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

[2026] SGHC(A) 5

Appellate Division of the High Court / Civil Appeal No 3 of 2025

Between

Jethanand Harkishindas Bhojwani

… *Appellant*

And

(1) Devin Jethanand Bhojwani
(2) Dilip Jethanand Bhojwani
(3) Sandeep Jethanand Bhojwani

… *Respondents*

Appellate Division of the High Court / Civil Appeal No 4 of 2025

Between

(1) Devin Jethanand Bhojwani
(2) Dilip Jethanand Bhojwani
(3) Sandeep Jethanand Bhojwani

… *Appellants*

And

Jethanand Harkishindas Bhojwani

… *Respondent*

In the matter of Suit No 521 of 2021

Between

(1) Devin Jethanand Bhojwani
(2) Dilip Jethanand Bhojwani
(3) Sandeep Jethanand Bhojwani

… *Plaintiffs*

And

Jethanand Harkishindas Bhojwani

… *Defendant*

In the matter of Suit No 521 of 2021 (Summons No 663 of 2024)

Between

Jethanand Harkishindas Bhojwani

… *Applicant*

And

(1) Devin Jethanand Bhojwani
(2) Dilip Jethanand Bhojwani
(3) Sandeep Jethanand Bhojwani

… *Respondents*

JUDGMENT

[Civil Procedure — Appeals — Permission to appeal]
[Equity — Fiduciary relationships — Duties]
[Trusts — Breach of trust — Remedies]
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30 January 2026 Judgment reserved.

See Kee Oon JAD (delivering the judgment of the court):

Introduction

1 The present appeals in AD/CA 3/2025 ("AD 3") and AD/CA 4/2025 ("AD 4") arise against the backdrop of a protracted family dispute between the father, Jethanand Harkishindas Bhojwani ("Sajan"), and his three sons (collectively, the "Brothers"). Sajan was the trustee of a testamentary trust (the "Trust") created under the last will and testament ("Will") of his late father, Harkishindas Ghumanmal Bhojwani ("Harkishindas"). In HC/S 521/2021 ("S 521"), the Brothers brought claims against Sajan for breach of trust, which were largely allowed by a judge of the High Court (the "Judge").

2 AD 3 and AD 4 are cross-appeals against the Judge's decision in S 521. For the reasons given below, save for certain adjustments to the remedies

awarded to the Brothers, we dismiss Sajan's appeal in AD 3 and allow the Brothers' appeal in AD 4.

Facts

The parties

3 The Brothers are Devin Jethanand Bhojwani ("Devin"), Dilip Jethanand Bhojwani ("Dilip") and Sandeep Jethanand Bhojwani ("Sandeep") respectively. They are the sons of Sajan and his ex-wife, Lakshmi Jethanand Bhojwani ("Lakshmi").[1] The family resided at 32 Branksome Road ("32BR") before Sajan moved out in June 2019.

The Will

4 On 20 October 2006, Harkishindas executed the Will. Harkishindas had three sons, and Sajan was the eldest. Moti Harkishindas Bhojwani ("Moti"), Sajan's younger brother, is the executor of the Will.[2] The Will provided for the creation of three separate trusts: one with Sajan as trustee; one with Moti as trustee; and one with Jaikirshin Harkishindas Bhojwani (*ie*, Sajan's youngest brother) ("Jack") as trustee. Harkishindas subsequently passed away on 4 March 2007.

5 We set out certain key clauses of the Will. Clause 5.1(i) provided that the "trust period" would be the period of 30 years commencing from the date of Harkishindas's death. Under cl 5.1(ii), the Brothers and Lakshmi were the only

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1 Affidavit of Evidence-in-Chief of Devin Jethanand Bhojwani dated 17 January 2024 ("Devin's AEIC") at para 4 (Joint Record of Appeal for AD/CA 3/2025 and AD/CA 4/2025 dated 11 April 2025 ("ROA") Vol 3A p 15).

2 Devin's AEIC at paras 7–8 (ROA Vol 3A pp 15–16).

named beneficiaries for the Trust.[3] Clause 5.2 of the Will provided for Sajan's powers of appointment during this trust period, and stated that they could be exercised "in his absolute discretion":[4]

> 5.2 I direct my trustee to hold the Trust Property upon trust for all or such one or more of the beneficiaries at such ages or times in such shares and upon such trusts for the benefit of all or any one or more of the beneficiaries as my trustee in his absolute discretion may by deed or deeds revocable or irrevocable at any time or times during the trust period appoint and in making such appointment my trustee shall have powers specified in clause 3 above during the Trust Period.

6 Under cl 3 of the Will, Sajan was given the following powers that he could exercise in making an appointment under cl 5.2:[5]

(a) to sell trust property for cash or upon such terms he deemed fit;

(b) to call in, and convert into money, trust property or such part(s) thereof, at any time and in any manner;

(c) to postpone such sale, calling in and conversion of such property, or of any part(s) thereof for any period(s);

(d) to stand possessed of the moneys arising therefrom;

(e) to borrow moneys from any person on such terms and conditions as Sajan thought fit with or without security, and to sign and execute mortgages, bills of sale and other securities over all or any part of the assets of the estate;

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3 Clause 5.1(i) and (ii) of the Last Will and Testament of Harkishindas Ghumanmal Bhojwani dated 20 October 2006 at ROA Vol 3A p 178.

4 Clause 5.2 of the Will (Appellants' Joint Core Bundle dated 21 April 2025 ("AJCB") Vol B p 16; ROA Vol 3A p 179)

5 Clause 3 of the Will (AJCB Vol B pp 12–13; ROA Vol 3A pp 175–176).

(f) permit any beneficiary to reside in any dwelling-house, occupy any land or buildings or have the custody and use of any chattels, and to acquire with trust moneys any such dwelling-house, land, building or chattels;

(g) make investments for the estate not limited to investments authorised by law, but which Sajan considered to be to the advantage of the executor, and Sajan would "not be liable for any loss that may happen to [Harkishindas's] estate in connection with any such investment made by [Sajan] in good faith"; and

(h) to do or omit to do all such acts or things as Sajan in his absolute discretion considered to be for the benefit of the estate or any one or more of the beneficiaries.

7 Clauses 5.1(iv) and 7(b) of the Will specified certain assets that would form the property of the Trust (which we refer to as the "Trust Assets" or "Trust Property"). The Trust Assets comprised: (a) shares in several companies which were run as a family business loosely known as the "Shankar's Group"; (b) Harkishindas's interest in 32BR; and (c) one-third of Harkishindas's residual estate. For reference, the shares in companies that formed part of the Trust Assets (which we refer to hereinafter as the "Trust Shares" either separately or collectively) are set out as follows:

(a) 9,000 shares in Malaya Silk Store (Private Limited) ("MSSPL");

(b) 150,000 shares in Shankar's Emporium (Private) Limited ("SEPL"), which was the main holding company;

(c) 1 founder's share in SEPL (the "Founder's Share");

(d) 15,000 shares in Sharrods (Private) Limited ("Sharrods");

(e) 11,360 shares in Shankar's Pte Ltd ("SPL");

(f) 15,000 shares in Sovrein (Private) Limited ("Sovrein");

(g) 12,001 shares in Lions Amalgamated Industries Private Limited ("Lions");

(h) 1 share in Shankar's Investments Pte Ltd ("Shankar's Investments"); and

(i) 1 share in Liberty Merchandising Pte Ltd ("LMPL").

The Founder's Share

8 As stated at [7(c)] above, one of the shares forming part of the Trust Assets was the Founder's Share in SEPL. This was one among two founders' shares that were issued when SEPL was incorporated on 24 February 1976.[6] At the time of incorporation, Harkishindas and Jamnadas Ghumanmal Bhojwani ("Jamnadas"), Harkishindas's brother,[7] each held a founder's share.

9 Clause 5 of SEPL's Memorandum of Association ("M&A") set out certain rights that were conferred on a holder of a founder's share:[8]

(a) the right to hold office as a director of SEPL;

(b) the right at any time when not personally holding office as a director to appoint any other person to be a director of SEPL;

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6 SEPL's Certificate of Incorporation at ROA Vol 3D p 7; cl 5 of the M&A at ROA Vol 3D pp 12–13.

7 As to Jamnadas' relationship to Harkshindas, see Devin's AEIC at para 56(c); ROA Vol 3A p 36.

8 Clause 5 of the M&A (AJCB Vol B pp 6–7; ROA Vol 3D at pp 12–13).

(c) the right to exercise all the powers, authorities and discretions expressed to be vested in the directors;

(d) the right to be named as governing director;

(e) the right to remove any director (except the holder of a founder's share) and appoint any other person as director in their place;

(f) the right to nominate any person to succeed on their death to the founder's share; and

(g) the right to 10% of the net profits of the company annually in perpetuity.

10 Clause 5 of SEPL's M&A also provided that:[9]

> The rights hereby attached to the Founder Shares shall not be altered, they are fundamental. Any of the other shares in the Capital of the company whether original or increased may be issued with any preferential special or qualified rights as regards dividend capital working or otherwise but so that the rights hereby attached to the Founder Shares shall not be prejudiced.

The events that transpired following Harkishindas's death

11 Following Harkishindas's passing in March 2007, on 15 September 2008, Sajan and the four other second-generation shareholders of SEPL (*ie*, Moti, Jack, Hiro J Bhojwani ("Hiro") and Mohandas Jamnadas Bhojwani ("Manu")) voted to "convert" the two founders' shares into two ordinary shares.[10] This was done by passing a directors' resolution and a shareholders'

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9 Clause 5 of the M&A (AJCB Vol B p 7; ROA Vol 3D p 13).

10 Judgment at [170]. See Statement of Claim (Amendment No 2) at para 34; Defence (Amendment No 2) at paras 25(d)(vi)–25(d)(vii) and 25(e); ROA Vol 2 pp 32 and 85.

resolution to remove cl 5 of SEPL's M&A.[11] We note that in the parties' cases as well as in the Judge's decision, what was done to the Founder's Share was characterised as a "conversion". However, as we make clear below, it appears that this is not wholly accurate as the term had been loosely adopted by the parties and, with respect, by the Judge.

12 Next, in 2010, Sharrods, SPL, Sovrein, Lions and Shankar's Investments were struck off, the assets of these companies realised and the proceeds therefrom returned to the shareholders.[12]

13 Finally, on 16 February 2021, Sajan executed two deeds in which he declared that the Trust Shares in SEPL and LMPL (collectively, the "Two Live Companies") were to be sold to his brothers, Moti and Jack.[13] On 18 February 2021, the transfers of the Trust Shares were effected.[14]

The Judge's decision in S 521

14 On 11 June 2021, the Brothers commenced S 521 against Sajan and claimed that Sajan had breached several duties owed as a trustee. As alluded to in the introduction, the Judge largely held in the Brothers' favour: see *Devin Jethanand Bhojwani v Jethanand Harkishindas Bhojwani* [2024] SGHC 310 (the "Judgment"). We set out the key aspects of the Judge's decision that are relevant to the present appeals.

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11 See SEPL's resolutions at ROA Vol 5M pp 109–110.

12 Devin's AEIC at paras 212–213 (ROA Vol 3A pp 120–121).

13 See the two deeds at ROA Vol 3D pp 234–237 and 242–245.

14 Instruments of Share Transfer dated 18 Feb 2021 for the sale of the Trust Shares in SEPL at ROA Vol 5M pp 219–220**;** Instrument of Share Transfer dated 18 Feb 2021 for the sale of the Trust Share in LMPL at ROA Vol 5M p 264.

Matters not directly related to the Trust Shares

15 We begin by examining the Judge's decision in relation to matters not directly related to Sajan's management and/or disposition of the Trust Shares.

16 First, the Judge examined the ambit of Sajan's discretion in respect of his duties, powers and liabilities to the Trust. Clause 5.2 read with cl 3 of the Will provided that Sajan had "absolute discretion" to exercise his power of appointment, which included the powers stated at [6] above. However, the Judge held that the use of the phrase "absolute discretion" in the Will did not preclude the court's intervention in the exercise of a trustee's powers. Further, on the facts of the case, the phrase "absolute discretion" did not enlarge any of Sajan's powers, abridge any of his duties, or excuse or limit his liability for breach of trust (Judgment at [59] and [61]).

17 Second, the Judge dismissed Sajan's claim that Devin and Sandeep had no standing to bring S 521. In arguing that Devin and Sandeep lacked standing, Sajan had relied on two deeds and a deed of appointment which he executed on 14 April 2021 (the "Exclusion Deeds"), in which he declared that Devin and Sandeep had no further interest in any of the remaining Trust Assets and would receive no distribution from the same, and that he held the remaining Trust Assets only for the benefit of Dilip.[15] In the Judge's view, Sajan had executed the Exclusion Deeds as a response to Devin and Sandeep's questioning of his management of the Trust. Sajan's exclusion of Devin and Sandeep from the Trust was therefore done in bad faith, such that the Exclusion Deeds were void for being fraud on the power (Judgment at [87]–[94]).

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[15] Devin's AEIC at para 249 (ROA Vol 3A p 137). See the three deeds at ROA Vol 3E pp 21–32.

18 Third, the Judge held that Sajan had breached his duties as trustee by commingling the Trust Assets as well as any moneys that rightfully belonged to the Trust (the "Trust Moneys") with his own. The Judge found that Sajan had clearly commingled the Trust Moneys since he admitted that moneys coming into the Trust were placed in a joint bank account under Sajan and Lakshmi's names, with this account also containing Sajan's personal moneys. It was only on 24 February 2017 that Sajan opened a bank account for the Trust. Consequently, Sajan had breached his duty to segregate the Trust Moneys from his own (Judgment at [103]–[106]).

19 Fourth, the Judge held that Sajan had failed to maintain proper accounts of the Trust. In his time as a trustee, Sajan had produced three sets of documents which purportedly contained information relating to the Trust Assets, income received by the Trust and expenditures incurred by the Trust. Among those documents was a two-page "trust statement" for the period ending on 31 December 2017 ("December 2017 Trust Summary"), which Sajan emailed to the Brothers on 16 May 2018, as well as a trust statement dated 16 November 2023 ("November 2023 Trust Statement") that Sajan later disclosed in the course of the S 521 proceedings (Judgment at [12]). The Judge found that Sajan had failed to maintain a contemporaneous account of the Trust Assets or the cash inflows to and outflows from the Trust, that Sajan did not properly check the details set out in the various documents he produced, and that in any case those documents had incorrectly recorded large sections of expenses. Accordingly, the Judge held that Sajan had acted in breach of his management stewardship duty as trustee and ordered an account on a wilful default basis (Judgment at [139]–[160]).

20 Fifth, the Judge found that Sajan had concealed the Trust from the Brothers and Lakshmi until 16 September 2016. The Judge accepted the

Brothers' case that they had only learnt of the Trust in late 2016, following the receipt of a letter on 16 September 2016 (the "Crawford Letter") at 32BR from Crawford, a firm of loss adjustors ("Crawford"). As the Crawford Letter referred to Moti as the occupant of 32BR instead of Sajan, Lakshmi and the Brothers, its receipt led to a sequence of events that resulted in the Brothers and Lakshmi learning of the existence of the Trust. Accordingly, the Judge held that Sajan's deliberate concealment of the Trust amounted to a breach of his duty to inform the beneficiaries of their interests under the Trust (Judgment at [107]–[131]).

The conversion of the Founder's Share

21 The Judge held that Sajan had breached his management stewardship duty as trustee in converting the Founder's Share. In the Judge's view, Sajan's default lay not in the act of converting the Founder's Share *per se*, but in converting the Founder's Share in a manner that fell below the objective standard of his duty of care as a trustee. This was because Sajan converted the Founder's Share for no additional value to make up for the difference between the value of the Founder's Share and the value of an ordinary share in SEPL as at the date of the conversion (*ie,* 15 September 2008), meaning that the conversion resulted in a loss in the value of the Trust. The loss was one which an ordinary prudent trustee in Sajan's position would have appreciated and exercised due diligence and care to avoid (Judgment at [177]–[181]).

