Sandz Solutions (Singapore) Pte Ltd and others *v* Strategic Worldwide Assets Ltd and others [2014] SGCA 27

Case Number	: Civil Appeal No 112 of 2013
Decision Date	: 21 May 2014
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Low Chai Chong, Daryl Ong and Alvin Liong (Rodyk & Davidson LLP) for the appellants; Devinder K Rai (ACIES Law Corporation) for the first respondent; Ronnie Tan and Rajendran Kumaresan (Central Chambers Law Corporation) for the second respondent; Kelly Yap and Morgan Chng (Oon & Bazul LLP) for the third respondent.
Parties	: Sandz Solutions (Singapore) Pte Ltd and others — Strategic Worldwide Assets Ltd and others

CIVIL PROCEDURE – Witnesses – assessing veracity of witnesses' evidence

Companies – Shares – dividends

Tort – Conspiracy

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 4 SLR 662.]

21 May 2014 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 This appeal arose from Suit No 506 of 2009 ("the Present Suit"), an action commenced by the first respondent, Strategic Worldwide Assets Limited ("Strategic"), against the first appellant, Sandz Solutions (Singapore) Pte Ltd ("Sandz"), and the other three appellants, who were the shareholders and directors of Sandz at the material time. Strategic sought payment of $1m, being its purported 25% share of dividends of $4m declared by Sandz in 2007 ("the $4m Dividends"). Sandz and the other three appellants (collectively, "the Appellants") in turn brought:

(a) third-party proceedings against two individuals related to Strategic – namely, the second respondent, Tan Choon Wee ("Mr Tan"), and the third respondent, Poon Seng Fatt ("Mr Poon") – for a contribution and/or an indemnity; and

(b) a counterclaim against the same individuals and Strategic for conspiracy.

2 The High Court judge ("the Judge") held that Strategic was entitled to succeed in its claim and dismissed the Appellants' counterclaim and third-party action: see *Strategic Worldwide Assets Ltd v Sandz Solutions (Singapore) Pte Ltd and others (Tan Choon Wee and another, third parties)* [2013] 4 SLR 662 ("the Judgment"). The Appellants filed a notice of appeal in respect of the whole of the Judge's decision, but in their submissions before us, they pursued only the Judge's decision to allow Strategic's claim and to dismiss their counterclaim.

Background to the dispute

The parties to the dispute

3 The first appellant, Sandz, is a company incorporated in Singapore. It is an enterprise solutions provider, providing professional services in information technology regionally.

4 The second appellant, Lawrence Liaw Shoo Khen ("Mr Liaw"), is the chairman and managing director of Sandz. He founded Sandz in 1999 and built the business together with another director, Tan Jeck Min ("Mr JM Tan"), the fourth appellant. The third appellant, Koh Siang Ling Alina ("Ms Koh"), is Mr Liaw's wife and also a director of Sandz. Mr Liaw, Mr JM Tan and Ms Koh will hereafter be referred to collectively as "the Liaw Group".

5 The first respondent, Strategic, is a company incorporated in the British Virgin Islands. It was incorporated as an investment vehicle by the third respondent (and second third party in the trial below), Mr Poon, who is a businessman. He had, however, by December 2006 transferred his shares in and directorship of Strategic to one Benjamin Ng Chee Yong ("Mr Ng"), an old friend of his who was involved in property investments.

6 The second respondent (and first third party in the trial below), Mr Tan, is a venture capitalist and an executive director of The Lexicon Group Limited ("Lexicon"), a listed company. Lexicon was previously known as Sun Business Network Ltd ("SBN"), and this name appears in some of the material documents. The other executive director of Lexicon/SBN is Mr Ricky Ang Gee Hing ("Mr Ang"), who is also the company's managing director.

The sale and purchase agreement between Strategic and Mr Liaw

7 On or about 6 February 2007, Mr Liaw was introduced to Mr Tan by a mutual acquaintance. At this meeting, Mr Liaw informed Mr Tan that he was looking for a suitable vehicle into which he could inject Sandz, and explained the intention of Sandz's shareholders to raise working capital through either a trade sale or a public listing. Mr Liaw needed further working capital in order to expand Sandz. He had initially planned to list the company on the Malaysian Stock Exchange in 2006, but those plans failed to materialise. Mr Tan was impressed by the figures that Mr Liaw showed him – according to those figures, Sandz was making a net profit after tax of around $2m to $3m per year. Mr Tan offered to assist Mr Liaw in finding a suitable vehicle for Sandz to be injected into. As will be elaborated later, this vehicle was to be Lexicon (see below at [13]–[14]).

8 At that time, the Liaw Group held 75% of the shares in Sandz and the remaining 25% ("the 25% stake in Sandz") was held by SES Systems Pte Ltd ("SES"). Mr Liaw and Mr Tan did not dispute that the idea to buy the 25% stake in Sandz and on-sell it was discussed at the meeting on 6 February 2007. However, their respective accounts of the meeting diverged in respect of whose idea it had been.

9 Also in February 2007, Mr Liaw met Mr Poon for the first time. Mr Poon had been roped in by Mr Tan as the third-party investor to put up the purchase price of $2.5m for the 25% stake in Sandz. Mr Poon was an old friend of Mr Tan, and their companies (Value Capital Asset Management Ltd and China Enersave Holdings respectively) had previously had business dealings with one another. The plan was to on-sell the 25% stake in Sandz to Lexicon for a profit. According to Mr Poon, he subsequently became worried that his involvement in the transaction might result in a possible conflict of interest. He thus approached Mr Ng to see if the latter would like to participate in his stead. Eventually, it was agreed that Strategic, of which Mr Ng was by then the sole director and

shareholder, would be the third-party investor, and that Mr Poon would "assist" [note: 1] in finalising the transaction.

10 With Mr Ng's authority, Mr Poon instructed ACIES Law Corporation to draft an agreement for the sale and purchase of the 25% stake in Sandz between Mr Liaw and Strategic at the price of $2.5m ("the Strategic SPA"). Mr Tan sent a draft of the Strategic SPA to Mr Liaw on 27 February 2007. The Strategic SPA was undated, but it appeared that the parties were *ad idem* that it was eventually signed on or about 15 March 2007 by Mr Liaw and Mr Poon (acting as the authorised signatory of Strategic).

11 On 12 March 2007, Mr Liaw made an offer to SES to purchase the 25% stake in Sandz for $2.5m. SES eventually agreed to part with that 25% stake for $2.7m. Thus, on 16 March 2007, Mr Liaw entered into an agreement with SES to purchase the 25% stake in Sandz for $2.7m. On 26 March 2007, Strategic's lawyers remitted $2.5m to Mr Liaw's bank account and the remaining $200,000 was paid by Mr Liaw. On 9 April 2007, SES transferred the shares which comprised the 25% stake in Sandz to Mr Liaw; those shares were then registered in Mr Liaw's name. Subsequently, Mr Liaw transferred the 25% stake in Sandz to Strategic, and on 20 April 2007, Strategic became the registered shareholder of the shares which comprised that 25% stake. According to Mr Liaw, he transferred the 25% stake in Sandz to Strategic: [note: 2]

> … on the understanding that Strategic would owe me $200,000 and that:–
>
> a. Strategic's only interest was to flip the 25% stake [in Sandz] for a quick profit in view of the intended acquisition by Lexicon;
>
> b. Strategic would not be involved in or interfere whatsoever in any of the affairs or management or business of [Sandz] as this was solely an opportunity for Mr Tan and his close friends/business associates to benefit and earn a quick profit; and
>
> c . *Accordingly, Strategic would not have any claim or interest in or against [Sandz], its profits, or cash or any money thereof including any entitlement to dividends.*
>
> [emphasis added]

The above criteria ("the Representations") – in particular, criterion (c) (referred to hereafter as "Representation C" where appropriate to the context) – lie at the heart of the dispute between the parties.

