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

[2026] SGHC(A) 1

Appellate Division / Civil Appeal No 11 of 2025

Between

Yit Chee Wah (as private trustee of the estate of Jannie Chan Siew Lee, a bankrupt)

… *Appellant*

And

Fulcrum Distressed Partners Limited

… *Respondent*

In the matter of Originating Application No 797 of 2022

Between

(1) Timor Global Pte Ltd (in liquidation)
(2) Fulcrum Distressed Partners Ltd

… *Claimants*

And

Yit Chee Wah (as private trustee of the estate of Jannie Chan Siew Lee, a bankrupt)

… *Respondent*

And

In the matter of Bankruptcy No 2648 of 2018 (Summons No 4314 of 2022)

In the matter of the Bankruptcy Act (Cap 20, 2009 Rev Ed)

And

In the matter of Jannie Chan Siew Lee

Between

SME Care Pte Ltd

… *Plaintiff*

And

Jannie Chan Siew Lee

… *Defendant*

JUDGMENT

Insolvency Law — Bankruptcy — Proof of Debt
Companies — Directors — Duties

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Ang Cheng Hock JCA, Woo Bih Li JAD and Kannan Ramesh JAD
26 September 2025

7 January 2026 Judgment reserved.

Ang Cheng Hock JCA (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision by the Judge below (the "Judge") in *SME Care Pte Ltd v Chan Siew Lee Jannie and another matter* [2025] SGHC 27 (the "Judgment"). The Judgment addressed three main applications involving the same bankrupt, Jannie Chan Siew Lee ("Ms Chan"), and her private trustee in bankruptcy ("PTIB"), Mr Yit Chee Wah ("Mr Yit").

2 The first main application, HC/SUM 4315/2022 ("SUM 4315"), was Ms Chan's application to set aside Mr Yit's partial admission of a proof of debt filed by SME Care Pte Ltd. The Judge dismissed the application. Since this appeal does not involve SUM 4315, we say no more about it.

3 The second and third main applications were in respect of a proof of debt filed by the liquidators of Timor Global Pte Ltd ("TGPL"), a Singapore-incorporated company, and pursued by the assignee of TGPL's debt, Fulcrum Distressed Partners Ltd ("FDPL"), a company incorporated in the British Virgin Islands ("BVI"). The second main application comprised HC/SUM 4314/2022 ("SUM 4314") and HC/OA 797/2022 ("OA 797") filed by FDPL, where it sought to reverse Mr Yit's rejection of two sums of the proof filed. At the same time, for the third main application in HC/SUM 4316/2022 ("SUM 4316") filed by Ms Chan, she argued that two other parts of the proof should not have been accepted by Mr Yit. The Judge allowed the second main application and dismissed the third main application.

4 Mr Yit brings this appeal against the Judge's decision relating to the second main application, *ie*, SUM 4314 and OA 797, which was decided in favour of FDPL. Mr Yit contends that two sums, referred to by the parties and the Judge as the "TL Sum" and the "Finished Goods Sum", should not be admitted under the proof of debt regime, or alternatively, that the Judge ought to have conducted a trial or at least ordered cross-examination of witnesses, before deciding whether those sums should be admitted.

5 Having considered the parties' written and oral submissions, we are of the view that the proper course of action is for us to order a trial before the Judge to determine the admissibility of the TL Sum and the Finished Goods Sum. The allegations against Ms Chan are that she had breached her duty to act honestly and in good faith in the interests of TGPL. Those are serious accusations, and the available evidence before us does not appear sufficient to establish such dishonesty and lack of good faith. As we shall elaborate, the evidence pertaining to the elements of breach of fiduciary duty is contradictory and incomplete, leaving gaps which ought to be further explored through the processes available

in proceedings for an originating claim such as discovery, orders for persons to attend court as witnesses, and the oral examination of witnesses.

6 We also take this opportunity to reiterate that the proof of debt regime is designed for the relevant adjudicator (*eg*, a PTIB) to decide straightforward claims efficiently, such as where the written and/or documentary evidence clearly establish liability. In claims which involve complex disputes of fact, and where examination of witnesses is necessary to resolve the disputes, the adjudicator can reject the claim and explain that the claim is not amenable to be determined summarily. Alternatively, the adjudicator can seek directions from the court as to how the claim should be determined. Often, in such cases, the court may direct that there be a trial of the claim or at least some limited cross-examination of witnesses to resolve the material disputes of fact. In the present case, given the nature of the issues, it would have been appropriate for Mr Yit to have sought directions from the court on how those issues should be best resolved in the present circumstances. Alternatively, Mr Yit and FDPL should have attempted to agree on the modalities for resolving those issues and obtain directions from the court on whether their approach was acceptable. However, neither course of action was taken by the parties. Instead, each party proceeded independently on the basis that the issues in dispute could be resolved simply based on the affidavits and documentary evidence. This was an erroneous approach. The Judge ought not to have permitted the parties to proceed on this basis. Instead, a trial of the disputed claims ought to have been ordered.

Facts

Background

7 TGPL was incorporated in Singapore on 16 February 2005. Its sole shareholder at all material times was Ms Chan. From the time of incorporation

until the company was ordered to be wound up in 2018, Ms Chan and a Mr Lay Ni Suig Bobby ("Mr Lay") were directors of TGPL. In addition, a Mr Tan Tjo Tek ("Mr Tan") was a director of TGPL from 2005 to August 2016. TGPL was placed in compulsory liquidation on 2 March 2018. Timor Global (TL) Pte Ltd ("TL"), a Timor-Leste company registered in 2005, is another company that features in these proceedings. Ms Chan held between 60 to 70% of the shares in TL at all material times. Mr Lay was the sole director of TL: Judgment at [26]–[27].

8 TGPL and TL were in the business of agricultural trading, such as coffee beans. From 2006 to 2008, TGPL and TL were involved in a joint venture arrangement with Intraco Trading Pte Ltd ("Intraco") for the processing and trading of coffee beans, and for the profits to be shared between TGPL and Intraco. To that end, TGPL, TL and Intraco entered into a joint venture agreement on 1 July 2007 ("2007 JVA"). Notably, the recitals of the 2007 JVA referred to an earlier agreement dated 27 March 2006 ("2006 JVA"), but only the 2007 JVA was produced as part of the documentary evidence before the court below. According to the recitals of the 2007 JVA, the latter covered substantially the same subject matter as the 2006 JVA, but there were some changes to Intraco's trading commitment and the way profits were to be shared.

9 Under the terms of the 2007 JVA:

(a) TGPL would place orders for processed coffee beans from Intraco, and Intraco would in turn order an equivalent amount from TL. Intraco was required to make advance payment to TL of the purchase price for the coffee beans.

(b) TL would purchase raw materials from third parties and then process them into coffee beans. The advance payment by Intraco was

intended to enable TL to purchase the raw materials and process them into coffee beans.

(c) The coffee beans Intraco purchased from TL would be on-sold by Intraco to TGPL at cost.

(d) TGPL would then market and sell the coffee beans to third-party buyers, with gross profits of such sales being split according to a pre-arranged formula of either (a) 60:40 (TGPL:Intraco) where Intraco's share of the profits were up to US$770,040; or (b) 70:30 for profits above that threshold. Any losses would be borne entirely by TGPL.

10 It is not in dispute that the parties did not adhere strictly to the terms of the 2007 JVA. For example, for reasons that were not explained, the invoices issued by TL to Intraco for the advance payments directed the latter to make payment to TGPL's bank accounts instead of TL's bank accounts. That was what Intraco did. It is undisputed that, from 31 July 2007 to 17 October 2007, S$8,638,389.92 was paid by Intraco to TGPL, who then paid S$8,142,398.70 to TL (from 3 August 2007 to 18 October 2007). Whether those payments to TGPL and their onward transfer to TL were pursuant to the joint venture arrangements between Intraco, TGPL and TL is one of the contentious issues in dispute in this case, as we will explain below.

11 In 2008, disputes arose in relation to the joint venture agreement. In September 2009, Intraco commenced arbitration proceedings against both TGPL and TL. While Intraco settled its claim against TL in September 2010, it continued pursuing its claim against TGPL. Eventually, Intraco obtained arbitration awards in its favour of S$6,635,566.93 and S$3,630,001 on 10 March 2015 and 26 November 2015 respectively against TGPL. In April 2015, Intraco obtained leave to enforce one of the awards as an order of court and took

out examination of judgment debtor proceedings against TGPL (the "Intraco EJD Proceedings"). Ms Chan filed three affidavits in those proceedings (the "Intraco EJD Affidavits"), and was also examined in court. Intraco subsequently brought winding up proceedings against TGPL and it was ordered to be wound up on 2 March 2018.

12 TGPL's liquidators found discrepancies in the records of TGPL as to the amounts due from TL. For example, the latest management accounts of TGPL reflected the TL Sum as being the amount of receivables due from TL, whereas the amount of receivables recorded as due from TL to TGPL in TGPL's last *audited* financial statements (for the financial year ending 31 December 2008) was substantially less than the amount shown in TGPL's management accounts for the same year. The books and records of TGPL were also found to be incomplete.

13 On 17 May 2019, TGPL's liquidators applied to examine Ms Chan and Mr Lay, the two directors of TGPL at the time it was placed in liquidation. However, on 27 May 2019, Ms Chan was adjudged bankrupt on an application made by SME Care Pte Ltd in relation to an unrelated debt. Proceedings against Ms Chan were then stayed and she was never examined by TGPL's liquidators. For reasons which are unclear, the liquidators also did not proceed with the examination of Mr Lay.

14 On 14 October 2019, TGPL's liquidators filed a proof of debt against Ms Chan's estate in bankruptcy for four sums, including the TL Sum and the Finished Goods Sum. The quantum of the four sums totalled S$18,413,260 and US$2,301,767: Judgment at [30]. The proof of debt was revised on 1 April 2022. Among other changes, the TL Sum was adjusted from S$15,400,000 to S$15,766,460. This sum referred to the receivables allegedly owed by TL to

TGPL as at 31 December 2014. The Finished Goods Sum referred to a sum of US$2,301,767.43, which, according to FDPL, converted to S$3,161,247.39 using the Monetary Authority of Singapore's exchange rate for 27 May 2019 (the date of Ms Chan's bankruptcy order) of S$1.3734 = US$1. This sum represented sales proceeds from coffee beans sold by TGPL in 2008, which were allegedly paid directly by TGPL's customers to TL between 19 June 2008 and 14 November 2008: Judgment at [32]. The basis of the claim against Ms Chan for both sums was that she had breached her fiduciary duties as a director of TGPL.

15 Mr Yit was subsequently appointed as the PTIB of Ms Chan's estate in bankruptcy on 9 June 2020 and he proceeded to adjudicate the proof of debt. Mr Yit met with Ms Chan on nine occasions and also wrote to TGPL's liquidators to ask for further information and documents about the two sums. Ms Chan objected to the claims for the two sums, as well as other sums which are not the subject of this appeal.