22 That being said, the Judge disagreed with the Brothers' position that Sajan's conduct in arranging for the conversion of the Founder's Share amounted to a breach of his custodial stewardship duty. The conversion did not involve an unauthorised disbursement of the Founder's Share from the Trust, and was instead a product of a change in SEPL's constitution that caused a

change in the quality of the share (Judgment at [188]–[192]). The Judge also disagreed with the Brothers' argument that the conversion amounted to a custodial breach of Sajan's fiduciary duty. Although Sajan personally owned 22% of the shares in SEPL at the time, the Judge considered that any conflict arising from that situation had been authorised by Harkishindas or the terms of the Trust as contained in the Will (Judgment at [229]–[234]). It followed that the appropriate remedy for Sajan's breach of his management stewardship duty was to surcharge the Trust account on a wilful default basis, and for Sajan to be liable to compensate the Trust for the consequential losses occasioned by the conversion (Judgment at [193]).

23 In assessing the loss occasioned by the conversion, the Judge took reference from the counterfactual of the value that the Trust would have had if Sajan had performed his management stewardship duties as a trustee (Judgment at [202]). Therefore, the Judge ordered that the Trust account was to be surcharged in the amount of the difference between the market value of the Founder's Share and one ordinary share in SEPL as at 15 September 2008, that being the value which Sajan was obliged to obtain for the Trust if he had exercised due care. However, the Judge declined to surcharge the Trust account by any increase in market value in the Founder's Share after 15 September 2008, as the evidence did not show that a prudent trustee would have avoided converting the Founder's Share altogether. Further, the Judge declined to surcharge the Trust account for any future income post-dating the conversion (Judgment at [220]).

24 In view of the foregoing, the Judge assessed the loss occasioned to the Trust from the conversion to be in the sum of $9,522,731.92, and ordered the account to be surcharged in the same amount. In arriving at this figure, the Judge preferred the valuation of the Brothers' expert, Mr Chaitanya Arora

("Mr Arora"), over that of Sajan's expert, Mr Henry Young Hao Tai ("Mr Young") (Judgment at [228]).

The sale of the Trust Shares in the Two Live Companies and the realisation of the Trust Shares in the Three Struck Off Companies

25 The Judge held that Sajan had breached his duty of care in selling the Trust Shares in the Two Live Companies. Sajan had failed to provide any justifiable reason or sensible reasoning process for selling off the Trust Shares. In this light, Sajan's decision was juxtaposed against certain optimistic indications as to the future value of the Trust Shares set out in the valuations of both companies. The Judge further rejected Sajan's bare explanation that the sale was motivated by a defensive strategy to minimise potential losses to the Trust. Therefore, Sajan had breached his statutory duty to consider proper advice about how his power of investment should be exercised, and whether the investment should be varied, *per* s 6(1) of the Trustees Act 1967 (2020 Rev Ed) ("Trustees Act"). Sajan had also breached his duty of care in relation to the exercise of his powers of investment, both under the Trustees Act and common law (Judgment at [244]).

26 The Judge further held that Sajan's breach of duty in selling the Trust Shares in the Two Live Companies ought to be conceptualised as a breach of his custodial stewardship duty as trustee, as the sale amounted to an unauthorised disposal of Trust Assets (Judgment at [247]–[251]). The consequence was that the Brothers were entitled to falsify the Trust account in respect of the sale of the Trust Shares. As the Judge did not consider reconstitution *in specie* to be possible, Sajan was to pay into the Trust a sum to substitute for the value the Trust would have had if the unauthorised disbursements had not occurred. In assessing the relevant values, the Judge preferred the valuation of Mr Arora over Mr Young's, and declined to apply a

discount for lack of control ("DLOC") or a discount for lack of marketability ("DLOM") to the value of the Trust Shares in the Two Live Companies. Sajan was thereby ordered to reimburse the Trust in the amount of $1,839,853.00 (Judgment at [252]–[266]).

27 Next, the Judge also held that Sajan had breached his common law duty of care in his handling of the realisations of the Trust Shares in Sharrods, SPL and Sovrein (collectively, the "Three Struck Off Companies"). As stated at [12] above, these were three of the five companies that were struck off in 2010. Having accepted Mr Arora's valuation of the fair market value of the Trust Shares in the Three Struck Off Companies, the Judge found that the actual amounts returned to the Trust from the striking off was at a significant undervalue compared to what ought to have been returned to the Trust. As Sajan did not provide any explanation as to this discrepancy, the Judge inferred that Sajan had negligently failed to ascertain whether the Trust had received the correct amount from the realisation of the Trust Shares in the Three Struck Off Companies. His mishandling of the realisations also amounted to a breach of his custodial stewardship duty as trustee, since there was an unauthorised disposal of Trust Assets (Judgment at [269]–[276]).

28 In assessing the substitutive award that Sajan was required to pay to reconstitute the Trust for the breach, the Judge found that the value of the Trust Shares in the Three Struck off Companies in 2010 (*ie,* at the time of the striking off) was the best estimate available to assess the value of the Trust Shares to date if they had remained in the Trust. The Judge therefore ordered that Sajan's liability to the Trust would be determined by the difference between the sums that ought to have been returned to the Trust following the striking off (as calculated by Mr Arora), and the actual amounts received by the Trust from

the striking off, which were to be determined subsequently when an account was taken of the Trust (Judgment at [279]–[282]).

The removal of Sajan as Trustee

29 The final aspect of the Judge's decision related to the Brothers' application for Sajan to be removed as a trustee. The Judge held that it was appropriate to remove Sajan as a trustee since he had displayed a lack of proper capacity and reasonable fidelity to execute his duties as a trustee. However, the Judge did not grant the Brothers their prayer to nominate Lakshmi and Devin as replacement co-trustees, and instead ordered that a professional trustee be appointed to replace Sajan as trustee of the Trust (Judgment at [283]–[284]).

The award of pre-judgment interest

30 On 16 December 2024 (11 days after the Judgment was delivered), the Brothers' counsel wrote to court requesting for pre-judgment interest to be granted in relation to the following:[16]

> (a) the Judge's order that in respect of Sajan's conversion of the Founder's Share, the Brothers were entitled to surcharge the Trust account in the amount of $9,522,731.92, for which Sajan was liable to compensate the Trust; and
>
> (b) the Judge's order that in respect of Sajan's realisation of the Trust Shares in the Three Struck Off Companies at an undervalue, Sajan was liable to make good the deficit in the Trust, with the precise quantity to be reimbursed being determined after an account had been taken of the Trust.

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16 ROA Vol 3Q p 268, para 3.

31 On 26 December 2024, the Judge granted pre-judgment interest in relation to the foregoing two items, from 15 September 2008 and 31 May 2010 respectively until the date of the Judgment, at a rate of 5.33% per annum. The Judge reasoned that (a) the court retained a broad discretion to award pre-judgment interest in respect of claims in equity, as set out in s 12(1) of the Civil Law Act 1909 (2020 Rev Ed), and (b) the Trust had been "out of pocket" of the sums from the date of the aforesaid impugned acts until the date of the judgment.[17]

The parties' cases on appeal

32 In AD 3, Sajan challenges several aspects of the Judge's decision in S 521. We set out his various grounds of challenge:

(a) The Judge erred in finding that he had concealed the Trust from the Brothers. In any case, he was not obliged to inform the Brothers of the existence of the Trust.

(b) The Judge erred as Sajan's comingling of Trust Moneys with his own funds did not cause loss to the Trust.

(c) The Judge erred in finding that Sajan had executed the Exclusion Deeds to exclude Devin and Sandeep from the Trust in bad faith.

(d) The Judge erred in finding that Sajan's conversion of the Founder's Share to an ordinary share in SEPL, without any additional consideration, was done in breach of trust. In any case, the Judge's assessment of the quantum of loss occasioned to the Trust from the conversion was in error.

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17 Paragraphs 2(a) and (b) of the Correspondence from Courts (ROA Vol 1 p 220).

(e) The Judge erred as Sajan's sale of the Trust Shares in the Two Live Companies was neither wrongful nor at an undervalue.

(f) In any case, the Judge erred in assessing the quantum of loss caused by the sale of the Trust Shares in the Two Live Companies, because, *inter alia,* a DLOC and DLOM should have been applied to the valuation of the Trust Shares in the Two Live Companies.

(g) The Judge erred in finding that the Trust Shares in the Three Struck Off Companies were realised at an undervalue (and therefore, a breach of trust).

(h) The Judge erred in awarding pre-judgment interest on the amounts that Sajan was liable to compensate or reimburse the Trust for in relation to his breaches of trust concerning the conversion of the Founder's Share and the realisation of the Trust Shares in the Three Struck Off Companies.

(i) The Judge erred in appointing a professional trust company to replace Sajan as trustee.

33 The Brothers reject all of Sajan's points of contention in AD 3 and argue that the Judge made no error.

34 As for AD 4, the Brothers challenge several aspects of the Judge's decision in relation to the conversion of the Founder's Share:

(a) The Judge erred in finding that Sajan's conversion of the Founder's Share to an ordinary share, in itself, did not amount to a breach of Sajan's duties.

(b) The Judge erred in holding that Sajan's conduct amounted to a breach of his management stewardship duty, as it ought to have amounted to a breach of his custodial stewardship duty.

(c) Consequently, the Brothers ought to be entitled to falsify the conversion of the Founder's Share. Sajan ought to be ordered to pay into the Trust a sum equivalent to the difference between the present value of the Founder's Share and an ordinary share in SEPL.

(d) Alternatively, if Sajan's conduct amounted to a breach of his management stewardship duty, the Judge erred in assessing the loss occasioned to the Trust as at the time of the breach (*ie,* the date of the conversion). The date of assessment ought to be the date of the trial as the Brothers had been unaware of the breach of trust at the material time, and there was no duty to mitigate one's loss in trust law.

(e) Finally, the Judge erred in holding that Sajan did not breach his fiduciary duties in authorising the conversion. Sajan's conduct in respect of the conversion constituted a breach of his core fiduciary duties, including the no-conflict rule, the no-profit rule and the duty to act in good faith in the beneficiaries' best interests.

35 In response to the Brothers' arguments in AD 4, Sajan maintains that the conversion was not a breach of trust and opines that taken at its highest, it was a breach of his management stewardship duty. Sajan also argues that the Brothers' argument that he had breached his fiduciary duties was not pleaded and was in any event devoid of merit since any alleged position of conflict that Sajan was placed in was authorised by Harkishindas or the terms of the Trust as set out in the Will.

Issues to be determined

36 The parties' cases give rise to the following issues:

(a) Whether Sajan had concealed the Trust from the Brothers and Lakshmi;

(b) Whether Sajan's commingling of the Trust Moneys ought to be held against him;

(c) Whether Sajan's execution of the Exclusion Deeds to exclude Devin and Sandeep as beneficiaries was done in bad faith;

(d) Whether Sajan's conduct in converting the Founder's Share constituted a breach of his custodial stewardship duty, and whether it amounted to a breach of his fiduciary duties;

(e) Whether the Judge had erred in assessing the remedy that Sajan was liable for in respect of the conversion of the Founder's Share;

(f) Whether Sajan's sale of the Trust Shares in the Two Live Companies was at an undervalue and in breach of trust;

(g) Whether a DLOM and DLOC ought to be applied to the valuation of the Trust Shares in the Two Live Companies;

(h) Whether Sajan's realisation of the Trust Shares in the Three Struck Off Companies was at an undervalue;

(i) Whether pre-judgment interest ought to have been awarded on the amounts Sajan was liable for in respect of the conversion and the realisation of the Trust Shares in the Three Struck Off Companies; and

(j) Whether a trust company ought to have been appointed to replace Sajan as trustee.

Preliminary issue: Sajan's appeal against the Judge's decision in SUM 663

37 Before we examine the main issues in the appeal, we dispose of a preliminary point raised by Sajan in AD 3. On 19 March 2024, which was the first day of the trial in S 521, the Judge heard two applications by the parties: (a) the Brothers' application in HC/SUM 678/2024 ("SUM 678") to amend their pleadings, and (b) Sajan's application in HC/SUM 663/2024 ("SUM 663") to admit the affidavit of evidence-in-chief ("AEIC") of Mr Abdul Khader Mohamed Ismail ("Mr Ismail"), or for Mr Ismail's oral evidence-in-chief ("EIC") to be adduced during the trial itself (see Judgment at [13]–[39]). On the same day, the Judge allowed SUM 678 and dismissed SUM 663.[18] In AD 3, Sajan seeks to appeal against the Judge's dismissal of SUM 663.

38 In our view, this court is not seised of jurisdiction to hear Sajan's appeal against the Judge's decision in SUM 663. This is because Sajan did not apply for and obtain permission to appeal against the Judge's decision to dismiss SUM 663.

39 Pursuant to s 29A(1)(*c*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") read with para 3(*l*) of the Fifth Schedule, permission is required to appeal against a decision of the General Division of the High Court ("General Division") where the Judge makes an order at the hearing of an interlocutory application (apart from certain specified exceptions). It is settled law that para 3(*l*) prescribes two conjunctive prerequisites that must be satisfied

[18] Minute Sheet (19 March 2024) for SUM 663 and SUM 678.

before permission is required: there must be (a) an interlocutory order made (b) at the hearing of an interlocutory application (see *Commodities Intelligence Centre Pte Ltd v Hoi Suen Logistics (HK) Ltd* [2022] 1 SLR 845 at [21]; *Avra International DMCC v Dava Pte Ltd* [2025] 2 SLR 421 at [23]).

40 Before us, Sajan took the position that the Judge's dismissal of SUM 663 was not an interlocutory order as the order was made on the first day of trial. As such, he did not require permission to appeal. In addition, the prescribed timelines for filing an appeal against an interlocutory order did not apply. In our view, the Judge's order to dismiss SUM 663 was an interlocutory order since it did not finally dispose of the rights of the parties (see *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 ("*Telecom Credit*") at [19(b)]). SUM 663 was also an interlocutory application since it did not determine the rights of the parties and was peripheral to the main hearing of the trial (*Telecom Credit* at [26]). Consequently, Sajan required permission to appeal against the Judge's decision to dismiss SUM 663.

41 We note that the Brothers also rely on O 18 rr 27(1) and 29(1) of the Rules of Court 2021 ("ROC 2021") to argue that Sajan is out of time to seek permission to appeal. For reference, O 18 rr 27(1) and 29(1) prescribe timelines within which a party seeking to appeal against a decision of the General Division must file and serve its notice of appeal or file and serve its application for permission to appeal respectively. However, we agree with the submission made by Sajan's counsel, Mr Narayanan Sreenivasan *SC* ("Mr Sreenivasan"), that O 18 of the ROC 2021 is not applicable to any appeal against the decision in SUM 663. This is because O 18 r 1(2)(*b*)(i) provides, *inter alia*, that applications heard on the same day as the hearing on the merits of an originating claim do not fall within the purview of O 18. Accordingly, the application of O 18 is precluded here since SUM 663 was heard on a hearing date set down

for determining the merits of S 521. We note, for completeness, that although S 521 was commenced under the Rules of Court (2014 Rev Ed), the ROC 2021 is applicable to the present appeal against the Judge's decision to dismiss SUM 663 (see O 1 r 2(3)(*b*) of the ROC 2021).

42 We note that timelines for a party to apply for permission to appeal are prescribed in O 19 r 15(1) of the ROC 2021, which is applicable to the present appeal against SUM 663. In this regard, O 19 r 15(1) of the ROC 2021 requires Sajan to have sought permission to appeal within 14 days after the Judge gave his decision on costs on 26 December 2024 (see O 19 r 4(1) of the ROC 2021).[19] He did not do so. More importantly, permission to appeal is *required* pursuant to the SCJA, which Sajan never applied for.

43 We are fortified in our view by our decision in *PT OKI Pulp & Paper Mills v Sunrise Industries (India) Ltd* [2023] SGHC(A) 38 ("*PT OKI*"). There, the plaintiff sought to appeal against the High Court's decision to disallow certain amendments it sought to make to its reply and defence to the counterclaim, but it did not seek to obtain permission to appeal. The plaintiff argued that permission was not required because O 19 of the ROC 2021 did not require an appellant to obtain permission to appeal against a judgment rendered after trial and, *per* O 19 r 3 of the ROC 2021, the word "trial" included all applications taken out or heard on the same day as the hearing on the merits of an originating claim or originating application, and at any time following the start of the hearing until the giving of the judgment (at [32]).

