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

[2024] SGHCR 5

Originating Claim No 568 of 2023 (Summons No 450 of 2024)

Between

Tan Kian Chye

… *Claimant*

And

(1) Ang Siew Yan
(2) Ang Boon Chong
(3) Tan Sing Haiang @ Chen Chin Sien

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Amendment]

TABLE OF CONTENTS

Tan Kian Chye
v
Ang Siew Yan and others

[2024] SGHCR 5

General Division of the High Court — Originating Claim No 568 of 2023
(Summons No 450 of 2024)
AR Perry Peh
15, 26 March 2024

5 April 2024

AR Perry Peh:

Introduction

1 HC/SUM 450/2024 ("SUM 450") was an application by the claimant in HC/OC 568/2023 ("OC 568") to amend his Statement of Claim ("the SOC"), which the first defendant resisted. The first defendant relied on various grounds, but principal among them was her contention that the claimant should not be allowed to amend the SOC and pursue claims premised on positions that are seemingly inconsistent with the positions that he had previously taken in proceedings concerning the division of matrimonial property in the Family Justice Courts ("FJC"), as well as in a previous application, HC/SUM 2927/2023 ("SUM 2927"), filed by the first defendant in these proceedings. The first defendant argued that, because of the inconsistency, the amended claim is in any event precluded by the doctrine of approbation and

reprobation and/or is an abuse of process and liable to be struck out pursuant to O 9 r 16(1)(*b*) of the Rules of Court 2021 ("ROC 2021"), and therefore the amendments ought to be refused.

2 I accepted that the claims pursued in the amended version of the SOC are indeed premised on positions inconsistent with those that the claimant had taken previously. However, because the claimant's previous and current positions were taken in respect of distinct subject matter, the inconsistency in my view does not preclude the claimant from pursuing the amended claim on grounds of approbation and reprobation. The inconsistency in positions is also not of a nature that it shows the claimant's knowledge that he lacks the requisite factual basis to pursue the amended claim and in turn suggest that the claim is pursued for a vexatious or oppressive purpose. I was therefore also unable to agree with the first defendant that the amended claim is an abuse of process. For these and other reasons, I saw no ground for refusing the amendments sought and therefore allowed SUM 450. These are my grounds of decision.

Background

3 The claimant in OC 568 ("the Claimant") and the first defendant were formerly husband and wife. The second and third defendants are the first defendant's father and mother respectively. For reasons that I will come to later, OC 568 has been discontinued as against the second and third defendants.[1] Therefore, where appropriate, I will refer to the first defendant simply as "the Defendant".

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[1] 2nd Affidavit of Ang Siew Yan ("ASY-2") at para 14.

The FJC proceedings

4 In December 2022, the Defendant commenced divorce proceedings in the FJC against the Claimant. Interim judgment was granted in May 2023 dissolving the marriage with ancillary matters, including that of division of matrimonial assets, adjourned to be heard in Chambers. In the Claimant's affidavit of assets and means filed in July 2023 in the FJC proceedings for the division of matrimonial assets ("the AAM"), he identified four properties as coming within the pool of matrimonial assets to be divided – the parties' matrimonial home held in the Defendant's sole name, a landed property located in Lorong Kismis held in the sole name of the Defendant ("the LK Property"), and two condominium apartments respectively held in the sole name of the second and third defendants.[2] The Claimant's position, as stated in the AAM, is that the condominium apartments were both paid for by him and had been registered in the names of the second and third defendants to avoid additional buyer's stamp duty, and it was always intended that they were beneficially owned by both the Claimant and the Defendant.[3] As for the LK Property, this was similarly purchased using his funds and it had been intended that the LK Property be held jointly by the Defendant and himself. However, without his consent, the Defendant unilaterally created a trust over the LK Property for the benefit of their daughter ("D") with the Defendant as sole trustee (see [7] below).[4]

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2 1st Affidavit of Tan Kian Chye ("TKC-1") at pp 67–74.

3 TKC-1 at p 70.

4 TKC-1 at p 73.

The commencement of OC 568

5 In August 2023, the Claimant commenced OC 568, seeking reliefs against the Defendant as well as the second and third defendants in respect of the LK Property and the condominium apartments. In September 2023, the Defendant took out SUM 2927 to stay all further proceedings in OC 568 pending the determination of the FJC proceedings, on the ground of a multiplicity of proceedings. By the time SUM 2927 was heard, the second and third defendant stated through the Defendant that they had waived their interests in the condominium apartments and they each also provided an undertaking to "respect and enforce" any orders that the FJC may make over the condominium apartments, including orders relating to the beneficial interests of these properties.[5] The parties subsequently entered into a consent order providing, among other things, that the second and third defendants respectively hold the condominium apartments on trust for the Claimant and the Defendant, who are the full beneficial owners of these properties, and with their interests to be determined in the FJC proceedings. Pursuant to the consent order, the Claimant discontinued OC 568 as against the second and third defendants.[6] Therefore, only the part of the Claimant's claims in OC 568 relating to the LK Property against the Defendant remains to be considered, and so in these grounds, any reference to the Claimant's claims in the SOC is a reference only to those claims concerning the LK Property.

6 This is an appropriate juncture to set out the Claimant's claims in greater detail. According to the Claimant, sometime in 2018, he was pressured by the Defendant to purchase the LK Property for D. As D was still below 21 years'

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5 Defendant's written submissions in HC/SUM 2927/2023 at paras 43–46.

6 ASY-2 at paras 13–14.

old at the material time, the agreed arrangement between the Claimant and the Defendant was for the LK Property to be held on trust by both of them for D:[7]

> 7. The stated purchase was predicated upon the agreement and common intention of the Claimant and [the Defendant] in or around May 2018 that [the LK Property] was to be conveyed into the joint names of both [the Defendant] and the Claimant and thereafter, the jointly owned property was to be held on trust by both [the Defendant] and the Claimant, as trustees for [D]. Pursuant to the stated agreement and common intention, the Claimant agreed to the purchase of [the LK Property] for [D] with the use of funds from … [the parties' joint bank accounts]. The Claimant left it to [the Defendant] to handle the documentation relating to the purchase of [the LK Property].

7 According to the Claimant, he left it to the Defendant to handle the documentation relating to the purchase of the LK Property. However, contrary to the agreed arrangement, the Defendant put the LK Property in her sole name only and also unilaterally created a trust of the LK Property, with herself as trustee, in favour of D ("the Trust"), without the Claimant's knowledge and consent.[8] The Claimant further averred that the Defendant had unilaterally created a lease over the LK Property and collected rental income from the use of the LK Property without accounting to him.[9] Relying on these facts, the Claimant pleaded the following reliefs in connection with the LK Property: (a) a declaration that the Defendant and himself own the LK Property in joint names, and an order for the Defendant to reconvey the title of the LK Property into the joint names of the parties; (b) in the alternative, a declaration that the Defendant holds a substantial part of the LK Property on a "resulting or common intention constructive trust" for him; (c) a declaration or order that the Trust be

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7 Statement of Claim ("SOC") at para 7.

8 SOC at paras 8 and 11.

9 SOC at para 12.

revoked; and (d) an order that the Defendant accounts to him for all benefits and/or rent earned from use or tenanting of the LK Property:[10]

The Defendant's application in SUM 2927

8 In SUM 2927, the Defendant sought to stay OC 568 on the ground that it was unnecessarily commenced as any claim that the Claimant had in connection with the LK Property could be determined in the FJC proceedings for the division of matrimonial assets; alternatively, the FJC proceedings should at least be concluded first, before OC 568 comes to be tried. The positions taken by the parties in SUM 2927 have to be appreciated in the context of the Court of Appeal's guidance in *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA*") that the Women's Charter (Cap 353, 2009 Rev Ed) did not confer upon a "family justice court" (as defined in *UDA* at [1]) in proceedings for division of matrimonial assets the powers of adjudicating the claim of a third party (that is, someone who is not party to the marriage) to an alleged matrimonial asset or make orders against the third party in respect of that asset (see *UDA* at [31]–[32] and [44]). Therefore, whether the stay in SUM 2927 was to be granted turned on whether the Claimant's claim against the LK Property stood to affect the legal or beneficial interests of a third party.

9 The Defendant argued that OC 568 ought to be stayed because the Claimant had in the SOC conceded that the common intention between the parties was for the LK Property to be gifted to D, and as such, the only thing which the Claimant took issue with was the identity of the trustee of the Trust, and he was not seeking any determination of the beneficial ownership of the LK

10 SOC at paras 13 and 14, and (1)–(6).

Property.[11] The Claimant responded by saying that there was a dispute in OC 568 as to whether the LK Property was held beneficially by D, or by the Claimant and/or the Defendant, and that he claimed the beneficial interest in the LK Property, because it had been the "common intention" of the parties for the LK Property to be jointly owned (and not held in the Defendant's sole name), and since it was him who primarily made monetary contributions into the joint bank account using which the purchase of the LK Property was financed, the Defendant holds the beneficial interest in the LK Property on a resulting trust for him.[12] Therefore, the Claimant's position in SUM 2927 was that his claim in OC 568 affected the beneficial interests of a third party, namely, D, and what he sought in OC 568 was a determination of the beneficial interest of D in the LK Property, and not the beneficial interest as between himself and the Defendant in the same.[13]

10 The Assistant Registrar ("AR") who heard SUM 2927 dismissed the application. The AR noted that the Claimant had through the SOC as well as the AAM, asserted a beneficial interest in the LK Property and took the position that the Trust, which was unilaterally created, should be revoked.[14] The AR also rejected the Defendant's argument that the only issue at dispute in OC 568 was the identity of the trustees of the Trust.[15] The AR therefore concluded that OC 568 was properly brought, and the extent of D's interest in the LK Property had to be adjudicated and determined, before the judicial exercise of division of

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11 Defendant's written submissions in HC/SUM 2927/2023 at paras 29–30.

12 Claimant's written submissions in HC/SUM 2927/2023 at para 21;

13 1st Affidavit of Ang Siew Yan ("ASY-1") at pp 160 and 162.

14 ASY-1 at p 173.

15 ASY-1 at p 173.

matrimonial proceedings could be undertaken in the FJC proceedings.[16] There was no appeal against the AR's decision in SUM 2927.