16 On 21 October 2022, FDPL and TGPL entered into a Sale and Assignment of Claim agreement. Through this agreement, TGPL assigned to FDPL "any and all of TGPL's right, title, and interest in, to and under the claims of TGPL against [Ms Chan] and [her] bankruptcy estate", including the claims set out in the original and revised proof of debt lodged by TGPL. Mr Yit was given due notice of this assignment. In this judgment, we will refer to the claims for the TL Sum and the Finished Goods Sum as "FDPL's claims", though it should be understood that FDPL is the assignee of TGPL's claims against Ms Chan for breach of her fiduciary duties owed to TGPL.

17 Eventually, on 3 November 2022, Mr Yit issued an adjudication notice, in which he, among other things, rejected the claims for both the TL Sum and the Finished Goods Sum:

(a) Mr Yit rejected the claim for the TL Sum for two main reasons. First, he found that the documents did not provide satisfactory evidence that Ms Chan had breached her custodial fiduciary duties to TGPL. In particular, the evidence did not show that Ms Chan had misapplied the TL Sum by authorising the transfers of funds from TGPL to TL without any commercial purpose or had personally taken the benefit of such funds. Second, Mr Yit found that FDPL's claim for the TL Sum was time-barred, as the bulk of the transactions making up the TL Sum occurred more than six years before the winding up order on 2 March 2018.

(b) Mr Yit rejected FDPL's claim for the Finished Goods Sum because (i) there was insufficient evidence that Ms Chan instructed the customers to make these payments directly to TL or even knew about these payments; and (ii) there was no evidence that Ms Chan directly benefited from TL's receipt of the Finished Goods Sum.

The proceedings below

18 On 24 November 2022, FDPL filed OA 797 to appeal against Mr Yit's decision to reject the claims for the TL Sum and the Finished Good Sum. Shortly after that, FDPL filed SUM 4314 under HC/B 2648/2018 ("B 2648"), which was the bankruptcy application pursuant to which Ms Chan was adjudicated a bankrupt. SUM 4314 sought the same orders as OA 797. The reason for the two applications was uncertainty as to whether the regime governing the appeal against Mr Yit's adjudication was the Insolvency, Restructuring and Dissolution

Act 2018 (2020 Rev Ed) ("IRDA") or the now-repealed Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA"). If it was the former, the application would be made by an originating application but if it was the latter, the application would be made by a summons. This apparent lack of clarity stemmed from s 525(1)(*b*) of the IRDA, a transitional provision, which provides that the bankruptcy provisions in the IRDA do not apply "to or in relation to … any bankruptcy application made before 30 July 2020", but that the BA as in force immediately before 30 July 2020 will continue to apply. The issue is whether these words in s 525(1)(*b*) of the IRDA mean that the bankruptcy provisions in the IRDA do not apply in relation to *proceedings consequential to and arising from* an order of bankruptcy based on a bankruptcy application made before 30 July 2020. The Judge did not express a view on this issue.

19 Although this issue has not been raised on appeal, we think it would be appropriate for us to express some tentative views, given that the cases on this point do not speak with one voice (see *Rothstar Group Ltd v Chee Yoh Chuang and another and other matters* [2021] SGHC 176, contrasted with *Re Zhong Jun Resources (S) Pte Ltd (in liquidation) (Inner Mongolia Huomei-Hongjun Aluminium Electricity Co Ltd and another, non-parties)* [2024] SGHC 160, which deals with s 526 of the IRDA but is relevant as ss 526(1)(*c*) and (*g*) operate similarly to s 525(1)(*b*)). This may assist parties in deciding what is the correct procedure and thus save parties some unnecessary costs.

20 In our view, the regime under the BA applies to this case. Although the term "bankruptcy application" under s 525(1)(*b*) of the IRDA is not explicitly defined, that term for Parts 13 to 21 of the IRDA refers to an application to the Court for a bankruptcy order, which in turn means an order adjudging a debtor bankrupt – see s 273(1) of the IRDA. The term "bankruptcy application" has the same meaning under s 2(1) of the BA. We think that the applications made

below to appeal against Mr Yit's adjudication on the admission of certain sums as debts in the bankruptcy estate of Ms Chan were made "in relation to" a bankruptcy application made before 30 July 2020. That the applications were made ultimately arises from the bankruptcy application made against Ms Chan in B 2648 which was filed on 2 November 2018 before the cut-off date of 30 July 2020.

21 We turn now to the conduct of the proceedings below. Counsel for Mr Yit and FDPL appeared before the Judge and made oral and written submissions. Ms Chan acted in person and filed SUM 4316 to appeal against Mr Yit's decision to admit certain sums as due from her to TGPL (and thus FDPL as assignee): Judgment at [3]. These sums did not include the TL Sum and Finished Goods Sum as Mr Yit did not admit them. In her affidavit in support of SUM 4316, she stated, among other things, that:

(a) she was "only a financial investor" in TGPL;

(b) she had no "hands on" involvement with the accounts and records of TGPL, which were "generally very 'messy' due to staff coming and going";

(c) as she was travelling overseas for about 90% of the year, her staff had a digital signature of hers "which they used when it was necessary"; and

(d) as she was involved in many other businesses, she left "all the affairs of TGPL to [Mr Lay] and [Mr Tan]" and one Charles Chow who worked with Mr Tan at the beginning but later moved on.

22 During the hearing before the Judge, Ms Chan also appeared in person and made arguments. She claimed that, amongst other things, she was "just an investor … [t]o finance equipment" for TGPL, and "was not involved in that company" or in its operations.

23 There was no oral examination of any witnesses in the proceedings below. Mr Lay and Mr Tan did not file any affidavits for the proceedings. The Judge had raised the possibility of converting the matter to a civil suit, but neither party took up the suggestion.

Decision below

The TL Sum and the Finished Goods Sum were provable debts

24 Mr Yit initially argued that breaches of fiduciary duty must be custodial for claims for damages arising from such breaches to be provable in bankruptcy. Mr Yit argued that FDPL's claims for the TL Sum and the Finished Goods Sum were claims for non-custodial breaches and thus did not give rise to debts provable in bankruptcy. On the other hand, FDPL contended that claims for damages arising from non-custodial breaches of fiduciary duty were also provable in bankruptcy.

25 However, after the Judge invited both parties to consider his decision in *Re Medora Xerxes Jamshid (in his capacity as the private trustee in bankruptcy of Tan Han Meng) (Planar One & Associates Pte Ltd (in liquidation), non-party)* [2024] 5 SLR 1006 ("*Re Medora Xerxes*") and file further submissions, the parties then took the common position that a claim for damages for breach of fiduciary duty, regardless of whether the breach was of a custodial or non-custodial nature, was provable as an unliquidated claim arising by breach of trust. On this basis, and applying the principles in *Re Medora Xerxes*, the Judge

held that the TL Sum and the Finished Goods Sum were capable of being provable debts, if established by the evidence: Judgment at [36]–[37].

26 The parties did not appeal against this part of the Judge's decision.

The TL Sum should be admitted

27 The Judge held that the TL Sum should be admitted in full.

The composition of the TL Sum

28 The Judge analysed the TL Sum as comprising three components (Judgment at [31]):

(a) the sum of S$8,142,398.70, which arises from transfers made by TGPL to TL in 2007 (the "2007 Payments") (see [10] above).

(b) the sum of S$6,662,009.44, which is the amount recorded in the accounts as being due from TL to TGPL as at 31 December 2006 (the "Opening Balance"); and

(c) the sum of S$962,051.84, which relates to payments made by TGPL purportedly for TL's operating expenses ("Sum 3").

29 The Judge adopted the TL Sum figure from TGPL's management accounts for the year 2014 (the "2014 MA"): Judgment at [31]. He also accepted that Sum 3 related to payments by TGPL for TL's operating expenses, by labelling that sum as "Operating Expenses". As we shall explain below at [91]–[93], it is not clear that this is indeed what Sum 3 relates to. All that can really be said is that Sum 3 is simply the result of subtracting the 2007 Payments and the Opening Balance from the TL Sum.

The 2007 Payments

30 Mr Yit contended that the 2007 Payments were legitimate transactions under the 2007 JVA. TL had directed Intraco to make advance payments to TGPL instead of directly to TL as provided for in the joint venture arrangements, and TGPL then passed on these funds to TL. Hence, TL was legally entitled to receive these payments – the transactions were not loans extended by TGPL to TL such that TL would have to repay these amounts. On this footing, Mr Yit argued that Ms Chan did not breach her fiduciary duties in authorising TGPL to make these payments or in subsequently failing to seek repayment and instead approving the writing-off of this "debt" due from TL.

31 FDPL submitted that the entire TL Sum, including the 2007 Payments, were loans extended by TGPL to TL with little or no commercial benefit to TGPL. These amounts were recorded as "receivables" owed by TL in TGPL's accounts. Ms Chan had also admitted during the Intraco EJD proceedings that these were genuine debts owed by TL to TGPL. As she had caused TGPL to make these loans to TL with little or no benefit to TGPL and failed to recover these amounts whilst TGPL faced insolvency, she was in breach of her fiduciary duties to the TGPL.

32 The Judge found sufficient evidence that the 2007 Payments were genuine debts owed by TL to TGPL.

33 First, the 2007 Payments were recorded as "related party receivables" or "amounts due from related parties" in TGPL's management accounts and financial statements. Although Mr Yit argued that this was inconclusive as "[f]rom an accounting perspective, transfers by TGPL to TL could be recorded as 'receivables' even if the payments were not actually loans", the Judge held

that the very definition of a receivable necessarily connotes a debt due and owing to the company: Judgment at [43].

34 Second, during the Intraco EJD Proceedings, Ms Chan had stated in the Intraco EJD Affidavits that the TGPL had lent money to TL and the total amount owed by TL in 2013 was S$15,343,006.93. This amount corresponded to the receivables recorded in TGPL's books as of 2013, which includes the 2007 Payments. She further described the loans as a "cash loan" that was secured by a director, interest-free and repayable on demand: Judgment at [44].

35 Third, the 2007 JVA could not satisfactorily explain the payments (Judgment at [46]):

(a) While most of the incoming payments from Intraco and the outgoing payments to TL occurred close in time, not all of them were temporally proximate.

(b) None of the incoming sums and outgoing sums were identical. For most of the transactions, there was a shortfall in the outgoing sums paid to TL, save for a notable excess of outgoing payments for the month of August 2007.

(c) Some incoming payments from Intraco lacked any onward payments to TL – *eg*, Intraco's payment of S$1,522,400 to TGPL on 30 August 2007 for raw materials had no recorded corresponding payment from TGPL to TL.

