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

[2023] SGHC 105

Suit No 665 of 2020

Between

(1) Wong Shu Kiat
(2) Wan Jin (Serangoon) Pte Ltd

… *Plaintiffs*

And

(1) Chen Jinping Michelle
(personal representative of the estate of Tin Koon Ming, deceased)
(2) Chen Jinping Michelle

… *Defendants*

JUDGMENT

[Debt and Recovery — Contractual debt]
[Trusts — Constructive trusts]
[Trusts — Resulting trusts]
[Trusts — Breach of trust — Dishonest assistance]

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Wong Shu Kiat and another
v
Chen Jinping Michelle (personal representative of the estate of Tin Koon Ming, deceased) and another

[2023] SGHC 105

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Teh Hwee Hwee JC
5–7 October 2022, 4 January, 1 February 2023

20 April 2023 Judgment reserved.

Teh Hwee Hwee JC:

Introduction

1 This is a claim arising from an oral agreement between the first plaintiff, Mr Wong Shu Kiat ("Mr Wong"), and Mr Tin Koon Ming ("Mr Tin"), who has since passed away, to enter into a joint venture for the purchase and sale of used cars (the "Alleged Agreement"). The Alleged Agreement was born out of a conversation that the pair had in a coffeeshop, and involved Mr Wong investing more than half a million dollars in the joint venture. About two years later, the joint venture was terminated, and Mr Wong now seeks to recoup his investment (which he alleges was only partially repaid).

Facts

The parties

2 Mr Wong was in the business of operating coffeeshops in Singapore, at Serangoon (the "Serangoon Coffeeshop") and Sin Ming (the "Sin Ming Coffeeshop").[1] Mr Wong was also a shareholder and the managing director of the second plaintiff, Wan Jin (Serangoon) Pte Ltd ("Wan Jin"), a company incorporated in Singapore to, among other things, run the business of the Serangoon Coffeeshop.[2]

3 According to Mr Wong, Mr Wong and Mr Tin had been friends for about 15 years prior to Mr Tin's passing on 7 July 2020.[3] Mr Wong first met Mr Tin at the Sin Ming Coffeeshop, where Mr Tin introduced himself as a business owner involved in the purchase and sale of used cars.[4] Mr Tin was the sole proprietor of Millenia Motor ("Millenia"), which was in the business of buying and selling used cars.[5]

4 Mr Wong and Mr Tin had mutual friends, including a couple, Ms Mandy Tan ("Ms Tan") and Mr Ng Lin Huat ("Mr Ng").[6] In 2012, the couple became good friends with Mr Tin and his wife, Mdm Yang Lijuan ("Mdm Yang"), after being introduced by a mutual friend at the Sin Ming Coffeeshop, which they

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1 Affidavit of Evidence-in-Chief ("AEIC") of Mr Wong Shu Kiat dated 2 August 2022 ("Mr Wong's AEIC") at para 4.

2 Mr Wong's AEIC at para 5.

3 Mr Wong's AEIC at paras 9 and 12.

4 Mr Wong's AEIC at para 9.

5 Mr Wong's AEIC at paras 6–7; AEIC of Ms Chen Jinping Michelle dated 2 August 2022 ("Ms Chen's AEIC") at paras 8–9.

6 AEIC of Ms Mandy Tan dated 2 August 2022 ("Ms Tan's AEIC") at paras 1, 6 and 7; AEIC of Mr Ng Lin Huat dated 2 August 2022 ("Mr Ng's AEIC") at paras 1, 6 and 7.

patronised often.[7] In turn, Mr Tin introduced the couple to Mr Wong in or around 2012.[8] Thereafter, they all became part of a group of mutual friends who would regularly gather for meals both individually and separately.[9] Mr Wong called on Ms Tan and Mr Ng to give evidence at the trial.

5 The first defendant is Mr Tin's estate (the "Estate"). The second defendant, Ms Chen Jinping Michelle ("Ms Chen"), is Mr Tin's daughter and the administrator of the Estate.[10] Ms Chen is sued in her personal capacity and was added as a party by Mr Wong after the commencement of the action.[11] She is a beneficiary of the Estate, together with her brother and Mdm Yang, who now resides in China.[12] Ms Chen was never involved in the running of Millenia's business, and the evidence that she has given was based on the documents available to her as the administrator of the Estate.[13] The defendants' case consists mainly of non-admissions, and the defendants put the plaintiffs to strict proof of the plaintiffs' case.

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7 Ms Tan's AEIC at paras 5 and 6; Mr Ng's AEIC at paras 5 and 6.

8 Ms Tan's AEIC at para 7; Mr Ng's AEIC at para 7; Mr Wong's AEIC at para 10.

9 Ms Tan's AEIC at paras 6–9; Mr Ng's AEIC at paras 6–9.

10 Ms Chen's AEIC at paras 3–4.

11 Certified Transcript for HC/SUM 2632/2021 at p 16, line 15 to p 18, line 16.

12 Notes of Evidence dated 7 October 2022 ("7 Oct NE") at p 135, lines 4–9; Ms Chen's AEIC at paras 13–14.

13 Ms Chen's AEIC at para 11; Notes of Evidence dated 6 October 2022 ("6 Oct NE") at p 79, line 25 to p 80, line 11.

Background to the dispute

The joint venture and Mr Wong's capital injection

6 Mr Wong alleges that in or around late 2016, Mr Tin approached Mr Wong to discuss a business venture involving the purchase and sale of used cars.[14] The pair decided to enter into the Alleged Agreement, under which Mr Wong would provide capital, while Mr Tin would provide the premises, equipment and labour, for the operation of the joint venture.[15]

7 Mr Wong alleges that the terms of the Alleged Agreement were as follows (the "Alleged Terms"):[16]

(a) Mr Tin and Mr Wong would share the profits and losses in the proportion of 60% to 40%, with Mr Tin receiving and bearing the larger share of the profits and losses (the "Distribution Term").

(b) The pair would settle the accounts of the joint venture weekly and Mr Tin would distribute the profits weekly (the "Weekly Settlement Term").

(c) Mr Wong would be refunded his capital, or part thereof (if losses ate into the joint venture capital), upon termination of the joint venture (the "Refund Term").

8 Mr Wong's evidence is that he invested a total of $517,047.27 (the "Capital Injection Sum") in the joint venture pursuant to the Alleged

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14 Mr Wong's AEIC at para 11.

15 Mr Wong's AEIC at para 20.

16 Mr Wong's AEIC at para 21.

Agreement, by causing Wan Jin to issue three cheques (the "Three Cheques"). The Capital Injection Sum was distributed as follows:[17]

(a) On 2 December 2016, Wan Jin issued a cheque for $336,547.27 (the "First Cheque") that was made payable to a United Overseas Bank ("UOB") account. Mr Wong passed the cheque to Mr Tin to acquire a Bentley car (the "Bentley Car") for onward sale at a profit to kickstart the joint venture. The cheque was to be applied towards the discharge of a car loan given by UOB to the vendor of the Bentley Car. The Bentley Car was subsequently sold by Millenia at a profit, and the sale proceeds were received by Millenia and/or Mr Tin for the purposes of the joint venture.

(b) On 8 December 2016, Wan Jin issued a cheque for $60,800 (the "Second Cheque") to Millenia under Mr Wong's instructions, and the said cheque was paid into Millenia's bank account.

(c) On 14 December 2016, Wan Jin issued a cheque for $119,700 (the "Third Cheque") to Millenia under Mr Wong's instructions, and the said cheque was paid into Millenia's bank account.

It is not in dispute that the First Cheque was deposited into the UOB account and that the Second Cheque and the Third Cheque were deposited into Millenia's bank account.[18]

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17 Mr Wong's AEIC at para 22.

18 First Defendant's Defence (Amendment No 3) dated 6 July 2022 ("1Df's Defence") at paras 7–10 (Set Down Bundle ("SB") at pp 33–35); Second Defendant's Defence (Amendment No 2) dated 6 July 2022 ("2Df's Defence") at paras 12–14 (SB at pp 77–78).

9 Mr Wong's evidence is that in or around December 2018, Mr Wong informed Mr Tin of his wish to terminate the joint venture and demanded repayment of the Capital Injection Sum from Mr Tin.[19] Mr Tin accepted Mr Wong's termination of the joint venture and ceased the profit-and-loss-sharing arrangement between them in or around March 2019.[20] According to Mr Wong, Mr Tin made partial repayment of $130,000 to Mr Wong in respect of the Capital Injection Sum through payments of $30,000 in cash and $100,000 in cash cheques.[21] The plaintiffs' claim in this action is for the balance that allegedly remains due for repayment (the "Outstanding Sum"), which, by the plaintiffs' account, amounts to $387,047.27.[22]

Events leading up to the commencement of the present proceedings

10 According to Mr Wong, Mr Tin made several propositions to Mr Wong relating to the repayment of the Outstanding Sum. This included an offer, made in or around March 2019, to include Mr Wong's name in a durian plantation investment in Malaysia (the "Durian Plantation Offer"), which Mr Wong rejected.[23] Further, Mdm Yang called Mr Wong sometime in late 2019 to suggest that Mr Tin could transfer one of his properties in Malaysia to Mr Wong in order to settle the Outstanding Sum, which Mr Wong also rejected.[24]

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19 Mr Wong's AEIC at para 47.

20 Mr Wong's AEIC at para 47.

21 Mr Wong's AEIC at para 50.

22 Statement of Claim ("SOC") (Amendment No 4) at prayer 4 (SB at p 17).

23 Mr Wong's AEIC at paras 63–64.

24 Mr Wong's AEIC at para 55.

11 On 7 July 2020, Mr Wong served his letter of demand on Mr Tin.[25] Unfortunately, Mr Tin passed away that same day.[26] Mr Wong subsequently sent a follow-up letter to Mr Tin's family for the return of the Outstanding Sum.[27] As Mr Wong did not receive any payment,[28] he commenced this action on 23 July 2020.[29]

The parties' cases

12 The plaintiffs' case is that the Outstanding Sum should have been returned after the termination of the joint venture.[30] The plaintiffs therefore seek the repayment of the Outstanding Sum.[31] The plaintiffs also seek a declaration that the Outstanding Sum is held by Mr Tin and/or the Estate and/or the first defendant on trust for the plaintiffs,[32] and an order for an account to be taken with respect to the Outstanding Sum.[33] Further or in the alternative, the plaintiffs seek equitable compensation to be assessed and paid by the defendants.[34] In addition, the plaintiffs seek a declaration that Ms Chen is liable in her personal capacity for causing the Estate to deny the trust and/or for dishonestly assisting the Estate in its continued breach of trust.[35]

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25 Agreed Bundle of Documents Volume 4 ("4AB") at pp 2050–2051.

26 Mr Wong's AEIC at paras 12 and 69; Ms Chen's AEIC at para 12.

27 Mr Wong's AEIC at para 70; 4AB at p 2052.

28 Mr Wong's AEIC at para 70.

29 Writ of Summons for HC/S 665/2020, filed on 23 July 2020 at 11.12am.

30 SOC (Amendment No 4) at paras 12–13 (SB at p 12).

31 SOC (Amendment No 4) at prayer 4 (SB at p 17).

32 SOC (Amendment No 4) at prayer 1 (SB at p 16).

33 SOC (Amendment No 4) at prayer 3 (SB at p 17).

34 SOC (Amendment No 4) at prayer 5 (SB at p 17).

35 SOC (Amendment No 4) at para 18 and prayer 2 (SB at pp 16–17).

13 In so far as the plaintiffs assert that the Outstanding Sum is a just debt of the Estate, it is not admitted by the defendants, who put the plaintiffs to strict proof.[36] The defendants submit that the legal burden of proof is on the plaintiffs to show that the Alleged Agreement and the joint venture existed as pleaded, as well as to show that the Outstanding Sum is the specific sum as pleaded.[37] Based on the available evidence, the defendants contend that the plaintiffs have failed to discharge their legal and evidential burden of proof.[38]

14 The defendants contend, in particular, that there were certain losses suffered by the joint venture, as well as substantial payments made by Mr Tin to the plaintiffs, which were not accounted for.[39] The defendants therefore argue that the Outstanding Sum is an erroneous figure.[40] In addition, the defendants argue that since the plaintiffs' claim is for the specific sum of $387,047.27, the plaintiffs have mounted their claim on an "all or nothing" basis.[41] The plaintiffs' failure to properly account for the payments made by Mr Tin to Mr Wong is therefore fatal to the plaintiffs' claim.[42]

15 In respect of the claim against Ms Chen in her personal capacity, the defendants argue that there are serious issues relating to whether the Alleged Agreement and joint venture existed as pleaded. Ms Chen therefore cannot be faulted for questioning their existence in discharging her duties as the personal

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36 1Df's Defence at para 3A(ii) (SB at p 32); 2Df's Defence at para 4 (SB at pp 72–73).