44 We rejected the plaintiff's argument in *PT OKI* and held that permission to appeal was required. The plaintiff's interpretation of O 19 r 3 would have

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[19] Correspondence from Courts dated 26 December 2024 at para 2(1)(a), (4).

undermined the requirement to obtain permission to appeal prescribed by s 29A(1)(*c*) read with para 3(*h*) of the Fifth Schedule of the SCJA. In any case, the SCJA, being primary legislation, took precedence over the ROC 2021 (*PT OKI* at [37]). By parity of reasoning, since the Judge's decision to dismiss SUM 663 is clearly an interlocutory order made at the hearing of an interlocutory application, the requirement of permission to appeal prescribed by s 29A(1)(*c*) read with para 3(*l*) of the Fifth Schedule applies with full force and takes precedence over any argument that Sajan may make based on O 19 of the ROC 2021.

45 Sajan has failed to apply for the necessary permission to appeal. He is clearly out of time to apply for permission to appeal and would have required an extension of time to do so, but he has not applied for the same. Before us, Mr Sreenivasan also did not make an oral application for an extension of time and for an application for permission to appeal. Absent permission to appeal being granted, this court is not seised of jurisdiction to hear Sajan's appeal against the Judge's decision to dismiss SUM 663 (see *PT OKI* at [35]).

46 Having dealt with this preliminary issue, we turn to consider the main issues on appeal.

Whether Sajan concealed the Trust from the Brothers

Sajan concealed the Trust from the Brothers

47 In our view, Sajan's challenge to the Judge's finding that he had concealed the Trust from the Brothers is unmeritorious.

48 First, it is not disputed that there is no documentary evidence indicating that Sajan had informed the Brothers about the Trust at all until

16 September 2016, *ie*, almost ten years after Harkishindas passed away in March 2007. Sajan's case below, which he maintained on appeal,[20] was that he had *orally* informed the Brothers of the Trust sometime in 2009, and that such information was never communicated by way of a written record since all such familial communications were done in person.[21]

49 Second, the Judge disbelieved Sajan's claim that he had orally informed the Brothers of the Trust in 2009 (see Judgment at [115]–[120]). We do not see any basis to depart from the Judge's finding, as the supporting evidence is compelling when viewed chronologically. Indeed, the receipt of the Crawford Letter, which related to the ownership of 32BR, triggered what the Brothers describe as a "sudden burst of activity" relating to the Trust. At the time that the Crawford Letter was received, Moti was the named occupant of 32BR, and 32BR was registered in Moti's name along with the property at 32A Branksome Road. This was notwithstanding that 32BR was occupied by Sajan and his immediate family at the material time (see [3] above).

50 The events following the receipt of the Crawford Letter are telling. Upon the receipt of the Crawford Letter on 16 September 2016, Moti instructed WithersKhattarwong ("WKW") to transfer 32BR from himself to Sajan as trustee.[22] Subsequently, on 22 September 2016, Devin, Sandeep and Sajan attended a meeting at WKW (the "WKW Meeting") to learn more about the Trust and the ownership of 32BR.[23] Two days later, on 24 September 2016, Sajan sent the Brothers and Lakshmi an email stating that they were the

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20 Sajan's AD 3 Case at paras 52 and 54.

21 Transcript (27 March 2024) p 107 line 24 to p 108 line 6 (ROA Vol 3N pp 112 –113).

22 ROA Vol 3A p 185.

23 Devin's AEIC at para 20 (ROA Vol 3A pp 21–22); Transcript (27 March 2024) at p 106 lines 7–14 (ROA Vol 3N p 111).

"underlying beneficiaries of [32BR], gifted to [them], as per the Trust Document & I am just the Trustee", and that "[y]ou four have a share n stake in this property, as beneficiaries".[24] By 28 September 2016, Sajan had instructed WKW to transfer the ownership of 32BR to Lakshmi.[25]

51 The foregoing events were consistent with the Brothers' case that they had only learnt of the Trust after the receipt of the Crawford Letter. It is also particularly significant that Sajan only opened a bank account for the Trust on 24 February 2017,[26] and only sent the Brothers the December 2017 Trust Summary on 16 May 2018.[27] In a telling response dated 29 August 2018, Devin stated that the Brothers had only learnt of the Will and the Trust sometime "in late-2016".[28] Taken in its totality, the timeline of events leads to the irresistible inference that Sajan concealed the existence of the Trust from the Brothers until September 2016.

52 On appeal, Sajan relies on two arguments to challenge the Judge's factual finding. In our view, both are devoid of merit.

53 First, Sajan attempts to rely on email correspondence between Moti and WKW dated 30 August 2016 to suggest that Moti's transfer of 32BR to Sajan was already underway before 16 September 2016.[29] In our view, Sajan's argument is misplaced. Contrary to Sajan's assertion, the correspondence

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24 ROA Vol 3A at p 189.

25 ROA Vol 3A at p 193.

26 ROA Vol 3B at p 203; Transcript (27 March 2024) at p 64 lines 13–15 (ROA Vol 3N p 69).

27 ROA Vol 3A at pp 245–247.

28 ROA Vol 5A at p 288.

29 Sajan's AD 3 Case at para 55.

between Moti and WKW dated 30 August 2016 does not show that any transfer of *32BR* to Sajan was being actively contemplated prior to 16 September 2016. Instead, in the correspondence, WKW was asking Moti whether he or the beneficiaries to *32A Branksome Road* were Singapore citizens, as the property would otherwise have to be transferred within ten years from Harkishindas's death.[30] Moti then confirmed that no such time limit applied because he, Sajan and all the beneficiaries for both 32A Branksome Road and 32BR were Singaporean citizens.[31] There was therefore no active transfer being contemplated in this exchange, and it was only later, on 16 September 2016, that Moti followed up again with WKW requesting for, amongst other things, the transfer of 32BR to Sajan.[32]

54 Furthermore, as the Judge noted, the circumstances of the correspondence on 30 August 2016 are unclear since it does not show why Moti initiated such a conversation with WKW (see Judgment at [127]). Notably, Sajan did not attempt to adduce evidence from Moti to explain those circumstances. There was no suggestion that Moti was unavailable or unwilling to give evidence, and Moti was in fact present in the courtroom at various points during the trial.[33] In the circumstances, the correspondence between Moti and WKW dated 30 August 2016 does not support Sajan's assertion that a transfer of 32BR was already underway before the receipt of the Crawford Letter.

55 Sajan's second argument revolves around a statement in his AEIC that he had verbally informed the Brothers about the Trust "[f]rom as early as

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30 ROA Vol 3A at p 186.

31 ROA Vol 3A at pp 185–186.

32 ROA Vol 3A at p 185.

33 Transcript (27 March 2024) at p 87 line 2 to p 88 line 16 (ROA Vol 3N pp 92–93).

2016".[34] Sajan claimed that the reference to 2016 was a typographical error, when it ought to have been 2009 instead, and he made a belated correction to this effect on the first day that he took the stand. However, the Judge disbelieved Sajan's explanation and found that Sajan's change in evidence was an attempt to "escape from the [Brothers'] version of events" (see Judgment at [115]). Sajan asserts that the Judge's finding was erroneous and failed to take into account previous statements made by Sajan in earlier documents filed in S 521. Sajan points to para 6(b) of his Defence filed on 2 August 2021 ("Defence"), in which he asserted the following:

> Sometime in or about 2009, [Sajan] verbally told the [Brothers] in a family conversation that his late father had left behind some assets for them, including [32BR] and some shares in the family companies.

In his affidavit dated 18 October 2021, which was filed for the purpose of an application for further and better particulars in HC/SUM 4793/2021 ("SUM 4793"), Sajan substantially repeated what was stated in the above-cited portion of the Defence.[35]

56 We agree with the Judge that Sajan's belated claim of a typographical error is not credible. The date at which Sajan allegedly disclosed the existence of the Trust to the Brothers was of utmost importance, and it was unbelievable for Sajan to have made such a serious typographical error in his AEIC. We would add that, even taking the asserted fact in the Defence and affidavit filed in SUM 4793 to be true (*ie*, that Sajan had, in 2009, informed the Brothers of the assets left behind for them), this does not mean that Sajan had informed the Brothers of the existence of the *Trust* in 2009, which is a distinct legal

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34 Sajan's AEIC at para 51 (ROA Vol 3G p 18).

35 Affidavit of Jethanand Harkishindas Bhojwani dated 18 October 2021 filed in HC/SUM 4793/2021 at para 11 (ROA Vol 3S p 149).

arrangement. Instead, it could just mean that he had indicated to the Brothers that certain assets were meant to be passed down the family. In the context of 32BR, for instance, this would make sense since Sajan and the Brothers had been residing there and the Brothers might expect to someday inherit the property.

57 We therefore affirm the Judge's finding that Sajan had concealed the existence of the Trust from the Brothers until, at the earliest, 16 September 2016.

Sajan was obliged to inform the Brothers of their rights under the Trust

58 We do not accept Sajan's alternative argument that he was not obliged to inform the Brothers about their rights under the Trust. On appeal, Sajan contends that until a trustee exercises his power of appointment, discretionary beneficiaries are not entitled to trust property and therefore do not have the right to be informed of their interests under a trust.[36] Up until the Brothers' alleged discovery of the Trust in September 2016, Sajan had yet to decide who was to receive dispositions from the Trust and when such dispositions were to be made. The Brothers could not therefore be considered as real potential candidates for benefit under Sajan's exercise of this power of appointment.

59 We begin by noting that Sajan did not raise this point before the Judge below. In any case, it is plainly untenable. In the context of discretionary beneficiaries, in our view, it must be the case that trustees owe a duty to take reasonable steps to inform the beneficiaries of their rights under the trust, as long as the discretionary beneficiaries have a realistic and reasonable prospect of benefitting under the trust. The content of this duty was explained in Graham

[36] Sajan's AD 3 Reply at paras 9–11.

Virgo, *The Principles of Equity & Trusts* (Oxford University Press, 5th Ed, 2023) ("*The Principles of Equity & Trusts*") at para 14.3.1:

> As regards the objects of a discretionary trust, *since they have a right to put their case to the trustees for the exercise of their discretion, it follows that the trustees should be under a duty to take reasonable steps to draw this right to the objects' attention.* What constitutes reasonable steps will depend on the size of the class: trustees will not be expected to search for all possible objects where the class is very large. [emphasis added]

Similar observations were made in Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts*") at para 21–010:

> … there is no requirement to disclose the existence of a settlement to all objects of fiduciary powers in all circumstances, whether by direct communication, advertisement or otherwise. *We consider that what the trustees need to do is identify those discretionary beneficiaries who are, in the circumstances, real potential candidates for benefit in the proper exercise of the discretion under the trust or power; and disclosure may, indeed normally should, be limited to those discretionary beneficiaries.* [emphasis added]

60 Such a duty ought to be imposed because a discretionary beneficiary cannot assert his rights under the trust without knowledge of those rights (see *Lewin on Trusts* at paras 21–009 and 21–010). Furthermore, as alluded to in the above extract from *The Principles of Equity and Trusts,* in so far as the trustee is required to exercise his discretion, a proper exercise of that discretion may involve the discretionary beneficiary putting his case and concerns to the trustee for the trustee's consideration. A discretionary beneficiary can only do so if he has been apprised of his rights under the trust (see also *Lewin on Trusts* at para 21–010).

61 Applying these principles, we agree that Sajan owed an obligation to inform the Brothers of their potential interests under the Trust. The Brothers, as

three of the four named beneficiaries in cl 5.1(ii) of the Will, clearly had a realistic or reasonable prospect of benefitting under the Trust the moment the Trust came into existence. As such, unless they had been duly informed of the existence of the Trust or their rights thereunder, they would not be able to exercise their rights (including the seeking of information) or put their case to Sajan for his consideration. We therefore affirm the Judge's holding that Sajan breached his duty to inform the Brothers of their rights under the Trust (see Judgment at [131]).

Whether Sajan commingled and mismanaged the moneys in the Trust

62 On appeal, Sajan accepts the Judge's finding that he initially commingled the Trust Moneys with his own moneys (until he opened the separate bank account for the Trust in February 2017) (see Judgment at [105]–[106]). At the same time, Sajan attempts to ameliorate the effect of the Judge's finding on two grounds. First, Sajan contends that less diligence is expected of him as a layperson, as compared to a professional trustee.[37] Second, Sajan contends that although he commingled the Trust Moneys, he did not intend to commit a breach of trust, obtain gain for himself or cause loss to the Trust.[38]

63 As a preliminary point, we observe that in his oral arguments before us, Mr Sreenivasan appeared to have largely abandoned his arguments on this point and accepted that there was improper commingling and mismanagement.[39] In our view, this reflected the uphill task Sajan faced in persuading us that he had not committed a breach of trust in commingling the Trust Moneys with his own. First, it is well-established that a trustee is under an obligation to keep trust

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37 Sajan's AD 3 Case at para 58; Sajan's AD 3 Reply at paras 18–19.

38 Sajan's AD 3 Case at para 58.

39 Transcript (15 August 2025) at p 49 lines 19–27.

money distinct and separate from his own through a distinct and separate account (see *Burdick v Garrick* (1870) LR 5 Ch App 233 at 243). In the present case, Sajan did not dispute – both under cross-examination and in his written submissions on appeal[40] – that he had commingled the moneys in the Trust with his own, and that his conduct constituted a breach of his duty to segregate the Trust Moneys as well as his common law duty of care. That being the case, Sajan's intention is immaterial to liability for breach of trust. Second, Sajan's intention is also irrelevant to the remedies that would flow from this breach of trust. In the Judge's decision, Sajan's commingling of Trust Moneys was taken into account in ordering Sajan to be removed as trustee (see Judgment at [283]). Even if Sajan had genuinely acted innocently, it would not necessarily mean that he had acted properly in executing his duties as trustee. In any case, as we make clear at [159]–[163] below, the Judge was eminently entitled to remove Sajan as trustee given his mismanagement of the Trust Moneys and the other instances of misconduct and breaches of duty that he had committed in his tenure as trustee.

64 It is also clear that there was sufficient evidence indicative of Sajan's mismanagement of the moneys in the Trust since Sajan had failed to maintain proper trust accounts. Indeed, Sajan conceded at trial that this was the case and it is no excuse for Sajan to pin the blame on his accountants for having "messed it up" and not understanding his instructions (see Judgment at [140]).[41]

65 On a related note, we are of the view that the Judge was correct to dismiss Sajan's argument that the Will had granted him an "absolute discretion"

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40 Transcript (27 March 2024) at p 62 lines 8–11 (ROA Vol 3N p 67); Sajan's AD 3 Case at para 58.

41 Transcript (27 March 2024) at p 178 line 13 to p 179 line 11 (ROA Vol 3N pp 183–184).

to deal with the Trust Moneys as though they were his own (and therefore, to deal with the moneys without segregation).[42] To begin with, cl 5.2 read with cl 3 of the Will gave Sajan an "absolute discretion" to exercise certain powers in the course of making an appointment.[43] The plain wording of these clauses does not, on its face, extend the "absolute discretion" to Sajan's duties as trustee, including his duty of care. Before us, Mr Sreenivasan acknowledged that a trustee's "absolute discretion" was not "absolute" in the sense that it was wholly unfettered, but then relied on *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR 339 ("*Foo Jee Seng*") to argue that the phrase connoted an "enlarged discretion" limited to acts which were not done *mala fides*.[44] But this submission does not reflect what the Court of Appeal in *Foo Jee Seng* actually said. The Court of Appeal in *Foo Jee Seng* in fact had cautioned that the improper exercise of discretion could still fall within the court's purview even if it did not rise to the threshold of *mala fides* (*Foo Jee Seng* at [64]).

