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

[2025] SGHC 196

Suit No 304 of 2022 (Registrar's Appeal No 102 of 2025)

Between

Tio Geok Hong Bryan

… *Plaintiff*

And

(1) Korbett Pte Ltd
(2) Lee Wee Ching

… *Defendants*

Suit No 356 of 2022 (Registrar's Appeal No 103 of 2025)

Between

Wang Piao (Wang Biao)

… *Plaintiff*

And

(1) Korbett Pte Ltd
(2) Lee Wee Ching
(3) Low Xuefen
(4) Legora Asia Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Equity — Remedies — Account — Liability of trustee to account — Appropriate date at which profits of errant fiduciary should be assessed]

[Trusts — Trustees — Whether trustee should be indemnified for unauthorised expenses that benefited trust estate and incurred in good faith]

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v
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General Division of the High Court — Suit No 304 of 2022 (Registrar's Appeal No 102 of 2025) and Suit No 356 of 2022 (Registrar's Appeal No 103 of 2025)
Audrey Lim J
6, 29 August, 8 September 2025

3 October 2025

Audrey Lim J:

Introduction

1 In 2022, Mr Tio Geok Hong Bryan ("Bryan") and Mr Wang Piao ("Wang") ("Respondents") commenced related actions against Korbett Pte Ltd ("Korbett") and Mr Lee Wee Ching ("Lee"), among other defendants ("Actions").

2 On 4 September 2023, by consent of all parties, interlocutory judgments ("CIJs") were entered. Under the CIJs, the following orders were made:

(a) The Deed of Reconveyance dated 4 March 2021 ("Reconveyance Deed") was rescinded and null and void.

(b) The Trust Deed dated 10 September 2016 ("Trust Deed") had been, and continued to be, in effect since the date of the Trust Deed. It should be noted that the parties to the Trust Deed were Korbett as trustee; and Bryan, Wang, Lee and Chen Peng-Wei ("Chen") as beneficiaries.

(c) Since the date of the Trust Deed, Bryan and Wang each owned a 25% share of the beneficial interest in a property at 26A Hillview Terrace, Singapore 669238 ("Property").

(d) Korbett was to provide an account of all profits obtained by it as a result of the breaches of its fiduciary duties owed to Bryan and Wang, as set out in the respective Statements of Claim filed in the Actions. Korbett was to make payment of all said profits to Bryan and Wang (the Accounting of Profits and Payment order or "APP order").

(e) Korbett was to provide to Bryan and Wang a full account in respect of their 25% shares of the beneficial interest in the Property (the Full Account of Beneficial Interest order or "FABI order").

3 The taking of accounts in relation to the APP and FABI orders were heard by the Assistant Registrar ("AR"). Bryan, Wang and Lee testified. The Respondents called Mr Png Poh Soon ("Mr Png") as their expert witness, and Korbett called Ms Stella Seow ("Ms Seow") as its expert witness.

4 The AR issued her decision on 28 April 2025 – see *Tio Geok Hong Bryan v Korbett Pte Ltd* [2025] SGHCR 8 ("GD"). In RA 102/2025 ("RA 102") and RA 103/2025 ("RA 103"), Korbett appealed against the AR's decision on various issues. I allowed the appeal in part.

Summary of the AR's decision

5 In her decision, the AR dealt with the following issues:

(a) In relation to the APP order: (i) the profits Korbett needed to account for (Issue 1); (ii) whether these profits resulted from Korbett's breaches of its fiduciary duties to Bryan/Wang (Issue 2); and (iii) the amount to be paid to Bryan and Wang (Issue 3).

(b) In relation to the FABI order: the nature and extent of the account that Korbett needed to provide to Bryan and Wang (Issue 4).

6 In brief, the AR decided as follows:

(a) On Issue 1, Korbett was liable to account for: (i) unpaid rent for occupying the Property from March 2021 to April 2024 ("Unpaid Rent");[1] and (ii) monthly payments made to it by Global Techsolutions (S) Pte Ltd ("GTSS") ("GTSS Monthly Payments") as a result of GTSS's occupation of the Property.[2] However, Korbett was not liable to account for, as rent, $23,000 received from GTSS on 26 April 2017, as the nature of the payment was ambiguous.[3]

(b) On Issue 2, the Unpaid Rent that resulted from Korbett's breach of its fiduciary duties, specifically its duty not to profit from its position as a trustee. There was no rent-free arrangement between Korbett, Lee, Bryan and Wang. Further, the GTSS Monthly Payments were received by Korbett owing to its position as trustee over the Property.[4]

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1 GD at [42].

2 GD at [53].

3 GD at [58]–[59].

4 GD at [64], [77]–[79].

(c) On Issue 3, in assessing the quantum of the Unpaid Rent, the AR adopted the quantum put forth by Mr Png ($415,333.33). It was also irrelevant whether Korbett did its reasonable best to rent the Property to a tenant between March 2021 and April 2024.[5] Thus, Korbett was to account for the sum of $415,333.33 (being the Unpaid Rent) and the GTSS Monthly Payments received by Korbett attributed to GTSS's occupation of the Property. Following the wording of the CIJs, the entirety of the said profits was to be paid to the Respondents.[6]

(d) On Issue 4, Korbett was to produce an account including all incomings and outgoings related to the Property. Moreover, the following payments should not be reflected in the account as liabilities for the beneficiaries of the Trust Deed to share: (a) eleven invoices for improvement or renovation works to the Property; and (b) four invoices relating to the tenancy with HS Global Marketing Pte Ltd ("HSG").[7]

RAs 102 and 103

7 By RAs 102 and 103, Korbett appealed against the AR's decision on seven grounds,[8] as follows:

(a) 1st Ground – Whether the AR erred in finding there was no Trust Arrangement (see [9] below) among the beneficiaries of the Trust Deed.