The Sandz-Lexicon deal and the declaration of the $4m Dividends

12 This part of the narration of facts relates to the events leading up to and surrounding Sandz's declaration of the $4m Dividends. It should be noted from the outset that the accounts given by Mr Tan and Mr Liaw differed.

13 Throughout February and March 2007, Mr Tan and Mr Liaw had further discussions pertaining to the terms of the transaction between Sandz and the proposed vehicle, Lexicon. Mr Liaw maintained that he informed Mr Tan of his requirements for the transaction, which were as follows:

> (a) Mr Liaw was to be released from the personal guarantees which he had given to banks in order to support credit facilities for Sandz;

(b) there would be an injection of $5m in cash to provide additional working capital for Sandz; and

(c) control and management of Sandz would remain with Mr Liaw.

14 Mr Liaw met Mr Ang, the managing director (and the other executive director) of Lexicon, for the first time on 6 March 2007. Thereafter, Mr Ang, Mr Tan and Mr Liaw had several discussions about the deal between Sandz and Lexicon ("the Sandz-Lexicon deal"). According to Mr Liaw, he was repeatedly given assurances by the other two men that they had no interest in interfering with his running of Sandz and that Lexicon would be his listed company.

15 During these discussions, the term sheet for the Sandz-Lexicon deal underwent several changes. In particular, Mr Ang had a change of heart about the proposed cash injection of $5m into Sandz by Lexicon. He proposed instead that Mr Liaw and Lexicon each make a loan of $2.5m to Sandz. Eventually, on 8 May 2007, Mr Liaw (on behalf of Sandz's shareholders) and Mr Ang (on behalf of Lexicon) signed the finalised term sheet, which provided that:

(a) Lexicon would purchase all the issued shares in Sandz for $36m, of which $12m would be payable in cash in four quarterly instalments, with the remaining $24m to be paid in the form of Lexicon shares (then priced at $0.06 per share), which were to be allotted in stages; and

(b) Lexicon and Mr Liaw would each make a loan of $2.5m to Sandz to provide it with working capital.

Pursuant to this, Lexicon, Mr Liaw and Sandz entered into a loan and guarantee agreement ("the Loan and Guarantee Agreement") on 22 May 2007.

16 At this point, the parties' accounts diverged considerably. According to Mr Liaw, he was not keen on assuming additional personal liability and was unhappy about Lexicon backtracking on its initial agreement to provide the entire $5m capital injection into Sandz, so much so that he considered pulling out of the Sandz-Lexicon deal altogether. In order to rescue the deal, Mr Tan conjured a creative solution. Having been informed by Mr Liaw that Sandz had a net tangible asset value ("NTA") of $12m, Mr Tan proposed that Mr Liaw persuade Mr Ang and Lexicon to accept an NTA of $8m instead, which would allow Mr Liaw to take $4m out by way of dividends to furnish the loan of $2.5m to Sandz and keep the remaining $1.5m for himself. Mr Liaw claimed that this was evidenced by Mr Tan's short text message of 14 May 2007, which read as follows: [note: 3]

Yr acct need to b more creative. Once dividend declared co owe u. U then thru agrmt loan money to coy [*sic*].

17 Mr Tan's version was that around May 2007, Mr Liaw informed him that Sandz had an NTA of $12m, and that he had not taken any money out of Sandz despite working there for many years. Mr Tan agreed that he informed Mr Liaw that he did not have any issue if Mr Liaw were to take some profits out of Sandz as long as Mr Liaw did not overdo it. However, he denied specifying that Mr Liaw could take $4m out as dividends, nor that Mr Liaw could do so at the expense of Strategic.

18 Ultimately, the $4m Dividends were declared in two tranches:

(a) As evidenced by a series of e-mails dated 12, 13 and 16 April 2007, the first interim dividend of $2.5m was declared by way of a directors' resolution dated 11 April 2007.

(b) As evidenced by an e-mail dated 14 June 2007, the second interim dividend of $1.5m was declared on or about 14 June 2007. The resolution declaring it was signed on or about 22 June 2007 and backdated to 16 April 2007.

19 The first interim dividend was not paid in full upon declaration. Payment of the first interim dividend was instead broken into smaller amounts (all in S$ unless indicated otherwise below) as follows:

(a) on 11 April 2007, $75,000 was paid by UOB cheque number 743053 and $150,000, by UOB cheque number 743052;

(b) on 18 May 2007, $175,000 was paid by UOB cheque number 743066;

(c) on 23 May 2007, US$175,000 (S$264,250) was paid by UOB cheque number 336792 and US$800,000 (S$1,208,000), by UOB cheque number 336791; and

(d) on 4 June 2007, $627,750 was paid by UOB cheque number 743091.

As can be seen from the above, by 30 May 2007, about $1.872m out of the first interim dividend of $2.5m had been paid out. The second interim dividend was paid out by way of cheques backdated to 16 April 2007.

20 On 30 May 2007, the sale and purchase agreement between Lexicon and the shareholders of Sandz (who were, at that point in time, the Liaw Group and Strategic) for all the shares in Sandz ("the Lexicon SPA") was signed by the parties. It was completed on 2 October 2007 and the first tranche of the $12m cash consideration (*ie*, $3m) was paid, with Strategic receiving $750,000 (25%) and the Liaw Group, the remaining $2.25m (75%). The relevant Lexicon shares were also allotted to Strategic and the Liaw Group on the same day. Out of the $2.25m received by the Liaw Group, $750,000 was advanced to Strategic on the understanding that the sum would be recovered when the next tranche of the cash consideration under the Strategic SPA was paid.

21 Thereafter, the Securities Industry Council ("the SIC") raised queries regarding the ownership of Strategic. On 16 July 2007, Sandz informed the SIC that Strategic was the investment vehicle of Mr Poon. Subsequently, the SIC asked Sandz to confirm that Mr Poon was not related to the then directors and substantial shareholders of Lexicon. It was only then that Mr Poon volunteered the information that Mr Ng was the sole shareholder and director of Strategic, and that Mr Poon was an investor-cum-venture capitalist who was not related to any of the then directors and substantial shareholders of Lexicon. This was the first time that Mr Ng was mentioned in connection with Strategic or brought to Mr Liaw's attention as being the owner of Strategic.

The settlement deeds

22 Shortly thereafter, disagreements arose between Lexicon and the Appellants. This resulted in the commencement of Suits Nos 111 and 176 of 2008 on 9 March 2008. Eventually, the Appellants and Lexicon entered into a settlement deed on 21 November 2008 ("the Sandz-Lexicon Settlement Deed") in respect of those proceedings. In return for the cancellation of the shares issued to them by Lexicon and the repayment of the cash consideration which Lexicon had paid to them pursuant to the Lexicon SPA (less the $750,000 which they had advanced to Strategic (see [20] above)), the Liaw Group regained their shares in Sandz.

23 On 25 May 2009, some two years after the $4m Dividends had been declared, Strategic,

through its solicitors, wrote to Sandz and the Liaw Group asking for a full and complete account of all dividends declared and paid by Sandz from the time when Strategic became a shareholder of Sandz until the date of the letter ("the 25 May 2009 Letter of Demand"). Mr Liaw responded that Strategic had no shareholding interest in Sandz at the material time and that there was no basis for its request. The Present Suit was commenced by Strategic shortly thereafter on 11 June 2009.

24 Following this, Strategic and Lexicon entered into a separate settlement agreement by way of a settlement deed dated 24 August 2009 ("the Strategic-Lexicon Settlement Deed"). Via clause 2.1 of that settlement deed, Strategic and Lexicon agreed that:

(a) Strategic would keep the Lexicon shares which had been issued to it pursuant to the terms of the Lexicon SPA;

(b) Strategic would keep the cash consideration which had been paid to it pursuant to the terms of the Lexicon SPA; and

(c) Lexicon would transfer the 25% stake in Sandz to Strategic (or such other entity as Strategic might direct) free from encumbrances for a nominal consideration of $10.00.