66 Lastly, we were not persuaded by Sajan's argument that less skill and diligence should be expected from an unremunerated lay trustee like himself. Just as there is nothing sophisticated in requiring a lay trustee to document trust expenses (see *Baker, Michael A v BCS Business Consulting Services Pte Ltd* [2023] 1 SLR 35 at [30]), there is also nothing sophisticated about requiring a trustee to open a separate bank account to hold the moneys in the trust. The requirement to open a separate bank account is a basic requirement that does not require sophisticated knowledge or entail significant costs,[45] the latter of

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42 Sajan's AD 3 Reply at para 19.

43 AJCB Vol B pp 12 and 16.

44 Transcript (15 August 2025) at p 31 lines 17–19.

45 Brothers' AD 3 Case at para 55.

which Sajan acknowledged under cross-examination.[46] Trustees must maintain a clear separation between the trust assets and their personal assets, regardless of their professional status or remuneration.

Whether Sajan's execution of the Exclusion Deeds was conducted in bad faith

67 To recapitulate, the Judge held that Sajan's execution of the Exclusion Deeds to exclude Devin and Sandeep was done in bad faith and their exclusions were accordingly void as fraud on a power. Accordingly, Devin and Sandeep had standing to bring S 521 (see Judgment at [93]–[94]).

68 We agree with the Judge's decision. In our view, the chronology of events leading up to Sajan's execution of the Exclusion Deeds on 14 April 2021 strongly supports the conclusion that Sajan had executed the Exclusion Deeds in response to Devin and Sandeep's questioning of his management of the Trust. Up to February 2021, Sajan had repeatedly affirmed all three Brothers as being beneficiaries of the Trust.[47] Following Sajan's sale of the remaining Trust Shares in the Two Live Companies that month, the Brothers questioned Sajan's handling of the sale. Sajan promised to respond to their queries by 12 April 2021, but instead executed the Exclusion Deeds two days later. A fuller chronology is set out as follows:

(a) On 10 January 2021, Sajan executed a deed and a deed of appointment. He declared that he held all remaining Trust Assets for the benefit of the Brothers only, to the exclusion of Lakshmi.[48]

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46 Transcript (27 March 2024) at p 66 lines 7–9 (ROA Vol 3N p 71).

47 Brothers' AD 3 Case at para 63.

48 Judgment at [88(a)]. See the relevant deeds at ROA Vol ROA Vol 5A pp 224–230.

(b) On 16 February 2021, Sajan executed deeds for the sale of the remaining Trust Shares in the Two Live Companies, with cl 2 of the deeds stating that he held all the proceeds of sale for the benefit of all three Brothers only.[49]

(c) After Sajan informed the Brothers of the sale, Devin sent Sajan an email on behalf of the Brothers on 1 March 2021, in which he questioned whether the sale of the shares was at an undervalue and sought an account of the Trust from the date Sajan took control of the Trust.[50]

(d) Sajan eventually responded on 30 March 2021, in which he stated that he would reply by 12 April 2021. He also made a reference to "the case of the documents stolen from my laptop by Sandeep and Devin".[51] For context, this refers to HC/S 1242/2019 ("S 1242") commenced by Sajan against, *inter alia,* Devin and Sandeep (but not Dilip) in which Sajan sought and later obtained a permanent injunction restraining Devin and Sandeep from using, disclosing or destroying data that Sandeep copied from Sajan's laptop in breach of confidence (see *Jethanand Harkishindas Bhojwani v Lakshmi Prataprai Bhojwani* [2022] 3 SLR 1211).

(e) On 7 April 2021, Devin sent an email reply stating that he and Sandeep disagreed with Sajan's characterisation of the documents

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49 Judgment at [88(b)]. See the two deeds at ROA Vol 3D 234–237 and 242–245.

50 ROA Vol 5B p 78.

51 ROA Vol 5B p 79.

copied from his laptop. He reiterated that he "look[ed] forward to receiving [Sajan's] responses by 12 April 2021".[52]

69 Sandeep did not dispute that he had accessed and copied documents from Sajan's laptop sometime around October 2016 after the WKW Meeting. He explained that he did so owing to concerns over Sajan's possible concealment of information from them. He shared the documents with Devin sometime in late 2017.[53] In any event, the court made no finding in S 1242 that the documents were used for an improper purpose resulting in harm to Sajan, let alone to SEPL, LMPL or MSSPL.[54]

70 We agree with the Judge that the chain of events shows that it was Devin and Sandeep's questioning that led to Sajan's decision to exclude them from the Trust. This is the reasonable inference from the close proximity between the change of Sajan's position on the status of Devin and Sandeep as beneficiaries, and their questions regarding the Trust.

71 At trial, Sajan explained that he executed the Exclusion Deeds to provide for Dilip, whom he viewed as the "the weak one" among the Brothers.[55] The Judge found that this explanation was not convincing (see Judgment at [90]). It was noticeably absent from Sajan's pleadings or his AEIC, despite this being

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52 ROA Vol 5B p 79.

53 Affidavit of Evidence-in-Chief of Sandeep Jethanand Bhojwani dated 17 January 2024 at paras 15–20 (ROA Vol 3F pp 9–10).

54 Devin's AEIC at para 86 (ROA Vol 3A p 48).

55 Sajan's AD 3 Case at para 60.

his key defence to the allegation of bad faith.[56] We see no reason to disagree with the Judge's finding.

72 Further, Sajan attempts to challenge the Judge's finding by pointing to the fact that Devin had already begun questioning Sajan on the December 2017 Trust Summary in an email dated 29 August 2018,[57] which is approximately 2.5 years before Sajan executed the Exclusion Deeds. To our understanding, Sajan is suggesting that since the questioning of his management of the Trust started much earlier, he would have excluded Devin and Sandeep from the Trust much earlier than 14 April 2021 *if* he bore any ill-will towards Devin and Sandeep from their questioning of the Trust.

73 We do not think that there is merit to Sajan's reliance on Devin's earlier questioning of the December 2017 Trust Summary. The fact that Sajan did not immediately react to the earlier questioning by excluding the Brothers from the Trust does not preclude the possibility that he reacted in such a way to their questioning in April 2021. Furthermore, given how matters developed after 2018, it is conceivable that Sajan's decision to execute the Exclusion Deeds stemmed from a cumulative worsening of relations with the Brothers due to the Brothers' questioning and the litigation in S 1242. That would still mean that Sajan's exclusion of Devin and Sandeep was done in bad faith.

74 As the Execution Deeds were executed in bad faith, we affirm the Judge's holding that they were void. Any remaining challenge by Sajan on this issue falls away. Devin and Sandeep had standing to bring S 521 as they were not validly excluded from the Trust.

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56 Brothers' AD 3 Case at para 62. See also Transcript (28 March 2024) p 121 line 7 to p 122 line 5 (ROA Vol 3O p 126–127).

57 ROA Vol 5A pp 288–289.

Whether the "conversion" of the Founder's Share constituted a breach of trust and a breach of fiduciary duties

75 In analysing the "conversion" of the Founder's Share into a single, ordinary share, the Judge examined both the nature of the breach and its remedial consequences. The Judge found that Sajan did not commit any breach of his duties by the act of "conversion" *per se*, but had breached his management stewardship duties through the "conversion" of the Founder's Share into a single, ordinary share. He proceeded on the basis that Sajan had the power to convert the Founder's Share, "whether that power is seen as expressly conferred by cl 3(h) read with cl 5.2 of the Will… or 'created by necessary implication' by way of *inter alia* the language of cl 5.1(iv)(j) envisaging the prospect of such conversion" (see Judgment at [179]).

The "conversion" of the Founder's Share amounted to a breach of Sajan's custodial stewardship duty

76 The Judge reasoned that the conversion of the Founder's Share amounted to a management stewardship breach because there was no misapplication involving a direct transfer of an asset out of the Trust. Specifically, the Judge was of the view that in converting the Founder's Share, Sajan did not make an unauthorised disbursement from the Trust (see Judgment at [189]). With respect, we disagree. In our judgment, the Judge overlooked the following factors: (a) that the "conversion" effectively extinguished specific and valuable (or material) rights attached to the Founder's Share and amounted to an unauthorised disposal of such rights; (b) that the permanent loss of those rights could be viewed as equivalent to a loss of trust property; and (c) that the focus on the absence of a physical transfer undervalued the substance of what was lost.

77 It is useful, in our view, to briefly set out the two types of stewardship duties that a trustee owes to the beneficiaries in respect of trust property. The first duty that a trustee owes to the beneficiaries is a custodial stewardship duty, which is breached where a trustee misapplies trust assets (see *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 ("*Winsta*") at [100]). Such misapplication may occur where the trustee, in breach of his primary duty to hold and deal with the trust assets in accordance with the terms of the trust, engages in an unauthorised disbursement or disposal of those assets (*Winsta* at [106]; see *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2015] AC 1503 ("*AIB*") at [51]; see also *Snell's Equity* (John McGhee QC and Steven Elliot QC eds) (Sweet & Maxwell, 34th Ed, 2020) ("*Snell's Equity*") at para 30–012). The second duty that a trustee owes to the beneficiaries is the management stewardship duty. The management stewardship duty entails the trustee fulfilling his obligation to administer the trust fund in accordance with his equitable duties, which includes the equitable duty of care (*Winsta* at [100]).

78 Adopting the observations of the Court of Appeal in *Winsta* (at [106]), the misapplication of the trust funds would give rise to a custodial breach of the trustee's fiduciary duty. An obvious scenario illustrative of a custodial breach of duty is where the trustee does not even have the power to dispose of the assets but proceeds to do so.

79 It is well-established that a beneficiary is entitled to a common account of the trust as of right (see *Libertarian Investments Ltd v Thomas Alexej Hall* [2014] 1 HKC 368 ("*Libertarian Investments*") at [167]), and the beneficiary's entitlement is not premised on any misconduct by the trustee. Where the common account taken thereafter reveals an unauthorised disposition, the disposition may be disallowed and the trustee is viewed as owing an equitable debt towards the beneficiary akin to a debt in common law (see *Agricultural*

Land Management Ltd v Jackson (No 2) [2014] WASC 102 ("*Agricultural Land Management*") at [336], citing *Ex parte Adamson, In re Collie* (1878) 8 Ch D 807 at 819; see also *Re Medora Xerxes Jamshid* [2024] 5 SLR 1006 ("*Re Medora*") at [58]–[59]). The remedy thus involves the trustee either reconstituting the trust fund *in specie* or reconstituting the trust fund in monetary terms in lieu of reconstitution *in specie* (see *Winsta* at [112]). The remedy of falsification is substitutive in nature and there is no inquiry into whether the plaintiff actually suffered a loss in the absence of the trustee's breach of duty (*Winsta* at [113] and [115]). The rules on remoteness of damage and mitigation of loss are also irrelevant (see *Jervis v Harris* [1996] Ch 195 at 202).

80 On the other hand, if the trustee breaches the management stewardship duty, the court may surcharge the account and order the trustee to make reparative compensation for the loss caused to the trust (see *Winsta* at [121]). The taking of an account on a wilful default basis, in contrast to the taking of a common account of administration, is premised on trustee misconduct (see *Winsta* at [120]; *Partington v Reynolds* (1858) 4 Drew 253 at 255–256). Due to its *compensatory nature*, the remedy of surcharging is akin to the payment of damages as compensation for a loss (see *Libertarian Investments* at [170]). The short point we make here is that the type of stewardship breach would be reflected in the manner of the accounting process and the resulting remedy ordered.

The "conversion" amounted to a loss of the rights associated with the Founder's Share

81 In our view, the "conversion" of the Founder's Share into a single, ordinary share is best characterised as a custodial stewardship breach. The focal point is the character of the breach, which takes into account whether there was an unauthorised disposal of the Trust Property. As alluded to at [11] above, and

as we elaborate, the problem arises because of the loose adoption of the term "conversion" which conveniently mirrors the term used in cl 5.1(iv)(j) of the Will, which we set out for reference:

> 5.1 In this clause:
>
> …
>
> (iv) "Trust Property" means
>
> …
>
> (j) my 1 founder's share in Shankar's Emporium (Private) Limited and *any conversion therefrom to shares of any other class.*
>
> [emphasis added]

82 With respect, the loose adoption of the term "conversion" appears to have led to the Judge's characterisation of the breach as merely one of a management stewardship duty rather than a custodial stewardship duty. This characterisation appears to misapprehend the deleterious impact of the "conversion" on the rights associated with the Founder's Share. As set out in cl 5 of SEPL's M&A (at [10] above), the fundamental nature of the rights attached to the Founder's Share is underscored by the statement that any "other shares" may be issued with any preferential special or qualified rights, but the rights attached to the founders' shares "shall not be prejudiced".

83 A share is a chose in action that gives the shareholder a bundle of rights against the company which issued the share (see *Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd* [2016] 5 SLR 226 at [19]; *Qilin World Capital Ltd v CPIT Investments Ltd* [2018] 2 SLR 1 at [4]; Hans Tjio, Pearlie Koh & Lee Pey Woan, *Corporate Law* (Academy Publishing, 2nd Ed, 2024) at para 12.013). The Founder's Share is no different, as it represented a distinct bundle of rights that were qualitatively different in terms of benefits, privileges and control, from

ordinary shareholding rights. For instance, cl 5(vii) of SEPL's M&A provides that the holder of the Founder's Share is entitled to 10% of the net profits of the company in perpetuity (see [9(g)] above).[58] When viewed through this lens, the "conversion" effectively constituted a permanent extinguishment of specific rights in the Trust. While no physical transfer of assets occurred, the "conversion" functionally transferred value away from the Trust by permanently eliminating valuable rights that should rightly be regarded as Trust Assets. This amounted to a failure of Sajan's fundamental duty of trusteeship to preserve the essential character of the Trust Assets.

84 In this regard, it is pertinent to examine the shareholders' resolution of SEPL dated 15 September 2008 (the "Shareholders' Resolution") that effected the "conversion" of the Founder's Share into the ordinary share:[59]

> The members decided, after deliberation, to *remove* the class of founder shares and to *remove* all the rights and privileges offered to the founder shares from the Memorandum of Association and to treat the 2 founder shares as ordinary shares of the company [emphasis added]

The language of the Shareholder's Resolution mirrored that in the board resolution of SEPL dated on the same day, which Sajan participated in as a director of the company.[60]

85 When we analyse the true effect of the Shareholders' Resolution, this was not a case of converting a share in one class to a share in another class. It was about the adjustment of share capital of the company that extinguished the Founder's Share and replaced it with a single, ordinary share. There was no

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58 AJCB Vol B p 7.

59 ROA Vol 3D pp 161–162.

60 ROA Vol 5M p 109.

conversion here. Instead, this was a case of stripping away the rights conferred under cl 5 of SEPL's M&A (which was also removed and replaced under the Shareholders' Resolution). The ordinary share and the Founder's Share represented different choses in action. The appropriate analogy in the present case was that of substituting an asset with a less valuable one.

86 Consequently, with respect, the Judge erred by looking at the transaction through the lens of a "conversion". Contrary to the Judge's conclusion, this was not a case where there was "a change in quality or attribute in the share" (see Judgment at [189]). Instead, the effect of the Shareholders' Resolution was that the rights associated with the Founder's Share were wiped out, leaving behind an ordinary share. The net result was that Sajan permitted an asset of the Trust (*ie*, the Founder's Share) to be extinguished and replaced by a different and substantially less valuable asset (*ie*, the ordinary share). Sajan's actions constituted an unauthorised disposal of a Trust Asset that amounts to a breach of his custodial stewardship duty.

Sajan was not empowered to "convert" the Founder's Share

87 On this note, we respectfully disagree with the Judge that Sajan was empowered to "convert" the Founder's Share into a single, ordinary share (see Judgment at [179]). In this regard, Sajan points to cl 5.1(iv)(j) (see [81] above) as well as cl 3(h) read with cl 5.2 of the Will (see [5] and [6(h)] above) as conferring upon him a power to "convert" the Founder's Share into a single, ordinary share.[61] To assist his interpretation of the clauses, Sajan contends that there had been a conflict amongst the second-generation shareholders (*ie*, Sajan, Manu, Moti, Hiro and Jack) earlier in 2002 in respect of their shareholdings in

[61] Sajan's AD 3 Case at para 67.