SUM 450

11 At a Registrar's Case Conference subsequent to the AR's decision in SUM 2927, the Claimant's counsel informed the court that the Claimant wished to make amendments to the SOC, in particular, by amending the nature of his claim to the LK Property so that he no longer claimed the beneficial interest in the same but instead sought to be added as a co-trustee of the Trust.[17] The parties exchanged their positions on two sets of amendments circulated by the Claimant which culminated in the amended version of the SOC annexed to the Claimant's supporting affidavit for SUM 450 ("the Draft SOC"). This contained: (a) a set of contested amendments marked out in red underline at paras 6.2, 7 (and sub-paragraphs thereunder) and 13, as well as prayers (3) and (4) under the reliefs section ("the Contested Amendments"); and (b) a set of agreed amendments marked out in black strikethrough/black underline, which include the deletion of certain paragraphs and reliefs that fell away given the Claimant's decision to not pursue his claim for a beneficial interest in the LK Property. Only the Contested Amendments were the subject of SUM 450.

12 Through the Contested Amendments, the Claimant now pleads that he and the Defendant had, as a result of two oral discussions which involved the Defendant pressurising the Claimant to purchase the LK Property for D, entered into an oral agreement under which the LK Property is to be purchased for D, and the Claimant and the Defendant is to hold the LK Property jointly on trust

16 ASY-1 at p 173.

17 ASY-2 at para 24.

for D as co-trustees ("the Oral Agreement").[18] In breach of the Oral Agreement, the Defendant purchased the LK Property in her sole name and unilaterally created the Trust over the LK Property with herself as sole trustee.[19] The Claimant now seeks the following reliefs pursuant to the Oral Agreement: (a) a declaration or order that the Claimant and the Defendant hold the LK Property as co-trustees in D's favour, and that title in the LK Property be reconveyed into the joint names of both parties; and (b) an order that the Defendant appoint the Claimant as co-trustee over the LK Property under the Trust.[20] At the hearing before me, the Claimant's counsel clarified that these reliefs were sought in specific performance of the Oral Agreement.

13 By the Contested Amendments, the reliefs sought by the Claimant shifted from a claim to the beneficial interest in the LK Property to one for specific performance of the Oral Agreement through him being added as a co-trustee of the Trust. Despite this shift, the Claimant still relies on same underlying facts for his claim in OC 568 – that the LK Property was purchased as a result of pressure from the Defendant, that the parties agreed or intended for the LK Property to be held on trust for D's benefit, and that the LK Property was purchased using funds from the parties' joint accounts, one of which the Claimant had made substantial monetary contribution into. The pleaded facts relating to the Oral Agreement introduced by way of the Contested Amendments do not detract from the underlying narrative previously pleaded at para 7 of the SOC pertaining to the parties "agreement and common intention" relating to the LK Property (see [6] above) but elaborate on that in greater detail.

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18 Draft amended SOC ("Draft SOC") annexed to 2nd Affidavit of Tan Kian Chye ("TKC-2") at para 7.

19 Draft SOC at paras 8 and 11.

20 Draft SOC at para 13, prayers (3) and (4).

The applicable principles

14 The power of the court to allow amendments to pleadings under the ROC 2021 is provided for in O 9 r 14(1). The underlying principle on amendments to pleadings is as stated by the Court of Appeal in *Wright Norman v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 ("*Wright Norman*") (at [6]):

> … an amendment which would enable the real issues between the parties to be tried should be allowed subject to penalties on costs and adjournment, if necessary, unless the amendment would cause injustice or injury to the opposing party which could not be compensated for by costs or otherwise. …

15 The rationale of the principle in *Wright Norman*, later explained by the Court of Appeal in *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 ("*Ng Chee Weng*") (at [24]) is:

> … The court should be extremely hesitant to punish litigants for mistakes they make in the conduct of their cases, by deciding otherwise than in accordance with their rights.

16 These principles were recently considered by the High Court in *Wang Piao v Lee Wee Ching* [2023] SGHC 216 ("*Wang Piao*") (at [15]–[19]), which set out the following three-step analytical framework to approach applications for amendments to pleadings:

> (a) First, as a threshold question, the court has to determine the stage of the proceedings in which the amendment to the pleadings is being sought. This properly situates the circumstances in which the amendments to the pleadings are being sought, which can affect how the principles relating to amendments are being applied. Generally, the later in time an application is taken out, the stronger would be the grounds

required to justify the amendment sought, but this is all a matter of the court's discretion.

(b) Secondly, the court should consider whether the amendments sought "would enable the real question and/or issue in controversy between the parties to be determined". This was an appropriate starting point because it prioritises the interest of the amending party to advance his or her case substantively. The court considers whether the amendment application was taken out with the genuine intention to enable the real question and/or issue in controversy between the parties to be determined, as well as the materiality of the amendment.

(c) Thirdly, having determined whether the amendments sought would enable the real question and/or issue in controversy between the parties to be determined, the court should consider whether it is nonetheless just to allow the amendments. The focus here is on the party opposing the amendments, and the court considers in particular: (i) whether the amendments will cause any prejudice to the other party which cannot be compensated in costs; and (ii) whether the party applying for permission is effectively asking for a second bite at the cherry, such as if the amendment is sought in support of an appeal against the dismissal of the originally-pleaded claim on the merits (see, for example, *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173 at [19]).

17 In *EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 ("*EA Apartments*") (at [25]), the High Court held that an amendment to pleadings which would itself be liable to be struck out will not be allowed (see also *Ng Chee Weng* at [106]). Although the court did not explicitly say so, its reasoning

was that, if an amendment is liable to struck out in that the amended claim is eventually doomed to fail at trial, then the amendment will necessarily not be one that would allow for the real question and/or issue in controversy between the parties to be determined, and for that reason, it has to be refused. Put another way, that an amendment is liable to struck out goes towards showing that the amendment will *not* allow for the real question and/or issue in controversy to be determined. Therefore, whether an amendment is liable to be struck out and thus to be refused comes to be considered at the second of the three-step framework set out by the court in *Wang Piao* (see [16(b)] above). As the court in *Wang Piao* (at [17]) explained in connection with the second step:

> … it is clear that a court will disallow an amendment that is useless … or merely technical or trivial. This will necessarily involve a rudimentary assessment of the merits of the amendment because, for instance, a pleading that is bad in law would certainly not amount to a real question or issue in controversy between the parties to be determined …. A court cannot be expected to adjudicate on a bad pleading that is likely to be struck out in any event.

18 It goes without saying that the burden is on the party seeking to amend his pleadings to persuade the court that the amendments sought would enable the real question and/or issue in controversy to be determined. It will also be part of this burden that the party seeking to amend his pleadings refutes whatever grounds cited by the opposing party for resisting the amendments on the basis that they will not have such an effect, including any contention by the opposing party that the amended pleadings are liable to be struck out eventually. If the court concludes that the amendments do have the effect of enabling the real question and/or issue in controversy to be determined, the burden then shifts to the opposing party to demonstrate that it would suffer irremediable prejudice as a result of the amendments.

19 The grounds on which a pleading or any part thereof may be struck out under the ROC 2021 are provided for in O 9 r 16(1), and there are three of them: (a) that it discloses no reasonable cause of action or defence; (b) it is an abuse of process of the court; or (c) it is in the interests of justice to do so. In *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 (at [16]–[19]), the Court of Appeal explained the tests applicable to each of these limbs:

> (a) Under O 9 r 16(1)(*a*), the test is whether the action (or defence, as the case may be) has some chance of success when only the allegations in the pleadings are concerned. If that is the case, then it would not be struck out.
>
> (b) Under O 9 r 16(1)(*b*), the question is whether the judicial process is being used as a means of vexation and oppression in the process of litigation. The inquiry includes considerations of public policy and the interests of justice. This limb also signifies that the process of the court must be used *bona fide* and must not be abused.
>
> (c) Under O 9 r 16(1)(*c*), the question is whether the case is one where the court should exercise its inherent jurisdiction to prevent injustice, such as where the claim is "plainly or obviously unsustainable".

The submissions

20 The parties' submissions focused on a single overarching issue – whether the Contested Amendments are liable to be struck out pursuant to O 9 r 16(1) of the ROC 2021, and so are to be refused. I set out the Defendant's submissions first, before turning to the Claimant's responses.

21 In oral submissions, the Defendant relied on two principal grounds in arguing that the Contested Amendments are liable to be struck out.

(a) First, the Claimant is guilty of approbation and reprobation by now pursuing a claim based on the Oral Agreement, which seeks to uphold the Trust and affirm the beneficial interest of D in the LK Property, which is inconsistent with the previous position he has taken previously in SUM 2927 to revoke the Trust and claim a beneficial interest in the LK Property.

(b) Secondly, the Contested Amendments should not be allowed as they are inconsistent with the Claimant's previous positions taken in SUM 2927 as well as in the FJC proceedings and offended common sense. The inconsistency here was fundamental in nature as the Claimant's previous and current positions – claiming a beneficial interest in the LK Property, and then now seeking to be added as a co-trustee of the Trust – were entirely irreconcilable.

22 The Defendant also relied on three other grounds in her written submissions as to why the Contested Amendments are to be struck out.

(a) First, the Contested Amendments disclosed no reasonable cause of action because the claim based on the Oral Agreement lacked the material facts necessary to constitute a cause of action for breach of contract,[21] and in particular, those relating to the parties' intention to create legal relations in a contract that was purportedly formed in a domestic setting.[22]

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21 Defendant's written submissions at paras 23–38.

22 Defendant's written submissions at paras 39–42.

(b) Secondly, the reliefs sought by the Contested Amendments are legally unsustainable because: (i) the declaratory relief sought by the Claimant for him to be added as a trustee of the Trust and for the LK Property to be conveyed into parties' joint names cannot be granted where D, whose interests stood to be affected by such a declaration, was not a party to OC 568;[23] (ii) the reliefs were sought pursuant to the court's powers under the Trustees Act 1967 ("the Trustees Act") or the court's inherent jurisdiction in the administration of trusts, and not as remedies for breach of contract;[24] and (iii) in any event, the court will not order specific performance of the Oral Agreement by ordering the Claimant to be appointed as a co-trustee of the Trust because the relationship between the Claimant and the Defendant has irretrievably broken down.[25]

(c) Thirdly, the Defendant argued that the claim based on the Oral Agreement is factually unsustainable, in view of the Claimant's conduct at the material time and the objective evidence put before the court.[26]

23 The Defendant also argued that, in the event SUM 450 was refused, the Claimant should not be allowed to revert back to the pleading in the SOC, and the court should on its own motion strike out the Claimant's original claim relating to the LK Property. Although the Defendant also argued in her written

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23 Defendant's written submissions at paras 45–51.

