IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SING APORE

[2025] SGHC 19

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*

GROUNDS OF DECISION

[Contract — Formation]
[Contract — Intention to create legal relations]
[Trusts — Resulting trusts]
[Gifts — Incomplete]
[Personal Property — Ownership — Absolute]
[Personal Property — Ownership — Beneficial]

TABLE OF CONTENTS

Kok Kuan Hwa
v
Yap Wing Sang

[2025] SGHC 19

General Division of the High Court — Suit No 905 of 2021
Vinodh Coomaraswamy J
7–10, 14–16, 21–24, 28–30 November, 1 December 2023, 11, 12, 16–18 January, 9, 31 July 2024

5 February 2025

Vinodh Coomaraswamy J:

Introduction

1 This action arises from a dispute between the 50% owner (the plaintiff) and the 25% owner (the first defendant) of a highly successful and vertically-integrated food and beverage business that they have built together over decades. Their relationship has now broken down irretrievably. The parties have therefore decided to terminate their business relationship and to part ways.

2 Although there are eight defendants to this action, only the first defendant is actively defending it. The remaining seven defendants are nominal defendants who are not represented and who have taken no part in the litigation. I shall therefore use the term "the defendant" to refer to the first defendant and the collective term "the parties" to refer to only the plaintiff and the first defendant.

3 The parties cannot today agree: (a) on the identity of the companies that comprise their business; and (b) the legal effect of the parties' efforts since 2018 to terminate their business relationship and part ways.

4 Following the trial of this action, I have dismissed the plaintiff's claim and allowed the defendant's counterclaim in part. Both parties have appealed against my decision.

5 I now set out the grounds for my decision.

Facts

6 The principal cause of the parties' dispute is that, partly due to the rapid growth of their business over the decades, they have expanded the business organically and *ad hoc*. As a result, their business is not structured as a group of companies with an apex holding company in which they are both shareholders and with layers of intermediate holding companies and operating subsidiaries beneath it. Another cause of their dispute is that the parties dealt with each other over the decades with a high degree of trust and a great deal of informality. There is therefore little or no contemporaneous evidence of the intentions they held or of the agreements they reached over the decades in relation to their business.

7 From its inception, the parties have called their business "the Chang Cheng Group".[1] I shall use that term in these grounds, but purely for

[1] 19th Affidavit of Mr Kok Kuan Hwa dated 27 September 2023 ("Mr Kok's AEIC) at para 3, Plaintiff's Bundle of Affidavits of Evidence-in-Chief ("PBAEIC") at p 5; Affidavit of Mr Yap Wing Sang dated 15 September 2023 ("Mr Yap's AEIC") at para 6, Defendant's Bundle of Affidavits of Evidence-in-Chief ("DBAEIC") at p 3.

convenience. It must always be borne in mind that that term has purely commercial content. It does not, in itself, have any legal content.

8 The Chang Cheng Group comprises a number of companies in which each party holds or held a direct personal interest, in some cases together with third parties. The parties' shareholding in any of these companies does not necessarily match their agreed interest in the capital and income of the Chang Cheng Group. One of these companies is Chang Cheng Group Pte Ltd ("CCGPL"). CCGPL is, in a commercial and administrative sense, the headquarters of the Chang Cheng Group. But it also has operational subsidiaries and owns valuable real estate. Most importantly, it is not the apex holding company for the Chang Cheng Group. It is simply another company in which the parties hold a direct personal interest.

9 The Chang Cheng Group is a highly successful operator of food and beverage stalls, coffeeshops and food courts in Singapore.[2] The parties' business relationship began in 1998 or 1999 when they agreed to set up and operate food and beverage businesses together.[3] Their business started with an economy rice stall in Woodlands[4] and expanded rapidly over the decades into owning and operating other types of food stalls and ultimately into owning and operating coffee shop and food court premises.

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2 Mr Kok's AEIC at para 3, PBAEIC at p 5; Mr Yap's AEIC at para 5, DBAEIC at p 3.

3 Mr Kok's AEIC at para 11, PBAEIC at p 12; Mr Yap's AEIC at para 6, DBAEIC at p 3.

4 Mr Kok's AEIC at para 12, PBAEIC at p 13; Mr Yap's AEIC at para 29, DBAEIC at p 10.

10 It is common ground that the Chang Cheng Group comprises several operating companies ("the Operating Companies") in the food and beverage business.[5]

11 Ten of the Operating Companies have a particular significance in this action. I have listed these 10 companies in Annex 1 of the judgment that I have entered in this action. I shall therefore refer to these companies as "Annex 1 Companies".

12 The particular significance of the Annex 1 Companies is that in December 2018, in the course of the parties' terminating their business relationship and parting ways, the defendant transferred all of his shares in the Annex 1 Companies to the plaintiff.[6] At the same time, he resigned as an officeholder in all of the Operating Companies, *ie* including but not limited to the ten Annex 1 Companies.[7] One of the principal disputes between the parties is over the legal causes and consequences of his having done so.

13 The Annex 1 Companies are:[8]

(a) Chang Cheng Food Tastic Pte Ltd;

(b) Chang Cheng Mee Wah Holdings Pte Ltd;

(c) Chang Rong Logistics (West) Pte Ltd;

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5 Defence and Counterclaim (Amendment No. 3), Annex A.

6 P Lead Counsel Statement, Part Two, Section III at s/n 9; D Lead Counsel Statement, Part Two, Section III at s/n 9.

7 P Lead Counsel Statement, Part Two, Section III at s/n 9; D Lead Counsel Statement, Part Two, Section III at s/n 9.

8 P Lead Counsel Statement, Part Two, Section III at s/n 9; D Lead Counsel Statement, Part Two, Section III at s/n 9.

(d) Chang Rong Logistics Pte Ltd;

(e) G5 Food House Pte Ltd;

(f) Redhill 75 Food House Pte Ltd;

(g) TPY 126 C&B Pte Ltd;

(h) TPY 126 Food House Pte Ltd;

(i) Trendy Marks Pte Ltd; and

(j) WTL 261 Food House Pte Ltd.

14 Over time, real property was purchased from which to operate the Chang Cheng Group's food and beverage stalls and ultimately their coffee shops and food courts. Each of these properties was purchased and is now held by a company incorporated between 2005 and 2011 for that single purpose. I have listed these companies in Annex 2 of the judgment that I have entered in this action. I shall therefore refer to these companies as "Annex 2 Companies".

15 The Annex 2 Companies are:[9]

(a) TP406 Pte Ltd ("TP406");

(b) MS 136 Pte Ltd ("MS 136");

(c) MS 166 Pte Ltd ("MS 166");

(d) HOL 40 Pte Ltd ("HOL 40");

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[9] Plaintiff's Lead Counsel Statement filed on 6 October 2023 ("P Lead Counsel Statement"), Part Two, Section III at s/n 5; Defendant's Lead Counsel Statement filed on 6 October 2023 ("D Lead Counsel Statement"), Part Two, Section III at s/n 5.

(e) NL 10 Pte Ltd ("NL 10");

(f) TP 802 Investment Pte Ltd ("TP 802");

(g) Hougang 631 Pte ltd ("Hougang 631");

(h) Aljunied 119 Pte Ltd ("Aljunied 119");

(i) TP 201 Pte Ltd ("TP 201"); and

(j) MT59 Investment ("MT59").

16 The plaintiff classifies CCGPL as an operating company. The defendant does not accept this and classifies CCGPL as a company incorporated to purchase and hold real estate. I have therefore not included CCGPL within the scope of either the term "the Operating Companies" or listed it in Annex 2. I shall treat CCGPL as being *sui generis*.

17 The principal dispute between the parties is whether the Annex 2 Companies and CCGPL are part of the Chang Cheng Group.

18 Mdm Lim Lai Hiang ("Mdm Lim") is the plaintiff's wife. It is common ground that, at least from 2011 onwards, the plaintiff, Mdm Lim and the defendant had agreed between them that the plaintiff would have a 50% interest in the capital and income of the Chang Cheng Group and that Mdm Lim and the defendant would each have a 25% interest in its capital and income ("the 2011 Agreement").[10] I shall refer to these three individuals as "the Owners".

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[10] Plaintiff's Closing Submissions dated 19 March 2024 ("PCS") at para 1; Mr Yap's AEIC at para 7, DBAEIC at p 3.

19 For reasons that are immaterial for present purposes, the parties' relationship deteriorated over time. It is common ground that their relationship had broken down irretrievably by 2017 or 2018.[11]

20 By the end of 2018, the parties had agreed that they would part ways, with the plaintiff acquiring the defendant's interest in the Chang Cheng Group.[12] Negotiations then took place between the parties through an intermediary, Mr Cho Kim Wing ("Mr Cho").

21 It is both parties' case that these negotiations gave rise to an oral contract between the parties. The parties however differ radically as to the genesis and terms of the oral contract. The plaintiff calls this oral contract "the First Agreement". The defendant calls this oral contract "the Share Sale Contract".

22 It was following these negotiations that the defendant transferred the Annex 1 Shares to the plaintiff and resigned as an officeholder of the Operating Companies.

23 In December 2020, the parties, together with the third-party shareholders of four of the Annex 2 Companies – namely, Hougang 631, Aljunied 119, TP 201 and MT59 (see [14] above) – entered into sale and purchase agreements relating to these companies ("the Second Agreement").[13] It is undisputed that the parties are bound by and have duly performed the Second Agreement in full and final satisfaction of their interest in these four

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11 P Lead Counsel Statement, Part Two, Section III at s/n 7; D Lead Counsel Statement, Part Two, Section III at s/n 7.

12 P Lead Counsel Statement, Part Two, Section III at s/n 8; D Lead Counsel Statement, Part Two, Section III at s/n 8.

13 P Lead Counsel Statement, Part Two, Section III at s/n 11; D Lead Counsel Statement, Part Two, Section III at s/n 11.

Annex 2 Companies. As such, I do not have to deal with these four Annex 2 Companies.

24 At the same time, the parties were discussing the terms on which they would part ways in CCGPL and the remaining six Annex 2 Companies, namely TP406, MS 136, MS 166, HOL 40, NL 10 and TP 802 (see [14] above).[14] These discussions took place through Mr Paul Kok Kuan Pow ("Mr Paul Kok") as intermediary. The plaintiff's case is that the parties entered in another oral contract on or about 5 December 2020 ("the Third Agreement") as a result of these discussions.

Issues to be determined

25 There are four issues to be determined in this action:

(a) First, whether the parties entered into the First Agreement (as the plaintiff claims) or the Share Sale Contract (as the defendant claims).[15]

(b) Second, whether the parties entered into the Third Agreement as the plaintiff claims.[16]

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14 P Lead Counsel Statement, Part Two, Section III at s/n 12; D Lead Counsel Statement, Part Two, Section III at s/n 12.

15 P Lead Counsel Statement, Part Two, Section I at s/n 5 of the factual issues and s/n 1 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 5 of the factual issues and s/n 1 of the legal issues.

16 P Lead Counsel Statement, Part Two, Section I at s/n 7 of the factual issues; D Lead Counsel Statement, Part Two, Section I at s/n 7 of the factual issues.

(c) Third, whether the defendant is the absolute owner of all of the shares in CCGPL and in each of the six remaining Annex 2 Companies (see [24] above) that are registered in his name.[17]

(d) Fourth, whether the defendant has a 25% interest in and the Operating Companies.[18]

26 I take each issue in turn.

Issue 1: The First Agreement and the Share Sale Contract

27 The plaintiff seeks a declaration that the parties are bound by the First Agreement.[19] He alleges that the terms of the First Agreement are as follows:[20]

(a) The defendant will transfer to the plaintiff his interest in the Operating Businesses.

(b) In consideration for this, the defendant's interest in CCGPL and in each Annex 2 Company would be fixed in accordance with his registered shareholding in that company.

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17 P Lead Counsel Statement, Part Two, Section I at s/n 3 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 3 of the legal issues.

18 P Lead Counsel Statement, Part Two, Section I at s/n 5 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 5 of the legal issues.

19 Statement of Claim (Amendment No 2) dated 18 May 2023 ("SOC (Amd No 2)"), prayer (a).

20 SOC (Amd No 2) at para 19.

28 To determine whether the parties entered into the First Agreement, I must first decide two subsidiary factual issues:

(a) First, are the Annex 2 Companies part of the Chang Cheng Group?[21]

(b) Second, what terms governed the parties' interests in the Chang Cheng Group before the 2011 Agreement (see [18] above)?[22]

The Annex 2 Companies are part of the Chang Cheng Group

29 On the first subsidiary issue, I find that the Annex 2 Companies are part of the Chang Cheng Group. I exclude TP 201 from my analysis of this issue. The plaintiff accepts that TP 201 is *not* part of the Chang Cheng Group.[23]

30 I now set out the factors I have relied on for my finding that the Annex 2 Companies are part of the Chang Cheng Group.

31 First, I find on the balance of probabilities that the Annex 2 Companies did *not* purchase the properties that they own with initial funds supplied by – and therefore attributable personally to – the parties. Instead, they purchased the properties with initial funding supplied by and therefore attributable to one or more of the following three companies: CCGPL, Chang Cheng Mee Wah Holdings Pte Ltd ("CCMWH") and TP 177 Investment Pte Ltd ("TP 177"). The

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21 P Lead Counsel Statement, Part Two, Section I at s/n 1 of the factual issues and Section II at s/n 1 of the defendant's additional issues; D Lead Counsel Statement, Part Two, Section I at s/n 1 of the factual issues and Section II at s/n 1 of the defendant's additional issues.

22 P Lead Counsel Statement, Part Two, Section I at s/n 3 of the factual issues; D Lead Counsel Statement, Part Two, Section I at s/n 3 of the factual issues.

23 Transcript dated 9 July 2024 at p 54 lines 15–25.

defendant accepts that all three of these companies are part of the Chang Cheng Group.[24]

32 To support its argument that the Chang Cheng Group provided the initial funding for the Annex 2 Companies' purchase of the real property, the plaintiff relies on a report from his expert witness, Mr Ang Keng Siang Terence ("Mr Ang"). In his report, Mr Ang draws the following conclusions from the contemporaneous documents that are available (*eg*, cheques, cashier's orders, payment vouchers and receipts) relating to each purchase of property:

(a) The initial funding for the properties purchased by MT59[25] and Aljunied 119[26] came from CCMWH and/or TP 177.

(b) The initial funding for the properties purchased by MS 136,[27] MS 166,[28] TP406,[29] TP 802[30] and Hougang 631[31] came from CCMWH through an intercompany loan extended to each of these companies.

(c) The initial funding for the property purchased by NL 10 came from CCMWH, except for a deposit (amounting to 1% of the purchase price) which came from an unknown source.[32]

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24 Defence & Counterclaim (Amendment No 3) dated 3 April 2023 ("DNCC (Amd No 3)") at Annex A.

25 Mr Ang Keng Siang Terence's Expert Report dated 15 September 2023 ("Mr Ang's Expert Report") at paras 2.3.25–2.3.27, PBAEIC at pp 319–320.