36 Although TL may have instructed Intraco to pay TGPL for raw materials, the evidence did not establish that TGPL's subsequent payments to TL were made under the 2007 JVA. Also, while TL may have used

US$6,680,435 received from TGPL to purchase the raw materials for the processing of coffee beans, that did not conclusively show that TGPL disbursed the 2007 Payments to TL for the purpose of fulfilling the 2007 JVA. Since TGPL's records labelled the sums as a "receivable", and Ms Chan described them as loans, this supported the conclusion that the 2007 Payments could not be linked to the 2007 JVA: Judgment at [47]–[48].

37 The question then was whether Ms Chan had breached her fiduciary duties to TGPL in respect of the 2007 Payments. The Judge focused on whether Ms Chan had breached her duty to act honestly and *bona fide* in the interests of TGPL. He found that the *disbursement* of the 2007 Payments to TL was a breach of Ms Chan's fiduciary duty to act honestly and *bona fide* in the interests of TGPL. Ms Chan could not claim ignorance of these payments given her role as director and her signing of TGPL's financial statements from 2005 to 2017, in which the TL receivables consistently appeared as the largest asset. She had acknowledged the TL Sum during the Intraco EJD Proceedings and had not claimed the payments were made *bona fide* in TGPL's interests. Therefore, she could not reasonably have believed the 2007 Payments were in TGPL's interests: Judgment at [59].

38 The Judge found that Ms Chan's failure to pursue repayment from 2007 to 2014 was a further breach of her duty to act *bona fide* in TGPL's interests, as this only served to deprive TGPL of its assets and worsen its financial situation. For the same reasons set out in the paragraph above, Ms Chan could not claim to be ignorant of TGPL's failure to pursue repayment from TL – she herself testified during the Intraco EJD Proceedings that there was "no repayment schedule" for the debts due from TL, and that TGPL had never made a demand for TL to repay the debts owed: Judgment at [60]–[61].

39 Finally, Ms Chan breached the duty to act honestly and *bona fide* in the interests of the company by approving the *writing down* of the TL receivables (including the 2007 Payments) in 2015. By 2014, TGPL had a net deficit of around S$6,512,000, making it clear that insolvency proceedings were inevitable. Despite this, Ms Chan instructed the write-off of S$15,343,005.93 in TL receivables, purportedly to prepare the company for winding up. This was a breach of fiduciary duty: Judgment at [62].

The Opening Balance

40 The Opening Balance of approximately S$6,662,009.44 was the amount of receivables allegedly due from TL to TGPL as at 31 December 2006. The Judge rejected Mr Yit's argument that this could be explained by the 2006 JVA. Although the 2007 JVA made reference to the earlier 2006 JVA, there was no direct evidence of its existence or the terms thereof since the agreement was not produced in evidence before the court. Even if one was to consider the 2006 JVA, the Judge found it difficult to conclude the Opening Balance was paid in performance of it for similar reasons to those regarding the 2007 Payments (see [33]–[36] above). Mr Yit's speculation regarding the 2006 JVA contradicted other evidence showing that TL receivables had accrued since 2006 (*ie*, S$3,111,000 as of 2005), meaning the 2006 JVA could not fully explain how the TL receivables had accrued. Mr Yit's assertion that "it is probable that the parties performed the [2006 JVA] in a similar manner to the [2007 JVA] i.e. that … in reality TGPL served as the conduit for payments" was found to be purely Mr Yit's conjecture and wholly unsubstantiated: Judgment at [66]–[67].

41 The Judge held that Ms Chan had similarly breached her fiduciary duties regarding the Opening Balance by allowing the loans to be made to TL for no

commercial benefit, failing to pursue repayment, and approving the writing down of the TL Sum: Judgment at [68].

Sum 3

42 Sum 3 purportedly constituted certain business-related expenses paid by TGPL on behalf of TL to TL's directors, employees, auditors and trade creditors, amounting to S$962,051.84. Mr Yit initially argued that Sum 3 had a commercial purpose as TL was TGPL's wholly owned subsidiary. However, once FDPL provided evidence that TL was not in fact a wholly owned subsidiary of TGPL, Mr Yit no longer seriously disputed that Sum 3 lacked commercial purpose; instead, he argued that the claim for Sum 3 was time-barred: Judgment at [69].

The claim for the TL Sum was not time-barred

43 Mr Yit argued that the claims regarding the breaches of fiduciary duties relating to the TL Sum were time-barred under the six-year limitation period prescribed by s 6 of the Limitation Act 1959 (2020 Rev Ed) (the "LA"). Mr Yit took the position that none of the exceptions in s 22(1) of the LA applied.

44 The Judge held that a six-year limitation period generally applies to claims for breach of directors' fiduciary duties (Judgment at [74]–[75]), with the cause of action accruing from the point when the breach occurs: Judgment at [71]. However, contrary to Mr Yit's submissions, the Judge held that s 22(1) of the LA applied. That provision provides:

> **Limitation of actions in respect of trust property**
>
> **22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

> (*a*) *in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy*; or
>
> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.
>
> …
>
> [emphasis added]

45 The Judge endorsed the following propositions (Judgment at [73]–[75]):

(a) A breach of trust is fraudulent if it is dishonest. Such dishonesty "connotes at the minimum an intention on the part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the company or being recklessly indifferent whether it is contrary to their interests or not". Further, if a trustee "acts in a way which he does not honestly believe is in the interests of the beneficiaries then he is acting dishonestly" (*Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*") at [52]–[53], citing *Gwembe Valley Development Co Ltd (in receivership) v Koshy and others (No 3)* [2004] 1 BCLC 131 ("*Gwembe Valley*") at [131]).

(b) In determining whether there is dishonesty, the court considers whether "the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest" (*Panweld* at [52]–[53], citing *Gwembe Valley* at [132]).

(c) The statutory provisions on limitation regarding a breach of trust apply to claims for a director's breach of fiduciary duty (*Re Medora Xerxes* at [45]; *Panweld* at [44], [48]–[49] and [53]; *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 ("*Dynasty Line (CA)*") at [55]–[56]).

46 Applying these principles, the Judge concluded that Ms Chan could not be said to have acted honestly in extending the TL Sum to TL for no commercial benefit, making no effort to seek repayment, and writing down the receivables despite TGPL's imminent or inevitable insolvency. Therefore, s 22(1)(*a*) of the LA applied, and FDPL's claim for the TL Sum was not time-barred: Judgment at [76].

The Finished Goods Sum should be admitted

47 Mr Yit rejected the claim for the Finished Goods Sum primarily because there was no evidence that Ms Chan instructed or knew about these payments from the end-buyers to TL, which Mr Yit contended was required for a director to be in breach.

48 FDPL argued that Ms Chan's knowledge should be inferred from the circumstances, especially given that this sum was clearly recorded in TL's management accounts since at least 13 May 2009, making it unbelievable that Ms Chan would not have enquired about it. Mr Yit, in turn, relied on *Dynasty Line (CA)* and argued that directors can only be held liable for breach of duties if there is evidence they were aware of the impugned transaction, such as evidence that she signed off on and thus had direct knowledge of the transaction.

49 The Judge rejected Mr Yit's interpretation of *Dynasty Line (CA)*. The Judge instead ascertained, more broadly, whether there was evidence that Ms

Chan knew or should have known of the Finished Goods Sum. He found that there was such evidence for these reasons (Judgment at [82]):

> (a) Ms Chan had management and control of TGPL from incorporation until winding up, as TGPL's liquidators had observed.
>
> (b) Ms Chan signed off on TGPL's financial statements annually from FY 2005 to FY 2017 and was an authorised bank signatory of TGPL. She therefore would have known that TGPL was not recovering all its receivables from third-party buyers.
>
> (c) The Finished Goods Sum of S$3,161,247.39 was substantial, and particularly significant in 2008 when TGPL had a net deficit of S$667,000 on its balance sheet. The Finished Goods Sum was approximately 32% of TGPL's total revenue that year.
>
> (d) As Ms Chan was both director and sole shareholder of TGPL, it was implausible that she would be ignorant of such a significant diversion of funds and would not have made inquiries as to the presence of the funds.

Hence, Ms Chan either knew or should have known of the diversion of funds: Judgment at [77]–[82].

50 The Judge concluded that Ms Chan's failure to seek repayment of the Finished Goods Sum from TL was a breach of her duty to act honestly and *bona fide* in the company's interests: Judgment at [83].

51 As for limitation, the Finished Goods Sum was paid to TL in 2008. The Judge did not determine whether Ms Chan's breach was a continuing one (*ie*, up until TGPL's liquidation in 2018) or crystallised in 2008. Nonetheless, he

held that s 22(1)(*a*) of the LA applied, making the six-year limitation period inapplicable. According to the Judge, Ms Chan could not honestly have believed that allowing payments rightfully due to TGPL to be paid to TL and/or failing to seek repayment was in the company's best interests. This constituted a "fraudulent breach of trust" under s 22(1)(*a*) of the LA: Judgment at [84].

Parties' arguments on appeal

52 Mr Yit argues that the Judge erred in finding that the TL Sum and the Finished Goods Sum should be admitted.

53 For the TL Sum, Mr Yit argues that the Judge erred in finding that:

(a) the TL Sum was due and owing as a genuine debt;

(b) Ms Chan breached her duties in respect of the payments of the TL Sum to TL;

(c) Ms Chan breached her duties in respect of the failure to cause TGPL to collect the TL Sum from TL; and

(d) Ms Chan breached her duties by causing TGPL to write off the TL Sum.

54 For the Finished Goods Sum, Mr Yit argues that:

(a) part of the Finished Goods Sum should not be admitted as it overlaps with the TL Sum; and

(b) the Judge erred in finding that Ms Chan had breached her duties in respect of the transfer of the Finished Goods Sum, without evidence that she knew or authorised such transfer.

55 As for limitation, Mr Yit argues that the Judge erred in holding that s 22(1) of the LA applies to the TL Sum and the Finished Goods Sum.

56 Alternatively, Mr Yit argues that the Judge erred in summarily determining that the TL Sum and the Finished Goods Sum should be admitted based simply on affidavit evidence, as the claims are factually complex and substantially disputed.

57 FDPL argues that the Judge did not err in the above aspects, and that there is no overlap between the TL Sum and the Finished Goods Sum.

58 Before we set out the issues before us in this appeal, it will be apposite to set out several legal principles that govern the proof of debt regime.

The law on the proof of debt regime

59 In the context of corporate insolvency, it has been explained that the proof of debt regime is not meant to be used to adjudicate matters involving *controversial disputes of fact*. This is because of the policy of efficiency underlying the proof of debt process: *ERPIMA SA v Chee Yoh Chuang* [1997] 1 SLR(R) 923 ("*ERPIMA*") at [5], *Feima International (Hongkong Ltd (in liquidation) v Kyen Resources Pte Ltd (in liquidation) and others* [2024] 4 SLR 101 ("*Feima*") at [57]. Hence, when faced with a claim in a proof of debt that involves disputes of fact that cannot be easily resolved on the affidavit and documentary evidence, a liquidator or judicial manager (as the case may be) is not expected to determine whether the claim has been proven, and is perfectly entitled to reject the proof of debt (see *ERPIMA* at [5]).