24 Defendant's written submissions at paras 52–56.

25 Defendant's written submissions at paras 59–64.

26 Defendant's written submissions at paras 66–78.

submissions that "the Claimant should not be allowed further opportunities to amend [the SOC]",[27] this was not pursued in oral arguments.

24 The Claimant disputed each of the grounds relied on by the Defendant. The Claimant argued that, even if the Contested Amendments were deficient, it should still be afforded a further opportunity to amend, and there was no basis for the original claim to be struck out. I elaborate on these arguments later when turning to the issues proper, as may be needed. For now, it suffices for me to set out the arguments that the Claimant has made in response to the Defendant's two principal grounds of objection on approbation and reprobation and abuse of process:

(a) First, the doctrine of approbation and reprobation has no application in this context. The Claimant obtained no "benefit" by virtue of the previous position he took in SUM 2927, notwithstanding the Claimant's success in SUM 2927, because the AR's decision in SUM 2927 did not touch on the merits of the claim in OC 568. Upon questioning, counsel clarified that it was the Claimant's position that any "benefit" capable of triggering the doctrine of approbation and reprobation was limited only to that which had a bearing on the eventual merits of what was claimed in the action.

(b) Secondly, there was no inconsistency in the Claimant's current and previous positions, because the Claimant never once argued in SUM 2927 that the LK Property was *not* to be given to D beneficially; what he challenged was the Trust which the Defendant had unilaterally created without his consent. As such, the doctrine of approbation or

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[27] Defendant's written submissions at para 112.

reprobation was inapplicable in any event. There was also no inconsistency in the Claimant's positions that offended common sense in the manner argued by the Defendant.

The issues

25 As the principles relating to the amendment of pleadings summarised above show, the grounds on which the court can *refuse* an amendment to pleadings are: (a) where it does not enable the real question and/or issue in controversy to be determined; or (b) where the amendments if allowed would cause the opposing party irremediable prejudice. The Defendant's arguments pertaining to the doctrine of approbation and reprobation and the Claimant's irreconcilable change in positions had to be accommodated within one of those grounds. In response to my query on this point at the hearing, the Defendant's counsel helpfully clarified as follows:

(a) The Defendant relied on the doctrine of approbation and reprobation to demonstrate that the Claimant's claim based on the Oral Agreement was doomed to fail and so the Contested Amendments are in any event liable to be struck out pursuant to O 9 r 16(1)(*c*).

(b) The Defendant meant to demonstrate, through her arguments that the Claimant had irreconcilably changed his position in OC 568, that the Contested Amendments were an abuse of process and hence liable to be struck out in any event pursuant to O 9 r 16(1)(*b*).

26 Accordingly, the question which arose for determination in SUM 450 was whether the claim based on the Oral Agreement, founded upon the Contested Amendments, is defective on any one or all of the following grounds,

so that they will not enable the real question and/or issue in controversy to be determined, and had to be refused:

(a) Whether the claim based on the Oral Agreement is legally unsustainable because:

(i) the Claimant will be precluded from pursuing such a claim by the doctrine of approbation and reprobation;

(ii) the reliefs sought in OC 568 are reliefs under the Trustees Act or the court's inherent jurisdiction in the administration of trusts;

(iii) the court will not grant the declarations sought in OC 568 because D is not a party to these proceedings;

(iv) given that the relationship between the Claimant and the Defendant has broken down, the court will not order specific performance of the Oral Agreement.

(b) Whether the Contested Amendments are inconsistent with the Claimant's previous positions and are an abuse of process.

(c) Whether the claim disclosed no reasonable cause of action because the Contested Amendments lacks the material facts necessary to constitute a cause of action in contract.

(d) Whether the claim based on the Oral Agreement is factually unsustainable in view of the Claimant's conduct at the material time and the objective evidence before the court?

27 In the event that SUM 450 was refused, the question arising is whether the court should further exercise its discretion to strike out the Claimant's original claim in the SOC relating to the LK Property.

Whether the claim based on the Oral Agreement is legally unsustainable

28 I begin the first issue with a brief recap of the four grounds that the Defendant has relied on in support of her position that the claim based on the Oral Agreement is legally unsustainable: (a) the claim is precluded by the doctrine of approbation and reprobation; (b) the reliefs sought by the Claimant are reliefs under the Trustees Act or the court's inherent jurisdiction in trusts administration; (c) the reliefs sought by the Claimant in OC 568 stand to affect D's interests and the court will therefore not grant the reliefs sought because D is not a party to OC 568; and (d) specific performance is unavailable as a remedy because the Claimant and the Defendant will be unable to cooperate as co-trustees of the Trust.

Whether the claim based on the Oral Agreement is precluded by the doctrine of approbation and reprobation

29 The doctrine of approbation and reprobation applies in the context of litigation by precluding a party from adopting an inconsistent position against the same party or different parties in different proceedings, so long as it has received an actual benefit as a result of the earlier position, which is inconsistent with the position it now seeks to adopt (see *BWG v BWF* [2020] 1 SLR 1296 at [103] and [118]; *Goldbell Engineering Pte Ltd v Etiqa Insurance Pte Ltd (Range Construction Pte Ltd, third party) and another matter* [2024] 3 SLR 544 ("*Goldbell Engineering*") at [78]; see also Piers Feltham, Daniel Hochberg & Tom Leech, *Spencer Bower: Estoppel by Representation* (LexisNexis, 4th Ed, 2004) ("*Spencer Bower*") at para XIII.1.12). The foundation of this doctrine is

the principle of equity that a person who has accepted a benefit under an instrument must adopt it in its entirety, give full effect to its provisions and if necessary, renounce any other rights which are inconsistent with it (see *BWG* at [102]).

30 The "benefit" that triggers the doctrine of approbation and reprobation is constituted by a judgment in one's favour which a party had obtained in reliance on his previous (and now inconsistent) position (see *BWG* at [119]; *Goldbell Engineering* at [79]). There is also no requirement that the judgment debt has to be satisfied in order for the requisite benefit to be conferred, and further, the fact that the party who obtained the "benefit" has no intention to retain the same is immaterial to the analysis (see *BWG* at [119]–[120]).

31 In my view, a "benefit" capable of triggering the doctrine of approbation and reprobation is also not limited to a judgment on or relating to the merits of the action. I therefore did not agree with the Claimant's submission on this point (see [24(a)] above). I say so for two reasons. First, what engages the doctrine is a party's adoption of inconsistent attitudes and the gaining of an advantage consequent on the previous (and now inconsistent) position. The application of the doctrine does not involve an inquiry into the nature of the "benefit" that a party has obtained in reliance on the previous position and whether that was a judgment on or relating to the merits of the action. Secondly, it will unduly restrict the scope of the doctrine, which is aimed at discouraging parties from adopting inconsistent attitudes and "blow[ing] hot and cold" in litigation (see *Express Newspapers Plc v News (UK) Ltd and others* [1990] 1 WLR 1320 ("*Express Newspapers*") at 1329, cited in *BWG* at [104]), to limit the requisite "benefit" to only a judgment on or relating to the merits of the action, because that will mean that parties are free from the constraints, otherwise imposed by

the doctrine, in the positions they adopt for the majority of the proceedings that do not involve an adjudication of what is claimed in the action.

32 This analysis is also consistent with the decided cases. I cite two such examples:

(a) In *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal and another appeal and another matter* [2021] 1 SLR 342 ("*Recovery Vehicle 1*"), which was a decision of the Court of Appeal, the appellant, "RV1", had successfully appealed before a judge in the High Court against the decision of an AR setting aside an order granting leave for service out of jurisdiction under the Rules of Court (2014 Rev Ed). Before the judge, RV1 had argued that its claim against the respondent, "ICS", was time-barred under Senegalese law and so Senegal was an unavailable forum. However, the judge did not accept that argument in concluding that Singapore was *forum conveniens* and that was not a factor which the judge had considered in allowing RV1's appeal against the AR's decision. Before the Court of Appeal, RV1 took the position that its claim was no longer time-barred under Senegalese law, in order to rebut ICS's submission in the appeal that its claim lacked merit. The Court of Appeal found RV1's positions before the judge and on appeal inconsistent and that RV1's conduct would have attracted the doctrine of approbation and reprobation if the judge had, in finding that Singapore was *forum conveniens*, accepted that Senegal was an unavailable forum by reason of the time bar raised by RV1 (see *Recovery Vehicle 1* at [101]). The court's judgment on the *forum conveniens* issue, which concerned the procedural question of where the action was to be tried, was a "benefit" capable of triggering the doctrine of approbation and reprobation.

(b) In *Goldbell Engineering*, the beneficiary of a performance bond, "Goldbell", had previously made a request for extension and/or payment under the bond, which was the subject of earlier legal proceedings involving itself and the applicant for the bond, "Range". In those proceedings, Range had taken the position that Goldbell was entitled to payment under the bond pursuant to the request, if the interim injunction against payment (then in place) was set aside or if Goldbell successfully defended the earlier proceedings. In reliance on that position, Range successfully resisted an application by Goldbell for security for costs, on the basis that Goldbell was adequately secured for those proceedings by its entitlement to the secured sum under the bond. The earlier proceedings were later withdrawn. When Goldbell later sought payment under the bond, Range commenced fresh proceedings seeking a permanent injunction against Goldbell and argued that Goldbell was not entitled to payment under the request because, among other reasons, it was unconscionable. The High Court held that Range was precluded by the doctrine of approbation and reprobation from putting forward a position diametrically different from that which it had taken previously, namely, that Goldbell would be paid the secured sum under the bond if the interim injunction was set aside or if Goldbell had successfully defended the earlier proceedings, because Range had obtained the benefit of defeating Goldbell's application for security for costs in the earlier proceedings in reliance on its previous position (see *Goldbell Engineering* at [88]). The court's judgment on whether Goldbell was entitled to security for costs, which concerned the procedural issue of security for the action, was similarly a "benefit" that triggered the doctrine of approbation and reprobation.