37 Defendants' Closing Submissions dated 11 November 2022 ("DCS") at para 19.

38 DCS at paras 30–73.

39 DCS at para 75.

40 DCS at para 75.

41 DCS at para 12.

42 DCS at para 100.

representative of the Estate,[43] and Ms Chen cannot be said to have been dishonest.[44]

The issues

16 The issues raised are as follows:

(a) whether Mr Wong and Mr Tin entered into the Alleged Agreement and, if so, what were the terms of the Alleged Agreement;

(b) whether the Estate holds moneys owing to Mr Wong and, if so, whether the amount quantified by the plaintiffs as the Outstanding Sum or any other amount is owing;

(c) whether the plaintiffs have established their claim based on trust and/or based on a debt;

(d) whether Ms Chen is personally liable for causing the Estate to deny the trust and/or for dishonestly assisting the Estate in retaining the Outstanding Sum in breach of trust.

The Alleged Agreement

17 The proper approach for determining the existence of an oral agreement was set out by the court in *ARS v ART and another* [2015] SGHC 78 ("*ARS v ART*") at [53] as follows:

> (a) in ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;

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43 DCS at para 103.1.

44 DCS at paras 104–105.

> (b) where possible, the court should look first at the relevant documentary evidence;
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> (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists;
>
> (d) oral testimony may be less reliable as it is based on the witness' recollection and it may be affected by subsequent events (such as the dispute between the parties);
>
> (e) credible oral testimony may clarify the existing documentary evidence;
>
> (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and
>
> (g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.

18 It bears mentioning that the legal burden of proof lies squarely on the plaintiffs to prove, on the balance of probabilities, the existence of the Alleged Agreement and the Alleged Terms (*ARS v ART* at [47]).

19 I apply the principles set out in *ARS v ART* and start by analysing the documentary evidence to determine the existence of the Alleged Agreement. As observed by the Court of Appeal in *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206 at [41], "the first port of call for any court in determining the existence of an alleged contract and/or its terms would be the relevant *documentary* evidence" [emphasis in original].

20 The parties did not tender evidence of any written record of what was discussed at the meeting which Mr Wong claims led to the Alleged Agreement. The plaintiffs relied on other documentary evidence, the contemporaneous conduct of the parties and the oral evidence of Mr Wong, Ms Tan and Mr Ng to prove the existence of the Alleged Agreement and the Alleged Terms.

21 I first consider a blue notebook and a green notebook (the "Blue Notebook" and the "Green Notebook" respectively, and the "Notebooks" collectively) that the plaintiffs tendered in evidence. Mr Wong's evidence is that the Notebooks each contain entries pertaining to the purchase and sale of used cars for the joint venture.[45] On their face, the Notebooks contain handwritten entries that are numbered from 1 to 182, spanning a period from 5 or 6 December 2016 to 3 March 2019.[46] The entries are split into two columns side by side, one with the header "Tin" and the other with the header "Boss". In each entry, the following information is recorded:

(a) the date of the transaction;

(b) the car model (*eg*, "Bentley 6.8A", "Honda Fit 13A", "Chevrolet Spark 8.0", *etc*);

(c) the car registration plate number;

(d) the word "sold", if the car was sold; and

(e) sums that appear to reflect the purchase price and the sale price, and where the car was sold, the profit or loss and the distribution of profit or loss per the percentages written next to "Tin" and "Boss".

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45 Mr Wong's AEIC at paras 39–42.

46 Agreed Bundle of Documents Volume 3 ("3AB") at pp 1518–1563 and 1570–1616. The handwriting is unclear in the Green Notebook as to whether a "5" or "6" is indicated for the date of the first entry. In contrast, the handwriting in the Blue Notebook clearly indicates a "5" for the date of the first entry.

22 For example, entry 1 in the Blue Notebook records,[47] under the left column with the header "Tin", the following information (the typographical errors are inherent to the source):

> 5/12/2016 BENTLEY MULSANNE
> $49000 [*sic*] - $153452.73 (TIN)
> YEAR 9/3/2013 SLH9569H
> $500000 - $49000 [*sic*] = $10000
> SOLD 60% $6000

Entry 1 in the Blue Notebook, under the right column with the header "Boss", records the corresponding information:

> 5/12/2016 BENTLEY MULSANNE
> $490000 – UOB $336547.27
> YEAR 9/3/2013 SLH9569H
> $500000 - $490000 = $10000
> SOLD 40% $4000

Entry 1 in the Green Notebook[48] reflects similar information, reproduced almost exactly, with similar format, barring minor differences that are not substantive.

23 According to Mr Wong, Mr Tin recorded the transactions reflected in both Notebooks,[49] and Mr Wong and Mr Tin met up on a weekly basis to settle the accounts of the joint venture.[50] The Green Notebook was kept by Mr Wong, while the Blue Notebook was kept by Mr Tin.[51] Ms Chen came into possession

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47 3AB at p 1519.

48 3AB at p 1572.

49 Mr Wong's AEIC at para 39.

50 Mr Wong's AEIC at para 40.

51 Mr Wong's AEIC at para 39.

of Mr Tin's belongings sometime in March 2021, including the Blue Notebook.[52]

24 Having reviewed the Notebooks, I find that they are unequivocal evidence that Mr Wong and Mr Tin were in a joint venture for the purchase and sale of used cars. The Notebooks contain contemporaneous records of used cars that were purchased and sold for the joint venture, details of the deals made for the joint venture, and the profits and losses shared by the men for the used cars sold for the joint venture. Such contemporaneous evidence bears significant weight in ascertaining the existence of an oral agreement: *ARS v ART* at [53(a)].

25 Mr Wong also produced, as evidence of the joint venture, name cards which have "MILLENIA MOTOR" printed on them, along with "Andy Wong" and a mobile phone number, as well as Millenia's address.[53] According to Mr Wong, after they entered into the joint venture, Mr Tin printed two boxes of Millenia's name cards with Mr Wong's name and mobile phone number.[54] There is no suggestion that Mr Wong was involved in Millenia in any other capacity, and the defendants offer no other explanation for the inclusion of Mr Wong's name and details on Millenia's name cards. I find that these name cards were printed pursuant to, and for the purposes of, the joint venture.

26 The plaintiffs further relied on the Three Cheques and documents from UOB as evidence of the first plaintiff's investment in the joint venture and to prove the existence of the Alleged Agreement and the Alleged Terms. The defendants, however, do not admit that the First Cheque was issued for the

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52 Ms Chen's AEIC at para 37.

53 Mr Wong's AEIC at p 47; 7 Oct NE at p 140, lines 3–10.

54 Mr Wong's AEIC at para 25.

purposes of the joint venture.[55] This is because it was paid by Wan Jin to UOB, and not by Mr Wong to Mr Tin. The Estate argues that the First Cheque had nothing to do with Mr Tin or Millenia.[56] I cannot agree with the Estate. As reproduced above at [22], entry 1 of the Blue Notebook, dated 5 December 2016, indicates that a sum of $336,547.27 was paid to UOB in respect of a "Bentley Mulsanne" with the registration plate number SLH9569H.[57] Entry 1 of the Green Notebook reflects similar pertinent details, save that the car's name is reflected as "Bentley 6.8A" and the handwriting is unclear as to whether a date of 5 or 6 December 2016 is reflected.[58] The sum of $336,547.27 recorded in the Notebooks corresponds with the payment amount in the First Cheque. Further, pursuant to the plaintiffs' non-party discovery application against UOB, documents were disclosed by UOB,[59] revealing that the sum of $336,547.27 was indeed paid to the account of one Mr Yong Khong Yoong Mark ("Mr Yong") via a cheque dated 2 December 2016.[60] Mr Wong explains that the First Cheque was issued to discharge a loan extended by UOB to the vendor of the Bentley Car (see above at [8(a)]). In this regard, the Estate has in fact admitted in their pleadings that the First Cheque was paid to UOB for the settlement of a car loan taken by Mr Yong on the Bentley Car.[61] In my view, the evidence supports the finding that Mr Wong caused the First Cheque to be issued by Wan Jin for the purchase of the Bentley Car for the joint venture in furtherance of the Alleged Agreement. The Estate offers no alternative

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55 1Df's Defence at para 8 (SB at p 33); 2Df's Defence at para 12 (SB at p 77).

56 1Df's Defence at para 8 (SB at pp 33–35).

57 3AB at p 1519.

58 3AB at p 1572.

59 Mr Wong's AEIC at 87–89.

60 Mr Wong's AEIC at 87–88.

61 1Df's Defence at para 8 (SB at 33).

explanation for why Wan Jin, a company controlled by Mr Wong, would pay off a car loan debt owed by Mr Yong.

27 As for the Second and Third Cheques, Ms Chen acknowledged that they were issued to and received by Millenia.[62] Entry 6 of the Blue Notebook indicates that a sum of $119,700 was paid via "DBS C#300189" in respect of a "M/Benz E200".[63] The cheque number 300189 corresponds with that of the Third Cheque.[64] I find that the evidence unequivocally shows that the Third Cheque was part of Mr Wong's investment in the joint venture. While I note that the Notebooks do not contain a record of the Second Cheque, I also accept Mr Wong's evidence that the Second Cheque formed part of his investment in the joint venture. First, as noted above, it is not in dispute that payment was received by Millenia. Second, the Second Cheque was issued on 8 December 2016, a few days after the First Cheque was issued on 2 December 2016 for the purchase of the Bentley Car that was reflected as the first transaction of the joint venture in the Notebooks. The Third Cheque was issued on 14 December 2016, shortly after the Second Cheque, and recorded in entry 6 in the Notebooks. Indeed, the defendants did not proffer any alternative explanation as to the purpose of the Second Cheque. I also do not find any reason to doubt Mr Wong's evidence that the Second and Third Cheques were part of a series of payments he made for the purposes of investing in the joint venture.

28 Having examined the documentary evidence, I turn now to the oral evidence of Ms Tan and Mr Ng. Both Ms Tan and Mr Ng gave evidence that they knew about Mr Wong and Mr Tin entering into a joint venture for the

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62 Ms Chen's AEIC at para 44.

63 3AB at p 1522.

64 3AB at p 1478.

purchase and sale of used cars, because Mr Wong and Mr Tin would discuss it during their gatherings, although Ms Tan and Mr Ng were not aware of the details of the joint venture.[65] It is the evidence of Ms Tan and Mr Ng that the joint venture commenced "sometime before the start of 2017", and they were informed by Mr Wong and Mr Tin at the beginning of 2019 that the joint venture had been terminated.[66] This is generally consistent with the documentary evidence. The Notebooks reflect that entry 1 was dated 5 or 6 December 2016[67] while the last entry, entry 182, was dated 3 March 2019.[68] The Three Cheques that allegedly constituted Mr Wong's investment in the joint venture were all dated December 2016.[69] It is also Ms Tan's and Mr Ng's evidence that they were informed by Mr Wong and Mr Tin, in or around early December 2016, about the purchase and sale of a Bentley Car as part of the joint venture.[70] This accords with entry 1 in the Notebooks.