60 In addition, where the allegations made against a creditor are grave in nature (such as those of misfeasance and fraud), that is a factor which suggests

that the cross-examination of witnesses is necessary and that it is inappropriate for the disputed claim to be resolved under the proof of debt regime: *Feima* at [58], referring to *Re Bank of Credit and Commerce international SA (No 6); Mahfouz v Morris* [1994] 1 BCLC 450 ("*Re BCCI (No 6)*") at 454. Of course, this factor would be less relevant where the allegation is clearly made out on the affidavit or documentary evidence, or where there is no serious dispute regarding the existence of such misconduct.

61 In *Yit Chee Wah and another v Inner Mongolia Huomei-Hongjun Aluminium Electricity Co, Ltd and another appeal* [2025] 1 SLR 1110 ("*Inner Mongolia*"), the Court of Appeal provided guidance on the appropriate recourse for a liquidator when faced with factually complex cases that are disputed. The court held that a liquidator may: (a) reject the proof of debt, providing the reasons for his rejection; or (b) seek directions from the court on the manner or mode by which the adjudication of the proof of debt should be resolved, pursuant to s 145(3) of the IRDA (*Inner Mongolia* at [55]). Where the liquidator has rejected the proof of debt, the creditor may appeal (*ERPIMA* at [5]). Where the liquidator has applied to the court for directions for the resolution of adjudication of the proof of debt, the court may find that a trial or a limited cross-examination is necessary for the resolution of the issues.

62 The law and guidelines set out above were made in the context of corporate insolvency. As a matter of principle, we see no reason why these guidelines should not apply with equal force in personal insolvency proceedings. As such, when faced with a factually or legally complex case, a PTIB may (a) reject the proof of debt and provide reasons for the same; or (b) seek directions from the court on the manner or mode by which the adjudication of the proof of debt ought to be resolved. Depending on the applicable bankruptcy regime, the PTIB has the power to seek directions under s 40(2) of

the BA, which provides that a PTIB "may apply to the court for directions in relation to any particular matter arising under the bankruptcy", or under s 43(2) of the IRDA, which provides the same power using wording similar to s 40(2) of the BA. In deciding what to do, the PTIB ought to consider the same factors listed at [59]–[60] above, namely the ease of which the dispute may be resolved on the documents and/or affidavits, as well as the gravity of the allegation against the defendant.

63 If the matter comes before the court on appeal after the PTIB has rejected the claim on the basis that it is not amenable to summary determination or where the PTIB seeks directions from the court in relation to a factually complex claim, the next question is what the court should consider in deciding whether to order a trial of the disputed claim or, at the least, cross-examination of the key witnesses. The paramount consideration here is whether oral examination of witnesses and/or discovery is "necessary for fairly disposing of the particular issue": *Re BCCI (No 6)* at 453. Whether this necessity exists would depend on the facts of each case. The court will not exercise its discretion to order the oral examination of witnesses where such an order would be needless or oppressive: *ERPIMA* at [7]; *Re BCCI (No 6)* at 453.

64 The other factors which the court ought to consider would be much the same as those to be considered by the PTIB. They include the presence of complex disputes of fact, gaps in the documentary or affidavit evidence, conflicting documentary or affidavit evidence, as well as the gravity of the allegations against the bankrupt: see *ERPIMA* at [25] and *Feima* at [58]; see also *Re BCCI (No 6)* at 454.

65 The court will make a holistic assessment of all the relevant factors to decide the appropriate directions to be given for the disputed claim to be

resolved. This may involve a full trial of the claim, with the attendant pre-trial procedures such as pleadings and discovery, or perhaps only limited cross-examination of key witnesses and only on certain issues. Where it might assist in the resolution of the dispute, the court may also encourage parties to attempt mediation or some form of neutral evaluation. These alternative dispute resolution methods might be appropriate in cases where the value of the bankrupt's estate might be unduly burdened by the costs of litigation.

Issues to be determined

66 In this appeal, the overarching substantive issue is whether Ms Chan is liable to TGPL for the TL Sum and the Finished Goods Sum because of her breach of fiduciary duties as a director of TGPL.

67 However, as already alluded to, there is an *anterior* issue to be determined, which is whether FDPL's claims for the TL Sum and Finished Goods Sum ought to have been determined simply by way of affidavits, documents and submissions by the parties, without the need for a trial, or at least cross-examination of witnesses. As we shall explain, our view is that the evidence before the Judge does not clearly establish that Ms Chan was in breach of her duty to act honestly and *bona fide* in TGPL's interests in respect of the TL Sum and the Finished Goods Sum. The material disputes of fact in relation to FDPL's two claims render them unsuitable to be decided without a trial. We are of the view that simply ordering cross-examination of the deponents of the affidavits filed in the proceedings would not be sufficient in this case because (a) it does not appear to us that the points in contention between the parties have been clearly defined, (b) there are numerous gaps in the affidavit and documentary evidence and (c) certain individuals who would have knowledge of material facts will have to be ordered to attend court to give evidence and be

examined. Also, as it seems to us that all documentary evidence that would shed light on the issues may not be before the court, the more involved process of a trial does appear to be appropriate.

68 Having considered the parties' submissions, we think that the following key issues cannot be satisfactorily resolved on the available affidavit and documentary evidence:

(a) The first issue is whether the TL Sum represents a genuine debt owed by TL to TGPL. In particular, for the 2007 Payments and the 2006 Opening Balance, the question is whether these sums were simply payments to TL pursuant to the joint venture arrangements involving Intraco, or whether they were loans from TGPL to TL that had to be repaid.

(b) The second issue pertains to the quanta of the TL Sum, in particular, Sum 3, and the Finished Goods Sum.

(c) The third issue is whether Ms Chan had authorised or otherwise caused TGPL to make the payments comprising the TL Sum and gave instructions to TGPL's customers to pay the Finished Goods Sum to TL.

(d) The fourth issue is whether Ms Chan has breached her fiduciary duties by failing to cause TGPL to recover the TL Sum and Finished Goods Sum from TL, assuming that both of these sums are genuine debts owed by TL to TGPL.

(e) If the answer to either the third or fourth issues is in the affirmative, the fifth issue is whether FDPL's claims against Ms Chan are barred by the LA.

69 For the reasons elaborated below, we are unable to come to a firm determination on each of the key issues (at [68] above) based on the available evidence, and in our view, a trial of the disputed claims is necessary.

Issue 1: Whether the TL Sum was a genuine debt owed to TGPL by TL

70 We consider each component of the TL Sum separately.

The 2007 Payments

71 On appeal, Mr Yit argues that the Judge erred by relying on the 2014 MA as evidence that the TL Sum was owing from TL to TGPL. This is because the 2014 MA was unaudited. In fact, TGPL's management accounts for 2009 to 2013 were also unaudited. Mr Yit also argues that the large differences between the audited accounts and the management accounts for the years up to 2008 in relation to the amount of receivables purportedly due from TL shows that the management accounts of the TGPL are unreliable. For example, in 2008, the management accounts of TGPL recorded a figure of S$16,862,489 as the total amount of receivables due from TL, but the audited figure for that year was S$7,114,375. This amounted to a difference of S$9,784,114 that the auditors had disregarded. After 2008, TGPL ceased preparing audited financial statements but the receivable figures of approximately S$16m was carried over each successive year in the management accounts from 2009 to 2014 and became part of the TL Sum.

72 In response, FDPL argues that it is not always the case that audited accounts should be regarded as more reliable than the management accounts. In this case, the liquidators of FDPL found that the management accounts were more reliable. Also, Ms Chan had never rectified the management accounts to

reconcile them with the audited statements, which gives rise to an inference that Ms Chan knew and accepted that the management accounts were correct.

73 FDPL also points out that Ms Chan had given various confirmations of the amounts owing by TL to TGPL, for example, in a letter of undertaking dated 15 October 2010 to provide financial support to TL. She (together with Mr Lay and Mr Tan) also gave a personal guarantee to Australia and New Zealand Banking Group Ltd ("ANZ") in 2012 for TL's liabilities, though the document does not state the amount owed by TL to TGPL. In addition, Ms Chan stated in the Intraco EJD Affidavits that the total amount owing from TL to TGPL was S$15,343,006.

74 After considering the submissions of parties and reviewing the affidavit and documentary evidence, we are unable to conclude that the 2007 Payments were indeed debts due and owing from TL to TGPL. The undisputed fact is that the period in which TGPL paid the 2007 Payments to TL (between 3 August 2007 and 18 October 2007) roughly coincided with the period in which TGPL received around the same amount from Intraco (between 31 July 2007 and 17 October 2007). This suggests that those inflows and outflows were connected in some way. Indeed, in the invoices issued by TL to Intraco, TL indicated that Intraco should make the advance payments due to TL under the 2007 JVA to *TGPL's* bank accounts.

75 The central question therefore is whether the 2007 Payments were in fact the advance payments that were to be made by Intraco directly to TL pursuant to the 2007 JVA but were instead paid to TL by being channelled through TGPL. If the answer to this question is in the affirmative, absent a credible explanation, those payments would legitimately be for TL's account and not TGPL's, per the terms of the 2007 JVA. It would then be questionable to

conclude that the 2007 Payments constituted a debt owed by TL to TGPL. It is evident from the 2007 JVA that the advance payments were to enable to TL to purchase the necessary raw materials and turn the same into finished products which would then be sold to TGPL for on-sale to the market. As the advance payments were paid to TGPL, the question of how TL was able to procure the necessary raw material arises. There was no evidence that TL had any independent means to purchase the raw materials to enable it to perform its obligations under the 2007 JVA. The only source of funding that TL received on the record was the 2007 Payments.

76 Thus, it appears to us likely that TGPL had made the 2007 Payments to TL for the 2007 JVA, *ie*, TGPL had transmitted to TL the sums, provided by Intraco, for TL to purchase raw materials and process them into coffee beans. If so, that would be critical. As counsel for FDPL accepted at the hearing before us, if Intraco was merely using TGPL as a conduit to make the 2007 Payments to TL, then there can be no issue of any breach of fiduciary duty in respect of these payments by TGPL to TL. The route of payment from Intraco to TGPL and then to TL would not make TL a debtor of TGPL. After all, these were payments to which TL would be contractually entitled under the 2007 JVA and TGPL would not have any basis to retain those sums for itself.