26 Mr Ang's Expert Report at para 2.3.21, PBAEIC at p 317.

27 Mr Ang's Expert Report at para 2.3.7, PBAEIC at p 311.

28 Mr Ang's Expert Report at para 2.3.10, PBAEIC at p 312.

29 Mr Ang's Expert Report at para 2.3.15, PBAEIC at p 315.

30 Mr Ang's Expert Report at para 2.3.16, PBAEIC at p 315.

31 Mr Ang's Expert Report at para 2.3.22, PBAEIC at p 318.

32 Mr Ang's Expert Report at para 2.3.19, PBAEIC at p 317.

(d) It is not entirely clear where the initial funding for the property purchased by HOL 40 came from. But a substantial part of the funding came from CCGPL.[33] It paid the stamp duty and the deposit of 5% of the purchase price.[34] It also lent a sum of $698,600 to HOL 40, which covered more than 50% of the balance of the initial funding.[35]

33 The defendant contends that – although the immediate source of the initial funding may have been CCGPL, CCMWH and TP 177 – these sums are ultimately attributable to the parties because they were eventually deducted from their personal share of the profits of the Chang Cheng Group.[36]

34 The defendant relies for this contention on a report by his expert witness, Mr Tam Chee Chong ("Mr Tam"). Mr Tam concludes in his report that it is "reasonable" for the defendant to advance a case that the initial funding that the Annex 2 Companies required of the parties was based on their registered shareholding in each Annex 2 Company and that "any shortfall…not paid by…themselves would be paid through their respective share of profits from the Chang Cheng Group".[37] Mr Tam clarified during cross-examination that what he means by this conclusion is that it is "more than 50 per cent" likely that the initial funding for the Annex 2 Companies' purchase of the real property came ultimately from the parties.

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33 Mr Ang's Expert Report at paras 2.3.13–2.3.14, PBAEIC at pp 313–315.

34 Mr Ang's Expert Report at para 2.3.11, PBAEIC at p 313.

35 Mr Ang's Expert Report at paras 2.3.13, PBAEIC at pp 313–314.

36 DCS at para 81.

37 Mr Tam Chee Chong's Expert Report dated 15 September 2023 ("Mr Tam's Expert Report") at para 197(a), DBAEIC at p 208.

35 Mr Tam gives three reasons for drawing this conclusion:

(a) First, the parties' share of the Chang Cheng Group's profits at the material time was more than sufficient to cover the capital that each Annex 2 Company required of each of them.[38]

(b) Second, it is possible that the initial funding advanced by the Chang Cheng Group was deducted from the parties' share of profits only later, and not at or about the time of the advance.[39]

(c) Third, it is common ground that TP 201 was funded personally, *ie* from the parties' share of the Chang Cheng Group's profits.[40]

36 When faced with conflicting expert evidence, the court may choose one of the experts' views or reject them both. But it cannot adopt a third view of its own (*Tengku Jonaris Badlishah v Public Prosecutor* [1999] 1 SLR(R) 800 at [37]). Where expert evidence conflicts, the court will have regard to "the logic and common sense" of each expert in choosing which expert's evidence to accept (*Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2007] 2 SLR(R) 453 at [105]).

37 I accept Mr Ang's evidence and reject Mr Tam's. Mr Ang's evidence, *ie*, that the initial funding for the Annex 2 Companies' purchase of their properties was provided by the Chang Cheng Group, is supported by contemporaneous and objective documentary records. By contrast, Mr Tam's

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38 Transcript dated 17 January 2024 at p 68 lines 2–24.

39 Transcript dated 18 January 2024 at p 13 line 9 to p 15 line 1.

40 Transcript dated 18 January 2024 at p 13 line 23 to p 14 line 4.

conclusion that it is more likely than not that the initial funding came ultimately from the parties rests on reasoning and assumptions that are unpersuasive.

38 Even if the parties' share of the profits of the Chang Cheng Group was sufficient to cover the initial funding that the Annex 2 Companies needed (see [35(a)] above), this establishes only that it was *theoretically* possible for the parties to have funded the Annex 2 Companies' purchase of the properties out of their personal share of the Chang Cheng Group's profits. That theoretical possibility does not go very far towards establishing that this is *in fact* what the parties intended and did. As the plaintiff argues, save only for TP 201, there is no objective evidence to show that the Annex 2 Companies' initial funding was ultimately deducted from the parties' share of the profits of the Chang Cheng Group.[41]

39 As to the possibility that the funding advanced by the Chang Cheng Group was deducted from the parties' share of profits only later, and not at the time of the advance (at [35(b)] above), the only evidence that Mr Tam relies on for this part of his evidence is a profit-sharing worksheet for the Chang Cheng Group for 2012. This document shows that the payment made by the Chang Cheng Group on behalf of its directors for personal investments in 2008 was deducted from their share of the Chang Cheng Group's profits nearly five years later.[42] But if the initial funding was deducted from the Owner's profit share years after the money was advanced, then it is odd that no such deductions are reflected in any of the later profit-sharing worksheets. This is especially odd considering that (i) eight of the 10 Annex 2 Companies acquired their properties

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41 PCS at para 137.

42 Mr Tam Chee Chong's Reply Expert Report dated 3 October 2023 at para 28, DBAEIC at p 239.

before 2010; and (ii) Ms Elaine Yaw ("Ms Yaw"), the ex-Head of Accounts for the Chang Cheng Group, gave evidence that any such deductions would "usually" be made within two years from the investment.[43]

40 As for Mr Tam's reliance on TP 201 (at [35(c)] above), this is neither here nor there. That the shareholders of TP 201 provided the initial funding for the acquisition of its property is equally consistent with TP 201 being an exception rather than the norm. This is supported by the fact that TP 201 was the sole Annex 2 Company which had, as its shareholders, two other mutual friends of the parties.[44] The shareholders of all the other Annex 2 Companies are either the parties alone, or the parties together with Mdm Lim, Mr Cho or employees of the Chang Cheng Group.

41 Further, the relevance of Mr Tam's expert report is diminished by Mr Tam's oral evidence. He confirms that he is not expressing a view on whether the parties' share of the Chang Cheng Group's profits was *in fact* used to provide the initial funding for the Annex 2 Companies, as such deduction "has not happened yet".[45] He also confirms that save for TP 201, he has not seen any document that suggests that the initial funding advanced by the Chang Cheng Group was ever deducted from the parties' share of its profits.[46]

42 For all of these reasons, I do not find Mr Tam's evidence of assistance on this issue. In any event, counsel for the defendant clarified in oral closing submissions that the defendant was relying largely on Ms Yaw's evidence to

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43 Transcript dated 16 January 2024 at p 78 lines 2–14.

44 Mr Yap's AEIC at para 57, DBAEIC at p 16.

45 Transcript dated 18 January 2024 at p 12 line 22 to p 13 line 3.

46 Transcript dated 18 January 2024 at p 22 lines 2–9.

prove this part of his case.[47] Unfortunately for the defendant, Ms Yaw's evidence on this issue also does not carry much weight.

43 Ms Yaw's evidence in chief is that CCMWH or some other company in the Chang Cheng Group provided the initial funding for the Annex 2 Companies' purchase of their properties,[48] and that she had personally calculated and deducted that sum from the parties' share of the Chang Cheng Group's profits.[49] But under cross-examination, she either changed or qualified her evidence in chief. This diminishes significantly the weight I can attach to her evidence.

44 Ms Yaw's evidence in chief was that the initial funding advanced by the Chang Cheng Group on behalf of the Annex 2 Companies was deducted from the parties' profit share in 2009 and 2010, and that documents titled "BOD Profit Sharing For Year 2009" and "BOD Profit Sharing For Year 2010" reflected the parties' share of the profits after the deductions.[50] But when cross-examined on these documents, Ms Yaw accepted that no deduction were made in 2010[51] and suggested that the deduction could have been made from other pools of the Chang Cheng Group's profits, such as CCMWH.[52] This shift in her evidence, together with the fact that more than 13 years had passed from the time Ms Yaw had left the Chang Cheng Group, suggests to me that her recollection of the events may not be accurate.

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47 Transcript dated 9 July 2024 at p 114 lines 1–12.

48 Affidavit of Ms Elaine Yaw Ee Ling dated 15 September 2023 ("Ms Yaw's AEIC) at para 19, DBAEIC at p 136.

49 Ms Yaw's AEIC at para 25, DBAEIC at p 138.

50 Ms Yaw's AEIC at para 28(c)(i), DBAEIC at p 141.

51 Transcript dated 16 January 2024 at p 115 lines 8–12.

52 Transcript dated 16 January 2024 at p 115 lines 12–19 and p 119 lines 5–23.

45 Ms Yaw also qualified her evidence in chief by clarifying during cross-examination that she had personally made the deductions from the parties' profit share for only "some of the transactions" and "not all".[53] The defendant submits that this does not undermine Ms Yaw's involvement in the deduction process, as she "did not have to process the payments or to enter the deductions herself".[54] I disagree. Ms Yaw's clarification during cross-examination meant that even if the parties *intended* to provide the initial funding for the Annex 2 Companies' purchase of their properties ultimately from the parties' share of the Chang Cheng Group's profits, Ms Yaw had no personal knowledge as to whether the initial funding provided by the Chang Cheng Group was *in fact* deducted ultimately from the parties' profit share after every purchase.

46 In sum, there is insufficient evidence – whether documentary, oral or expert – to establish the defendant's contention that it was the parties who provided the initial funding for the Annex 2 Companies' purchase of their properties. It is also clear that the parties managed the profit-sharing account of the Chang Cheng Group *ad hoc*, and with a high degree of informality.

47 As such, I find that the evidence adduced by the defendant does not suffice to prove on the balance of probabilities that the initial funding that CCGPL, CCMWH and TP 177 provided to the Annex 2 Companies was subsequently deducted from the parties' share of the Chang Cheng Group's profits.

48 I turn to the second factor which leads to my finding that the Annex 2 Companies are part of the Chang Cheng Group.

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53 Transcript dated 16 January 2024 at p 93 lines 4–10.

54 Defendant's Reply Closing Submissions dated 16 April 2024 ("DRS") at para 29.

49 The plaintiff's expert, Mr Ang, expresses the opinion that the Annex 2 Companies are "financially and operationally an integral part" of the Chang Cheng Group.[55] This is because the Operating Companies and the Annex 2 Companies were under common management, financial and administrative control. Each Annex 2 Company is majority-owned by at least two of the Owners.[56] The Owners also control the board of directors of all of the Annex 2 Companies.[57] The defendant's expert witness, Mr Tam, does not challenge Mr Ang on this point.[58]

50 Although a court is not obliged to accept expert evidence by reason only that it is unchallenged, if the court finds that the evidence is based on sound grounds and supported by the basic facts, it can do little else than to accept the evidence (*Saeng-un Udom v PP* [2001] 3 SLR 1 at [26]).

51 I accept Mr Ang's expert opinion. It is based on sound grounds and is supported by the evidence of Mr Jason Tay ("Mr Tay") and Ms Yaw, who were ex-employees of CCGPL and CCMWH respectively.

52 Both Mr Tay and Ms Yaw confirmed their involvement in the finance, accounts and affairs of the Annex 2 Companies. For instance, as the former Chief Financial Officer,[59] Mr Tay handled the finances and accounts of the

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55 Mr Ang's Expert Report at para 2.3.44, PBAEIC at p 326.

56 Mr Ang's Expert Report at para 2.3.44, PBAEIC at p 326.

57 Mr Ang's Expert Report at para 2.3.44, PBAEIC at p 326.

58 Mr Tam's Reply Expert Report dated 15 September 2023 at para 40, DBAEIC at p 242.

59 Affidavit of Mr Tay Leong Kee dated 15 September 2023 ("Mr Tay's AEIC") at para 5, DBAEIC at p 95.

Annex 2 Companies.[60] Ms Yaw was involved in the incorporation of seven Annex 2 Companies and in the purchase of their properties.[61] The defendant also admitted that employees of CCGPL were responsible for the financial and administrative affairs of the Annex 2 Companies.[62]

53 As such, I am satisfied that the Annex 2 Companies were incorporated to be and were part of the Chang Cheng Group.

54 I turn to the third factor, which is the subsequent funding for the properties owned by the Property Holding Companies. After 2011, all of the properties owned by the Annex 2 Companies were leased to Chang Cheng Mee Wah Pte Ltd.[63] The rent that each Annex 2 Company receives from Chang Cheng Mee Wah Pte Ltd is then applied to pay down its purchase-money bank loans.[64] Neither party disputes that Chang Cheng Mee Wah Pte Ltd is part of the Chang Cheng Group. This leasing arrangement supports a finding that the Annex 2 Companies are part of the Chang Cheng Group.

55 The fourth relevant factor is the commercial purpose behind the decision to acquire the properties owned by the Annex 2 Companies.

56 At trial, Mr Paul Kok explained that it was he who had suggested to the parties that they should purchase properties. According to Mr Paul Kok, the intent in purchasing the properties was to "develop the food and beverage businesses of the Chang Cheng Group" and to enable the Chang Cheng Group

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60 Mr Tay's AEIC at para 15, DBAEIC at p 101.

61 Ms Yaw's AEIC at para 16, DBAEIC at p 135.

62 Transcript dated 23 November 2023 at p 49 line 24 to p 50 line 3.

63 Mr Ang's Expert Report at para 2.3.3, PBAEIC at p 310.

64 Mr Ang's Expert Report at para 2.3.32, PBAEIC at p 321.

to benefit from the properties' capital appreciation over time.[65] In other words, the properties were purchased to benefit the Chang Cheng Group rather than to benefit the parties personally or even to benefit the registered shareholders of the Annex 2 Companies. Indeed, there would be little commercial purpose for the Chang Cheng Group to fund the Annex 2 Companies' purchase of the properties and their repayment of their purchase-money bank loans unless those properties were to be owned and managed for commercial purposes aligned with advancing the commercial and economic interests of the Chang Cheng Group.

57 For all of these reasons, I find that the Annex 2 Companies are part of the Chang Cheng Group.

58 The defendant submits that several indisputable facts are circumstantial evidence supporting his contention that the Annex 2 Companies are the personal investments of the Owners. I reject all of these submissions.

59 First, the defendant relies on the presence of third-party shareholders in TP406 and TP 802 as being inconsistent with these companies being part of the Chang Cheng Group. I reject this submission. It is undisputed that these other shareholders are employees of the Chang Cheng Group who made no financial contribution to the purchase of the property by the Annex 2 Company in question. These employees were gifted their shares in the Annex 2 Companies as an incentive to the employees. The question then is: who was the donor of these gifts? I find that it is more likely than not that it was the Chang Cheng Group rather than either of the parties in his personal capacity who was the donor of these gifts. I therefore do not consider the presence of these

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[65] Transcript dated 29 November 2023 at p 29 lines 8–25.

shareholders in the Annex 2 Companies to be circumstantial evidence supporting the defendant's submission.

60 Second, the defendant relies on the fact that the bank financing extended to each Annex 2 Company (except Aljunied 119) was secured by personal guarantees given by the registered shareholders and directors of that Annex 2 Company.[66] I reject this submission. As both Mr Ang and Mr Tam confirmed, it is common for a financial institution that is lending money to a company to require and to take personal guarantees from each shareholder and each director of the company, without inquiring further into whether the shareholders actually own their shares outright or whether the directors are actually involved in managing the company.[67] I therefore do not consider these personal guarantees to be circumstantial evidence supporting the defendant's submission.

