

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

**[2026] SGHC 117**

Originating Claim No 662 of 2023

Between

- (1) Leow Hock Soon
- (2) Toh Teck Guan

*... Claimants*

And

- (1) Chew Eik Khoon
- (2) Phang Chu Mau
- (3) Chartworth Enterprise  
Singapore Pte. Ltd.

*... Defendants*

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**JUDGMENT**

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[Companies — Oppression — Standing]

[Contract — Misrepresentation — Fraudulent]

[Trusts — Constructive trusts — Institutional constructive trust — Fraud]

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Leow Hock Soon and another**  
**v**  
**Chew Eik Khoon and others**

**[2026] SGHC 117**

General Division of the High Court — Originating Claim No 662 of 2023

Sushil Nair J

1–4, 8–9, 11, 15–18, 22–25, 29, 31 July, 22, 29 September 2025

26 May 2026

Judgment reserved.

**Sushil Nair J:**

**Introduction**

1 HC/OC 662/2023 (“OC 662”) is a claim originally brought by Leow Hock Soon (“Leow”) and Toh Teck Guan (“Toh”) primarily against Chew Eik Khoon (“Chew”) and Phang Chu Mau (“Phang”). These four persons were previously the shareholders and directors of Chartworth Enterprise Singapore Pte Ltd (“Company”). Toh has since withdrawn his claims against Chew and Phang (collectively, “Defendants”) and Leow remains as the sole claimant in OC 662. Leow is seeking relief against the Defendants for fraudulent misrepresentation, minority oppression and breach of trust.

2 After considering the parties’ written submissions and hearing their oral arguments, I allow OC 662 in part. Specifically, I find that Leow has established, on a balance of probabilities, his claim against the Defendants for

breach of trust. I am, however, not satisfied that Leow has established his claims for fraudulent misrepresentation and oppression and dismiss them accordingly.

### **The parties**

3 I begin by introducing the parties.<sup>1</sup> The third defendant – the Company – lies at the centre of this dispute. It operates in the construction industry. The Company was incorporated in 1983 by the uncle of the second claimant, Toh.<sup>2</sup> It subsequently became a dormant company.<sup>3</sup>

4 Sometime in 2003, the following individuals decided – after a suggestion from Toh’s uncle and some discussions – to take over the management of the Company from Toh’s uncle:<sup>4</sup>

- (a) the first claimant, Leow;
- (b) the second claimant, Toh;
- (c) the first defendant, Chew; and
- (d) the second defendant, Phang.

5 I will refer to the four of them collectively as the “Founders”. The Founders were good friends and known to one another before they took over the

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<sup>1</sup> Agreed chronology of events filed on 20 June 2025 (“ACE”).

<sup>2</sup> ACE at p 2 (para 1).

<sup>3</sup> ACE at p 2 (para 2).

<sup>4</sup> ACE at p 2 (para 2); Bundle of AEICs dated 20 June 2025 (“BAEIC”) at pp 4 (para 4), 72–73 (para 7) and 87 (para 7).

running of the Company. They had a close personal relationship and even made joint personal investments together.<sup>5</sup>

6 On 12 December 2003, the Founders were registered as the shareholders and directors of the Company. Each of them contributed equally to the starting capital and held 25% of the shares of the Company. The Founders' respective roles in the Company were as follows:<sup>6</sup>

(a) Chew and Phang were appointed as the Chairman and Managing Director of the Company respectively. They were in charge of the Company's finances and mainly operated out of the Company's main office.

(b) Leow and Toh were in charge of supervising the Company's projects and site operations. They primarily worked at the site offices located at the Company's various construction work sites.

7 Leow and Toh have since ceased to be shareholders and directors of the Company. Currently, Chew and Phang are respectively the Chairman and Managing Director of the Company, and they each own 50% of the Company's shares.<sup>7</sup>

### **The parties' version of events**

8 I turn to set out the version of events as asserted by the various parties.

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<sup>5</sup> ACE at p 2 (paras 5–6).

<sup>6</sup> ACE at p 2 (paras 3–4).

<sup>7</sup> BAEIC at pp 71 (para 2) and 86 (para 2).

9 Preliminarily, I highlight that although OC 662 was originally commenced by both Leow and Toh on 29 September 2023, Toh withdrew his claims against the Defendants on 5 September 2024 pursuant to a settlement agreement.<sup>8</sup> Leow is thus the only remaining claimant in OC 662. Toh is no longer a party to OC 662 and became one of the Defendants’ witnesses after he reached a settlement with the Defendants.

### ***Leow***

10 Leow claims that when the Founders took over the Company, it was agreed and/or mutually understood between them that the Founders would have: (a) equal shareholding and ownership of the Company; (b) equal rights of management; and (c) equal share in the profits of the Company (to be divided by way of directors’ fees or dividends).<sup>9</sup> Moreover, the Company operated as a quasi-partnership based on mutual trust and understanding between the Founders.<sup>10</sup>

### *The Joint Account*

11 In or around 2008, the Founders collectively decided to open a joint bank account (“Joint Account”) as a reserve fund for the Company, to be drawn upon in times of financial emergency.<sup>11</sup> From 2010 to 2016, the Founders contributed a total of \$6m – comprising directors’ fees and/or dividends which the Founders

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<sup>8</sup> ACE at p 7 (paras 35–36).

<sup>9</sup> BAEIC at pp 4–5 (para 5).

<sup>10</sup> Agreed List of Issues filed 20 June 2025 (“ALI”) at p 3.

<sup>11</sup> BAEIC at p 9 (para 15); ACE at p 3 (para 7).

received from the Company – to the Joint Account.<sup>12</sup> Over the years, the funds in the Joint Account were managed by the Defendants.

12 Despite the stated purpose of the Joint Account, there was an agreement between the Founders that the Defendants would invest the moneys in the Joint Account to generate returns.<sup>13</sup> It was nevertheless clearly agreed and understood that any funds from the Joint Account used for investment purposes would be returned subsequently. Furthermore, the practice was for the Defendants to obtain the Founders’ consent for each investment,<sup>14</sup> and there was an express and/or implied agreement between the Founders that no withdrawals from the Joint Account would be made without the Founders’ unanimous consent.<sup>15</sup>

13 In or around 2011, the Founders agreed to cease the use of the Joint Account for investment purposes, upon the Defendants’ advice that the Founders should avoid “gambling” with the Company’s reserve fund.<sup>16</sup>

14 In December 2020, Leow and Toh requested the Defendants to provide them with the bank statements of the Joint Account, to seek assurance that there were sufficient funds to support the Company during the COVID-19 pandemic.<sup>17</sup> Leow and Toh did not have access to the bank statements as they

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<sup>12</sup> BAEIC at p 12 (para 17); ACE at p 3 (para 8).

<sup>13</sup> BAEIC at p 9 (para 15).

<sup>14</sup> BAEIC at p 13 (para 18).

<sup>15</sup> BAEIC at p 26 (para 54).

<sup>16</sup> BAEIC at p 13 (para 19).

<sup>17</sup> BAEIC at p 14 (para 21).

had only been sent to Phang’s residential addresses.<sup>18</sup> The bank statements were, however, not provided to Leow and Toh by the Defendants.

15 In or around the middle of January 2021, the Defendants informed Leow and Toh that there was only \$1m remaining in the Joint Account and that the Company had not been profitable.<sup>19</sup> The Defendants then handed Leow and Toh a cheque for \$250,000 each, stating that the amount was their respective share of the remaining funds in the Joint Account and that there was “no money left” thereafter.<sup>20</sup> This came as a shock to Leow and Toh, as they had trusted the Defendants to safeguard the funds in the Joint Account and the Defendants had repeatedly represented to them that the Joint Account maintained a healthy balance.<sup>21</sup> The Joint Account was later closed on 7 June 2021.<sup>22</sup>

16 Leow and Toh later managed to obtain the bank statements for the Joint Account in January 2023.<sup>23</sup> It was then discovered that, between December 2017 and January 2021, the Defendants had issued a series of cheques from the Company’s bank account and deposited those funds into the Joint Account.<sup>24</sup> These transfers were made without Leow and Toh’s knowledge and/or authorisation. Subsequently, the funds in the Joint Account were withdrawn and paid to the Company, the Defendants, and a third party, IG Asia Pte Ltd (“IG

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<sup>18</sup> BAEIC at p 15 (para 24).

<sup>19</sup> BAEIC at p 14 (para 22).

<sup>20</sup> ACE at p 5 (para 19).

<sup>21</sup> BAEIC at p 14 (para 23).

<sup>22</sup> BAEIC at p 98 (para 31).

<sup>23</sup> BAEIC at p 24 (para 48).

<sup>24</sup> BAEIC at pp 26–27 (para 55).

Asia”).<sup>25</sup> These withdrawals were similarly made without Leow and Toh’s knowledge and/or authorisation. A summary of these transactions is as follows:<sup>26</sup>

<b>Date</b>	<b>Deposits of the Company’s funds into the Joint Account</b>	<b>From</b>	<b>Withdrawals from the Joint Account</b>	<b>To</b>
26/12/2017	\$1,000,000	Company		
02/01/2018			\$1,000,000	Company
26/12/2018	\$1,000,000	Company		
03/01/2019			\$1,000,000	Company
29/05/2019			\$1,000,000	Company
23/12/2019	\$2,000,000	Company		
02/01/2020			\$1,000,000	Company
13/01/2020			\$1,000,000	Company
17/04/2020	\$1,000,000	Company		
21/04/2020			\$800,000	IG Asia
08/06/2020	\$1,000,000	Company		
02/07/2020			\$500,000	Phang
13/07/2020			\$500,000	IG Asia

<sup>25</sup> BAEIC at p 25 (para 51(a)) and pp 26–27 (para 55).

<sup>26</sup> BAEIC at p 27 (para 55); ACE at p 4 (paras 11–12); Defendants’ closing submissions dated 10 September 2025 (“DCS”) at para 343(a).

17/08/2020			\$200,000	Phang
28/08/2020	\$1,000,000	Company		
02/09/2020			\$800,000	Phang
16/09/2020			\$350,000	Phang
05/01/2021	\$1,000,000	Company		
07/01/2021			\$1,000,000	Chew
<b>Total</b>	<b>\$8,000,000</b>		<b>\$9,150,000</b>	

17 In addition to the withdrawals listed above, Leow asserts that, on 7 June 2017, the Defendants signed and issued two cheques from the Joint Account in favour of each of them personally.<sup>27</sup> Each cheque was for the sum of \$400,000.<sup>28</sup> These cheques had also been issued without the knowledge and/or authorisation of Leow and Toh.

#### *Leow's departure from the Company*

18 On 23 March 2021, at a meeting of the Founders, the Defendants informed Leow and Toh that the Company had not been profitable in recent years and that it had borrowed substantial sums, including loans from banks and a personal loan from Chew.<sup>29</sup> Phang also informed the Founders that he intended to wind up the Company within the next three years. Separately, Chew informed Leow that he was planning to leave the Company soon and suggested that Leow do the same, to reduce expenses and allow the Company to survive until its

<sup>27</sup> ACE at p 4.

<sup>28</sup> BAEIC at p 28 (para 57).

<sup>29</sup> BAEIC at p 17 (para 28); ACE at p 5 (paras 21–22).

eventual closure.<sup>30</sup> Leow informed the Defendants that he would consider doing so.<sup>31</sup>

19 At another meeting of the Founders on 20 April 2021, Chew informed the Founders that he had resigned from the Company and sold his shareholding of 25% of the Company's shares for \$2.5m.<sup>32</sup> Chew then urged Leow to do the same, and showed Leow a letter dated 20 April 2021 addressed to the Company ("Chew's Letter") (which had been signed and acknowledged by Phang on behalf of the Company):<sup>33</sup>

**NOTICE OF DESIRE TO TENDER SHARES IN CHARTWORTH ENTERPRISE SINGAPORE PTE. LTD. (THE "COMPANY") FOR SALE TO THE OTHER EXISTING SHAREHOLDERS**

Pursuant to Articles 28 and 29 of the Company's Constitution, please accept this letter as formal notice of my desire to tender my 25% shareholding in the Company for sale to the other existing shareholders at a fair value of S\$2.5 million and other terms to be agreed upon by the relevant interested parties. Further, I am agreeable for the sale consideration to be paid out in twelve monthly instalments for a period of one year.

My intention is to resign as Chairman and Director from the Company upon completion of the sale. Nevertheless, in order to ensure a smooth transition, I am willing to continue to work as a consultant to the Company for one additional year subject to an increment of S\$5,000.00 to my current monthly remuneration. The Company may terminate the consultancy before the one year is up by serving me one month's notice in writing or payment in lieu.

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<sup>30</sup> BAEIC at pp 17–18 (para 28).

<sup>31</sup> BAEIC at p 18 (para 29).

<sup>32</sup> BAEIC at p 18 (para 30).

<sup>33</sup> BAEIC at pp 18–19 (paras 30–31); ACE at p 5 (para 23); Core bundle dated 20 June 2025 ("CB") at p 1382.

Leow claims that he could not fully understand the contents of Chew’s Letter due to his limited proficiency in English.<sup>34</sup> He thus relied on Chew’s verbal explanation in Mandarin that Chew had resigned from the Company and sold his shareholding.

20 As a result, Leow takes the position that the Defendants had made the following representations (collectively, “Representations”) to him:<sup>35</sup>

- (a) the Company had not been profitable;
- (b) Chew had sold his 25% shareholding in the Company for \$2.5m;
- (c) Chew had resigned from his roles as Chairman and director of the Company; and
- (d) the Company faced imminent closure.

21 In reliance on the Representations, Leow asked his daughter, Leow Chew Loo (“Chew Loo”), to prepare a letter to the Company that was similar to Chew’s Letter. Leow handed the letter to the Defendants on 26 April 2021.<sup>36</sup> The letter (“Leow’s Letter”) stated as follows:<sup>37</sup>

**NOTICE OF THE DESIRE TO TENDER SHARES IN  
CHARTWORTH ENTERPRISE SINGAPORE PTE. LTD. (THE  
“COMPANY”) FOR SALE TO THE OTHER EXISTING  
SHAREHOLDERS**

Kindly accept this letter as a formal notice of my desire to tender my 25% shareholding in the Company for sale to the other

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<sup>34</sup> BAEIC at p 19 (para 32).

<sup>35</sup> Set Down Bundle dated 20 June 2025 (“SDB”) at p 15 (para 18).

<sup>36</sup> ACE at p 6 (paras 24–25).

<sup>37</sup> CB at p 1383.

existing shareholders at a fair value of S\$2.5 million to be paid out in one lump-sum.