33 However, for the doctrine of approbation and reprobation to be triggered, there must be *mutuality* in the subject matter in connection with which the previous and current positions, now attacked as being inconsistent, have been taken. This is because what the doctrine of approbation and reprobation frowns upon is not mere *inconsistent* attitudes or positions – "[p]arties to litigation are normally entitled to change their minds, and it is not normally inequitable for a party to amend his case or even to advance different and inconsistent cases in separate sets of proceedings" (see *Spencer Bower* ([29] above) at para XIII.1.15). What attracts the doctrine is where a party *subsequently* takes a position that amounts to a *renunciation* of the earlier benefit he had previously obtained, which can arise only where there is mutuality in the subject matter in connection with which the previous and subsequent positions were taken. Therefore, for a party to be found guilty of approbation and reprobation, not only must the subsequent and previous positions be inconsistent with each other, the subsequent position taken must be relevant to, and be capable of undermining, the legal and/or factual foundation of the judgment that had been made in that party's favour in the previous proceedings. This analysis is in my view consistent with the decided cases:

(a) In *Recovery Vehicle 1*, the previous and subsequent inconsistent positions were taken by RV1 in connection with the subject matter of whether RV1's claim was time-barred under Senegalese law. Had this been relied on by the judge in finding that Singapore was *forum conveniens* and in allowing RV1's appeal against the AR's decision, RV1's subsequent inconsistent position would have undermined the factual foundation on which the judge arrived at that conclusion.

(b) In *Goldbell Engineering*, the previous and subsequent inconsistent positions were taken by Range in connection with the

subject matter of whether Goldbell was entitled to payment pursuant to the request for extension and/or payment if the interim injunction against payment was set aside, and Range's subsequent position that Goldbell was not entitled to payment under that request, despite the interim injunction having been set aside, undermined the factual foundation on which the court had concluded that Goldbell was adequately secured for costs as against Range and that Goldbell was not entitled to security for costs in the earlier proceedings.

(c) In *Express Newspapers*, the position attacked as being inconsistent was the implied licence defence asserted by the plaintiff newspaper in response to a counterclaim brought by the defendant newspaper for breach of copyright. The plaintiff's claim and the defendant's counterclaim were mirror images of each other in terms of the factual substratum – one newspaper published an article based on a purportedly exclusive interview which the other newspaper then reported in its own newspaper, and the plaintiff and defendant newspapers asserted respectively a claim and counterclaim for breach of copyright against each other. The plaintiff argued that the defendant had no arguable defence to its claim and succeeded in obtaining summary judgment. The defendant then sought to obtain summary judgment in respect of the counterclaim, which the plaintiff defended on the basis of the implied licence defence. The court accepted that the plaintiff's defence was arguable but that it was precluded by the doctrine of approbation and reprobation from putting forward a wholly inconsistent position in the defendant's counterclaim that it enjoyed an arguable defence when it had previously asserted that no such defence exists on legally indistinguishable facts in respect of its own claim against the defendant. The mutuality in subject matter here lies in the common

factual substratum in connection with which the plaintiff's previous and subsequent positions were taken, and the plaintiff's subsequent position undermined the legal foundation on which the court had previously found the plaintiff to be entitled to summary judgment against the defendant.

(d) In *Kroll, Daniel v Cyberdyne Tech Exchange Pte Ltd and others* [2023] SGHCR 11 ("*Kroll*"), the plaintiff successfully resisted some parts of the defendants' application for further and better particulars of his Statement of Claim by taking certain positions on how his Statement of Claim was to be interpreted which led the court to conclude that some parts of the Statement of Claim were not deficient in particulars. The court further held that the plaintiff, in the absence of a formal amendment to the Statement of Claim was not entitled to subsequently resile from the positions which he had adopted *vis-à-vis* those parts of his Statement of Claim in a manner that would defeat the basis on which the requests for particulars had been disallowed by the court. That was precluded by the doctrine of approbation and reprobation because the plaintiff had obtained a benefit in terms of being relieved of having to provide particulars for certain parts of his Statement of Claim and to that extent successfully resisted the defendants' application for particulars (see *Kroll* at [80]). Here, the previous and hypothetical subsequent positions of the plaintiff were in respect of the same subject matter – the Statement of Claim put before the court at the time when the defendants' application for further and better particulars was heard. If the plaintiff subsequently resiled from its previous position, it would have undermined the legal foundation on which the court had relied in concluding that those parts of the plaintiff's Statement of Claim was not deficient in particulars.

34 With the above, I turn to the case before me. As a starting point, I agreed fully with the Defendant that the Claimant's previous position in SUM 2927 and his current position in SUM 450 are inconsistent. The Claimant's position in SUM 2927 was that he claimed a beneficial interest in the LK Property. On the other hand, in SUM 450, he seeks to be added as a co-trustee of the Trust and no longer claims a beneficial interest in the LK Property. I do not think it needs any further explanation that the two positions are inconsistent with each other. For the avoidance of doubt, the Claimant's position in the FJC proceedings is not relevant to the doctrine of approbation and reprobation as it was undisputed that those proceedings are still ongoing and it was unclear what "benefit" (if any) the Claimant has obtained from the position it adopted.

35 There was some suggestion in the Claimant's oral submissions that there is no inconsistency when the position taken by the Claimant previously in SUM 2927 is viewed in context of the relief he sought then, which was the revocation of the Trust that the Defendant had unilaterally created without his consent. The Claimant's position in SUM 2927, that he was seeking to claim the beneficial interest in the LK Property, had been taken as a consequence of the Trust being revoked. It was no part of that previous position that D should have no beneficial interest in the LK Property. As such, this is not inconsistent with him now seeking to affirm the beneficial interest of D, which he sought to do by way of the Contested Amendments.

36 In my view, this submission does not water down the apparent inconsistency between the Claimant's positions in SUM 2927 and SUM 450. The crux of the proceedings in SUM 2927 was whether the legal or beneficial interests of a *third party* in the LK Property are implicated by OC 568 and if that were the case, then a stay of OC 568 necessarily had to be refused, in view of the guidance of the Court of Appeal in *UDA* ([8] above). The Claimant relied

on his position that he was in OC 568 seeking to claim a beneficial interest in the LK Property to *resist* a stay. That position, when understood in the context of what was at stake in SUM 2927, necessarily meant that any claim he had to the beneficial interest in the LK Property was to the exclusion of D's beneficial interest in the LK Property, so that third party interests to the LK Property were at stake and there was no basis for OC 568 to be stayed.

37 However, in my judgment, the inconsistency between the Claimant's previous and current positions is not capable of triggering the doctrine of approbation and reprobation as there is *no* mutuality whatsoever in the subject matter in connection with which those positions have been taken. The Claimant's position in SUM 2927 was taken in connection with what his claim *was* at that time, based on what had been pleaded in the SOC as it stood then. The Claimant's position now in SUM 450 is taken in connection with the claim which he *intends* to pursue in OC 568 by amending his SOC through the Contested Amendments. What the AR in SUM 2927 considered in refusing the stay sought by the Defendant was *not* the claim that the Claimant now says he intends to pursue but the claim as it stood then in the SOC. Certainly, the AR in deciding whether to allow or refuse SUM 2927 could only have had regard to the *what* the Claimant's case was at that time. The Claimant's current position in SUM 450 is in no way relevant to or capable of undermining the factual and/or legal foundation on which the AR had relied on in arriving at his decision in SUM 2927, and therefore cannot have the effect of amounting to a renunciation of the earlier benefit he had obtained in SUM 2927 as a result of of the previous position he had taken. For this reason, I was not persuaded that the Claimant will be precluded from pursuing the claim based on the Oral Agreement by the doctrine of approbation and reprobation. I therefore did not

agree with the Defendant that the Claimant's claim was legally unsustainable on this count.

That the Claimant seeks reliefs under the Trustees Act or the court's inherent jurisdiction in trusts administration

38 The Defendant argued that the claim based on the Oral Agreement is legally unsustainable because the Claimant seeks reliefs under the Trustees Act or the court's inherent jurisdiction in the administration of trusts and not remedies for breach of contract. What the Defendant took issue with were prayers (3) and (4) of the reliefs listed in the Draft SOC. As the Claimant's counsel clarified, these reliefs are sought in specific performance of the Oral Agreement:

> (1) A declaration that the Claimant and [the Defendant] own [the LK Property] in joint names;
>
> (2) An order that [the Defendant] reconveys the title to [the LK Property] into the joint names of [the Claimant] and [the Defendant];
>
> (3) A declaration or order that the Claimant and [the Defendant] hold [the LK Property] as co-trustees in [D's] favour;
>
> (4) An order that [the Defendant] appoints the Claimant as co-trustee over [the LK Property] under the [Trust].

39 The Defendant may well be right in saying that these reliefs, which seek to invoke the court's jurisdiction under the Trustees Act or the court's inherent jurisdiction in trusts administration, are not ordinarily sought as remedies in a claim for breach of contract. However, I do not think that the *form* of these reliefs in and of themselves render the Claimant's claims legally unsustainable. The civil jurisdiction of the General Division of the High Court encompasses jurisdiction over trusts, which is conferred by the basic equitable jurisdiction which forms part of the High Court's civil jurisdiction, as well as the specific powers in the Trustees Act (see *Halsbury's Laws of Singapore* vols 9(3) and

9(4) (LexisNexis) ("*Halsbury's Laws of Singapore*") at para 110.459). Since the court possesses the requisite jurisdiction, it will also be open to the court to exercise that jurisdiction when that is warranted by the case before it and grant reliefs sought pursuant to that jurisdiction. That the reliefs are sought as a remedy for breach of contract is no reason why the court should be precluded from exercising that jurisdiction. The critical question here is whether there is anything in these reliefs, coupled with everything else the Claimant has pleaded in the Draft SOC, that renders them legally unsustainable.

40 With that in mind, I turn to consider the individual prayers in greater detail. Beginning with prayer (4), I was not persuaded that this relief ought to be characterised as a relief under the Trustees Act or the court's inherent jurisdiction in trusts administration. What prayer 4 seeks is an order compelling *the Defendant* to carry out what she had allegedly promised the Claimant she would do under the Oral Agreement. Of course, since the Trust is already constituted, the Defendant can only perform what she had promised to do under the Oral Agreement by invoking the court's jurisdiction in trust administration for the Claimant to be added as a co-trustee of the Trust. However, this does not detract from the fact that prayer (4) still seeks an order against the Defendant personally and for her to carry out her end of the bargain under the Oral Agreement. To that extent, prayer (4) does not in and of itself seek to invoke the court's jurisdiction in trust administration, and there is nothing in this relief, sought against the Defendant personally, that renders it legally unsustainable.

41 I now turn to prayer (3). What the Claimant seeks by this prayer is the court's exercise of its judicial power of appointment of new trustees, which is conferred upon the court by s 42 of the Trustees Act, and also forms part of the court's inherent jurisdiction in the trusts administration. The judicial power of appointment of new trustees under s 42 of the Trustees Act can only be exercised

on an application made by the trustees themselves or by persons beneficially interested in the trust estate (see s 57 of the Trustees Act; see also *Syed Salim Alhadad and others v Dickson Holdings Pte Ltd* [1997] 1 SLR(R) 228 at [30] and *Halsbury's Laws of Singapore* at para 110.478). Where this power is to be exercised pursuant to the court's inherent jurisdiction, it stands to reason that it can also only be exercised where the application in question is made by trustees and persons beneficially interested in the trust estate (see *Halsbury's Laws of Singapore* at para 110.748).