77 We would add that if Ms Chan, Mr Lay and Mr Tan, or a staff who had knowledge of the reasons for these 2007 Payments, had given evidence and been cross-examined, they might have been able to shed some light on some of the issues regarding these transfers of funds, such as (a) why payments from Intraco were directed to TGPL instead of being paid directly to TL, (b) why the subsequent payments from TGPL to TL were recorded as loans in TGPL's books, (c) how these purported loans were treated in TL's accounts, and (d) if the payments to TL were genuinely loans and TGPL had received from Intraco

the advance payments intended for TL, how TGPL and TL accounted for these moneys between themselves.

78 We think the Judge placed too much weight on the fact that the TL Sum appeared as a receivable recorded in the management accounts of TGPL. In our view, there is some force in Mr Yit's argument that the reliability of the management accounts must be called into question given that TGPL's auditors, L W Ong & Associates LLP ("L W Ong"), had disregarded more than S$9.7m of the receivables from TL recorded in the management accounts of TGPL in 2008, as can be seen in TGPL's audited accounts that year. We do not think it is a sufficient response for FDPL to simply assert that the liquidators assessed the management accounts to be more reliable. This is especially as FDPL has been unable to show why L W Ong's actions of writing down the receivables from TL were not justifiable. The point remains that there were significant unexplained variances between what was stated as the receivables due from TL in TGPL's management accounts as compared to its audited financial statements during the period of 2005 to 2008, which was the period when its accounts were being audited. The inference must be that the receivables figure in TGPL's management accounts are questionable. Without further evidence, we are of the view that the management accounts alone cannot form the basis of a finding that the 2007 Payments were correctly recorded as a loan due from TL.

79 At the hearing before us, we were informed by counsel that L W Ong no longer has TGPL's books and records in its possession. It is thus not entirely clear whether the auditors will be able to give any meaningful evidence on why they wrote down the receivables recorded in the management accounts as being due from TL. Nonetheless, *even if* the auditors are ultimately unable to assist, we think that Ms Chan, Mr Lay and Mr Tan, as directors of TGPL, or some staff

who had been handling the accounts for TGPL, ought to be in a position to clarify why they decided to maintain that amount of receivables in TGPL's management accounts from 2009 to 2014 despite the auditors writing the amount down significantly in 2008. But, as we have noted, at the hearing before the Judge, Mr Lay and Mr Tan did not file any affidavits in the proceedings. As for Ms Chan, neither party sought to adduce any evidence from her on this issue.

80 Although Ms Chan had admitted at various junctures to the amount of the debt owing from TL to TGPL by citing figures similar in range to those recorded in the management accounts, we do not think that that this alone suffices to show that these were indeed amounts due and owing from TL to TGPL. Mr Yit argues that Ms Chan was merely relying on the figures stated in the management accounts when she made these statements. Conversely, FDPL argues that, even if Ms Chan was referring to the figures in the management accounts, that would justify an inference that she accepts that those figures are accurate.

81 In our view, the evidence as to Ms Chan's admissions that there were loans due from TL to TGPL should have been explored further at the hearing below. Although Ms Chan admitted the existence of the loans under oath in the Intraco EJD Affidavits, she later made statements contrary to those admissions under oath too. In Ms Chan's affidavit for SUM 4316, she claimed that, while she was one of the three directors of TGPL and its sole shareholder, she was only a "financial investor" in the company. As she was involved in about 80 companies worldwide, she left all the affairs of TGPL to Mr Lay and Mr Tan, the other two directors. She claimed that Mr Lay could confirm that she had no knowledge of and control over the operations of TGPL. In this regard, she referred to an affidavit of one of the liquidators who confirmed that Mr Lay had informed the liquidators that Ms Chan had no "working knowledge of TGPL".

Ms Chan asserted that the liquidators of TGPL were aware that the company had operated under the management and control of Mr Lay from its incorporation to the date it was ordered to be wound up. On the other hand, TGPL's liquidators dispute that Ms Chan had no knowledge or control over TGPL. They claim that "the books and records available to the Liquidators show that [TGPL] had operated under the management and control of [Ms Chan] from the date of incorporation of [TGPL], up until the winding up of [TGPL]".

82 Ms Chan's statements on affidavit, where she disclaimed that she oversaw the operations of TGPL or any management control over TGPL, might suggest that she would not be able to explain why the 2007 Payments were made to TL. If that were the case, then the veracity of her assertions in the Intraco EJD Affidavits that these payments were loans to TL must be called into question. We thus find it surprising that neither Mr Yit nor FDPL chose to apply for Ms Chan to be examined as a witness, or apply for orders for Mr Lay and Mr Tan (or any staff of TGPL with knowledge of its management and operations) to attend court as witnesses in the proceedings. There are clear material disputes of fact that ought to be resolved by way of examination of witnesses. Indeed, during the hearing of the appeal, counsel for Mr Yit conceded that Ms Chan's degree of involvement in TGPL was not clear.

83 In our view, Ms Chan should have been orally examined on the difference between her statements made under oath and given a chance to explain. If Ms Chan's statements in her affidavit for SUM 4316 were true, it would add weight to Mr Yit's submission that Ms Chan had probably repeated in the Intraco EJD Affidavits what was stated in the management accounts of TGPL, *ie* that there were receivables owing from TL in the amount of more than S$15.3m, without knowing whether this was in fact accurate. Needless to say,

that point could have been clarified with Ms Chan if she had been examined as a witness.

84 In the same vein, the fact that Ms Chan's signature appeared on the management accounts including the 2014 MA does not establish that those management accounts are reliable or that she acknowledged the existence of the receivables owing from TL. Ms Chan had stated in her affidavit for SUM 4316 that, because she was travelling 90% of the time, her staff had her digital signature which they used when necessary. This assertion is rejected by FDPL. This is another dispute of fact that calls for witnesses, including Ms Chan, Mr Lay and Mr Tan, and possibly the accounting staff at TGPL during the material period, to be examined.

85 Hence, in our view, the evidence that was adduced in the proceedings does not unequivocally show that the 2007 Payments were debts due and owing from TL to TGPL.

The Opening Balance

86 The Judge found that the Opening Balance of approximately S$6,662,009.44 is the amount recorded in the management accounts of TGPL as being due from TL as at 31 December 2006 (Judgment at [66]). It is thus the "opening balance" for the receivables due from TL starting on 1 January 2007. However, at the hearing of the appeal, counsel for FDPL clarified that the Opening Balance refers to the quantum of receivables owing from TL as at 1 December 2006, as recorded in TGPL's general ledger.

87 Mr Yit argued below, and continues to argue on appeal, that this amount could relate to arrangements similar to the 2007 Payments, that is, Intraco had made payments to TGPL for onward transmission to TL, and TGPL had

recorded these outflows as receivables due from TL. Mr Yit suggests that this could have been made pursuant to the 2006 JVA. Mr Yit claims that the 2006 JVA had substantially the same terms as the 2007 JVA, a point that does not appear to be seriously disputed by FDPL.

88 The Judge found that the Opening Balance was part of the loans extended by TGPL to TL. This was for the same reasons as the 2007 Payments, namely that the amount was recorded as a receivable in the management accounts of TGPL, and that Ms Chan admitted in the Intraco EJD Affidavits that the amount due from TL to TGPL was over S$15.3m, with this sum including the Opening Balance amount. The Judge also found that the 2006 JVA could not explain how the 2006 Opening Balance as the "related party receivables" due from TL had accrued since 2006 (*ie*, S$3,111,000 as of 2005): Judgment at [67].

89 In our view, it is difficult for us to conclude, without the examination of witnesses such as Ms Chan, Mr Lay, Mr Tan, staff from TGPL who handled its accounts, and perhaps even someone from Intraco, that the Opening Balance was a genuine debt owing to TGPL. They would be the persons who would be able to shed light on the reasons for the Opening Balance. If, as Mr Yit submits, Intraco had made advance payments to TL under the 2006 JVA, by routing the moneys through TGPL, then the analysis here would be the same as for the 2007 Payments. There would have been no basis to even begin to allege that Ms Chan had breached her fiduciary duties in respect of the Opening Balance if that sum comprised legitimate payments that were due to TL under the 2006 JVA. Regrettably, parties decided not to apply to have aforementioned persons called to be orally examined on this issue.

90 Our views on the reliability of Ms Chan's admissions in the Intraco EJD Proceedings and the management accounts including the 2014 MA are the same as for the 2007 Payments for the reasons given earlier (see [74]–[84] above). In addition, at the hearing of the appeal, counsel for FDPL confirmed that the TGPL's audited financial statements for 2006 did not show that S$6.62m was due and owing from TL to TGPL. To the contrary, those audited financial statements showed that there were *no* amounts due and owing from TL to TGPL, or in fact from any other related parties. That throws into doubt the reliability of the general ledger relied on by FDPL to show that the Opening Balance was a receivable due from TL as at 1 December 2006. We therefore do not think it possible to conclude, based on the current state of the evidence, that the Opening Balance was a genuine debt due from TL to TGPL.

Sum 3

91 The Judge found that Sum 3, amounting to S$962,051.84, pertained to certain business-related expenses paid by TGPL on behalf of TL to TL's directors, employees, auditors and trade creditors (Judgment at [69]). In our view, there is no objective evidence that supports this finding. Rather, it appears to us that the Sum 3 is simply the result of subtracting the 2007 Payments and the Opening Balance from the TL Sum. This was in fact acknowledged by FDPL in its closing submissions below, and by TGPL's liquidators in one of their affidavits.

92 TGPL's liquidators claimed that the amount of S$962,052.84 owed by TL is attested in TGPL's internal balance sheets from 2009-2015, the 2010-2013 ledgers and the Statement of Financial Position as of December 2014. However, TGPL's liquidators did not indicate the specific entries they were relying on. Indeed, as mentioned in the preceding paragraph, FDPL did not even

describe the sum of S$962,052.84 as payment for TL's operating expenses – it was *Mr Yit* who did so. In response, FDPL described Mr Yit's position as "doubtful" as "many of the Sum 3 payments have no recorded purpose or even payee". It is only in this appeal before us that FDPL, following the Judge's adoption of the characterisation of Sum 3 as being payment for TL's operating expenses, similarly adopted such a characterisation.

93 Indeed, the characterisation of Sum 3 as Operating Expenses is also not fully explained by Mr Yit. In his decision for the Proof of Debt adjudication, Mr Yit's quantum for Sum 3 was "SGD 23,737.87 and USD 148,419.22 (equivalent to SGD 227,576.83 converted at forex rate of USD 1 to SGD 1.3734 as at the date of Bankruptcy Order) i.e. from 2010 to 2013, items for which the available information indicate related to operating purposes". Later on, in his third affidavit, he merely stated that there was a "balance of less than S$1,000,000 which appeared to be amounts paid by TGPL to or on behalf of TL for TL's operating expenses", and that his understanding was that "this included business-related expenses which TGPL paid on behalf of TL, such as payments for employee's salaries or electronics".