22 In or around May 2021, Phang asked Leow to sign three sale and purchase agreements relating to the sale of Leow’s shares in the Company:<sup>38</sup>

(a) a sale and purchase agreement which provided that the Company would purchase 3,200,000 of Leow’s shares for \$2m, and Phang would purchase 800,000 of Leow’s shares for \$500,000 (“First SPA”);

(b) a sale and purchase agreement which provided that Phang would purchase 3,200,000 of Leow’s shares for \$2m (“Second SPA”); and

(c) a sale and purchase agreement which provided that Toh would purchase 800,000 of Leow’s shares for \$500,000 (“Third SPA”).

For the avoidance of doubt, Leow’s shareholding of 25% of the Company’s shares comprised 4,000,000 shares in total.

23 On 17 May 2021, Phang handed Leow six post-dated cheques for a total amount of \$2.5m drawn on the Company’s account, in return for the sale of his shares in the Company.<sup>39</sup> The cheques were signed by Phang and Toh on behalf of the Company. Leow claims that Toh was asked to sign the cheques, as Chew was no longer able to do so given that he had left the Company.<sup>40</sup>

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<sup>38</sup> BAEIC at p 20 (para 34); ACE at p 6 (paras 26–27).

<sup>39</sup> ACE at p 6 (para 28).

<sup>40</sup> BAEIC at p 21 (para 36(c)).

24 On 31 May 2021, Leow transferred 3,200,000 of his shares in the Company to Phang, and the remaining 800,000 of his shares to Toh.<sup>41</sup> Leow then ceased to be a shareholder of the Company.

25 Leow subsequently discovered that the Representations were false and had been made by the Defendants without any genuine belief in their truth:<sup>42</sup>

(a) Chew had not left the Company or resigned as a director of the Company as he had previously represented and had not sold his shares.<sup>43</sup> Chew had even increased his shareholding in the Company from 25% to 35% by purchasing 1,600,000 shares from Phang for \$1m.<sup>44</sup>

(b) The Company was still profitable and was not facing imminent closure.<sup>45</sup>

26 Leow also claims that his 25% shareholding in the Company was in fact worth approximately \$5.575m at the time he sold them.<sup>46</sup> He thus sold his shares at an amount that was significantly below its fair value (*ie*, \$2.5m).

*The Alleged Site Expenses and Alleged FW Bonuses*

27 Separately, after reviewing the Company's records, Leow discovered that the Defendants had: (a) issued cash cheques from the Company's bank

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<sup>41</sup> ACE at p 6 (para 29).

<sup>42</sup> BAEIC at p 21 (para 38).

<sup>43</sup> BAEIC at p 21 (para 37).

<sup>44</sup> BAEIC at p 22 (para 39); ACE at p 7 (paras 30–31).

<sup>45</sup> BAEIC at pp 23–24 (paras 44–46).

<sup>46</sup> BAEIC at p 41 (para 74).

account amounting to \$6,401,305 for alleged “site expenses” between 31 January 2013 and 11 November 2020 (“Alleged Site Expenses”); and (b) issued cash cheques from the Company’s bank account amounting to \$3,934,082.50 for alleged “foreign worker bonuses” between 25 January 2010 to 6 December 2019 (“Alleged FW Bonuses”).<sup>47</sup>

28 In respect of the Alleged Site Expenses, Leow and Toh were not aware of them and never directed or authorised the Defendants to issue those cash cheques.<sup>48</sup> In respect of the Alleged FW Bonuses, Leow and Toh did not instruct or authorise the Defendants to issue the cash cheques for the Alleged FW Bonuses.<sup>49</sup> Consequently, Leow claims that the cash cheques for the Alleged Site Expenses and the Alleged FW Bonuses have been misappropriated by the Defendants.<sup>50</sup>

### ***Chew and Phang***

29 The Defendants take the position that there was no agreement and/or understanding between the Founders as alleged by Leow (see [10] above).<sup>51</sup> Leow did not have any legitimate expectation of: (a) equal shareholding, ownership, profits and access to information of the Company in perpetuity; and (b) managing the Company as equals with the Defendants when he was a

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<sup>47</sup> BAEIC at pp 25 (paras 51(b)–51(c)), 32 (para 61) and 37 (para 68); ACE at p 3 (paras 9–10).

<sup>48</sup> BAEIC at p 32 (para 61).

<sup>49</sup> BAEIC at p 38 (para 71).

<sup>50</sup> BAEIC at pp 36–37 (para 67) and 40 (para 72).

<sup>51</sup> ALI at p 2.

director and shareholder of the Company.<sup>52</sup> The Company also did not operate as a quasi-partnership.<sup>53</sup>

*The Joint Account*

30 According to the Defendants, the Joint Account was established to facilitate the making of joint personal investments by the Founders.<sup>54</sup> The investments were generally made by Phang on behalf of the Founders, who would update and discuss with the other Founders regarding the investment strategy and the status of the investments.<sup>55</sup> The investments were therefore made with the knowledge and consent of all the Founders.<sup>56</sup> Furthermore, each of the Founders had full and unrestricted access to the bank statements of the Joint Account.<sup>57</sup>

31 The Joint Account was also used by the Founders to loan money to the Company from time to time. The loans made to the Company over the years were all repaid to the Joint Account.<sup>58</sup>

32 In or around April 2020, the Founders collectively agreed to open a trading account with IG Asia (“IG Trading Account”) to invest in contracts-for-differences on margin.<sup>59</sup> They nominated Phang to be the account holder for the

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<sup>52</sup> ALI at p 3.

<sup>53</sup> ALI at p 3.

<sup>54</sup> BAEIC at p 91 (para 16).

<sup>55</sup> BAEIC at p 91 (para 18).

<sup>56</sup> BAEIC at p 92 (para 20).

<sup>57</sup> BAEIC at p 91 (para 17).

<sup>58</sup> BAEIC at pp 74 (para 10) and 93 (para 22).

<sup>59</sup> BAEIC at pp 75 (para 12) and 94 (para 23).

IG Trading Account.<sup>60</sup> The Founders agreed to transfer \$800,000 from the Joint Account into the IG Trading Account as initial capital for their joint investments (see [16] above).<sup>61</sup>

33 The Defendants assert that Phang was occasionally required to transfer his own moneys into the IG Trading Account from time to time to facilitate the Founders' investment strategy.<sup>62</sup> He would then seek reimbursement from the Joint Account. Phang made the following top-ups from his personal bank account to the IG Trading Account (which were later returned to him *via* the Joint Account – see [16] above):<sup>63</sup>

Date	Amount
02/07/2020	
09/07/2020	\$500,000
12/07/2020	
17/08/2020	\$200,000
18/08/2020	
20/08/2020	\$800,000
21/08/2020	
28/08/2020	
16/09/2020	\$350,000

<sup>60</sup> ACE at p 4 (para 13).

<sup>61</sup> BAEIC at p 95 (para 25); ACE at p 4 (para 14).

<sup>62</sup> BAEIC at p 95 (para 26).

<sup>63</sup> ACE at p 5 (para 16); DCS at para 343(b).

17/09/2020	
<b>Total</b>	<b>\$1,850,000</b>

34 The relationship between the Founders subsequently soured as a result of the trading losses suffered *via* the IG Trading Account.<sup>64</sup> When additional funds were needed to prevent the Founders' trading positions in the IG Trading Account from being force-closed, the Founders agreed to take short-term personal loans from the Company (which were transferred into the Joint Account), as Leow and Toh were not willing to top up the IG Trading Account with their personal funds. The loans from the Company were later repaid. A summary of these loans and how they were repaid is as follows (see also [16] above):<sup>65</sup>

<b>Date</b>	<b>Loan</b>	<b>Remarks</b>
28/08/2020	\$1,000,000	Repaid by Chew on behalf of the Founders on 14/12/2020. Chew claims that he reimbursed himself for the repayment he made by drawing a cheque from the Joint Account on or around 07/01/2021.
05/01/2021	\$1,000,000	Repaid by the Defendants on behalf of the Founders on 24/05/2021 and 08/07/2021.

35 In or around September 2020, Leow was not keen to continue contributing personal funds to the IG Trading Account due to the losses suffered

<sup>64</sup> BAEIC at p 76 (para 15).

<sup>65</sup> BAEIC at pp 74 (para 11) and 96 (paras 27–28); ACE at p 5 (para 17).

by the Founders thus far.<sup>66</sup> Phang therefore informed the Founders that he would top up the IG Trading Account with his own funds to prevent forced closures of existing open trades. A summary of the top-ups made by Phang from his personal bank account to the IG Trading Account (for which Phang did not seek reimbursement) is as follows:<sup>67</sup>

<b>Date</b>	<b>Amount</b>
07/07/2020	\$200,000
17/09/2020	\$50,000
17/11/2020	\$200,000
18/11/2020	\$200,000
24/11/2020	\$200,000
26/11/2020	\$200,000
27/11/2020	\$200,000
07/12/2020	\$200,000
03/01/2021	\$100,000
04/01/2021	\$100,000
13/01/2021	\$200,000
<b>Total</b>	<b>\$1,850,000</b>

36 In or around January 2021, the Defendants informed Leow and Toh that there was slightly over \$500,000 in the Joint Account and approximately

<sup>66</sup> BAEIC at p 96 (para 29).

<sup>67</sup> DCS at para 343(c); BAEIC at p 96–97 (para 29).

\$440,000 in the IG Trading Account. The Founders then agreed that the \$500,000 in the Joint Account would be split between Leow and Toh, while the Defendants would utilise the \$440,000 in the IG Trading Account to continue trading in their own capacities.<sup>68</sup> The Joint Account was later closed on 7 June 2021.<sup>69</sup>

*Leow's departure from the Company*

37 Between 2020 and 2021, the Company was facing cash flow issues due to the COVID-19 pandemic,<sup>70</sup> and it had to undertake various “mitigating factors” to survive.<sup>71</sup> Phang asserts that he had informed the other Founders about the Company’s financial challenges, but he never represented that the Company was facing “imminent closure” as alleged by Leow.<sup>72</sup>

38 At a meeting of the Founders on 23 March 2021, Phang reiterated to the Founders that the Company was facing cash flow problems, and handed the other Founders a copy of the Company’s financial statements and its bank statements.<sup>73</sup> Chew then informed the Founders that he wanted to leave the Company, and Leow said he wanted to do so the same.<sup>74</sup> However, as Phang did not have sufficient funds to buy all of Chew and Leow’s shares, Chew agreed to delay his departure by one year and let Leow leave the Company first. The

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<sup>68</sup> BAEIC at p 97 (para 30).

<sup>69</sup> BAEIC at p 98 (para 31).

<sup>70</sup> BAEIC at p 98 (paras 32–33).

<sup>71</sup> ACE at p 5 (para 15).

<sup>72</sup> BAEIC at p 99 (para 34).

<sup>73</sup> BAEIC at pp 77 (para 17) and 100 (para 37); ACE at p 5 (para 20).

<sup>74</sup> BAEIC at pp 77 (para 18) and 101 (para 39).

Founders also had a discussion to determine the value of each of their shareholding in the Company, and they agreed that each of the Founders' 25% shareholding was worth \$2,500,000.<sup>75</sup>

39 The Founders had another meeting on 20 April 2021, where Chew produced a letter to the other Founders (*ie*, Chew's Letter), reflecting his desire to sell his shareholding in the Company and resign as Chairman and director of the Company (see [19] above).<sup>76</sup> Phang acknowledged receipt of Chew's Letter on behalf of the Company.<sup>77</sup>

40 On 26 April 2021, Leow passed Phang a letter that was similar in terms to Chew's Letter (*ie*, Leow's Letter) (see [21] above).<sup>78</sup>

41 In or around May 2021, Phang asked Leow to sign the First SPA to facilitate his departure from the Company.<sup>79</sup> However, on the advice of the Company's corporate secretary, Phang subsequently prepared and handed Leow the Second SPA and Third SPA.<sup>80</sup> Phang then informed Leow that the First SPA will be superseded, and that the payment for Leow's shares will be paid in instalments (and not in one lump sum as requested by him). Leow did not object to the new arrangement.<sup>81</sup>

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<sup>75</sup> BAEIC at pp 78 (para 19) and 101 (para 40).

<sup>76</sup> BAEIC at pp 78–79 (paras 20–21) and 102 (para 41).

<sup>77</sup> BAEIC at p 102 (para 41).

<sup>78</sup> BAEIC at p 102 (para 43).

<sup>79</sup> BAEIC at pp 103 (para 44).

<sup>80</sup> BAEIC at pp 103–104 (paras 45–47).

<sup>81</sup> BAEIC at pp 104–105 (paras 47–49).

42 In or around 17 May 2021, Leow passed Phang the signed Second SPA and Third SPA, as well as his resignation letter. Phang then handed Leow six post-dated cheques which had been signed by Phang and Toh.<sup>82</sup>

43 Phang subsequently managed to persuade Chew to remain in the Company.<sup>83</sup> Chew and Phang then signed a sale and purchase agreement which provided that Phang would sell 1,600,000 of his shares in the Company to Chew for \$1m.<sup>84</sup> Toh was later informed about this and did not express any objections.<sup>85</sup>

44 Chew further asserts that he has met with Leow multiple times since Leow's departure from the Company, but Leow has never asked about the state of the Company or questioned why Chew is still a shareholder and director of the Company.<sup>86</sup>

*The Alleged Site Expenses and Alleged FW Bonuses*

45 In respect of the Alleged Site Expenses, the Defendants claim that they were genuine and justified payments made to cover expenses incurred at the Company's project sites.<sup>87</sup> In respect of the Alleged FW Bonuses, the Defendants claim that they were genuine and justified incentives awarded to the

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<sup>82</sup> BAEIC at pp 104–105 (para 49).

<sup>83</sup> BAEIC at pp 79 (para 23) and 105 (para 50).

<sup>84</sup> BAEIC at p 105 (para 51); ACE at p 7 (paras 30–31).

<sup>85</sup> BAEIC at pp 80 (para 25) and 106 (para 52).

<sup>86</sup> BAEIC at pp 80–81 (para 26).

<sup>87</sup> ALI at p 7.

Company’s foreign workers,<sup>88</sup> and that the cash cheques for the Alleged FW Bonuses were in fact used to pay bonuses to the Company’s foreign workers.<sup>89</sup>

### **Issues to be determined**

46 In this case, Leow is claiming against the Defendants on the following grounds: (a) breach of trust; (b) unjust enrichment (in the alternative to the claim for breach of trust); (c) fraudulent misrepresentation; and (d) oppression under s 216 of the Companies Act 1967 (2020 Rev Ed) (“Companies Act”).<sup>90</sup>

47 Given the parties’ respective positions and submissions, the following issues arise for my determination:

- (a) whether Leow’s claim for fraudulent misrepresentation (“Misrepresentation Claim”) against the Defendants is made out;
- (b) whether Leow’s claim for minority oppression under s 216 of the Companies Act (“Oppression Claim”) is made out; and
- (c) whether Leow’s claim for breach of trust (“Breach of Trust Claim”) – or, in the alternative, for unjust enrichment – is made out.