42 On the Claimant's case in the Draft SOC, he is neither a trustee nor a beneficiary of the Trust. However, on the pleaded facts in the Draft SOC, I cannot at this juncture *exclude* the possibility that the Claimant can eventually be found to have sufficient beneficial interest in the LK Property for him to invoke the court's judicial power of appointment of new trustees in respect of the Trust. But for the Trust, which the Claimant says was created without his consent and contrary to the Oral Agreement, a presumption of resulting trust in respect of the LK Property would have arisen in the Claimant's favour by virtue of his contributions to the purchase price of the LK Property (see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [53]). In my view, it is arguable that the Claimant can invoke in his favour the court's judicial power of appointment of new trustees in respect of the Trust, and this excludes any characterisation of the relief sought in prayer (3) as legally unsustainable.

43 For the reasons above, I was not persuaded that the reliefs sought by the Claimant as remedies for breach of the Oral Agreement rendered his claim legally unsustainable.

That D is not a party to OC 568

44 It is established law that one of the several requirements that must be satisfied before the court grants declaratory relief is that "any person whose interests might be affected by the declaration should be before the court" (see *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 at [14]). Relying on this, the Defendant argued that the relief sought by the Claimant for the addition of himself as a co-trustee of the Trust is legally unsustainable because D is not a party to OC 568 despite her interests being affected by an order or declaration to this effect.

45 The court, in exercising its judicial power to appoint the trustees of a trust, takes into account the views and wishes of the remaining trustees as well as the beneficiaries of the trust (see *Halsbury*'s *Laws of Singapore* ([39] above) at para 110.748; see also Jamie Glister & James Lee, *Hanbury and Martin: Modern Equity* (Sweet & Maxwell, 20th Ed, 2015) at para 18-030). Therefore, as a matter of *general principle*, I accept that the beneficiaries of a trust have an interest in the identity of the trustee of the trust in proceedings concerning the appointment or removal of trustees of a trust.

46 However, it has to be borne in mind that the Claimant is seeking to be added as a trustee of the Trust, not by invoking the court's judicial power of appointment of trustees *in the abstract*, but in reliance on the terms of the Oral Agreement that he seeks to enforce in OC 568. If the Claimant's case on the Oral Agreement is eventually found to be proven at trial, then the Claimant ought to have been a co-trustee of the Trust together with the Defendant from the *inception* of the Trust. Given the basis on which the Claimant seeks to be added as a trustee of the Trust, it does not appear to me that D *necessarily* has an interest in his appointment in the same manner as the beneficiary of a trust

ordinarily would in proceedings concerning the appointment or removal of trustees, because the Trust ought to have included the Claimant as a co-trustee to begin with, if the Claimant's succeeds in his case on the Oral Agreement. Put another way, while I accept that D's interests stand to be affected by a declaration or order for the Claimant to be added as a co-trustee of the Trust on the basis of the general principle that the beneficiary of a trust has an interest in the identity of its trustees, given that the Claimant here seeks to be added as a co-trustee on the basis of the Oral Agreement which constitutes the foundation on which the Trust had been created, I have some doubt as to whether D will be regarded as having the same interest in the identity of the trustees of a trust as a beneficiary ordinarily would and whether her absence from OC 568 will *necessarily* preclude the court from granting an order or declaration that the Claimant be added as a co-trustee. It is in my view arguable that the relief sought by the Claimant for himself to be added as a co-trustee of the Trust can nevertheless be granted despite D not being a party to OC 568. I am therefore unable to conclude that the Claimant's claim based on the Oral Agreement is legally unsustainable for this reason.

47 In support of her submission that no orders can be made for the Claimant to be added as a co-trustee of the Trust in OC 568 because D is not a party to these proceedings, the Defendant cited *Ng Foong Yin v Koh Thong Sam* [2013] 3 SLR 455 ("*Ng Foong Yin*"). In that case, the defendant was the sole executor and trustee of his mother's estate, of which the plaintiff, a daughter-in-law, was the beneficiary. The defendant was also the sole executor and trustee of his late brother's estate. The brother, who predeceased the mother, had owed the mother a debt at the date of his death. The plaintiff's case was that the defendant, as executor of the brother's estate, failed to repay the debt back to the mother's estate. The plaintiff brought the action in her capacity as beneficiary of the

mother's estate against the defendant in his capacity as the executor and trustee of the mother's estate, for the defendant to provide a full and complete account of his administration of the estate including an account of what was due and owing, as well as a declaration that any assets transferred to the defendant by the mother, or taken by the defendant from the mother, were held on trust for the mother's estate. The defendant argued that the plaintiff's claim was untenable because she did not join any other beneficiaries of the mother's estate and also of the brother's estate to the action, all of whose interests stood to be affected by the reliefs sought. This was rejected in part by the court. In connection with the plaintiff's claim for an account of administration of the estate, the court held that this was an administration action and there was no requirement that all persons with a beneficial interest in the estate be joined (see *Ng Foong Yin* at [20]). In connection with the plaintiff's claim for a declaration, the court agreed with the defendant's objection that the plaintiff cannot ask for a declaration to be made because the other beneficiaries of the brother's estate, whose interests stood to be affected by the declaration, were not parties to the action though the court considered such a declaration to be unnecessary anyway because any asset which the defendant is eventually found to hold on behalf of the mother's estate would *prima facie* be held for the benefit of all beneficiaries of the mother's estate (see *Ng Foong Yin* at [22]–[24]).

48 *Ng Foong Yin* is distinguishable from the present case because the declaration sought by the plaintiff stood to affect the interests of the beneficiaries of the brother's estate in the estate's property (see *Ng Foong Yin* at [23]). It goes without saying that the beneficiaries of an estate or trust have an interest in the estate or trust property. On the other hand, the declaration or order sought by the Claimant in the present case is only in respect of the identity of the trustees of the Trust; no relief which the Claimant seeks in the Draft SOC

stands to impact D's beneficial interest in the LK Property. In fact, the Claimant now affirms D's interest in the LK Property as created by the Trust entirely. *Ng Foong Yin* therefore did not assist the Defendant in showing that the relief sought by the Claimant for the addition of himself as a co-trustee will necessarily be refused as a result of D's absence from these proceedings.

49 For the avoidance of doubt, nothing I have said above (at [42] and [46]) in connection with the legal sustainability of the reliefs sought by the Claimant should be regarded as an assessment of those reliefs on their merits. All I am saying here is that there is no basis for me to conclude that these reliefs will necessarily fail and therefore warrant a refusal of the Contested Amendments.

The unavailability of specific performance as a remedy

50 The remedy of specific performance is special and extraordinary in character and is at the court's discretion, which the court would only exercise "if under all the circumstances, it is just an equitable to do so" (*Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*") at [52]–[53]). Factors affecting the court's discretion include considerations such as: (a) whether damages would be an adequate remedy; and (b) whether the person against whom the relief of specific performance is being sought would suffer substantial hardship (see *Lee Chee Wei* at [53]).

51 The Defendant argued that, because her relationship with the Claimant has irretrievably broken down, the court would not grant specific performance of the Oral Agreement, and for that reason, the claim based on the Oral Agreement, which seeks specific performance as a remedy, is legally unsustainable. I was not persuaded by this. I accept, assuming that the Claimant succeeds in proving the Oral Agreement at trial, that the court might possibly

find that substantial hardship would be caused to the Defendant if specific performance of the Oral Agreement were ordered because the parties' relationship have in fact broken down. However, whether specific performance is to be granted is a matter for the court's exercise of *discretion* and there are multiple permutations as to how that discretion can be exercised, and what I have posited is merely one of those permutations. The possibility that the case can ultimately go the way of one of those permutations certainly cannot justify me concluding at the present juncture that the Claimant's claim for specific performance of the Oral Agreement is legally unsustainable.

52 In any case, the Defendant's objection on this ground failed for a more fundamental reason. The test of whether a pleaded claim is *legally unsustainable* is where it would be clear as a matter of law that a party would not be entitled to the remedy sought even if he succeeds in proving all the facts he offers to prove (see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]–[40]). What the Defendant must show, therefore, is that the pleaded facts in the Draft SOC, if proven, would *not* entitle the Claimant to specific performance. Even if I were to accept that the parties' breakdown in relationship will necessarily result in the court refusing to exercise its discretion to order specific performance of the Oral Agreement, this is not a *fact* that the Claimant has pleaded in the Draft SOC. In fact, save for the mention that the parties have undergone a divorce, there is no pleading in the Draft SOC that the parties' relationship has irretrievably broken down. That the parties have undergone a divorce does not warrant the court reading into the SOC that the parties' relationship have irretrievably broken down and that they are unable to cooperate as co-trustees to the extent that specific performance of the Oral Agreement will cause hardship to the Defendant.

Whether the Contested Amendments are inconsistent with the Claimant's previous position and are an abuse of process

53 I now come to the second issue. The Defendant argued that the Contested Amendments are an abuse of process and hence liable to be struck out because they are premised on a position inconsistent with the previous positions the Claimant has taken in SUM 2927 as well as in the FJC proceedings. The inconsistency lies in the Claimant *previously* disavowing the Trust in the FJC proceedings and maintaining his claim to a beneficial interest in the LK Property in SUM 2927, and *now* seeking to be added as a co-trustee of the Trust by the Contested Amendments sought in SUM 450. The inconsistency offends common sense because the Claimant has on the one hand asserted a beneficial interest in the LK Property while on the other made the converse assertion that he is only a bare trustee holding the LK Property for D's benefit, both of which are legally and factually irreconcilable positions. I agreed fully with the Defendant that the Claimant's previous and current positions are inconsistent – while he previously sought to dispute the existence of the Trust and assert a beneficial interest in the LK Property, he no longer does so now and seeks to affirm D's beneficial interest in the LK Property. For reasons explained earlier (at [34]–[36]), it needs no explanation that these positions are inconsistent with each other. The only issue here was whether the inconsistency is of such a nature that it renders the Contested Amendments an abuse of process.