SEPL that threatened a disorderly winding-up of the family business, and that the second-generation shareholders consequently entered into an agreement dated 2 August 2002 (the "SHA")[62] (Judgment at [175]).[63] Clause 1.5 of the SHA provided, among other things, that if any of the second-generation shareholders became beneficial owners of both founders' shares in SEPL, that the shareholder would "reduce the rights of the said founders shares … to that of ordinary shares".[64] According to Sajan, Harkishindas was aware of the conflict in 2002 and the resulting SHA, and agreed to the founders' shares not having any place in the second generation's running of the family business. He therefore intended to confer upon Sajan the power to "convert" the Founder's Share via the aforementioned clauses in the Will.[65]

88 Sajan's arguments do not assist him. In the first place, we disagree that the SHA reveals Harkishindas's intention to confer upon Sajan the power to "convert" the Founder's Share into the single, ordinary share. As we pointed out to Mr Sreenivasan at the hearing, if Harkishindas was aware of the SHA in 2002 and intended to observe its purported purpose (*ie*, that the founders' shares would be bequeathed to the second-generation shareholders and "converted" into ordinary shares), it makes little sense why, in executing the Will four years later, Harkishindas would have bequeathed the beneficial ownership of the Founder's Share to the *Brothers'* generation. It would have been far simpler and more logical for Harkishindas to have bequeathed the beneficial ownership of

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62 ROA Vol 3H p 5.

63 Sajan's AD 3 Case at para 69; Defence at para 25(d)(iv)–(v) (ROA Vol 2 at pp 84–85). See also Transcript (28 March 2024) p 58 line 19 to p 59 line 4 (ROA Vol 3O pp 63–64).

64 Clause 1.5 of the SHA (ROA Vol 3H p 8).

65 Sajan's AD 3 Case at para 67 read with Sajan's AD 3 Reply at para 33.

the Founder's Share to the second-generation instead.[66] In these circumstances, we are of the view that the SHA does not shed much light on Harkishindas's intentions in drafting the Will.

89 We observe, for completeness, that the "conversion" of the Founder's Share to the single, ordinary share was in any event not done in accordance with the SHA. This is because at the time of the "conversion" of the Founder's Share in September 2008, Sajan would, pursuant to the terms of the Will, not have been the beneficial owner of this Founder's Share. Thus, despite Sajan's argument to the contrary,[67] the "conversion" of the Founder's Share was not done in accordance with the spirit and purpose of the SHA.

90 Next, we disagree that Sajan's conduct was empowered by different clauses of the Will. The first clause which Sajan relies on is cl 5.1(iv)(j), but this is not an empowering provision. Rather, this clause lists the Founder's Share as one of the items falling within the meaning of "Trust Property" in cl 5.1(iv). In any case, the clause's plain wording simply states that the Trust Property also comprises any shares that the Founder's Share may be converted to. It does not specifically empower the trustee to "convert" the Founder's Share.

91 Sajan then refers to cl 3(h) read with cl 5.2 of the Will, which states that Sajan has the power to do or omit to do all such acts or things as he shall in his absolute discretion consider to be for the benefit of any one or more of the beneficiaries of the Trust (see [5] and [6(h)] above). On this point, counsel for the Brothers, Mr Thio Shen Yi *SC* ("Mr Thio") did accept in oral arguments that

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66 Transcript (15 August 2025) p 29 line 3 to p 31 line 10.

67 Transcript (15 August 2025) p 29 lines 25–26.

assuming that Sajan had voted in favour of the "conversion" *in the interest of the estate*, Sajan's acts would be authorised by cl 3(h).[68]

92 We do not see how cl 3(h) assists Sajan. It may be arguable that the conversion was contemplated by Harkishindas given the wording of cl 5.1(iv)(j) of the Will which covers "any conversion" of the Founder's Share to shares of any other class. That being said, there is no specific language in the Will that empowers "conversion" of the Founder's Share. More importantly, the Will does not explicitly empower Sajan to agree to the "conversion". We doubt whether cl 3(h) of the Will can operate to permit Sajan to agree to a conversion, since it appears to us that the powers under cl 3 were vested in Moti as the executor and could only be exercised by Sajan in the context of or in relation to making an appointment of a beneficiary. This is clear from the language of cl 5.2 of the Will which states expressly that Sajan has the powers under cl 3(h) in making the appointment of a beneficiary. In the present case, since the "conversion" of the Founder's Share did not occur in such a context, Sajan cannot rely on the powers in cl 3 of the Will to argue that he was empowered by the Will to "convert" the Founder's Share. We are also conscious that cl 5 of SEPL's M&A (see [10] above) states that the rights attached to the Founder's Share are "fundamental" and "shall not be altered". SEPL's M&A was signed by Harkishindas and he had presumably also taken it into account when preparing the Will. The absence of any express power in the Will to convert the Founder's Share would seem to cohere with cl 5 of SEPL's M&A. In any event, Sajan's authority to act presupposes that he must act "for the benefit of" (*ie*, in the best interests of) the estate or the beneficiaries of the Trust. We do not agree that Sajan has shown that he considered his conduct in voting for the "conversion" to be in the interest of the estate. We elaborate on our reasons for

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[68] Transcript (15 August 2025) p 102 line 25 to p 103 line 11.

this view at [98]–[103] below in addressing whether Sajan had breached his fiduciary duties.

93 On appeal, Sajan alludes to the necessity of the "conversion" in light of the conflict arising in 2002 as well as problems in 2008 that led to calls by the second-generation shareholders for the removal of the Founder's Share.[69] In this vein, Sajan asserts that not acceding to these calls in 2008 would have jeopardised the Shankar's Group of companies and led to an impasse, which would have diminished the value of the Founder's Share.[70] We reject these arguments. To begin with, Sajan did not mention in his Defence or his AEIC the alleged problems or conflict arising in 2008 that led to the calls for the removal of the Founder's Share, or the fact that such conflict would have led to an impasse and jeopardy.[71] He only put forward the existence of such conflict in cross-examination, which indicated that this justification was a mere afterthought.[72]

94 Additionally, Sajan did not present any evidence of how a disorderly winding-up may have arisen from the conflict. Sajan only mentioned the consequence of the conflict in 2002 leading to a disorderly winding-up in his *Defence*, and not in his AEIC. He also gave no details as to the nature of the problems between the second-generation shareholders (either in 2002 or 2008) and whether they necessitated the "conversion", and there was no evidence from any of the second-generation shareholders on this point even though several of

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69 Sajan's AD 3 Case at para 69; Transcript (28 March 2024) at p 59 lines 2–4 (AJCB Vol B at p 108).

70 Sajan's AD 3 Case at para 73(d).

71 Brothers' AD 3 Case at para 76. See Sajan's AEIC at paras 95–99 (ROA Vol 3G pp 25–26).

72 Transcript (28 March 2024) p 58 line 13 to p 59 line 6 (ROA Vol 3O pp 63–64).

them attended the trial.[73] Sajan's arguments were therefore bare assertions that the Judge rightly rejected as unsupported by the evidence (see Judgment at [183]–[184]).

95 Moreover, we note that Sajan pleaded in his Defence that he could not have prevented the "conversion" of the Founder's Share because it would have been put into effect by the majority vote of the other shareholders of SEPL in any event.[74] However, the point was never mentioned by Sajan in his AEIC,[75] nor was it specifically argued in his closing submissions below.[76] In cross-examination, he also prevaricated by answering "I'm not sure" when asked by Mr Thio if the deletion of cl 5 of SEPL's M&A required the unanimous consent of the shareholders.[77] Sajan's abandonment of his pleaded position in his oral evidence indicates that he *never* genuinely believed the justification that he was powerless to prevent the "conversion" of the Founder's Share. This is bolstered by the fact that this pleaded justification was utterly without merit. As the Judge held (see Judgment at [186]), cl 5 of SEPL's M&A contained an entrenching provision (see [10] above) under s 26A(4)(*b*) of the Companies Act 1967 (2020 Rev Ed) ("CA"), and consequently could not be removed unless all of SEPL's shareholders agreed to do so (*per* s 26A(2) of the CA).

96 Accordingly, even if cl 3(h) empowered Sajan with a discretion to "convert" the Founder's Share into a single, ordinary share, he cannot invoke

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73 Transcript (27 March 2024) at p 87 line 2 to p 88 line 16 (ROA Vol 3N at pp 92–93).

74 Defence at para 25(d)(h) (ROA Vol 2 p 86).

75 Sajan's AEIC at paras 90–100 (ROA Vol 3G at pp 24–26).

76 Sajan's Closing Submissions in S 521 dated 14 May 2024 ("Sajan's Closing Submissions") at paras 100–119 (ROA Vol 3Q pp 55–63).

77 Transcript (28 March 2025) p 56 lines 12–17 (ROA Vol 3O p 61).

that discretion here. As the Brothers point out,[78] the Judge did not expressly find any legitimate reason for the "conversion" notwithstanding that he appeared to have accepted that the decision to convert may have been a legitimate exercise of discretion on Sajan's part (see Judgment at [208]). *None* of the reasons raised by Sajan in his pleadings or his AEIC pass muster, and the circumstances under which they were put forward indicate to us that Sajan never genuinely considered these reasons when he decided to vote in favour of the "conversion". Sajan's lack of justification is all the more problematic given that he made the decision to "convert" the Founder's Share in breach of the "no-conflict" and "no-profit" rules, as we explain below at [100]–[104]. In those circumstances, Sajan cannot be considered to have exercised his discretion under cl 3(h) read with cl 5.2 of the Will *in the interests of the estate or for any one or more of the beneficiaries.*

97 It follows from the foregoing that Sajan's conduct was (a) unauthorised and (b) amounted to a disposal of Trust Assets in the form of the rights extinguished in the Founder's Share. We therefore respectfully depart from the Judge's decision and hold that Sajan breached his custodial stewardship duty in authorising the "conversion" of the Founder's Share.

Sajan breached his fiduciary duties in arranging for the "conversion" of the Founder's Share

98 Although the Judge concluded that Sajan had breached his duties as trustee, he found that Sajan's "conversion" of the Founder's Share did not constitute a breach of his fiduciary duties. Specifically, the Judge concluded that the "conversion" of the Founder's Share to the ordinary share did not amount to a breach of the "no-profit" rule (see Judgment at [230]). On appeal, the Brothers

[78] Brothers' AD 4 Case at para 27.

raise three key contentions that involve allegations of breaches of the no-profit rule, the no-conflict rule as well as the duty to act in good faith.[79]

99 We pause here to note that there is no merit to Sajan's suggestion on appeal that the Brothers did not plead any cause of action for breach of fiduciary duties.[80] While it is critical to ensure that material facts are pleaded, it is not always necessary for the particular legal result flowing from the material facts to be pleaded. Indeed, it is not necessary to plead relevant propositions or inferences of law (see *How Weng Fan v Sengkang Town Council* [2023] 2 SLR 235 at [19]). In the present case, the Brothers pleaded in their Statement of Claim and Reply that Sajan's "conversion" of the Founder's Share into the ordinary share was not in the best interests of the Brothers and amounted to a breach of trust.[81] This sufficed to encapsulate the allegation that Sajan had breached his fiduciary duties and it was not necessary for the Brothers to plead this specific allegation. Thus, the question is whether the Brothers have succeeded in showing that the "conversion" of the Founder's Share into an ordinary share was a breach of Sajan's fiduciary duties.

100 In our view, the Brothers have succeeded in showing that the "conversion" of the Founder's Share into an ordinary share constituted breaches of the no-profit and no-conflict rules. This is of course on the assumption that Sajan, as trustee, had the power to "convert" the Founder's Share in the first place. As indicated above at [92], we doubt that such a power existed.

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79 Brothers' AD 4 Case at para 53.

80 Sajan's AD 4 Case at para 46.

81 Statement of Claim (Amendment No 2) dated 9 January 2023 at para 36 (RJCB at p 25; ROA Vol 2 at p 34); Reply (Amendment No 3) dated 20 March 2023 at para 6 (Appellants' 2nd Joint Core Bundle at p 20; ROA Vol 2 at p 100).

101 We begin with the no-profit rule, which is a strict, prophylactic rule that prohibits a fiduciary from obtaining a profit from his fiduciary position without the principal's informed consent (see *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 at 145B; *Lim Suat Hua v Singapore HealthPartners Pte Ltd* [2012] 2 SLR 805 at [90]). Here, by agreeing to extinguish the rights attached to the Founder's Share, Sajan, along with his brothers Jack and Moti, stood to personally benefit from the 1:1 "conversion" of the Founder's Share into a single, ordinary share (see [87] above). Consequently, Sajan stood to enjoy a profit through the receipt of the additional dividends in his capacity as an ordinary shareholder of SEPL, as a result of the "conversion" of the Founder's Share to a single, ordinary share. This would have amounted to a breach of the no-profit rule. The fact that Sajan would benefit from a conversion of the Founder's Share underscores our view above that Sajan, as trustee, did not have the power to "convert" the Founder's Share in the first place. It is inconceivable that Harkishindas authorised the "conversion" which led to the extinguishment of the Founder's Share and the additional rights attached to it, so that Sajan could benefit. The point is further fortified by the fact that the Will does not include any provision which permits Sajan to profit in any way from the exercise of his powers as trustee including "conversion" of the Founder's Share. Indeed, cl 3(h) of the Will, which requires Sajan to act for the benefit of the beneficiaries, runs counter to any argument that Sajan may profit from discharging his duties as trustee.

102 Further, the "conversion" of the Founder's Share into a single, ordinary share constitutes a breach of the no-conflict rule. The no-conflict rule posits that a fiduciary cannot place himself in a position or enter into a transaction such that his personal interest or interest in a third party may conflict with his duty to the principal, unless the principal consents with full knowledge of all the

material circumstances and the nature and extent of the fiduciary's interest (see *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*") at [137]; *Winsta* at [71]; *Credit Suisse Trust Limited v Ivanishvili, Bidzina* [2024] 2 SLR 164 ("*Credit Suisse*") at [42]). The no-conflict rule encompasses both actual conflict and potential conflict. Indeed, it suffices that there arises on the facts a reasonable perception of a conflict of interest arising (*Ng Eng Ghee* at [138]).

103 The Judge reasoned that since there was neither actual conflict nor potential conflict, there was no breach of the no-conflict rule (see Judgment at [231]). But this reasoning was premised on the Judge's acceptance that Sajan was empowered to "convert" the Founder's Share into a single, ordinary share (which was not his pleaded case). We question this conclusion for the reasons we have set out at [101] above. Even if that were the case, which we do not accept, the fact remains that through the "conversion" of the Founder's Share to a single, ordinary share, Sajan has not acted "for the benefit" of the beneficiaries as he was obliged to pursuant to cl 3(h) of the Will. This is because he failed to ensure that the assets in the Trust were preserved and had lowered the value of the Trust, and also personally stood to benefit from the "conversion" through the receipt of additional dividends. His true motivations are apparent from the fact that he concealed the Trust from the Brothers.

104 In all the circumstances, there was an actual conflict in the "conversion" of the Founder's Share to an ordinary share and Sajan was in breach of the no-conflict rule.

105 Given our finding that Sajan had breached the no-profit and no-conflict rules, we need not express a conclusive view or make a determination on whether Sajan had also breached his duty to act in good faith in the interests of

the Brothers. That said, we doubt that Sajan had acted in good faith or that the "conversion" simply stemmed from his misapprehension or misinterpretation of the SHA (which was not his pleaded case). That there is a fiduciary duty on the part of a trustee to perform the trust honestly and in the interests of the beneficiaries is well-established (*Credit Suisse* at [39]). In the present case, Sajan would have known that the "conversion" was an improper disposal of the Founder's Share resulting in a fundamental alteration of its character to an ordinary share. As noted above, Sajan has not demonstrated any legitimate purpose or good reason for the "conversion" of the Founder's Share to a single, ordinary share. While the legal burden remained on the Brothers to show that Sajan acted without good faith, the evidential burden would have shifted to Sajan to provide a credible reason for the "conversion", viewed in the context that the Founder's Share was indisputably more valuable than an ordinary share, and Sajan stood to benefit personally from the "conversion" based on his own shareholding.