### **The Misrepresentation Claim**

48 I start with the Misrepresentation Claim. The following elements must be established for the Defendants to be liable for fraudulent misrepresentation

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<sup>88</sup> ALI at p 7.

<sup>89</sup> BAEIC at p 109 (para 60).

<sup>90</sup> Claimant’s closing submissions dated 10 September 2025 (“CCS”) at paras 316 and 362.

(*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 (“*Panatron*”) at [14], citing *Bradford Building Society v Borders* [1941] 2 All ER 205):

First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

49 To recapitulate, Leow claims that the Defendants made the following Representations to him (see [20] above):<sup>91</sup>

(a) the Company had not been profitable and the Company faced imminent closure (“Company Representations”); and

(b) Chew had sold his 25% shareholding in the Company for \$2.5m and had resigned from his roles as Chairman and director of the Company (“Chew Representations”).

50 Leow takes the position that the Company Representations were made by the Defendants at a meeting of the Founders on 23 March 2021, while the Chew Representations were made at another meeting of the Founders on 20 April 2021.<sup>92</sup> He claims that the Representations were fraudulent as they were deliberate misstatements of material facts.<sup>93</sup> The Defendants also made the Representations with the intention that they would be acted on by Leow.<sup>94</sup> Leow

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<sup>91</sup> SDB at p 15 (para 18); CCS at paras 199 and 370.

<sup>92</sup> SDB at pp 15–17 (para 19); BAEIC at pp 17–18 (paras 28 and 30).

<sup>93</sup> CCS at paras 239, 371 and 375–376.

<sup>94</sup> CCS at para 377.

subsequently acted in reliance on the Representations and suffered damage in doing so.<sup>95</sup> Specifically, Leow sold his 25% shareholding in the Company at a significant undervalue. Leow further contends that the Defendants made the Representations with the knowledge that they were false.<sup>96</sup>

51 The Defendants take the position that they never made the Company Representations to Leow.<sup>97</sup> According to the Defendants, they only represented to Leow that the Company was facing cash flow issues.<sup>98</sup> The Defendants further contend that they did not make the Chew Representations to Leow. They assert that Chew only informed the Founders of his *intention* to leave the Company, and Chew subsequently passed the Founders a letter to indicate his *intention* to sell his shares in the Company and resign as Chairman and director of the Company, *ie*, Chew’s Letter (see [19] above).<sup>99</sup>

52 I make an important point before I deal with the parties’ submissions. The onus is on Leow to produce more cogent evidence in order to successfully establish the Misrepresentation Claim against the Defendants on a balance of probabilities (see *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 (“*Alwie Handoyo*”) at [161]). This flows from the fact that an allegation of fraud is a serious one and an award of damages for fraudulent misrepresentation covers a wide ambit (*Anna Wee* at [30]–[31]). In *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR(R) 263 at [14], the Court of Appeal stated as follows:

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<sup>95</sup> CCS at para 378–382.

<sup>96</sup> CCS at paras 383–384.

<sup>97</sup> Defendants’ closing submissions dated 10 September 2025 (“DCS”) at para 69.

<sup>98</sup> DCS at para 108.

<sup>99</sup> DCS at para 69.

... Therefore, we would reiterate that the standard of proof in a civil case, including cases where fraud is alleged, is that based on a balance of probabilities; but the more serious the allegation, the more the party, on whose shoulders the burden of proof falls, may have to do if he hopes to establish his case.

***The Defendants did not make and Leow did not act in reliance on the Company Representations***

53 I deal first with the Company Representations (see [49(a)] above). In my view, Leow has not pointed to sufficient evidence to show, on a balance of probabilities, that the Defendants made the Company Representations to him. The evidence in fact reflects otherwise. It is clear that Leow knew that the Company remained profitable up until 2020, as he was directly involved in the Company’s business and operations.<sup>100</sup> Leow stated as follows in his affidavit of evidence-in-chief (“AEIC”):<sup>101</sup>

Between 2013 and 2020, the Company flourished. It secured numerous government project tenders, and from my direct involvement in the Company’s operations, it was clear to me that the business remained profitable during this period.

54 Any representation by the Defendants at the meeting on 23 March 2021 that the Company had not been profitable would have clearly contradicted Leow’s personal knowledge about the Company’s finances.<sup>102</sup> It is difficult to see how the Defendants could have made such a claim about the Company’s financial situation, especially after they handed Leow the Company’s audited financial statements from 2003 to 2020 at that same meeting.<sup>103</sup> Indeed, Leow

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<sup>100</sup> BAEIC at p 13 (para 20); Agreed bundle of documents dated 20 June 2025 (“ABOD”) at p 3791.

<sup>101</sup> BAEIC at p 13 (para 20).

<sup>102</sup> Notes of Evidence dated 2 July 2025 (“NE 020725”) at p 25:20–21; DCS at paras 102–103.

<sup>103</sup> BAEIC at p 15 (para 26).

accepts that the financial statements would have given him the full picture of the Company's financial health.<sup>104</sup> Any representation by the Defendants that the Company had been unprofitable would have been plainly inconsistent with the Company's financial statements. It is inconceivable that the Defendants would have informed Leow that the Company had not been profitable and yet provide Leow with the relevant documents which show otherwise.

55 Leow nevertheless appears to take the position that he was not able to understand the Company's financial statements, and he trusted the Defendants' statements to him regarding the Company not being profitable.<sup>105</sup> I do not accept Leow's submission. Even if Leow could not understand financial statements, there was nothing preventing him from seeking the help of others (*eg*, his wife or an external accountant) to interpret the Company's financial statements.<sup>106</sup> Further, on Leow's own case, he had requested the Defendants to provide him with the bank statements of the Company and the Joint Account as he wanted to be reassured that there were sufficient funds to support the Company through the COVID-19 pandemic.<sup>107</sup> If it was indeed the case that Leow was content with trusting the Defendants' explanations regarding the Company's financial position, there would have been no need for Leow to request for the bank statements in the first place. Moreover, as previously mentioned, Leow knew that the Company had been profitable all along (see [53] above). Thus, I find it highly unlikely that Leow would not have verified the Defendants' claim that the Company was not profitable by checking the contents of the Company's

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<sup>104</sup> NE 020725 at p 25:1–3.

<sup>105</sup> NE 020725 at p 26:16–18; BAEIC at p 17 (para 27).

<sup>106</sup> Notes of Evidence dated 1 July 2025 (“NE 010725”) at p 19:5–16; NE 020725 at p 29:13–15.

<sup>107</sup> BAEIC at pp 14–15 (paras 21 and 25).

audited financial statements. This, in my view, points towards the conclusion that the Defendants did not represent to Leow that the Company had not been profitable.

56 Leow further claims that: (a) at the Founders' meeting on 23 March 2021, Chew showed him a photograph of a cheque to prove that Chew had loaned \$1m to the Company as the Company was in financial difficulty;<sup>108</sup> and (b) the Defendants made it seem as though the funds in the Joint Account had been depleted by the Company's poor performance during the COVID-19 pandemic.<sup>109</sup> Leow thus submits that these acts by the Defendants were meant to bolster the representation that the Company had not been profitable. However, this submission misses the point. In my view, what is ultimately material is that the Defendants provided Leow with the Company's audited financial statements at the meeting on 23 March 2021, and those statements clearly show that the Company remained profitable in 2020 despite the impact of the COVID-19 pandemic (see [54] above). Consequently, I find it difficult to accept Leow's claim that the Defendants had represented to him that the Company had not been profitable.

57 As to the representation that the Company faced imminent closure, I find it equally unlikely that the Defendants made such a representation to Leow. As pointed out by the Defendants, Leow's evidence – that Phang had informed the Founders that he intended to wind up the Company within the next three years – sits uneasily with the alleged misrepresentation by the Defendants that the

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<sup>108</sup> CCS at paras 213 and 217; BAEIC at p 17 (para 28).

<sup>109</sup> CCS at para 201; BAEIC at p 14 (para 22).

Company faced *imminent* closure.<sup>110</sup> Furthermore, there was no factual basis for the Defendants to have represented that the Company faced imminent closure, as the Company remained profitable in 2020 despite the disruptions caused to the construction industry by the COVID-19 pandemic.<sup>111</sup>

58 Given my finding that Leow has failed to establish that the Defendants made the Company Representations to him, there is strictly speaking no need for me to consider whether the other elements of fraudulent misrepresentation have been established on the facts in relation to the Company Representations (see [48] above).

59 Notwithstanding that, I add that I would not have found that Leow has proved that he relied on the Company Representations (see [65] below), even if I assumed that the Defendants had made the Company Representations to him. This is because Leow accepts that he knew that the Company was still profitable up until 2020 (see [53] above).<sup>112</sup> In other words, on his own evidence, and even if the Company Representations had been made to him, Leow knew that the Defendants were making false representations when they informed him that the Company was not profitable and faced imminent closure. Moreover, contrary to Leow's assertion,<sup>113</sup> I find it to be very unlikely that Leow trusted the Defendants' representations to him regarding the Company's financial position and future prospects. Leow claims that him and Toh requested access to the bank statements of the Company and the Joint Account in December 2020, but

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<sup>110</sup> DCS at para 100.

<sup>111</sup> ABOD at p 3791.

<sup>112</sup> DCS at paras 215 and 217.

<sup>113</sup> Notes of Evidence dated 3 July 2025 ("NE 030725") at p 2:8–26.

the Defendants failed to provide them with the bank statements.<sup>114</sup> Leow also claims that, when the Defendants informed him and Toh that the funds in the Joint Account had been depleted as the Company had not been profitable, he was “shocked” as it was “entirely inconsistent with the Defendants’ repeated representations that the [Joint Account] maintained a healthy balance”.<sup>115</sup> In the circumstances, it is difficult to believe Leow’s claim that he still reposed trust in the Defendants *vis-à-vis* the Company’s finances,<sup>116</sup> especially considering the fact that Leow’s personal knowledge was that the Company remained profitable. Indeed, I find it to be more likely that Leow would have independently verified whether the Company Representations were true, as the Company’s audited financial statements were given to him by the Defendants and were readily accessible to him. In the final analysis, even if the Defendants had made the Company Representations to Leow (which I have determined has not been established), I find that Leow knew that the Company was still profitable and was not facing imminent closure, *ie*, that the Company Representations were false. It is thus difficult to believe that Leow was induced by and relied upon the Company Representations as a matter of fact (see *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] 2 Lloyd’s Rep 511 (“*Peekay*”) at [40]; see also [72]–[75] below).

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<sup>114</sup> BAEIC at pp 14–15 (para 21 and 25).

<sup>115</sup> BAEIC at pp 14–15 (paras 22–23).

<sup>116</sup> Notes of Evidence dated 8 July 2025 (“NE 080725”) at p 47:23–31.

***The Defendants did not make and Leow did not act in reliance on the Chew Representations***

60 I deal next with the Chew Representations (see [49(b)] above). The Defendants assert that they never made the Chew Representations to Leow.<sup>117</sup> However, Leow submits that the following events, among other things, show that the Defendants made the Chew Representations to him: (a) Chew was absent at the meetings when the First, Second and Third SPAs were signed;<sup>118</sup> and (b) Toh, instead of Chew, signed the First SPA on behalf of the Company and approved the payment vouchers for the post-dated cheques given to Leow on 17 May 2021.<sup>119</sup> Leow’s position is that these events were manufactured by the Defendants to convey to him and reinforce “the clear impression that Chew had already exited the Company”.<sup>120</sup> Leow also claims that the First SPA was “designed to mislead him into believing that Chew had already departed from the Company”.<sup>121</sup>

61 Having considered the evidence, I am not satisfied that Leow has shown, on a balance of probabilities, that the Defendants made the Chew Representations to him. To recapitulate, Leow’s case is that, at a Founders’ meeting on 20 April 2021, Chew made the Chew Representations to Leow when he “informed [the Founders] that he had resigned from the Company and sold his 25% shareholding for S\$2.5 million”.<sup>122</sup> However, I am of the view that the

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<sup>117</sup> DCS at para 59.

<sup>118</sup> CCS at paras 228 and 235.

<sup>119</sup> CCS at paras 233 and 235.

<sup>120</sup> CCS at para 235.

<sup>121</sup> CCS at para 221.

<sup>122</sup> SDB at p 16 (para 19.2); BAEIC at p 18 (para 30).

specific events and circumstances referred to by Leow (see [60] above) do not sufficiently support Leow's case that the Chew Representations were made to him at that specific meeting of the Founders. This is because such a representation would have stood in clear contradiction to the express wording of Chew's Letter, *ie*, the letter dated 20 April 2021 which Chew showed Leow at that same meeting (see [19] above). I reproduce Chew's Letter in full again for convenience:

**NOTICE OF *DESIRE* TO TENDER SHARES IN CHARTWORTH ENTERPRISE SINGAPORE PTE. LTD. (THE "COMPANY") FOR SALE TO THE OTHER EXISTING SHAREHOLDERS**

Pursuant to Articles 28 and 29 of the Company's Constitution, please accept this letter as formal notice of my *desire to tender my 25% shareholding in the Company for sale* to the other existing shareholders at a fair value of S\$2.5 million and other terms to be agreed upon by the relevant interested parties. Further, I am agreeable for the sale consideration to be paid out in twelve monthly instalments for a period of one year.

*My intention is to resign as Chairman and Director from the Company upon completion of the sale.* Nevertheless, in order to ensure a smooth transition, I am willing to continue to work as a consultant to the Company for one additional year subject to an increment of S\$5,000.00 to my current monthly remuneration. The Company may terminate the consultancy before the one year is up by serving me one month's notice in writing or payment in lieu.

[emphasis added]

62 Chew's Letter clearly states that Chew *intended* to sell his 25% shareholding in the Company for \$2.5m and that he *intended* to resign as Chairman and director of the Company thereafter. This does not cohere with Leow's assertion that Chew had stated, at the meeting on 20 April 2021, that he had resigned from the Company and sold his shareholding. This was accepted

by Leow in his AEIC and during cross-examination.<sup>123</sup> In my view, if Chew had made the Chew Representations to Leow, there was no reason why the wording of Chew’s Letter would not have been framed in similar terms. In other words, Chew’s Letter would simply have stated that Chew had *already* sold his 25% shareholding in the Company for \$2.5m and resigned from his roles as Chairman and director of the Company. The circumstances thus point away from a finding that Chew made the Chew Representations to Leow.