54 In support of her submission that this was the case, the Defendant cited *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 ("*Chandra Winata Lie*"). In that case, the High Court upheld an AR's decision to refuse certain amendments to a Statement of Claim and also for the original pleading to be struck out, on the grounds that they both were an abuse of process, among other

reasons. The plaintiff in that case had suffered significant losses on investment accounts maintained with the defendant and he claimed to recover those losses as compensation, on the basis that the defendant had failed to advise or made negligent misrepresentations, or alternatively, that there were certain circumstances in the case which "[gave] rise to the inference" that the defendant had engaged in unauthorised transactions (see *Chandra Winata Lie* at [37]). In an attempt to stave off an application by the defendant to strike out the unauthorised trading claim on the basis of the original pleading as I have recited, the plaintiff proposed to amend his Statement of Claim by deleting his reliance on the inference of unauthorised trading and inserting a positive assertion that the defendant had engaged in unauthorised trading in view of those same circumstances that he had previously relied on in asserting the inference of unauthorised trading (see *Chandra Winata* at [58]).

55 The court upheld the AR's decision to strike out the original pleading for the unauthorised trading claim. The court found that the original pleading omitted an essential element of the plaintiff's cause of action – that the plaintiff did not authorise the said transactions that were the subject of the unauthorised trading claim. Before the court, the plaintiff's counsel argued that the plaintiff should be excused from the requirement of having to plead, particularise and point to proof for each and every element of his pleaded cause of action because he genuinely could not recall if he had authorised the said transactions or not (see *Chandra Winata Lie* at [44]). This was rejected by the court, which held that it was an abuse of process for a claimant to commence suit when he is unable to properly plead his cause of action, particularise it or point to some proof rationally connected to each essential element, whether because the essential elements of the cause of action are: (a) entirely unknowable; (b) knowable but not within the claimant's knowledge; or (c) previously within the

claimant's knowledge but he could no longer recall them (see *Chandra Winata Lie* at [45], [48] and [50]). The court held that the plaintiff's original pleading came within situation (c) and was an abuse of process (see *Chandra Winata Lie* at [54]).

56 As for the plaintiff's proposed amendments to his Statement of Claim, the court noted that the plaintiff's own evidence was consistently that he could not recall whether he had authorised the said transactions or not, and this acknowledgment remained part of the proposed amended Statement of Claim (see *Chandra Winata Lie* at [61]–[62]). The court held that the AR correctly refused the proposed amendments, which among other things, were an abuse of process because they "assert[] a fact inconsistent with [the plaintiff's] own evidence" (see *Chandra Winata Lie* at [76]). The court also explained that the plaintiff's own evidence of being unable to recollect whether he authorised the transactions or not would have precluded him from making an unqualified positive assertion that he had not authorised the transactions that are the subject of the unauthorised trading claim (see *Chandra Winata Lie* at [62]). In particular, the court held (see *Chandra Winata Lie* at [63]):

> Parties cannot freely change their case, let alone their evidence, and amend their pleadings to keep up. Thus, where a party's case is that her predecessor in title took possession of property pursuant to an agreement with a lessee who in turn was in possession of the property with the agreement of the head lessor, that party will be refused leave to plead by amendment an entirely inconsistent case asserting adverse possession against the head lessor's mortgage. … So too, where a party advances a case that it granted an extension of time for contractual performance and leads evidence in support of that case, it will be refused leave to plead by amendment that there was no such extension of time ….

57 An abuse of process is found where the judicial process is used as a means of vexation and oppression in the process of litigation, such as where an

action is brought for a collateral purpose (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22]). Having regard to this, as well as the reasons which led the court in *Chandra Winata Lie* to conclude that the plaintiff's original and amended unauthorised transaction claims were an abuse of process, I arrive at the following proposition – it is an improper use of the court's machinery where a claimant commences proceedings and pursues a claim that he knows he lacks the requisite factual basis to pursue, whether because: (a) he lacks knowledge of or cannot recall those facts; (b) the circumstances are such that he must know that the factual basis he now asserts in reliance is untrue or not properly founded; or (c) he has admitted in his pleading to not have a sound factual basis to pursue a claim (see, for example, *Lipkin International Ltd v Swiber Holdings Ltd and another* [2015] 5 SLR 962 ("*Lipkin International*") at [46], where the court remarked that it was an abuse of process for the plaintiff to pursue a claim based on an oral charterparty where it had admitted in its pleadings to be unsure of the most salient terms of that agreement). In any of these circumstances, there can be no genuine attempt by the claimant to seek reliefs through the judicial process, because he fully knows that the attempt will *not* succeed. Such circumstances necessarily lead to the inference that the proceedings have been commenced for a vexatious or oppressive purpose and the underlying pleading is thus liable to be struck out on the basis that they are an "abuse of the process of the Court".

58 Therefore, in *Chandra Winata Lie*, it was not *inconsistency* between the plaintiff's previous position (his own evidence that he could not recall whether the said transactions were authorised) and his proposed amended pleading (a positive assertion that the said transactions were authorised) *per se* that rendered the latter an abuse of process. In the circumstances of the case, the inconsistency demonstrated that the plaintiff knew well that he lacked the requisite factual

basis to pursue the unauthorised trading claim based on the proposed amended pleading, because what the pleading asserted was contradicted by what he had previously stated on affidavit in the same proceedings, and critically, the proposed amended pleading still retained an acknowledgment that he could not recall whether the said transactions were authorised. Given the plaintiff's previous position that he could not recall whether the trades were authorised, he also must have known that his factual assertion about the unauthorised trades in the proposed amended pleading could not be sustained at trial. In these circumstances, the unauthorised trading claim based on the proposed amended pleading could not have been maintained with the genuine intention of seeking reliefs and it was an abuse of process for the plaintiff to pursue the same.

59 Returning to the present case, the fact that there is inconsistency in the Claimant's previous and current positions is not the end of the matter. The question is whether this inconsistency shows that the Claimant knows that his claim on the Oral Agreement, based on the Contested Amendments, cannot succeed.

60 It is important to note, as a starting point of the analysis, that the inconsistency here lies only in the reliefs that the Claimant now seeks to pursue in reliance on what appears to be a rather consistent pleaded narrative. The Contested Amendments do not in any way involve the Claimant shifting his position on the underlying facts relating to the LK Property, namely: the Defendant had persuaded him to purchase a property for D; he had contributed substantially to the purchase price of the LK Property through funds he contributed to the parties' joint bank account; the parties' agreed arrangement was for the LK Property to be held on trust by both of them for D; and the Defendant had created the Trust unilaterally without his knowledge (see [6]–[7] and [12]–[13] above). The Claimant's case on the Oral Agreement is consistent

with these facts and the Contested Amendments only seek to elaborate further on how the arrangement for the LK Property to be held on trust had come about. That being the case, I do not see how the inconsistency can warrant any inference that the Claimant knows he lacks the requisite factual basis to pursue the claim based on the Oral Agreement.

61 It is significant that the Claimant has relied on the same critical factual elements in his original claim for the beneficial interest in the LK Property as well as in the current iteration of his claim based on the Oral Agreement – his monetary contribution to the purchase of the LK Property, that the parties intended for the LK Property to be held jointly on trust for D and that the Defendant had created the Trust unilaterally without the Claimant's consent. On the face of the underlying facts, in respect of which the Claimant has maintained a consistent account, the Claimant appears equally entitled to *pursue* either of the following reliefs – a claim to the beneficial interest of the LK Property because the Trust had been created without his consent and contrary to the agreed arrangement between the parties and so was to be revoked, or a claim to be added as co-trustee of the Trust pursuant to the agreed arrangement between the parties which the Contested Amendments plead and particularise as the Oral Agreement. The fact that the Claimant now opts to pursue one relief over the other by way of the Contested Amendments certainly does not reveal any knowledge on his part that he lacks the requisite factual basis to pursue the claim based on the Oral Agreement (and indeed, this conclusion also logically follows in respect of his original claim to the beneficial interest in the LK Property). In my judgment, therefore, the inconsistency in the Claimant's previous and current positions do not in any way show that the Contested Amendments are an abuse of process and thus liable to be struck out on that ground.

62 Before concluding this section, let me briefly address the Defendant's reliance on *Ng Chee Weng* ([15] above) in her submissions that the inconsistency arising from the Contested Amendments offended common sense and therefore had to be refused. As I will explain, this argument is different from saying that the Contested Amendments are inconsistent and thus an abuse of process, which I have dealt with earlier. In *Ng Chee Weng* (at [31] and [37]), the Court of Appeal held that a pleader was free to plead inconsistent causes of action in the alternative, but the inconsistency cannot in relation to the facts pleaded offend common sense. One example of an inconsistency that offended common sense is where the pleading contains alternative statements of fact where one statement or the other within the knowledge of the pleader must be false (see *Ng Chee Weng* at [36]). The Court of Appeal in *Ng Chee Weng* (at [41]) recognised inconsistency between alternative causes of action that offended common sense as an *independent* ground on which proposed amendments to pleadings can be refused. This is because such amendments are necessarily useless and will not have the effect of enabling the real question or issue in controversy to be determined (see *Wang Piao* at [17]).

63 The principle on inconsistent alternative pleadings in *Ng Chee Weng* is of no application in the present case because the inconsistency here arises not within a single pleading but between the Claimant's previous position, taken in connection with the existing SOC, and the Claimant's current position, taken in connection with the Contested Amendments. Therefore, even if the inconsistency in the Claimant's previous and current positions *offended common sense* in the manner the Defendant argued, the principle in *Ng Chee Weng* does not afford an independent ground for refusing the Contested Amendments in the circumstances of this case. Anything objectionable about the inconsistency can only be relevant in connection with the issue of whether

the Contested Amendments are abuse of process, of which I have found there is none in this case (see [60] above). In any case, the Defendant's counsel in oral submissions also confirmed that the Defendant was not relying on *Ng Chee Weng* as an independent ground on which the Contested Amendments are to be refused.

64 For completeness, I do not think that a primary plea that a party is entitled to the beneficial interest of a property, and an alternative plea that he is a bare trustee of the same, will *necessarily* attract the principle on inconsistent alternative pleadings, as the Defendant argued.[28] What attracts the principle on inconsistent alternative pleadings is where the alternative pleas are of such a nature that to the knowledge of the pleader, *only one but not the other*, can be true. Each case therefore turns on its own facts and what has been specifically pleaded. It is true that in *Chong Poh Siew v Chong Poh Heng* [1994] 3 SLR(R) 188, which the Defendant relied on, the court rejected as being inconsistent the plaintiff's plea of being a bare trustee of monies that were the subject of an alleged trust, which had been advanced in the alternative to the plaintiff's primary plea that the said trust did not exist and that he was a beneficial owner of those monies. In my view, however, what attracted the principle on inconsistent alternative pleadings in that case was not simply because the plaintiff's primary and alternative pleas contradicted each other; it was because these alternative pleas were founded on two versions of events, of which only one could be true (that the alleged trust exists or not), which was also within the plaintiff's own knowledge.