106 When compared to the conduct of the trustee in *Foo Jee Seng*, the evidence indicated that Sajan's conduct was just as egregious, if not more so. In *Foo Jee Seng*, the first respondent was one of two trustees of a trust for sale which directed the trustees to sell the property whilst giving them the power to postpone the sale in their absolute discretion. The Court of Appeal held that the first respondent was in breach of his fiduciary duties as the sole living trustee when he vehemently opposed the sale of the property in question and division of the inheritance amongst the beneficiaries (at [79]–[80]). Here, Sajan had deliberately disadvantaged the Trust while pocketing substantial sums to personally profit from the "conversion" and the preservation of his position as director. He had also failed to inform the Brothers of the Trust in the first place. Sajan's conduct in the "conversion" of the Founder's Share to a single, ordinary

share reflected more than mere poor management. He had acted in obvious breach of the no-profit and no-conflict rules and cl 3(h) of the Will, and his conduct was a serious breach of fiduciary duty reflecting an evident lack of good faith.

The Brothers are entitled to the remedy of falsification

107 Since we have found Sajan to be in breach of his custodial stewardship duty, the appropriate relief is that of falsification. There are, at present, two competing approaches to causation for the remedy of falsification. The first approach is the orthodox approach, which contemplates the plaintiff only showing that the subject matter of the trust would not have left the custody of the trustee but for the trustee's breach of his custodial stewardship duty (*Winsta* at [114]). The second approach – which is followed in the UK – contemplates the further examination into whether the loss would still have occurred in the absence of a breach of duty (see *Target Holdings Ltd v Redferns* [1996] 1 AC 421 ("*Target Holdings*") at 436C; *AIB* at [73] and [136]). The parties did not advance any arguments on the basis of the UK approach and we therefore apply the orthodox approach.

108 In the present case, the removal of the entrenching clause in cl 5 of SEPL's M&A (see [10] above) embodying the fundamental and unalterable nature of the Founder's Share could not have occurred but for Sajan's acquiescence to the Shareholders' Resolution, which removed the class of founders' shares. Accordingly, the causation requirement under the orthodox approach was satisfied here.

109 Since Sajan can no longer reconstitute the Trust *in specie* with the Founder's Share, he can only falsify the Trust account through the payment of

a monetary sum in lieu of reconstitution *in specie* of the Founder's Share. We turn to determine the extent of Sajan's liability to reconstitute the trust fund in monetary terms, in lieu of reconstitution *in specie.* As stated by Lord Millett NPJ in *Libertarian Investments*, "[t]he amount of the award is measured by the objective value of the property lost determined at the date when the account is taken and with the full benefit of hindsight" (at [168]). The date of assessment would be the date of judgment (*Re Medora* at [54]; *Target Holdings* at 437; *Snell's Equity* at para 30–016).

110 In the present case, our view is that, subject to one caveat, the appropriate amount is best measured by Mr Arora's valuation of the Founder's Share as at 1 December 2023. We prefer Mr Arora's valuation to Mr Young's valuation of the Founder's Share as at 31 March 2021.[82]

111 To provide context, we first set out Mr Arora's valuation methodology in respect of the Founder's Share as at 1 December 2023:[83]

(a) First, Mr Arora assessed the equity value of SEPL at $181,794,807.00.

(b) Second, Mr Arora assessed the value of the right to become a director at $6,263,247.00.

(c) Third, on the premise that the payment of the additional director's fees would be an additional cost in the future for SEPL,[84] Mr Arora subtracted the value of the right to become a director from the

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82 ROA 3I pp 18–19.

83 Mr Arora's Expert Report at para 4.94 (ROA Vol 3F p 220).

84 Mr Arora's Expert Report at para 4.43 (ROA Vol 3F p 207).

equity value of SEPL to derive an adjusted equity value of $175,531,560.00.

(d) Fourth, on the premise that the right to 10% of SEPL's annual net profit in perpetuity was equivalent to a 10% shareholding in SEPL,[85] Mr Arora calculated the value of that 10% shareholding at $17,553,156.00.

(e) Fifth, Mr Arora added the value of the right to become a director to the value of the 10% shareholding, to derive the figure of $23,816,404.00.

112 Generally speaking, Mr Arora's methodology was sound. We note that in favouring Mr Arora's valuation of the Founder's Share as at 15 September 2008 over Mr Young's, the Judge considered Mr Young's valuation to be flawed in so far as it considered the Founder's Share and the ordinary share to be of the same value (see Judgment at [222] and [255]).[86] We agree with the Judge's underlying reasoning. That being said, we do not accept Mr Arora's computation of the value of the right to appoint a director, which he used in deriving the value of the Founder's Share. In this respect, Mr Arora calculated the value of the right to appoint a director by approximating an annual director's fee of $200,000, which would be paid in perpetuity from 2023 onwards. After adjusting for inflation and the risk of the director's fee not being paid, Mr Arora arrived at the figure of $6,263,247.00.[87] In their Respondents' Case in AD 3, the Brothers justified the inclusion of these director's fees in the valuation on the

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85 Mr Arora's Expert Report at para 4.41 (ROA Vol 3F p 206).

86 Mr Young's Expert Report at pp 27–28 (ROA Vol 3I at pp 36–37).

87 Mr Arora's Expert Report at paras 4.41–4.42 and 4.91 (ROA Vol 3F pp 206 and 219).

basis that the beneficiaries of the Trust were entitled to appoint someone as a director and enjoy the stream of director's fees.[88]

113 We respectfully disagree. Mr Arora's assumption that the economic value of the right to appoint a director lies in the fees that the director receives, with respect, is incorrect in this context. Mr Arora appears to have not taken into account cl 5 of the M&A, which makes it clear that the right of appointment is for the purpose of control of the company. This is achieved by the right of the holder of the share to be appointed director or to nominate another to be director, remove other directors (save for the director who is holder of the Founder's Share or nominated by that shareholder) and be designated a Governing Director. The director's fees are not a fair proxy for the element of control that the Founder's Share gives. The director's fees are, in fact, to be paid personally to the appointed director for the performance of his or her duties, and do not benefit the Trust. We would therefore exclude the consideration of the value of the right to become/appoint a director from Mr Arora's analysis. However, we make no uplift in the value on account of the element of control as there is no evidence of that and the Brothers have not sought to advance that position. That leaves the right to 10% of the net profits of the company annually provided for in cl 5(vii) of the M&A. Accordingly, we calculate the value of the Founder's Share as being 10% of the equity value of SEPL as at 1 December 2023, which is $18,179,480.70 (see [111(a)] above).

114 Given that falsification is the appropriate remedy, we agree with the Brothers' argument that Sajan should also pay into the Trust the profits which it ought to have received on account of the Founder's Share. In their written closing submissions in the proceedings below, the Brothers have computed this

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88 Brothers' AD 3 Case at para 82.

loss of profit to be at least $6,492,782.14. When interest at the default rate of 5.33% per annum up to 8 January 2024 (*ie*, the original deadline for the filing of AEICs) is included, the amount stands at $8,684,668.04.[89] These calculations were not challenged at trial. On appeal, the Brothers quantify the loss of profit, inclusive of interest, at $8,999,010.68,[90] to account for interest for the approximately 11 months (or 332 days) between the deadline for the filing of the AEICs (*ie*, 8 January 2024) and the date of the Judgment (*ie*, 5 December 2024).[91] It should be noted that these are conservative figures, calculated based on 10% of SEPL's dividends declared rather than 10% of its net profits, which was the Founder's Share's entitlement under cl 5(vii) of the M&A (see [9(g)] above). The Brothers' calculations are summarised as follows:

(a) First, as the total amount of dividends distributed between FY 2009 and FY 2021 was $66,491,696.00, the holder of the Founder's Share is taken to be entitled to 10% of those dividends, *ie*, $6,649,169.60. The interest on those dividends, from the date of payment to the date of the Judgment (*ie,* 5 December 2024), is calculated to be $2,566,753.22.

(b) Second, the above figure is adjusted to take into account the amount of dividends overdistributed to the Trust in respect of its ordinary shares in SEPL. After accounting for the fact that the Founder's Share would have received 10% of SEPL's net dividends declared, the Brothers pro-rated the remaining dividends (*ie*, $59,842,526.40) with respect to the 150,000 ordinary shares of SEPL in the Trust. This

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89 Plaintiffs' Closing Submissions dated 14 May 2025 at para 166 (ROA Vol 3P at p 280); ROA Vol 4A at p 19.

90 Brothers' AD 4 Case at para 49.

91 TSMP's Letter to Court dated 8 December 2025 at para 4.

produced a figure of $1,451,548.29, the sum that ought to have been distributed to the Trust in respect of its ordinary shares in SEPL.

(c) Seeing as the Trust had actually received $1,607,935.75 in dividends for the ordinary shares, the Brothers calculated that the Trust had been overpaid by the sum of $156,387.46, with an additional $60,524.68 representing the interest on the overpaid dividends.

(d) Thus, the Trust was entitled to a total of $8,999,010.68 (*ie*, $6,649,169.60 + $2,566,753.22 – $156,387.46 – $60,524.68).

115 In principle, we see no reason to exclude from the Brothers' claimed reliefs the loss of profits and interest accrued on those profits until the date of the Judgment. In this regard, Sajan raises four objections:

(a) First, that the actual trading profits, instead of the dividends paid, should have been used to compute the value of the right to 10% of the net profits of SEPL that was attached to the Founder's Share.

(b) Second, that the rate of 5.33% per annum should not have been used to calculate the interest that accrued on the dividends.

(c) Third, that the loss of the net profits should be calculated at the date that the Founder's Share was "converted" (*ie*, 15 September 2008).[92]

(d) Fourth, that even if the loss of this right was to be quantified as at a date after the "conversion" of the Founder's Share, the appropriate date was 12 January 2017, being the date that the Brothers, Lakshmi and

92 SCL's Letter to Court dated 10 December 2025 ("SCL's Letter") at para 5.

Sajan executed a deed of family arrangement to divest their shares and investments in the Shankar's Group of companies ("2017 Deed").[93]

116 We see no merit in any of the above objections:

(a) The first objection is answered by our acceptance of Mr Arora's foundational premise that the right to 10% of net profits can be measured with reference to the dividends distributed by SEPL (see [113] above). In any case, this is more beneficial to Sajan than using the actual trading profits to compute the appropriate value.

(b) As for the second objection, Sajan has not furnished any reason as to why we should depart from the standard rate of 5.33% per annum (see *Minichit Bunhom v Jazali bin Kastari* [2018] 1 SLR 1037 at [96]; *Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 ("*Grains*") at [143]).

(c) The third objection is addressed by our decision to order falsification of the Trust accounts, for which the date of assessment of the relevant substitutive award is the date of judgment (see [107] above).

(d) As to the fourth objection, we note that Sajan is raising the issue of the effect of the 2017 Deed on the date of valuation for the first time on appeal, having failed to raise it in his submissions below. Putting this to one side, we are nevertheless of the view that this objection is devoid of merit. Sajan relies on the decision of the High Court in *Eller, Urs v Cheong Kiat Wah* [2021] SGHC 253 ("*Eller, Urs*") for the proposition that:

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93 SCL's Letter at para 6.

> 70 … Generally, when equitable compensation operates as a reparative remedy for a non-custodial breach, the date for assessing loss should be the date of judgment or as close to it as the evidence and the course of proceedings allow, unless justice requires the clock to be stopped earlier, for example where there is evidence that the beneficiary intended to sell the asset at an earlier time. …

Sajan then contends that since there is evidence that the Brothers intended to divest their shares and investments in the Shankar's Group of companies on 12 January 2017, justice requires that the clock be stopped at that date. *Eller, Urs*, however, is distinguishable from the present case because the remedy that was before the court in *Eller, Urs* was that of *compensatory* relief, which is *reparative* in nature. In contrast, the present case concerns the remedy of *falsification*, which is *substitutive* in nature. The rules of causation that are applicable in the present case are different from those applied in *Eller, Urs*. Furthermore, Devin gave testimony that the plan to divest the shares and investments in the Shankar's Group of companies was not followed through, and that any plan for divestment did not exist after Lakshmi initiated divorce proceedings against Sajan.[94] Hence, assuming that the Founder's Share was not "converted", it is unlikely that Sajan would have gone through with such divestment in 2017 in any event.

117 Accordingly, we accept that the Brothers are entitled to the loss of profits as well as interest up to the date of the Judgment. However, as fairly pointed out by Sajan, one aspect of the Brothers' calculations does have to be adjusted. Although the Brothers assigned to the Founder's Share an entitlement to 10% of SEPL's distributed dividends based on the underlying right to 10% of SEPL's

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94 Transcript (20 Mar 2024) p 75 lines 11–15 (ROA Vol 3J p 277).

net profits, they did not assign a similar entitlement to the *other* founder's share in SEPL, which had been held by Sajan's two cousins. In our view, this further step is necessary in giving effect to the remedy of falsification.

118 The effect of falsification is that the whole of the relevant transaction or disbursement is disallowed (see *Agricultural Land Management* at [380], citing *Libertarian Investments* at [169]). In this case, Sajan's breach lay in his voting in favour of the Shareholders' Resolution to remove cl 5 of SEPL's M&A. If he had not done so, both founders' shares in SEPL would have remained. It follows, in calculating the value of the dividends that *would* have been distributed to the Trust in respect of the Founder's Share, that the entitlement to 10% of the dividends enjoyed by *both* founders' shares must be taken into account.

119 The Brothers' response on this point is that there was no evidence that the owners of the other founder's share in SEPL had not obtained the necessary consent or authorisation to "convert" that share.[95] We do not accept this submission. By removing cl 5 of the M&A in its entirety, the Shareholders' Resolution extinguished the rights conferred upon the entire class of founders' shares in SEPL. Therefore, it is not possible to treat the "conversion" of the two founders' shares separately. The consent or authorisation of the other owners, even if present, is thus immaterial here for the purposes of falsification.

120 We therefore adjust the Brothers' calculations in the following manner:

(a) First, we see no reason to disturb the Brothers' calculations stating that the Founder's Share is entitled to 10% of those dividends

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95 Brothers' AD 3 Case at para 83(c).

from FY 2009 to FY 2021, *ie*, $6,649,169.60, and that the interest on those dividends, from the date of payment to the date of the Judgment (*ie,* 5 December 2024), is $2,566,753.22 (see [114(a)] above).

(b) Second, the amount that the Trust ought to have received in dividends in respect of the ordinary shares will be pro-rated based off the remaining *80%* of the total dividends distributed, after accounting for the dividends that would have been received by *both* founders' shares. The remaining dividends after accounting for the 20% of the dividends attributable to both of the founders' shares is calculated to be $53,193,356.80. Since the Trust is taken to have 150,000 out of the available 6,184,002 ordinary shares, the Trust would have been entitled to $1,290,265.35 in dividends in respect of the ordinary shares.

(c) Since the Trust actually received $1,607,935.75 in dividends, it was overpaid by $317,670.40. We adjust the interest that accrued on the overpayment of dividends until the date of the Judgment. The total interest that accrued is calculated to be $122,784.11.

(d) Thus, the total amount that the Trust is entitled to is adjusted to **$8,775,468.31** (*ie*, $6,649,169.60 + $2,566,753.22 – $317,670.40 – $122,784.11).

121 As for the other disputed areas of computation in the expert reports, we do not think that the Judge erred in accepting Mr Arora's assessment, considering that no serious challenge was made in relation to his assessment in his cross-examination below. Bearing in mind that Sajan sold the Founder's Share as an ordinary share for $15.5799, Sajan is therefore liable to reconstitute the Trust for the monetary sum of $26,954,933.43 (*ie*, $18,179,480.70 + $8,775,468.31 – $15.5799).