29 I accept the evidence of Ms Tan and Mr Ng, which corroborates the documentary evidence. Both witnesses came across as neutral and straightforward. Their evidence was consistent with what they deposed in their affidavits of evidence-in-chief and with each other. Ms Tan made an impression as a credible witness who was familiar with the relationship between Mr Wong and Mr Tin, and the events that led to the breakdown of their relationship and

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65 Ms Tan's AEIC at paras 15–16; Mr Ng's AEIC at paras 15–16; 6 Oct NE at p 64, lines 17–22 and p 72, lines 10–18.

66 Ms Tan's AEIC at paras 16.1 and 18; Mr Ng's AEIC at paras 16.1 and 18.

67 3AB at pp 1519 and 1572. The handwriting is unclear in the Green notebook as to whether a "5" or "6" is indicated for the date of the first entry. In contrast, the handwriting in the Blue Notebook clearly indicates a "5" for the date of the first entry.

68 3AB at pp 1562 and 1611.

69 Mr Wong's AEIC at paras 22.1–22.3; 3AB at pp 1477 and 1478.

70 Ms Tan's AEIC at para 16.5; Mr Ng's AEIC at para 16.5.

this suit. Her evidence was clear, and she did not profess to know more than what was within her knowledge, nor hesitate to qualify her answers while she was on the stand.

30 When considered together, the evidence points strongly towards the existence of the Alleged Agreement and the joint venture. The evidence led by the plaintiffs is not rebutted by the defendants. In this regard, Ms Chen herself conceded under cross-examination that she had not adduced any evidence to show that Mr Wong and Mr Tin did not enter into the joint venture.[71] I am satisfied that the plaintiffs have shown, on a balance of probabilities, that Mr Wong and Mr Tin were in a joint venture for the purchase and sale of used cars pursuant to the Alleged Agreement.

The Alleged Terms

31 Mr Wong's evidence is that he and Mr Tin had agreed to the Alleged Terms, namely, the Weekly Settlement Term, the Distribution Term and the Refund Term (see [7] above). The defendants argue that Mr Wong's evidence is not credible because of his shifting position during cross-examination.[72] In gist, they contend that when Mr Wong was queried on when the Alleged Agreement was entered into and how many meetings Mr Wong and Mr Tin held to discuss the joint venture, Mr Wong gave inconsistent responses as to the number of meetings and the terms of the Alleged Agreement that were discussed during the meetings.[73] For instance, Mr Wong initially stated that the Alleged Agreement was entered into at a meeting when Mr Tin drove the Bentley Car

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71 6 Oct NE at p 99, lines 22–23.

72 DCS at paras 31–32.

73 DCS at paras 31–32.

to show it to him,[74] and all the Alleged Terms were discussed at that meeting.[75] But subsequently, Mr Wong stated that there was another meeting after the aforementioned meeting[76] at which a further term was discussed.[77]

32 To my mind, it is not unexpected that there are some inconsistencies in Mr Wong's evidence due to the challenges in recalling the precise sequence of verbal discussions relating to the Alleged Agreement, especially since those events took place nearly six years before his evidence was given at trial. With the passage of time, Mr Wong's inability to recall certain details precisely does not necessarily mean that his evidence is unreliable, or that he was being untruthful. From my observation of Mr Wong on the stand, Mr Wong was not an untruthful witness concocting a story about a joint venture in order to mount a claim against the defendants. He also did not come across as an opportunist conjuring up a claim against Mr Tin's estate and taking advantage of the fact that Mr Tin was not available to contradict his evidence. While he did not always recall the relevant details pertaining to the matters that were asked of him, and his evidence was not entirely consistent at some points, on the whole, his evidence concerning the terms of the joint venture was congruent with the other available evidence (including the documentary evidence and the evidence of Ms Tan and Mr Ng). Considering Mr Wong's evidence together with the other evidence before the court, I find that the plaintiffs have proven the Alleged Terms on a balance of probabilities. I elaborate on each of the Alleged Terms in turn.

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74 Notes of Evidence dated 5 October 2022 ("5 Oct NE") at p 32, lines 5–12.

75 5 Oct NE at p 41, lines 14–25 and p 42, lines 11–16.

76 5 Oct NE at p 50, lines 18–24 and p 51, lines 4–11.

77 5 Oct NE at p 49, line 25 to p 50, line 5 and p 73, lines 9–15.

The Weekly Settlement Term

33 According to Mr Wong, he and Mr Tin agreed that the accounts of the joint venture were to be settled weekly and the profits would be distributed by Mr Tin weekly.[78] This was done during weekly meetings at Millenia's office at Sin Ming or at the Serangoon Coffeeshop, where Mr Tin would update the Notebooks and settle the accounts of the joint venture and hand over any cash or cash cheques to Mr Wong if the joint venture made profits that week after deducting the losses.[79] Mr Wong's evidence is corroborated by Ms Tan and Mr Ng, who gave evidence that they had often observed Mr Tin and Mr Wong having their weekly meetings concerning the joint venture, during which they would be looking at the contents of a notebook.[80] They also observed Mr Tin passing money in cash to Mr Wong, which they understood to be the profits of the joint venture.[81] Mr Wong's evidence is further corroborated by the profit and loss entries in the Notebooks. In the circumstances, I accept that the plaintiffs have shown, on a balance of probabilities, that the Weekly Settlement Term formed part of the Alleged Agreement.

The Distribution Term

34 According to Mr Wong, he and Mr Tin agreed, pursuant to the Distribution Term, to share profits and losses in the proportion of 60% to 40%, with Mr Tin receiving and bearing the larger share of the profits and losses respectively.[82] This is supported by a significant majority of the entries in the

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78 Mr Wong's AEIC at para 21.2.

79 Mr Wong's AEIC at para 40; 6 Oct NE at p 53, line 1 to p 54, line 5.

80 Ms Tan's AEIC at para 16.4; Mr Ng's AEIC at para 16.4.

81 Ms Tan's AEIC at para 16.4; Mr Ng's AEIC at para 16.4.

82 Mr Wong's AEIC at para 21.1.

Notebooks, which repeatedly indicate "60%" under the column with the header "Tin" and "40%" under the column with the header "Boss". The defendants point out, however, that certain entries in the Notebooks are inconsistent with the Distribution Term[83] and that there are discrepancies between the Green Notebook and the Blue Notebook.[84] In view of that, and a lack of any satisfactory explanation from Mr Wong, the defendants argue that the real arrangement between Mr Wong and Mr Tin was substantially different from what was pleaded by the plaintiffs.[85]

35 In respect of the inconsistencies and discrepancies, the Green Notebook shows seven profit entries (the "Reversed Profit Entries") that were not distributed in accordance with the Distribution Term.[86] The Reversed Profit Entries record a distribution of 40% to 60% with Mr Wong receiving the larger share.[87] Of the seven Reversed Profit Entries, four of them (the "Four Entries") were reflected the same way in the Blue Notebook (*ie*, the distribution was the reverse of the Distribution Term).[88] In respect of losses, the defendants note that entry 136 in the Green Notebook does not state how the losses were apportioned.[89] On this basis, the defendants argue that there was a different profit-and-loss-sharing term from the Distribution Term.[90]

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83 DCS at para 51.

84 DCS at paras 52–58.

85 DCS at para 59.

86 DCS at para 52.1.

87 Ms Chen's AEIC at para 53(a); 3AB at pp 1601, 1609 and 1610.

88 Ms Chen's AEIC at para 59; 3AB at pp 1560 and 1561.

89 DCS at para 52.2; 3AB at p 1602.

90 DCS at para 54.

36 The defendants further point out the following anomalies with the entries in the Notebooks:

(a) Thirteen loss entries were not recorded in the Green Notebook but were recorded in the Blue Notebook (the "13 Loss Entries"), distributed on a 50-50 basis.[91]

(b) Entries 108 and 131 in the Green Notebook reflect a profit-and-loss distribution that was in accordance with the Distribution Term, but the corresponding entries in the Blue Notebook reflect a profit-and-loss distribution that was the reverse of that provided for under the Distribution Term.[92]

(c) Connected to the point on inconsistent entries above, three of the seven Reversed Profit Entries (*ie*, the three entries other than the Four Entries where the distribution was reflected in *both* Notebooks in reversed proportions) were reflected differently in the Green Notebook as compared to the Blue Notebook.[93]

37 To put the inconsistencies and discrepancies highlighted by the defendants in perspective, they were identified out of a total of 182 entries in the Notebooks. The large majority of the entries in the two Notebooks thus support Mr Wong's evidence that Mr Wong and Mr Tin had operated in accordance with the Distribution Term.

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91 DCS at paras 55.1 and 56; 3AB at pp 1553–1562 and 1603–1611.

92 DCS at paras 55.2–55.3; 3AB at pp 1521, 1545, 1596 and 1601.

93 DCS at paras 53–54; 3AB at pp 1522, 1559, 1601 and 1609.

38 I accept Mr Wong's explanation that the Reversed Profit Entries, which were made manually, were likely mistakes.[94] It is plausible that the ratio was inadvertently handwritten in the inverse. However, for the 13 Loss Entries that were omitted from the Green Notebook, I do not accept Mr Wong's suggestion that Mr Tin had forgotten to make the entries[95] or that Mr Tin was "confused"[96] because there were "frequent losses" by the time those entries were recorded.[97] It is improbable that it was a mistake that the entries were all consistently made only in one notebook but not the other. I will deal with this point in greater detail later in the judgment (below at [70]). It suffices for me to find at this point that on balance, it is more probable that the 13 Loss Entries were intentionally omitted from the Green Notebook. That having been said, the 13 Loss Entries were in and of themselves far from sufficient to show that Mr Tin and Mr Wong had not agreed on the Distribution Term. Overall, while there were some inconsistencies and discrepancies, I am satisfied that the plaintiffs have shown, on a balance of probabilities, that the Distribution Term formed part of the Alleged Agreement.

The Refund Term

39 According to Mr Wong, Mr Tin agreed that upon the termination of the joint venture, Mr Wong would receive the moneys that he injected into the joint venture (*ie*, the Capital Injection Sum) unless the losses ate into the joint venture capital.[98] This term is nothing extraordinary when viewed in the context of what

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94 6 Oct NE at p 9, lines 11–24, p 10, line 7 to p 11, line 5, and p 23, line 25 to p 24, line 6.

95 6 Oct NE at p 13, lines 8–14.

96 6 Oct NE at p 14, line 18 to p 21, line 16.

97 6 Oct NE at p 16, lines 11–14; 3AB at pp 1553–1562.

98 Mr Wong's AEIC at para 21.3.

appears to be an informal investment premised on an oral agreement between two friends who have known each other for over a decade. The Refund Term is neither unusual nor contrary to commercial sense. The defendants advance no alternative case to refute the Refund Term, nor any evidence to suggest that the Capital Injection Sum would not be returned to Mr Wong or that it would be retained by Mr Tin even after termination of the joint venture.

40 Indeed, I find that the actions of the various actors in the present suit all point towards an attempt by Mr Tin to raise a substantial sum, in money or in kind, to transfer value to Mr Wong after the termination of the joint venture. Their contemporaneous conduct supports the existence of the Refund Term. The logical inference is that the Capital Injection Sum had to be returned to Mr Wong after the termination of the joint venture. I explain.

41 Mr Wong's evidence is that Mr Tin has repaid $130,000 of the Capital Injection Sum.[99] He also gave evidence that Mr Tin made the Durian Plantation Offer, which Mr Wong refused, and their friendship eventually broke down over the issue of Mr Tin's failure to repay the Outstanding Sum.[100] In addition, Mr Wong testified during cross-examination that Mdm Yang called to plead with him not to "go after [Mr Tin]" because Mr Tin was suffering from illnesses and did not even have the money to see a doctor.[101] Mr Wong further testified that Mdm Yang had suggested that she would speak to Mr Tin about whether he could give Mr Wong one of Mr Tin's properties in Malaysia, but Mr Wong

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99 Mr Wong's AEIC at paras 50, 63 and 70.3.