The decision below

25 The Judge was satisfied on the balance of probabilities that although Mr Tan was not the legal owner of Strategic, he had, at all material times, a personal interest either in Strategic or in the transactions through which Strategic acquired the 25% stake in Sandz to on-sell to Lexicon (see the Judgment at [53]). In this regard, the Judge observed that "[a]t all times it was Mr Tan who negotiated on behalf of the 'investors' who were taking over the [25%] stake [in Sandz]" (see the Judgment at [52]), and that Strategic appeared to be content to rely on Mr Tan's knowledge and assessment of the financial information furnished to him by Mr Liaw (see the Judgment at [55]). She further noted that Mr Tan had used personal pronouns when referring to Strategic's affairs and activities in his correspondence with Mr Liaw, and had not corrected or rebutted Mr Liaw's statements which referred to or implied his personal involvement in Strategic (see the Judgment at [50]–[51]).

26 The Judge was also satisfied that Mr Poon was at all material times interested in the transactions involving the 25% stake in Sandz and continued to have an interest in Strategic, even though he had, on paper, transferred legal ownership of the company to Mr Ng (see the Judgment at [59]). She observed that Mr Poon had continued giving instructions to ACIES Law Corporation regarding Strategic's acquisition of the 25% stake in Sandz and had signed the Strategic SPA on behalf of Strategic, contrary to his averment that he had passed on to Strategic (*ie*, Mr Ng) his initial interest in participating in the acquisition of that 25% stake (see the Judgment at [58]). Moreover, Mr Poon had used Strategic's name for the purpose of purchasing a condominium unit in a separate transaction, and although Strategic had exercised the option, all the funds for the purchase had come from Mr Poon and all the proceeds from the subsequent sale of the condominium unit had similarly gone back to Mr Poon (see likewise [58] of the Judgment). The Judge further held that even if Mr Ng were the true owner of Strategic, he was only a minor partner to the transactions making up the Sandz-Lexicon deal (namely, Mr Liaw's purchase of the 25% stake in Sandz from SES, the Strategic SPA and the Lexicon SPA) – on the face of it, not only did Mr Ng lack the resources to fund Mr Liaw's purchase of the 25% stake in Sandz from SES, he also left all important aspects of the Sandz-Lexicon deal to Mr Poon (see the Judgment at [59]).

27 In the premises, the Judge was satisfied that Mr Poon, Mr Tan and Mr Ng were working together in relation to Strategic's purchase of the 25% stake in Sandz and the subsequent divestment to

Lexicon. She thus found that Mr Tan had actual authority to negotiate with Mr Liaw on behalf of Strategic and to bind Strategic in relation to its dealings with Mr Liaw and Sandz (see the Judgment at [61]).

28 However, the Judge was not convinced on the balance of probabilities that Mr Tan (and/or Mr Poon) had made any express representation to Mr Liaw that Strategic would not be entitled to its share of any dividends declared by Sandz (see the Judgment at [78]). First, she observed that the Appellants' counsel failed to put it to both Mr Poon and Mr Tan that they had made such a representation (which is, in essence, Representation C), and also did not put it to Mr Ng that the specific representation had been made on Strategic's behalf (see the Judgment at [72]). Second, she noted that there had been a material change from the pleading in the Appellants' Defence and Counterclaim (Amendment No 2) that Mr Tan had "*expressly*" [note: 4] [emphasis added] made the Representations to Mr Liaw's assertion in his affidavit of evidence-in-chief that there was "an *understanding* that the [R]epresentations applied" [emphasis added] (see the Judgment at [68]). Finally, she found Mr Liaw's evidence on the Representations totally unsatisfactory (see the Judgment at [69]–[71]), and considered him "an inconsistent, evasive and vacillating witness" in this regard (see the Judgment at [79]).

29 In the premises, the Judge held that "[a]ll the evidence establishe[d] [was] that Mr Tan came up with a scheme to allow Mr Liaw to tap into the hitherto illiquid value of [Sandz] via the device of declaring dividends" (see [70] of the Judgment). However, she pointed out, it did not follow from such a finding that Mr Tan (or, for that matter, Mr Poon) had expressly represented on behalf of Strategic that it would forgo its share of any dividends declared by Sandz (see [70] and [79] of the Judgment). It followed from this that the basis of the Appellants' claim for an indemnity from the third parties (*ie*, Mr Tan and Mr Poon) fell away (see the Judgment at [89]) as that claim was premised on, *inter alia*, the Representations having been made.

30 Having held that no express representation had been made by or on behalf of Strategic to give up its entitlement to its share of any dividends declared by Sandz, the Judge did not go further to consider the legal argument that in any case, reliance on any such representation would have been precluded by the terms of clause 3.1 of the Strategic SPA read with the "entire agreement" provision in clause 6.8 thereof (see the Judgment at [79]).

31 As regards Strategic's entitlement to the first interim dividend declared by Sandz, the Judge was satisfied that Mr Liaw was at all material times acting as Strategic's agent in acquiring the 25% stake in Sandz and could not profit from his position as an agent. Therefore, Strategic's entitlement to the first interim dividend would not be affected even though that dividend had been validly declared before legal ownership of the 25% stake in Sandz had been transferred to Strategic (see the Judgment at [84]–[85]). In finding that Mr Liaw was Strategic's agent, the Judge observed that all but $200,000 of the $2.7m purchase price for the 25% stake in Sandz had been remitted by ACIES Law Corporation, which represented Strategic, and further, that the shares comprising the 25% stake in Sandz were later transferred by Mr Liaw to Strategic for no consideration (see the Judgment at [84]).

32 Turning to Strategic's entitlement to the second interim dividend declared by Sandz, the Judge held that as the Lexicon SPA had been unwound, the parties were to be treated as having all the rights that they would have had if the Lexicon SPA had not been entered into. She also rejected the Appellants' argument that the second interim dividend had been declared with the intention of benefitting the Liaw Group only, holding that the intention in declaring that dividend was irrelevant (see the Judgment at [87]).

33 The Judge thus held that Sandz should have paid Strategic 25% of the $4m Dividends, and that the Liaw Group were to pay Strategic the amount by which they had been overpaid, which amount they held as constructive trustees (see the Judgment at [88]).

34 Finally, having found that Strategic was entitled to a 25% share of the $4m Dividends, the Judge held that the first basis of the Appellants' conspiracy counterclaim (*ie*, that the Present Suit had been commenced in bad faith for the purpose of trying to obtain something which Strategic knew it was not entitled to) had fallen away. She further held that in any event, there was no merit in that limb of the conspiracy counterclaim. First, she observed that the "unlawful means" relied on by the Appellants was the commencement of the Present Suit; however, there was nothing unlawful about commencing a law suit. Second, she noted that the only damage which the Appellants claimed to have suffered by reason of the commencement of the Present Suit was the cost incurred to defend it, but that was a cost which would be incurred by every defendant when a claim was brought against it, regardless of whether the claim was well founded or not (see the Judgment at [93]).

35 The Judge further held that the Appellants' second and alternative basis for their conspiracy counterclaim (*ie*, that the acts done in furtherance of the conspiracy were for the sole or predominant purpose of causing injury to the Appellants) was equally and obviously unsustainable. She was satisfied that Strategic's predominant purpose in starting the Present Suit was to benefit itself, and similarly, its predominant purpose in reaching a separate settlement with Lexicon was to obtain better terms for itself. Although the Appellants alleged that Strategic had acted in bad faith, they had not adduced any evidence to support this allegation (see the Judgment at [94]).