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5 GD at [82], [85]–[94].

6 GD at [94], [96], [98]–[100].

7 GD at [126]–[129].

8 Appellant's Written Submissions dated 8 July 2025 ("AWS") at [2].

(b) 2nd Ground – Whether the AR erred in finding that Korbett's efforts to rent out the Property to a tenant between March 2021 and April 2024 were wholly irrelevant to the issue of profit disgorgement.

(c) 3rd Ground – Whether the AR erred in determining the quantum of profits Korbett was liable to account for (by its occupation of the Property from March 2021 to April 2024) was $415,333.33.

(d) 4th Ground – Whether the AR erred in including the period after the CIJs in assessing the quantum of profits to be disgorged by Korbett.

(e) 5th Ground – Whether the AR erred in treating the payments by GTSS to Korbett for 1 April 2017 to 5 February 2021 as profits and not as constituting Lee's share of the mortgage payment for the Property.

(f) 6th Ground – Whether the AR erred in determining that payments by Korbett for renovation works of the Property should not be a liability for the beneficiaries of the Trust Deed to share.

(g) 7th Ground – Whether the AR erred in determining that Korbett's payment to the housing agent should not be a liability for the beneficiaries of the Trust Deed to share.

8 I noted briefly that both parties agreed that the principles in *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 apply to an appeal from a registrar in chambers to a High Court judge in a case such as this.[9] I do not intend to rehash the principles enumerated therein.

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[9] AWS at [29]; Respondents' Joint Written Submissions dated 16 July 2025 ("RWS") at [8].

1st Ground – Whether there was a Trust Arrangement among the beneficiaries of the Trust Deed

9 Korbett alleged there was a Trust Arrangement, *ie*, an oral agreement among the beneficiaries in late 2016 to March 2017, with the following terms:

(a) Korbett could use 75% of the Property, and Apek Services Pte Ltd ("Apek") could use 25% of the Property, rent-free until a new tenant was found; and

(b) the monthly mortgage payments pertaining to the Property were to be shared equally between Korbett (for and on behalf of Lee) and Apek (for and on behalf of Wang and Bryan).[10]

10 Before the AR, Korbett raised the following arguments, which were rejected:

(a) First, Korbett claimed that Bryan, Wang and Lee had confirmed that the Trust Arrangement existed during trial. The AR found that the beneficiaries did not confirm the existence of such a Trust Arrangement; and that if the Trust Arrangement existed, it would have been recorded as part of the CIJs, but it was not.[11]

(b) Second, Korbett claimed the Trust Arrangement was necessary to give effect to the beneficiaries' obligation to indemnify it under cl 3 of the Trust Deed. Korbett argued that thus, the Trust Arrangement was an integral part of the Trust Deed, and the two had to be viewed as one, such that the revival of the Trust Deed in the CIJ also revived the Trust

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10 24BCP at p 12 (Korbett's Closing Submissions before the AR ("KCS") at [15]); AWS at [17]; 13BCP at pp 17–18 (Lee's 28/11/23 Affidavit at [9(3)(c)(iii)]).

11 24BCP at p 13 (KCS at [16]); GD at [66]–[71]; AWS at [40(a)].

> Arrangement.[12] The AR did not accept the Trust Arrangement was "necessary" to give effect to the indemnity clause in the Trust Deed, as the beneficiaries could indemnify Korbett through other means. As the Trust Arrangement came into existence after the creation of the Trust Deed, the AR found there was no evidence of consideration given to render the Trust Deed legally binding, and this also militated against a Trust Arrangement having been concluded. Further, the AR stated that the Trust Arrangement (being a declaration of trust respecting immovable property) had to be in writing, to operate as a variation of or addendum to the Trust Deed, pursuant to s 7 of the Civil Law Act 1909 (2020 Rev Ed) ("Civil Law Act").[13]

11 The AR had defined in her GD the purported Trust Arrangement as being an agreement for Korbett to use 75% of the Property rent-free until a new tenant was found. It was not as defined by Korbett in the appeals before me (see [9] above) which included another term that the monthly mortgage payments were to be shared equally between Korbett and Apek. Be that as it may, the inclusion of this other term by Korbett in these appeals did not change my analysis and I refer to the "Trust Arrangement" as defined by Korbett.

12 I also noted that Chen was a named beneficiary of the Property in the Trust Deed. Korbett initially claimed that it took over Chen's interest. Later in the proceedings before the AR, Korbett and Lee claimed that Chen's interest had been taken over by Lee. The AR did not make an express finding on whether Chen's interest was taken over by Korbett or by Lee.[14] That said, counsel for

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12 24BCP at pp 13–14 (KCS at [17]–[18]).

13 GD at [74]–[76]; AWS at [40(b)] and [40(c)].

14 GD at [7].

both parties agreed before me that Chen was no longer in the picture.[15] As Bryan and Wang had attested that Lee would discharge 50% of the monthly mortgage payment of the Property (albeit through Korbett) (see [13] below), it can be inferred that Chen's share in the Property was taken over by Lee.

Whether a Trust Arrangement was concluded from late 2016 to early 2017

13 I found the AR erred in determining that no Trust Arrangement was concluded in around late 2016 or early 2017. Bryan and Wang themselves attested to the existence of the Trust Arrangement.

(a) Bryan accepted there was an understanding among the parties up until March 2021 (when he found out about Korbett's and Lee's fraudulent misrepresentation and conspiracy) that Korbett could use 75% of the Property whilst Apek could use 25% of the Property without having to pay rent. Hence, Bryan only claimed that Korbett was to account for the rent it had not paid *since March 2021*.[16]

(b) Bryan further admitted that in or around March 2017, he and Lee agreed that Korbett and Apek would bear the monthly mortgage payments equally, so that the beneficiaries did not have to fork out cash every month to pay for the mortgage; that he and Wang were effectively contributing to the monthly mortgage payments through Apek; and that between 10 September 2016 and 4 March 2021, neither Apek nor Korbett paid rent when they occupied the Property.[17] It must be

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15 6/8/25 Notes of Evidence ("NE") at p 5.