100 Mr Wong's AEIC at paras 62–64.

101 5 Oct NE at p 106, lines 12–16.

rejected the offer because the Malaysian property was worth less than the money owing.[102]

42 Mr Wong's evidence is corroborated by Ms Tan and Mr Ng, who gave evidence that in or around the start of 2019, they were informed by Mr Wong and Mr Tin on separate occasions about the termination of the joint venture.[103] Around that time, Ms Tan and Mr Ng also found out that Mr Wong had begun to chase Mr Tin for repayment.[104] Then, sometime in or around mid-2019, Mr Wong told them that Mr Tin disclosed that Mr Tin did not have enough money to make repayment to Mr Wong as Mr Tin's funds had been invested in a durian business in Malaysia.[105] In addition, Mr Wong told them that Mr Tin had proposed making repayment by including Mr Wong's name in Mr Tin's durian business but Mr Wong did not accept that proposal.[106]

43 Ms Tan and Mr Ng also gave evidence that they had accompanied Mr Tin to Malaysia to conduct a site visit of the durian plantation on 25 July 2019. The trip is evidenced by scanned copies of their passports showing that they entered Malaysia on 25 July 2019. Mr Tin knew that Ms Tan was a real estate agent and wanted her help in advertising the sale of his durian business to potential customers in Singapore.[107] During that site visit, Mr Tin told Ms Tan and Mr Ng that he had offered to put Mr Wong's name in the durian business

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102 5 Oct NE at p 106, lines 17–22.

103 Ms Tan's AEIC at para 18; Mr Ng's AEIC at para 18.

104 Ms Tan's AEIC at para 19; Mr Ng's AEIC at para 19.

105 Ms Tan's AEIC at para 20; Mr Ng's AEIC at para 20.

106 Ms Tan's AEIC at para 20; Mr Ng's AEIC at para 20.

107 Ms Tan's AEIC at para 21 and Tab 2; Mr Ng's AEIC at para 21 and Tab 2.

as repayment of the moneys owing to Mr Wong, but Mr Wong had refused Mr Tin's offer.[108]

44 In or around the second half of 2019, Ms Tan and Mr Ng met Mdm Yang for a meal without Mr Tin, during which they discussed the conflict between Mr Wong and Mr Tin. During the meal, Mdm Yang mentioned that she had suggested that Mr Tin make repayment of his debt to Mr Wong by transferring one of his properties in Malaysia to Mr Wong. Ms Tan and Mr Ng were aware that Mdm Yang's suggestion was motivated by her desire for Mr Tin to settle the "debt" with Mr Wong, and that she did not wish to "lose face" over it.[109] Then, sometime in or around late 2019, Ms Tan and Mr Ng were informed by Mr Wong that Mdm Yang had called him on behalf of Mr Tin and offered to transfer one of Mr Tin's properties in Malaysia to Mr Wong, as tabled by Mdm Yang at the meal.[110]

45 Mr Wong's evidence on the Refund Term is corroborated by the evidence of the other witnesses in relation to the Malaysian assets owned by Mr Tin and the attempts made by Mr Tin or made on behalf of Mr Tin to settle Mr Tin's debt to Mr Wong using those assets. To the extent that Mr Tin owned a durian plantation and/or business and properties in Malaysia, the evidence of the defendants' witnesses also lends some corroboration to Mr Wong's evidence. Mr Tin's brother, Mr Tan Lay Huat, whom the defendants called as their witness, gave evidence that Mr Tin had mentioned plans on acquiring a durian plantation in Malaysia in 2019.[111] Similarly, Ms Chen gave evidence that

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108 Ms Tan's AEIC at para 22; Mr Ng's AEIC at para 22.

109 Ms Tan's AEIC at para 24; Mr Ng's AEIC at para 24.

110 Ms Tan's AEIC at para 25; Mr Ng's AEIC at para 25.

111 AEIC of Mr Tan Lay Huat dated 1 August 2022 at para 6.

Mr Tin told her about his purchase of properties and a durian plantation in Malaysia.[112]

46 On a balance of probabilities, I find that Mr Wong and Mr Tin had agreed on the Refund Term, and that Mr Tin is bound by the Refund Term to return the remainder of the Capital Injection Sum that was not eaten into by the losses of the joint venture. The defendants did not adduce any evidence to contend otherwise, and I find no reason to doubt Mr Wong's evidence that he and Mr Tin had agreed on the Refund Term.

Adverse inferences

47 The defendants invite me to draw an adverse inference against the plaintiffs for failing to call Mr Wong's sister as a witness. During cross-examination, Mr Wong testified that his sister was present at the meeting where he and Mr Tin discussed the terms of the Alleged Agreement.[113] The defendants contend that given the plaintiffs' failure to call Mr Wong's sister as a witness, I ought to draw an adverse inference that the Alleged Agreement, the Alleged Terms, and the joint venture itself, did not exist as pleaded by the plaintiffs.[114]

48 Section 116 Illustration (*g*) of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act") allows the court to draw an adverse inference as to any fact flowing from the nature of the evidence that would likely have emerged if evidence that could and should have been produced by a party is not so produced. The drawing of an adverse inference depends on the circumstances of each case, and it is not the position that in every situation in which a party

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112 Ms Chen's AEIC at para 33.

113 5 Oct NE at p 52, line 21 to p 53, line 3.

114 DCS at para 36.

fails to call a witness or give evidence, an adverse inference must be drawn against that party (*Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*") at [20]). With specific regard to absent witnesses, the broad principles governing the drawing of an adverse inference are as follows (*Sudha Natrajan* at [20]):

> (a) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.
>
> (b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

49 Here, the adverse inference sought pertains to matters in respect of which the defendants have not advanced a positive case or any rebutting evidence (see above at [5]). The Court of Appeal in *Sudha Natrajan* at [23] made it clear that "s 116(*g*) does not afford the court the opportunity to speculate as to what the evidence may be without some basis for the drawing of the inference which the opposing party seeks to persuade the court to draw". An adverse inference cannot be drawn simply because the defendants take the view that there is a particular piece of evidence that could have been adduced but was

not. I therefore decline to draw any adverse inference against the plaintiffs for not calling Mr Wong's sister as a witness.

50 Separately, the plaintiffs also ask me to draw an adverse inference against the defendants for failing to call Mdm Yang as a witness at the trial.[115] This is because Mdm Yang had previously sworn an affidavit dated 23 November 2020 in support of the Estate's application in HC/SUM 4545/2020 to set aside a default judgment dated 27 August 2020 that was entered in the present suit.[116] In that affidavit, she stated that around the end of 2019, Mr Tin received a call from Mr Wong, but Mr Tin refused to pick up the call and became extremely angry.[117] Mdm Yang averred that sometime after that call, she called Mr Wong as she wanted to see if she could help to resolve the dispute between Mr Tin and Mr Wong.[118] Mdm Yang claimed that in her telephone conversation with Mr Wong, she informed Mr Wong that Mr Tin and Mr Wong were friends, and that *if* there were any sums owing from Mr Tin to Mr Wong, Mr Tin had properties in Malaysia that could be sold to repay the sums owing.[119] Mdm Yang emphasised that she qualified her sentences with the word "if" and did not admit Mr Tin's liability to repay Mr Wong.[120] Mr Wong, in his affidavit of evidence-in-chief ("AEIC"), asserted that Mdm Yang had called him in late 2019 on behalf of Mr Tin and offered to repay the remaining debt due from Mr Tin to Mr Wong by transferring one of Mr Tin's properties in Malaysia to Mr

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115 Plaintiffs' Closing Submissions dated 11 November 2022 ("PCS") at para 74.

116 Agreed Bundle of Documents Volume 1 ("1AB") at pp 204–219; HC/JUD 418/2020.

117 Affidavit of Mdm Yang Lijuan dated 23 November 2020 ("Mdm Yang's affidavit") at para 5 (1AB at 206).

118 Mdm Yang's affidavit at para 6 (1AB at p 206).

119 Mdm Yang's affidavit at para 8 (1AB at pp 206–207).

120 Mdm Yang's affidavit at para 8 (1AB at pp 206–207).

Wong.[121] The plaintiffs argue that had Mdm Yang been called to give evidence at trial, her evidence would have corroborated Mr Wong's account of this late 2019 call from Mdm Yang to Mr Wong,[122] and would show that even Mr Tin's wife was aware that sums were owing from Mr Tin to Mr Wong. The plaintiffs assert that Mdm Yang is best placed to provide evidence as to whether the call happened, and what was said during the call.[123] The plaintiffs argue that Mdm Yang was a material witness for the defendants,[124] and that an adverse inference should be drawn by the court against the defendants for failing to call Mdm Yang to give evidence at trial.[125] The adverse inference the plaintiffs seek is the inference that "Mdm Yang had indeed offered to repay Mr Wong the Outstanding Sum with Mr Tin's properties in Malaysia over a telephone call".[126] On the other hand, the defendants argue that since the plaintiffs bear the burden of proof in relation to the allegation that Mdm Yang had admitted that Mr Tin owed Mr Wong the Outstanding Sum, then the plaintiffs should have called Mdm Yang as their witness.[127] Any adverse inference to be drawn should therefore be drawn against the plaintiffs.[128]

51 In my view, it is not appropriate to draw an adverse inference against either party for their failure to call Mdm Yang to testify at the trial. It is not in dispute that Mdm Yang is out of jurisdiction in China. That is a reasonable and

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121 Mr Wong's AEIC at para 55.

122 PCS at para 76.

123 PCS at para 79.

124 PCS at paras 77 and 79.

125 PCS at para 80.

126 PCS at para 80.

127 DCS at para 72.

128 DCS at para 72.

credible explanation (*Sudha Natrajan* at [20(d)]) for either side not to have called Mdm Yang as their witness. Indeed, the plaintiffs stated that they were unable to reach Mdm Yang, since she had returned to China,[129] and Mr Wong testified that he did not have the contact number of Mdm Yang.[130] The plaintiffs' situation appears to be the same as the defendants' in that Ms Chen testified during cross-examination that her last contact with Mdm Yang was at the start of 2022 and that she had lost contact with Mdm Yang after that.[131]

Quantum of moneys owing to Mr Wong

52 Having concluded that the plaintiffs have proven, on a balance of probabilities, that Mr Wong and Mr Tin had entered into the Alleged Agreement on the Alleged Terms, I turn next to the question of how much was owed by Mr Tin to Mr Wong.

53 A preliminary issue is whether the joint venture was profitable. This is because under the Refund Term, the sum of moneys that was to be refunded to Mr Wong upon the termination of the joint venture would be reduced if the losses ate into the Capital Injection Sum. Mr Wong's evidence is that the total profits of the joint venture amounted to approximately $422,800 as of 3 March 2019, based on the Green Notebook.[132] While Ms Chen, in her AEIC, did not expressly agree with the plaintiffs that the joint venture made profits of $422,800, her main contention with this figure appears to be that $422,800 is too high, and the profits of the joint venture must be reduced by a sum of $109,000 to account for losses recorded in the 13 Loss Entries that the plaintiffs

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129 Plaintiffs' Opening Statement dated 26 September 2022 at para 38.

130 5 Oct NE at p 28, lines 16–18.

131 7 Oct NE at p 135, lines 12–15.

132 Mr Wong's AEIC at para 43.

allegedly failed to account for when computing the profits.[133] Under cross-examination, Ms Chen also acknowledged that both Notebooks show a net profit.[134] The defendants, in their closing submissions, similarly highlighted that the plaintiffs failed to account for the $109,000 loss allegedly incurred by the joint venture but did not highlight any other unaccounted loss.[135] Arithmetically, even if the sum of $109,000 was deducted from the plaintiffs' submission of $422,800, the joint venture would still have made a net profit. Therefore, I find that *prima facie*, the Capital Injection Sum is to be refunded to Mr Wong upon the termination of the joint venture, after deducting all repayments and unaccounted losses, if any.

54 In the course of the proceedings, it surfaced that there were various cheque payments made by Mr Tin or Millenia to Mr Wong between December 2016, around the time that the joint venture was formed, and August 2018, when the last cheque payment was made.

55 There was a cheque dated 11 December 2016 for a payment of $55,500 (the "$55,500 Cheque")[136] to Wan Jin that was recorded as payment to "Kiat" in a bank notebook kept by Mr Tin.[137] In addition, there were 18 UOB cheques (the "18 UOB Cheques") issued by Mr Tin to Mr Wong from 14 February 2017 to 26 August 2019.[138] These were disclosed through the defendants'

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133 Ms Chen's AEIC at paras 53–54.