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[28] Defendant's written submissions at paras 96–100.

Whether the Contested Amendments disclose no reasonable cause of action

65 I now come to the third issue. The Defendant argued that the Contested Amendments disclose no reasonable cause of action in contract for the following reasons: (a) the Claimant has not pleaded with clarity and consistency the fundamental terms of the Oral Agreement, such as the precise date on which it was formed and its precise terms; and (b) the Claimant has also failed to plead essential legal elements such as the consideration provided for the Oral Agreement and the parties' intention to create legal relations.

66 I begin with the applicable principles. The function of pleadings is, among others, to give the opposing party fair notice of the case which has to be met (see *Lee Chee Wei* ([50] above) at [61]). *Singapore Civil Procedure 2021 Vol I* (Sweet & Maxwell) (at para 18/12/5) provides the following guidance:

> … The pleading should state the date of the alleged agreement, the names of all parties to it, and whether it was made orally or in writing, in the former case stating by whom it was made and in the latter case identifying the document, and in all cases setting out the relevant terms relied on …. If the agreement is not under seal, the consideration must also be stated. … Where a contract is alleged to be implied from a series of letters or conversations or otherwise from a number of circumstances, the contract should be alleged as a fact, and the letters, conversations or circumstances set out generally.

67 It is not in dispute that the Claimant has indeed omitted from the Draft SOC the specific date on which the Oral Agreement was formed. However, in my view, that is not fatal to the Claimant's cause on action on the Oral Agreement. Reading the relevant parts of the Draft SOC as a whole, the Claimant's case is that the Oral Agreement was reached at the *second* of the two

oral discussions which he had with the Defendant regarding the purchase of the LK Property:[29]

> 7. …, there was an oral agreement between the Claimant and [the Defendant] that they would purchase [the LK Property] for [D] and that the both of them would hold [the LK Property] jointly on trust for [D] as co-trustees ('Oral Agreement')
>
> > 7.1 Sometime between 28 April 2018 and 8 May 2018, there were two oral discussions between the Claimant and [the Defendant] in relation to the purchase of [the LK Property]. Both discussions took place in the Claimant's and [the Defendant's] matrimonial home …
> >
> > 7.2 During the first discussion, [the Defendant] learnt of the Claimant's purchase of [another property] for [S], and [the Defendant] suggested that the Claimant should also purchase [the LK Property] for [D]. However, the Claimant disagreed with [the Defendant's] suggestion as they already owned [the matrimonial home] which [D] could inherit, and which was much bigger in size and floor area than [the LK Property].
> >
> > 7.3 During the second discussion, [the Defendant] took issue with the Claimant's earlier reluctance to buy the property for [D]. [The Defendant] insisted that it was only fair that the Claimant purchases a similar property for [D], since the Claimant had purchased a property for [S]. The Claimant eventually relented and gave in to pressure from [the Defendant] to purchase [the LK Property] for [D]. However, as [D] was not 21 years of age at the material time, *the Claimant and [the Defendant] agreed* that [the LK Property] was to be conveyed into the joint names of both [the Defendant] and the Claimant and *thereafter*, the jointly owned property was to be held on trust by both [the Defendant] and the Claimant, as trustees for [D] until she reaches the age of twenty-one (21) years old. …
>
> [emphasis added]

68 The Draft SOC is not deficient in terms of when the Oral Agreement came into being to the extent that it warrants striking out for disclosing no

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[29] Draft SOC at paras 7, 7.1, 7.2 and 7.3

reasonable cause of action. First, although the Claimant does not specify the date on which the second oral discussion took place, and in turn, the date on which the Oral Agreement was formed, the Claimant has already provided other particulars about this discussion – namely, that it had taken place in the one-week period between 28 April 2018 and 6 May 2018 at the parties' matrimonial home, as well as what had been raised at this discussion. This in my view provides the Defendant with sufficient and fair notice of the Claimant's case on the Oral Agreement that she has to defend. Secondly, the Claimant's pleaded case on the Oral Agreement in the Draft SOC also conforms with the requirement under the law on offer and acceptance in contract formation that there must be a single point in time where the necessary consensus *ad idem* is reached and the contract comes into being (see *Lipkin International* ([57] above) at [42]). As currently pleaded, the Oral Agreement came into being at the second of the two oral discussions, which the Claimant asserts had taken place in the period between 28 April 2018 and 6 May 2018.

69 The Defendant's next complaint is that the Claimant has not pleaded with clarity the precise terms of the Oral Agreement. The Defendant took issue with the use of the word "thereafter" at para 7.3 of the Draft SOC, which I have set out above. She argued that para 7 of the Draft SOC contemplates a *single* step in the performance of the contractual obligation under the Oral Agreement, but the use of the word "thereafter" suggests that there are two stages to this: first, a conveyance of the LK Property into the parties' joint names, and secondly, a declaration of trust over the Property by both parties in D's favour. The pleadings relating to this material term of the Oral Agreement is therefore internally inconsistent.[30]

[30] Defendant's written submissions at para 31.

70 I did not find any merit in this argument. In my view, the use of the word "thereafter" does not render the pleadings at para 7 and para 7.3 of the Draft SOC inconsistent with each other. The word "thereafter", used in the context of para 7.3, is that a trust was to be created over the LK Property for D's benefit *after* the LK Property was conveyed jointly into the names of the Claimant and the Defendant. This is in no way inconsistent with what is pleaded at para 7, which is that the LK Property was to be held by both parties on trust for D. Logically and obviously, the LK Property would have to be first conveyed into the names of the Claimant and the Defendant before a trust with both of them as co-trustees could be created over it. It would be quite a different thing if the creation of the trust was premised on a further event or discussion between the Claimant and the Defendant or any agreement that the parties had to reach subsequent to the property being conveyed into their joint names, but that is not what has been pleaded in the Draft SOC and certainly not what the word "thereafter" means. In my view, the Defendant's objection that the fundamental terms of the Oral Agreement have not been properly pleaded also has no merit.

71 I turn now to the Defendant's objections regarding the legal elements of the Oral Agreement. I begin with the issue of consideration, which in my view can be easily dealt with. In the Draft SOC, the Claimant pleads that he had, pursuant to the Oral Agreement, agreed to the purchase of the LK Property with the use of funds from the parties' joint bank account, into which he had transferred substantial funds. This in my view sufficiently notifies the Defendant as to what the Claimant says is the consideration underlying the Oral Agreement – that the Claimant consented to the purchase of the LK Property using funds which beneficially belong to him.

72 In the Defendant's written submissions, she does not dispute that this was the consideration relied on by the Claimant in his case on the Oral

Agreement, but she argued that this was not good consideration because: (a) first, the Claimant had also averred that he agreed to the purchase of the LK Property after pressure from the Defendant, which is inconsistent with him having agreed to the purchase the LK Property as a result of the Oral Agreement; and (b) secondly, the account from which the purchase monies of the LK Property was derived also contained monies of the Defendant, and so the Claimant's consent to the use of monies from that account for the purchase of the LK Property would not be adequate as consideration.[31] I did not find any merit in these objections. For the first objection, that the Claimant might have been persuaded to purchase the LK Property as a result of pressure from the Defendant is not *inconsistent* with him having agreed to the purchase on account of the Oral Agreement. As for the second objection, that the relevant bank account also contained the Defendant's monies does not detract from the fact that the Claimant agreed to the purchase of the LK Property using funds which beneficially belonged to him; that constitutes the *detriment* which the Claimant suffered, and in return for which the Defendant obtained the benefit of having the LK Property purchased for D's benefit on trust pursuant to the terms of the Oral Agreement which, if proven at trial, would constitute valid consideration (see *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [65]–[66]).

73 Finally, I come to the issue of the parties' intentions to create legal relations. This, apart from the requirements of offer, acceptance and consideration, is a necessary element for a binding and enforceable agreement to arise (see *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Soon and another and another appeal* [2019] SGCA

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31 Defendant's written submissions at para 38.

61 ("*Ong Wui Teck*") at [45]). It is also established law that in the domestic or social context, there is a presumption that the parties do not intend for legal consequences to follow and hence do not intend to create legal relations, which imposes the burden of proof on the party seeking to enforce the agreement to prove that the parties did in fact intend for their arrangement to have legal consequences (see *Ong Wui Teck* at [46]).

74 The Defendant argued the Claimant's omission to plead anywhere in the Draft SOC that the parties had the requisite intention to create legal relations renders the pleading relating to the Oral Agreement defective. In my view, that does not follow. The effect of the presumption is that mere promises or arrangements made in the domestic setting will be presumed to not give rise to legal consequences (see Andrew Phang Boon Leong gen ed, *Law of Contract in Singapore* (Academy Publishing, 1st Ed, 2012) at paras 05.012 to 05.020). Of course, if the claimant's case is that a domestic arrangement which *prima facie* attracts the presumption gave rise to an enforceable contract, then he must plead that the parties had the requisite intention to create legal relations, and also plead the material facts sustaining that assertion. However, where it is obvious from the subject matter of the agreement pleaded by the claimant that the parties necessarily must also have had the requisite intention to create legal relations, then such an explicit pleading will be redundant and to insist on the same would be to ask the pleader to state the obvious, which is not the function that pleadings are meant to serve. The present case falls within the latter category because the Oral Agreement relates not to a mere domestic arrangement or promise between the parties but to the purchase of a property of substantial value; it is implicit from the fact of the Oral Agreement itself that the parties had intended to create legal relations in connection with the purchase of the LK Property through the Oral Agreement.

75 For the reasons above, I did not find any merit in the Defendant's objections that the Contested Amendments disclosed no reasonable cause of action. Accordingly, this was not a reason for refusing the Contested Amendments.

Whether the claim based on the Oral Agreement is factually unsustainable

76 I now come to the fourth and final issue. The Defendant relied on three grounds to support her case that the Claimant's claim based on the Oral Agreement is factually unsustainable:

(a) It is inconceivable and inconsistent with the Claimant's claim on the Oral Agreement that he had simply left it to the Defendant to complete all the documentation relating to the purchase of the LK Property, and that he had not been required to sign off on any of the conveyancing documents or the trust deed for the Trust.[32]

(b) The objective evidence contradicted the Claimant's version of events underlying the Oral Agreement – including evidence which showed that the paperwork for the purchase of the LK Property was prepared on the basis that the Defendant would hold the LK Property as sole trustee for D, and correspondence between the Defendant and the conveyancing solicitor at the material time which made no mention of the Oral Agreement.[33]

(c) The Claimant's own conduct contradicts the existence of the Oral Agreement. The Claimant had waited until June 2022 (more than

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32 Defendant's written submissions at paras 68–70.