16 13BCP at pp 230–231 (Bryan's 18/12/23 Affidavit at [16(b)]).

17 13BCP at pp 603–604 (Bryan's 12/4/24 Affidavit at [33]) and pp 654–655 (Bryan's 7/10/24 Affidavit at [25]–[27]).

remembered that Bryan was Apek's majority shareholder and its sole director then.[18]

(c) Wang similarly attested that in end 2016 or early 2017, Bryan, Lee and he agreed that Korbett and Apek could utilise the Property in the proportion of 75/25 without having to pay rent; and that Korbett and Apek would each bear 50% of the monthly mortgage repayment from March 2017 onwards (with Apek paying for Wang's and Bryan's shares).[19] Wang further attested that Korbett and Apek could continue to use the Property rent-free until a new tenant was found.[20]

(d) Bryan's and Wang's testimony accorded with that of Lee.[21]

14 The testimony of Bryan, Wang and Lee all showed the beneficiaries (and Korbett and Apek) intended the Trust Arrangement to be binding at the material time, before the Reconveyance Deed was executed. Bryan and Wang's claim for Korbett to account for rent only from March 2021 (when the Reconveyance Deed was executed, albeit subsequently annulled) showed they treated the Trust Arrangement as having contractual and legal effect.

15 Next, I found the issue of consideration to be irrelevant. The AR was determining whether profits had been obtained by Korbett *as a result of the breach of its fiduciary duties* owed to Bryan and Wang (beneficiaries under the Trust Deed). The no-profit rule prohibits a fiduciary from obtaining an

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18 6/8/25 NE at p 2.

19 6BCP at pp 27–28 (Wang's 30/6/23 Affidavit at [43]–[45]); 16BCP at p 227 (Wang's 18/12/23 Affidavit at [16(b)(i)]).

20 22BCP at pp 290–291, 295–296 (4/12/24 Transcripts at pp 86–87, 91–92).

21 13BCP at pp 17–18 and 256 (Lee's 28/11/23 Affidavit at [9(3)(c)(iii)]); 14BCP at p 20 (Lee's 7/10/24 Affidavit at [24]).

advantage out of his fiduciary position without the informed consent of the principal/beneficiaries (*Credit Suisse Trust Limited v Ivanishvili, Bidzina* [2024] 2 SLR 164 at [42]). If the beneficiaries had agreed on how the Property should be utilised (in this case, as per the Trust Arrangement) it was unclear how Korbett would have breached its fiduciary duties in carrying out their wishes, particularly when there was nothing to suggest that Korbett had withheld information or misled the beneficiaries when the Trust Arrangement was concluded. As Mr Kronenburg (counsel for the Respondents) accepted, if the Trust Arrangement existed, Korbett could not be said to be in breach of its duties to the beneficiaries during the period before March 2021.[22]

16 In any event, it could not be said that there was no consideration for the Trust Arrangement. I found the beneficiaries had provided mutual consideration for each other, pertaining to the Property. Bryan and Wang (the majority shareholders of Apek) would have benefitted indirectly from the non-payment of rent by Apek, and with some detriment to Lee (being a 25% indirect shareholder of Apek). Any rent that had been collected from Apek would have formed the pool of moneys that belonged to the beneficiaries collectively (including Lee). The same can be said of Lee *vis-à-vis* Bryan and Wang.

17 Finally, s 7 of the Civil Law Act did not apply to the Trust Arrangement because it was not a "declaration of trust" regarding the Property nor did it vary the trust of the Property.

Effect of the Reconveyance Deed on the Trust Arrangement

18 That said, the Trust Arrangement would have determined when the Reconveyance Deed was executed on 4 March 2021. By the Reconveyance

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22 29/8/25 NE at p 19.

Deed, Bryan's and Wang's beneficial interests in the Property were transferred to Korbett, and they no longer had any interest in the Property. Accordingly, Bryan and Wang would have been unable to consent to the continued application of the Trust Arrangement.

19 The above understanding was supported by the parties' testimony. Wang attested that when he signed the Reconveyance Deed, he no longer had a share in the Property and had no control over the use of the Property. Bryan also attested that post-March 2021, he did not discuss with Lee or Korbett on how the Property was to be used.[23] Lee attested that any agreement the parties had, would have ended with the Reconveyance Deed; that from March 2021, Korbett did not have any agreement with anyone that it could remain at the Property rent-free; and that Korbett could do whatever it wanted with the Property from thereon.[24] As Mr Kronenburg stated, without a beneficial interest in the Property, Bryan and Wang had no basis to reach an agreement with Lee on the use of the Property after March 2021.[25]

Annulment of the Reconveyance Deed and reinstatement of the Trust Deed

20 The annulment of the Reconveyance Deed and the reinstatement of the Trust Deed (by the CIJs) did not automatically reinstate the Trust Arrangement. The Trust Arrangement, being a separate agreement made after the Trust Deed was executed, could only have been "revived" by agreement of the parties (*ie*, Lee, Bryan, and Wang) or the CIJs. There was no evidence of such an

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23 22BCP at pp 258 and 296 (4/12/24 Transcripts at pp 54 and 92).

24 13BCP at p 256 (Lee's 9/2/24 Affidavit at [39]); 22BCP at pp 42–43 (2/12/24 Transcripts at pp 33–34).

25 6/8/25 NE at p 11.

agreement, and the CIJs did not provide for an automatic revival of the Trust Arrangement.