Whether Sajan breached his duties in selling the Trust Shares in the Two Live Companies

122 We turn to consider the Judge's finding that Sajan breached his duties in selling the Trust Shares in the Two Live Companies (*ie,* SEPL and LMPL). As stated at [13] above, Sajan sold the shares to his brothers, Jack and Moti, on 18 February 2021. The Trust Shares in SEPL were sold at $15.5799 per share to Jack and Moti (for a total of $2,337,000.58), while the Trust Share in LMPL was sold for $14,147.00 to Jack.[96]

123 To recapitulate, the breaches of duty by Sajan in selling the Trust Shares in the Two Live Companies, as identified by the Judge, included the following (see Judgment at [244] and [248]):

(a) a breach of Sajan's statutory duty to consider proper advice about the way in which his power of investment should be exercised, and whether the investment should be varied, pursuant to s 6(1) of the Trustees Act;

(b) a breach of Sajan's duty of care under the common law and under s 3A(1) read with para 1 of the First Schedule of the Trustees Act, in relation to the exercise of his powers of investment; and

(c) a breach of Sajan's custodial stewardship duties as a trustee.

124 Similar to his case below, Sajan argues on appeal that the Trust Shares were not sold in bad faith; instead, the sale of the Trust Shares was part of a defensive strategy motivated by concerns of declining share value amid adverse

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[96] Instruments of Share Transfer dated 18 Feb 2021 for the sale of the Trust Shares in SEPL at ROA Vol 5M pp 219–220**;** Instrument of Share Transfer dated 18 Feb 2021 for the sale of the Trust Share in LMPL at ROA Vol 5M p 264.

market conditions.[97] To buttress his argument, Sajan relies on the valuation reports prepared for the purpose of the sale of the Trust Shares.[98] But these valuation reports do not assist Sajan; in fact, they show that Sajan's explanation is not credible.

Sajan committed a breach of trust in selling the Trust Shares in the Two Live Companies

125 We begin with the report prepared by RSM Corporate Advisory Pte Ltd (the "RSM Report") on 5 February 2021, which valued the Trust Shares in SEPL as at 30 November 2020. At the outset, we observe that the RSM Report was not an actual valuation report but only a statement of SEPL's annual accounts for FY 2021. There is thus no actual formal "valuation" in the strict sense of the word to support Sajan's assertion. It is true that the auditors had stated that SEPL's distribution of electrical and electronic goods and other general merchandise was projected to be loss-making from FY 2021 to FY 2023.[99] But the auditors had also expressly stated that SEPL's revenue in this regard was forecasted to increase by 11.1% and 12.5% in FY 2022 and FY 2023 respectively because the economy was expected to gradually recover from FY 2022 onwards.[100]

126 In any event, the auditors' comment about SEPL being projected to be loss-making from FY 2021 to FY 2023 was made in the specific context of valuing just SEPL's distribution of electrical and electronic goods and other general merchandise. When the auditors valued the Trust Shares in SEPL, they

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97 Sajan's AD 3 Case at para 83.

98 Sajan's AD 3 Case at para 82.

99 ROA Vol 5N p 78.

100 ROA Vol 5N p 75. See also Judgment at [244].

also valued, among other things, the property segment and food trading segment of SEPL.[101] It would therefore be inaccurate to take in isolation the auditors' comment that SEPL's distribution of electrical and electronic goods and other general merchandise was projected to be loss-making from FY 2021 to FY 2023 and conclude that the value of the Trust Shares in SEPL was going to suffer a decline amid adverse market conditions. Nowhere in the RSM Report is it stated that the value of the Trust Shares in SEPL was going to suffer a decline from FY 2021 to FY 2023. This is because it was not a valuation report *per se*. Thus, the RSM Report does not support Sajan's contention that he sold the Trust Shares in SEPL because he was worried about the share value declining amid adverse market conditions.

127 Turning to the valuation reports prepared by Natarajan & Swaminathan on 21 January 2020 and 29 January 2021 (the "N&S Reports"), which dealt with the valuation of the Trust Share in LMPL, these likewise do not assist Sajan. Indeed, these reports show that the valuation of the Trust Share in LMPL increased from $5,970.50 (as at 30 November 2019) to $14,147.00 (as at 30 November 2020).[102] The Judge observed that the N&S Reports indicated an upward trend in the value of the Trust Share in LMPL (see Judgment at [244]) and we agree. Thus, Sajan cannot rely on the N&S Reports to justify his sale of the Trust Share in LMPL.

128 The credibility of Sajan's explanation is particularly impugned by a lack of any attempt to procure an exit by selling his own shares in SEPL or galvanising other shareholders to exit the Two Live Companies by collectively selling their shares. In this regard, we note that when the RSM Report was

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101 ROA Vol 5N p 71.

102 ROA Vol 5N pp 111 and 116.

released, Sajan held 1,365,080 shares in SEPL (excluding the 150,001 Trust Shares).[103] If Sajan had genuinely believed that market conditions necessitated the urgent sale of the Trust Shares, he would have attempted to exit in the manner described above since he stood to suffer a loss if he did not. However, as the Brothers point out, Sajan admitted under cross-examination that he had not adduced any evidence that he had attempted to sell his own shares in SEPL since 2021, even though he claimed that he "would have liked to sell them" in 2021.[104] As the Judge observed, there is no objective evidence that Sajan or the other shareholders of SEPL took any steps to sell the shares (see Judgment at [245]). As such, there was no compelling reason or particular urgency for the sale of the Trust Shares in the Two Live Companies.

129 Sajan's supplementary argument is that he sold the Trust Shares in response to the Brothers' expressed wishes in 2017 for the Brothers, Sajan and Lakshmi to divest from the family business (see [115(d)] above).[105] Thus, amid the familial animosity against Sajan and the various actions commenced against him, Sajan asserts that it was reasonable for him to sell the Trust Shares and account for the sale proceeds.

130 We do not accept Sajan's argument. Notwithstanding that it was never mentioned in his AEIC or submissions at the trial below,[106] such a plan for divestment did not exist after Lakshmi initiated divorce proceedings against

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103 ROA 5N at p 59.

104 Brothers' AD 3 Case at para 111. For Sajan's testimony, see Transcript (28 March 2024) pp 82 line 9 to p 83 line 8 (ROA Vol 3O pp 87–88).

105 Sajan's AD 3 Reply at para 46. See also Transcript (21 March 2024) p 89 lines 7–16 (ROA Vol 3K p 202).

106 See, *eg,* Sajan's AEIC at paras 113–119 (ROA Vol 3G pp 28–35); Sajan's Closing Submissions at paras 130–135 (ROA Vol 3Q pp 68–69), Sajan's Reply Submissions at para 50 (ROA Vol 3Q p 143).

Sajan (see [116(d)] above). Sajan's argument is in any event irrelevant to whether Sajan had breached the aforesaid duties (at [122] above) in arranging for the sale. The above suffices to dispose of Sajan's challenge against the Judge's finding that he had breached his duties in arranging the sale of the Trust Shares in the Two Live Companies.

131 In AD 3, while Sajan did argue that he was authorised to sell the Trust Shares, his submission stops short of contending that the Judge erred in holding that the sale of the Trust Shares amounts to a breach of his *custodial* stewardship duty,[107] notwithstanding his many attacks on the other parts of the Judge's decision. We therefore do not take this point further.

132 We next consider Sajan's contention that the Judge erred in assessing the quantum of loss occasioned by the breaches by erroneously relying on Mr Arora's valuation of the Trust Shares.

The Judge's assessment of the substitutive awards in respect of the sale of the Trust Shares in the Two Live Companies

133 The relevant principles governing the threshold for appellate intervention in findings on expert evidence were set out recently by the Court of Appeal in *Credit Suisse*:

> (a) Appellate intervention in relation to a trial judge's findings of fact is warranted only when the trial judge's assessment is plainly wrong or manifestly against the weight of the evidence (at [74]).
>
> (b) Similarly, an appellate court will ordinarily respect a trial judge's findings on expert evidence, unless there are doubts as to whether the

[107] Sajan's AD 3 Case at paras 79–88; Sajan's AD 3 Reply at paras 45–50.

evidence had been satisfactorily assessed by the trial judge. If so, the appellate court may undertake a critical evaluation of the expert evidence, focusing on obvious errors of fact and/or deficiencies in the reasoning process (at [75]).

(c) If intervention is warranted, the appellate court is in as good a position to assess the expert's evidence since the bulk of the expert evidence is typically found in the tendered expert report. An appellate court is also entitled to evaluate the trial judge's findings if they are based on inferences drawn from the expert evidence (at [76]).

(d) The trial judge must assess the factual premises or other premises undergirding the expert's conclusions. The expert evidence cannot fly in the face of proven objective facts, and the factual predicates that the expert evidence may rely on may be examined to determine the strength of the expert evidence (at [77]).

134 Pertinently, we note that Sajan concedes in his Appellant's Case in AD 3 that Mr Young made a number of concessions in respect of his own valuations. Yet, on appeal, Sajan asserts that he has since been advised that those concessions were incorrectly made, and that he now seeks to show clear errors on the face of those valuations.[108]

135 We are sceptical of Sajan's approach. We see no cogent reason why Sajan should be permitted on appeal to disavow his own expert's concessions below in relation to his valuations. Having reviewed the parties' submissions and the expert evidence in S 521, we also see no cogent reason to interfere with the Judge's preference for Mr Arora's valuations over those put forth by

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108 Sajan's AD 3 Case at para 87.

Mr Young. Sajan has not shown that Mr Arora's valuation methodology was materially wrong or unreasonable. In particular, we disagree with Sajan's submissions that the Judge erred in refusing to apply a DLOM and DLOC to the valuation of the Trust Shares in the Two Live Companies.

(1) The Judge did nor err in refusing to apply a DLOM and DLOC to the valuation of the Trust Shares in the Two Live Companies

136 Sajan has asserted that the Judge erred in preferring Mr Arora's valuation of the Trust Shares in the Two Live Companies over Mr Young's. In this regard, Sajan argues that a key error lies in the Judge's decision to not apply a DLOM and DLOC to the valuation of the Trust Shares in the Two Live Companies.[109]

137 We briefly set out the Judge's reasons for not applying a DLOM or DLOC to the valuation of the Trust Shares in the Two Live Companies:

(a) In respect of the shares in SEPL, the Judge began with the premise that applying a DLOC and DLOM were inapposite to the sale of the Trust Shares in SEPL to Jack and Moti. Because the appropriate remedy was one of falsification, the appropriate comparator in terms of the remedy was the Trust Shares in SEPL being held by Sajan as a trustee rather than the shares having been sold off. The Judge also specifically decided against applying a DLOC for two reasons: (i) SEPL's property segment was valued using a net asset value ("NAV") approach, for which no premium for control was factored in that would require an adjustment for a DLOC; and (ii) SEPL's electronics segment was valued with market comparators based on the share prices of minority

109 Sajan's AD 3 Case at para 87.

shareholdings in other companies, the valuation of which would already have applied a DLOC. The Judge also observed that applying a DLOM was also inappropriate for the SEPL Trust Shares because the investment properties under SEPL's property segment were valued based on third-party valuations, which would already have reflected relevant market discounts for a DLOM. Applying another DLOM would therefore result in double-counting (see Judgment at [256]–[258]).

(b) As for the Trust Share in LMPL, the Judge preferred Mr Arora's valuation of LMPL as a going concern using a market-based approach over Mr Young's use of a NAV approach, which Mr Young premised on the basis that LMPL operated as a special purpose vehicle ("SPV") for related party transactions. In this regard, the Judge took the view that a company with no or little inventory could nevertheless still be an actively operating company and that this was not a decisive indicator that the company was a SPV. The Judge therefore declined to apply a DLOC to the Trust Share in LMPL as the market-based approach would already have factored in a DLOC (Judgment at [262]–[265]).

138 We see no reason to disagree with the Judge's reasoning in relation to the valuation of the Trust Shares in SEPL or LMPL. In this regard, we specifically note that Sajan takes issue with one of Mr Arora's justifications for not applying a DLOM to his valuations of the Trust Shares, *viz*, that an existing buyer for those shares had already been identified.[110] For context, we understand Mr Arora to be referring to Moti and Jack, who had purchased the Trust Shares from Sajan. Sajan asserts that Mr Arora's reasoning was "disingenuous"

[110] Paragraphs 4.47 and 6.14 of Mr Arora's report at ROA Vol 3F pp 207 and 224.

because he did not explain why the identified buyers would be willing to purchase the Trust Shares at a higher valuation.[111]

139 We do not accept Sajan's argument. We note that in the proceedings below, neither expert engaged with the question of whether the identified buyers would have been willing to purchase the Trust Shares at the higher valuation identified by Mr Arora. Further, while we recognise that the disparity between Mr Arora's valuation and the actual sale price of the Trust Shares is not insignificant (for instance, Jack purchased the LMPL Trust Share at $14,147 while Mr Arora valued it at $1,854,000), there is no evidence to substantiate Sajan's argument that the identified buyers would be unwilling to purchase the Trust Shares at the higher valuations. Sajan's assertion is speculative at best.

140 More importantly, applying a DLOC and DLOM would be inappropriate given the nature of the remedy of falsification. The objective is to reconstitute the trust. Seen that way, it is inappropriate to apply a discount in the form of a DLOC and DLOM, as there was no desire to exit the relevant companies. It was the wrongful acts of the trustee that resulted in the exit. A useful analogy may perhaps be found in how a minority shareholding is valued for the purpose of a buyout order in minority oppression cases. In such a scenario, the Court of Appeal has held that a DLOM and DLOC may not be applicable (see *Kiri Industries Ltd v Senda International Capital Ltd* [2024] 2 SLR 1 (at [234]–[235]). Adopting the views of Professor Douglas Moll in his article "Shareholder Oppression and 'Fair Value': of Discounts, Dates and Dastardly Deeds in the Close Corporation" (2004) 54(2) Duke LJ 293 at 319, the Court of Appeal accepted that a DLOM would be inappropriate, in view of the forced-sale nature of the buyout proceeding and the identity of the purchasers involved.

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111 Sajan's AD 3 Case at para 91.

In our view, taking reference from share buyout cases involving minority oppression, there is similarly no actual desire in our case to exit the companies since Sajan had dissipated trust assets. Applying a DLOM and DLOC would not be appropriate, and the remedy of falsification would involve giving full value to the shares to reflect these circumstances.

141 Accordingly, we do not think that the Judge erred in not applying a DLOC and DLOM to the valuation of the Trust Shares in SEPL and LMPL.

(2) Adjustments to the valuation of the Trust Shares in SEPL were required

142 While we generally do not disagree with Mr Arora's valuation, we find it necessary to make certain adjustments to Mr Arora's valuation of the 150,001 Trust Shares in SEPL. To provide some context, Mr Arora had valued an ordinary share in SEPL at $25.55 as at 1 December 2023 (see Judgment at [254]).[112] He did so using the following steps:

(a) As stated at [111(a)]–[111(c)] above, the starting point of Mr Arora's calculations was the adjusted equity value of SEPL, after accounting for the value of the right to appoint a director (*ie,* $175,531,560.00).

(b) On the premise that the right to 10% of SEPL's net profits in perpetuity (held by the owner of the Founder's Share) was equivalent to 10% of SEPL's adjusted equity value, the value of the ordinary shares in SEPL was calculated at the remaining 90% of SEPL's adjusted equity value (*ie*, $157,978,404.00).

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112 Mr Arora's Expert Report at para 4.94 (ROA Vol 3F p 220).

(c) Taking the Founder's Share out of consideration, there were 6,184,003 ordinary shares in SEPL at the time, which amounted to a value of $25.55 per share.

143 We have a reservation on Mr Arora's calculations at [142(b)] above. Mr Arora's valuation process was inconsistent in that while he assigned to the Founder's Share 10% of SEPL's adjusted equity value, based on the underlying right to 10% of SEPL's net profits (on the basis that dividends served as a proxy for the profits), he did not assign a similar 10% equity value to the *other* founder's share in SEPL, which had been held by Sajan's two cousins. As we have explained earlier (see [117]–[119] above), this step in the valuation process is not consistent with the Brothers' claim for the remedy of falsification. Instead, in calculating the value of the ordinary shares in SEPL, the equity value to *both* founders' shares should be accounted for and deducted.