33 Defendant's written submissions at paras 74–75.

> four years after the Oral Agreement had allegedly been entered into) to obtain documents relating to the Trust and after having sight of these documents which show that the LK Property was held by the Defendant as sole trustee, the Claimant did not immediately disavow the Trust or bring an action against the Defendant for breach of the Oral Agreement.[34]

77 A claim is "factually unsustainable" where it could be said with confidence before trial that the factual basis for the claim is entirely without substance, which can be the case if it were clear beyond question that the facts pleaded are contradicted by all the documents or other material on which it is based (see *The "Bunga Melati 5"* ([52] above) at [39]–[40]).

78 The Claimant's case on the Oral Agreement is based – at the risk of stating the obvious – on an *oral* agreement between the parties, which in turn stemmed from two *oral* discussions between the parties; it is therefore based entirely on the Claimant's *own* account of the events, and not on any documentary or contemporaneous evidence. If the court is to conclude that the Oral Agreement is factually unsustainable for the purposes of striking out, then it must engage in the exercise of preferring one party's account over the other regarding conflicting facts, something which it could only do "in the plainest of cases" (see *The "Bunga Melati 5"* at [45] and [52]).

79 The Defendant has not persuaded me that this is one such case where I should *reject* the Claimant's account at this preliminary stage. The arguments which the Defendant has made about the objective evidence and the Claimant's own course of conduct, although raising reasonable *questions* about the

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[34] Defendant's written submissions at paras 72, 76 and 77.

Claimant's case on the Oral Agreement, do not go so far as to contradict his account on the Oral Agreement so that it is to be disbelieved. For instance, there could have been various reasons why the Claimant simply left it to the Defendant to complete all documentation relating to the LK Property and never asked for documents relating to the Trust until June 2022, or why the Claimant did not immediately disavow the Trust after having sight of the documents relating to the Trust showing the Defendant as sole trustee, and these reasons might not necessarily be inconsistent with the Oral Agreement. Whether it is significant that the paperwork for the LK Property was prepared on the basis of the Defendant being the sole trustee and that the correspondence between the Defendant and the conveyancing solicitor (in which the Claimant was *not* copied) made no mention of the Oral Agreement[35] depends on what the Defendant had told the conveyancing solicitor in the first place and does not in and of itself show that the Oral Agreement does not exist. The questions identified by the Defendant, although reasonable, are properly left to be ventilated at trial and for the trial judge to make the necessary determinations with the benefit of the fact-finding processes in a full trial. They do not warrant the conclusion that the Claimant's case on the Oral Agreement is factually unsustainable.

80 For her submission that the Claimant's conduct contradicted the existence of the Oral Agreement, the Defendant cited the High Court's finding in *Lipkin International* ([57] above) that the claim for breach of an oral charterparty in that case was factually unsustainable because, among other things, the plaintiff remained completely silent about the first defendant having acted in breach of contract, despite having been alerted to the circumstances

35 ASY-2 at pp 298–303.

said to give rise to the alleged breach. I did not think this assists the Defendant. What the court in *Lipkin International* principally relied on in finding the oral charterparty claim to be factually unsustainable was the plaintiff's own evidence and the correspondence exchanged between the parties, which the court found contradicted the plaintiff's case on the oral charterparty; the court specifically noted that the plaintiff's silence "in itself would be *insufficient* to strike out the claim" [emphasis added] but considered this as reinforcing the overall conclusion when considered together with the other evidential difficulties plaguing the plaintiff's case (see *Lipkin International* at [50] and [79]). Here, I have already explained earlier that I did not find the Claimant's own conduct to *contradict* his case on the Oral Agreement – in my view, this merely raised questions to be ventilated at trial proper. However, even if I were wrong, the Claimant's conduct can provide no basis for striking out because, unlike the defendant in *Lipkin International*, the Defendant has not pointed to any other independent ground apart from the questions she has raised that is capable of undermining the Claimant's case on the Oral Agreement.

Conclusion

81 For the reasons above, I allowed SUM 450. While I saw no ground for refusing the Contested Amendments, I agreed with the Defendant that the reliefs sought by the Claimant in respect of the LK Property (see [38] above) could be further amended to make clear that he was seeking specific performance of the Oral Agreement,[36] which the Claimant's counsel confirmed is the case at the hearing before me. Pursuant to my directions and on the basis of my decision in SUM 450, the Claimant reworded the reliefs in the Draft SOC as follows, to which the Defendant also had no objections:

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[36] Defendant's written submissions at para 53.

> There be specific performance of the Oral Agreement between the Claimant and [the Defendant] for the Claimant to be appointed as a co-trustee over [the LK Property] and therefore, that [the Defendant] appoints the Claimant as a co-trustee over [the LK Property] under the [Trust] and for the Claimant and [the Defendant] to hold [the LK Property] as co-trustees in [D's] favour.

82 Given my decision to allow SUM 450, it was unnecessary for me to consider the Defendant's argument that I should further exercise my discretion to strike out the Claimant's original claim in the SOC relating to the LK Property in the event that the Contested Amendments were refused. It suffices for me to make the following brief observations in response to the arguments made on this point.

83 First, the Defendant argued that it would have been appropriate for me to do so because the court had, in response to a letter by the Defendant's solicitors enclosing for the court's information the second of two sets of draft amendments to the SOC exchanged between the parties and their respective positions (see [11] above), directed that grounds of striking out can be raised by the Defendant in submissions and at the hearing of SUM 450, and that it was unnecessary for the Defendant to take out a separate striking out application.[37] I did not agree with the Defendant on this point. In the letter by the Defendant's solicitors, it was said that notwithstanding the amendments proposed by the Claimant which that letter enclosed, the Claimant's "alleged claim for breach of contract" remains unsustainable at law, and it requested that the Claimant be directed to file an application for amendment of pleadings, and that the Defendant be permitted to file a "partial striking out application of the alleged breach of contract claim *in response* to the amendments, and for the applications to be heard together so that the Court has the forum to hear full legal

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37 ASY-2 at p 278.

submissions and decide the merits of the *proposed* cause of action" [emphasis added].[38] It is clear from the contents of the letter by the Defendant's solicitors that the "striking out" which the court had in mind when it responded to that letter was *vis-à-vis* the Claimant's proposed amended claim, and not the original claim in the SOC. The Defendant's solicitors had asked for permission to file a striking out application "in response to the amendments" and to show that the "proposed cause of action" by the Claimant is unsustainable at law. It cannot be any clearer that the reference to "striking out" was *not* with respect to the original claim in the SOC.

84 Secondly, I had some doubt whether it was open to me at all to exercise my discretion in the manner urged by the Defendant. The parties' submissions in SUM 450 had addressed the question of whether the amended claim based on the Oral Agreement is liable to be struck out (in the context of whether the Contested Amendments were to be allowed or refused) and no part of those submissions touched on the original claim. Even if I were to accept the Defendant's submission that the court can strike out the original pleading where it refuses amendments sought by the pleader, despite no formal application having been taken out by the opposing party for striking out of the original pleading, this does not appear to be the appropriate course of action here because the parties had not addressed the court on whether the original claim is liable to be struck out. The cases that the Defendant cited to me in which the court had refused an amendment to pleadings and struck out the original pleading at the same time were those where the court had been addressed on the sustainability of *both* the original and proposed amended pleadings (see, for example, *Chandra Winata Lie* ([54] above) at [36] and [56]–[57]).

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[38] ASY-2 at pp 263–264.

85 The Defendant's counsel explained during oral submissions that the Claimant's original claim relating to the LK Property is inconsistent with the position he has taken in SUM 450 in pursuing the Contested Amendments, and to allow the Claimant to revert to his original claim in the SOC would give rise to an abuse of process within the meaning of O 9 r 16(1)(*b*) of the ROC 2021, and this warranted striking out of the Claimant's original claim. I was also not persuaded by this argument. In the first place, as explained, the Claimant's inconsistent positions do not reveal an abuse of process, with respect to both the amended claim based on the Oral Agreement, as well as the original claim for a beneficial interest in the LK Property – these are claims that the Claimant is equally entitled to pursue on the basis of the rather consistent underlying factual narrative that he has so far maintained (see [61] above). In any case, counsel's submission does not overcome the fundamental objection I have alluded to earlier, which is that SUM 450 concerned whether the amended claim (and *not* the original claim) is to be struck out and it certainly cannot be correct for the court to exercise its powers of striking out on its own motion where it has not been addressed by the parties on the matter.

86 Finally, on the issue of costs, I ordered that: (a) the Defendant pay the Claimant costs of $4,000 (all in) in respect of SUM 450; and (b) the Claimant pay the Defendant costs of $1,000 (all in) in respect of costs occasioned by the amendment allowed in SUM 450. In arriving at my decision on the quantum of costs for SUM 450, I took into account the costs range of $1,000–$7,000 provided for by Appendix G of the Supreme Court Practice Directions 2021 for applications for amendment of pleadings. The Contested Amendments were fairly straightforward factually but given that various legal arguments and authorities had been raised by the Defendant in opposing these amendments, and also taking into account the Claimant's submission that *net* costs of $3,000

(all in) was reasonable, I considered a sum of $4,000 (all in) to be appropriate. For the avoidance of doubt, this also encapsulates the costs incurred in respect of the two sets of draft amendments to the SOC that had been exchanged between the parties before SUM 450 was taken out. In arriving at my decision on the quantum of consequential costs, I considered the nature of the Contested Amendments as well as how the Claimant's claim has shifted by virtue of the Contested Amendments. This was not major because the claim based on the Oral Agreement does not detract from the underlying factual narrative that has already been pleaded but merely adds to the details and involves a shift in the reliefs now claimed. In my view, a sum of $1,000 (all in) sufficiently compensates the Defendant for the costs it might incur for any further work to be done in amending her Defence for OC 568.

Perry Peh
Assistant Registrar

Charles Ho Jiaxin and Lorraine Fong (Harry Elias Partnership) for the claimant;
Terence Wah and Zhang Weihao (Dentons Rodyk & Davidson LLP) for the first defendant.