21 In fact, the parties showed an intention otherwise. Bryan attested that when he discovered Lee's deception (that caused Bryan to give up his 25% share in the Property by the Reconveyance Deed), their relationship broke down and the goodwill between them ended. There was no agreement among the beneficiaries that Korbett could continue to use the Property rent-free from March 2021 and Bryan never agreed to Korbett doing so.[26] Wang similarly attested that Korbett had to account for the rent that it had not paid since March 2021 because "the rent-free agreement" did not continue as Lee had cheated him and Bryan.[27]

Conclusion on the 1st Ground

22 I accepted there was a Trust Arrangement made in late 2016 to early 2017 (in particular, that Korbett and Apek could use the Property rent-free until a new tenant was found). However, the Trust Arrangement terminated with the Reconveyance Deed and was not revived merely by the annulment of that deed or by the CIJs. Thus, Korbett was liable to pay rent in respect of its continued occupation of the Property from 4 March 2021 (the date of the Reconveyance Deed).

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[26] 13BCP at p 655 (Bryan's 7/10/24 Affidavit at [28]); 22BCP at p 315 (4/12/24 Transcripts at p 111).

[27] 22BCP at p 297 (4/1/2/24 Transcripts at p 93); 16BCP at p 227 (Wang's 18/12/23 Affidavit at [16(b)]).

2nd Ground – Whether the AR erred in finding that Korbett's efforts to secure a tenant for the Property between March 2021 and April 2024 were irrelevant

23 Korbett argued that it had discharged its duties as a trustee to act in good faith and with due diligence to obtain a tenant for the Property. The AR held this was irrelevant to the exercise required by the APP order.[28]

24 The 2nd Ground pertained to whether Korbett was liable to account for the use of the Property from March 2021 to April 2024 ("**Period**"), by paying rent. As I found the Trust Arrangement did not exist during this Period, Korbett could not rely on it to absolve itself.

25 In any event, Korbett's argument was misconceived and irrelevant.

(a) Even if Korbett had attempted to secure a tenant, and part of the Period coincided with the COVID-19 pandemic (which might have made it harder to secure a tenant), this did not therefore mean that Korbett could occupy the Property during the Period without paying rent. Korbett's efforts (or lack thereof) in securing a tenant for the Property were unrelated to its rent-free occupation of the Property. I agreed with the AR that it was the latter which constituted the breach of Korbett's duty (as a trustee) not to profit from trust property.[29]

(b) Further, an order for an account of profits focuses on the *gain* made by the *fiduciary*, and not on the loss to the trust fund. This flows from the principle that the purpose of disgorgement of profits is not to compensate the beneficiary but to ensure that the fiduciary does not

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28 AWS at [151]–[154]; GD at [81]–[82].

29 GD at [64].

profit from his breach of duty (*Innovative Corp Pte Ltd v Ow Chun Ming* [2023] 3 SLR 1488 at [18] ("*Innovative Corp*"); *UVJ v UVH* [2020] 2 SLR 336 at [28]). In this regard, I also agreed with the AR's analysis of the case law and her eventual finding that an errant fiduciary may be made to account for profits which he had notionally received.[30]

3rd Ground – Whether the AR erred in determining the quantum of Unpaid Rent during the Period should be $415,333.33

26 Korbett's argument in respect of the Unpaid Rent was two-pronged. First, Korbett argued that the existence of the Trust Arrangement militates against any notional rent (and thus an account of profits) that Korbett had to make.[31] Second, it challenged the quantum that the AR assessed.

27 I rejected Korbett's first argument. I had found the Trust Arrangement did not exist during the Period. I also repeat [25] above.

28 I turn to Korbett's challenge on the quantum of the Unpaid Rent. First, Korbett argued that Mr Png had erred in adopting a higher effective floor area of 696 m^2 for the Property, in contrast to his assumed across-the-board standard effective floor area of 558 m^2 for comparable properties.[32] The AR rejected this argument, as this was not put to Mr Png during cross-examination, thus triggering the rule in *Browne v Dunn* (1893) 6 R 67. The AR further noted that in any event, Mr Png had explained his adoption of the floor area, and even Ms Seow (Korbett's expert) had used a similar floor area of 701 m^2 in her report.[33]

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30 GD at [40].

31 AWS at [106]–[111].

32 AWS at [130]; 24BCP at p 28 (KCS at [64]–[65]).

33 GD at [86]–[87].

Before me, counsel for Korbett (Mr Suhaimi) raised a slightly different argument, being that Mr Png had erred in using the rental rate for properties of smaller floor area (558 m^2) to derive the rental rate for the Property which was larger (696 m^2). Mr Png had stated in his affidavit that the rental rate for "very large units" was not the same as that of "very small units", and that the rental rate per square foot tended to become lower as the floor area of a property increased. However, Mr Suhaimi accepted that this argument was not put to Mr Png in cross-examination.[34]

29 Second, Korbett argued that Mr Png erred in applying a blanket uplift of 35% for the Property on the assumption that it was in better condition than comparable properties, externally and internally.[35] The AR accepted Mr Png's evidence that most industrial properties were leased on a "bare shell basis" without any fittings, and that an uplift of 35% was appropriate to take into account the better condition of a fully fitted-out property (as was in this case). The AR noted that Korbett did not adduce any expert evidence to rebut Mr Png's evidence on this aspect.[36] The AR rejected Korbett's suggestion that the direct comparison method of valuation ("DCM") adopted by Mr Png required him to have closely examined the interior and exterior of all comparable properties, finding that to be an "unfair and unrealistic" position. The AR noted that Ms Seow, who also adopted the DCM, had viewed various properties from the exterior of the building but not the condition of the particular units.[37]

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34 29/8/25 NE at p 7.