94 It appears that Mr Yit relied on the finding in TGPL's liquidators' report ("TGPL's Liquidators' Report") at para 67 that TGPL's and TL's general ledgers include entries which record TGPL paying TL's operating expenses. However, this finding by TGPL's liquidators does not support Mr Yit's conclusion, as the liquidators were simply noting the existence of such payments and they did not state that the amount of TL's operating expenses paid by TGPL was S$962,051.84, *ie*, the quantum of Sum 3. Also, those entries in TGPL's Liquidators' Report were dated 2007, whereas TGPL's liquidators took the position that the bulk of Sum 3 was incurred by TGPL from 2010 onwards

– more specifically, the years 2010 to 2013 (see [92] above) in which Sum 3 was supposedly attested in TGPL's ledgers.

95 It thus appears that TGPL's liquidators merely placed broad reliance on entries from TGPL's internal balance sheets from 2009–2015, the 2010–2013 ledgers and the Statement of Financial Position, without actually investigating the specific entries which purportedly supported the "Operating Expenses". This means that the *purpose* of Sum 3 (*ie*, why payment was made) is far from clear, and this would obviously affect any finding of a breach of fiduciary duty by Ms Chan in relation to Sum 3. In our judgment, this too calls for an examination of witnesses such as Ms Chan, Mr Lay, Mr Tan, staff from TGPL and TGPL's liquidators before the court can make the necessary findings in relation to this Sum 3.

96 Counsel for Mr Yit appears to have accepted at the hearing before us that Sum 3 was for the operating expenses for TL. However, this acceptance was a qualified one, as counsel also said that Mr Yit did not "have more of the details of what was going on" at the time Sum 3 was paid. In this light, and given that counsel seemed merely to be repeating Mr Yit's own position of what Sum 3 represented (see [91]–[93] above) – a description we consider unsupported by the evidence and inconclusive – we think that an examination of witnesses is warranted to clarify whether TGPL did in fact pay the operating expenses of TL, and if so, why this was done, and the actual quantum of such operating expenses. We stress that it is FDPL who will have the burden of proving that TGPL had paid for TL's operating expenses and the precise amounts that were paid. Simply relying on Mr Yit's "concession", as we have explained, will not suffice to discharge that burden.

Issue 2: What is the quantum of the TL Sum and the Finished Goods Sum

97 There are questions pertaining to the quanta of various components of the TL Sum and the Finished Goods Sum. The first, as just explained, concerns the existence of Sum 3 as a debt and its quantum. The second question is whether the Opening Balance was even a true receivable due from TL because, as noted above, the audited financial statements of 2006 show that there are no amounts owing from TL to TGPL. The third concerns the possibly erroneous inclusion of amounts in the management accounts of TGPL, which had been excluded in the audited financial statements. The fourth concerns a possible overlap between the TL Sum and the Finished Goods Sum. In our view, these questions cannot be resolved on the available affidavit and documentary evidence. An examination of witnesses is called for. We have explained why this is the case for the first and second questions and will now do the same for the third and fourth questions.

The Excluded Amount

98 On appeal, Mr Yit makes the new argument that, in TGPL's audited financial statements of the year 2008, some S$9.7m recorded as receivables in the management accounts had been excluded, *ie*, there are no such amount of receivables owed by TL to TGPL (the "Excluded Amount"). In the subsequent years, "the inflated and unverified receivables figure of some S$16.86 million in the 2008 management accounts (as contrasted with the audited financial statements) was simply carried forward to each successive year, i.e. the [Excluded Amount] was also carried over as an outstanding receivable in the management accounts of subsequent years and ultimately made its way as part of the TL Sum". In other words, although the Excluded Amount was not reflected in TGPL's audited accounts, they were still included in the management accounts. Counsel did not identify any document where the

auditors had explained the S$9.7m discrepancy, nor did TGPL's liquidators manage to obtain an explanation from the management of the company or from the auditors.

99 Notwithstanding that the accuracy of certain entries in the audited financial statements may require further investigation, our view is that these statements cannot be dismissed outright (see [78] above). It follows that the Excluded Amount would raise questions as to the quantum of the TL Sum – questions which would be best answered by witnesses, such as Mr Lay, Mr Tan, Ms Chan and staff from TGPL who handled its accounts.

The overlap between the TL Sum and Finished Goods Sum

100 According to FDPL, the transfers of the Finished Goods Sum from TGPL's customers to TL were recorded in nine entries in ***TL's*** general ledger for the year 2008. These were the nine entries, totalling the amount of US$2,301,767.43:

#	Date	Description in TL GL	Amount of transfers to TL (US$)
1	19 June 2008	received funds from Altimvs	268,712.22
2	26 June 2008	received funds from Altimvs	453,251.00
3	6 August 2008	received funds from Altimvs	216,407.30
4	23 September 2008	received funds from Altimvs	27,664.41
5	6 August 2008	U Yong Industry Co Ltd	437.354.50
6	3 September 2008	funds received from U Yong Industry Co Ltd	199,954.50
7	12 September 2008	funds received from U Yong Industry Co Ltd	249,954.50
8	25 September 2008	funds received from U Yong Industry Co Ltd	148,994.50
9	14 November 2008	funds received from U Yong Industry Co Ltd	299,474.50

101 However, Mr Yit submits on appeal that the first eight entries in the above table correspond with receivables recorded in ***TGPL's*** general ledger for 2008, in the sense that:

(a) the quantum of each relevant entry in the TL's general ledger, either individually or in combination with that of other entries, matches the quantum of each relevant entry in the TGPL's general ledger, down to the cent; and

(b) where there are matches in the figures, the relevant entries in TL's general ledger and TGPL's general ledger are proximate in time.

102 Mr Yit provides a table showing the corresponding entries:

Entries recorded in TL GL			Entries recorded in TGPL GL		
Date	**Description**	**Amount of transfers to TL (US$)**	**Date**	**Description**	**Amount of receivables due from TL to TGPL (US$)**
19 June 2008	received funds from Altimvs	268,712.22	30 June 2008	JVU04/06/08 – Being fund recei	721,963.22
26 June 2008	received funds from Altimvs	453,251.00			
6 August 2008	received funds from Altimvs	216,407.30	31 August 2008	JV08/08/08 – Being fund receive	216,407.30
23 September 2008	received funds from Altimvs	27,664.41	30 September 2008	JV10/09/08 – Being fund receive	27,664.41
6 August 2008	U Yong Industry Co Ltd	437.354.50	8 August 2008	JV01/08/08 – Being fund receive	437.354.50
3 September 2008	funds received from U Yong Industry Co Ltd	199,954.50	25 September 2008	JV15/09/08 – Being fund received	598.903.50
12 September 2008	funds received from U Yong Industry Co Ltd	249,954.50			
25 September 2008	funds received from U Yong Industry Co Ltd	148,994.50			

103 The eight entries in relation to the Finished Goods Sum as recorded in TL's general ledger correspond so precisely with the entries in TGPL's general ledger as set out in the table in the preceding paragraph that it suggests that FDPL is in fact double claiming a significant sum of US$2,002,292.93 (the total of the eight entries) as part of the TL Sum as well as part of the Finished Goods Sum.

104 FDPL contends that the above argument should be rejected as none of the components of the TL Sum are attested to by TGPL's general ledger for 2008. Hence, even if the entries in TL's general ledger for 2008 correspond to TGPL's general ledger for 2008, FDPL argues that this does not show a claim for the same sum. Moreover, temporal proximity and identical quanta alone do not establish a sufficient basis for concluding that the entries correspond to the same transaction. FDPL claims that Mr Yit's position amounts to no more than conjecture, unsupported by any documentary evidence or explanation of accounting practices that would justify drawing such a connection.

105 We are unable to agree with FDPL. We think that the above arguments raise the possibility that there was indeed an overlap in the claimed amounts for TL Sum and the Finished Goods Sum. This should be explored by an examination of witnesses such as Mr Lay, Mr Tan, Ms Chan and staff of TGPL who handled its accounts. As explained at [91]–[95] above, there is a lack of clarity on the *composition* of Sum 3 and the *dates* on which Sum 3 accrued as a debt to TGPL, given that TGPL's liquidators did not identify the exact entries in support of Sum 3. It is not even clear that Sum 3 consisted solely of TL's operating expenses paid by TGPL. It is thus difficult to determine whether the receivables in TGPL's general ledger for 2008 could have been factored into Sum 3.

106 More generally, according to TGPL's management accounts, the receivables owed by TL to TGPL peaked in 2008 (presumably after the 2007 Payments) and then fluctuated (below the 2008 amount) from 2009 to 2014. There is thus no clarity as to whether any portion of the Finished Goods Sum was reduced by TL transferring some portion of the amount received from TGPL's customers to TGPL.

107 In this regard, we are unable to accept FDPL's submission that the temporal proximity and identical amounts alone do not establish a sufficient basis for a *prima facie* conclusion that the entries correspond to the same transaction. As for the difference in quantum between the eight entries highlighted by TGPL (S$2,002,292.93) and Sum 3 (S$962,051.84), this could well be related to the decrease in receivables owed by TL after 2008 (see [105] above). The point here is simply that the evidence raises questions that can only be resolved by the examination of witnesses such as Mr Lay, Mr Tan, Ms Chan and staff from TGPL who handled its accounts.

108 Just like the argument concerning the Excluded Amount, this argument on the overlap of sums is a new argument raised by Mr Yit on appeal. It is well established that the following factors are relevant in considering whether to allow a new point to be raised on appeal: (a) the nature of the parties' arguments below; (b) whether the court had considered and provided any findings and reasoning in relation to the new point; (c) whether further submissions, evidence, or findings would have been necessitated had the new points been raised below; and (d) any prejudice that might result to the counterparty in the appeal if the new point is allowed to be raised: *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 at [38], referred to in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd and another* [2024] 1 SLR 690 at [59].

109 We are prepared to consider Mr Yit's new arguments. For factors (a) to (c), Mr Yit is simply referring to documents that are already part of the evidential record before the court and asking that we draw the reasonable inferences from them. There was no examination of witnesses before the Judge on these entries in these accounting documents. Parties simply made submissions on the documentary evidence. As such, we are in a similar position as the Judge in being able to draw the necessary inferences from the documents. Finally, for factor (d), FDPL did not suffer any prejudice because it could and did respond to these new arguments raised on appeal.

Issue 3: Whether Ms Chan had authorised or caused TGPL to grant the TL Sum and instruct customers to transfer the Finished Goods Sum to TL and whether that was a breach of her fiduciary duties to TGPL

110 The Judge found that Ms Chan had extended the TL Sum to TL for no commercial benefit (Judgment at [76]) and applied this same analysis to the Finished Goods Sum (Judgment at [82]). These findings suggest that Ms Chan had authorised or caused TGPL to make these payments in the case of the 2007 Payments, Opening Balance, and Sum 3, and that she had instructed the customers of TGPL to make payments to TL in the case of the Finished Goods Sum. The Judge's conclusion seems to be based on his finding that Ms Chan had management and control over TGPL, which were in turn based on the following (see Judgment at [82]):

> (a) the observation by TGPL's liquidators that the books and records show that TGPL operated under the management and control of Ms Chan from the date of TGPL's incorporation until the date of winding up; and

(b) the fact that Ms Chan had signed off on the financial statements of TGPL every year from FY 2005 to 2017 and was an authorised bank signatory of TGPL.