The issues on appeal

36 The following issues arise in relation to this appeal:

(a) whether Strategic was the proper party to sue for a 25% share of the $4m Dividends;

(b) whether Strategic and Sandz and/or Mr Liaw agreed that Strategic would not have any entitlement to dividends declared by Sandz; and

(c) whether Mr Tan and Mr Poon conspired to injure the Appellants when they caused Strategic to commence the Present Suit against the Appellants.

Preliminary points

Principles of appellate intervention

37 As much of the present appeal hinges on findings of fact made by the Judge, we think it apposite to first set out the principles governing appellate intervention *vis-à-vis* findings of fact by the trial judge. In Singapore, the applicable principles have been authoritatively elucidated in *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 as follows (at [41]):

> … The appellate court's power of review with respect to finding[s] of facts is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned (*Seah Ting Soon v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR(R) 53 at [22]). However, this rule is not immutable. Where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding (see *Alagappa Subramanian v Chidambaram s/o Alagappa* [2003] SGCA 20 at [13] and *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 at

[34]–[36]). Furthermore, where a particular finding of fact is not based on the veracity or credibility of the witness, but instead, is based on an inference drawn from the facts or the evaluation of primary facts, the appellate court is in as good a position as the trial judge to undertake that exercise (*Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [54] and *Ho Soo Fong v Standard Chartered Bank* [2007] 2 SLR(R) 181 at [20]). In so doing, the appellate court will evaluate the cogency of the evidence given by the witnesses by testing it against inherent probabilities or against uncontroverted facts (*Peh Eng Leng v Pek Eng Leong* [1996] 1 SLR(R) 939 at [22]).

In *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 ("*Goh Sin Huat Electrical*"), the Court of Appeal extended these principles to appeals concerning the apportionment of liability amongst two or more defendants.

38 The above passage suggests that where inferences of fact are concerned, a lower standard of review than that of "plainly wrong" applies. In this regard, we think it apposite to restate the observations of then Chief Justice Yong Pung How in *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 (at [24]):

> … [W]hen it comes to inferences of fact to be drawn from the actual findings which have been ascertained, a different approach will be taken. *In such cases, it is again trite law that an appellate judge is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case.* … [emphasis added]

It is clear that the above passage contemplates a *de novo* review by the appellate court where inferences of fact are concerned. This principle has in turn been affirmed in subsequent cases like *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [37]–[38], *Ho Soo Fong and another v Standard Chartered Bank* [2007] 2 SLR(R) 181 at [20] and *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [54].

39 Subsequently, in *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207, the Court of Appeal affirmed (at [13]) the High Court's decision in *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 that an appellate court with access to the same material as the trial judge is in as good a position as the trial judge to assess a witness's credibility in two situations, namely, where such assessment is based on inferences drawn from, respectively:

> (a) the *internal consistency* in the content of the witness's testimony (the "Category 1" situation); and
>
> (b) the *external consistency* between the content of the witness's evidence and the extrinsic evidence (the "Category 2" situation).

40 The rationale for the Singapore courts' approach was articulated in *Goh Sin Huat Electrical* (at [55]):

> ***We reiterate that the principal objective of the appellate process must be to do justice by correcting plainly wrong decisions. This function, a constitutional responsibility of this court, is a necessary prerequisite to ensuring that public confidence in the administration of justice is maintained.*** *A proper balance has therefore to be struck by appellate courts between due deference and undue deference in relation to findings of fact (and apportionment) by trial courts. Arid historical distinctions between correctable errors of law and irretrievable errors of fact no longer resonate.* ***Improvements to the record, such as verbatim transcripts***

> ***that are electronically recorded, now permit closer appellate review of findings of fact by trial courts. The trial judge's notes are no longer the only reliable record of what has transpired below. With this development, some of the previously exclusive advantages of triers of fact have shrunk.*** [emphasis in italics in original; emphasis added in bold italics]

41 What is apparent from the foregoing is that the Court of Appeal now takes, in appropriate cases, a rather less deferential approach to a trial judge's findings on a witness's credibility in Category 1 and Category 2 situations, where such findings are based on inferences drawn from the evidence.

Reliance on the demeanour and recollections of witnesses

42 At this juncture, we think it apposite to also say a few words about the dangers of relying excessively on the demeanour of witnesses and/or taking issue with witnesses' faulty recollections in assessing the veracity of their evidence. We think it would be helpful to make some observations on these problematic issues which judges have to address in almost every trial, including the trial below for that matter (see [76] below).

43 Findings on demeanour often relate to the fluency (or hesitation) of a witness, his steady or shifting gaze, his body language and the like. *A great deal of caution should be exercised by the trial judge when placing reliance on these factors alone to find a witness untruthful.* In this regard, it is important to remember the context in which evidence is given in court – the witness is under the intense scrutiny of the judge and is also under pressure to answer counsel's questions; even truthful witnesses may wilt and display discomfort in such circumstances. As Alan E Morrill recognised in his seminal article "Enter – The Video Tape Trial" (1970) 3 J Marshall J Prac & Proc 237 in the context of jury trials (at p 245):

> … To testify in a courtroom before a jury can be a pretty unnerving experience for almost everyone. To some of our more timid citizens, the mere thought of it produces a cold sweat. A witness answering this description may erroneously give an impression to the jury that he is unsure of his testimony. …

These observations are applicable to all manner of trials.

44 A witness's non-verbal expressions of nervousness are not infrequently perceived as deceitfulness. In her article "Nonverbal Communication in the Courtroom: Attorney Beware" (1984) 8 Law & Psychol Rev 83, Elizabeth A LeVan cited a study on hand movements conducted by Ekman and Friesen (see Ekman & Friesen, "Hand Movements" (1972) 22 J Com 353 at p 362), which revealed that people who observed a subject's body thought that the person was lying if he exhibited many of the self-adapters associated with nervousness. These self-adapters occur when a person touches a part of his body with his hands, and include behaviour like picking at one's fingernails, grabbing one's knees, digging into one's palms, and scratching the nose or chin: see Ekman & Friesen, "Nonverbal Leakage and Clues to Deception" in *Nonverbal Communication: Readings with Commentary* (S Weitz ed) (1974) 269 at p 281; see also McClintock & Hunt, "Nonverbal Indicators of Affect and Deception in an Interview Setting" (1975) 5 J Appl Soc Psychol 54 at p 64.

45 Put simply, therefore, the demeanour of a witness on the witness stand is not invariably a *conclusive* indicator of deception. Even if it were, experts have found that judges (amongst others) "did no better than chance" (see Paul Ekman, *Telling Lies* (W W Norton, 1992) at p 285) in assessing whether people were lying. More troubling, perhaps, is the finding that most of them did not even know that they could not detect deceit from demeanour.

46 This is not to say that judges should not observe and assess a witness's demeanour and behaviour on the witness stand. Such observations should, however, seldom be the sole basis on which the judge determines the credibility of a witness and the veracity of his evidence. In this regard, the sagacious observations of Lord Devlin in *The Judge* (Oxford University Press, 1979) bear reiterating (at p 63):

> *The great virtue of the English trial is usually said to be the opportunity it gives to the judge to tell from the demeanour of the witness whether or not he is telling the truth.* ***I think that this is overrated*** **.** It is the tableau that constitutes the big advantage, the text with illustrations, rather than the demeanour of a particular witness. On that I would adopt in their entirety (this being the highest form of judicial concurrence) the words of Mr. Justice MacKenna:
>
> > I question whether the respect given to our findings of fact based on the demeanour of the witnesses is always deserved. I doubt my own ability, and sometimes that of other judges, to discern from a witness's demeanour, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is that the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me, or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground perhaps from shyness or a natural timidity? For my part I rely on these considerations as little as I can help.
> >
> > *This is how I go about the business of finding facts.* ***I start from the undisputed facts which both sides accept. I add to them such other facts as seem very likely to be true, as, for example, those recorded in contemporary documents or spoken to by independent witnesses like the policeman giving evidence in a running down case about the marks on the road. I judge a witness to be unreliable if his evidence is, in any serious respect, inconsistent with these undisputed or indisputable facts, or of course if he contradicts himself on important points. I rely as little as possible on such deceptive matters as his demeanour. When I have done my best to separate the true from the false by these more or less objective tests, I say which story seems to me the more probable, the Plaintiff's or the Defendant's.***
>
> [emphasis added in italics and bold italics]

Like Lord Devlin, we concur with and endorse the approach articulated by Mr Justice MacKenna insofar as it pertains to judicial fact-finding.