61 Third, the defendant relies on Mr Tay's evidence. According to Mr Tay, the profits of each Annex 2 Company was not included in the profits of the Chang Cheng Group for distribution.[68] Mr Tay's analysis of the profit-sharing documents of the Chang Cheng Group[69] shows that, since the Chang Cheng Group started keeping accounts in 2001, only the profits from the food and beverage business were distributed.[70]

62 For instance, the document "BOD Profit Sharing For Year 2009" shows that only the profits from the food and beverage business of the Chang Cheng

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66 Mr Tam's Expert Report at para 197b, DBAEIC at p 208.

67 Mr Ang's Expert Report at para 2.2.6(b), PBAEIC at p 358; Transcript dated 17 January 2024 at p 85 lines 4–7.

68 Mr Tay's AEIC at para 17, DBAEIC at p 102.

69 Core Bundle vol 4 at pp 2459–2477.

70 Transcript dated 9 November 2023 at p 80 lines 2–6.

Group for that year were distributed.[71] By contrast, the profits of the Annex 2 Companies then in existence (namely, TP406, TP 802, MS 136, MS 166, Hougang 631 and Aljunied 119), were not distributed.[72]

63 I reject this submission. The fact that the profits of the Annex 2 Companies were not distributed to the parties is immaterial because, as the plaintiff points out, the profits of the Annex 2 Companies were not distributed to anyone, not even to the Annex 2 Companies' shareholders.[73] Both the plaintiff and the defendant confirmed in cross-examination that they have never received any dividends or profits from the Annex 2 Companies.[74] As such, the fact that the parties received no share of the profits of the Annex 2 Companies does not indicate that these companies are not part of the Chang Cheng Group.

64 For completeness, I note that the plaintiff relies on a spreadsheet titled "Group of Companies (Mr Yap)"[75] prepared by Mr Tay in August 2017 ("the 2017 Spreadsheet"). The 2017 Spreadsheet includes the consolidated financial position of the Annex 2 Companies.[76] Based on this, the plaintiff submits that Mr Tay treated those entities as part of the Chang Cheng Group.[77]

65 I reject this submission. Mr Tay states expressly that his understanding has always been that the Annex 2 Companies are not part of the Chang Cheng

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71 Core Bundle vol 4 at p 2459.

72 Core Bundle vol 4 at p 2243.

73 Plaintiff's Reply Closing Submissions dated 16 April 2024 ("PRS") at para 30(b).

74 Transcript dated 10 November 2023 at p 97 lines 20–25; Transcript dated 24 November 2023 at p 50 line 18 to p 51 line 23.

75 Core Bundle vol 4 at pp 2257–2264.

76 Core Bundle vol 4 at p 2258.

77 PCS at para 78.

Group.[78] Even on the plaintiff's own case, the plaintiff was the one who instructed Mr Tay to assess the net asset value of the Chang Cheng Group, *including* the Annex 2 Companies, for the purpose of formulating a proposal for the parties to part ways.[79] As Mr Tay was merely following the plaintiff's instructions, the 2017 Spreadsheet cannot be said to reflect Mr Tay's understanding of the Chang Cheng Group's composition. I thus gave no weight to this document in arriving at my finding that the Annex 2 Companies are part of the Chang Cheng Group.

66 In summary, I find that the plaintiff has established on the balance of probabilities that the Annex 2 Companies (except TP 201) are part of the Chang Cheng Group because: (a) they were incorporated for the benefit of the Chang Cheng Group; (b) the purchase of their properties was funded by the Chang Cheng Group; and (c) they were integrated into the Chang Cheng Group.

The contractual relationship between the parties before the 2011 Agreement

67 I turn to the second subsidiary issue.

68 Part of the plaintiff's case is that – before the Owners entered into the 2011 Agreement – he and the defendant entered into an agreement in or around 2001 that the plaintiff would have a 50% interest in the Chang Cheng Group and that the defendant and Mdm Lim would each have a 25% interest in the Chang Cheng Group, ("the 25% Agreement").[80]

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78 Mr Tay's AEIC at para 26(a), DBAEIC at p 105.

79 Affidavit of Mr Kok Kuan Hwa dated 16 August 2023 at para 32.

80 SOC (Amd No 2) at para 11.

69 The defendant, on the other hand, argues that the parties agreed in or around 1999 that the plaintiff would have a 70% interest and that the defendant would have a 30% interest in the Chang Cheng Group ("the Shareholding Agreement").[81]

70 Neither party seeks any relief in relation to the existence or the enforcement of the 25% Agreement. But in their supplementary written submissions tendered after the oral closing submissions, both parties submit that I ought to make a determination on this issue that is not merely an intermediate and incidental determination but a final determination that is capable of binding the parties in future litigation by way of an issue estoppel.[82]

71 As such, I have determined this issue as though the relief that the plaintiff seeks in his claim includes a declaration that the parties entered into the 25% Agreement; and as though the relief that the defendant seeks in his counterclaim includes a declaration that the parties entered into the Shareholding Agreement.

72 I find that the ownership of the Chang Cheng Group before the 2011 Agreement was governed by the Shareholding Agreement and not the 25% Agreement.

73 There is no evidence, other than the plaintiff's own assertion, that the parties ever entered into the 25% Agreement. The circumstantial evidence relied on by the plaintiff does not support a finding that the parties entered into the 25% Agreement.

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81 DNCC (Amd No 3) at para 7(c).

82 Plaintiff's Supplemental Written Submissions dated 18 July 2024 ("PSS") at para 2; Defendant's Supplemental Written Submissions dated 18 July 2024 ("DSS") at para 1.

74 The plaintiff relies on the undisputed fact that, the Owners entered into the 2011 Agreement[83] as support for his case that the parties entered into the 25% Agreement. But the fact that the parties entered into the 2011 Agreement in or about *2011* is irrelevant to the issue of whether the parties entered into a separate agreement to the same effect *in 2001*.

75 The plaintiff relies on a letter dated 6 February 2017 signed by the plaintiff, the defendant and Mdm Lim.[84] The letter "served 'to make good' the shares of past years' profit", as the past profit-sharing "had NOT been distribute[d] based on the Director's Ownership Percentage" of 50% for the plaintiff and 25% each for the defendant and Mdm Lim.[85] This letter, however, provides no indication as to when the shareholding of 50:25:25 was agreed upon. It is equally likely that this letter was seeking to adjust the past distribution of profits in accordance with the 2011 Agreement and not pursuant to any agreement reached in 2001.

76 In fact, there is objective evidence which points against the existence of the 25% Agreement. The documents "BOD Profit Sharing for Year 2009" and "BOD Profit Sharing for Year 2010" show that Mdm Lim was entitled to only 3% of the profits of the Chang Cheng Group in 2009 and 2010. According to Ms Yaw, the parties decided to increase the total points of profit to 130, giving some of the remaining 30 points to key management employees of the Chang Cheng Group including Mdm Lim.[86] That Mdm Lim was entitled to only 3% of the profits of the Chang Cheng Group in 2009 and 2010 contradicts the

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83 PCS at para 15.

84 Agreed Bundle of Documents vol 3 at p 2097.

85 Agreed Bundle of Documents vol 3 at p 2097.

86 Ms Yaw's AEIC at para 28bii, DBAEIC at p 140.

plaintiff's case that the parties had agreed in 2001 that Mdm Lim should have a 25% interest in the Chang Cheng Group.

77 I thus reject the plaintiff's case that the parties ever entered into the 25% Agreement.

78 By contrast, the contemporaneous and independent evidence suffices to prove on the balance of probabilities that the parties did enter into the Shareholding Agreement.

79 First, the document titled "BOD Profit Sharing for Year 2009" reflects an income split of 70% for the plaintiff and 30% for the defendant.[87] Ms Yaw gave evidence that she prepared this document, as well as earlier profit-sharing documents from 2006 on the understanding that the parties' interest in the Chang Cheng Group was based on the Shareholding Agreement.[88] I found her evidence on this aspect of the defendant's case to be credible and reliable.

80 Next, the 70:30 split of income is also reflected in the document titled "BOD Profit Sharing for Year 2010".[89] Both the plaintiff and the defendant signed and expressly approved this document. Their signatures confirm their agreement that the profit-sharing arrangement was in accordance with the Shareholding Agreement, at least for the year 2010.

81 Further, comparing the profit-sharing documents for 2009 and 2010 with those for years 2011 to 2017[90] shows that 2011 was the first year when the 70:30

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87 Core Bundle vol 4 at pp 2459–2460.

88 Ms Yaw's AEIC at para 28b, DBAEIC at p 140.

89 Core Bundle vol 4 at p 2461.

90 Core Bundle vol 4 at pp 2462–2477.

profit sharing proportion was changed to reflect the 50:25:25 profit sharing proportion under the 2011 Agreement.[91] This is consistent with the defendant's case that the parties departed from the Shareholding Agreement only when they entered into the 2011 Agreement with Mdm Lim. It is also undisputed that the parties' shared the profits of their first business, *ie*, the economy rice stall in Woodlands (see [9] above), in the proportion of 70% for the plaintiff and 30% for the defendant.[92] I find it more likely than not that the parties agreed to continue this arrangement under the Shareholding Agreement until they entered into the 2011 Agreement.

82 Finally, Mr Paul Kok gave evidence that he prepared the profit and loss accounts of the Chang Cheng Group from 1998 to around 2001. His evidence was that before 2001, he had prepared the accounts on the basis that the plaintiff was the sole owner of the businesses.[93] But after 2001, the plaintiff instructed Mr Paul Kok to prepare the profit and loss accounts based on the terms of the Shareholding Agreement.[94] I found Mr Paul Kok's evidence on this point reliable and credible.

83 Considering all of this evidence, I find that the parties entered into the Shareholding Agreement. In view of the parties' common position that I ought to decide this issue formally and with finality, I have included in the judgment that I have entered in this action a formal declaration that the parties did not enter into the 25% Agreement and did enter into the Shareholding Agreement.

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91 Core Bundle vol 4 at p 2462.

92 Mr Kok's AEIC at para 12, PBAEIC at p 13; Mr Yap's AEIC at para 29, DBAEIC at p 10.

93 Affidavit of Mr Paul Kok Kuan Pow dated 15 September 2023 ("Mr Paul Kok's AEIC") at para 13(e), DBAEIC at p 48.

94 Mr Paul Kok's AEIC at para 13(f), DBAEIC at p 48.

The plaintiff failed to prove that the parties entered into the First Agreement

84 On the first main issue, the plaintiff has failed to prove on the balance of probabilities that the parties entered into the First Agreement. I start with the law on oral contracts.

The law on oral contracts

85 The substantive requirements for an oral contract are the same as the requirements for a written contract, namely, (a) an offer and an acceptance; (b) an intention to create legal relations; (c) certainty of terms; and (d) consideration (*Tan Swee Wan and another v Johnny Lian Tian Yong* [2018] SGHC 169 at [222]).

86 In determining whether the substantive requirements for an oral contract to arise have been met, the following principles apply:

(a) The court will consider the relevant documentary evidence and the contemporaneous conduct of the parties at the material time (*ARS v ART and another* [2015] SGHC 78 ("*ARS*") at [53(a)]).

(b) Where possible, the court should look first at the relevant documentary evidence (*ARS* at [53(b)]). If there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if the parties concluded an oral contract (*ARS* at [53(g)]).

(c) For the purposes of determining whether the parties concluded an oral contract, the court is not limited by the more restrictive approach applied to contractual interpretation, such as the parol evidence rule (*The Luna* [2021] 2 SLR 1054 ("*The Luna*") at [38]). There is, however, no

definitive pronouncement on whether subsequent conduct may be considered in order to determine whether the parties concluded a contract (*The Luna* at [33]–[34]).

(d) Oral evidence may be less reliable as it is based on the witnesses' recollection and may be coloured by subsequent events, such as the dispute that has arisen between the parties (*ARS* at [53(d)]). Oral evidence becomes even less reliable where many years have passed since the disputed events (*ARS* at [54]).

(e) Credible oral evidence may clarify the existing documentary evidence (*ARS* at [53(e)]).

(f) Where the witness is not legally trained, the court should not place undue emphasis on the choice of words (*ARS* at [53(f)]).

87 Finally, as emphasised in *Chan Tam Hoi (alias Paul Chan) v Wang Jian and other matters* [2022] SGHC 192 ("*Chan Tam Hoi"*), the burden of proof is on the plaintiff to prove its positive case (at [38]). It is "especially important" to bear this in mind in cases involving oral contracts, where there will be gaps in evidence precisely because there is no direct evidence pointing to a written agreement (*Chan Tam Hoi* at [38]).

88 With the above principles in mind, I start by considering the relevant documentary evidence.

The 2017 Spreadsheet is of minimal relevance

89 The plaintiff places significant weight on the 2017 Spreadsheet to support his case that the parties entered into the First Agreement. As noted above at [64]–[65], Mr Tay prepared this spreadsheet on the plaintiff's

instructions to calculate the value of the defendant's interest in the Annex 2 Companies on two alternatives: (a) the defendant's registered shareholdings in the Annex 2 Companies; and (b) the defendant's 25% interest in the Chang Cheng Group.

90 The plaintiff's original case was that the First Agreement arose from an offer that the *defendant* made to the plaintiff in October 2018[95] through Mr Cho as intermediary and that the *plaintiff* accepted the defendant's offer, again through Mr Cho.[96] In support of this case, the plaintiff submitted in his written closing submissions that the 2017 Spreadsheet is evidence that the parties entered into the First Agreement because it shows that the plaintiff asked Mr Tay to prepare the spreadsheet to evaluate the commerciality of the defendant's offer.[97] But in oral closing submissions, the plaintiff now relies on the 2017 Spreadsheet to advance a different case: "that this [spreadsheet] was in fact the basis of [the *plaintiff's*] proposal … for the [F]irst [A]greement which was ultimately accepted" by the *defendant*.[98]

91 The plaintiff's new case as to who made the offer that led to the First Agreement is materially inconsistent with his original case. This inconsistency in itself casts doubts on whether the parties in fact entered into the First Agreement.

92 Leaving that point aside, I consider that the 2017 Spreadsheet supports neither version of the plaintiff's case. I take the plaintiff's oral closing

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95 Mr Kok's AEIC at para 54, PBAEIC at pp 99–100; PCS at para 95.

96 Mr Kok's AEIC at para 55, PBAEIC at p 100; PCS at para 95.

97 PRS at para 8.

98 Transcript dated 9 July 2024 at p 4 lines 13–15.

submissions as stating his final position on how the First Agreement was formed. The 2017 Spreadsheet is little support for this case for three reasons.

93 First, the 2017 Spreadsheet is not a contemporaneous document. It was prepared in August 2017. The plaintiff's case is that the parties started discussing how they were to part ways only in August 2018.[99] At best, all that the 2017 Spreadsheet suggests is that the plaintiff in August 2017 was *considering* making an offer to the defendant of the terms of the First Agreement. It does not warrant any inference that the plaintiff in fact made any such offer in August 2018, let alone that the defendant accepted any such offer.