111 In our view, the evidence referred to by the Judge does not provide unequivocal support for a finding that Ms Chan had known of the various payments making up the 2007 Payments, the Opening Balance and Sum 3, or that TGPL's customers had made payments directly to TL instead, *at the time these payments were made*. It follows as a matter of logic, and for the reasons as set out at [81]–[84] above, that the available evidence does not suffice to prove that Ms Chan had actually caused or authorised TGPL to extend the TL Sum as loans and instructed TGPL's customers to pay the Finished Goods Sum to TL.

112 At the hearing of the appeal, counsel for FDPL referred to an answer that Ms Chan gave, as recorded in the Notes of Evidence in the Intraco EJD Proceedings, where she appeared to have agreed that she authorised loans amounting to over S$15.3m from TGPL to TL. It does not appear that FDPL had brought this point to the attention of the Judge. FDPL urges us to take into account this admission as support for a finding that Ms Chan did authorise loans by TGPL to TL. However, our view is that Ms Chan's admission in the Intraco EJD Proceedings must be weighed against her statements in her affidavit in the proceedings below, where she disclaimed any knowledge of the operations of TGPL and asserted that Mr Lay was the director who had management and control of TGPL (see [81] above). Ms Chan ought to have been cross-examined on these apparent contradictions in her sworn statements and the court would then have been able to make a finding as to her level of involvement in the payments by TGPL to TL or the instructions to TGPL's customers to make payments to TL.

113 It is axiomatic that, without sufficient evidence to show that Ms Chan caused or authorised the disbursement of the TL Sum to TL or that she instructed the customers to transfer the Finished Goods Sum to TL, Ms Chan cannot be held in breach of her fiduciary duty *in respect of those very acts*. However, this may not be completely fatal to FDPL's claims against Ms Chan for the TL Sum and the Finished Goods Sum case because, as we explain below, a failure to cause TGPL to pursue repayment of an outstanding debt due to FDPL may, depending on the circumstances and the reasons for inaction, amount to a breach of fiduciary duty.

Issue 4: Whether Ms Chan breached her fiduciary duties by failing to cause TGPL to recover the TL Sum and the Finished Goods Sum and/or by causing TGPL to write off the TL Sum in 2015

114 It is apposite at this juncture to briefly set out the law on a director's fiduciary duty to act *bona fide* and honestly in the interests of the company.

A director's duty to act bona fide and honestly in the interests of the company

115 The law on a director's duty to act honestly and *bona fide* in the interests of the company is set out by the Court of Appeal in *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 at [35]–[36]:

> 35 Indeed, ***there are both subjective and objective elements in the test*** [of whether a director had acted honestly and *bona fide* in the interests of the company]. The subjective element lies in the court's consideration as to whether a director had exercised his discretion *bona fide* in what he considered (and not what the court considers) is in the interests of the company: *Re Smith & Fawcett Ltd* [1942] Ch 304 at 306, as accepted by this court in *Cheong Kim Hock v Lin Securities (Pte)* [1992] 1 SLR(R) 497 at [26] and in *Ho Kang Peng v Scintronix Corp Ltd* [2014] 3 SLR 329 ("*Ho Kang Peng*") at [37]. Thus, a court will be slow to interfere with commercial decisions

> made honestly but which, on hindsight, were financially detrimental to the company.
>
> 36 The objective element in the test relates to the court's supervision over directors who claim to have been genuinely acting to promote the company's interests even though, objectively, the transactions were not in the company's interests. ***The subjective belief of the directors cannot determine the issue***: the court has to assess whether an intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company. This is the test set out in *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62 (at 74) and it has been applied here since adopted by this court in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 (at [28]). Thus, "where the transaction is not objectively in the company's interests, a judge may very well draw an inference that the directors were not acting honestly": *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) ("*Walter Woon*") at para 8.36, referred to in *Ho Kang Peng* at [38]. It is thus observed in *Walter Woon* at para 8.36 that in practice the courts often apply a more objective test although the test is theoretically subjective.
>
> [emphasis added in bold italics]

Hence, we agree with the Judge's observation that the test as to whether a director had acted *bona fide* and honestly is part-subjective and part-objective (Judgment at [54]).

116 A trustee's fiduciary duty to act in good faith requires him to act in circumstances where he knows that the interests of the beneficiaries are at risk of harm. The focus is on whether the trustee should have acted in the circumstances, not on whether the trustee achieved a particular outcome; the decision to act or not act must be made honestly and in good faith for the benefit of, and in the interest of, the beneficiaries of the trust: *Credit Suisse Trust Limited v Ivanishvili, Bidzina and others* [2024] 2 SLR 164 ("*Credit Suisse*") at [48].

117 This duty applies to directors as well. It is trite that both directors and trustees are fiduciaries (*Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Winsta*") at [103]), and that the duty to act in good faith is a fiduciary duty (see *Winsta* at [253] and *Credit Suisse* at [42]). Hence, in *Centre for Laser and Aesthetic Medicine Pte Ltd v GPK Clinic (Orchard) Pte Ltd and others and another appeal* [2018] 1 SLR 180, a director knew that her fellow director was diverting clients away from the company, but she did not stop him, claiming that she was informed by that fellow director that he was justified in doing so. The Court of Appeal nonetheless found her in breach of her fiduciary duties as she failed to at least report her fellow director's actions to the company (at [75]–[77]). Notably, the Court of Appeal found the director to be in breach, without finding that she caused or positively authorised the breach.

118 Hence, one situation where a director is in breach of her fiduciary duties is: (a) where a director comes to *know* about the transaction that is against the interests of the company, (b) believes (in the part-subjective and part-objective sense at [115] above) that the transaction is against the interests of the company, and (c) but does nothing to try to prevent the transaction from being carried out if she has prior knowledge of it, or fails to take steps to try to reverse the transaction if she learns of it only later. In such a scenario, the director would have breached her duty to act honestly and *bona fide* in the interests of the company.

The TL Sum

119 To recapitulate, the Judge found that Ms Chan's failure to pursue repayment from 2007 to 2014 was a breach of her duty to act honestly and *bona fide* in TGPL's interests. In this regard, he found that (Judgment at [59]–[61]):

(a) Ms Chan could not claim ignorance of these payments given her role as director and her signing of TGPL's financial statements from 2005 to 2017, in which the TL receivables consistently appeared as the largest asset. She had also acknowledged the TL Sum during the EJD Proceedings; and

(b) Ms Chan could not have reasonably believed that the 2007 Payments were in TGPL's interests, as no legitimate commercial reason for the payments had been presented, TL was not a subsidiary of TGPL, and Ms Chan herself stated in the Intraco EJD Affidavits that there was no consideration for these loans given to TL and no repayment schedule.

120 We proceed on the assumption that the TL Sum indeed constituted loans extended by TGPL to TL. From the evidence in these proceedings, it does appear likely to us that Ms Chan came to know about the existence of those receivables at some point of time, as she had signed off on the management accounts of TGPL from 2005 to 2017.

121 Having said that, the available evidence is insufficient to establish that Ms Chan is liable for *the entirety* of the TL Sum due to her failure to cause TGPL to pursue recovery of these receivables.

122 First, as pointed out by Mr Yit's counsel during the hearing of the appeal, the reasons for Ms Chan's inaction must be examined. The question is why she did not get TGPL to take action to recover from TL these amounts comprising the TL Sum. As Mr Yit's counsel argues, if TL was in no position to pay, that might well have been a legitimate reason for TGPL not pursuing or taking steps to recover the sums owed. Mr Yit's counsel points out that there is no evidence before the court as to why Ms Chan did not cause TGPL to pursue

recovery of the loans. This is relevant as the part-subjective and part-objective test central to determining the breach of the duty to act honestly and *bona fide* in the interests of the company (see [115] above) requires the court to examine the *reasons* for the director's acts or omissions. Put another way, if Ms Chan cannot explain why she took no action to cause TGPL to pursue repayment, there may then be a basis for a finding that Ms Chan had breached her fiduciary duty to act honestly and *bona fide* in the interests of TGPL.

123 Second, FDPL may also face issues of causation. In this case, the question may arise as to whether TGPL would have been able to recover the full amount of the loan if it had taken steps to pursue repayment, *eg*, whether TL would have had the financial wherewithal to pay TGPL. Given that the Judge's finding that Ms Chan had disbursed or authorised the grant of the TL Sum has been put into doubt (see [111] above), Ms Chan might be found (depending on the evidence adduced at a trial of the claims) not liable for a *custodial* breach of fiduciary duty. Following the approach taken by the Court of Appeal in *Winsta* at [254], for non-*custodial* breaches of fiduciary duty, the onus would then be on Mr Yit to show that, even if Ms Chan had caused TGPL to pursue recovery of the loans, TGPL would still have suffered the loss of this amount. The problem is that this factual inquiry was not explored by the parties before the Judge. Indeed, the available evidence does not appear to point either way as to whether Ms Chan's inaction had any causal connection (in the but-for causation sense) to TGPL's loss of the TL Sum.

124 In this regard, the question of the amount of assets owned by TL *at the time of Ms Chan's alleged breach of fiduciary duty* in failing to act honestly and *bona fide* in the interests of TGPL may be relevant. As things stand, we do not have evidence of *when* exactly Ms Chan knew about the respective components of the TL Sum; nor is there evidence of the assets of TL (thus what was

potentially recoverable from TL) at those respective points of time. Further evidence would be necessary to determine this question, including but not limited to an examination of witnesses, namely Ms Chan, as the majority owner of TL, and Mr Lay as the sole director of TL, and possibly staff from TL who handled its finances or accounts.

125 As for the Judge's finding that Ms Chan's authorisation of TGPL writing off the TL Sum in 2015 was a breach of her fiduciary duty, we agree with Mr Yit's submissions that the act of writing off this sum cannot, by itself, cause TGPL any loss, as it was an internal accounting exercise and did not prevent TGPL from pursuing the sum.

The Finished Goods Sum

126 For the analysis here, we proceed on the assumption that the Finished Goods Sum is a debt due and owing from TL to TGPL. Like the TL Sum, again we are of the view that the available evidence is equivocal as to whether Ms Chan had breached her fiduciary duties in failing to cause TGPL to pursue repayment of that sum.

127 The Judge found that Ms Chan had or should have had knowledge of the Finished Goods Sum on the basis that (Judgment at [82]):

(a) Ms Chan had management and control of TGPL;

(b) Ms Chan had signed off on the financial statements of TGPL for every year from FY 2005 and FY 2017 and was an authorised bank signatory of TGPL; and

(c) it was unlikely that the Ms Chan would not have made enquiries as to the lack of sale proceeds when she had signed off on TGPL's financial statements.