63 Leow nevertheless claims that he did not fully understand the contents of Chew’s Letter due to his limited proficiency in English, and he just went along with what Chew had explained to him at that point in time.<sup>124</sup> There was, however, nothing preventing Leow from taking a photo of Chew’s Letter and seeking the assistance of a third party with the translation of its contents – which was what in fact happened.<sup>125</sup> Leow took a photo of Chew’s Letter after it was shown to him at that Founders’ meeting and his daughter, Chew Loo, later explained the contents of Chew’s Letter to him in Mandarin. In this regard, Chew Loo testified that she read through Chew’s Letter and explained its contents to Leow.<sup>126</sup> It follows that Leow would have been aware that Chew’s Letter only stated that Chew intended to sell his shares and resign from his roles in the Company, and not that Chew had already done so (see [19] above). In the circumstances, the evidence is inconsistent with Chew having made the Chew Representations (which Leow asserts he did). Leow took a photo of Chew’s Letter, had his daughter explain it to him, and asked her to draft a similar

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<sup>123</sup> NE 020725 at p 31:11–13; BAEIC at p 19 (para 32).

<sup>124</sup> NE 020725 at p 31:9–10; BAEIC at p 19 (para 32).

<sup>125</sup> NE 020725 at pp 29:26–30:1.

<sup>126</sup> Notes of Evidence dated 25 July 2025 (“NE 250725”) at p 85:16–18.

letter,<sup>127</sup> ie, Leow's Letter (see [21] above). She did so, but with some amendments that she discussed with Leow.<sup>128</sup> In my view, if the Chew Representations – which conflicted with the wording of Chew's Letter – had in fact been made, Leow would have raised them with Chew at that time instead of proceeding to prepare Leow's Letter. That he did not do so is consistent with the Chew Representations not having been made.

64 In any event, even if I were wrong on the issue of whether the Chew Representations were made to Leow, I would not have found that Leow has successfully made out the Misrepresentation Claim in respect of the Chew Representations. This is because, even if I take Leow's case at its highest and accept that the Defendants did make the Chew Representations to him, I do not think that Leow has proved on a balance of probabilities that he acted in reliance on the Chew Representations when he sold his 25% shareholding and ceased to be a shareholder of the Company.

65 For the Defendants to be liable for fraudulent misrepresentation, Leow must prove that he relied on the Chew Representations (*Anna Wee* at [43]). In other words, the claimant must have been induced to act to his detriment by the misrepresentation (*Panatron* at [22], citing *JEB Fasteners v Marks, Bloom & Co* [1983] 1 All ER 583 ("*JEB Fasteners*") at 588–589; *Zurich Insurance Co plc v Hayward* [2017] AC 142 ("*Hayward*") at [18]). The misrepresentation has to act upon the will of the claimant such that it influences or leads the claimant to change his behaviour in reliance on the misrepresentation (*Anna Wee* at [44]). This is ultimately a question of fact (*Hayward* at [25] and [63]; *The Law of*

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<sup>127</sup> NE 250725 at p 84:11–13.

<sup>128</sup> NE 250725 at pp 84:14–86:19.

*Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) (“*The Law of Contract in Singapore*”) at para 11.066). In this regard, it is sufficient if the misrepresentation played “a real and substantial part and operated in [the claimant’s] mind” (*Panatron* at [23]). The misrepresentation does not have to be the sole or a decisive factor in inducing a claimant to act; it just has to be an inducing cause which led the claimant to act as he did (*Panatron* at [21]–[22], citing *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 481 and *JEB Fasteners* at 588–589; *Alwie Handoyo* at [187]–[188]).

66 Leow takes the position that he had acted in reliance on the Representations (including the Chew Representations) when he entered into the agreements to sell his shares in the Company by signing the First SPA, the Second SPA and the Third SPA.<sup>129</sup> However, the evidence indicates that Leow did not rely on the Chew Representations when he signed the agreements and consequently sold his shares and ceased to be a shareholder of the Company. This is because the Chew Representations did not play a real and substantial part in operating on Leow’s mind. This may be inferred from the events that unfolded after Leow claimed to have discovered that Chew had not resigned from and sold his shares in the Company.<sup>130</sup>

67 Leow’s evidence is that, in or around 17 June 2021, he found out that Chew had not left the Company.<sup>131</sup> However, he did not bother to investigate into what had happened.<sup>132</sup> Leow’s failure to investigate at this point in time is,

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<sup>129</sup> SDB at p 17 (para 20); BAEIC at pp 19–21 (paras 33–34).

<sup>130</sup> DCS at paras 79–85.

<sup>131</sup> BAEIC at p 21 (para 37); NE 020725 at p 46:6–14.

<sup>132</sup> NE 020725 at p 46:15–18.

in my view, significant given his allegation that the Chew Representations had been made to him by the Defendants in April 2021 (see [50] above). He later confirmed *via* a search of the Company’s records with the Accounting and Corporate Regulatory Authority (“ACRA”) in February 2022 that Chew had not sold and transferred his shareholding in the Company.<sup>133</sup> At the trial, Leow testified that after he discovered this, he was not angry, but he felt that he had been “cheated by [the Defendants]”.<sup>134</sup> Notwithstanding that, Leow went on multiple fishing trips and attended gatherings with Chew on at least four separate instances in 2021, 2022 and 2023.<sup>135</sup> Leow also accepted that there is no evidence that he had complained about the circumstances surrounding the sale of his shares until the filing of OC 662.<sup>136</sup> The picture that emerges from these events and Leow’s conduct inevitably shows that Leow was not at all concerned or bothered by the fact that the Defendants had allegedly lied to him by making the Chew Representations. If Leow had in fact relied on the Chew Representations, he would have – at the very least – followed up with the Defendants after his search of the Company’s records with ACRA in February 2022 revealed that Chew was still a shareholder of the Company. There is no compelling reason why he could not have brought this up to either of the Defendants. This is especially since Leow described Chew as his “best friend”,<sup>137</sup> and Leow’s position is that he only stopped trusting the Defendants sometime in March 2022.<sup>138</sup> In this regard, Leow’s behaviour was wholly

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<sup>133</sup> BAEIC at p 21 (para 37).

<sup>134</sup> NE 020725 at p 46:32.

<sup>135</sup> NE 020725 at pp 49:16–51:6.

<sup>136</sup> NE 02725 at p 49:12–15.

<sup>137</sup> NE 080725 at pp 27:25–32 and 40:21–22.

<sup>138</sup> NE 080725 at p 42:10–12.

inconsistent with that of a person who believed that he had been “cheated” by someone he trusted deeply. Indeed, Leow’s omission to take any action after claiming to have discovered the falsity of the Chew Representations – and his failure to provide any compelling explanation for his omission (see [68] below) – is significant, and undermines his assertion that he had trusted the Defendants and relied on the Chew Representations.<sup>139</sup>

68 Leow’s purported explanation for his behaviour is that, despite discovering that Chew had not sold his shares and left the Company, he did not bring this up to either of the Defendants as it would be pointless to do so, given that he had already left the Company.<sup>140</sup> Leow further testified that he did not want to argue with Chew without concrete evidence that Chew had misled or betrayed him, and he had no choice but to invite Chew for the fishing trips and gatherings as these were activities which they took part in with a group of friends.<sup>141</sup> Leow also claimed that, at that point in time, he was “trying very hard to get the bank statements of the [J]oint [A]ccount” and he did not want the Defendants to stop him from getting those bank statements.<sup>142</sup>

69 I do not find this to be a persuasive or plausible explanation for Leow’s conduct. It does not lie in Leow’s mouth to assert that it would be “pointless” to bring the alleged misrepresentations to the Defendants’ attention, given that Leow is now bringing a claim in fraudulent misrepresentation against the Defendants. It is also difficult to see how there was no concrete evidence that

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<sup>139</sup> CCS at para 378.

<sup>140</sup> NE 020725 at p 48:14–20; NE 080725 at pp 33:15–35:3.

<sup>141</sup> NE 080725 at p 40:21–29.

<sup>142</sup> NE 080725 at p 41:26–30.

the Defendants had lied to Leow. On Leow's case, Chew had earlier asserted in April 2021 that he had "resigned from the Company and sold his 25% shareholding for S\$2.5 million".<sup>143</sup> Leow's subsequent discovery that Chew had not left or sold his shares in the Company would have clearly showed that Chew had misled Leow.<sup>144</sup> And even if Leow had no choice but to attend gatherings and go on fishing trips with Chew, and he did not want the Defendants to prevent him from getting the bank statements of the Joint Account, that does not adequately explain why he could not have simply raised the issue of the Chew Representations to the Defendants.

70 In addition, assuming that the Defendants made the Chew Representations to Leow, I find that Leow was already aware that the Chew Representations were not true before he sold and transferred his shares in the Company.<sup>145</sup> As highlighted above (see [61]–[62]), the contents of Chew's Letter only indicated that Chew *intended* to sell his 25% shareholding in the Company for \$2.5m and to resign as Chairman and director of the Company thereafter. Furthermore, as previously mentioned (see [63] above), the evidence indicates that the contents of Chew's Letter were subsequently explained to Leow in Mandarin by his daughter, Chew Loo.<sup>146</sup> In this connection, Leow had asked his daughter to prepare a similar letter for him, *ie*, Leow's Letter (see [21] above):

**NOTICE OF THE DESIRE TO TENDER SHARES IN  
CHARTWORTH ENTERPRISE SINGAPORE PTE. LTD. (THE  
"COMPANY") FOR SALE TO THE OTHER EXISTING  
SHAREHOLDERS**

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<sup>143</sup> BAEIC at p 18 (para 30).

<sup>144</sup> BAEIC at p 21 (para 37).

<sup>145</sup> DCS at paras 218 and 221.

<sup>146</sup> DCS at paras 72–77 and 222.

Kindly accept this letter as a formal notice of my desire to tender my 25% shareholding in the Company for sale to the other existing shareholders at a fair value of S\$2.5 million to be paid out in one lump-sum.

71 In the circumstances, it is likely that Leow would have known – at least by the time that Chew Loo explained the contents of Chew’s Letter to him – that Chew had not sold his shareholding in the Company and resigned from his roles as Chairman and director of the Company as of 20 April 2021 (*ie*, the date of Chew’s Letter). In other words, assuming that the Chew Representations had been made, Leow knew about the falsity of the Chew Representations before he sold and transferred his shares in the Company.

72 It must follow that Leow did not rely on and was not induced by the Chew Representations. It is difficult to conceive how a representee could genuinely be misled by a representation he already knew to be untrue (see *Peekay* at [40]; K R Handley, *Spencer Bower & Handley: Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014) at para 11.07; John Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (Sweet & Maxwell, 7th Ed, 2025) at para 3–53). As Lord Clarke observed in *Hayward* at [18], a representee who disbelieves a representation may face “serious difficulty” in establishing that he was induced to act upon it.

73 I am nevertheless mindful that the Court of Appeal has recognised, albeit in *obiter*, that knowledge of the truth does not invariably defeat a misrepresentation claim, and that it does not automatically follow that a representee cannot have relied on a representation merely because he knew or had discovered its falsity before acting on it (*MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 (“*MAN Diesel*”) at [172]–[173], citing *Hayward* at [44]–[45]). In *MAN Diesel* (at [173]), the Court of Appeal took the view that

the following position as expressed by Lord Clarke in *Hayward* (at [44]–[45]) was “sensible”:

44 ... it is not necessary to express a final view on the question whether it always follows from the fact that the representee knows that the representation is false that he cannot succeed. As explained earlier, questions of inducement and causation are questions of fact. *It seems to me that there may be circumstances in which a representee may know that the representation is false but nevertheless may be held to rely upon the misrepresentation as a matter of fact.*

45 This very case could have been such a case. The judge considered this possibility ... where he said:

“At the very least, statements made in the course of litigation will be viewed with healthy scepticism and weighed against the other material available. Often the other party will not be sure, even then, whether the statement is in fact true and will mainly concern himself with how likely it is to be accepted by the court. Sometimes (a staged road traffic ‘accident’ for example) the other party may actually be certain from his own direct knowledge that the statement is a deliberate lie. But even then he and his advisers cannot choose to ignore it; they must still take into account the risk that it will be believed by the judge at trial. This situation is quite different from a proposed purchase, where if in doubt one can simply walk away.” ...

[emphasis in original omitted; emphasis added]

74 I digress to make two points about the proposition in *Hayward* that a representee may be induced by a misrepresentation even when he is aware of the falsity of the misrepresentation. First, although that proposition was contemplated in *Hayward*, it was in *obiter* as Lord Clarke specifically stated that it was “not necessary to express a final view” in respect of it (*Hayward* at [44]). Second, it may nonetheless be prudent to confine that proposition in *Hayward* to the particular facts of that case. As recognised in *Holyoake v Candy* [2017] EWHC 3397 (Ch) (“*Holyoake*”) at [390]–[393], the case of *Hayward* was not a “paradigm case” where a representor lies to a representee in the hope

of inducing the representee to do something. It involved a unique situation where the representor lied to the representee and the representee was induced to act in a particular way because of the risk that the representor might tell the same lie to a third party and the effect of that on the third party (*Holyoake* at [393]). In my view, in a “paradigm case” where a representor simply makes a false representation to a representee, it is difficult to see how the representee can be induced to act unless the representee genuinely believes that the misrepresentation is true (*Holyoake* at [390] and [393]).

75 In any event, I add that the proposition in *Hayward* (see [73] above) does no more than preserve the possibility of reliance in certain circumstances; it does not, in my judgment, assist Leow on the facts of this case. The question of whether the reliance element in a claim for misrepresentation is satisfied remains, ultimately, one of fact – and the facts here speak clearly against Leow. Leow knew the Chew Representations were false. He nonetheless proceeded to act as he did, and his conduct after he claimed to have discovered that Chew had neither sold his shares nor resigned from the Company is wholly inconsistent with the behaviour of someone who had been genuinely deceived. On these facts, I am satisfied that Leow did not act in reliance on the Chew Representations (even if they had been made by the Defendants). There is simply insufficient evidence to establish that they played a real and substantial part in operating on his mind.

76 In light of my findings that the Defendants did not make the Chew Representations to Leow and Leow did not act in reliance on the Chew Representations (see [61] and [64] above), it is not necessary for me to consider whether the other elements of fraudulent misrepresentation have been made out in respect of the Chew Representations (see [48] above).

77 It follows from the above analysis that Leow has not successfully proved that the Defendants are liable for fraudulent misrepresentation. The Misrepresentation Claim thus cannot be made out.