134 6 Oct NE at p 91, lines 13–22.

135 DCS at paras 75.1 and 79.

136 3AB at p 1479

137 3AB at p 1630.

138 3AB at pp 1500–1517.

Supplemental List of Documents filed on 26 January 2022. According to the defendants, the $55,500 Cheque and 18 UOB Cheques totalled $349,100.[139]

56 The plaintiffs claim that not all these fund transfers relate to the Capital Injection Sum. Mr Wong explains that Mr Tin frequently approached him for loans, although he was unable to recall the exact number of loans he had extended to Mr Tin.[140] To the best of his recollection, all loans prior to the joint venture were fully repaid.[141] He recalls that, in particular, he had provided two loans to Mr Tin: one in the sum of $200,000 (the "$200,000 Loan") and another in the sum of $55,500 (the "$55,500 Loan").[142] Mr Wong states his belief that the $55,500 Cheque was a repayment by Mr Tin of the $55,500 Loan, which was extended prior to the joint venture.[143] Mr Wong also identifies two cheques (out of the 18 UOB Cheques), which totalled $150,000, as forming partial repayment for the $200,000 Loan, which was extended after the joint venture commenced.[144] According to Mr Wong, only five of the 18 UOB Cheques, amounting to $100,000 (the "Five UOB Cheques"), relate to the part payment of $130,000 for the Capital Injection Sum that Mr Tin had repaid to Mr Wong.[145] The Five UOB Cheques were cash cheques. The remaining $30,000 was repaid in cash (see above at [9]).[146]

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139 DCS at para 82.

140 Mr Wong's AEIC at para 61.5; 5 Oct NE at p 93, lines 7–17.

141 Mr Wong's AEIC at para 61.5.

142 Mr Wong's AEIC at paras 61.2, 61.3 and 61.5.

143 Mr Wong's AEIC at para 61.5.

144 Mr Wong's AEIC at para 61.

145 Mr Wong's AEIC at para 51.

146 Mr Wong's AEIC at para 50.

57 The defendants point out that the plaintiffs' case shifted significantly after the disclosure of the $55,500 Cheque and 18 UOB Cheques.[147] The plaintiffs amended their Statement of Claim four times. Until the third amendment to the Statement of Claim, the plaintiffs maintained that Mr Tin made the repayment of $130,000 by way of *cash payments* in four tranches from December 2018 to *February 2019*.[148] After the disclosure of the 18 UOB Cheques, the plaintiffs took the position in the fourth amendment of the Statement of Claim that the mode of payment was $30,000 in cash and $100,000 in *cash cheques* from December 2018 to *August 2019*.[149] Mr Wong also identifies the Five UOB Cheques as constituting part of the $130,000 repaid by Mr Tin in respect of the Capital Injection Sum.[150] In short, there were shifts in the plaintiffs' positions as to the mode of payment (cash as opposed to cash cheques), the dates of the partial repayments (from up till February 2019 to up till August 2019) and the number of tranches of payment (from four to more than four). As for the rest of the cheques, Mr Wong claimed under cross-examination that they were payments for profits from the joint venture.[151]

58 The defendants submit, in particular, that Mr Wong's assertion that the cash cheques of $50,000 and $100,000 issued to Mr Wong respectively in March 2017 and November 2017 were partial repayments for the $200,000 Loan, is unsupported by other evidence.[152] The defendants also submit that the Five UOB Cheques, which Mr Wong had identified as constituting part of the

147 Ms Chen's AEIC at para 128.

148 SOC (Amendment No 3) dated 30 July 2021 at para 9, which paragraph was not amended until SOC (Amendment No 4).

149 SOC (Amendment No 4) at para 9 (SB at p 11).

150 Mr Wong's AEIC at para 51.

151 6 Oct NE at p 36, line 1 to p 37, line 5.

152 DCS at para 76.

$130,000 repayment of the Capital Injection Sum,[153] were in fact separate repayments that should be considered in addition to the $130,000 cash payment (as opposed to cash cheque repayments) pleaded by the plaintiffs before the last amendment to the Statement of Claim.[154] The defendants further submit that 11 of the 18 UOB Cheques (*ie*, the cheques besides the two cash cheques of $50,000 and $100,000 that Mr Wong claimed were for partial repayment of the $200,000 loan and the Five UOB Cheques) were unaccounted for (the "Unaccounted Cheques").[155]

59 At this juncture, I pause to note that the burden is on the plaintiffs to prove their claims. As provided in s 103(1) of the Evidence Act, "[w]hoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which the person asserts, must prove that those facts exist". With this principle in mind, I turn to consider whether the plaintiffs have proved, on the balance of probabilities, that the Outstanding Sum amounting to $387,047.27 was owed by Mr Tin.

60 I find that it is improbable that the fund transfers that were made before December 2018 were partial repayments of the Capital Injection Sum. Instead, I accept Mr Wong's evidence that these transfers were payments for the loans that he had extended to Mr Tin and for payment of profits that were due to him from the joint venture. I provide my reasons.

61 First, given my finding that the Refund Term is part of the joint venture agreement, the Capital Injection Sum was only due for repayment upon the

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153 Mr Wong's AEIC at para 51.

154 DCS at para 91; 1Df's Defence at para 16A (SB at p 36).

155 DCS at paras 97 and 98.

termination of the joint venture. It is Mr Wong's consistent and corroborated evidence that the joint venture was terminated around December 2018 or March 2019.[156] There is therefore no reason for Mr Tin to have repaid the Capital Injection Sum using any of the cheques that were dated before December 2018. These payments included the $55,500 Cheque dated 11 December 2016,[157] two of the 18 UOB Cheques dated 8 March 2017 and 29 November 2017 which totalled $150,000 that Mr Wong stated were for part repayment of the $200,000 Loan,[158] and another nine of the 18 UOB Cheques that were issued between 14 February 2017 and 13 August 2018 which amounted to $33,600.[159]

62 Further, in respect of the $55,500 Cheque, I accept Mr Wong's evidence that Mr Tin had periodically approached him for loans, and that this was a repayment for such a loan. The $55,500 Cheque was dated 11 December 2016 (see [55] above). On the available documentary evidence, it appears that the joint venture started around 5 or 6 December 2016, which is the date of entry 1 of the Notebooks (see [21] above). I find that it is improbable that the $55,500 payment was for a repayment of the Capital Injection Sum, given that it was made around the time that the joint venture was just commencing business. If Mr Tin had the available funds to repay Mr Wong for Mr Wong's injection into the joint venture, it appears counterintuitive for Mr Tin to have done that instead of injecting the available sum into the joint venture directly. Further, the $55,500 Cheque predated the Third Cheque for the Capital Injection Sum. It defies logic that Mr Tin would repay the Capital Injection Sum on 11 December 2016 only to receive more capital on 14 December 2016.

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156 Mr Wong's AEIC at para 47.

157 3AB at p 1479.

158 3AB at pp 1502 and 1506; Mr Wong's AEIC at para 61.

159 3AB at pp 1500–1501, 1503–1505 and 1507–1510.

63 In respect of the partial payment for the $200,000 Loan, Ms Tan and Mr Ng gave evidence that in or around January 2017, they were informed by both Mr Wong and Mr Tin on separate occasions of a request by Mr Tin to Mr Wong for a loan of $200,000, which was eventually given by Mr Wong.[160] They recall that Mr Tin had offered to give jewellery to Mr Wong as a deposit for the loan.[161] This corroborates Mr Wong's testimony at trial. When queried on how he remembered the $200,000 Loan in particular, he responded, "[b]ecause [Mr Tin] wanted to give me his wife's jewellery as a pledge".[162] Having regard to Mr Wong's evidence as corroborated by that of Ms Tan and Mr Ng, I accept that the $200,000 Loan was extended by Mr Wong to Mr Tin.

64 The defendants seek to discredit Mr Wong's evidence that he made the $200,000 Loan by highlighting that Mr Wong "only asserted specific details of the alleged loans given to the late Mr Tin *after* the disclosure of the 18 UOB Cheques" [emphasis in original].[163] In my assessment, it is unsurprising that the specific details were provided after the disclosure of the 18 UOB Cheques. As Mr Wong explained, in relation to loans made by him to Mr Tin in the past, even before the joint venture commenced, "[t]o the best of [Mr Wong's] recollection, [Mr Tin] had made full repayments of all the earlier loans".[164] The moneys extended in the past loans between Mr Wong and Mr Tin are not the subject of the plaintiffs' claim in this suit. Mr Wong's evidence as to the loans between himself and Mr Tin only became relevant after the defendants put the 18 UOB Cheques into issue, as a means of questioning the sum claimed by the

160 Ms Tan's AEIC at para 29; Mr Ng's AEIC at para 29.

161 Ms Tan's AEIC at para 29.2; Mr Ng's AEIC at para 29.2.

162 6 Oct NE at p 51, lines 10–11.

163 DCS at para 92.

164 Mr Wong's AEIC at para 61.5

plaintiffs. Mr Wong's evidence on the loans between himself and Mr Tin therefore cannot be dismissed as mere afterthoughts. In view of the foregoing, I accept that Mr Tin not only owed Mr Wong sums from Mr Wong's investment in the joint venture, but also separately owed the $200,000 Loan, and that the $50,000 and $100,000 cash cheque payments were made in repayment of the $200,000 Loan.

65 The timeline of events also indicates that the substantial amounts of $50,000 and $100,000 were made in partial repayment of the $200,000 Loan. It is uncontroverted that these payments were made in March and November of 2017 respectively.[165] As earlier mentioned (at [63]), Mr Wong, Ms Tan and Mr Ng gave evidence that the $200,000 Loan was discussed in or around January 2017. Given that the payments were made several months after the loan was extended, and given that the joint venture had only just started out, I accept Mr Wong's evidence that the $50,000 and $100,000 payments were to repay the $200,000 Loan.

66 Out of the 18 UOB Cheques, seven were made in or after December 2018.[166] The seven cheques consist of the Five Cheques that went towards the $130,000 partial repayment of the Capital Injection Sum and two other cheques, one dated 15 March 2019 for $7,000[167] and another dated 26 August 2019 for $3,000.[168] Mr Wong's evidence in his AEIC is that he and Mr Tin only ceased the profit-and-loss-sharing arrangement in or around March 2019.[169] This is

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165 1Df's Defence at para 16A (SB at p 36); 2Df's Defence at para 21A (SB at p 79).

166 3AB at pp 1511–1517.

167 3AB at p 1513.

168 3AB at p 1517.

169 Mr Wong's AEIC at paras 21.1 and 47.

corroborated by the Notebooks, which, as noted above at [21]–[22], show that the joint venture conducted business until at least 3 March 2019, which was the date of the final handwritten entry in both Notebooks documenting the purchase and sale of used cars.[170] I accept that the cheque dated 15 March 2019 for $7,000 was issued to pay Mr Wong his share of the profits from the joint venture. However, in relation to the final cheque of $3,000 dated 26 August 2019, I am not satisfied that it was for the payment of Mr Wong's share of the profits. By then, the joint venture had been terminated, and there is no evidence of any sale or purchase of used cars made by the joint venture or any profit to distribute. Based on Mr Wong's own case, it is improbable for him to receive any payment for a profit made by the joint venture in August 2019.[171] I therefore do not accept the explanation given by Mr Wong, when he was confronted during cross-examination, that Mr Tin had continued to pay him his share of the profits up till August 2019.[172] The $3,000 payment should therefore be deducted from the Outstanding Sum that Mr Wong claims was owing to him.

67 As for the amendments in the plaintiffs' Statement of Claim with respect to the particulars of the partial repayments for the Capital Injection Sum after the disclosure of the 18 UOB Cheques and the $55,500 Cheque, I am of the view that taken in the round, they do not undermine the veracity of the evidence given by Mr Wong in support of the plaintiffs' claim. In addition to my observations at [32] concerning the veracity of Mr Wong's evidence in general, my further reasons specific to these issues are as follows:

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170 3AB at pp 1562 and 1611.