128 Unlike the TL Sum, however, we do not think that the available evidence permitted the court to infer that Ms Chan knew of the Finished Goods Sum. This is especially given her statements on affidavit that she did not manage TGPL or control its operations. Significantly, there is no evidence on record to show that Ms Chan was aware that TGPL's customers had been told to make payments to TL instead of TGPL, much less that she had instructed them to do so. Second, we are not aware of any accounting records other than TGPL's general ledger where the Finished Goods Sum is attested, and it does not appear to us that TGPL's financial statements signed off by Ms Chan specifically indicated that TGPL's customers had made payments for coffee beans directly to TL, instead of to TGPL. In this regard, there is a difference between a director failing to notice a large sum reflected as a receivable due from TL, and that director having knowledge of specific ledger entries showing that the payment due for coffee beans sold by TGPL had been paid by its customers to TL. There was no evidence before the court to show that Ms Chan was aware of or had signed off on these ledger entries. When one also takes into consideration Ms Chan's affidavit for SUM 4316, where she claims she did not manage or operate TGPL, there is altogether insufficient evidence to show that Ms Chan was cognisant of the Finished Goods Sum being owed by TL.

129 Even if one is to assume that Ms Chan had learnt from the financial and accounting records of TGPL that customer payments had been diverted to TL, there is still no evidence that she procured the diversion of those payments, as we have already explained (see [110] to [113] above). If so, the basis of Ms Chan's potential liability for breach of her fiduciary duties would stem from her

failure to cause TGPL to pursue recovery of the Finished Goods Sum. That brings us back to the same concerns raised at [122]–[124] above – namely, that the reasons Ms Chan chose not to seek recovery have not been examined, and that the issues of causation and the point of time at which Ms Chan became aware of the diversion remain unresolved. As already explained, these concerns necessitate further investigation and the examination of witnesses.

Issue 5: Whether FDPL's claims are time-barred

130 To recapitulate, the Judge found that FDPL's claims were not time-barred, as s 22(1)(*a*) of the LA applied. That section provides that no period of limitation prescribed by the LA shall apply to an action by a beneficiary under a trust, being an action *in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy*. He held that s 22(1)(*a*) applies to claims for a director's breach of duty. The requirement of fraud is satisfied where a trustee or director acts in a way which he does not honestly believe is in the beneficiaries' or company's interests. The test for honesty is whether the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest (see [44]–[45] above). Applying these principles, he found that s 22(1)(*a*) applied to FDPL's claim for the TL Sum and the Finished Goods Sum.

131 On appeal, Mr Yit contends that the Judge erred in holding that the exception under s 22(1)(*a*) of the LA applied. The test for the applicability of that provision has an objective and subjective limb (per *Panweld* at [52]–[53]), but Mr Yit argues that the Judge only applied the objective limb. He did not expressly find that Ms Chan *subjectively realised* her conduct was dishonest. In this case, however, there was no evidence that Ms Chan authorised the loans to

TL making up the TL Sum, or that she failed to cause TGPL to take steps to seek recovery of the TL Sum for dishonest reasons. Also, there was no evidence of Ms Chan's "subjective knowledge" at the time when the Finished Goods Sum was paid by TGPL's customers to TL and at the time when it is alleged that Ms Chan should have caused TGPL to recover that sum from TL but did not do so.

132 FDPL argues that the Judge applied the correct legal framework for determining the applicability of s 22(1)(*a*) of the LA. When the Judge concluded that Ms Chan "cannot be said to have acted honestly", he was applying the full legal test under *Panweld – ie*, dishonesty assessed by the objective standards of reasonable and honest people, coupled with the defendant's subjective appreciation that their conduct was dishonest by those standards.

133 Further, FDPL submits that, if the court finds that Ms Chan had breached her fiduciary duty to TGPL because she did not act with honesty and in good faith in the best interests of TGPL, then it must necessarily follow that s 22(1)(*a*) of the LA applies. In doing so, FDPL relies on *Dynasty Line Ltd (in liquidation) v Sia Sukamto and another* [2013] 4 SLR 253 at [27]:

> Thus, the meaning of "fraudulent breach of trust" in s 22(1)(*a*) is a broad one. If Sia and Lee, in disposing of Dynasty's assets, are found to have breached their fiduciary duties to Dynasty because they did not act honestly and in good faith in the best interests of Dynasty, their conduct will by that very finding be considered fraudulent under s 22(1)(*a*).

134 As we have expressed our concerns regarding the more fundamental problems on the issue of liability, we do not propose to deal with the issues of limitation in respect of FDPL's claims for both sums. We would simply observe tentatively that, while we do not disagree with the statements of the law at [44]–[45] above, we do take the view that the available evidence is insufficient to support a finding that Ms Chan had acted dishonestly. Whether Ms Chan had

acted dishonestly or fraudulently is a question that is extremely fact-intensive and can only be answered after all the relevant evidence, including from the examination of witnesses, is considered.

Our orders

135 Given our views expressed above on how there are material disputes of fact which are critical in determining whether Ms Chan is in breach of her fiduciary duties in respect of FDPL's claims, we allow the appeal and set aside the orders by the Judge below for Mr Yit to admit the TL Sum and the Finished Goods Sum.

136 We also set aside the order of costs made by the Judge in relation to FDPL's claims. In so far as the costs order in favour of FDPL below covered other claims that are not the subject of this appeal, we remit the issue of costs for these other claims to the Judge for his determination.

137 We order that there be a trial before the Judge on the claims advanced by FDPL against Ms Chan's bankruptcy estate. A trial will determine whether Ms Chan was in breach of her fiduciary duties to TGPL such that she is liable to TGPL for the TL Sum and the Finished Goods Sum, and if not fully liable, the extent of her liability.

138 We will leave it to the Judge to make the appropriate set of directions for the determination of the matter by way of a trial between the parties to this appeal. It appears to us though that, given the nature of the FDPL's claims against Ms Chan, at the least, pleadings should be filed to define the issues in dispute, discovery ought to be given, and the necessary individuals ought to be ordered to attend court to give oral evidence and be cross-examined.

139 The BR envisage that, if oral evidence from witnesses is to be taken, the examination should be held within those proceedings itself. Rule 11 of Part II of the BR provides that an application pursuant to the BA is generally to be made by summons. Then, in the same Part of the BR, r 25 provides that the court may order the examination upon oath of any person at any place. Finally, the court has a wide power to give directions as to the appropriate procedures in insolvency matters. Section 11 of the BA provides:

> **Where no specific procedure provided**
>
> **11**.—(1) In any matter of practice or procedure for which no specific provision has been made by this Act or the rules, the procedure and practice for the time being in use or in force in the Supreme Court shall, as nearly as may be, be followed and adopted.
>
> (2) Where in respect of any matter of practice or procedure it is not possible to apply subsection (1), the court may make such orders and give such directions as are likely to secure substantial justice between the parties.

Conclusion and costs

140 Ultimately, FDPL's claim against Ms Chan in these proceedings is that she had breached her duty to act honestly and *bona fide* in TGPL's interests. This is a serious allegation which impugns Ms Chan's *honesty*. The available evidence in these proceedings does not establish that Ms Chan had acted dishonestly and in breach of her fiduciary duties. Instead, the evidence throws up material disputes of fact that ought to have been resolved through the examination of witnesses, rather than on affidavits and documents alone.

141 As pointed out by FDPL, the issue of whether there should be a trial of the claims was raised by FDPL's counsel before the Judge. This is because the Judge had raised the possibility of converting the matter into a civil suit, and FDPL's counsel had agreed with this suggestion. However, Mr Yit's counsel had demurred and said that the onus was not on Mr Yit to make the necessary

application to court. FDPL did not make any application. The Judge then recorded in the Judgment at [37] that both FDPL and Mr Yit did not consider it inappropriate for the claims "to be resolved under the proof of debt regime".

142 It appears to us that both parties were content to let the Judge decide the claims based on the affidavit and documentary evidence alone. This was an error on the part of both parties. FDPL has the burden of proof as the party seeking to establish the claims against Ms Chan. That would have required FDPL to establish the existence of the loans by TGPL to TL, and we have already pointed out that there is contradictory evidence as to the purpose of the transfers of money from TGPL to TL. Also, a material part of FDPL's case requires it to show that Ms Chan had *caused* TGPL to make those loans to TL (in the case of the TL Sum) or that Ms Chan instructed the customers of TGPL to pay TL (for the Finished Goods Sum). There is a lack of clarity on the evidence on these issues, given Ms Chan's statements on affidavit that it was Mr Lay, not her, who managed and controlled TGPL. As for the alternative basis that Ms Chan had breached her duties by failing to cause TGPL to seek recovery of sums due from TL, Ms Chan's reasons for her inaction and the question of causation should have been, but were not, explored.

143 At the same time, however, we find that there were certain key issues where the evidential burden rested squarely on Mr Yit. For example, Mr Yit argues that, while the management accounts recorded the Opening Balance and the 2007 Payments as receivables owing by TL, these were not genuine debts – instead, they had arisen as a result of the arrangements under the 2006 and 2007 JVAs and the way the money being paid by Intraco to TL, but passing through TGPL, was wrongly recorded in the books of TGPL as receivables due from TL. The evidential burden was on Mr Yit to prove these specific allegations. Further, assuming that Ms Chan was in breach of her duties by her failure to

take steps to seek recovery of the debts from TL, Mr Yit bore the burden of showing that, even if such recovery had been pursued, TGPL would still have suffered the loss of the TL Sum and Finished Goods Sum (see [123] above). As such, it was entirely in Mr Yit's interests, as much as FDPL's, to have those issues ventilated through the trial process where there can be discovery and examination of relevant witnesses.

144 In these circumstances, we are of the view that it would not be just for us to determine that FDPL had not proven that its claims should be admitted as debts in Ms Chan's bankruptcy estate. Instead, we think that FDPL ought to be given an opportunity to properly prove its claims through the trial process.

145 For the same reasons, while we are allowing the appeal, it does not appear to us fair to penalise FDPL by making it pay the costs of this appeal and the costs below in relation to FDPL's claims that are the subject of this appeal. We invite parties to agree on the costs both here and below. Parties are to write to inform us by 14 January 2026 if they have reached such an agreement. If there is no agreement, parties are to file and serve their submissions on costs, limited to five pages in length, by 21 January 2026.

Ang Cheng Hock
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Hing Shan Shan Blossom *SC*, Yeo Jianhao Mitchell (Yang Jianhao) and Claire Neoh Kai Xin (Drew & Napier LLC) for the appellant;
Lee Eng Beng *SC*, Benjamin Liow Jun Mun and Jung Sangbum (Rajah & Tann Singapore LLP) for the respondent.