***Leow has affirmed the Second SPA and the Third SPA***

78 Before I turn my attention to the Oppression Claim, I make a point about the remedy which Leow is seeking pursuant to the Misrepresentation Claim. Leow is seeking to rescind the First SPA, the Second SPA and the Third SPA on the ground of fraudulent misrepresentation.<sup>147</sup>

79 In the first place, it is unclear why Leow is seeking a rescission of the First SPA, as the First SPA was never effected by the contracting parties.<sup>148</sup> The First SPA provides for the Company to purchase 3,200,000 of Leow’s shares for \$2m, and for Phang to purchase 800,000 of Leow’s shares for \$500,000 (see [22(a)] above).<sup>149</sup> However, what in fact happened was that Leow transferred 3,200,000 of his shares to Phang for \$2m and 800,000 of his shares to Toh for \$500,000 (see [22]–[24] above).<sup>150</sup> Although I am cognisant that the moneys received by Leow in return for selling his shares came from the Company’s bank account (see [23] above), this was because Phang and Toh had decided to use dividends issued by the Company to them to pay for Leow’s shareholding.<sup>151</sup> Indeed, Leow accepted during cross-examination that the First SPA “did not

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<sup>147</sup> SDB at p 31; CCS at paras 385–387.

<sup>148</sup> NE 020725 at pp 35:18–36:5; Notes of Evidence dated 22 September 2025 (“NE 220925”) at pp 33:31–34:3.

<sup>149</sup> BAEIC at p 20 (para 34(a)).

<sup>150</sup> ACE at p 6 (paras 27–29).

<sup>151</sup> BAEIC at pp 103–104 (para 46).

take effect”.<sup>152</sup> It is thus pointless for the First SPA to be rescinded since the underlying transaction never happened.

80 Further, Leow is not entitled to a rescission of the Second SPA and the Third SPA. This is because he has affirmed them by conduct.<sup>153</sup> Rescission, whether in common law or in equity, will be barred where the innocent party (*ie*, the representee) has affirmed the contract in question (*CDX v CDZ* [2021] 5 SLR 405 at [59]; Dominic O’Sullivan KC, Steven Elliott KC and Rafal Zakrzewski, *The Law of Rescission* (Oxford University Press, 3rd Ed, 2023) (“*The Law of Rescission*”) at para 10.30). Any such affirmation must be communicated by the innocent party to the other party in clear and unequivocal terms, and may be implied where the innocent party conducts himself in a way which is consistent only with a decision to keep the contract alive (*Strait Colonies Pte Ltd v SMRT Alpha Pte Ltd* [2018] 2 SLR 441 (“*Strait Colonies*”) at [42], citing *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 (“*Wishing Star*”) at [171]). In this regard, knowledge of the facts giving rise to the right of rescission is sufficient for affirmation to take place, and it is not necessary to show that the innocent party knew of his legal right to elect between rescission and affirmation when he acted to affirm the contract (*Strait Colonies* at [64]).

81 In this case, Leow knew about the facts giving rise to his right to rescind the Second SPA and the Third SPA, as he would have known that the Chew Representations were falsely made (*The Law of Rescission* at paras 23.18 and 23.20). Leow’s evidence is that he realised he had been “misled and betrayed”

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<sup>152</sup> NE 020725 at p 36:4–5.

<sup>153</sup> Defendants’ further written submissions dated 29 September 2025 (“DFWS”) at paras 3–10; NE 220925 at pp 34:4–35:6.

by the Defendants when his search of the Company's records with ACRA in February 2022 revealed that Chew had not sold and transferred his 25% shareholding in the Company.<sup>154</sup> He also takes the position that, on or around 17 June 2021, he found out that Chew had not left the Company and asked Chew about it.<sup>155</sup> However, prior to the filing of OC 662, Leow never informed the Defendants that he wanted to return to the Company as a shareholder, and he also never offered to return the \$2.5m which he had received for the sale of his shares in the Company.<sup>156</sup> There is also no evidence to show that Leow complained about the sale of his shares before he filed OC 662.<sup>157</sup> Moreover, I note that Leow was handed six post-dated cheques (dated 1 June 2021, 1 August 2021, 1 October 2021, 1 December 2021, 1 February 2022 and 1 April 2022 respectively) in return for the sale of his shares.<sup>158</sup> It was thus possible for Leow to have elected to rescind the Second SPA and the Third SPA by refusing to deal with some of the cheques after he allegedly discovered that the Defendants had lied to him (whether in June 2021 or February 2022). That Leow did not do so – and proceeded to accept the payments for the sale of his shares – shows that he communicated a clear and unequivocal election to affirm the Second SPA and the Third SPA, as the only proper inference from his conduct was that he had decided to keep those agreements alive (*Wishing Star* at [171]; *The Law of Contract in Singapore* at para 11.152). It follows that, even if Leow was able to establish his claim in fraudulent misrepresentation, he would not be entitled to the remedy which he seeks.

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<sup>154</sup> BAEIC at p 21 (para 37).

<sup>155</sup> BAEIC at p 21 (para 37); NE 020725 at p 46:6–14.

<sup>156</sup> NE 030725 at p 1:18–23.

<sup>157</sup> NE 020725 at p 49:12–15.

<sup>158</sup> ACE at p 6 (para 28).

### The Oppression Claim

82 I turn next to the Oppression Claim. The main hurdle which Leow faces for the Oppression Claim is that he is no longer a shareholder of the Company and does not have the standing to pursue the Oppression Claim. Leow ceased to be a shareholder of the Company on 31 May 2021, after he transferred all his shares to Phang and Toh.<sup>159</sup> Currently, only Chew and Phang remain as the shareholders of the Company.<sup>160</sup>

83 Leow does not dispute the general rule that only members of a company have the standing to commence an oppression claim under s 216 of the Companies Act.<sup>161</sup> However, Leow submits that there exists an exception to the general rule in circumstances where “the events which caused the plaintiff to cease to be a shareholder are also the subject matter of the complaint under s 216” (*Lim Seng Wah v Han Meng Siew* [2016] SGHC 177 (“*Lim Seng Wah*”) at [13]). Leow takes the position that, in this case, he had ceased to be a shareholder of the Company because of: (a) the Defendants’ fraudulent Representations (see [20] above); (b) the deliberate withholding of financial information relating to the Joint Account and the Company by the Defendants; and (c) the misappropriation of the Alleged Site Expenses, Alleged FW Bonuses and the moneys in the Joint Account by the Defendants.<sup>162</sup>

84 The Defendants submit that the exception to the general rule is more limited in nature than that asserted by Leow. Specifically, it is only where the

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<sup>159</sup> ACE at p 6 (para 29).

<sup>160</sup> BAEIC at pp 71 (para 2) and 86 (para 2).

<sup>161</sup> CCS at para 389.

<sup>162</sup> CCS at para 390; NE 220925 at p 7:4–16.

claimant is already in substance a member, but their name has not been formally entered in the register due to the defendant’s conduct, that the defendant will be estopped from asserting that the claimant has no standing to pursue an oppression claim. In other words, the claimant must already satisfy the substantive requirement of membership when the s 216 action is commenced.<sup>163</sup>

85 It is well-established that, generally speaking, only registered shareholders of a company are permitted to commence an oppression claim under s 216 (see s 216(1) of the Companies Act; *Kitnasamy s/o Marudapan v Nagatheran s/o Manogar* [2000] 1 SLR(R) 542 (“*Kitnasamy*”) at [25]). However, the Court of Appeal in *Kitnasamy* clarified that, in *some* cases, it would be possible for a claimant who is not a registered shareholder to pursue a claim under s 216. Specifically, if it would be unjust or inequitable to permit a defendant to a s 216 action to assert that the claimant had no standing to commence the action, the defendant would be estopped from asserting as such (*Kitnasamy* at [26], citing *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd* [1996] 1 MLJ 113 (“*Owen Sim*”) at 134).

86 In *Lim Seng Wah* at [9], Chua Lee Ming JC (as he then was) referred to the general rule as stated in *Kitnasamy* at [25]. Chua JC subsequently agreed with the proposition that “where a registered shareholder has freely disposed of his shares ... he will no longer have *locus standi* once he has ceased to be registered as a member” (*Lim Seng Wah* at [13], citing R Hollington QC, *Hollington on Shareholders’ Rights* (Sweet & Maxwell, 7th Ed, 2013) at para 9–15). But in that same paragraph, Chua JC caveated that proposition by stating that there is an “exception” in circumstances “where the events which

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<sup>163</sup> DCS at paras 38–39 and 50–51.

caused the plaintiff to cease to be a shareholder are also the subject matter of the complaint under s 216” (*Lim Seng Wah* at [13]). As stated previously (at [83] above), Leow relies on this “exception” in *Lim Seng Wah* to argue that he has the requisite standing to pursue the Oppression Claim. However, with respect, the basis for the formulation of the “exception” in *Lim Seng Wah* at [13] is not entirely clear. I note that Chua JC did make reference to *Kitnasamy* at [26], and that could be a possible ground on which the “exception” may stand on (*Lim Seng Wah* at [12]). But Chua JC also noted that in *Kitnasamy*, the facts were such that “[t]he applicant was for all intents and purposes a shareholder except that the company had not registered him as one” and so “the respondents were estopped from challenging the applicant’s *locus standi*” (*Lim Seng Wah* at [12]). In other words, Chua JC appeared to accept that the applicant in *Kitnasamy* was never registered as a shareholder. The situation in *Kitnasamy* is thus materially different from the “exception” as framed, which made reference to “events which caused the plaintiff to cease to be a shareholder” [emphasis added] (*Lim Seng Wah* at [12]).

87 In my view, it is necessary to properly consider *Owen Sim* and *Kitnasamy* in order to determine the contours of the exception to the general rule that only registered shareholders of a company can commence a claim under s 216. The commonality in the two cases is that a party who was not a registered shareholder of the company in question was not precluded from pursuing an oppression claim. In this regard, I find the analysis of *Owen Sim* and *Kitnasamy* by Mavis Chionh Sze Chyi J in *Marten, Joseph Matthew v AIQ Pte Ltd* [2023] SGHC 361 (“*Marten, Joseph Matthew*”) at [71]–[77] to be compelling and I respectfully adopt it. Importantly, Chionh J stated as follows in *Marten, Joseph Matthew* (at [77]):

More fundamentally, the judgments in *Kitnasamy* and *Owen Sim* made it clear that they were allowing only a narrow exception to the statutory requirement that a claimant in a minority oppression suit must be a registered member: *in order for a non-member to assert successfully that the defendant was estopped from denying his standing to bring the suit, there must be shown an element of unconscionability in the defendant's conduct, and this unconscionable conduct had to relate to the circumstances in which the claimant's name was omitted from the register of members.* In both *Kitnasamy* and *Owen Sim*, the respondents' conduct had led to the appellants/claimants not being registered members of the company; and without being registered members, the appellants had no standing to pursue their claims of oppression against the respondents. This meant that in substance, the respondents' wrongful actions against the appellants not only led to wrongdoing against the appellants, but also caused the latter to lack the standing to pursue their claims in respect of such wrongdoing. In such a scenario, the respondents would clearly be using the Companies Act as an "engine of fraud" if they were to invoke the appellants' lack of *locus standi* (*Owen Sim* at 135). It was in these circumstances that an element of unconscionability was found to arise in both *Kitnasamy* and *Owen Sim*: *in each case, the respondents' wrongful actions against the appellant constituted the reason for the latter's lack of standing under the Companies Act, and it was therefore inequitable for the respondents to rely on the requirements of the statute in denying the appellants' lack of standing.*

[emphasis in original omitted; emphasis added]

88 It follows from the above that, for Leow to avail himself of the exception to the general rule and for the Defendants to be estopped from asserting that Leow does not have the standing to pursue the Oppression Claim, Leow would have to prove that the Defendants had acted in an unconscionable or wrongful manner against him and that was the reason why Leow lacked the standing to commence a claim under s 216. There is no requirement for Leow to have "already satisf[ied] the substantive requirement of membership at the commencement of [the s 216 action]".<sup>164</sup> Indeed, to impose such a requirement

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<sup>164</sup> DCS at para 39.

would clearly go against the fact that the Court of Appeal in *Kitnasamy* intended to formulate an *exception* to the general rule by permitting a claimant who is *not* a registered shareholder to pursue an oppression claim under s 216 (*Kitnasamy* at [26]–[27]).

89 In this case, the reason why Leow lacked the standing to pursue the Oppression Claim was because he had sold and transferred his shares in the Company to Phang and Toh.<sup>165</sup> This sale and transfer of shares was made voluntarily by Leow and not because of any unconscionable or wrongful conduct of the Defendants (see *Lim Seng Wah* at [9] and [13]; *Marten, Joseph Matthew* at [79]). On this note, I do not accept Leow’s submission that he does not have the requisite standing under s 216 because he had sold and transferred his shares in the Company as a result of the Defendants making the fraudulent Representations to him (see [83] above). This necessarily flows from my conclusion that Leow has failed to establish the Misrepresentation Claim (see [77] above). I also do not accept Leow’s submission that he had ceased to be a shareholder of the Company because of the Defendants’ deliberate withholding of financial information and the Defendants’ misappropriation of the Alleged Site Expenses, the Alleged FW Bonuses and the moneys in the Joint Account (see [83] above). In my view, even if it may be assumed that the Defendants had acted in the manner as asserted by Leow, it cannot be said that the Defendants’ conduct is the reason why Leow does not have the standing to pursue the Oppression Claim. To put it another way, any such conduct by the Defendants was not causally linked to Leow’s departure from the Company.

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<sup>165</sup> ACE at p 6 (paras 28–29).

90 In the circumstances, Leow is unable to avail himself of the exception to the general rule that only registered shareholders of the Company have the necessary standing to commence an oppression claim. My conclusion on this threshold issue is determinative of Leow’s Oppression Claim. It is accordingly unnecessary for me to consider the substantive merits of the Oppression Claim, *ie*, whether the affairs of the Company were conducted in a manner oppressive to Leow and in disregard of his interests as a member. This includes Leow’s claims concerning the Alleged Site Expenses and the Alleged FW Bonuses.

### **The Breach of Trust Claim**

91 Finally, I turn to the Breach of Trust Claim.

92 Leow submits that the Defendants are liable for breach of trust in respect of how they have dealt with the moneys in the Joint Account.<sup>166</sup> He takes the position that the moneys in the Joint Account belonged to all of the Founders, and they had agreed that any withdrawals from the Joint Account could only be made with their unanimous consent (“Joint Account Agreement”).<sup>167</sup> He further contends that the Defendants were custodians and *de facto* trustees of the Joint Account,<sup>168</sup> and the moneys in the Joint Account were subject to a common intention constructive trust and/or an institutional constructive trust in his favour as a result of their conduct.<sup>169</sup> Leow accordingly seeks the following remedies:<sup>170</sup>

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<sup>166</sup> CCS at paras 318–320 and 344.