171 Mr Wong's AEIC at para 47.

172 6 Oct NE at p 37, line 16 to p 38, line 24.

(a) I accept as probable Mr Wong's explanation that he previously stated that he was paid in cash because "cash cheques [are] equivalent to cash".[173] Indeed, on the face of the Five Cheques adding up to $100,000 which Mr Wong testified was paid by Mr Tin in partial repayment of the Capital Injection Sum,[174] "cash" was reflected in the "Pay" line. Moreover, I note that in Mr Tin's own records, two of the payments to Mr Wong that were part of the 18 UOB cheques were reflected as "CASH" even though the payment was made via cash cheque.[175]

(b) As for the change in the number of tranches of repayment and when the last partial repayment for the Capital Injection Sum was received, Mr Wong's explanation under cross-examination was that he had made an error initially because of "a lapse of time", that he "did not pay careful attention to when the payments were made", and that he "merely knew that in total [Mr Tin] repaid [Mr Wong] $130,000".[176] While Mr Wong's explanation might suggest some uncertainty in his evidence, this must be considered within the context of how Mr Wong and Mr Tin conducted their business with each other. Their dealings were informal and lacking in proper documentation or records specifying the dates and amounts of the repayments for the Capital Injection Sum. It is therefore unsurprising that Mr Wong may not have recalled every detail with unerring precision.

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173 6 Oct NE at p 34, lines 2–6; 3AB at pp 1511–1512 and 1514–1516.

174 Mr Wong's AEIC at paras 51–52; 3AB at pp 1511–1512 and 1514–1516.

175 See 3AB at pp 1633 and 1637 for Mr Tin's records, which correspond to the cash cheques exhibited at 3AB at pp 1503 and 1508.

176 6 Oct NE at p 34, lines 9–19.

(c) I accept Mr Wong's evidence that he was repaid only $130,000. Mr Wong did not claim, at any point, for the whole of the Capital Injection Sum. In his letter of demand dated 7 July 2020, Mr Wong took the position that Mr Tin had repaid $130,000.[177] This position has been maintained consistently throughout, before and after the discovery process, without Mr Wong being confronted by adverse documentary evidence and compelled to concede that the debt owing from Mr Tin was reduced by the sum of $130,000.

(d) I also observe that there was a change in the nature of the sums stated in the 18 UOB Cheques across time. I set out the dates and amounts of the 18 UOB Cheques in a table:[178]

S/No	Date	Amount
1.	14 February 2017	$2,000.00
2.	28 February 2017	$2,000.00
3.	8 March 2017	$50,000.00
4.	6 September 2017	$3,000.00
5.	7 November 2017	$3,500.00
6.	27 November 2017	$7,400.00
7.	29 November 2017	$100,000.00
8.	4 January 2018	$2,500.00
9.	11 June 2018	$4,600.00
10.	24 July 2018	$4,200.00

177 4AB at pp 2050–2051, para 7.

178 3AB at pp 1500–1517 and 1631–1642.

11.	13 August 2018	$4,400.00
12.	10 December 2018	$20,000.00
13.	23 December 2018	$30,000.00
14.	15 March 2019	$7,000.00
15.	16 June 2019	$30,000.00
16.	18 June 2019	$10,000.00
17.	25 August 2019	$10,000.00
18.	26 August 2019	$3,000.00

(e) The UOB cheques that were dated before December 2018, excluding the two cheques dated 8 March 2017 and 29 November 2017 for part repayment of the $200,000 Loan as discussed at [63]–[65] above, had relatively smaller and uneven amounts ranging from $2,000 in the cheque dated 14 February 2017[179] to $7,400 in the cheque dated 27 November 2017.[180] In contrast, five out of the seven cheques issued from December 2018 onwards had large round amounts of between $10,000 and $30,000.[181] Such a pattern of payments is consistent with the picture painted by Mr Wong. The payments prior to December 2018, which, according to Mr Wong were largely for the distribution of the profits of the joint venture,[182] were, as one would expect, smaller and less even, while the payments from December 2018 onwards for the gradual paying down of the Capital Injection Sum were logically larger.

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179 3AB at p 1500.

180 3AB at p 1505.

181 3AB at pp 1511, 1512, 1514–1516.

182 6 Oct NE at p 36, line 1 to p 37, line 5.

(f) Although the defendants have adduced two partially redacted notebooks containing Mr Tin's records of various payments made by Mr Tin to Mr Wong,[183] the visible transaction records in the notebooks show only the payments made via the 18 UOB Cheques and the $55,500 Cheque. The defendants do not argue that Mr Tin's records evidence further payments made by Mr Tin to Mr Wong beyond the sums represented by the 18 UOB Cheques and the $55,500 Cheque.[184] In my view, if it is the defendants' case that Mr Tin had made further repayments of the Capital Injection Sum after December 2018 beyond the $130,000 conceded by Mr Wong, then it is incumbent on the defendants to adduce some evidence of such repayments, or an explanation of why these repayments were not reflected in Mr Tin's records.

68 Viewed as a whole, Mr Wong's evidence is credible and is generally consistent with the available documentary evidence and the evidence of the witnesses. For these reasons, I am satisfied that the last set of amendments to the plaintiffs' Statement of Claim and the explanation given by Mr Wong were not fabricated to explain away the $55,500 Cheque and the 18 UOB Cheques.

69 I turn next to the 13 Loss Entries. The defendants argue that the Outstanding Sum is "likely to be erroneously arrived at" given that there were "losses from the [joint venture] that were not accounted for".[185] The defendants contend that the plaintiffs have failed to take into account the 13 Loss Entries, which were missing from the Green Notebook (*ie*, Mr Wong's copy) and

183 DCS at paras 80–82; 3AB at pp 1629–1644.

184 DCS at para 82.

185 DCS at para 75.

recorded only in the Blue Notebook (*ie*, Mr Tin's copy).[186] These losses total $109,000.[187] The defendants submit that the Outstanding Sum should be reduced by 40% of $109,000, in accordance with the Distribution Term.[188]

70 Looking at the dates of the 13 Loss Entries, the first of which was made on 24 May 2018 and the last of which was made on 3 March 2019,[189] it appears that Mr Tin started to omit to inform Mr Wong of losses towards the later part of the joint venture. In contrast, when a loss was made early in the joint venture, the loss was reflected in both Notebooks, for instance, in entry 6 of both the Blue and Green Notebooks dated 16 December 2016.[190] As noted above, Mr Wong attributed the omissions to Mr Tin having forgotten to make the entry[191] or to Mr Tin being "confused" because there were "frequent losses".[192] I cannot agree with Mr Wong. In my view, a reasonable inference can be made that Mr Tin intentionally omitted to inform Mr Wong of the losses in the 13 Loss Entries to preserve their collaboration in the light of the stress and pressures arising from the losses that had afflicted the joint venture. I therefore agree with the defendants that the losses should be taken into account in computing the Outstanding Sum. Pursuant to the Distribution Term, which I have found to have been proven on the balance of probabilities, the losses were to be shared in the proportion of 60% (Mr Tin): 40% (Mr Wong). 40% of the total losses in

186 DCS at paras 78–79.

187 DCS at para 79; 3AB at pp 1553–1562.

188 DCS at para 79.

189 DCS at para 55.1; 3AB at pp 1553 and 1562.

190 3AB at pp 1522 and 1574.

191 6 Oct NE at p 13, lines 8–14.

192 6 Oct NE at p 14, line 18 to p 21, line 16.

the 13 Loss Entries, being 40% of $109,000, which is $43,600, should be accounted for in determining the amount that was owed by Mr Tin to Mr Wong.

71 In accordance with my findings as set out in [66] and [70] above, I find $340,447.27 to be the amount of the remaining Capital Injection Sum that was owed by Mr Tin to Mr Wong, as follows:

Capital Injection Sum	$517,047.27
Less $130,000 repayment acknowledged by Mr Wong	-$130,000
Less cheque dated 27 August 2019	-$3,000
Less 40% of losses in 13 Loss Entries	-$43,600
Total	=**$340,447.27**

Whether the plaintiffs are barred from recovering an amount that is lower than $387,047.27

72 The defendants refer to *Edmund Tie & Co (SEA) Pte Ltd v Savills Residential Pte Ltd* [2018] 5 SLR 349 ("*Edmund Tie*"), in which the applicant's statement of claim prayed for the payment of a specific contract sum. In that case, Choo Han Teck J dismissed the applicant's application for leave to appeal against the learned District Judge's decision on the basis that the applicant was bound by his pleaded case (see [11] of *Edmund Tie*) and that the learned District Judge had made the correct order in not granting something that the applicant did not ask for (see [14] of *Edmund Tie*). Choo J observed that the applicant's solicitors had missed out eight crucial words in their statement of claim, namely, "or such sum as the court deems fit" immediately after the words "[a]nd the

[applicant] claims against the [respondent] … the sum of $13,385.70" (*Edmund Tie* at [9]).

73 Here, the defendants argue that the plaintiffs' claim is similarly an "all or nothing" claim such that if this court is not satisfied that the precise sum owing was the Outstanding Sum as pleaded, then the plaintiffs may not claim a lesser amount, since that would be inconsistent with the plaintiffs' own version of the facts, namely, that Mr Tin only repaid $130,000.[193]

74 In the present case, the key issues with the plaintiffs' version of events pertain to the $3,000 cheque dated 26 August 2019 and the deduction of $43,600, being 40% of the total losses in the 13 Loss Entries, which were not taken into account by the plaintiffs in the calculation of the Outstanding Sum. In my judgment, *Edmund Tie* is distinguishable. The plaintiffs seek an "order that Mr Tin and/or the Estate and/or the Defendants pay the Plaintiffs the Outstanding Sum in the amount of $387,047.27", which "Outstanding Sum" is defined as follows: "Mr Tin and/or the Estate remains liable to [Mr Wong] in the sum of $387,047.27 (the "Outstanding Sum"), being the balance amount due for the refund of [Mr Wong's] capital upon [Mr Wong's] termination of the joint venture".[194] The plaintiffs have not limited themselves to either a claim for $387,047.27 or nothing and it is open to the court to make a finding on the "balance amount due for the refund" in respect of Mr Wong's capital contribution. Further, in *Edmund Tie*, the plaintiff would have had to rely on facts that he had challenged in order to claim the sum he sought in that action (see [5] and [10] of *Edmund Tie*). The same issue does not present itself here. Here, the plaintiffs must prove that the Outstanding Sum, as they have

193 DCS at para 27.

194 SOC (Amendment No 4) at prayer 4 and para 12 (SB at pp 12 and 17).

quantified it, is due. If they are unable to prove part of that amount, it is not necessarily a contradiction to their entitlement to the part of the sum that they are able to prove. Indeed, the court "may award less but not more than what an applicant claims" (*Swee Wan Enterprises Pte Ltd v Yak Thye Peng* [2019] SGHC 149 at [80] referring to *Edmund Tie* at [10]).

The plaintiffs' causes of action

75 The cases the parties presented in their closing submissions are akin to ships that pass in the night. The plaintiffs focus on a claim that is based on arguments pertaining to trusts. They contend that the defendants hold the Outstanding Sum on a common intention constructive trust that arose between Mr Wong and Mr Tin.[195] Alternatively, they contend that the Outstanding Sum is held on a resulting trust in favour of the plaintiffs.[196] Although the plaintiffs' statement of claim alluded to a claim for moneys owing under the Alleged Agreement (*ie*, a claim in debt), their closing submissions did not expressly address arguments on this basis.

76 In contrast, the focus of the defendants' closing submissions is on defending a claim in debt. The defendants argue that the plaintiffs have not discharged their burden of proving the existence of the Alleged Agreement, the Alleged Terms, the joint venture, or that the Outstanding Sum is owing to Mr Wong.[197] The defendants make no submissions on trusts at all, even in their reply closing submissions, after having had sight of the plaintiffs' closing submissions.

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195 PCS at paras 19, 29–37.