94 Second, the 2017 Spreadsheet does not suggest that the defendant had any incentive to accept any offer from the plaintiff to enter into the First Agreement. I reject the plaintiff's argument that the spreadsheet shows that the defendant had a meaningful upside in entering into the First Agreement.[100] The 2017 Spreadsheet shows that entering into the First Agreement would involve the defendant giving up an interest worth $3,751,246.18 in the food and beverage businesses in return for an interest worth $2,782,656.99 in the Annex 2 Companies.[101] Taking the plaintiff's case at its highest and assuming that these figures amount to reliable and accurate evidence of the exchange of value between the parties under the First Agreement assessed in August 2017, it is unclear how accepting an offer in terms of the First Agreement would bring any upside to the defendant. It is undisputed that in August 2018, the defendant rejected the plaintiff's offer to purchase the defendant's interest in the Chang

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99 SOC (Amd No 2) at para 18.

100 PCS at paras 104, 106–107.

101 P10.

Cheng Group for $25m.[102] That being the case, it is inherently unlikely that the defendant would have contracted to sell the same interest just two months later in return for a mere $2.78m. Even based on the plaintiff's own figures, entering into the First Agreement would have left the defendant worse off by over $1m ($3,751,246.18 - $2,782,656.99).

95 Finally, the plaintiff points out that the defendant himself has described a sub-worksheet from the 2017 Spreadsheet in his list of documents as the *plaintiff's* "proposed recalculations".[103] I do not accept this as any sort of admission by the defendant. The phrase "recalculations" is ambiguous. It can indeed refer to recalculations of the parties' interests in the Annex 2 Companies, which is what the plaintiff suggests. But it could equally refer to recalculations of profits, which is Mr Tay's evidence.[104] I therefore do not place any weight on the defendant's characterisation of this sub-worksheet.

96 For the same reasons, the 2017 Spreadsheet does not even support the plaintiff's original case: that the *defendant* made an offer to the *plaintiff* which the plaintiff accepted. I add that it makes no sense for the plaintiff to have approached Mr Tay in August 2017 with the terms of the First Agreement allegedly in mind, when it is also the plaintiff's case that it was the defendant who made the offer to the plaintiff in terms of the First Agreement.

97 For all of these reasons, I do not accept that the 2017 Spreadsheet supports the plaintiff's case that the parties entered into the First Agreement.

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102 PCS at para 102; Transcript dated 28 November 2023 at p 22 line 22 to p 23 line 2.

103 PCS at para 105.

104 Mr Tay's AEIC at para 26(b), DBAEIC at p 105.

The meeting between the plaintiff and Mr Cho has little weight

98 I turn to the next item of evidence that the plaintiff relies on, which is an audio recording of a meeting between the plaintiff and Mr Cho on 15 October 2021.

99 The plaintiff submits that this audio recording shows that Mr Cho clearly confirmed in this meeting that the defendant had agreed to withdraw from the food and beverage businesses of the Chang Cheng Group unconditionally, in exchange for retaining his interest in CCGPL and the Annex 2 Companies as reflected in those companies' register of shareholders.[105] The plaintiff points to the following exchanges between himself and Mr Cho at this meeting:[106]

> [Plaintiff]: So I said, "Okay. Take the hundred million dollars." And you came back and said, "Ah Hwa, I've told Ah Sang." We sat down and discussed. Okay. *The conditions that he proposed were withdrawing without conditions. Right? After that, he only wanted the real estate. Right? He only wanted the real estate.* So you said… Okay? So we went back and terminated all those without real estate.
>
> Only the real estate ones are remaining. Right? Left with the real estate. So, I've been thinking. I've been thinking until now. Okay, he's withdrawing without conditions, only left with the real estate. So I was here that day, and I told him to give me six months. Once the business is stabilised, we'll discuss it again. So six months, right, I was like, okay, and gave him $25 million. Okay, $25 million. After that, he remained quiet. Fine. And then we sat here. You were sitting here. Okay, I gave him $30 million. I gave $30 million to him. Okay. I told him $30 million. And he remained silent. He was quiet. Then, you told me that, okay [Ah] Hwa, I promised Ah Sang to sell those four businesses.
>
> [Mr] Cho: Yes.
>
> [Plaintiff]: Yes ….
>
> [Plaintiff]: Yes. Because he withdraw without conditions. Without conditions would mean you don't want the business.

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105 PCS at para 121.

106 Core Bundle vol 5 at pp 3236–3238.

> You just want to keep the real estate, right? But he told me he withdraw without conditions. Withdrawing without conditions means I don't want this business anymore. I'll return everything to you. I no longer want them. Right? It's not like, "Hey, I'm withdrawing without conditions. I still want to keep my shares."
>
> [Mr] Cho: Yes, he's saying this now…
>
> …
>
> [Plaintiff]: That's why it was crucial at the time because you told me you withdraw without conditions.
>
> [Mr] Cho: Yes, correct.
>
> [Plaintiff]: Then, it's simple to me. You withdraw without conditions means…
>
> [Mr] Cho: It means you don't want anything. Yes, you don't want anything because you withdraw without conditions.
>
> [Mr] Cho: Yes. Correct?
>
> [Plaintiff]: Correct.
>
> [Mr] Cho: He said that, so I told you this too.
>
> [Plaintiff]: Yes. *And if he withdraw without conditions and took all the real estate, he wouldn't have… This is actually 25%. The businesses are 35%, 40%, right? Overall, it's 38% and not 25%.*
>
> [Mr] Cho: I know. I know…
>
> [emphasis added]

100 I give these statements by Mr Cho very little weight. I consider them to be unreliable for the following reasons.

101 First, Mr Cho's statements are not contemporaneous evidence of the parties' contractual intention objectively ascertained in October 2018. That is the critical time, because that is the time at which the plaintiff alleges that they entered into the First Agreement. Mr Cho made these statements almost three years later.

102 Second, as the defendant points out, the plaintiff arranged this meeting just two weeks before commencing this action.[107] I find that the plaintiff arranged this meeting with Mr Cho and recorded their discussions in order to steer Mr Cho into making recorded statements that were favourable to the plaintiff's intended case and unfavourable to the defendant's anticipated case. In Mr Cho's own words, the plaintiff kept "leading" him during this meeting.[108] Crucially, the plaintiff himself admits that he recorded the meeting "solely" for the purpose of enabling him to commence this action against the defendant".[109]

103 Third, it is obvious from listening to this recording that both the plaintiff and Mr Cho were intoxicated during this meeting. The plaintiff confirms that he and Mr Cho had been drinking alcohol for about two hours before the meeting.[110] Mr Cho's evidence is that he had "drunk a lot"[111] – about seven or eight bottles of beer.[112]

104 In all the circumstances, I consider it likely that Mr Cho was saying at this meeting what he thought the plaintiff wanted to hear. As Mr Cho puts it, he responded to the plaintiff in a manner intended "to humour" the plaintiff.[113] This is very often what an intermediary does when there is a breakdown between the two principal parties. I therefore consider Mr Cho's statements to be unreliable

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107 Defendant's Closing Submissions dated 19 March 2024 ("DCS") at para 58.

108 Transcript dated 1 December 2023 at p 5 lines 18–20.

109 Transcript dated 8 November 2023 at p 46 lines 4–7.

110 Transcript dated 8 November 2023 at p 49 line 19 to p 50 line 2.

111 Transcript dated 1 December 2023 at p 1 lines 22–23 and p 3 line 12.

112 Transcript dated 1 December 2023 at p 25 lines 13–18.

113 Transcript dated 1 December 2023 at p 6 lines 4–8.

evidence of the parties' intentions in October 2018 and worthy of very little weight.

105 In any event, even if I go into the content of Mr Cho's statements, they are not of much assistance to the plaintiff. During the meeting, the plaintiff says to Mr Cho: "And if he withdraw [*sic*] without conditions and took all the real estate, he wouldn't have… This is actually 25%. The businesses are 35%, 40%, right?" (see [99] above). This is at most a vague statement which *alludes* to the defendant receiving a larger interest in the Annex 2 Companies. But this is slender evidence from which to infer that the parties entered into the First Agreement.

The statement made by the plaintiff to his former solicitor was inadmissible

106 The plaintiff also relies on the evidence of his former solicitor, Mr Lim Kok Meng ("Mr Lim"). The plaintiff instructed Mr Lim in July 2020 in relation to the Second Agreement. Mr Lim was not advising the plaintiff in relation to or at the time of the First Agreement.

107 According to Mr Lim, the plaintiff told him in July 2020, as part of his instructions on the background to the Second Agreement, that the defendant had already agreed to relinquish 25% of his share in the Chang Cheng Group and in return, "in terms of the [Annex 2] companies, notwithstanding that [the defendant] should have only been entitled to 25 per cent, … he would be given whatever that was in ACRA, which would be higher than 25 per cent".[114]

108 Mr Lim's evidence does not assist the plaintiff to prove that the parties entered into the First Agreement.

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[114] PCS at para 125; transcript dated 21 November 2023 at p 23 lines 14–24.

109 First, Mr Lim's evidence of the plaintiff's out-of-court statement to him that the parties had entered into the First Agreement is inadmissible to prove the truth of its contents. Section 62(1) of the Evidence Act 1893 (2020 Rev Ed) ("the Evidence Act") states that oral evidence "must in all cases be direct". Specifically, if the oral evidence refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard that fact (s 62(1)(*a*) Evidence Act). What the plaintiff must prove on this branch of his case is that offer and acceptance coincided in October 2018 to give rise to the First Agreement as a contract. I assume for present purposes that this is a question of pure fact. Mr Lim, however, did not witness this fact directly. In other words, Mr Lim's evidence of the plaintiff's statement to him is not direct evidence of the contents of the statement within the meaning of s 62(1) of the Evidence Act. As such, the plaintiff cannot rely on Mr Lim's evidence to prove that the parties did indeed enter into the First Agreement.

110 Second, even if the plaintiff's out-of-court statement to Mr Lim in July 2020 were admissible despite s 62(1) of the Evidence Act, it is of very little weight. The plaintiff relies on Mr Lim's evidence to prove what is in truth a mixed question of fact and law or perhaps even an opinion (*ie*, that offer and acceptance coincided in October 2018 to give rise to the First Agreement), and not to prove an issue of pure fact. In this context, the plaintiff's out-of-court statement to Mr Lim in July 2020 is of very little weight as it is self-serving evidence. Indeed, it is perhaps even inadmissible as a mere statement of opinion.

111 Section 159 of the Evidence Act does not assist the plaintiff. Under this provision, a former statement made by a witness "relating to the same fact at or about the time when the fact took place" may be proved at trial to corroborate the witness's evidence (see *eg*, *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP and others* [2023] SGHC 141 at [118]–[119]). As the defendant submits, s 159

of the Evidence Act is relevant only where the former statement was made "at or about the time when the fact took place".[115] Here, there is a significant gap of almost two years between the date on which the plaintiff alleges the parties entered into the First Agreement and the date on which the plaintiff made these statements to Mr Lim.

112 Finally, the test of whether parties intend to enter into a contract is objective (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") at [41]). A party's subjective belief that a counterparty has entered into a contract with him is immaterial (*Tribune Investment* at [41]). As such, even taken at its highest, all that the plaintiff's statement to Mr Lim in July 2020 establishes is that the plaintiff subjectively *believed* in July 2020 that the parties had entered into the First Agreement in October 2018. It is not evidence that they actually did so.

The alleged 25% Agreement does not assist the plaintiff's case

113 The plaintiff also relies on his case that the parties entered into the 25% Agreement as evidence that the parties entered into the First Agreement. The submission is that it was because the defendant had only a 25% interest in the Annex 2 Companies pursuant to the 25% Agreement that the defendant had an incentive to enter into the First Agreement,[116] *ie*, to increase his interest in the Annex 2 Companies so that it matched his registered shareholding in those companies.

114 I have rejected the plaintiff's claim that the parties entered into the 25% Agreement (see [77] above) even though I have accepted the plaintiff's claim

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115 DRS at para 57.3.

116 PSS at para 7.

that the Annex 2 Companies are part of the Chang Cheng Group (see [66] above). It follows from my rejection of the plaintiff's case on the 25% Agreement that he cannot rely on it as evidence to support his claim that the parties entered into the First Agreement.

115 Even if I were to find that the parties did enter into the 25% Agreement, I reject the plaintiff's submission that the 25% Agreement, which gave rise to merely personal obligations, could have had the proprietary effect of limiting the defendant's interest in the Annex 2 Companies to 25%. I explain my reasons for this conclusion below.

The parties' subsequent conduct does not assist the plaintiff

116 Finally, the plaintiff's case that the parties entered into the First Agreement rests also on evidence of the parties' subsequent conduct, *ie* after October 2019. As noted above at [86(c)], it remains unclear whether the court can consider subsequent conduct in determining whether parties have formed a contract. One concern is that evidence of subsequent conduct is not contemporaneous evidence from which to ascertain objectively their intentions at the time the contract was allegedly formed. Another concern is that parties' conduct after a dispute has arisen will be tainted by hindsight or motivated by a desire to rewrite history self-servingly in order to gain an advantage in any proceedings to resolve the dispute.

117 Having said that, I am prepared to assume in favour of the plaintiff that I may consider the parties' subsequent conduct as evidence to support this branch of his case, at least up to the point where a dispute arose, and the parties' relationship became adversarial. It appears to me that the parties' conduct after this point is unlikely to be reliable evidence for the reasons I have given. I

therefore do not consider any conduct by the parties after January 2021. That is when the parties assumed adversarial positions in anticipation of proceedings to resolve the dispute between them.

118 I now turn to the items of subsequent conduct on which the plaintiff relies.

119 The first item is the defendant's conduct in resigning as an officeholder in the food and beverage businesses of the Chang Cheng Group and transferring the Annex 1 Shares to the plaintiff in December 2018 (see [20] above).[117] But this conduct is consistent only with defendant's alleged obligation under the First Agreement. The defendant's conduct gives no indication as to the plaintiff's obligation in return. In fact, the defendant's conduct is equally consistent with his case that the parties entered into the Share Sale Contract (see [129] below). As such, this conduct is of little weight as evidence that the parties entered into the First Agreement.

120 Next, the plaintiff relies on the parties' subsequent conduct in relation to CCGPL. As I have mentioned, CCGPL occupies a special position in the Chang Cheng Group. It owns real property while also owning operating subsidiaries. CCGPL is not an Annex 1 Company. As such, the defendant continues to be a shareholder of CCGPL to this day.[118] After the defendant transferred the Annex 1 Shares to the plaintiff, CCGPL transferred all of its shares in its own subsidiaries directly and only to the plaintiff and Mdm Lim.[119] None of CCGPL's shares in its subsidiaries were transferred to the defendant.

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117 PCS at para 112(a); Mr Kok's AEIC at para 57, PBAEIC at p 102; Mr Yap's AEIC at para 106(c), DBAEIC at p 30.

118 Mr Kok's AEIC at para 58, PBAEIC at pp 102–104.

119 Mr Kok's AEIC at para 58, PBAEIC at pp 102–104.

121 According to the plaintiff, CCGPL's transfers of the shares in its subsidiaries only to the plaintiff and Mdm Lim is evidence that the parties entered into the First Agreement. It is part of the defendant's agreement to relinquish entirely his interest in the food and beverage businesses and to retain only his registered interests in the Annex 2 Companies *and* in CCGPL (because it owns real property).[120]

122 The existence of the First Agreement is not the only, or even a more likely, explanation for CCGPL's transfer of the shares in its subsidiaries to [the plaintiff and Mdm Lim. Once again, this conduct is equally consistent with the defendant's case that the parties entered into the Share Sale Contract (see [129] below). As such, this conduct is of little weight as evidence that the parties entered into the First Agreement.