35 AWS at [129]; 24BCP at pp 23–28 (KCS at [52]–[63]).

36 GD at [89]–[90].

37 GD at [92]–[93].

30 I did not find the AR had erred in her assessment of the quantum of the Unpaid Rent being $415,333.33.

31 Korbett did not rely on Ms Seow's expert evidence in its closing submissions below as to the market rental rate.[38] Ms Seow had testified that her conclusions in the expert valuation report could not be relied on by the court.[39] This essentially left the court with Mr Png's expert report and opinion. While "the court is not obliged to unquestioningly accept expert evidence, even if it is unchallenged, the court would be slow to substitute its views for those of the expert's in the absence of good grounds" (*Abhilash s/o Kunchian Krishnan v Yeo Hock Huat* [2019] 1 SLR 873 at [88]). If the court finds the evidence, which is unchallenged, 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 Public Prosecutor* [2001] 2 SLR(R) 1 at [26]).

32 It was undisputed that the Property was fully fitted out, and Mr Png had explained how he applied the uplift based on comparable properties in the vicinity of the Property and considering the difference in the built-in areas of such properties.[40] He had also conducted a physical site inspection of the properties in the vicinity and examined photographs that were publicly available.

33 On the other hand, as the AR had observed, Korbett did not adduce expert evidence to rebut Mr Png's evidence that most tenants would view a fully

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38 GD at [83]; 29/8/25 NE at pp 8 and 11.

39 GD at [83]; 22BCP at pp 178–179 (3/12/24 Transcripts at pp 59–60); 29/8/25 NE at pp 7–8.

40 22BCP at pp 338, 360, 362–363 (5/12/24 Transcripts at pp 17, 39, 41–42).

fitted-out property favourably and offer a higher rental rate.[41] Korbett's objection to the methodology adopted by Mr Png was also undermined by the fact that its own expert witness, Ms Seow, had adopted a similar methodology (in respect of the DCM) and reached a similar conclusion (in respect of the effective floor area) in her valuation.

34 Further, Korbett had not advanced sufficient justification for the adoption of its proposed "Corrected Valuation" (of $226,200), which was derived simply by removing the blanket uplift of 35% entirely. To this end, Korbett relied on a comparison of the rental data from JTC in asserting that Mr Png's valuation was "inflated".[42] Mr Kronenburg pointed out that this assertion was "plainly incorrect", as Mr Png had attested that his valuation of the per-square-foot rental rates fell within a wider range of rental data available from JTC, of which Korbett relied on a subset.[43]

35 Thus, I saw no reason to disagree with the AR's adoption of Mr Png's valuation. Accordingly, I accepted that the quantum of Unpaid Rent during the Period should remain at $415,333.33.

4th Ground – Whether the AR erred in including the period after the CIJs in determining the quantum of profits

36 Korbett submitted that the profits should be assessed up to 4 September 2023 (the date the CIJs were entered into).[44] I rejected this submission.

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41 GD at [89]–[90].

42 AWS at [132]–[135]; 29/8/25 NE at p 8.

43 RWS at [44(i)].

44 AWS at [141].

37 First, the CIJs did not expressly state that the account of profits only pertained to the period between March 2021 and 4 September 2023. Rather, the CIJs expressly provided that Korbett was to provide an account of all profits obtained by it as a result of breaches of its fiduciary duties to Bryan and Wang.

38 Korbett's reliance on *Innovative Corp* at [84][45] did not assist its case. In *Innovative Corp*, the court had to value the fiduciary's gain in relation to unsold property. The court held (at [83]–[84]) that where the value of the profits earned by an errant fiduciary *may fluctuate* before he is found liable for breaches of fiduciary duties and made to account for the profits, the most principled and accurate measure of the benefit that the fiduciary has obtained would be the value of his gain at the time he is found to be in breach of his duties. In the present case, the court can come to an "accurate measure of the benefit that the fiduciary [Korbett] has obtained". The monthly notional rent used (for the Property) was a defined and consistent value, and there was a determinative date for the valuation being the date Korbett subsequently vacated the Property.

39 In *Re Medora Xerxes Jamshid* [2024] 5 SLR 1006, the court stated (at [54]) that the quantum of the compensation resulting from a fiduciary's breach of trust can be fixed at the date of judgment at which date the compensation can be assessed. In this case, there was no reason why the compensation could not be assessed up to the date of assessment of damages before the AR, if the breach was continuing even after the CIJs.

40 Importantly, Korbett never argued, at the hearing below, that the profits should be assessed only up to the date of the CIJs (4 September 2023). In its closing submissions below, Korbett proceeded on the basis that the period of

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45 AWS at [149].

valuation would be from March 2021 to April 2024. This was confirmed by Lee in cross-examination, where he agreed that Korbett would have had to account for the benefit of occupying the Property rent-free from March 2021 until HSG became a tenant, although he qualified this by saying that this was subject to the Trust Arrangement.[46] The qualifier was irrelevant, as I found the Trust Arrangement did not exist after the Trust Deed was reinstated in March 2021.

5th Ground – Whether the AR erred in finding that the GTSS Monthly Payments received by Korbett were to be treated as "profits"

41 GTSS occupied part of the Property and paid Korbett $3,210 monthly from 1 April 2017 to 5 February 2021 (the GTSS Monthly Payments). The issue was whether these payments were rent to be treated as "profits" that Korbett had to account for, or as payments towards Lee's share of the mortgage.[47]

42 GTSS was controlled by Lee.[48] Lee attested that: (a) it was agreed that Bryan and Wang would be responsible for 50% of the mortgage payments which they effected through Apek; and (b) he (through Korbett *and his other company GTSS*) would be responsible for paying the remaining 50%.[49] Korbett alleged that Bryan was aware the GTSS Monthly Payments to Korbett were considered part of Lee's share of the contributions to the mortgage.[50]

43 The AR found that Korbett had not discharged its burden of showing the GTSS Monthly Payments were to be treated as payments towards Lee's share

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46 22BCP at p 41 (2/12/24 Transcripts at p 32); 24BCP at p 30 (KCS at [70]).