196 PCS at paras 19, 38–40.

197 DCS at paras 30–101.

77 In view of the divergence and lack of clarity in the parties' closing submissions, I directed the parties to clarify their positions on whether (and if so, how) a trust may arise in the context of the Alleged Agreement, and whether the plaintiffs are claiming in contract for moneys due for refund under the Alleged Agreement or proceeding only based on a common intention constructive trust or resulting trust.[198]

78 The plaintiffs tendered further submissions on 16 January 2023, clarifying that they are indeed pursuing a claim in debt for moneys due for refund under the Alleged Agreement.[199] As for the defendants, they argue in their further submissions that the plaintiffs' case had been based on a trust claim and that there is no basis for the plaintiffs to assert a claim for moneys due for refund under the Alleged Agreement.[200]

79 I therefore directed the parties to specifically address, in their reply to each other's further submissions, whether the plaintiffs have properly pleaded their claim in debt, and whether the defendants have suffered any prejudice relating to discovery, leading of evidence, cross-examination and closing submissions.[201]

80 As will be elaborated upon further below, the plaintiffs submit that they have properly pleaded a cause of action in debt and included prayers in their statement of claim in that regard, and that no prejudice to the defendants will

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198 Minute Sheet for hearing on 4 January 2023; Letter from court dated 5 January 2023.

199 Plaintiffs' Further Written Submissions dated 16 January 2023 ("PFS") at paras 32–35.

200 Defendants' Further Submissions dated 16 January 2023 ("DFS") at paras 16–22.

201 Letter from court dated 25 January 2023.

arise from the plaintiffs' clarification on the alternative claim in debt.[202] The defendants, on the other hand, submit that the plaintiffs have not properly pleaded a claim in debt, that a claim in debt will constitute a "brand-new and distinct cause of action", and that they are prejudiced by the plaintiffs' late clarification.[203]

81 I turn first to deal with the plaintiffs' claim in trust and the parties' submissions, including the further submissions that they made in response to the court's directions for clarifications, before doing the same for the plaintiffs' claim in debt.

The claim in trust

Parties' submissions

82 The plaintiffs' submission is that the first defendant holds the Outstanding Sum on a common intention constructive trust in favour of the plaintiffs.[204] This is because Mr Wong and Mr Tin had an oral agreement showing a common intention that the Capital Injection Sum would be returned to Mr Wong upon the termination of the joint venture (*ie*, the Refund Term).[205] Mr Wong had transferred the Capital Injection Sum to Mr Tin to Mr Wong's detriment. It is therefore unconscionable for the Estate to retain the sum.[206]

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202 Plaintiffs' Reply to Further Written Submissions dated 1 February 2023 ("PRFS") at paras 3.3–3.5.

203 Defendants' Reply Further Submissions dated 1 February 2023 ("DRFS") at paras 16 and 20–23.

204 PFS at para 4.

205 PFS at para 6.

206 PFS at para 7.

83 In the alternative, the plaintiffs argue that a resulting trust has arisen by operation of law as there was no intention on Mr Wong's part to benefit Mr Tin or the Estate when transferring the Capital Injection Sum.[207] The defendants bear the burden of proving that Mr Wong had injected the sum with the intention to benefit, or to make a gift to, Mr Tin or the Estate, and the defendants have failed to discharge this burden.[208]

84 The defendants submit that the common intention constructive trust and the resulting trust analyses do not apply in the present case involving an alleged oral agreement with defined terms.[209] The defendants submit that the common intention constructive trust doctrine is only deployed where there is no express agreement between the disputing parties as to how the beneficial ownership in the property in question would be allocated between them,[210] but the plaintiffs' pleaded case is that there was such an express agreement.[211] The defendants further argue that the resulting trust analysis does not apply on the present facts because the presumption of resulting trust only operates where there is no evidence from which to prove or infer the intention of the transferor, whereas in the present suit, the court is presented with a positive case concerning the actual intention and desires of Mr Wong as the transferor of the Capital Injection Sum.[212]

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207 PFS at para 24.

208 PFS at paras 24–27.

209 DFS at para 15.

210 DFS at para 12.

211 DFS at para 15a.

212 DFS at para 14.

85 The defendants conclude by adding that the trust doctrine cannot apply to the entire Outstanding Sum, given that a portion of the capital injected by Mr Wong into the joint venture was paid to UOB rather than Mr Tin. Therefore, Mr Tin would not have been a trustee of that sum paid to UOB.[213]

Analysis

(1) The law

86 Courts have found constructive trusts in a myriad of scenarios. In exploring the foundations of the constructive trust doctrine, some commentators have observed that constructive trusts arise "in response to unconscionable conduct and in circumstances where it is inequitable for the defendant to retain the property" (Christopher Hare and Vincent Ooi, *Singapore Trusts Law* (LexisNexis, 1st Ed, 2021) at para 10-17). This language of unconscionability is indeed evident in authorities on various sub-species of constructive trusts (see, for example, *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [124]–[125], *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [171]–[172] and *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 at [103]). In relation to common intention constructive trusts, the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") observed that in English law, the "common intention constructive trust was developed to mitigate the arithmetic rigour of the resulting trust when ascertaining property rights upon the breakdown of a relationship in the domestic context" (at [95]).

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213 DFS at para 23a.

87 The elements of a common intention constructive trust were recently summarised in *Er Kok Yong v Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased) and others* [2023] SGHC 58 ("*Er Kok Yong*") at [18], as follows:

> … As the name suggests, a common intention constructive trust arises "where it is clear that there is a common intention among parties as to how their beneficial interests are to be held": *per* the Court of Appeal ("CA") in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [83]. To successfully invoke the common intention constructive trust, the common intention – which subsists either at, or subsequent to, the time the property was acquired – may either be express or inferred; and there must be sufficient and compelling evidence of the express or inferred common intention: *Su Emmanuel* at [83] citing *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160(b)] and [160(f)]. Apart from proving the common intention, detrimental reliance on that common intention must also be shown: *per* the CA in *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 at [40] – [41]

88 As for resulting trusts, the court in the recent case of *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2022] SGHC 45 ("*Acute Result"*) at [68]–[69] provided an overview of the circumstances under which a resulting trust arises:

> 68 A resulting trust arises when a transferor transfers property to a transferee lacking the intention to benefit the transferee: *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [35] ("*Lau Siew Kim*"); *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [43] ("*Chan Yuen Lan*"). The two factual elements which give rise to a resulting trust are therefore: (a) a transfer of property to a transferee; and (b) circumstances in which the transferor does not intend to benefit the transferee: *Moh Tai Siang v Moh Tai Tong and another* [2018] SGHC 280 at [72]; Robert Chambers, *Resulting Trusts* (Clarendon Press, Oxford 1997) (*"Chambers' Resulting Trusts"*) at p 32, accepted in *Lau Siew Kim* at [35].
>
> 69 A transferor's lack of intention to benefit the transferee can be established in two ways: (a) by a failure to rebut the

> presumption of resulting trust which arises when a transferee of property does not provide the whole of the consideration for the transfer; or (b) by evidence of the transferor's intention with respect to the transfer. The court should not resort to the presumption if there is evidence which can prove the transferor's intention or from which that intention can be inferred: *Chan Yuen Lan* at [51] (broadly approving *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 at [25]).

89 In relation to ordinary commercial transactions, the Court of Appeal held in *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119 ("*Hinckley*") at [18], citing *Henry v Hammond* [1913] 2 KB 515 at 521, that absent other indicators of a trust, it would be unlikely for a trust to arise in a situation where the recipient of money is not bound to keep the money separate, but is instead entitled to mix it with his own money and deal with it as he pleases. In such a scenario, when the recipient is called upon to hand over an equivalent sum of money, then, he is not a trustee of the money, but merely a debtor. It has also been observed that courts are "reluctant to introduce equitable doctrines into non-familial matters", and that "commerce would be impossible if payments ordinarily create a trust" (see *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 ("*AHPETC*") at [122]).

(2) My decision

90 In my judgment, the plaintiffs' claim on the basis of trusts is misconceived and must fail. I explain.

(A) COMMON INTENTION CONSTRUCTIVE TRUST

91 It is clear that a common intention constructive trust can arise where there is an express discussion on how the beneficial interest in the property is to be shared: see *Chan Yuen Lan* at [97]. Indeed, express discussions are the

clearest basis upon which the requisite common intention can be found, without needing to resort to the inferred common intention analysis based on contributions to purchase price. However, the requisite common intention must be in relation to the *beneficial interest* in the property: *Chan Yuen Lan* at [96]–[97]. This is echoed in the recent Court of Appeal decision in *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 at [34].

92 I find that the plaintiffs have failed to prove the requisite common intention. The plaintiffs' submission is that the parties had a common intention that the Capital Injection Sum should be returned to Mr Wong upon the termination of the joint venture and understood that it was not meant as a gift for Mr Tin.[214] This says nothing about the parties' common intention in relation to beneficial interest in identifiable trust property and is, instead, consistent with an ordinary loan (which typically provides for the return of the loaned capital after a specified time or upon the occurrence of a specified event). In this case, the Capital Injection Sum was placed at the disposal of Mr Tin and not kept separate. Mr Wong's evidence is that the "funds derived from the cheques were subsequently utilised by Mr Tin as capital in the joint venture for the purchase and sale of used vehicles, which continued until it was terminated".[215] It is also Mr Wong's evidence that in relation to the Three Cheques representing sums that constitute the Capital Injection Sum, the first sum of $336,547.27 was used to acquire the Bentley Car for the joint venture, and the second and third sums of $60,800 and $119,700 were paid into the bank account of Millenia for the joint venture to carry out its business.[216] This evidence is consistent with Mr Wong's case that, under the joint venture, Mr Wong was to provide capital

214 PFS at paras 6–7.

215 Mr Wong's AEIC at para 23.

216 Mr Wong's AEIC at paras 22.1–22.3.

whilst Mr Tin would handle day-to-day operations. However, it does not evidence any common intention as to beneficial interest.

93 Evidentiary shortcomings aside, the plaintiffs' claim on common intention constructive trust fails in principle as there was no detrimental reliance. The only detriment raised by the plaintiffs is the fact that the Capital Injection Sum was transferred by Mr Wong to Mr Tin.[217] On the plaintiffs' own pleaded case, the Capital Injection Sum was paid pursuant to the Alleged Agreement (the existence of which I accept). There is no detrimental reliance giving rise to a common intention constructive trust, given that Mr Wong merely did what he had contracted to do. The Capital Injection Sum was the consideration provided by Mr Wong in exchange for a cut of the profits earned through Mr Tin's on-sale of used cars. In the circumstances, there is nothing unconscionable in mutually agreed *quid pro quo* pursuant to a contract that both parties have voluntarily concluded. Indeed, it is the plaintiffs' case, and I have found, that the joint venture was profitable.

94 There is another reason the plaintiffs' claim on common intention constructive trust must fail. The plaintiffs' submission is essentially that a contract which provides for the eventual return of a transferred sum will establish the requisite common intention, and the very fact of that transfer is itself sufficient to constitute the detrimental reliance necessary to give rise to a common intention constructive trust. The effect of the plaintiffs' proposition is that debtors in a very wide range of loan instruments are regarded as constructive trustees, allowing creditors to easily circumvent the rules of priority in insolvency law.

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217 PFS at para 7.

95 Before I leave this point to consider the plaintiffs' arguments on resulting trust, I observe that common intention constructive trust is typically analysed in relation to the acquisition of real property. The plaintiffs did not explain how or why the common intention constructive trust analysis applies to money, which is property that is fungible, unlike in the usual case involving an identifiable property with bifurcated legal and equitable interests, and where the legal interest is registered under a system of ownership. As a decision on the issue of whether a common intention constructive trust can and should be applied to money is not necessary for the disposal of the plaintiffs' claim, I say no more on this issue.