123 In fact, as the defendant points out, his conduct in resigning as a director of CCGPL contradicts the terms of the First Agreement.[121] Under the First Agreement, the defendant was required to resign as an officeholder in the food and beverage businesses. On the plaintiff's own case, CCGPL is not a food and beverage business because it owns real property.[122] In oral closing submissions, counsel for the plaintiff explained that "it [was] part of the [F]irst [A]greement that he would relinquish all his interest[s] in the businesses of the Chang Cheng Group [and] to take no further part of the business operations".[123] This explanation does not address the inconsistency between the defendant's

120 PRS at para 12(b).

121 DRS at para 58.

122 SOC (Amd No 2) at Annex A.

123 Transcript dated 9 July 2024 at p 40 lines 4–14.

resignation as an officeholder of CCGPL and the alleged terms of the First Agreement.

124 I thus find that the parties' conduct in relation to CCGPL does not support a finding that the parties entered into the First Agreement.

125 The plaintiff next relies on the parties' subsequent conduct in entering into the Second Agreement.[124] Under the Second Agreement, the parties agreed to part ways in four of the Annex 2 Companies (*ie*, MT59, TP 201, Hougang 631 and Aljunied 119) by divesting their interest in these companies to these companies' third-party shareholders in accordance with the parties' registered shareholding. According to the plaintiff, this conduct is consistent with the terms of the First Agreement and hence supports his case that the parties entered into the First Agreement.[125]

126 Once again, the existence of the First Agreement is not a likely explanation for the parties' conduct in agreeing to the terms of the Second Agreement. That the parties dealt with their interests in these four Annex 2 Companies in accordance with their registered shareholdings is equally consistent with the defendant's case that the parties' interest in the Annex 2 Companies equalled their registered shareholding *from the outset*. As such, I do not accept that the Second Agreement supports a finding that the parties entered into the First Agreement.

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124 PCS at para 167.

125 PCS at para 167(a).

127 Finally, the plaintiff also relies on the defendant's alleged delay in disputing the existence of the First Agreement.[126] This requires me to look at the parties' conduct in July and August 2021. I have concluded above (see [117]) that it would be unsafe to examine the parties' subsequent conduct after January 2021 in order to determine whether the parties entered into the First Agreement. That is because the parties', by that time, had adopted adversarial positions. As such, I reject the plaintiff's argument on this point.

128 For all of these reasons, I find that the plaintiff has failed to establish on the balance of probabilities that the parties entered into the First Agreement. The defendant is therefore entitled to a declaration that the parties did not enter into the First Agreement.

The defendant failed to prove that the parties entered into the Share Sale Contract

129 I turn to the defendant's case that the parties entered into the Share Sale Contract. The defendant's case is that the terms of the Share Sale Contract are as follows:[127]

(a) The defendant would transfer all his shares in ten companies in the Chang Cheng Group to the plaintiff and resign as an officeholder of the companies in the Chang Cheng Group.

(b) The plaintiff would fully and fairly compensate the defendant for his 25% share in the Chang Cheng Group within seven months after he transferred these shares to the plaintiff.

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126 PCS at para 128.

127 DNCC (Amd No 3) at para 24.

130 Because the defendant does not accept that the Annex 2 Companies are part of the Chang Cheng Group, the implicit consequence of the Share Sale Contract is that the defendant retains his registered shareholding in the Annex 2 Companies absolutely.

131 It is common ground that the defendant has not received any compensation for the Annex 1 Shares that he transferred to the plaintiff in December 2018. The defendant's counterclaim therefore seeks damages from the plaintiff for his breach of the Share Sale Contract.[128]

132 The defendant originally pleaded that the ten companies whose shares he was to transfer to the plaintiff were the Annex 1 Companies.[129] In oral closing submissions, however, the defendant withdrew this list, leaving the ten companies whose shares he was to transfer to the plaintiff unspecified in the Share Sale Contract.

133 I find it inherently unlikely that the defendant would have agreed to enter into a contract on such uncommercial terms. The Share Sale Contract: (a) allowed the plaintiff to *dictate* the ten companies whose shares the defendant was to transfer to the plaintiff; (b) obliged the defendant to resign as an officeholder from the companies in the Chang Cheng Group; (c) required the defendant to wait patiently up to seven months for payment; and (d) left entirely unquantified the sum that the plaintiff was to pay the defendant within those seven months.

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128 DNCC (Amd No 3), relief (B).

129 DNCC (Amd No. 3) at para 24(c).

134 Leaving aside the lack of commerciality in the alleged Share Sale Contract, there is also insufficient evidence to establish on the balance of probabilities that the parties ever entered into this contract. For instance, Mr Cho, who the defendant alleges conveyed the plaintiff's offer of this contract to the defendant, gave evidence that the plaintiff's offer was "not about the interest in [the] Chang Cheng Group" but about "the sign[ing] [of] the documents for [the plaintiff] so that the company could continue its operations".[130] This evidence contradicts the defendant's pleaded case. There is in fact little or no evidence to prove that the parties ever entered into the Share Sale Contract.

135 Even on the assumption that that the plaintiff made on offer of the Share Sale Contract to the defendant through Mr Cho and the defendant accepted it again through Mr Cho, I find that the terms of the Share Sale Contract are insufficiently certain to give rise to a contract.

136 On the defendant's own case, the Share Sale Contract did not specify which ten companies' shares the defendant was to transfer to the plaintiff or how "the full and fair compensation" was to be quantified. The pleaded terms of the Share Sale Contract suggest that the agreement between the parties, if any agreement was reached, was no more than an agreement to negotiate. A mere agreement to negotiate is too uncertain to be enforceable and therefore cannot give rise to a contract (*JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 at [99]–[100], citing *Walford v Miles* [1992] 2 AC 128).

137 The defendant has also not specified with the necessary certainty *when* the parties entered into the Share Sale Contract. In *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2019] SGHC 68

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130 Transcript dated 30 November 2023 at p 58 lines 17–21 and p 64 lines 14–21.

("*PNG*"), it was held that although it is not necessary for a party to plead "the *exact* date" [emphasis in original] when an alleged oral contract was made, the party must plead a date with "reasonable certainty" (at [148]). The plaintiff in *PNG* identified 20 days in October 2001 as the relevant period in which an alleged oral contract was entered into (*PNG* at [149]). On the facts of *PNG*, this did not satisfy the requirement of reasonable certainty.

138 In the present case, the defendant pleads that: (a) the plaintiff made an offer of the Share Sale Contract to him "[i]n or around early-mid December 2018"; (b) the defendant accepted the offer; and (c) the defendant transferred the Annex 1 Shares to the plaintiff "on 20 December 2018".[131] Like the plaintiff in *PNG*, the defendant has failed to plead with reasonable certainty the date when the parties entered into the Share Sale Contract.

139 Indeed, the defendant himself acknowledges the lack of certainty in the Share Sale Contract. Although his primary submission is that the parties are bound by the Share Sale Contract, his alternative submission is that the Share Sale Contract is void for uncertainty.[132]

140 In my view, an offer in the terms of the Share Sale Contract, even if it were made and accepted, could not, as a matter of law, amount to a contract. It would have been nothing more than an unenforceable agreement to agree.

141 For these reasons, I find that the defendant has failed to prove on the balance of probabilities that the parties entered into the Share Sale Contract. As

131 DNCC (Amd No 3) at para 26.

132 DCS at para 188.

such, it is unnecessary for me to consider whether the plaintiff has breached the Share Sale Contract.[133]

The plaintiff holds the Annex 1 Shares on resulting trust for the defendant

142 I have found that the parties did not enter into either the First Agreement (the plaintiff's case) or the Share Sale Contract (the defendant's case). In oral closing submissions, counsel for the plaintiff accepted that, if the plaintiff failed to prove on the balance of probabilities that the parties had entered into the First Agreement, then the result would be that the plaintiff would hold the Annex 1 Shares on a resulting trust for the defendant.[134]

143 Quite apart from the plaintiff's concession, it is clear that the legal requirements for a resulting trust are satisfied. A resulting trust arises where a transferor transfers property or causes property to be transferred to a transferee in circumstances in which the transferor lacks an intent to benefit the transferee (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [35]). It is undisputed that the defendant did not intend the transfer of the Annex 1 Shares to the plaintiff to an unconditional benefit the plaintiff, *ie*, to be a gift to the plaintiff. Even on the plaintiff's own case, the defendant was to receive consideration in the form of an increased interest in the Annex 2 Companies.

144 This suffices to give rise to a resulting trust over the Annex 1 Shares binding the plaintiff in favour of the defendant. It is thus unnecessary for me to

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133 P Lead Counsel Statement, Part Two, Section I at s/n 4 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 4 of the legal issues.

134 Transcript dated 9 July 2024 at p 41 lines 18–25.

address the defendant's alternative case to recover the Annex 1 Shares in unjust enrichment or on a constructive trust.[135]

145 The plaintiff is therefore liable to deliver the Annex 1 Shares up to the defendant for no consideration. He is also liable to account to the defendant for any and all benefits that the plaintiff has received since the defendant transferred the Annex 1 Shares to him in December 2018 where those benefits are referable to the Annex 1 Shares.

Issue 2: The Third Agreement

146 I turn to the second issue, which is whether the parties entered into the Third Agreement. According to the plaintiff, the parties entered into the Third Agreement on 5 December 2020 when the defendant accepted, through Mr Paul Kok, the plaintiff's offer in the following terms:[136]

> (a) The plaintiff would purchase the shares registered in the defendant's name in CCGPL and the remaining six Annex 2 Companies (*ie*, TP406, MS 136, MS 166, HOL 40, NL 10 and TP 802). The purchase price would be based on the values of the properties held by those companies.
>
> (b) Each party would procure valuations of the properties held by those companies from reputable property valuers by 5 January 2021. In the event of a difference in the two valuations for any given property, the sale price of the shares in that entity would be based on the average of the two valuations.

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135 P Lead Counsel Statement, Part Two, Section I at s/n 8 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 8 of the legal issues.

136 SOC (Amd No 2) at paras 24–26.

147 The plaintiff seeks a declaration that the parties are bound by the Third Agreement.[137] The plaintiff also seeks a declaration that the defendant breached the Third Agreement[138] and should be compelled specifically to perform it or to pay damages in lieu of specific performance.[139]

148 In my view, the parties had arrived by 5 December 2020 at, at most, a *consensus ad idem* on a possible way forward for a parting of the ways. But this *consensus ad idem* did not give rise to a contract because the parties lacked the intention to create legal relations on 5 December 2020.

149 I start with the undisputed facts. It is undisputed that in November or December 2020, the parties were negotiating through Mr Paul Kok as their intermediary the terms on which the defendant would sell to the plaintiff his interest in CCGPL and the remaining six Annex 2 Companies.[140] More specifically, it is undisputed that the plaintiff met Mr Paul Kok on or around 2 December 2020 and conveyed a proposal for the defendant to purchase the defendant's shares in CCGPL and the remaining Annex 2 Companies based on a valuation of the real property held by these seven companies at $100m.[141] On the same day, the plaintiff asked Mr Paul Kok to give the defendant a handwritten note from the plaintiff.[142] The plaintiff's note set out his valuation of each of the seven real properties held by CCGPL and the remaining Annex 2

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137 SOC (Amd No 2), relief (a).

138 SOC (Amd No 2), relief (b).

139 SOC (Amd No 2), reliefs (c)–(d).

140 Mr Kok's AEIC at paras 71–75, PBAEIC at pp 117–121; Mr Yap's AEIC at para 122; DBAEIC at pp 33–35.

141 Mr Kok's AEIC at para 72, PBAEIC at p 118; Mr Yap's AEIC at paras 122(c)–(d), DBAEIC at p 34; Mr Paul Kok's AEIC at para 33(b), DBAEIC at p 57.

142 Core Bundle vol 5 at p 3254.

Companies.[143] The defendant confirms that Mr Paul Kok conveyed to him the plaintiff's proposal and his handwritten note.[144]

150 The parties' dispute of fact is over the subsequent events.

151 According to the plaintiff, Mr Paul Kok informed him on 5 December 2020 that the defendant had accepted the plaintiff's proposal. Additionally, the plaintiff alleges that the *defendant* counteroffered the term set out at [146(b)] above,[145] and that the plaintiff told Mr Paul Kok that he accepted the term.[146] The plaintiff's case is that the defendant's counteroffer and the plaintiff's acceptance of it gave rise to the Third Agreement on 5 December 2020.

152 The defendant and Mr Paul Kok, on the other hand, assert that the defendant did not accept the plaintiff's offer.[147] According to them, Mr Paul Kok suggested that the parties obtain their own valuations,[148] and it was the *plaintiff* who then altered his own offer by proposing the term set out at [146(b)] above on 10 December 2020.[149] The defendant alleges that he rejected the plaintiff's offer and asked Mr Paul Kok to communicate his rejection to the plaintiff.[150] Mr

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143 Mr Kok's AEIC at para 72, PBAEIC at pp 118–119; Mr Yap's AEIC at para 122(d), DBAEIC at p 34.

144 Mr Yap's AEIC at para 122(e), DBAEIC at p 34.

145 Mr Kok's AEIC at para 74, PBAEIC at p 120.

146 Mr Kok's AEIC at para 74, PBAEIC at p 120.

147 Mr Yap's AEIC at para 122(e), DBAEIC at p 34; Mr Paul Kok's AEIC at para 33(d), DBAEIC at p 58.

148 Mr Yap's AEIC at para 122(f), DBAEIC at p 34; Mr Paul Kok's AEIC at para 33(e), DBAEIC at p 58.

149 Mr Yap's AEIC at para 122(g), DBAEIC at p 35.

150 Mr Yap's AEIC at para 122(h), DBAEIC at p 35.

Paul Kok confirms that he conveyed the defendant's rejection to the plaintiff in or around March 2021.[151]

153 As cautioned in *ARS*, parties' oral evidence tends to be less reliable in ascertaining whether the parties entered into a contract (see [86(d)] above). Oral evidence is based on recollection, which may be inaccurate and tainted by subsequent events. I thus place little weight on resolving this discrepancy in the parties' oral evidence.

154 Before I address other items of evidence that I have considered in arriving at a finding on the Third Agreement, I deal with a preliminary objection by the defendant. The defendant contends that the alleged terms of the Third Agreement are too uncertain to give rise to a contract because important commercial terms remain unresolved.[152] I reject this argument.

155 It is well-established that the requirement of certainty may be satisfied even if some contractual terms have not yet been finalised (*Toptip Holding Pte Ltd v Mercuria Energy Trading Pte Ltd and another appeal* [2018] 1 SLR 50 ("*Toptip*") at [40]). The test is whether an "objective appraisal of the conduct and language of the negotiating parties leads to the conclusion that, having agreed on the essential terms, [the parties] intended to be bound immediately" (*Toptip* at [40]).