<sup>167</sup> CCS at para 321.

<sup>168</sup> CCS at para 341.

<sup>169</sup> CCS at para 340.

<sup>170</sup> CCS at para 361.

- (a) a declaration that the Defendants are constructive trustees of the Joint Account, holding the funds therein on trust for the Founders in equal shares;
- (b) an order that the Defendants jointly and severally pay Leow the sum of \$787,500, being 25% of the total amount which they allegedly withdrew from the Joint Account to engage in trading activities using the IG Trading Account (see [99] below);
- (c) an order that the Defendants jointly and severally pay Leow the sum of \$200,000, being 25% of the total amount which they allegedly withdrew from the Joint Account *via* cheques and transferred to themselves on 7 June 2017 (see [17] above); and
- (d) an order that the Defendants jointly and severally pay Leow all further sums found due upon the taking of an account of the Joint Account on a wilful default basis.

93 The Defendants submit that the Joint Account Agreement, as alleged by Leow, did not exist.<sup>171</sup> Moreover, even if the Joint Account Agreement existed, there was no express or constructive trust created in favour of Leow over the moneys held in the Joint Account.<sup>172</sup> They claim that Leow, as one of the owners of the Joint Account, had access to and could obtain the statements of the Joint Account.<sup>173</sup> They further take the view that they have provided reasonable

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<sup>171</sup> DCS at paras 319 and 406.

<sup>172</sup> DCS at paras 412 and 417.

<sup>173</sup> DCS at para 323.

explanations for the transfers of moneys in and out of the Joint Account,<sup>174</sup> and Leow has thus failed to discharge his burden of proving that the Defendants had withdrawn and misappropriated the funds in the Joint Account.<sup>175</sup>

***The moneys in the Joint Account could not be withdrawn or used without the Founders' unanimous consent***

94 I begin my analysis by making a few observations regarding the Joint Account. It is common ground that the Joint Account is registered and held in the names of all of the Founders.<sup>176</sup> It is also common ground that the moneys in the Joint Account comprised dividends and directors' fees earned by the Founders from the Company (see [11] above).<sup>177</sup> These dividends and directors' fees belonged to each of the Founders in their personal capacities, and each Founder contributed to the Joint Account an equal amount of the dividends and directors' fees which they received from the Company.<sup>178</sup> There has been no suggestion that any of the Founders, at any point in time, deposited into the Joint Account his personal moneys which belonged solely to that Founder.

95 Given that the moneys in the Joint Account belonged equally to all of the Founders,<sup>179</sup> I find it to be highly likely that the Joint Account Agreement existed, *ie*, that the Founders had agreed that any withdrawals or use of moneys from the Joint Account could only be made with their unanimous consent. In

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<sup>174</sup> DCS at para 319.

<sup>175</sup> DCS at para 337.

<sup>176</sup> NE 020725 at p 53:6–9; BAEIC at p 91 (para 16).

<sup>177</sup> BAEIC at pp 12 (para 17) and 92–93 (para 21); ACE at p 3 (para 8).

<sup>178</sup> NE 030725 at p 48:22–24; Notes of Evidence dated 11 July 2025 (“NE 110725”) at pp 14:27–28, 23:5–14 and 24:27–29.

<sup>179</sup> NE 110725 at p 24:27–29.

this regard, there is documentary evidence showing that the Founders had meetings during which they agreed to withdraw moneys from the Joint Account for the purpose of making joint personal investments.<sup>180</sup> Further, there is no evidence to suggest that any of the Founders had the permission of the other Founders to treat the funds in the Joint Account as his own. It is also difficult to see why any of the Founders would have allowed for their share of the moneys in the Joint Account to be withdrawn without their consent. Moreover, although the Defendants – specifically, Phang – appeared to be responsible for managing matters related to the Joint Account (*ie*, investments by the Founders using moneys from the Joint Account),<sup>181</sup> this does not mean that Phang had *carte blanche* to utilise the funds in the Joint Account in any way he wanted. Indeed, Phang’s evidence is that when joint investments by the Founders were made using the moneys in the Joint Account, they were made “with the knowledge and consent of all the Founders” and he had to seek the Founders’ agreement to withdraw funds from the Joint Account for “investment purposes”.<sup>182</sup> Phang also stated that the Defendants would inform the other Founders, *ie*, Leow and Toh, before the Founders loaned money to the Company *via* the Joint Account.<sup>183</sup> This supports my finding that any usage of moneys in the Joint Account was likely to have been made known to and approved by all of the Founders.

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<sup>180</sup> BAEIC at pp 91–92 (para 18); CB at pp 182–183.

<sup>181</sup> DCS at para 408; BAEIC at pp 9 (para 15) and 13 (para 18); NE 110725 at p 23:22–30; Notes of Evidence dated 15 July 2025 (“NE 150725”) at p 89:5–7.

<sup>182</sup> BAEIC at pp 91–92 (paras 18–20); NE 110725 at p 23:17–21; CB at pp 182–183.

<sup>183</sup> BAEIC at p 93 (para 22); NE 110725 at p 22:25–31.

***Leow was not aware of and did not agree to the withdrawals from the Joint Account made by the Defendants***

96 The question that follows is whether Leow knew about and gave his consent for the following (see [92] above):<sup>184</sup>

- (a) the Defendants’ withdrawal of \$3.15m in total from the Joint Account for the purpose of conducting trading activities and making investments using the IG Trading Account (“IG Investments”); and
- (b) the Defendants’ withdrawal of \$800,000 from the Joint Account on 7 June 2017 to reimburse themselves for a loan which they had extended to the Company on behalf of the Founders on 6 June 2017 (“Loan 16”).

97 However, before I deal with the issue as stated at [96] above, I make a brief comment on the contested issue of what purpose the Joint Account was meant to serve. Leow submits that the moneys in the Joint Account initially had a dual purpose: (a) they were to be used by the Founders to make joint personal investments; and (b) they were meant to serve as a reserve fund for the Company to be utilised in times of financial need.<sup>185</sup> However, Leow claims that, in or around 2012, the Founders mutually agreed to cease making joint personal investments using the funds in the Joint Account, and the sole remaining purpose of the Joint Account was to serve as a financial backstop for the Company.<sup>186</sup> In contrast, the Defendants take the position that the Joint Account

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<sup>184</sup> CCS at para 344.

<sup>185</sup> CCS at para 138.

<sup>186</sup> CCS at para 138.

was only ever meant to facilitate the parties' joint personal investments, and it was never meant to be a reserve account for the Company.<sup>187</sup>

98 In my view, it is not necessary to resolve what the Founders' intended purpose was in setting up the Joint Account, or whether that purpose changed over the years. The key question for determining the merits of Leow's Breach of Trust Claim is whether Leow knew about and consented to the withdrawals by the Defendants (as set out at [96] above). That question does not turn on the intended purpose of the Joint Account. Whether the account was set up to facilitate the parties' joint personal investments or to serve as a reserve fund for the Company does not answer – and is not determinative of – whether the Defendants made those withdrawals with Leow's knowledge and consent.

*The withdrawal of \$3.15m from the Joint Account for the IG Investments*

99 I thus turn to specifically consider the question of whether the Defendants' withdrawals from the Joint Account – totalling \$3.15m – for the purpose of the IG Investments was done with Leow's consent and agreement (see [96(a)] above). It is not disputed that the following sums were transferred from the Joint Account to Phang and IG Asia for the purpose of the IG Investments:<sup>188</sup>

<b>Date</b>	<b>Amount</b>	<b>Transferred to</b>
21/04/2020	\$800,000	IG Asia
02/07/2020	\$500,000	Phang

<sup>187</sup> DCS at paras 319 and 429.

<sup>188</sup> ACE at pp 4 (paras 11–12) and 5 (para 16); DCS at para 343(b).

13/07/2020	\$500,000	IG Asia
17/08/2020	\$200,000	Phang
02/09/2020	\$800,000	Phang
16/09/2020	\$350,000	Phang
<b>Total</b>	\$3,150,000	

100 Leow's position is that he was never informed of and never agreed to the moneys in the Joint Account being used for the IG Investments.<sup>189</sup> The Defendants claim that the Founders had collectively agreed to open the IG Trading Account and make the IG Investments.<sup>190</sup> They had agreed to authorise Phang to trade using the IG Trading Account and gave Phang a broad discretion to do so.<sup>191</sup>

101 I do not accept the Defendants' version of events. In my view, the evidence – in particular, the conduct of the Defendants – does not show that the Founders had agreed to trade and invest using the IG Trading Account.

102 I first highlight that no written or documentary evidence has been adduced by the Defendants to show that the Founders – including Leow – agreed to make the IG Investments. The Defendants submit that this is not surprising, as it is consistent with how the Founders handled their joint personal investments.<sup>192</sup> Nevertheless, I find it to be striking that there is a lack of

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<sup>189</sup> CCS at paras 155 and 167.

<sup>190</sup> DCS at paras 339–340.

<sup>191</sup> DCS at para 359.

<sup>192</sup> DCS at para 358.

documentary evidence reflecting the Founders' agreement to trade using the IG Trading Account. This is because, in the period after the Joint Account was first set up, there was indeed written documentation evincing the Founders' intention to use the moneys in the Joint Account for "investment purposes".<sup>193</sup> In addition, I note that the Defendants appear to accept that the Founders did not make any joint investments using the moneys in the Joint Account for an extended period of about five to six years leading up to April 2020 (*ie*, when they started making the IG Investments).<sup>194</sup> Phang also testified that the IG Investments were risky in nature as the Founders were engaging in margin trading,<sup>195</sup> and he had taken steps to ensure that the Founders were aware of the risks.<sup>196</sup> Given that the Founders were supposedly agreeing to partake in a risky investment venture after not having made joint investments with the moneys in the Joint Account for a long period of time, it would have been natural and prudent for the Founders to have recorded their agreement showing that they all consented to the investment strategy for the IG Investments and would collectively bear the attendant risks. The fact that there was no written documentation thus undermines the Defendants' case that the Founders had agreed to make the IG Investments.

103 I further find that the Defendants' conduct in relation to the IG Investments casts significant doubt on their claim that the Founders had unanimously consented to trade using the IG Trading Account. As pointed out

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<sup>193</sup> CB at pp 182–183; BAEIC at pp 91–92 (para 18).

<sup>194</sup> NE 150725 at pp 83:23–85:30; Notes of Evidence dated 17 July 2025 ("NE 170725") at pp 48:20–49:8.

<sup>195</sup> NE 150725 at p 75:15–19.

<sup>196</sup> NE 150725 at p 68:17–18.

by Leow,<sup>197</sup> if the Defendants' narrative was true and the Founders had all agreed to make the IG Investments using moneys equally owned by them, it would follow that the losses suffered as a result of the IG Investments would very likely have been borne equally by each of the Founders. This was accepted by Phang during cross-examination.<sup>198</sup> However, that was not in fact how the losses were distributed. On the evidence, it appears that Phang bore a substantially larger proportion of the losses as compared to the other Founders, as he had contributed more in terms of capital for the IG Investments.<sup>199</sup> Phang's evidence is that he had transferred \$1.85m of his own moneys into the IG Trading Account, and he was not reimbursed from the Joint Account for these sums.<sup>200</sup> According to the Defendants, in or around January 2021, there was slightly over \$500,000 in the Joint Account and approximately \$440,000 in the IG Trading Account.<sup>201</sup> The sum in the IG Trading Account was what remained out of \$4,600,958.26 – which included the \$1.85m contributed by Phang – that was deposited for the purpose of the IG Investments.<sup>202</sup> The Founders then allegedly agreed that the \$500,000 in the Joint Account would be split between Leow and Toh, while the Defendants would utilise the \$440,000 in the IG Trading Account to continue trading in their own capacities.<sup>203</sup> In other words, when the Founders decided how the remaining funds in the Joint Account and the IG Trading Account were to be split, Phang was not compensated for the

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<sup>197</sup> CCS at para 173.

<sup>198</sup> NE 150725 at p 80:27–29.

<sup>199</sup> NE 150725 at p 81:15–17.

<sup>200</sup> DCS at para 343(c); BAEIC at pp 96 – 97 (para 29).

<sup>201</sup> BAEIC at pp 97–98 (para 30).

<sup>202</sup> DCS at para 343.

<sup>203</sup> BAEIC at pp 97–98 (para 30).

additional \$1.85m which he contributed out of his own pocket to the IG Trading Account.

104 It was accepted by Phang that it was “illogical” for him to bear a larger proportion of the Founders’ losses from the IG Investments.<sup>204</sup> He could not, however, provide a convincing explanation for why the losses were distributed between the Founders as such. He claimed that he had to contribute the additional \$1.85m from his own moneys as the other Founders were not willing to contribute any more funds to the IG Trading Account after he requested them to do so.<sup>205</sup> He further asserted that he was responsible for the losses arising from the IG Investments and he would “just have to accept it”.<sup>206</sup> In my view, Phang’s explanation raises more questions than it answers. It is unclear why Phang felt that he had to be responsible for more of the losses from the IG Investments. Although Phang was the one who had sole control over and executed the trades made using the IG Trading Account,<sup>207</sup> the Defendants’ case is that all of the Founders – including Leow – had agreed to make the IG Investments.<sup>208</sup> Phang also agreed that Leow was fully aware of and accepted the risks of margin trading.<sup>209</sup> In the circumstances, it beggars belief why Phang would have willingly shouldered the bulk of the losses flowing from the IG Investments, if there had in fact been an agreement between the Founders to make the IG Investments. Indeed, it is curious that there is no evidence that Phang had ever

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<sup>204</sup> NE 150725 at p 81:31.

<sup>205</sup> NE 150725 at p 81; BAEIC at pp 96 – 97 (para 29).

<sup>206</sup> NE 150725 at p 82:8–10.

<sup>207</sup> NE 150725 at p 78:26–27.

<sup>208</sup> DCS at para 340; NE 150725 at p 68:21–23.

<sup>209</sup> NE 150725 at pp 79:24–26 and 82:11–13.

suggested, at any point in time, to the other Founders that he should be compensated for the additional sums which he contributed from his own funds to the IG Trading Account.