(B) RESULTING TRUST

96 The plaintiffs' claim on resulting trust must similarly fail in light of their pleaded case. The Capital Injection Sum was provided by Mr Wong pursuant to the Alleged Agreement, in order to provide the capital needed for the operation of the joint venture. In accordance with the Distribution Term, the joint venture was to be for the mutual benefit of both parties. This was a benefit that was actually intended to be conferred by Mr Wong to Mr Tin in transferring the Capital Injection Sum. This alone is sufficient to dispose of the resulting trust claim, which depends on a *lack of intention* to benefit. Indeed, Mr Tin's conscience was in no way affected by the fund transfer to him. There is no reason for equity to intervene by imposing a resulting trust.

97 In summary, there is no basis for a trust to arise on the present facts, nor any reason for importing trust doctrines into the present commercial arrangements between Mr Wong and Mr Tin. Accordingly, I dismiss the plaintiffs' claim that is based on the law of trusts.

98 The failure of the plaintiffs' claim based on the law of trusts, however, is not the end of the matter. I will turn now to the plaintiffs' alternative claim in debt to ascertain if it is made out.

The claim in debt

Parties' submissions

99 As mentioned at [78], the plaintiffs clarified, in their further submissions dated 16 January 2023, that they are pursuing an alternative claim in debt for the Outstanding Sum.[218] This clarification, which came after the respective closing submissions were filed, naturally gives rise to the issue of whether this claim in debt was adequately pleaded and canvassed during trial and the closing submissions, and whether the defendants are in any way prejudiced by the clarification.

100 The plaintiffs argue that pleadings only need to set out the essential factual material that supports a claim.[219] In this regard, the plaintiffs argue that they have sufficiently proved the relevant material facts for a claim in debt, namely that (a) a transfer of money was made to Mr Tin, and (b) the Outstanding Sum was due for refund to Mr Wong.[220] The plaintiffs also submit that this claim in debt has been sufficiently pleaded at prayers four and eight of their Statement of Claim.[221]

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218 PFS at paras 32–35.

219 PRFS at para 16.

220 PRFS at para 18.

221 PRFS at paras 14–15.

101 The plaintiffs submit that their clarification that they are claiming in debt did not prejudice the defendants, given that the defendants' pleadings were premised on a defence to a claim in debt. In addition, the material evidence relating to the claim in debt had been sufficiently disclosed by both parties over the course of discovery, and when the evidence from the witnesses was canvassed,[222] and the defendants' primary case is in fact directed towards disproving a claim in debt.[223]

102 The defendants contend that the plaintiffs have not properly pleaded their claim in debt,[224] as the plaintiffs' pleaded case was premised solely on a claim under resulting trust,[225] and the plaintiffs' closing submissions were premised on common intention constructive trust with resulting trust analysis as an alternative.[226] The defendants contend that it is manifestly unfair and inequitable for the plaintiffs to assert that the plaintiffs' claim is also based on moneys due for refund as a debt under the Alleged Agreement.[227]

103 The defendants further assert that they are prejudiced as the plaintiffs' claim in debt is a "brand-new and distinct cause of action".[228] The defendants argue that if the plaintiffs are allowed to introduce a brand-new cause of action, the plaintiffs will get a "second bite at the cherry".[229]

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222 PRFS at paras 22–23.

223 PRFS at paras 24–28.

224 DRFS at para 16.

225 DRFS at para 16.

226 DFS at paras 16–22.

227 DFS at paras 21–22

228 DRFS at paras 22–23.

229 DRFS at paras 25 and 29.

Analysis

104 In my judgment, the claim in contract for moneys due for refund under the Alleged Agreement was pleaded by the plaintiffs, and no prejudice has been occasioned to the defendants by the plaintiffs' claim in debt.

105 The Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") examined the law on pleadings and held, at [43], that the specific term of art for a particular cause of action did not have to be specifically pleaded, though if such a cause of action is to be relied on, the pleadings should at the very least disclose the material facts which would support such a claim, so as to give the opponent fair notice of the substance of such a case. The Court of Appeal proceeded to analyse the nature of the claims in *V Nithia* and concluded that the first respondent's failure in that case to expressly plead his claim in proprietary estoppel and the material facts necessary to establish the cause of action for proprietary estoppel was fatal (at [44]–[46]).

106 More recently, in *Acute Result*, the court accepted that the plaintiff had changed its case between its pleadings and its closing submissions (at [60]–[63]). The plaintiff's statement of claim had asserted that a company, Lioncap Global, was in a trustee/beneficiary relationship with the plaintiff by virtue of contractual terms found in certain agreements made in 2016. However, in the plaintiff's closing submissions, the plaintiff argued that a *resulting* trust had arisen when the plaintiff transferred shares to Lioncap Global, and this share transfer had taken place *after* 2016. The defendant argued that on the pleadings, although the plaintiff had pleaded expressly that it was beneficially entitled to the shares, it was nowhere pleaded that Lioncap Global held the shares *on trust*

for the plaintiff, let alone on *resulting trust*. The court proceeded to examine the plaintiff's case, as revised in its closing submissions, opining that a pleader's duty was to plead facts not law – once the material facts have been pleaded, the pleader can develop the legal consequences of those facts in submissions, with the proviso that the legal consequences which the pleader develops in submissions must not take the opposing party by surprise so as to cause it prejudice which cannot be remedied (at [64]).

107 Paragraphs 12 and 13 of the plaintiffs' Statement of Claim (Amendment No 4), under the heading "The Plaintiffs' Claims", make it clear that the plaintiffs are claiming the Outstanding Sum from the Estate. Although the plaintiffs then proceeded to plead at paragraph 14 of the Statement of Claim (Amendment No 4) that the Outstanding Sum is held by the Estate on trust for and on behalf of the plaintiffs upon the termination of the joint venture, there is no doubt that the plaintiffs are asking for a return of the balance amount of the Capital Injection Sum that is due for refund upon the termination of the joint venture. In fact, in portions of the Statement of Claim (Amendment No 4), the Outstanding Sum has also been referred to as "just debts of the Estate" (see paras 2A and 17 of the Statement of Claim (Amendment No 4)). Further, as the plaintiffs point out, prayer four of their Statement of Claim (Amendment No 4) seeks an "order that Mr Tin and/or the Estate and/or the Defendants pay the Plaintiffs the Outstanding Sum in the amount of $387,047.27". That prayer, when read with paragraphs 12 and 13 of their Statement of Claim (Amendment No 4), makes it plain that the plaintiffs are seeking an order for the return of the moneys invested in the joint venture as constituted by the Outstanding Sum. I therefore cannot agree with the defendants that they do not have fair notice of the plaintiff's claim in debt.

108 For completeness, I mention that the plaintiffs are off the mark when they submit that they can rely on prayer eight of the Statement of Claim (Amendment No 4), where the plaintiffs prayed for "such further or other relief as this Honourable Court deems fit and/or just", for the plaintiffs' claim in debt. As noted by the court in *Edmund Tie* at [12], a prayer along such lines is intended to enable the court to make such orders that may facilitate the execution of the main orders, rather than a prayer for a substantive order.

109 I move on to consider the issue of prejudice to the defendants. As I have observed above at [107], the defendants cannot be said to have been taken by surprise. Both the first and second defendants have pleaded in their defence that the plaintiffs' statement of claim is not admitted in so far as it asserts that "the Outstanding Sum are just debts of the Estate".[230] The Estate further averred in its defence that Mr Tin "would have informed his family if there was an alleged debt owed to the 1st Plaintiff"[231] and Ms Chen averred that "the Plaintiffs have not sufficiently proven their debt that [*sic*] there was in fact a valid and binding debt amounting to the Outstanding Sum owed to them by [Mr Tin]".[232] It is most telling that despite being directed by the court to specifically address the question of whether and how the defendants are prejudiced, the defendants could not substantiate their claim that they would be prejudiced. For instance, they did not say that they would have pleaded their defence differently or that they would have adduced additional evidence to defend the claim in debt. They also did not say that they would have to recall witnesses or call new witnesses to give evidence. In addition, given that the defendants did not seek permission to supplement their closing submissions, they evidently did not see any new

230 1Df's Defence at para 3A(ii) (SB at p 32); 2Df's Defence at para 4 (SB at pp 72–73).

231 1Df's Defence at para 24 (SB at p 39).

232 2Df's Defence at para 35.5 (SB at p 87).

lines of argument necessitated by the plaintiffs' clarification. Indeed, the defendants' approach to the trial and their closing submissions (along with their reply closing submissions) were focused on contending that no debt was due from Mr Tin to Mr Wong. As mentioned above (see [76]), the defendants did not even engage the plaintiffs' claim based on trust, prior to the court's directions on 4 January 2023.

110 I am also not persuaded that the plaintiffs are getting a "second bite at the cherry" in making the alternative claim in debt. The cases cited by the defendants[233] – *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*"), *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*"), and *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173 ("*Asia Business Forum*") – do not assist them, as they involve factual situations very different from the present one.

111 While *Review Publishing* concerned the amendment of pleadings (see [113] of *Review Publishing*), no issue on amendment of pleadings arises here as the plaintiffs are relying on their existing pleadings. While *Sheagar* concerned the appellant seeking to raise an entirely new defence on appeal, which would have necessitated a re-trial of the case (see [122] of *Sheagar*), there is no issue of requiring a re-trial in the present case. Indeed, neither party has suggested the need for further discovery, or the need to tender new evidence or recall witnesses. While *Asia Business Forum* concerned an appellant seeking to fundamentally alter its case at the appeal stage (see [18]–[19] of *Asia Business Forum*), the present plaintiffs are relying entirely on the pleadings, evidence and submissions that are already before the court.

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233 DRFS at paras 25–29.

112 In the circumstances and in light of my finding at [71] above that $340,447.27 is the amount of the remaining Capital Injection Sum that was owed from Mr Tin to Mr Wong after the termination of the joint venture, I order that the first defendant pay the plaintiffs a sum of $340,447.27.

The claim against Ms Chen

Liability for causing the Estate to deny trust and for dishonest assistance

113 The plaintiffs seek a declaration that Ms Chen is personally liable to the plaintiffs as trustee of Mr Tin's estate by causing the Estate to deny the trust.[234] The plaintiffs also seek a declaration that Ms Chen is personally liable to the plaintiffs by dishonestly assisting the Estate in the Estate's continued breach of trust.[235]

114 These claims can be swiftly disposed of since a trust must necessarily exist in order for (a) a party to be liable for causing an estate to deny a trust, and (b) a party to be found to have dishonestly assisted a breach of trust (*MSP4GE Asia Pte Ltd and another v MSP Global Pte Ltd and others* [2019] 3 SLR 1348 ("*MSP4GE Asia*") at [131]). Given my finding at [90]–[97] above that the plaintiffs have no basis for their claims in trust, it follows that the plaintiffs' claim that Ms Chen be personally liable for causing Mr Tin's estate to deny a trust, and for dishonest assistance in the Estate's breach of trust, must also fail. In any case, I note that liability for dishonest assistance in breach of trust accrues where a party acts in relation to the trust in a manner which is "contrary to normally acceptable standards of honest conduct": *MSP4GE Asia* at [131(b)]. Viewing Ms Chen's conduct in context, and particularly considering that it is

234 SOC (Amendment No 4) at prayer 2 (SB at p 17).

235 SOC (Amendment No 4) at prayer 2 (SB at p 17).

not entirely clear-cut how much of the Outstanding Sum was due, especially in light of the Unaccounted Cheques and the 13 Loss Entries, Ms Chen's conduct cannot, in any event, be said to have crossed the threshold of dishonesty to render her personally liable for dishonest assistance in breach of trust.

Conclusion and orders made

115 For the reasons stated above, I order as follows:

(a) the first defendant is to pay the plaintiffs the sum of $340,447.27, being a debt owing from the first defendant; and

(b) the plaintiffs' claim against the second defendant for causing the Estate to deny a trust and/or for dishonest assistance in breach of trust be dismissed.

116 I will hear parties on the issue of interest and costs.

Teh Hwee Hwee
Judicial Commissioner

Sean Chen Siang En, Cheong Wei Wen John and Shermaine Lim Jia Qi (Dentons Rodyk & Davidson LLP) for the plaintiffs;
Ng Lip Chih and Lai Shueh Chien (Foo & Quek LLC) for the defendants.