47 Caution should also be exercised when relying on the uncorroborated recollections of a witness. In this regard, we note that memory is more than a reinstatement of the original perception, and often involves the interpretation and/or reinterpretation of details, judgment, estimates and the correlation of related incidents. Put another way, memory more closely resembles a synthesis of experiences rather than a replay of a videotape: see Elizabeth Loftus, "Our changeable memories: legal and practical implications" (2003) 4 Nat Rev Neurosci 231.

48 The very nature of memory makes it susceptible to error. As Dillard S Gardner rightly noted in his article "The Perception and Memory of Witnesses" (1933) 18 Cornell LQ 391 ("*Gardner*") at p 409, there are three distinct categories of memory error:

> … (1) The original perception of the event or detail may have been defective; (2) the details may not have been fixated, may have been forgotten, or imagination may have altered, added to, or

changed them; (3) the original perception may have become interwoven with or altered by suggestion from outside sources. …

49 The original perception of the event or detail in question may never enter the witness's memory in the first place, or may be so sketchy as to render retrieval difficult or impossible: see Roger Tourangeau, "Remembering What Happened: Memory Errors and Survey Reports" in *The Science of Self-Report: Implications for Research and Practice* (1999) ch 3 ("*Tourangeau*") at pp 30–31. Moreover, the witness's original perception of the event or detail "may be defective and illusory; wrong associations may make it imperfect; judgments may misinterpret the experience; and suggestive influence may falsify the data of the senses": see Hugo Münsterberg, *On the Witness Stand: Essays on Psychology and Crime* (Doubleday, Page & Co, 1908) at pp 56–57.

50 Faulty original perceptions aside, a witness's ability to recollect the material events and the accuracy of his recollections are inversely proportional to the length of time that has elapsed from the occurrence of the events to his appearance on the witness stand. The effects of the passage of time on recall accuracy have been exhaustively studied and demonstrated in relation to almost every kind of event: see David C Rubin & Amy E Wenzel, "One Hundred Years of Forgetting: A Quantitative Description of Retention" (1996) 103 Psychol Rev 734. *Gardner* refers to a "curve of forgetting" (at p 393), which demonstrates that we forget very rapidly immediately after the perception according to a law of progressively diminishing speed. *Gardner* cites, in support, studies conducted by, *inter alia*, Hermann Ebbinghaus (see *Memory, A Contribution to Experimental Psychology* (1913, trans)) and Edward K Strong (see "Effect of Time-Interval upon Recognition Memory" (1913) 20 Psychol Rev 339). *A court should thus be slow to label a witness untruthful where there are gaps in his recollection of events after a significant period of time has elapsed between the occurrence of the events in question and the trial.* As a rule of thumb, the longer the lapse of time between the happening of the event or matter being recollected and the witness's appearance on the witness stand, the less the reliance that should be placed on pure oral evidence and the more searching the court ought to be in assessing and testing that evidence.

51 Often, the reality is that what memory does not recall, the imagination tends to supply, sometimes unconsciously (and honestly) or half-consciously (where bias or suggestion exists). Thus, *Gardner* observes as follows (at pp 400–401):

> … As memory fades, imagination retouches the details; where this is done unconsciously, therefore honestly, we are apt to recall what we *think* should have normally occurred, or, if personally involved, what we *wish* had occurred, or what, from suggestions now half-forgotten, we *believe* occurred. … The merest skeleton of fact, repeatedly told, bodies forth as a complete, truthful narrative, "ere long fiction expels reality from memory and reigns in its stead alone" and "unconscious impressions" blend with "conscious realities", playing havoc with objective truth. … [emphasis in original]

52 A major source of the details added during the reconstruction process is our general knowledge about what is typical for events of a given type: see *Tourangeau* at p 42. Other studies have shown that participants are more likely to "remember" fabricated detail where the latter would help to explain the original memory: see Quin M Chrobak & Maria S Zaragoza, "When Forced Fabrications Become Truth: Causal Explanations and False Memory Development" (2013) 142 J Exp Psychol Gen 827 at pp 839–841.

53 Moreover, recollections are not judgment-free. As *Tourangeau* notes at p 35:

> … [W]hat we retrieve from memory often consists of our current beliefs about an incident, beliefs

that reflect what we actually experienced (and remember), what we did not experience but infer, and what we learned later on. …

Problems arise when witnesses fail to distinguish between these different sources and let their later experiences or hindsight colour their recollections of the actual events that took place.

54 Witnesses are also particularly vulnerable and susceptible to suggestion and misinformation where the passage of time has allowed the original memory to fade. As pithily observed by Elizabeth F Loftus in "When A Lie Becomes Memory's Truth: Memory Distortion After Exposure to Misinformation" (1992) 1 Curr Dir Psychol Sci 121, "[i]n its weakened condition, memory – like the disease-ridden body – becomes especially vulnerable to repeated assaults on its very essence" (at p 121). In this regard, a number of studies have demonstrated that variations as small as a single word in a question can affect an individual's response. For instance, the question "How fast were the cars going when they smashed into each other?" (as opposed to a more neutral form of the question involving the use of the verb "hit" instead of "smashed") led not only to higher estimates of speed, but also to more people falsely claiming that they had seen broken glass when there was none: see Elizabeth F Loftus, "Make-Believe Memories" in (2003) 58 Am Psychol 867.

55 More recent studies have focused on another source of misinformation – the co-witness: see Fiona Gabbert *et al*, "Memory Conformity: Can Eyewitnesses Influence Each Other's Memories for an Event?" (2003) 17 Appl Cogn Psychol 533. "Memory conformity" between co-witnesses refers to the phenomenon whereby witnesses influence each other's memories of an event, such that their accounts converge and become seemingly corroborative. This, however, is dangerous where an aspect of that memory is in error and where the memories of other witnesses can be influenced by confident co-witnesses: see Lorraine Hope *et al*, "'With a little help from my friends …': The role of co-witness relationship in susceptibility to misinformation" (2008) 127 Acta Psychol (Amst) 476.

56 The above is meant to highlight the danger of over-reliance on the recollection of witnesses in the witness stand. Conversely, a witness should not be found to be less credible merely because of gaps in his memory, particularly where a long period of time has passed since the occurrence of the events in question. We reiterate that ultimately, the trial judge has to consider the *totality* of the evidence in determining the veracity, reliability and credibility of a particular witness's evidence. This includes contemporaneous objective documentary evidence.

Our decision

The proper party to sue for a 25% share of the $4m Dividends

57 We turn now to the appeal proper, beginning with the issue of whether Strategic was the proper party to sue for a 25% share of the $4m Dividends (see [36(a)] above). The first and second interim dividends, which collectively made up the $4m Dividends, were declared payable on 11 and 16 April 2007 respectively. The parties did not dispute that this fell within the period from 9 to 20 April 2007, when the shares comprising the 25% stake in Sandz were still registered in Mr Liaw's name. We note, further, that the first interim dividend was paid out in instalments, with the bulk of the instalments being paid after 20 April 2007, the date on which Strategic became a registered shareholder of the shares comprising the 25% stake in Sandz.