105 The Defendants nonetheless submit that the evidence indicates that the Founders had expressly agreed to open the IG Trading Account and make the IG Investments.<sup>210</sup> They assert that the documentary records show that funds from the Joint Account were actually used to invest in Tesla shares, and there is no evidence that the funds which were transferred from the Joint Account to the IG Trading Account were used by the Defendants for other purposes.<sup>211</sup> The Defendants further contend that the *modus operandi* for the making of the IG Investments is consistent with how the Founders previously made their joint personal investments.<sup>212</sup>

106 In my view, the Defendants' submissions do not take them very far. The fact that the documents show that the moneys transferred to the IG Trading Account were in fact used to invest in Tesla shares does not mean that Leow had knowledge of and agreed to make the IG Investments using the funds in the Joint Account. In this regard, there is no need for Leow to show that the funds from the Joint Account were misappropriated by the Defendants for other purposes, as the act of withdrawing those funds for the IG Investments without Leow's consent is itself the wrongful conduct on the Defendants' part. Further, the Defendants' submission that the making of the IG Investments was consistent with how the Founders previously made their joint personal

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<sup>210</sup> DCS at paras 340 and 345.

<sup>211</sup> DCS at para 341.

<sup>212</sup> DCS at para 354.

investments misses the point. The key point is that there is no evidence to show that Leow ever allowed the Defendants to use the moneys in the Joint Account for the purpose of the IG Investments. In any event, I place limited weight on the manner in which the joint personal investments of the Founders were managed in the past, due to the high-risk nature of the IG Investments and the fact that the IG Investments were made after the funds in the Joint Account had not been used for the Founders' joint personal investments for a prolonged period (see [102] above).

107 Accordingly, I find that the evidence shows that the Founders did not agree to make the IG Investments, and Leow did not consent to the moneys in the Joint Account being used for the purpose of the IG Investments. The Defendants thus acted wrongfully when they withdrew the sums totalling \$3.15m from the Joint Account to make the IG Investments.

*The withdrawal of \$800,000 from the Joint Account to reimburse the Defendants for Loan 16*

108 I consider next whether Leow had knowledge of and consented to the Defendants' withdrawal of \$800,000 from the Joint Account on 7 June 2017 for the purpose of reimbursing themselves for Loan 16 (see [96(b)] above). It is not disputed that two cheques of \$400,000 each were issued from the Joint Account to Chew and Phang respectively on 7 June 2017.<sup>213</sup>

109 For context, on 6 June 2017, the Company had obtained a loan of \$800,000 from the directors.<sup>214</sup> This loan – which was labelled on the

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<sup>213</sup> ACE at p 4 (para 12); CB at pp 530–532.

<sup>214</sup> See Exhibit C7 at p 13; NE 150725 at pp 53–61; NE 170725 at pp 44–48.

Company's records as Loan 16 – was obtained *via* a cheque issued from a bank account in the names of Chew and Phang. The next day, on 7 June 2017, Chew and Phang appear to have reimbursed themselves for Loan 16 by issuing two cheques of \$400,000 each from the Joint Account to themselves.<sup>215</sup> After this, the loan of \$800,000 was supposed to be repaid by the Company to the Joint Account directly. However, on 14 December 2017, the Company repaid Loan 16 by issuing two cheques of \$400,000 to Chew and Phang respectively.<sup>216</sup> The two cheques from the Company were, however, not deposited into the Joint Account,<sup>217</sup> but were deposited into other bank accounts which were controlled by the Defendants.<sup>218</sup> The evidence thus indicates that the Defendants were in fact reimbursed twice for Loan 16, *ie*, on 7 June 2017 from the Joint Account and on 14 December 2017 from the Company's bank account.<sup>219</sup>

110 The Defendants were not able to provide a credible explanation for this double reimbursement of Loan 16. Phang claimed that there was “some other reason” which he could not recall due to the passage of time,<sup>220</sup> while Chew asserted that the two cheques of \$400,000 each issued from the Joint Account on 7 June 2017 to the Defendants were not to reimburse them for Loan 16 but were for “an investment” that he could not remember.<sup>221</sup> I do not accept the Defendants' version of events. In my view, it is very likely that the two cheques

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<sup>215</sup> CB at pp 530–532; NE 150725 at p 54:28–30.

<sup>216</sup> CB at p 730; NE 150725 at p 55.

<sup>217</sup> NE 150725 at p 60:1–3.

<sup>218</sup> NE 150725 at pp 60:32–61:4.

<sup>219</sup> CCS at para 197.

<sup>220</sup> NE 150725 at p 59:25; Notes of Evidence dated 16 July 2025 (“NE 160725”) at p 38:1–9.

<sup>221</sup> NE 170725 at pp 46:20 and 47:14–18.

issued from the Joint Account on 7 June 2017 were to reimburse Chew and Phang for Loan 16, given the temporal proximity and the fact that the combined value of the two cheques was identical to the quantum of Loan 16. It follows that the Defendants have not provided any satisfactory explanation for why they were reimbursed twice for Loan 16. Furthermore, there is no concrete evidence that Leow was aware of or had agreed to issue the two cheques of \$400,000 each from the Joint Account to the Defendants on 7 June 2017. The Defendants have thus acted wrongfully when they withdrew the sum of \$800,000 from the Joint Account on 7 June 2017.

***The unauthorised withdrawals made by the Defendants are subject to an institutional constructive trust***

111 I turn next to the issue of whether a proportion of the sums withdrawn from the Joint Account without Leow’s knowledge and consent (see [96] above) are subject to a constructive trust in favour of Leow. Leow submits that the court should find that the withdrawn sums are subject either to an institutional constructive trust or a common intention constructive trust.<sup>222</sup>

112 An institutional constructive trust arises by operation of law and its existence is declared based on facts that have arisen (*Guy Neale v Nine Squares Pty Ltd* [2015] 1 SLR 1097 (“*Guy Neale*”) at [124]). It is generally imposed whenever the defendant knows that the property in question has been dealt with in an unconscionable manner (*Guy Neale* at [125]; see also *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400 at 409):

The liability of the constructive trustee is predicated on his knowing of some factor that affects his conscience. This is because the equitable jurisdiction to impose trusts depends on

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<sup>222</sup> CCS at para 340.

the conscience of the holder of the property concerned (usually, of the legal interest therein) being affected. Absent this, an institutional constructive trust cannot arise ... Where such a trust arises, the beneficiary acquires proprietary rights in the property, except in cases where the defendant is made personally liable to account on grounds of knowing receipt or dishonest assistance ...

113 It is nevertheless critical to recognise that an allegation of unconscionability in the general sense is not sufficient, and the defendant’s conduct must fall into an established category which equity has recognised as being capable of giving rise to an institutional constructive trust (*Robert Tantular v The Stephanie Karina* [2025] 1 SLR 1083 (“*Robert Tantular*”) at [114], citing *Peck Wee Boon Patrick v Lim Poh Goon* [2024] 5 SLR 1234 (“*Patrick Peck*”) at [150]; see *Snell’s Equity* (Steven Elliott KC gen ed) (Sweet & Maxwell, 35th Ed, 2025) (“*Snell’s Equity*”) at para 26–002). As explained by Vinodh Coomaraswamy J in *Zaiton bte Adom v Nafsiah bte Wagiman* [2023] 3 SLR 533 (“*Zaiton*”) at [104]–[105]:

104 ... A constructive trust is not equity’s response to conduct by [the trustee] which is unconscionable only in the general sense of being conduct which is either not right or reasonable or which is contrary to good conscience. Unconscionability in that general sense is a necessary, but not a sufficient, condition for a constructive trust to arise. ...

105 In my view, [the trustee] holds her rights in property on constructive trust for [the beneficiary] if, and only if, a set of circumstances have transpired in relation to those rights which equity recognises by accretion of judicial decision are sufficient to render it unconscionable for [the trustee] to exercise those rights as she sees fit, disregarding [the beneficiary]. Equity responds to the unconscionability by burdening [the trustee]’s rights in the property with a set of equitable duties to [the beneficiary]. ...

114 The specific categories of unconscionability which equity recognises as being capable of giving rise to an institutional constructive trust are as follows (*Robert Tantular* at [114], citing *Patrick Peck* at [150]; see also *Zaiton* at [107]):

- (a) fraud;
- (b) the retention of property acquired as a result of a crime causing death;
- (c) a profit in breach of a fiduciary duty;
- (d) the retention of property by a vendor after the vendor had entered into a specifically enforceable contract to sell the property;
- (e) the changing of a will by the survivor of two persons who had entered into a contract to execute wills in a common form;
- (f) the acquisition of land expressly subject to the interests of a third party; and
- (g) the assertion of full entitlement to property after a common intention to share property had been formed (also known as a “common intention constructive trust”).

I note, however, that the categories listed above are not closed and may be developed incrementally by way of analogy (see *Zaiton* at [108]).

115 Further, for an institutional constructive trust to be declared, the requirements of certainty of objects and certainty of subject matter must be fulfilled (*Estate of Yang Chun v Yang Chia-Yin* [2019] 5 SLR 593 (“*Yang Chun*”) at [90]; *Snell’s Equity* at para 26–004). The beneficiary and the subject matter of the constructive trust must be defined with sufficient certainty, and there must exist identifiable property that could be made the subject matter of the constructive trust (*Snell’s Equity* at para 26–004; see *Yang Chun* at [122]).

Contrary to the Defendants' submission,<sup>223</sup> it is not necessary for the requirement of certainty of intention to be established, as “[i]t follows from the nature of a constructive trust arising from a wrong that it is unnecessary to prove the expression of any intention to create it” (*Snell's Equity* at para 26–004). This is necessarily the case as a constructive trust arises by operation of law rather than through the expression of a settlor's intention (*Guy Neale* at [124]; *Snell's Equity* at para 26–001; *Zaiton* at [111]). It also follows from the inherent nature of a constructive trust that, for such a trust to exist, it is not necessary for the parties to have intended there to be a split in their beneficial and legal interests in relation to the alleged trust property.<sup>224</sup>

116 In my view, the only applicable category of unconscionability giving rise to an institutional constructive trust in this case is that of fraud (see [114] above). Although Leow submits that a common intention constructive trust arises over the withdrawals of \$3.15m and \$800,000 made by the Defendants from the Joint Account,<sup>225</sup> I have some reservation over the applicability of the doctrine of common intention constructive trust in the present case, which I discuss below (at [120]).

117 It is not the case that every instance of fraud will result in the imposition of an institutional constructive trust; there is no universal principle that “wherever there is personal fraud the fraudster will become a trustee for the party injured by the fraud” (*Halifax Building Society v Thomas* [1996] Ch 217 at 228). It was nonetheless recognised by the Appellate Division of the High

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<sup>223</sup> DCS at para 413; DFWS at para 19.

<sup>224</sup> DCS at para 415; DFWS at paras 25–28.

<sup>225</sup> CCS at paras 322–327.

Court in *Robert Tantular* (at [116]) that one type of fraud which can give rise to an institutional constructive trust is fraudulent taking. This is a situation where there has been “the outright taking of a person’s property, wholly without his consent” (*Snell’s Equity* at para 26–012). For example, in a case where a thief has stolen a bag of coins, he holds the stolen moneys on a constructive trust for the owner (*Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (“*Westdeutsche*”) at 715–716 (*per* Lord Browne-Wilkinson), applied in *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch) at [127]–[129], but *cf* *Shalson v Russo* [2003] EWHC 1637 (Ch) at [110]):

I agree that the stolen moneys are traceable in equity. But the proprietary interest which equity is enforcing in such circumstances arises – under a constructive, not a resulting, trust. Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity. Thus, an infant who has obtained property by fraud is bound in equity to restore it ... Moneys stolen from a bank account can be traced in equity ...

118 In the present case, the Defendants’ withdrawals of Leow’s shares of the moneys in the Joint Account – *ie*, 25% of the \$3.15m withdrawn for the purpose of the IG Investments and 25% of the \$800,000 withdrawn for the purpose of reimbursing themselves for Loan 16 – which were made without Leow’s knowledge and approval amounts to fraudulent taking.<sup>226</sup> The Defendants’ conduct can be equated with the example of a thief who has stolen a bag of moneys given by Lord Browne-Wilkinson in *Westdeutsche*, as they have taken the moneys in the Joint Account – which include Leow’s share of the moneys – and used it for other purposes without obtaining Leow’s consent. In the

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<sup>226</sup> CCS at para 335.

circumstances, given that each of the Founders were entitled to an equal share of the moneys in the Joint Account (see [94]–[95] above), I find that a constructive trust in favour of Leow arises over 25% of: (a) the Defendants’ withdrawals totalling \$3.15m from the Joint Account which were used for the IG Investments; and (b) the Defendants’ withdrawal of \$800,000 from the Joint Account on 7 June 2017 which was used to reimburse the Defendants for Loan 16.

119 I add that I do not agree with the Defendants’ submission that Leow has not properly identified the subject matter of the alleged constructive trust, *ie*, the requirement of certainty of subject matter is not satisfied.<sup>227</sup> In my view, the subject matter of the constructive trust is quite clearly Leow’s 25% share of the amounts which the Defendants withdrew from the Joint Account for the IG Investments and to reimburse themselves for Loan 16. In other words, there is fixed and identifiable property that can be made the subject matter of the constructive trust. I also do not agree with the Defendants’ submission that Leow has not established the requirement of certainty of objects, as the identity of the beneficiary of the alleged constructive trust is unclear.<sup>228</sup> In my view, although Leow seems to take the position that the Joint Account was meant to serve as a reserve fund for the Company,<sup>229</sup> he does not appear to be asserting that the moneys which were withdrawn by the Defendants from the Joint Account without his consent are held on trust for the Company.<sup>230</sup> It is not inconceivable or inconsistent for the beneficial interest in the moneys in the

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<sup>227</sup> DFWS at para 21.

<sup>228</sup> DFWS at para 23; DCS at para 416.

<sup>229</sup> CCS at para 138.

<sup>230</sup> CCS at paras 339–340 and 361.

Joint Account to reside with the Founders, and for the Joint Account to concurrently serve as a reserve fund for the Company to tap on in times of financial difficulty.

120 In light of my finding that an institutional constructive trust arises in this case (see [118] above), there is no need for me to further consider whether the Defendants' withdrawals from the Joint Account made without Leow's consent are subject to a common intention constructive trust. In any event, I express some reservation over the applicability of the doctrine of common intention constructive trust in this case. This is because it appears that a common intention constructive trust will only arise when a party has made "an assertion of full entitlement to property after a common intention to share property had been formed" (see [114(g)] above). In the present case, however, the Defendants are not asserting that they are fully entitled to Leow's shares of the moneys in the Joint Account (or the withdrawals made therefrom). Indeed, the Defendants accept that the funds in the Joint Account belonged equally to all of the Founders (see [94]–[95] above). What the Defendants are asserting is that Leow gave his consent for them to withdraw those specific sums from the Joint Account, for the IG Investments and the reimbursement of Loan 16. I further note that the common intention constructive trust has traditionally been invoked in situations which involve real property (see, generally, *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222; *Ong Chai Soon v Ong Chai Koon* [2022] 2 SLR 457; Tang Hang Wu, "Broken kinship: Family property disputes and the common intention constructive trust in Singapore" (2024) 38(12) *International Journal of Law, Policy and the Family* 1). It is, however, not necessary for me to delve into the issue of whether the common intention constructive trust is applicable in this case, and I say no more on this.