144 Consequently, we make a downward adjustment in respect of the equity value of SEPL's ordinary shares to account for the 10% equity value that should have been assigned to account for the other founder's share. Given our earlier rejection of Mr Arora's inclusion of the value of the right to appoint a director in his valuation of the Founder's Share (see [112]–[113] above), we also reverse his adjustment of SEPL's total equity value that he used to account for the value of the Founder's Share.

145 We therefore adjust the value of each ordinary share in SEPL to $23.52 (rounded to the nearest two decimal places), based on the following calculations:

Parameter	**Calculation**	**Value**
Total equity value of SEPL as at 1 December 2023	As stated in Mr Arora's expert report (see [111(a)] above)	$181,794,807.00
Total equity value of ordinary shares in SEPL as at 1 December 2023	$181,794,807.00 x 80% (*ie*, less $36,358,961.40 or the 20% equity value assigned to the two founders' shares)	$145,435,845.60
Value of one ordinary share	$145,435,845.60 divided by 6,184,002 ordinary shares	$23.52

146 Presently, Sajan is required to reconstitute the monetary value of 150,000 ordinary shares in SEPL (as opposed to 150,00**1**; *cf* Judgment at [259]) We find the value of these 150,000 shares to be $3,528,000.00. Given that Sajan sold the 150,0001 Trust Shares in SEPL in February 2021 for $2,337,000.58 at $15.5799 per share (see [122] above; Judgment at [259]), we treat him as having received $2,336,985.00 for the 150,000 ordinary shares. Thus, Sajan has to reconstitute the Trust in the sum of $1,191,015.00 (*ie,* $3,528,000.00 less $2,336,985.00). As for the Trust Shares in LMPL, we accept Mr Arora's

valuation of these shares as of 18 February 2021 and affirm the Judge's order for Sajan to reimburse the Trust in the sum of $1,839,853.00 in this regard (Judgment at [266]).

Whether Sajan's realisation of the Trust Shares in the Three Struck Off Companies at an undervalue was in breach of trust

147 Next, we consider Sajan's challenge against the Judge's finding that the realisation of the shares in the Three Struck Off Companies (*ie,* Sharrods, SPL and Sovrein) was done at an undervalue in breach of his trustee duties. As stated at [12] above, the three companies were struck off in 2010 whereupon there was a return of capital to the Trust. According to the November 2023 Trust Statement, the actual capital sum returned to the Trust amounted to approximately $80,000 in total. This was far lower than Mr Arora's assessed value of the same Trust Shares, which stood at an equity value of approximately $2m (see Judgment at [269]). On appeal, Sajan argues that the companies were struck off in the normal course of running the business of the group, and that Mr Arora's methodology of calculating the fair market value ("FMV") of the Trust Shares was flawed in focusing on the FMV rather than the capital returned to the shareholders. In this vein, Sajan asserts that the capital returned to the Trust was proportionate to the capital returned to the other shareholders.[113]

148 Sajan's challenge fails to meet the threshold for appellate intervention in findings on expert evidence (which have been set out earlier at [133] above). Mr Arora's methodology adopted a hypothetical estimation of the FMV of the capital returns from the striking off,[114] while Mr Young had taken the converse position that the FMV could not be estimated for the return of capital from the

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113 Sajan's AD 3 Case at para 95(b) and (c).

114 Mr Arora's Reply Report at para 7.5 (ROA Vol 3F p 289).

striking off.[115] In our view, it was reasonable for the Judge to accept Mr Arora's methodology, which Mr Arora justified on the basis that FMV could be estimated by reference to the amount for which a willing buyer would pay to acquire the rights to receive the return of capital.[116]

149 In any case, leaving aside Sajan's objections to the theoretical underpinnings of Mr Arora's methodology, the fact remains that Mr Arora substantially relied on the NAV of the Three Struck Off Companies, as stated in the companies' balance sheets as at 30 June 2009, to derive his valuation (see Judgment at [269]).[117] Since Sajan was unable or unwilling to explain the substantial discrepancy between the NAV stated in the balance sheets and the actual sums returned to the Trust, Mr Arora had to effectively work off the balance sheets as the best evidence of what value ought to have been distributed from the return of the share capital. The Judge was, in the circumstances, entitled to accept Mr Arora's methodology.

150 Sajan's assertion that the capital received by the Trust was proportionate to the returns received by the other shareholders of the Three Struck Off Companies was, respectfully, even more problematic.[118] Before us, Mr Sreenivasan alluded to the statements of affairs filed on behalf of the Three Struck Off Companies, which he asserted contained information on the amount that was actually returned as share capital from the striking off.[119] For

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115 ROA Vol 3I pp 19 and 45.

116 Mr Arora's Reply Report at para 7.5 (ROA Vol 3F p 289).

117 Mr Arora's Expert Report at paras 7.9–7.11 (ROA Vol 3F p 227–228). See Sharrod's balance sheet at ROA Vol 5(AG) p 266, SPL's balance sheet at ROA Vol 5(AH) p 53 and Sovrein's balance sheet at ROA Vol 5(AH) p 131.

118 Sajan's AD 3 Case at para 95(c).

119 Transcript (15 August 2025) p 69 lines 2–18.

completeness, we acknowledge, especially in respect of Sharrods and Sovrein, that there are potentially significant differences between the capital purportedly returned to the shareholders as stated in the statements of affairs, and the amount that ought to have been returned according to Mr Arora's calculations.[120]

151 However, Sajan's assertion misses the point. We agree with the Brothers that Sajan's argument on the proportionality of the returns to the Trust was never raised in Sajan's pleadings or his AEIC.[121] Sajan was also unable to explain the significant discrepancy, in the case of Sharrods and Sovrein, between what was received by the Trust and what the Trust should have rightfully received from the striking off, *per* Mr Arora's calculations.[122] Sajan's explanation was that the business of the Three Struck Off Companies was handled by Harkishindas (see Judgment at [276]),[123] but even that is questionable since Harkishindas passed away in 2007 (see [4] above), which was approximately three years before the striking off. Accordingly, *even if* the capital returns actually received by the Trust were proportionate to the capital returns received by the other shareholders, that did not explain the discrepancy identified by the Judge.

152 We would add that it was no excuse for Sajan to state that the decision to strike off the companies was one made in the normal course of running the business of the Shankar's Group of companies, and that he did not make this decision unilaterally. The primary consideration is not whether Sajan had breached his duties by causing the three companies to be struck off in 2010.

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120 See the Statement of Affairs for Sovrein at ROA Vol 5K pp 288–290, Sharrods at ROA Vol 5K pp 294–296, and SPL at ROA Vol 5L pp 6–8.

121 Brothers' AD 3 Case at para 147.

122 Transcript (15 August 2025) p 69 lines 19–21.

123 This was repeated by Mr Sreenivasan during the hearing and questioned by Nair J (as he then was): see Transcript (15 August 2025) p 69 line 24 to p 70 line 6.

Rather, as the Judge had found (see Judgment at [275]–[276]), it is whether he had ensured that the realisation of the Trust Shares in these companies resulted in the appropriate amount of capital being rightfully returned to the shareholders. We agree with the Judge that Sajan had failed to do so. Hence, Sajan cannot escape the conclusion that he acted in breach of trust, and we uphold the Judge's finding to this effect.

153 Finally, for completeness, we note that the parties' experts did not give evidence as to the reliability of the numbers stated in the statement of affairs of each company, as the core issue in dispute between them concerned whether the NAV approach could be applied to a struck-off company (as was acknowledged by Sajan's counsel in the trial below).[124] In the round, we therefore do not see why appellate intervention in the Judge's findings on the expert evidence is justified.

154 Accordingly, we see no reason to disturb the Judge's holding that Sajan had breached his common law duty of care in the management of the Trust. As for the breach of Sajan's custodial stewardship duty as trustee, we similarly do not disturb the Judge's finding as Sajan does not make any argument on this point in his appeal.[125]

Whether the Judge erred in awarding pre-judgment interest

155 Sajan appeals against the Judge's award of pre-judgment interest. As we noted at [30]–[31] above, the Judge's order for pre-judgment interest was only granted on 26 December 2024 by way of a correspondence from the Court, in response to post-Judgment clarifications sought by the Brothers on

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124 Transcript (2 April 2024) p 224 lines 17–22 (ROA Vol 3P p 164).

125 Sajan's AD 3 Case at para 95; Sajan's AD 3 Reply at paras 55–57.

16 December 2024. We are not persuaded by Sajan's objections to the grant of pre-judgment interest. Strictly speaking, it is unnecessary to consider these objections which pertain to the remedy of surcharging in respect of the Founder's Share, given our conclusion that the proper remedy is that of falsification and reconstitution of the Founder's Share in monetary terms as at the date of the Judgment (see [107]–[109] above).

156 First, Sajan argues that, according to the Court of Appeal in *Grains*,[126] only claimants entitled to money can claim pre-judgment interest. This argument is misconceived for multiple reasons. *Grains* merely states the general principle that a claimant who has been kept out of pocket without basis should be entitled to recover interest on money that is found to be owed to them for the period from the date of their entitlement to the date that it is paid (at [138]). Furthermore, Sajan's argument misapprehends the nature of the monetary awards being ordered against him. The awards are ordered as payments to the *Trust*, and not to the Brothers as discretionary beneficiaries. It follows that Sajan may be ordered to pay to the *Trust* pre-judgment interest on those awards.

157 In this vein, since objects of a discretionary trust may invoke the court's jurisdiction to seek proper administration of a trust and claim relief extending to reconstitution of the trust (*Lewin on Trusts* at para 41–073), we do not see why those objects should not be able to claim, on behalf of the trust, interest on trust money that the trust has been wrongfully kept out of. Indeed, in *Cochrane v Black* (1855) D 321 at 331, Lord Wood espoused the principle that a beneficiary is entitled to pre-judgment interest where a trustee has misused trust funds in breach of his fiduciary duties. Hence, the Brothers here are, contrary to Sajan's assertion, entitled to claim pre-judgment interest on behalf of the Trust.

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126 Sajan's AD 3 Case at para 97.

158 Second, Sajan asserts that there was considerable delay in the Brothers' commencement of their action against Sajan for breach of trust, since they ought to have found out about the conversion of the Founder's Share and the realisation of the Trust Shares in the Three Struck Off Companies when Sajan provided them with the December 2017 Trust Summary.[127] We consider this objection to be untenable. The period between the Brothers' discovery of the issues with the Trust in May 2018 and the commencement of S 521 in June 2021 was reasonable given the range and complexity of the matters involved.[128] There is thus no merit to the assertion that the Brothers engaged in dilatory tactics in commencing S 521 against Sajan.

Whether the Judge erred in ordering Sajan's removal as trustee

159 The test for whether a trustee should be removed is whether the trustee had shown a lack of honesty, proper capacity to execute his duties or reasonable fidelity, and thereby endangered the trust property (see *Siraj Ansari bin Mohamed Shariff v Juliana bte Bahadin* [2022] SGHC 186 at [81], citing *Yusof bin Ahmad v Hongkong Bank (Singapore) Ltd* [1990] 1 SLR(R) 369 at [10]). In applying this test, the Judge considered multiple factors in coming to his decision that Sajan lacked proper capacity to execute his trustee duties, including: (a) Sajan's exclusion of Devin and Sandeep as beneficiaries in bad faith; (b) Sajan's repeated breaches of his duty of care in exercising his trust powers; (c) Sajan's inability to read balance sheets; and (d) Sajan's unfamiliarity with financial statements and basic accounting concepts. Given the above, the Judge ordered Sajan to be replaced with a professional trustee.

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127 Sajan's AD 3 Case at para 100.

128 Brothers' AD 3 Case at para 152.

160 On appeal, Sajan argues that replacing him as trustee was unnecessary because the Trust Assets now primarily comprise bank account moneys and property interests. This wholly fails to address Sajan's fundamental shortcomings in administering the trust and safeguarding the Trust Assets, which rightfully call into question Sajan's ability to continue to execute his duties as trustee.

161 Next, Sajan argues that in ordering his replacement, the Judge failed to have regard for the wishes of Harkishindas *qua* settlor, as Harkishindas intended for his assets to be administered by his sons.[129] Sajan also cites *Re Wrightson* [1908] 1 Ch 789 ("*Re Wrightson*") as an example showing that a trustee need not be replaced even if he has committed a breach of trust.[130]

162 *Re Wrightson* does not assist Sajan. If anything, the reasoning in *Re Wrightson* was aligned with the established principle that the court's exercise of jurisdiction to remove trustees is guided by considerations of the beneficiaries' interests and the preservation of trust property (at 798). In the present case, having regard to the nature and extent of Sajan's shortcomings, the considerations of the beneficiaries' welfare and the safeguarding of trust property ought to take precedence over any settlor's intention regarding trustee identity.

163 In *Re Wrightson,* a single investment made in breach of trust did not justify the trustees' removal. A substantial proportion of the beneficiaries objected to the removal of the trustees and, importantly, there would be extra expense and loss to the trust estate which would be occasioned by the change of

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129 Sajan's AD 3 Reply at paras 62–65.

130 Sajan's AD 3 Reply at para 60.

trustees. In the circumstances, the court there concluded that it was not necessary for the protection of the trust estate and it would not be in the interests of the beneficiaries if the trustees were removed (at 803). In contrast, Sajan's case involves multiple serious breaches of trust demonstrating bad faith and incompetence. Three of the four named beneficiaries of the Trust have called for his removal. This suffices to distinguish *Re Wrightson* from the present case. In our view, there is a clear case in favour of replacing Sajan as trustee.

Conclusion

164 For the reasons above, we do not think that the Judge's decision in respect of the issues raised in AD 3 was plainly wrong or unsupported by the evidence. Hence, aside from the adjustments to the valuation of the Founder's Share and the Trust Shares in SEPL, we dismiss AD 3 in its entirety.

165 As for AD 4, we allow the appeal on the basis that Sajan's "conversion" of the Founder's Share amounted to a breach of his custodial stewardship duty as well as a breach of his fiduciary duties. Therefore, the appropriate remedy is not to surcharge the Trust account, but to falsify the disposal of the Founder's Share.

166 Accordingly, we find that Sajan is liable for the total sum of $29,985,801.43 in respect of the "conversion" of the Founder's Share and the sale of the Trust Shares in SEPL and LMPL. The breakdown of this total sum is set out in the Annex to this Judgment.

167 As for costs, we are mindful that AD 3 involved challenges to the entire decision while AD 4 concerned a narrower range of issues. We thus order costs

in the amount of $120,000 all-in to the Brothers for both appeals. The usual consequential orders will apply.

Hri Kumar Nair
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Narayanan Sreenivasan *SC*, Muralli Rajaram, Tan Kai Ning Claire and Tan Si Xin Adorabelle (Sreenivasan Chambers LLC) for the appellant in AD/CA 3/2025 and the respondent in AD/CA 4/2025; Thio Shen Yi *SC*, Tang Hang Wu, Koh Li Qun Kelvin (Xu Liqun), R Arvindren, Joshua Phang Shih Ern and Ang Kai Le (TSMP Law Corporation) for the respondents in AD/CA 3/2025 and the appellants in AD/CA 4/2025.

Annex: Breakdown of Sajan's liability to reconstitute the Trust for the "conversion" of the Founder's Share and sale of the Trust Shares in SEPL and LMPL

Event	Parameter	Value
"Conversion" of the Founder's Share	Value of the Founder's Share (see [113] above)	$18,179,480.70
	Value of the profits that ought to have been paid to the Trust on account of the Founder's Share (see [120(d)] above)	$8,775,468.31
	Less value of the Founder's Share which Sajan received in exchange for its sale as an ordinary share	($15.5799)
	Sum which Sajan must reconstitute to the Trust	$26,954,933.43
Sale of the Trust Shares in SEPL	Sum which Sajan must reconstitute to the Trust (see [146] above)	$1,191,015.00

Sale of the Trust Share in LMPL	Sum which Sajan must reconstitute to the Trust (see [146] above)	$1,839,853.00
	Total sum which Sajan must reconstitute to the Trust	**$29,985,801.43**