58 Strategic claimed an equitable interest in the 25% stake in Sandz by virtue of the Strategic SPA, which the parties agreed had been signed on or about 15 March 2007. It also relied on clause 3.1 of the Strategic SPA, which provides as follows: [note: 5]

> In consideration of the payment of the Aggregate Consideration and on the basis of the terms, conditions, representations and warranties set forth in this Agreement, the Vendor [*ie*, Mr Liaw] shall sell as legal and beneficial owner, and the Purchaser [*ie*, Strategic] shall purchase, all of the rights, title and interest in and to the Sale Shares [*ie*, the 25% stake in Sandz] on Completion, free from all Encumbrances or Third Party Rights of whatsoever nature and *with all rights and benefits attaching thereto from the date of this Agreement*. [emphasis added]

Strategic argued that it also purchased, along with the 25% stake in Sandz, the right to a 25% share of dividends declared by Sandz from the date of the Strategic SPA. Each of these contentions will be dealt with in turn.

59 We consider, first, Strategic's contention that it had an equitable interest in the 25% stake in Sandz by virtue of having entered into the Strategic SPA with Mr Liaw. On closer examination, we think it pertinent to note that clause 3.1 of the Strategic SPA provides that "the Purchaser shall purchase … all of the rights, title and interest in and to the Sale Shares *on Completion*" [note: 6] [emphasis added]. Put simply therefore, Strategic's equitable interest in the 25% stake in Sandz arose only on the completion of the sale and purchase of that 25% stake, and Mr Liaw's duty as trustee also arose only then: see para 11.109 of *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, 3rd Ed, 2009).

60 In this regard, we note that the terms "Completion" and "Completion Date" are terms which are defined in the Strategic SPA. Clause 5.1 of the Strategic SPA provides that "Completion shall take place at 10.00 a.m. on the Completion Date …". [note: 7] "Completion Date" is in turn defined in clause 1.1 as: [note: 8]

> … the Business Day immediately following the date on which all Conditions shall have been fulfilled or waived in accordance with the terms of this Agreement or such other date as the Parties [*ie*, Mr Liaw and Strategic] shall agree in writing as the date on which Completion shall take place in accordance with Clause 5 …

"Conditions" in the above extract refers to the conditions precedent set out in clause 2.1. Thus, completion of the sale of the 25% stake in Sandz by Mr Liaw to Strategic would have taken place – and Strategic's equitable interest in that 25% stake would only have arisen – either on the day after the conditions precedent in clause 2.1 had been fulfilled or waived, or on such other date as Mr Liaw and Strategic agreed on.

61 It is regrettable that this issue of when completion took place was not addressed by counsel either before us or at the trial below, as both sides appear to have proceeded on the incorrect basis that Strategic's equitable interest in the 25% stake in Sandz arose once the Strategic SPA was signed. The burden lies on Strategic to establish this fact as it is seeking to assert rights apropos the 25% stake in Sandz, but it has quite clearly failed to discharge this burden. Even assuming that Strategic's equitable interest in the 25% stake in Sandz arose before the declaration of the $4m Dividends, we nevertheless hold that Strategic's claim for a 25% share of those dividends fails for the reasons set out below at [63]–[64] and [66]–[72].

62 Turning to Strategic's second contention (*ie*, that it purchased, along with the 25% stake in Sandz, the right to a 25% share of dividends declared by Sandz from the date of the Strategic SPA), the question here is whether the Strategic SPA purports to also transfer the right to payment of dividends declared by Sandz. This turns on an interpretation of clause 3.1 of the Strategic SPA, in particular, the phrase "rights and benefits attaching thereto from the date of this Agreement". [note:

[9] It is settled law that once a dividend has been validly declared, it is a debt owed by the company to its registered shareholders from the date on which it is payable: see *In re Severn and Wye and Severn Bridge Railway Company* [1896] 1 Ch 559 at 564. The mere postponement of payment does not operate to deprive the registered shareholder at the time of dividend declaration of its right to payment: see *In re Kidner* [1929] 2 Ch 121 at 126.

63 Returning to clause 3.1 of the Strategic SPA, it is certainly plausible that read in its entirety, the clause refers to rights and benefits *attaching to the shares* comprising the 25% stake in Sandz. However, as alluded to above, the right to be paid a declared dividend is not a right attaching to shares, but a personal right of the registered shareholder at the time of dividend declaration against the company.

64 In any event, we find that all rights attaching to the shares comprising the 25% stake in Sandz were clearly transferred to Lexicon on 30 May 2007 following the signing of the Lexicon SPA. Pertinently, clause 2 of the Lexicon SPA provides: [note: 10]

> Subject to and in accordance with the terms and conditions of this Agreement, the Sellers [*ie* Strategic and the Liaw Group] shall sell and [Lexicon] shall purchase the full Legal and Beneficial Title to the Sale Shares [*ie*, all the shares in Sandz] … free from any Encumbrance and *together with all accrued benefits and rights now and hereafter attached including, without limitation, all dividends and distributions declared, made or paid on or after the date hereof*. [emphasis added]

The wording of clause 2 is clear. Any purported right to the payment of dividends which had been declared by Sandz but which remained unpaid as at the date of the Lexicon SPA ("Unpaid Dividends"), and which thus accrued to the shareholders of Sandz as a debt to be paid by the company, would have been transferred to Lexicon on that date (*ie*, 30 May 2007).

65 Strategic nevertheless submitted that the deeds of settlement between Lexicon and, respectively, the Appellants and Strategic (see [22] and [24] above) were entered into with the intention that the Lexicon SPA be "completely unwound". [note: 11] Strategic argued that this was clearly evidenced by Recital C of the Sandz-Lexicon Settlement Deed as well as clause 6.1(b) of the Strategic-Lexicon Settlement Deed. The Judge agreed and held that the deeds of settlement separately entered into by the Appellants and Strategic with Lexicon had the effect of unravelling the Lexicon SPA, such that "the parties must be treated as having all the rights they would have had if the Lexicon SPA has not been entered into" (see the Judgment at [87]). With respect, we are not convinced that the Judge was correct in making such a determination.

66 In this regard, the first point which we wish to make is that Strategic cannot rely on Recital C of the *Sandz*-Lexicon Settlement Deed as it was not a party to that deed. This is clear from the *Strategic*-Lexicon Settlement Deed, which expressly states (in Recital C thereof) that "Strategic was not a party to the [Sandz-Lexicon] Settlement Deed". [note: 12] Further, the objective of the Sandz-Lexicon Settlement Deed was *not* the same as that of the Strategic-Lexicon Settlement Deed. According to Recital C of the *Sandz*-Lexicon Settlement Deed, the objective of that deed was that "the Parties [*ie*, the Appellants and Lexicon] will *unwind the [Lexicon SPA]* in relation to 75% of the [shares in Sandz] on terms and subject to the conditions … provided" [note: 13] [emphasis added]. In contrast, Recital D of the *Strategic*-Lexicon Settlement Deed reads: [note: 14]

> Further to discussions and negotiations, Strategic and Lexicon have come to an agreement regarding the [Lexicon SPA] and each of their positions thereunder. The terms of such understanding and settlement are contained in this Deed.

It can be seen that unlike Recital C of the Sandz-Lexicon Settlement Deed, which expressly states that the parties to that settlement deed "will unwind the [Lexicon SPA]", [note: 15] there is no express mention of an "unwinding" of the Lexicon SPA *vis-à-vis* Strategic and Lexicon in Recital D of the Strategic-Lexicon Settlement Deed.

