mr Yap's counsel at the hearing. Any finding of the Judge in relation to the scope of coverage of the Chang Cheng Group thus cannot give rise to any possible claims against Mr Yap that there was a breach of either the Shareholding Agreement or the 2011 Agreement to Gift.



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***The parties did not enter into the Share Sale Contract***

75 As noted above at [11], the Share Sale Contract was raised by Mr Yap as a competing version to the First Agreement. Our reasons for accepting the First Agreement have addressed why the Share Sale Contract is not consistent with the parties' subsequent conduct (see [40]–[57] above). In addition, we find that the Share Sale Contract has not been established for the following reasons.

76 The Judge disbelieved Mr Yap's case on the Share Sale Contract for three main reasons:

(a) First, the alleged Share Sale Contract was uncommercial because, among other things, it allowed Mr Kok to dictate which ten Operating Entities Mr Yap had to give up his interests in: GD at [132]–[133].

(b) Second, there was insufficient evidence of the Share Sale Contract being entered into: GD at [134].

(c) Third, the terms of the alleged Share Sale Contract were too uncertain because they did not specify which ten Operating Entities' shares Mr Yap was to transfer to Mr Kok, and how Mr Yap's full and fair compensation for the Transferred Shares would be quantified. Hence, the alleged Share Sale Contract was at best an unenforceable agreement to agree: GD at [135]–[141].

77 In our view, these factors – in particular, the second and third factors – are fatal to Mr Yap's case, and he has not mounted any argument on appeal to persuade us otherwise. On the sufficiency of the evidence, Mr Yap relied primarily on his own testimony and Mr Cho's evidence to prove the Share Sale Contract. However, as found by the Judge, Mr Cho's evidence contradicts



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Mr Yap's case that Mr Kok would compensate Mr Yap in exchange for Mr Yap's interests in the ten Annex 1 Companies: GD at [134]. We agree. Based on the evidence, Mr Cho had emphasised in no uncertain terms (and on more than one occasion) that, while Mr Kok did promise to compensate Mr Yap, this compensation had nothing to do with Mr Yap's interests in the Chang Cheng Group. Mr Yap's insistence on appeal that Mr Cho's evidence was consistent with the terms of the Share Sale Contract was rather difficult for us to understand.

78 As for the uncertainty of terms, we agree with the Judge that the alleged terms of the Share Sale Contract, in particular the failure to specify how Mr Yap's "full and fair compensation" was to be quantified in exchange for his transfer of shares, were simply too vague to be enforceable as a contractual obligation. While a contract of this nature may not necessarily require the precise consideration to be stated, there must at least be an agreed mechanism which would allow the value of the Transferred Shares to be determined (see *Harwindar Singh s/o Geja Singh v Wong Lok Yung Michael and another* [2015] 4 SLR 69 at [20]). As pleaded, the Share Sale Contract did not even have any provision for such a mechanism. We would add that the fact that the Letter of Demand sent by Mr Yap's solicitors to Mr Kok in July 2021 describes the Share Sale Contract as an "understanding" between the parties further undermines Mr Yap's case that there was an enforceable contract reached between the parties.

79 On balance, we do not think that Mr Yap has been able to put forward any persuasive arguments as to why the Judge had erred in rejecting the existence of the Share Sale Contract. As such, we agree with the Judge that the Share Sale Contract, even if it was reached, was at best an unenforceable agreement to agree: GD at [140].



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***No grounds for any finding that Mr Kok held a 25% beneficial interest in four other Operating Entities***

80 Finally, Mr Yap contends that the Judge had overlooked the fact that Mr Yap had also transferred his shares in four other Operating Entities to Mr Kok on or after 20 December 2018, which are: (a) Chang Cheng Food Paradise Pte Ltd; (b) Chang Cheng Food & Beverage Pte Ltd; (c) 211 New Upper Changi Fr; and (d) 211 New Upper Changi Drink. Mr Yap argues that given the Judge had held that he was the beneficiary of a resulting trust in relation to the Transferred Shares, the Judge should have held the same in relation to these four entities where Mr Yap divested his shares and/or interests in December 2018, and for which he has not received any payment.

81 This ground of appeal is completely without merit. First, Mr Yap did not specifically plead or even argue below that he was entitled to shares or interests in these four Operating Entities, or that the court should grant him relief in relation to them. Counsel for Mr Yap accepted the same during the hearing. Moreover, although Mr Yap claims that he transferred 25 shares each in Chang Cheng Food Paradise Pte Ltd and Chang Cheng Food & Beverage Pte Ltd on 20 December 2018, the ACRA Register of Members of both companies appear to suggest that Mr Yap has never owned any shares in either company.

82 In any case, given that we have found that the First Agreement exists and that Mr Yap has not disputed that these four Operating Entities are part of the Chang Cheng Group, they would be subject to the First Agreement. Assuming Mr Yap did give up his interests in these four Operating Entities, Mr Yap would simply have been performing his contractual obligation under the First Agreement to give up all his interests in the F&B businesses. Hence, he is not entitled to any relief in respect of them. We therefore reject this ground of appeal.



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**Conclusion**

83 For the foregoing reasons, we allow AD 75 and dismiss AD 76 in its entirety. We make the following orders.

84 The declaration granted by the Judge below regarding the First Agreement is set aside. We hereby grant a declaration that the parties entered into the First Agreement.

85 Following from our finding that Mr Yap had divested his shares in the Annex 1 Companies in December 2018 because of the First Agreement, we set aside the declarations made by the Judge below regarding Mr Yap's interests in those shares and that Mr Kok held those shares on resulting trust since the time of the transfer. The consequential orders made by the Judge below that flowed from his finding that there was a resulting trust are also set aside.

86 The costs order below in favour of Mr Yap is set aside. We award costs to Mr Kok for both appeals, as well as for the action below. If such costs are not agreed, parties are to file and exchange their submissions on costs within 14 days of this judgment. Any such submissions should be limited to five pages.

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division



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Ang Cheng Hock
Judge of the High Court

Lee Eng Beng *SC*, Cheng Wai Yuen Mark, Tan Ee Kuan and Naomi Lim Bao Bao (Rajah & Tann Singapore LLP) for the appellant in AD/CA 75/2024 and respondent in AD/CA 76/2024;
Zhulkarnain Bin Abdul Rahim, Low Chai Chong, Too Fang Yi and Sean Chen Siang En (Dentons Rodyk & Davidson LLP) for the respondent in AD/CA 75/2024 and appellant in AD/CA 76/2024.



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