121 Before I turn to the issue of the appropriate remedy, I briefly touch on the Defendants' submission that Leow should be denied equitable relief as his ignorance regarding the affairs of the Joint Account was "the product of a deliberate choice not to inquire".<sup>231</sup> According to the Defendants, Leow had the means and ability to access the bank statements for the Joint Account, but he simply chose not to do so.<sup>232</sup> I do not accept the Defendants' submission. To my mind, the evidence does not reflect that Leow made a "deliberate choice not to inquire" into matters which concerned the Joint Account.<sup>233</sup> As previously highlighted (see [94]–[95] above), although the Joint Account was registered in the names of all of the Founders, its affairs were primarily managed by Phang.<sup>234</sup> This is evident from how the bank statements for the Joint Account were sent to Phang's residential address,<sup>235</sup> the chequebook for the Joint Account was kept in Phang's office,<sup>236</sup> and Phang's role in facilitating the making of joint personal investments by the Founders using the moneys in the Joint Account.<sup>237</sup> Consequently, Leow depended on and trusted the Defendants to properly manage the funds in the Joint Account.<sup>238</sup> There was no compelling reason for Leow to suspect that the Defendants were making unauthorised withdrawals from the Joint Account to make the IG Investments and for their own benefit. It thus cannot be said that Leow deliberately refused to look into the affairs of the

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<sup>231</sup> DCS at para 396.

<sup>232</sup> DCS at para 328.

<sup>233</sup> DCS at para 396.

<sup>234</sup> DCS at para 408; BAEIC at pp 9 (para 15) and 13 (para 18); NE 110725 at p 23:22–30; NE 150725 at p 89:5–7.

<sup>235</sup> NE 150725 at p 89:5–7.

<sup>236</sup> NE 170725 at p 14:25–31.

<sup>237</sup> NE 110725 at p 23:15–30; DCS at para 408; BAEIC at pp 91–92 (para 18).

<sup>238</sup> BAEIC at p 13 (para 19).

Joint Account, even if it may be assumed that he could readily access the bank statements of the Joint Account.

***The appropriate remedy***

122 In this case, Leow has elected to pursue a personal claim against the Defendants in respect of the institutional constructive trust in his favour – specifically, for the Defendants to pay him his 25% share of the withdrawals of \$3.15m and \$800,000 from the Joint Account (*ie*, \$787,500 and \$200,000 respectively).<sup>239</sup> Leow is not pursuing a proprietary claim for those sums of moneys to be returned to him. Consequently, even if the sums of \$787,500 and \$200,000 withdrawn from the Joint Account by the Defendants no longer exist in their entirety, that has no bearing on the Defendants’ *personal* liability to account to Leow for those sums of moneys (see Jamie Glister and James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 23rd Ed, 2024) at para 12–005). The Defendants thus remain jointly and severally liable to pay Leow the sums of \$787,500 and \$200,000.

123 I turn to deal with the other remedies which Leow is seeking in relation to the Breach of Trust Claim (see [92] above):<sup>240</sup>

- (a) a declaration that the Defendants are constructive trustees of the Joint Account, holding the funds therein on trust for the Founders in equal shares; and

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<sup>239</sup> SDB at pp 33–34; CCS at paras 361(b) and 361(c).

<sup>240</sup> CCS at para 361.

(b) an order that the Defendants jointly and severally pay Leow all further sums found due upon the taking of an account of the Joint Account on a wilful default basis.

124 In relation to the remedy of a declaration as stated at [123(a)] above, I agree with the Defendants that this court cannot declare that a constructive trust arises over the Joint Account generally.<sup>241</sup> This is because, as previously stated, a constructive trust can only arise over identifiable property and the subject matter of the constructive trust must be defined with sufficient certainty (see [115] above). The Joint Account, in and of itself, is not property that can be subject to a constructive trust. It is only specific sums of moneys in the Joint Account – or more accurately, the choses in action owed by the bank to the account holder representing the sums of moneys deposited – that may be the subject matter of a constructive trust. Moreover, in the present case, it is only Leow’s shares of the moneys withdrawn by the Defendants from the Joint Account that are the subject matter of the institutional constructive trust. Leow is thus not entitled to a declaration that the Defendants hold the moneys in the Joint Account on a constructive trust for the Founders in equal shares. It follows from this that the remedy of an account as stated at [123(b)] above cannot be granted, as the Defendants cannot be constructive trustees of the Joint Account generally such that they may be liable to provide an account in respect of the Joint Account. In any event, there is no basis for me to order an account on the wilful default basis, as Leow did not specifically plead that he was seeking an account on the wilful default basis.<sup>242</sup> It is, in my view, necessary for a beneficiary seeking an account on the wilful default basis to specifically plead

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<sup>241</sup> DFWS at para 31.

<sup>242</sup> SDB at pp 31–35.

and prove the act of wilful neglect or default (*Cheong Soh Chin v Eng Chiet Shoong* [2019] 4 SLR 714 at [80], citing *Ong Jane Rebecca v Lim Lie Hoa* [2005] SGCA 4 at [61]).

125 For the sake of completeness, I add that there is no need for me to consider whether Leow has made out his claim in unjust enrichment,<sup>243</sup> as that claim was made by Leow in the alternative to the Breach of Trust Claim (see [47(c)] above).

### **Toh’s allegations against Pua Lee Siang and Loke Siew Meng**

126 Before I conclude, it is important for me to say a few words regarding Toh’s allegations against Pua Lee Siang (“Pua”) and Loke Siew Meng (“Loke”).

127 To recapitulate, Toh was previously the second claimant in OC 662 (see [9] above). Pua is the lawyer who acted for Leow and Toh from when they first commenced OC 662 in September 2023 to July 2024.<sup>244</sup> Loke is a lawyer serving as a Commissioner for Oaths who was asked to commission Leow’s and Toh’s affidavits in 2023.<sup>245</sup>

128 Toh made the following allegations against Pua and Loke in his AEIC for OC 662, when explaining why the contents of his AEIC are materially different from what he originally stated in the Statement of Claim dated

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<sup>243</sup> CCS at paras 362–369.

<sup>244</sup> CB at p 1958 (para 1).

<sup>245</sup> BAEIC at pp 57–59 (paras 12–18).

29 September 2023 (“Old SOC”) and his affidavit in HC/SUM 3261/2023 dated 3 November 2023 (“TTG1A”):<sup>246</sup>

4 I also wish to state the circumstances that led me to file the original Statement of Claim dated 29 September 2023 (“Old SOC”) and my 1st Affidavit dated 3 November 2023 (“TTG1A”) in HC/SUM 3261/2023. Many facts set out in the Old SOC and TTG1A are not true. I will set out the truth in this AEIC. In short, I was misled and deceived into filing the Old SOC and TTG1A. When preparing and filing the Old SOC and TTG1A, my former lawyer, Ms Pua Lee Siang (“Ms Pua”) from Kelvin Chia Partnership, had mainly taken instructions from Mr Leow. After the documents were drafted, she also did not explain to me in detail what she had drafted in the Old SOC and TTG1A. Unfortunately, the Commissioner of Oaths and translator Mr Loke Siew Meng (“Mr Loke”) from CLTC Law Corporation, was not fluent in Chinese. He was unable to properly translate TTG1A to me and did not confirm with me that I had understood TTG1A. As a result, the Old SOC and TTG1A are riddled with many untruths, and I have no choice but to clarify and explain the matters in this AEIC.

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49 I wish to highlight something serious to explain why there are material inconsistencies in the Old SOC, TTG1A and this AEIC. I also disavow the Old SOC and TTG1A.

...

51 Ms Pua worked primarily with Mr Leow to prepare the Old SOC. When the draft was finalised, she did not explain to me in detail what the Old SOC contained. She merely asked me to sign off on the Old SOC and Mr Leow assured me that the Suit would only take a year, that we would surely win, and that I would receive at least \$5 million. I duly did so based on his reassurance. I later revisited the Old SOC and discovered that it contained many untruths. Unfortunately, I did not know at that time that I had been taken advantage of by Mr Leow then.

52 A similar process happened for the filing of TTG1A. Ms Pua worked primarily with Mr Leow to prepare TTG1A. When the draft was finalised, she did not explain to me in detail what TTG1A contained. She merely asked me to sign off on TTG1A before a Commissioner of Oaths. When I attended before Mr Loke, he said that his Chinese was not very good. He could not

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<sup>246</sup> BAEIC at pp 116–117 and 132–133 (paras 4, 49, 51–52); DCS at para 259.

explain properly what was in TTG1A and skipped many parts. He did not ask me whether I understood what I was signing. Mr Leow was there with me when I was with Mr Loke. Since Mr Leow had already signed his affidavit, I followed suit and signed off on TTG1A. I later revisited TTG1A and discovered that it contained many untruths. Unfortunately, I did not know that I had been taken advantage of by Mr Leow then.

129 Both Pua and Loke categorically take the position that the allegations levelled against them by Toh are untrue.<sup>247</sup>

130 It is strictly speaking unnecessary for me to make any finding relating to Toh’s allegations in order to determine whether Leow has established his claims against the Defendants. Notwithstanding that, it cannot be gainsaid that Toh’s allegations are undoubtedly serious in nature. Toh is, in essence, asserting that Pua and Loke have not acted with the professionalism and diligence that is expected of them as a solicitor and a Commissioner for Oaths respectively. It goes without saying that such allegations should not be made lightly and without sufficient basis.

131 In this connection, it became apparent to me in the course of the trial that Toh did not appreciate the gravity of the accusations he was making against Pua and Loke. This is clear from how his testimony on this crucial issue was inexplicably inconsistent and ambiguous. During Toh’s cross examination, he was first asked to confirm whether the paragraphs in his AEIC which contained the allegations against Pua and Loke were true. Surprisingly, he stated that they were not.<sup>248</sup> However, in the afternoon on that same day, when Toh was asked about those few paragraphs again, he changed his position and testified that the

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<sup>247</sup> CB at pp 1947–1948 and 1958–1960; BAEIC at p 55 (paras 3–4).

<sup>248</sup> Notes of Evidence dated 22 July 2025 (“NE 220725”) at pp 35:14–37:23.

allegations in his AEIC were true. He further claimed that he could not remember the evidence he had given just a few hours before, and that he had not been listening and thinking carefully before he gave his earlier testimony.<sup>249</sup>

I reproduce an extract of Toh’s testimony during the trial:<sup>250</sup>

Q Can you recall this morning it was read and explained to you, interpreted to you?

A Yes.

Q And I asked you, Mr Toh, whether the contents in paragraph 54 is true---sorry, 51 is true or not and your answer was, “No, it ss [*sic*] not true.”

A Because this morning when---because when it was explained to me this morning, I did not think carefully before I answer. So I just anyhow give an answer. I was not very clear about the content this morning. However, when this was explained to me again now, I am very clear. This morning, I was confused and nervous.

Court: Can I understand, Mr Toh, that when I pointed out to you that you are supposed to be truthful in your answer, when you answered, you were willing to speak whatever came to your head whether it is true or not? Is that what you’re saying?

Witness: Your Honour, I just said whatever that came into my mind because I did not think carefully. My Chinese is actually very poor.

Court: What you said this morning is that what was said in that paragraph was not true. That is what you said. Now what are you saying?

Witness: I can’t remember. I can [*sic*] remember what I said in the morning.

132 Toh’s explanations for his inconsistent evidence was, in my view, plainly unacceptable and completely unsatisfactory. Having made such severe allegations against Pua and Loke, it was wholly inappropriate for Toh to adopt

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<sup>249</sup> NE 220725 at pp 49:4–54:18.

<sup>250</sup> NE 220725 at p 50:12–32.

such a frivolous attitude when he was asked about those very allegations. I further add that Toh's allegations against Pua and Loke did not sit well with his concessions during the trial that he understood the contents of the Old SOC and TTG1A after Pua had explained them to him.<sup>251</sup> Toh's flippant attitude in dealing with his allegations was also evident from how he handled Pua and Loke's replies after the Defendants' counsel informed them – pursuant to r 29 of the Legal Profession (Professional Conduct) Rules 2015 – that Toh would be making certain allegations against them in his AEIC. Toh's evidence is that after Pua and Loke provided their replies, he told the Company's lawyer to "handle it" as he did not know what to say.<sup>252</sup> Toh further testified that he asked the Company's lawyer to "go and think about how we should give the answer",<sup>253</sup> and accepted that his responses to Pua and Loke's replies (as found in paragraphs 55 and 56 of his AEIC)<sup>254</sup> had not been prepared by him.<sup>255</sup> While it is not necessary for me to make a finding on the truthfulness of Toh's allegations, I have no hesitation in rejecting his allegations against Pua and Loke.

### **Conclusion**

133 For the foregoing reasons, I find that Leow has failed to successfully establish the Misrepresentation Claim and the Oppression Claim. Notwithstanding that, I find that Leow has succeeded in making out the Breach

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<sup>251</sup> Notes of Evidence dated 24 July 2025 at pp 62:8–16 and 63:3–6.

<sup>252</sup> NE 220725 at pp 47:3–21 and 48:3–6.

<sup>253</sup> NE 220725 at p 48:30–31.

<sup>254</sup> BAEIC at p 134 (paras 55–56).

<sup>255</sup> NE 220725 at pp 48:7–31 and 49:1–3.

of Trust Claim on a balance of probabilities. I accordingly make the following orders:

(a) The Defendants are jointly and severally liable to pay Leow the sum of \$787,500, *ie*, 25% of the total sum of \$3.15m which the Defendants withdrew from the Joint Account for the purpose of making the IG Investments.

(b) The Defendants are jointly and severally liable to pay Leow the sum of \$200,000, *ie*, 25% of the total sum of \$800,000 which the Defendants withdrew from the Joint Account on 7 June 2017 for the purpose of reimbursing themselves for Loan 16.

134 The parties are to file their submissions on costs for OC 662 (limited to 10 pages) within 14 working days from the date of the release of this judgment.

Sushil Nair  
Judge of the High Court

Ivan Lee Tze Chuen (PDLegal LLC) (instructed) and Pereira Edmond Avethas (Edmond Pereira Law Corporation) for the first claimant;  
Quah Wei Sheng Danny and Joshua Chia Han Sheng (CHP Law LLC) for the first and second defendants;  
The third defendant absent and unrepresented.

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