156 The essential terms of a contract of sale generally include the parties, the price and the subject matter (*Tan Ngiap Tong v Tan Ngep Hong* [2021] SGHC 220 at [5]). I accept the plaintiff's submission that each of these essential

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151 Mr Paul Kok's AEIC at para 33(i), DBAEIC at p 59.

152 DCS at para 126.

terms can be found in the alleged terms of the Third Agreement. The plaintiff and the defendant are the parties to the contract. The subject matter is the defendant's registered shareholdings in CCGPL and the remaining Annex 2 Companies. The purchase price is based on the values of the properties held by those companies.[153] The alleged terms of the Third Agreement even include a mechanism for establishing those values. It is true that the alleged terms of the Third Agreement make no provision for "the completion date, the signing date, bank financing and pre-emptive rights and the companies' liabilities".[154] But in my view, the lack of agreement on these issues does not introduce so much uncertainty that no contract could arise. The essential terms were agreed.

157 The crux of the issue is therefore whether the parties intended to create legal relations and thereby "to be bound immediately" by the essential terms that they had agreed.

No intention to create legal relations

158 The plaintiff submits that the parties did intend to create legal relations on 5 December 2020. The plaintiff relies on correspondence and discussions involving the parties' solicitors in December 2020 and January 2021, shortly after the Third Agreement was allegedly concluded.[155]

159 As a preliminary point, the defendant contends that many of the documents on which the plaintiff relies for this submission are inadmissible by reason of without prejudice privilege.[156] I do not accept this submission. I

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153 PRS at para 51.

154 DCS at para 159.

155 Transcript dated 9 July 2024 at p 63 lines 3–19.

156 DCS at paras 156–161.

instead accept the plaintiff's submission that, even if the without prejudice privilege did attach to these documents, the defendant waived any such privilege by disclosing these documents in discovery without asserting the privilege (*Greenline-Onyx Envirotech Phils, Inc v Otto Systems Singapore Pte Ltd* [2007] 3 SLR(R) 40 at [21]–[22]).

160 I turn now to the documents that the plaintiff relies on.

161 The fact that the parties had reached an "agreement" is asserted in both an attendance note dated 10 December 2020 and in an e-mail from the plaintiff's former solicitor, Ms Nichola Koh ("Ms Koh"), to the defendant's solicitor then and now, Mr Low Chai Chong ("Mr Low"), on 21 December 2020.

162 The attendance note[157] was taken by Ms Koh of an internal discussion she had with Mr Lim on 10 December 2020. The note records that Mr Lim told Ms Koh that the plaintiff had instructed Mr Lim that the plaintiff and the defendant had "agreed" on the plaintiff's purchase of the defendant's interest in CCGPL and the remaining Annex 2 Companies. The attendance note further records that the parties had "agreed" to appoint their own valuers and to do so by early January 2021.

163 On 16 December 2020, Mr Lim had a telephone discussion with Mr Low. Mr Lim's evidence is as follows. Mr Lim informed Mr Low that the plaintiff had instructed Mr Lim that the parties had entered into the Third Agreement. Mr Low responded that he had been similarly instructed. Mr Low was concerned that the plaintiff's valuers would provide valuations substantially lower than the defendant's valuers. Mr Lim suggested that the

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157 Agreed Bundle of Documents vol 23 at p 16553.

parties should then appoint a third valuer to provide a benchmark valuation. But Mr Lim and Mr Low eventually agreed to proceed as agreed by the parties by 5 January 2021, *ie* by averaging the two valuations.

164 On 21 December 2020, Ms Koh sent an e-mail to Mr Low summarising his telephone discussion with Mr Lim on 16 December 2020. As the plaintiff submits, this e-mail explicitly states that the parties "have reached an agreement" and accurately records the terms of the Third Agreement.[158] The email reads as follows:[159]

> We refer to the teleconversation between yourself and our Mr Lim Kok Meng last week.
>
> As discussed, *our clients have reached an agreement and our client will be purchasing the properties. The purchase price will be the average of 2 valuations, each conducted by your client and our client respectively.* We understand that your client will be engaging Colliers for this purpose. Our client is in the midst of finalising engagement of a valuer. *We further note that the valuations must be issued by 5 January 2021.*
>
> …
>
> [emphasis added]

165 I accept the plaintiff's submission that special significance may be attributed to a solicitor's use of the word "agreement". It is correct that that word is, ambiguous. It can refer simply to a consensus ad idem falling short of a contract. But at least on one of its meanings is a legal term of art synonymous with "contract". Nevertheless, the correspondence and discussions between the solicitors has little evidential value in establishing that the parties themselves intended to create legal relations on 5 December 2020.

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158 PCS at para 193.

159 Core Bundle vol 3 at p 1508.

166 The correspondence and discussions merely repeat and record, between solicitors, the parties' out-of-court statements in their instructions to their respective solicitors that the parties had reached a *consensus ad idem*. Whether that *consensus ad idem* was accompanied by the legal requirements for it to amount to a contract is ultimately a question of mixed fact and law. The resolution of that question does turn on the label that the parties apply to their *consensus ad idem*, or the label that they use in conveying their instructions to their own lawyers to act on that *consensus ad idem*, even if those lawyers are sophisticated commercial lawyers. Thus, Ms Koh's attendance note dated 10 December 2020, Mr Lim's account of his telephone discussion with Mr Low on 16 December 2020 and Ms Koh's e-mail dated 21 December 2020 do not assist the plaintiff in establishing that the parties had the intention to create legal relations on 5 December 2020.

167 Mr Low did not respond to Ms Koh's e-mail dated 21 December 2020. As a result, she sent another e-mail to Mr Low on 4 January 2021. In that e-mail, Ms Koh informed Mr Low that the plaintiff had already appointed a valuer and asked him when he would like to have another discussion.[160] Mr Low did not respond to this email either. Ms Koh asked Mr Low for an update by two emails sent on 7 January 2021 and 11 January 2021.[161]

168 It was only on 11 January 2021 that Mr Low responded to Ms Koh's email of 21 December 2020 in the following terms:[162]

> Our valuer will need a few more days. I just noticed your email of 21 December where you suggested that there was agreement

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160 Core Bundle vol 2 at p 964.

161 Core Bundle vol 2 at pp 965–966.

162 Core Bundle vol 2 at p 967.

> that your client would be purchasing all the properties. There is no such agreement as yet. I will speak to [Mr Lim] tomorrow.

169 Mr Lim's evidence is that he spoke to Mr Low a few days after his email of 11 January 2021. In this conversation, Mr Lim's evidence is that Mr Low told Mr Lim that the defendant had "had a change of mind" and intended to deal with his interests in CCPGL and the remaining Annex 2 Companies on the same terms as in the Second Agreement.[163]

170 Mr Low's denial in his email of 11 January 2021 of an agreement between the parties came three weeks after Ms Koh had asserted on behalf of the plaintiff that the parties had in fact reached an agreement. According to the plaintiff, Mr Low's email after such prolonged silence is significant because it shows that the defendant initially accepted that the parties had reached an agreement on and after 5 December 2020 and then changed his mind on or before 11 January 2021.[164]

171 I accept the plaintiff's submission that Mr Low's email of 11 January 2021 after three weeks of silence – even if it took place over the end of year festive period[165] – and compared to the earlier discussions between the solicitors does suggest that the defendant had by then had second thoughts about the *consensus ad idem* that the parties had reached in December 2020.

172 Mr Low's response on 11 January 2021 that he had "just noticed" Ms Koh's e-mail of 16 December 2020 is artful. Four of Mr Low's colleagues were copied on Ms Koh's follow-up e-mails before her e-mail of 11 January 2021.

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163 Affidavit of Mr Lim Kok Meng (Lin Guoming) dated 14 September 2023 at para 17, PBAEIC at p 265.

164 PCS at para 196(b).

165 DRS at para 81.

At least one of those four colleagues must have read Ms Koh's e-mail of 16 December 2020 and brought it to Mr Low's attention. If the defendant's position throughout was that there was "no such agreement as yet", as Mr Low asserted on 11 January 2021, Mr Low would have said so in immediate response to Ms Koh's assertion to the contrary on 16 December 2020.

173 Having said that, the statements or silence of the defendant or his solicitors in late December 2020 and early January 2021 do not operate to supply evidence that the parties had the necessary intention to create legal relations on 5 December 2020. None of the material the plaintiff relies on between the parties' solicitors is therefore sufficient to warrant drawing an inference that the *consensus ad idem* the parties reached on 5 December 2020 was accompanied by the necessary intention to create legal relations at that time and therefore gave rise to a contract biding the defendant from that time.

174 Further, the plaintiff submits that the very fact the parties instructed lawyers to initiate and engage in discussions suggests that the parties reached a degree of finality in their discussions and is circumstantial evidence from which I can infer an intention to create legal relations in terms of their *consensus ad idem*. I disagree. The fact that the parties engaged solicitors is equally consistent with the parties' reaching nothing more than an in-principle agreement and their desire to continue negotiations through solicitors with the benefit of legal advice in order to refine their *consensus ad idem* on *a possible* parting of ways into a final contract on *the* parting of ways, precisely in order to avoid disputes and litigation.

175 Finally, the plaintiff argues that I should draw an adverse inference against the defendant for his failure to call Mr Low as a witness.[166]

176 Under s 116(*g*) of the Evidence Act, the court may presume that "evidence which could be and is not produced would if produced be unfavourable to the person who withholds it". As the Court of Appeal held in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*"), the court is entitled to draw an adverse inference from the absence of a witness who might be expected to have "material evidence" to give on a relevant issue (*Sudha Natrajan* at [20(a)]). The inference cannot fairly be drawn unless the evidence of the witness who is not called "would be superior in respect to the fact to be proved" (*Sudha Natrajan* at [26]).

177 The fact to be proved here is that the parties had an intention to create legal relations on 5 December 2020. The defendant submits that Mr Low could not have given any superior evidence on the fact to be proved.[167] This is because only the parties and Mr Paul Kok can give direct evidence within the meaning of s 62(1) of the Evidence Act on the underlying facts necessary for a finding that the parties intended to create legal relations on 5 December 2020.

178 I do not accept this submission. Mr Low and the defendant are the only witnesses who can give direct evidence on the instructions that the defendant gave Mr Low in December 2020 in relation to the Third Agreement. Further, Mr Low, Mr Lim and Ms Koh are the only witnesses who can give direct evidence of Mr Low's telephone conversation with Mr Lim on 16 December

166 PCS at para 204.

167 DRS at para 87.

2020 (at [163] above) and Mr Low's conversation with Mr Lim (at [169] above).[168]

179 But the adverse inference to be drawn from the defendant's failure to call Mr Low is simply that, had the defendant called Mr Low, Mr Low would have had to affirm Mr Lim's evidence on the contents of their discussions. But Mr Lim's evidence on the ultimate issue at hand is based entirely on what the plaintiff told Mr Lim. So too, Mr Low's evidence on the events of 5 December 2020 would have been based on what the defendant told him. Even assuming that a statement by a client to its solicitor is admissible, these statements have little evidential value in proving the truth of the contents, *ie*, that the parties did intend to create legal relations on 5 December 2020.

180 For all these reasons, I place little weight on the correspondence and discussions between the parties' solicitors. They are insufficient to establish on the balance of probabilities that the parties intended to create legal relations on 5 December 2020.

The statement made by the plaintiff to his former solicitor was inadmissible

181 Next, the plaintiff relies on his own statement to his former solicitors as evidence that the parties entered into the Third Agreement. During cross-examination, Mr Lim gave evidence that the plaintiff instructed him in the week of 10 December 2020 that the Third Agreement had been brokered by Mr Paul Kok, and that the plaintiff needed to appoint a valuer.[169] Mr Lim also said that the plaintiff was "very hung up on [the] date" of 5 January 2021, as that was the

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168 Affidavit of Mr Lim Kok Meng (Lin Guoming) dated 14 September 2023 at para 17, PBAEIC at p 265.

169 Transcript dated 21 November 2023 at p 38 lines 1–13 and p 54 lines 5–14.

deadline for the valuation to be produced.[170] Mr Lim's evidence is supported by Ms Koh's attendance note of her internal meeting with Mr Lim dated 10 December 2020.[171]

182 But for reasons I have explained at [109] above, the plaintiff's out-of-court statements to Mr Lim are inadmissible to prove the truth of their contents.

183 Even if the plaintiff's out-of-court statements were admissible, they have very little evidential weight for at least three reasons.

184 First, as noted above at [166], how a party labels a *consensus ad idem* has little or no bearing on the issue of whether, as a matter of law, the parties had the legal intention to enter into a contract on the terms of that *consensus* and have, as a matter of law, entered into a contract. The plaintiff's allegation that the parties entered into the Third Agreement does not become any more credible or cogent merely because the plaintiff repeats this allegation to his solicitor.

185 Second, the plaintiff's statement can reveal only his subjective belief that the parties entered into the Third Agreement. But whether there is a contract is determined by the objective test in contract and does not turn on a party's subjective belief that he has entered into a contract (see [112] above).

186 Third, as the defendant submits,[172] the plaintiff's statement is self-serving and is not independent and objective evidence. This evidence is hence highly unreliable as evidence of the existence of the Third Agreement.

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170 Transcript dated 23 November 2023 at p 39 line 22 to p 40 line 9.

171 Agreed Bundle of Documents vol 23 at p 16552.

172 DRS at para 79.

187 For all of these reasons, I do not accept that the plaintiff's earlier statement to Mr Lim that he had entered into the Third Agreement with the defendant is capable of proving that the parties did in fact enter into the Third Agreement.

The evidence of the parties' subsequent conduct is of no assistance

188 Finally, the plaintiff relies on the parties' conduct after allegedly concluding the Third Agreement on 5 December 2020.[173]

189 The first item of subsequent conduct is a WhatsApp voice message from the plaintiff to Mr Paul Kok on 10 December 2020:[174]

> … I already instructed the lawyer to work on the valuation thing. …
>
> So we have one month's time, I have told my lawyer here. So, in about 2 to 3 weeks, the valuation will be out, okay? So, after 2 to 3 weeks, we will see about the purchase, we will talk about it then, okay?
>
> So, tell the lawyer to handle it. When it's out, we see what's the middle price then we discuss more.

190 Mr Paul Kok acknowledges receiving this message from the plaintiff. His evidence in cross-examination is that he had understood this as an offer by the plaintiff to purchase the defendant's shares in CCGPL and the remaining Annex 2 Companies at a price determined by taking the average of valuations obtained by both parties.[175] This explanation is not convincing. The message is clearly not framed as an offer by the plaintiff to the defendant for the defendant to accept. It refers very clearly to past events, *ie* that the plaintiff "already

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173 PCS at para 206.

174 Agreed Bundle of Documents vol 49 at p 38003.

175 Transcript dated 29 November 2023 at p 48 line 21 to p 49 line 2.

instructed [his] lawyer to work on the valuation". That is likely pursuant to the earlier *consensus ad idem* that each party would obtain a valuation after which, the parties would look at "the middle price".

191 Crucially, however, this voice message does not suggest that the parties had concluded their negotiations. As the defendant submits, the message talks about obtaining the valuations and the parties then "see[ing] about the purchase", "talk[ing] about it" and "discuss[ing] more".[176] This is more consistent with the alternative scenario, *ie* that the parties had merely reached a *consensus ad idem* under which they would obtain their own valuations, after which they would resume negotiations with a view to entering into a contract. This WhatsApp voice message does not assist the plaintiff.