47 GD at [43]–[44].

48 AWS at [74]; 6/8/25 NE at p 3.

49 13BCP at pp 16–17 (Lee's 28/11/23 Affidavit); 14BCP at p 20 (Lee's 7/10/24 Affidavit at [24]).

50 24BCP at pp 46–47 (KCS at [118]–[121]).

of the mortgage of the Property, based on the following. First, Lee stated in two accounting affidavits that Korbett received rental proceeds from GTSS, which were used towards servicing the mortgage. These affidavits demonstrated clear understanding of the distinction between the character of the payment (*ie*, rent) and the use to which the payment was put (*ie*, defraying Lee's share of the mortgage). Second, while Lee's oral evidence showed he had conflated the character with the use of the payment, this could not "change the true character of the payment or the fact that there were two separate and distinct obligations being discharged". Third, the AR accepted the Respondents' evidence that they were unaware of the GTSS Monthly Payments and had assumed that mortgage payments would be undertaken by Apek (for the Respondents) and Korbett (for Lee). The AR also did not accept that Lee's control over GTSS meant that "whatever GTSS paid for occupying part of the Property would be taken as Lee's share of the mortgage".[51]

44 I found the AR had not erred in concluding that the GTSS Monthly Payments made to Korbett (attributable to GTSS's occupation of the Property) were profits which Korbett had to account for.

45 I accepted the AR's findings that the GTSS Monthly Payments were payments of rent.[52] This was clear from Lee's own testimony. In Lee's affidavit dated 28 November 2023, he admitted to Korbett receiving rental proceeds and/or benefits of $99,810 and referred to "Section (I) of the Account for breakdown of *rental* profits for GTSS" [emphasis added].[53] Lee, again, in his affidavit dated 9 February 2024, stated that "*GTSS did pay rent* in the period

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51 GD at [45]–[53].

52 GD at [45].

53 13BCP at pp 16–17 (Lee's 28/11/23 Affidavit at [9(3)(c)(iii)]).

prior to April 2021".[54] Before me, Mr Suhaimi did not dispute that GTSS paid rent to Korbett. The dispute centred around whether the beneficiaries had agreed that the GTSS Monthly Payments could be used towards the discharge of the mortgage of the Property for Korbett (on Lee's behalf).[55]

46 Next, I agreed with the AR that there was no evidence the Respondents knew of, or had agreed to, the treatment of the GTSS Monthly Payments as payments towards Lee's share of the mortgage ("GTSS Arrangement").

47 I start by stating that it was not Korbett's case that the Trust Arrangement included an additional term or agreement among the beneficiaries that Korbett could use any payments from GTSS for GTSS's occupation of the Property as part of Lee's share of the monthly mortgage payment. Even Lee did not attest as such (see [9] and [42] above). Hence, the existence of a Trust Arrangement (for *Korbett* (and Apek) to use the Property rent-free) did not therefore mean the beneficiaries also agreed to Korbett allowing GTSS (or any other person) to occupy the Property and collecting rent from the occupant without accounting for them to the beneficiaries' benefit. This was even if GTSS was (indirectly) owned by Lee, as it was a separate entity, and there was nothing in the Trust Arrangement that showed the parties intended to benefit GTSS.

48 Korbett asserted the Respondents knew the GTSS Monthly Payments to it were to be considered as part of Lee's share of the contribution to the mortgage. Korbett relied on the fact that Lee controlled GTSS and a Whatsapp exchange between Lee and Bryan on 26 April 2017 ("26/4/17 Messages").[56]

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54 13BCP at p 254 (Lee's 9/2/24 Affidavit at [35]).

55 29/8/25 NE at pp 2–3.

56 AWS at [74]–[101]; 10BCP at pp 247–248.

> Bryan: How much is Apek supposed to pay for monthly rental for 26A? I need to apportion part of it to Derrick [a director of GTSS, at the material time[57]]
>
> Lee: Har I already took that into account
>
> Lee: 1/2 to KORBETT 1/2 to Apek
>
> Bryan: Ya. But my half they take up a portion on my location ma
>
> Lee: Whoa lao
>
> Bryan: Cannot be i take less than whole of ground floor n then pay over 5-6k for rental
>
> Lee: They only using 1/4 of the backyard right?
>
> Bryan: More like half if i see the layout correctly. Anyway they will have people there and will incur electricity and water bills etc.

49 I agreed with the AR that the 26/4/17 Messages did not demonstrate a clear acceptance by Bryan that any payments from GTSS to Korbett would be attributed to Lee's share of the mortgage.[58] Even if Bryan knew that "Derrick" was a representative from GTSS[59] and knew of GTSS' occupation of the Property, this did not mean that he knew GTSS would be paying rental to Korbett (*ie*, the *existence* of the GTSS Monthly Payments) or that Bryan had accepted that such payments would be attributed towards Lee's share of the monthly mortgage.

50 Importantly, Lee never raised the 26/4/17 Messages in any of his affidavits (whether to liability or account of profits) to support his/Korbett's assertion that the beneficiaries (Wang and Bryan) knew of, or agreed to, the GTSS Monthly Payments, or that any GTSS payments to Korbett would be used as Lee's share of the monthly mortgage repayments. In fact, Lee merely cited

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57 AWS at [80].