67 More pertinently, we find that there is nothing in the language of clause 6.1(b) of the Strategic-Lexicon Settlement Deed to suggest a restoration of Strategic and Lexicon to their respective original positions before their entry into the Lexicon SPA. Clause 6.1(b) reads as follows: [note: 16]

> [S]ave in respect of clauses in the Agreements [*ie*, the Lexicon SPA and the addendum thereto dated 5 September 2007] that were expressed to survive the termination, the Agreements … will have no legally binding effect on any of the Parties with effect from Completion …

At most, the clause appears to evince a termination of the Lexicon SPA from the date of completion of the Strategic-Lexicon Settlement Deed, *ie*, from the date on which all the arrangements set out at [24] above were put into effect (see the definition of "Completion" in clause 1 of the Strategic-Lexicon Settlement Deed).

68 Further, the other terms of the Strategic-Lexicon Settlement Deed clearly do not evince the return of Strategic and Lexicon to their respective original positions prior to entering into the Lexicon SPA. On the contrary, Strategic was placed in a *far better position* than the position which it was in before the Lexicon SPA was entered into. Pursuant to clause 2.1 of the Strategic-Lexicon Settlement Deed:

> (a) Strategic would keep the Lexicon shares which had been issued to it pursuant to the terms of the Lexicon SPA;
>
> (b) Strategic would keep the cash consideration which had been paid to it pursuant to the terms of the Lexicon SPA; and
>
> (c) Lexicon would transfer the 25% stake in Sandz to Strategic (or such other entity as Strategic might direct) free from encumbrances for a nominal consideration of $10.00.

69 In the premises, we find that the Judge erred in finding that the effect of the Strategic-Lexicon Settlement Deed was to unravel the Lexicon SPA such that Strategic and Lexicon were to be treated as "having all the rights they would have had if the Lexicon SPA had not been entered into" (see the Judgment at [87]).

70 The next question to determine is whether the effect of the Strategic-Lexicon Settlement Deed was to transfer the right to a 25% share of the Unpaid Dividends back to Strategic. First, we note that clause 2.1(c) of that settlement deed provides as follows: [note: 17]

> Lexicon will transfer the Sale Shares [*ie*, the 25% stake in Sandz] to Strategic (or such other entity as it may direct) free from Encumbrances for a nominal consideration of S$10.00.

We note that the clause makes no explicit mention of the transfer to Strategic of other rights which might have accrued to Lexicon in respect of the 25% stake in Sandz while it owned that 25% stake. It is questionable, therefore, if the effect of this clause was to transfer the right to a 25% share of the Unpaid Dividends to Strategic.

71 Second, we observe that the earlier settlement deed (*ie*, the Sandz-Lexicon Settlement Deed) contains clause 6.1(a), which provides for the mutual waiver, release and discharge of the parties (*ie*, the Appellants and Lexicon) from all demands, claims, counterclaims, obligations, suits and actions, including Suits Nos 111 and 176 of 2008. We are of the view that the claims settled by this clause would encompass Lexicon's claim against Sandz for a 25% share of the Unpaid Dividends. Therefore, no right to any part of the Unpaid Dividends accrued when Lexicon transferred the 25% stake in Sandz back to Strategic.

72 In any event, at the hearing before us, it turned out that to date, Strategic is not yet the registered owner of the shares comprising the 25% stake in Sandz which was transferred back to it pursuant to the Strategic-Lexicon Settlement Deed. Thus, even if the right to a 25% share of the Unpaid Dividends had been transferred back to Strategic, the proper party to have commenced the Present Suit was the legal owner of the shares comprising the 25% stake in Sandz, *ie*, Lexicon. Alternatively, Lexicon should have been joined as a party to the action: see *Binney v The Ince Hall Coal and Cannel Company* (1866) 35 LJ Ch 363.

The alleged agreement that Strategic would not be entitled to dividends declared by Sandz

73 In any event, we find that Strategic had no right to a 25% share of the $4m Dividends as there was an understanding between Mr Liaw (and/or Sandz) and Strategic that Strategic would not have any interest in or claim against Sandz, including any entitlement to dividends declared by Sandz. Before giving our reasons for this finding, we think it apposite to affirm several findings of the Judge in the court below.

74 First, we see no reason to disturb (and, in any event, none of the parties appealed against) the Judge's findings that:

(a) Mr Ng had no experience in deals like the Sandz-Lexicon deal and, despite being, in law, the sole shareholder and director of Strategic, left the transactions making up the Sandz-Lexicon deal entirely in the hands of Mr Poon. Mr Poon was in turn clearly happy for Mr Tan to act on his behalf (see [55] and [59] of the Judgment).

(b) Mr Tan was Strategic's alter ego; insofar as Strategic needed to be satisfied about Sandz's financial position, it relied on Mr Tan's knowledge and assessment (see [55] of the Judgment).

(c) Mr Tan was authorised to negotiate with Mr Liaw on behalf of Strategic and to bind Strategic in relation to its dealings with Mr Liaw and Sandz (see [61] of the Judgment).

75 We also agree with the Judge's finding that no express representation was made by Strategic and/or Mr Tan and/or Mr Poon to Mr Liaw that Strategic was giving up its entitlement to dividends declared by Sandz. We share the Judge's concern that Mr Liaw's own evidence in his affidavit of evidence-in-chief and later under cross-examination departed from his initial contention in the Appellants' Defence and Counterclaim (Amendment No 2) that Representation C (along with the rest of the Representations) had been "expressly" [note: 18] made. Mr Liaw stated in his affidavit of evidence-in-chief that he transferred the 25% stake in Sandz to Strategic on an "*understanding*" [note: 19] [emphasis added] – as opposed to an express representation – that the Representations would apply. Subsequently, under cross-examination, he prevaricated as to whether Representation C had been expressly made to him. The following extract shows one such instance in a cross-

examination peppered with vacillations: [note: 20]

Court: So did they say to you *expressly*, "We will not claim the dividends"?

A: *Yes, Your Honour.*

…

Q: Mr Liaw, when was the first time that Mr Tan said to you, we do not want the dividends? I need to have a time for this. I don't need a date, but I need a time. When was it? …

A: You want me to agree with your words?

Q: No, no.

A: I disagree it was put in that way.

Q: Mr Liaw – –

A: Mr Tan said okay, we declare this dividend for you. You loan it back. *So if you want me to agree with you saying that, oh, I don't want the dividend, this is all yours, they are not put in those words* …

Court: *I thought five minutes ago, you said it was put in those words?*

A: *No, not exactly what he just put*.

[emphasis added]

It is evident from the court transcripts that Mr Liaw had considerable difficulty in testifying to what Mr Tan had told him, nor was he able to state who (whether Mr Tan or Mr Poon) had made Representation C.

76 The Judge was clearly unimpressed with Mr Liaw's evidence on (*inter alia*) Representation C and said so in the Judgment (at [79]):

> … I found Mr Liaw's evidence with regard to the Representations and the course of events leading to the declaration of dividends to be totally unsatisfactory. On these aspects he was an inconsistent, evasive and vacillating witness.

77 We have some concerns about labelling Mr Liaw, and for that matter, Mr Tan (see [76] of the Judgment), as evasive and/or vacillating witnesses. The Judge was correct to find certain aspects of their evidence unsatisfactory, but we think it pertinent to note that the events in question took place nearly five years prior to the trial. A trial should not be a test or contest of memories. As we observed above at [50], even the recollections of the most truthful of witnesses would be tested by the lapse of time. In the premises, we think it preferable in these proceedings to place more reliance on the objective documentary evidence before us as well as the actual conduct of the parties, as opposed to their hazy recollections of past events on the witness stand.