192 The plaintiff also relies on the parties' subsequent conduct after January 2021. But I do not give this conduct any weight as evidence that the parties had entered into the Third Agreement. By January 2021, a dispute had arisen, and the parties were already adversarial. I therefore consider their subsequent conduct to be highly unreliable as evidence shedding light on the parties' intention to create legal relations, objectively ascertained, on 5 December 2020.

193 Even if I were to consider the parties' conduct after January 2021, that conduct contradicts the plaintiff's case that the parties entered into the Third Agreement on 5 December 2020. The parties continued their negotiations and made new offers to each other for close to a year, long after the plaintiff alleges they had concluded their negotiations and entered into the Third Agreement.

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176 DRS at para 97.

194 These negotiations continued into September 2021. On 25 March 2021, the defendant made an offer to purchase the plaintiff's shares in the remaining Annex 2 Companies at a combined total valuation of $75m.[177] On 31 March 2021, the plaintiff's solicitors asked the defendant to make a "formal offer" to the defendant, "including the salient terms and conditions".[178] On 4 May 2021, the defendant's solicitors sent a draft term sheet, setting out the terms of the defendant's offer.[179]

195 In September 2021, there was an agreement for the plaintiff to pay $40m to the defendant for his 25% interest in the Chang Cheng Group (*ie*, the food and beverage businesses, CCGPL and the remaining six Annex 2 Companies).[180] This agreement fell through because, as the plaintiff explains, he was unable to obtain the approval of his bank for a loan of that size.[181]

196 That the plaintiff was willing to consider an alternative offer from the defendant in May 2021, and that the plaintiff agreed to another agreement in September 2021, indicates to me very clearly that the parties did not intend to create legal relations on the terms of the *consensus ad idem* they had reached on 5 December 2020.

197 It is important to bear in mind that the plaintiff bears the burden of proving his positive case that the parties entered into the Third Agreement (see [87] above). For all of the reasons I have given, I find that the plaintiff has failed

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177 Agreed Bundle of Documents vol 9 at p 6150, para 2.

178 Agreed Bundle of Documents vol 9 at p 6150, para 2.

179 Agreed Bundle of Documents vol 9 at p 6155.

180 Mr Paul Kok's AEIC at para 37, DBAEIC at pp 60–62.

181 Transcript dated 8 November 2023 at p 65 line 23 to p 67 line 10.

to discharge this burden. It is thus unnecessary to determine whether the defendant breached the Third Agreement and whether the plaintiff is entitled to any remedy for any such breach.[182]

Issue 3: The defendant's interest in the Annex 2 Companies

198 I turn to the third issue. The defendant seeks by counterclaim a declaration that he is the legal and beneficial owner of the shares in the Annex 2 Companies that are registered in his name.[183]

199 For clarity, this issue concerns only TP406, MS 136, MS 166, HOL 40, NL 10 and TP 802. It is common ground that the Second Agreement and its performance has dealt fully and finally with the parties' interests in Hougang 631, Aljunied 119, TP 201 and MT59 (see [23] above).

200 I have thus far concluded that the parties' interest in the Chang Cheng Group before the 2011 Agreement was determined by the Shareholding Agreement (see [83] above). Both parties submit that the effect of this is that the defendant holds a 30% interest in the Annex 2 Companies.[184]

201 I disagree. It is unclear to me how a contract concluded in or around 1999 could have proprietary consequences on the shares in the Annex 2 Companies, all of which were incorporated *after* 1999.

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182 P Lead Counsel Statement, Part Two, Section I at s/n 2 of the legal issues; D Lead Counsel Statement, Part Two, Section I at s/n 2 of the legal issues.

183 DNCC (Amd No 3), relief (A).

184 PSS at para 24; DSS at para 18.

202 It is important for the following analysis that the plaintiff makes no claims in equity against the defendant. The plaintiff's only claims against the defendant are at common law.

203 It is common ground that the general rule at common law is that a contract under which one person ("A") agrees to confer proprietary rights upon another person ("B") in property that A is to acquire only in the future or that is to come into existence only in the future (*eg*, shares in companies to be incorporated in the future) is merely a contract and does not have automatic proprietary consequences at common law in relation to that future property (Richard Calnan, *Proprietary Rights and Insolvency* (Oxford University Press, 2nd Ed, 2016) ("*Proprietary Rights and Insolvency*") at paras 5.19 and 5.21). This is because at common law, one of the requirements for a transfer of a proprietary interest in an asset is that the asset is an *existing* asset in which the transferor has an *existing* legal proprietary interest at the time of the transfer (*Proprietary Rights and Insolvency* at para 5.18). As such, when A acquires the property in the future or when the property comes into existence in the future with A as owner, A becomes the *absolute* owner of the property, free at common law of the proprietary interest that A undertook in his contract with B to confer upon B.

204 For a proprietary interest to come into existence in the property at common law, A must undertake a "new act" indicating his intention to complete the transfer and create that proprietary interest in the property in favour of B after A becomes the owner of the property (*Proprietary Rights and Insolvency* at para 5.21). Examples of a new act include delivering possession of the property to B or executing a transfer document in respect of the property (*Proprietary Rights and Insolvency* at para 5.21).

205 If A does not carry out any such new act, then there is at common law nothing more than a breach of contract giving B nothing more than the usual personal remedy at common law of damages against A for breach of contract (*Proprietary Rights and Insolvency* at para 5.21). No proprietary interest arises at common law.

206 As I have said, this is the position at common law. If there is a ground for equity to intervene, an equitable proprietary interest may arise in the property when it comes into existence and into A's hands as a result of the equitable maxim that equity treats as done that which ought to be done (*Proprietary Rights and Insolvency* at para 5.48).

207 But, as I have said, the plaintiff advances no claim in equity against the defendant.

The defendant's interest was absolute prior to the 2011 Agreement

208 With these legal principles in mind, I turn to my analysis of this issue. I have found in favour of the defendant that the parties are bound by the Shareholding Agreement and not the 25% Agreement.

209 The defendant makes extensive submissions on why the 25% Agreement cannot have the proprietary effect of fixing his interest in the Annex 2 Companies at 25%. But he does not explain why the Shareholding Agreement can have the proprietary effect of fixing his interest in the Annex 2 Companies at 30%. The Shareholding Agreement did not or could not, in itself, create any proprietary rights in the shares in the Annex 2 Companies as and when those shares were issued and allotted upon incorporation and registered in the defendant's name. This was for two reasons.

210 First, the defendant did not perform any "new act". Proprietary rights in the shares of the Annex 2 Companies vested in the defendant upon the incorporation these companies – specifically, when these companies were "brought into existence by incorporation under law and co-instantaneously by the issue of capital stock according to a system of registration established by the corporation[s] as issuer" (*Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem and others* [2023] SGHC 6 at [60], citing Tan Yock Lin, *Personal Property Law* (Academy Publishing, 2014) at para 19.018). But when the shares in the Annex 2 Companies were issued and allotted upon incorporation and registered in the defendant's name, the defendant performed no "new act" to confer proprietary rights on the other Owners.

211 Second, because the contractual terms of the Shareholding Agreement cannot have any proprietary effect at common law on the property in the shares in the Annex 2 Companies, the plaintiff has to rely on equity to limit the defendant's proprietary interest in the Annex 2 Companies to 25%. But property does not come into being, from inception, with a legal interest running in parallel with a beneficial interest (*Buthmanaban s/o Vaithilingam v Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another* [2015] SGHC 35 ("*Buthmanaban*") at [62], citing *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 1 AC 669 at 706). Instead, a person who owns property is entitled to deal with that property as its absolute owner until and unless equity intervenes on behalf of another person by recognising that a particular confluence of circumstances operates in equity on the owner's conscience to restrict his absolute right to deal with the property as its absolute owner and instead obliges him to deal with the property for the benefit of that other person (*Buthmanaban* at [62]).

212 The plaintiff has failed to plead, let alone prove, that there has been any such confluence of circumstances as to warrant the intervention of equity. To meet this point, the plaintiff asks belatedly in his supplemental written submissions, tendered after the oral closing submissions, to amend his pleadings. The plaintiff seeks to rely on an express trust or alternatively, on an equitable assignment.[185]

213 I decline to allow the plaintiff to advance these equitable claims by amendment. As the Court of Appeal held in *Wright Norman v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640, an amendment which would enable the real issues between the parties to be tried should be allowed (subject to the usual orders on costs, if necessary), unless the amendment would cause injustice or injury to the opposing party for which it cannot be compensated by costs or otherwise (at [6]). Where these requirements are satisfied, the court may allow a party to amend its pleadings even after the conclusion of the trial (*Tang Chay Seng v Tung Yang Wee Arthur* [2010] 4 SLR 1020 ("*Tang Chay Seng*") at [17]).

214 In the present case, I consider that the plaintiff's request to amend his pleadings after trial, after the closing submissions and only after I raised the point comes too late in the day. Furthermore, the amendment that the plaintiff seeks to make would severely prejudice the defendant. The defendant has had no opportunity to adduce oral or documentary evidence or to cross-examine the plaintiff and his witnesses on the facts underlying these new equitable claims.

215 In any event, even if I had allowed the plaintiff to advance these claims by amendment at this late stage, I consider that these claims would have failed.

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185 PSS at para 9.

216 The plaintiff argues that an express trust arose under the 25% Agreement each time an Annex 2 Company was incorporated or registered.[186] The effect of the express trust was to adjust and apportion the beneficial interests in that Annex 2 Company in accordance with the 25% Agreement.[187]

217 This argument is without merit. First, I have found that the parties did not enter into the 25% Agreement (at [77]). Second, even if the parties did enter into the 25% Agreement, I am not satisfied that they evinced thereby any intention to create a trust. Finally, this argument suggests an odd arrangement where the plaintiff and the defendant are settlors and also either a trustee or a beneficiary, depending on whether his registered shareholding in the relevant Annex 2 Company is above or below his share of capital and income under the 25% Agreement. It is unclear how this is a valid trust arrangement.

218 The plaintiff also argues that the 25% Agreement amounts to an equitable assignment of the parties' future interest in each Annex 2 Company as and when it was incorporated such that the parties now have a beneficial interest in each Annex 2 Company in accordance with the 25% Agreement.[188] Even on the assumption that the parties entered into the 25% Agreement, it is unclear how the pleaded terms of this agreement (see [67] above) suggest any sort of assignment. To the extent that the plaintiff suggests that he was the assignor and the defendant was the assignee, the 25% Agreement could not have adjusted the beneficial interests in an Annex 2 Company where the plaintiff's registered interest in that company was less than his 50% interest in the Chang Cheng Group.

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186 PSS at para 13.

187 PSS at para 15.

188 PSS at para 17.

219 Therefore, the default position as a matter of property law is that, before the 2011 Agreement, the defendant's interest in the Annex 2 Companies was absolute and not limited to 25% by any obligation, whether at common law or in equity, that he owed to the plaintiff. The defendant's proprietary interest in each Annex 2 Company as against the plaintiff is therefore equal to the defendant's registered shareholding in that Annex 2 Company.

The defendant's interest remained absolute after the 2011 Agreement

220 This was the position until the parties entered into the 2011 Agreement. I therefore now turn to the effect of the defendant's transfer of 5% out of his 30% interest of the interest in the Chang Cheng Group to Mdm Lim pursuant to the 2011 Agreement.

221 Both parties characterise this transfer as a voluntary transfer by the defendant to Mdm Lim unsupported by consideration.[189] That amounts to both parties accepting that this transfer was, in law, a gift by the defendant of a 5% interest in the Chang Cheng Group to Mdm Lim. As I have found above (at [66]), the Chang Cheng Group includes the Annex 2 Companies. This means that the defendant's intent to make a gift to Mdm Lim of 5% of the Chang Cheng Group extended to the defendant's interest in the Annex 2 Companies which were then in existence.

222 That donative intent in relation to the Annex 2 Companies, however, was never carried through into an actual gift. A gift of personal property is valid at common law if (a) it is accompanied by a declaration of absolute gift by the donor; (b) it is accepted by or on behalf of the donee; and (c) the possession of

189 DNCC (Amd No 3) at para 16(b).

it is delivered by the donor to the donee (*Halsbury's Laws of Singapore* vol 9(3) and 9(4) (LexisNexis Singapore, 2023) ("*Halsbury's Laws of Singapore*") at para 110.056). Equity may intervene to uphold the gift if the donor has done everything he can to perfect the gift. But if the donor has failed to do so, equity will not intervene to perfect an imperfect gift, given that the donee is by definition a volunteer (*Halsbury's Laws of Singapore* at para 110.056).

223 I accept the defendant's submission that he has not done everything in his power necessary to convey to Mdm Lim the relevant number of shares in the Annex 2 Companies that had already been incorporated prior to the 2011 Agreement to make a gift to her of a 5% interest in that Company.[190] The defendant's donative intent under the 2011 Agreement remains to this day, therefore, nothing more than an imperfect gift. The defendant's interest in each Annex 2 Company is therefore absolute and is unaffected by his unperformed donative intent to make a gift of 5% of that company to Mdm Lim under the 2011 Agreement.

224 As such, in relation to the Annex 2 Companies that were incorporated before the 2011 Agreement, the defendant's right to treat his registered shareholding in these companies as his absolute property is unaffected by any intervention by equity in favour of the plaintiff. The same conclusion follows in relation to CCGPL, which was incorporated on 1 July 2010.[191]

225 As for the Annex 2 Companies incorporated after the 2011 Agreement, there is no evidence before me and no legal basis put to me to find that the

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190 DSS at para 19.

191 SOC (Amd No 2) at Annex B.

defendant's absolute ownership of the shares is restricted by any principle of equity in favour of the plaintiff or in favour of Mdm Lim.

226 Finally, the defendant alleges that on or around 13 May 2005, the parties entered into an oral contract to own the shares in each Annex 2 Company "legally and beneficially" according to the parties' registered shareholding. This is a bare allegation. The defendant has produced no contemporaneous or objective evidence of this oral contract. The defendant even admits that he "cannot remember" what particular terms were agreed in 2005.[192] I find that the parties entered into no such oral contract.

227 This finding, albeit adverse to the defendant, has no bearing on the substance of his counterclaim in relation to his interest in the Annex 2 Companies. The defendant's counterclaim succeeds despite this finding because the default common law rules of property operate in the defendant's favour, and because the plaintiff has failed to plead, let alone establish, any basis for equity to intervene in the plaintiff's favour.

228 For all these reasons, I allow the defendant's counterclaim in substance, although not in the precise terms that he has sought it. I grant a declaration that the defendant is the absolute owner of each share in each Annex 2 Company that is registered in his name, with an equivalent declaration for CCGPL.