58 GD at [49].

59 22BCP at p 242 (4/12/24 Transcripts at p 38).

the 26/4/17 Messages (in his 11 July 2023 affidavit) to support that "Apek would pay monthly rental to Korbett for their share of the space", without any further explanation.[60] Additionally, whilst Lee asserted in a later affidavit (of 7 October 2024) that Korbett and he (including through his other company GTSS) would be responsible for putting up the remaining 50% of the mortgage payments, he did not exhibit the 26/4/17 Messages to support this assertion.[61]

51 Korbett also relied on Bryan's testimony in cross-examination. The AR was cognisant that Bryan was questioned in court in some detail about the 26/4/17 Messages.[62] I saw no reason to disagree with the AR's conclusion that Bryan essentially explained that he and Lee discussed the *use* of the Property and how much each user should be paying for the space utilised, but not that GTSS's payments would be attributed to Lee's share of the mortgage. I also saw no reason to disagree with the AR's finding that Bryan did not even know that GTSS was paying rent, much less about the GTSS Arrangement.[63]

52 Indeed, Bryan's testimony was that he found out about GTSS when it started to come into the Property.[64] It bears remembering that the Trust Arrangement was made in around late 2016 to March 2017. The 26/4/17 Messages occurred in April 2017 (*after* the Trust Arrangement) and, importantly, there was no evidence that Wang was privy to the 26/4/17 Messages or that he knew about the GTSS Monthly Payments or the GTSS Arrangement at the material time, let alone agreed to the GTSS Arrangement.

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60 4BCP at p 23 (Lee's 11/7/23 Affidavit at [36]).

61 17BCP at p 20 (Lee's 7/10/24 Affidavit at [24]).

62 AWS at [75]; GD at [50]; 22BCP at pp 237–244 (4/12/24 Transcripts at pp 33–40).

63 GD at [51].

64 22BCP at pp 237–238, 242 (4/12/24 Transcripts at pp 33–34, 38).

Before me, Mr Suhaimi accepted there was no evidence that Wang knew about the GTSS Arrangement.[65]

53 Finally, I agreed with the AR that even if Bryan and/or Wang knew that Lee controlled GTSS, it did not necessarily follow that GTSS's payments for occupying the Property would be agreed as Lee's share of the mortgage.[66] There was no evidence to show that both Bryan and Wang had agreed with Lee on the GTSS Arrangement. That Korbett was permitted to occupy the Property rent-free (pursuant to the Trust Arrangement) did not mean that it was permitted to sub-let the Property, let alone collect rent for its own benefit.

6th Ground – Whether the AR erred in determining 11 invoices for improvement works to the Property should not be a liability for the beneficiaries under the Trust Deed to share

54 Mr Suhaimi clarified the 6th Ground concerned 11 invoices mentioned by the AR in her GD at [122] ("11 Invoices"), that pertained to improvement works to the Property which included the installation of a pedestrian gate, cabling for the internet system and a security system ("Works").[67]

55 Korbett argued that the Works benefitted the Property as a whole and enabled it to secure a better rental price. The Respondents argued that the Works were carried out for the benefit of Lee's companies (Korbett and GTSS). The AR declined to find whether the Works were for Korbett's benefit or had contributed to securing the rental price. Instead, the AR found the Works were outside the scope of the basic renovation works that the beneficiaries had agreed to bear the costs of, and that two of the beneficiaries did not agree to the Works.

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65 29/8/25 NE at p 2.

66 GD at [52].

67 29/8/25 NE at p 14; GD at [122].

The AR stated that Korbett could not take instructions from only one of the three beneficiaries. The AR thus found the 11 Invoices were not to be shown in the account as a liability for the beneficiaries under the Trust Deed to share.[68]

56 On appeal, Korbett argued that the AR failed to consider that under the Trust Deed, Korbett was bound to follow the instructions of a beneficiary and be indemnified for all payments that it properly made in accordance with the Trust Deed, and relied on cl 3 of the Trust Deed.[69] Clause 3 provided as follows:

> The Beneficiary shall indemnify the Trustee for all payments properly made by the Trustee in accordance with this Deed in relation to the property and for all payments made and costs and expenses properly and reasonably incurred as a result of carrying out the instructions of any of the Beneficiary.

57 "Beneficiary" was defined in the Trust Deed as comprising Bryan, Wang and Lee collectively (as Chen was no longer a beneficiary – see [12] above). Notably, cl 3 of the Trust Deed expressly provided that instructions from "*any* of the Beneficiary" [emphasis added] would suffice for the Trustee (Korbett) to be indemnified for costs and expenses ("expenses") *properly and reasonably incurred*.

58 The Respondents argued that cl 3 must be read with cll 2.1, 2.4 and 2.5 which delineated what constitutes "payments properly made by the trustee" under cl 3 of the Trust Deed; and that Korbett was required to seek the consent of all the beneficiaries to the Trust Deed to be indemnified on the 11 Invoices.[70]

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68 GD at [122] and [126].

69 Notice of Appeal, ground (f); AWS at [161].

70 RWS at [66].

59 In my view, that one of the "Beneficiary" gave instructions to the Trustee to incur expenses did not *ipso facto* make the expenses "properly and reasonably incurred". Notably, cl 2.6 of the Trust Deed stipulated that "the Trustee [Korbett] shall act in good faith and with due diligence for the benefit of the Beneficiary in respect of all matters relating to the [P]roperty". Thus, unless the beneficiaries agreed otherwise, any expenses would only be "properly and reasonably incurred" if incurred for the benefit of all the beneficiaries (collectively defined as "Beneficiary"), even if the instruction to incur such expenses emanated from one of them.

60 The evidence showed the beneficiaries had agreed that: (a) only the expenses of "basic renovation works" would be borne by them; and (b) any "additional renovation works" would be decided upon, and paid for, by the intended future tenant of the Property.

(a) Bryan attested that when the Property was purchased, he, Wang and Lee agreed that they would pay for basic renovation works equally, such that the Property would be presentable enough to be rented out; and that they agreed that any additional renovation works (*eg*, relating to air conditioning, security, aesthetics/interior design of the Property) were to be decided upon and paid for by the intended future tenant of the Property ("Renovation Agreement").[71]

(b) Bryan further attested that the Renovation Agreement was the basis on which Lee had sent two emails to him and Wang on 16 January 2017 and 11 April 2017 ("Renovation Emails"), wherein Lee informed them of the costs of the "basic reno" to be shared among the

[71] 13BCP at p 668 (Bryan's 7/10/24 Affidavit at [45]–[46]).

beneficiaries and that "[a]ir conditioning, interior, everything else paid by tenants taking over".[72]

(c) Wang attested to the same as Bryan at [(a)] and [(b)] above.

(d) In cross-examination, Lee agreed with Bryan's testimony regarding the above.[73]

61 Before me, Mr Suhaimi agreed that the 11 Invoices pertained to "additional renovation works".[74] Korbett would have known this, and of the agreement as set out in Bryan's testimony (at [60(a)] above). Lee represented Korbett in relation to the Works, as can be seen from some of the 11 Invoices addressed to Lee and the Renovation Emails which were sent by Lee. That the Renovation Agreement was made when the Property was purchased did not affect the trustee's duty to act in good faith (for the benefit of all the beneficiaries of the Property), a duty explicitly stated in the Trust Deed.

62 Indeed, Korbett was alive to its duty to act in good faith. The Renovation Emails showed that Korbett and Lee continued to act in accordance with the Renovation Agreement more than six months after the execution of the Trust Deed, as can be seen from Lee's 11 April 2017 Renovation Email (see [60(b)] above). Thus, Korbett should have obtained the consent of all the beneficiaries before departing from the Renovation Agreement, regardless of the "instructions" that came from one beneficiary (Lee) on the Works.

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72 13BCP at p 669 (Bryan's 7/10/24 Affidavit at [47]); 10BCP at pp 240–241 (Renovation Emails).

73 22BCP at pp 81–82 (2/12/24 Transcripts at pp 72–73).

74 29/8/25 NE at p 16.

63 Mr Suhaimi argued that Apek also enjoyed the benefits of the Works and the Works enhanced the ability for the Property to be tenanted out; Bryan and Wang could not then argue that the Works should not have been done or paid for. I agreed with the AR that this was beside the point, in view of the Renovation Agreement. Notably, Korbett, GTSS and Apek were the tenants of the Property, and the Renovation Agreement could have been put into effect. Further, Lee was Korbett's director and the indirect sole shareholder of Korbett and GTSS. Korbett, in carrying out Lee's sole instructions (even if *qua* beneficiary) without obtaining the consent of the other beneficiaries (Bryan and Wang) would have put itself in a position of conflict of interests and/or duty.

64 In sum, I found the AR did not err in determining that the 11 Invoices should not be a liability for the beneficiaries under the Trust Deed to share.

7th Ground – Whether the AR erred in determining Korbett's payment of the housing agent's fee should not be a liability for the beneficiaries under the Trust Deed to share

65 The AR accepted that Korbett's leasing of the Property to HSG was not known to the Respondents until *after* the tenancy agreement with HSG (the "Tenancy Agreement") was concluded. The AR found that this was in breach of Korbett's obligations under cll 2.1 and 2.5 of the Trust Deed. Clauses 2.1 and 2.5 required Korbett to provide prior disclosure of the tenancy to the Respondents before the Tenancy Agreement was executed, and to obtain the beneficiaries' written consent to deal with the Property. The AR thus held that the payment to the real estate agent involved in the procurement of the Tenancy Agreement ("Agent Fee") was not properly incurred and could not be shown in the account as a liability for the beneficiaries of the Trust Deed to share.[75]

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[75] GD at [128]–[129]; 13BCP at p 649 (Bryan's 7/10/24 Affidavit at [16]); 16BCP at p 645 (Wang's 7/10/24 Affidavit at [16]); 21BCP at pp 668–670.

66 In so far as Korbett relied on cl 3 of the Trust Deed, I agreed with the AR that this must be read with other relevant clauses in the Trust Deed. I reiterate [59] above. Clause 2.1 stipulated that Korbett (the Trustee) agreed not to deal with the Property without the beneficiaries' written consent and cl 2.5 stipulated that Korbett was to disclose to the beneficiaries all agreements that affect the ownership of the Property. These clauses were wide enough to cover a tenancy and the Tenancy Agreement. Thus, where Korbett had breached its duty as a trustee by dealing with the Property (*ie*, by letting it to HSG) without obtaining the prior written consent of all the beneficiaries, the expense incurred in obtaining the tenancy with HSG (such as the Agent Fee) would have formed part of the "dealing" in relation to the Property, and which would thus not have been properly incurred.

67 The question was whether Korbett was nevertheless entitled to be indemnified for the Agent Fee.[76] The court retains a discretion to allow a trustee to be indemnified if he incurs expenses in a transaction unauthorised by the terms of the trust instrument and without the request or implied assent of the beneficiaries, where the trustee acted in good faith and the transaction benefitted the trust estate (*Cheong Soh Chin v Eng Chiet Shoong* [2019] 4 SLR 714 at [63]–[65]).

68 Although Korbett had breached its duties in various aspects, I exercised my discretion to allow Korbett to be indemnified in relation to the Agent Fee. The Agency Fee that was incurred resulted in a tenant (HSG) being obtained for the Property, which yielded rent to the beneficiaries' benefit. There was also nothing to suggest that Korbett acted in bad faith in incurring this expense.

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[76] AWS at [167].

Conclusion

69 In conclusion, I allowed the appeal only in relation to the 7th Ground and ordered that the Agent Fee be shown in the account as a liability for the beneficiaries under the Trust Deed to share. I dismissed the appeal in relation to the 1st to 6th Grounds.

Audrey Lim
Judge of the High Court

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Suhaimi bin Lazim, Thrumurgan s/o Ramapiram, Mohamed Hashim H Sirajudeen, Mohamad Hasbu Haneef bin Abdul Malik and Lokman Hakim bin Mohamed Rafi (Trident Law Corporation) for the defendants.