Issue 4: The defendant's interest in the food and beverage businesses

229 I turn to the final issue. The defendant seeks a declaration that he has a 25% interest in all of the food and beverage businesses of the Chang Cheng Group, and that the plaintiff holds the defendant's interest in these businesses

192 Transcript dated 24 November 2023 at p 1 line 9 to p 2 line 2.

on trust for the defendant.[193] According to the defendant, there are 46 food and beverage businesses in the Chang Cheng Group, including CCGPL and the 10 companies which were allegedly subject to the Share Sale Contract (see [20] above), *ie* the Annex 1 Companies.[194] The Defendant lists these 46 companies in Annex A of the Defence and Counterclaim

230 I dismiss this aspect of the defendant's counterclaim.

231 My finding above (at [208]) that the Shareholding Agreement did not or could not create any proprietary rights in the shares in the Annex 2 Companies applies equally to the shares in the food and beverage businesses of the Chang Cheng Group. The defendant's interest in the food and beverage businesses is his registered shareholding in each of those businesses.

232 I have also found above (at [222]) that the defendant's intent to make a gift of a 5% interest in the Chang Cheng Group to Mdm Lim pursuant to the 2011 Agreement included the Annex 2 Companies, but remains to this day an imperfect gift in relation to those companies. This finding applies by parity of reasoning to the food and beverage businesses of the Chang Cheng Group. The defendant's donative intent in respect of these companies has never been carried through into an actual gift to Mdm Lim. As such, the defendant's interest in the food and beverage businesses, in principle, continues to be equal to his registered shareholding in these businesses and is unaffected by the 2011 Agreement.

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193 DNCC (Amd No 3), relief (C).

194 DNCC (Amd No 3), Annex A.

233 The defendant, however, has not adduced any evidence to prove that he is a registered shareholder of *all* 46 of these entities. There is evidence to conclude only that the defendant's interest in the 10 Annex 1 companies mirrors his registered shareholding in those companies (*ie*, his registered shareholding before he transferred those shares to the plaintiff in December 2018).

234 As such, there is no basis to declare that the defendant has a 25% interest (or indeed any other interest) in *all* 46 entities identified by the defendant.

235 To the extent that the defendant seeks a declaration that his interest in the 10 Annex 1 Companies is his registered shareholding in them before his transfers in December 2018, I consider that the defendant's rights are sufficiently vindicated by my finding above at [145] that the plaintiff holds the Annex 1 Shares on a resulting trust for the defendant and is liable to transfer those shares to the defendant and to account to the defendant for any and all benefits the plaintiff has received since the transfer that are referable to these shares.

236 Nevertheless, for the avoidance of doubt, I also declare that the defendant holds absolutely his interest in each Annex 1 Share free of any trust, fiduciary or other equitable obligation or constraint in favour of the plaintiff and attached to the defendant's absolute ownership thereof, at the time of the transfer of that share from the defendant to the plaintiff in or about December 2018.

Conclusion

Findings

237 To summarise my findings:

(a) The parties did enter into the Shareholding Agreement.

(b) The parties did not enter into the 25% Agreement.

(c) The parties did not enter into the First Agreement.

(d) The parties did not enter into the Share Sale Contract.

(e) The defendant held absolutely his interest in each Annex 1 Share at the time of he transferred that share to the plaintiff in December 2018.

(f) The plaintiff holds the Annex 1 Shares on a resulting trust for the defendant and has held each Annex 1 Share on such resulting trust since the time of the transfer of that share to the plaintiff in December 2018.

(g) The parties did not enter into Third Agreement.

(h) The defendant holds absolutely his interest in each share that is registered in his name in CCGPL and in each Annex 2 Company, free of any trust, fiduciary or other equitable obligation or constraint in favour of the plaintiff and attached to the defendant's absolute ownership thereof.

(i) The defendant is not entitled to a declaration that he is the beneficial owner of 25% in all the food and beverage businesses of the Chang Cheng Group.

Costs

238 I now deal with the costs of this action. Having considered the parties' costs submissions, I have ordered the plaintiff to pay the defendant's costs of this action, such costs fixed in the sum of $542,948.20.

239 The parties agree, in my view correctly, that the event in this action is in favour of the defendant. They therefore agree that it should be the plaintiff who pays costs to the defendant. They differ only in the quantum in which those costs should be fixed.

240 The defendant's costs schedule claims costs totalling $829,188.20. This comprises $405,000.00 for party and party costs and $424,188.20 for disbursements. The disbursements claimed include a sum of $361,225.00 for the fee that the defendant has paid to his expert witness, Mr Tam.

241 The plaintiff submits that the defendant should not be awarded the full sum that he claims in his costs schedule because: (a) the defendant succeeded only in part in his counterclaim; and (b) Mr Tam's evidence provided only limited assistance to the court. The plaintiff submits that I should award the defendant only costs of $321,963.20. That figure includes 60% of the defendant's claim for party and party costs and nothing for Mr Tam's fee. In response, the defendant indicates that he is prepared to accept $745,188.20 for his costs. This represents a small reduction of $84,000 from his claim for party and party costs (being about 21%) with Mr Tam's fee claimed in full.

242 I accept as my starting point the plaintiff's submission that the defendant should recover only 60% of his party and party costs. I do not accept the defendant's submission that he has obtained essentially the bulk of the relief he sought by his counterclaim. Critically, the defendant failed to establish the three aspects of his counterclaim. First, that he entered into an oral contract with the plaintiff that their interests in the Annex 2 Companies would be equal to their registered shareholding in those companies and would not be subject to the

Shareholding Agreement.[195] Second, that the parties entered into the Share Sale Contract and that the plaintiff is liable in damages for breaching it. Finally, that the defendant has a 25% interest in all the food and beverage businesses of the Chang Cheng Group.

243 Further, I accept the plaintiff's submission that the defendant's case on the first two of these issues was weak and unsupported by evidence.[196] As such, I consider that these claims were unreasonably brought. In the round, I consider that the defendant was only 60% successful in his counterclaim.

~~244~~ Having said that, I accept the defendant's submission that he incurred substantial additional and unanticipated legal costs after he had prepared and submitted his costs schedules. This work included: (a) preparing supplemental written submissions; (b) attending to receive the oral judgment in this matter; and (c) preparing post-judgment submissions on costs and on the form of the judgment to be entered in this action. I have therefore allowed the defendant 65% of its claim of $405,000.00 for party and party costs.

245 On Mr Tam's fee, I do not accept either of the extreme positions that the parties have taken. Instead, I award the defendant $216,735.00 for Mr Tam's fee, being 60% of the total fee of $361,225.00. I have not disallowed Mr Tam's fee in full because I accept that there is a distinction between an expert witness whose fee is unreasonably incurred in its entirety and an expert witness whose evidence is "reasonably sought (and the associated fee is reasonably incurred) but the evidence is not eventually accepted by the court" (*Kiri Industries Ltd v*

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195 DNCC, paragraph 15(c).

196 Plaintiff's written submissions dated 29 August 2024 at paras 44–45.

Senda International Capital Ltd and another [2022] 3 SLR 174 at [102]). Mr Tam, in my view, falls into the latter category rather than the former.

246 I accept that it was reasonable for the defendant to seek and adduce the expert evidence of Mr Tam. But I also accept that Mr Tam's evidence on the source of the initial funding for the properties purchased by the Annex 2 Companies was ultimately of little assistance to me, for the reasons I have given. Counsel for the defendant even conceded in oral closing submissions that the defendant does not rely on Mr Tam's evidence on this issue and that I could determine this issue without regard to that evidence.[197] I found the remainder of Mr Tam's evidence, however, to be of some assistance. In the round, I assess at 40% the proportion of Mr Tam's fee that is attributable to work done on the source of the initial funding for the purchase of the real properties.

247 In conclusion, I order the plaintiff to pay the defendant his costs of and incidental to this action, such costs fixed at $542,948.20. That sum comprises $263,250.00 (being 65% of the $405,000 that the defendant claims for party and party costs) plus $279,698.20 (being the disbursements that the defendant claims less 40% of Mr Tam's fee).

Judgment

248 The plaintiff has asked me to include in the judgment entered in this action an express declaration that the Annex 2 Companies are part of the Chang Cheng Group. The plaintiff submits that this declaration is needed because it finally resolves the parties' dispute over their contractual rights as shareholders in the Annex 2 Companies.

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197 Transcript dated 9 July 2024 at p 114, lines 1–10.

249 I decline to include this declaration for three reasons.

250 First, whether a company is "part of the Chang Cheng Group" is commercial concept that the parties have used by agreement from the inception of their business. That is also the only sense in which I have used that term in this judgment. But as I have said, a company being or not being "part of the Chang Cheng Group" is a concept devoid of any legal content. It therefore has no place in the judgment entered in this action. The parties' business relationship having broken down, their dispute can now be resolved only by judicial determinations that have legal content and not by terms with only commercial content.

251 Second, I have declared that the parties entered into the Shareholding Agreement in or about 1999. It is also common ground that, from the time of the 2011 Agreement to the present day, the plaintiff has an interest of 50% in the capital and income of the Chang Cheng Group and the defendant and Mdm Lim each have an interest of 25% in the capital and income of the Chang Cheng Group. The additional declaration that the plaintiff seeks is therefore not necessary to dispose of the claim or the counterclaim.

252 Third, this additional declaration contradicts the facts. The Annex 2 Companies include TP 201, Aljunied 119, Hougang 631 and MT59 Investment. The parties' interests in these four companies have already been dealt with fully and finally under the Second Agreement. Moreover, the plaintiff himself concedes that TP 201 was never part of the Chang Cheng Group. On any view, these companies are not today part of the Chang Cheng Group, even as a purely commercial matter.

253 The plaintiff also asks me to record in the judgment entered in this action that "any breach of the Shareholding Agreement gives rise only to a personal remedy in damages for breach of contract".

254 I decline the plaintiff's request for three reasons.

255 First, this is not a legal issue that I had to decide in order to dispose of this action. What I have said on this legal issue is therefore purely *obiter dicta*. It is therefore wrong in principle to include a determination of this legal issue in the judgment entered to dispose of this action.

256 Second, it appears from this form of words that the plaintiff is contemplating a future action against the defendant to seek damages for breach of the Shareholding Agreement and wants the judgment entered in this action to validate in advance such a claim. I consider that to be inappropriate. Whether the plaintiff can bring any such claim in the future depends on two things. First, the legal merits of any such claim. Second, on the effect of the plaintiff's failure to raise any such claim in this action. Both of those issues must be determined in the future by the court which hears any such claim, not today by me.

257 Third, my finding is that the relationship between the Owners is today governed by the 2011 Agreement. As such, the Shareholders' Agreement no longer contains any primary obligations binding on the parties.

258 The plaintiff also asks that I make clear in my declaration as to the defendant's interest in the Annex 2 Companies that my declaration relates to his proprietary interest. I do not consider that that is necessary. The declaration is clear as it stands.

259 In light of my findings on the merits of the claim, on the merits of counterclaim and on costs, and in light of the parties' pleaded cases and submissions on the form of the judgment in this action, I have entered judgment in this action as set out in the Annex to these grounds of decision.

Vinodh Coomaraswamy J
Judge of the High Court

Lee Eng Beng SC, Cheng Wai Yuen Mark, Tan Tian Hui, Naomi Lim Bao Bao, Liu Yulin (Rajah & Tann Singapore LLP) for the plaintiff;
Zhulkarnain Abdul Rahim, Low Chai Chong, Too Fang Yi, Sean Chen Siang En, Shermaine Lim Jia Qi (Dentons Rodyk & Davidson LLP) for the defendants.

Annex: Judgment entered in this action

1 It be and is hereby declared that the plaintiff and the defendant did in or about 1999, enter into the Shareholding Agreement (as alleged and defined in para 7(c) of the Defence and Counterclaim (Amendment No. 3) dated 3 April 2023 ("D&CC").

2 It be and is hereby declared that the plaintiff and the defendant at no time:

(a) entered into the 25% Agreement (as alleged in para 11 of the Statement of Claim (Amendment No. 2) dated 18 May 2023 ("SOC")).

(b) entered into an oral agreement as alleged in para 15(c) of the D&CC in relation to each of the companies listed in Annex 2 to this judgment) (each "an Annex 2 Company").

(c) entered into the First Agreement (as alleged and defined in para 3 of the SOC).

(d) entered into a contract upon the defendant accepting the Share Sale Offer (as defined in para 24 of the D&CC and as alleged in para 26 of the D&CC).

(e) entered into the Third Agreement (as alleged and defined in para 3 of the SOC).

3 It be and is hereby declared that the defendant now holds absolutely, and has at all times held absolutely, his interest in each share that is registered in his name in each Annex 2 Company and in Chang Cheng Group Pte Ltd free of any

trust, fiduciary or other equitable obligation or constraint in favour of the plaintiff and attached to the defendant's absolute ownership thereof.

4 It be and is hereby declared that the defendant held absolutely his interest in each share listed in Annex 1 to this judgment (each "an Annex 1 Share") free of any trust, fiduciary or other equitable obligation or constraint in favour of the plaintiff and attached to the defendant's absolute ownership thereof at the time of the transfer of that share from the defendant to the plaintiff in or about December 2018.

5 It be and is hereby declared that the plaintiff now holds each Annex 1 Share on resulting trust for the defendant, and furthermore, has held each Annex 1 Share on such a resulting trust since the time of the transfer of that share from the defendant to the plaintiff in or about December 2018.

6 The plaintiff shall transfer each Annex 1 Share (except in relation to any company that has been wound up, is struck off and/or is no longer registered with the Accounting and Regulatory Authority) to the defendant for no consideration and shall account to the defendant for any and all benefits that the plaintiff has received that are referable to each Annex 1 Share since the date of the transfer of that Annex 1 Share from the defendant to the plaintiff.

7 If it is necessary or desirable for the plaintiff to execute, sign or indorse any deed, document or instrument in order for the plaintiff to comply with the terms of this judgment and if the plaintiff fails, refuses or neglects to do so within seven (7) days after being so presented with the deed, document or instrument, the defendant be and is hereby authorised to prepare the deed, document or instrument and to tender it to the Registrar pursuant to s 14 of the Supreme Court of Judicature Act 1969 for execution upon the proper stamp, if

any is required by law, without need for any further application by the defendant or any further order by the court.

8 Save to the extent that any prayer for relief made either by the plaintiff in his SOC or by the defendant in his D&CC has been allowed by any of the express terms of this judgment, each and every such prayer be and is hereby dismissed.

9 The plaintiff shall pay to the defendant his costs of and incidental to this action, such costs fixed at $542,948.20.

Annex 1

No.	Name of Annex 1 Company	Number of shares
1.	Chang Cheng Food Tastic Pte Ltd (now known as LLH Pte Ltd)	25
2.	Chang Cheng Mee Wah Holdings Pte Ltd	50,000
3.	Chang Rong Logistics (West) Pte Ltd	1
4.	Chang Rong Logistic Pte Ltd	1
5.	G5 Food House Pte Ltd	30
6.	Redhill 75 Food House Pte Ltd	1
7.	TPY 126 C&B Pte Ltd	1
8.	TPY 126 Food House Pte Ltd	1
9.	Trendy Marks Pte Ltd	1
10.	WTL 261 Food House Pte Ltd	1

Annex 2

No.	Name of Annex 2 Company
1.	Aljunied 119 Pte Ltd
2.	Hougang 631 Pte Ltd
3.	MT59 Investment
4.	MS 136 Pte Ltd
5.	MS 166 Pte Ltd
6.	NL 10 Pte Ltd
7.	TP 201 Pte Ltd
8.	TP406 Pte Ltd
9.	TP 802 Investment Pte Ltd
10.	HOL 40 Pte Ltd