78 In this regard, we note that the Judge did also consider, apart from the parties' oral evidence, other evidence before concluding that neither Mr Tan nor Mr Poon had made Representation C. We agree that she drew the correct inferences from the following objective facts (at [77] of the Judgment):

(a) there was no document or message which showed or hinted that Representation C had been made;

(b) the Appellants' solicitors did not mention Representation C as a ground for rejecting Strategic's demand for its share of the $4m Dividends when Strategic's lawyers sent the 25 May 2009 Letter of Demand (see [23] above); and

(c) in an affidavit dated 25 March 2008 which Mr Liaw filed in Suit No 176 of 2008, he stated that he "assumed all along" [note: 21] that since Mr Tan had agreed to the declaration of dividends by Sandz, Strategic too "would have no issue with the declaration of the dividend[s]". [note: 22]

79 We do not, however, agree with the Judge's finding (at [77(d)] of the Judgment) that no persuasive reason was put forth as to why the resolutions declaring the $4m Dividends had to be backdated so as to make it appear that those dividends had been declared *before* Strategic became a registered shareholder of Sandz. We are of the view that her analysis was far too focused on the question of whether Representation C had indeed been made. The question of whether Representation C had been made was by no means determinative of whether or not there was an understanding that Strategic would not be entitled to any dividends declared by Sandz.

80 First, we observe that the Appellants' pleadings apropos Representation C were not confined so narrowly to express representations that Strategic would not be entitled to any dividends declared by Sandz. The exact words pleaded in para 13 of their Defence and Counterclaim (Amendment No 2) were: [note: 23]

> … [Mr Tan] *expressly agreed with and/or represented* to the [Appellants] in relation to the proposed scheme … [emphasis added]

The words used evince *both* express *agreement* between the parties as well as representations *vis-à-vis* Strategic's non-entitlement to dividends declared by Sandz. Second, at para 16 of their Defence and Counterclaim (Amendment No 2), the Appellants pleaded: [note: 24]

> … [I]t was the *common understanding and/or assumption* that [Strategic]'s only interest in acquiring the 25% stake in [Sandz] was to profit from flipping the shares through the sale to Lexicon and not for [Strategic] … to derive benefit from dividends declared by [Sandz]. [emphasis added]

From the foregoing, it was clear to us that the Appellants' case was far broader than one based purely on express representations.

81 It was also clear to us that from the outset, the commercial objective of Strategic's purchase of the 25% stake in Sandz was indeed only to "flip" the shares comprising that stake. Strategic and/or the persons behind it stood to make an enormous profit of $6.5m when the sale of the 25% stake in Sandz to Lexicon (as part of the sale of all of Sandz's shares to Lexicon) was completed. This was common ground between the parties, and Strategic's counsel also candidly conceded at the hearing before us that Strategic never had any intention of being a long-term investor in Sandz. Indeed, consistent with its commercial objective of "flipping" the shares comprising the 25% stake in Sandz, Strategic never conducted any valuation (independent or otherwise) of Sandz's worth and was content to accept Sandz's *pro forma* results for 2006 as well as Sandz's consolidated financial statements for financial years 2005 and 2006, which documents Mr Liaw sent to Mr Tan. Moreover, it

was clear that Strategic had no intention of managing Sandz. As conceded by Mr Poon under cross-examination and evidenced by the Strategic SPA, Strategic did not seek any management rights in Sandz, such as a seat on Sandz's board of directors. Neither did it even remotely participate in the management or operations of Sandz prior to the signing of the Lexicon SPA and the transfer of the 25% stake in Sandz to Lexicon.

82 We turn now to examine the circumstances surrounding the declaration of the $4m Dividends. First, it was clear that an important condition of the plan to inject Sandz into a suitable vehicle (later identified as Lexicon) was that the investor would provide additional working capital. Mr Tan agreed that Mr Liaw had informed him that:

(a) he needed capital to grow his business, *ie*, Sandz;

(b) he was concerned about his exposure to personal liabilities in terms of guarantees given to banks in order to support credit facilities for Sandz; and

(c) he required a capital injection of at least $5m into Sandz.

83 As evidenced by an e-mail dated 15 March 2007 from Mr Tan, the parties did in fact specifically contemplate a cash injection of $5m by Lexicon to provide additional working capital for Sandz. The e-mail stated as follows: [note: 25]

> Margaret/Abigail,
>
> In preparation for the SBN [*ie*, Lexicon] Board paper and approval to acquire 49% of Sandz please liaise with one another for information flow.
>
> As part of the deal, Sandz would require a further injection of SGD5m over the next 12 months for business expansion.
>
> Abigail, it would be helpful if you could get your finance people to provide a projection on the anticipated business growth as a result of the capital injection from SBN.
>
> Cheers
>
> [Mr Tan]

It was clear, therefore, that as at 15 March 2007, the parties were still working on the basis of Lexicon furnishing a $5m loan to Sandz.

84 Subsequently, however, Mr Ang had a change of heart and indicated that the capital injection should be shared between Mr Liaw and Lexicon, with each putting in $2.5m. This change was reflected in the draft indicative term sheet for the Sandz-Lexicon deal dated 25 April 2007 and subsequently in the finalised term sheet signed on 8 May 2007. In the circumstances, we think it reasonable to infer that the discussions about the declaration of dividends by Sandz must have commenced sometime between 15 March 2007 and 25 April 2007.

85 Mr Liaw made it plain that he was very unhappy that Lexicon had backtracked on its initial agreement to provide a $5m loan to Sandz and was concerned that he would be out of pocket even before the conclusion of the Sandz-Lexicon deal, so much so that he contemplated pulling out of the deal altogether. Mr Tan agreed under cross-examination that the discussions about the declaration of

dividends by Sandz was necessary to placate Mr Liaw and to ensure that the Sandz-Lexicon deal did not fall through. We think it pertinent to note that Mr Tan had a significant personal interest in ensuring that that deal did not fall through; otherwise, Strategic's efforts to insert itself into the transaction for a quick "flip" would have come to naught. In this regard, whilst we agree with the Judge that Mr Tan's actions were largely motivated by financial interests, we are of the view that Mr Tan had much larger fish to fry, so to speak.

86 It was clear that at least one key objective prompting the declaration of the $4m Dividends by Sandz was to facilitate Mr Liaw's loan of $2.5m back to Sandz. Indeed, Mr Tan accepted this in cross-examination. In any event, there was also the evidence of Mr Tan's short text message of 14 May 2007 (see [16] above). We observe that that message was one of the few pieces of objective documentary evidence pertaining to the parties' discussions about the declaration of dividends by Sandz. For convenience, we restate the text of that message: [note: 26]

> *Yr acct need to b more creative. Once dividend declared* ***co owe u*** *. U then thru agrmt loan money to coy* [*sic*]. [emphasis added in italics and bold italics]

87 In our view, Mr Tan's 14 May 2007 short text message is clear evidence that the key purpose of declaring the $4m Dividends was to allow Mr Liaw to make the requisite loan to Sandz. We find it significant that Mr Tan used the phrase "Once dividend declared *co owe* ***u*** " [note: 27] [emphasis added in italics and bold italics] – "u" being Mr Liaw – and not "us" or "the shareholders", notwithstanding that by then, the Strategic SPA had already been signed and the shares comprising the 25% stake in Sandz registered in Strategic's name. In our view, this buttresses the Appellants' case that there was an understanding between Mr Liaw (on behalf of Sandz) and Mr Tan (on behalf of Strategic) that Strategic would have no interest in dividends declared by Sandz. This also accounts for why the resolutions declaring the $4m Dividends had to be backdated so as to make it appear that those dividends were declared *before* Strategic became a registered shareholder of Sandz. Plainly, Mr Tan knew about the declaration of the $4m Dividends by Sandz and accepted that they would accrue to Mr Liaw alone. Further, there can be no doubt that Mr Tan represented Strategic in relation to this understanding (see [27] above).

88 Pertinently, the timing of the various events supports the Appellants' case that the declaration of the $4m Dividends by Sandz was part of an agreement to facilitate the Sandz-Lexicon deal. As observed above at [83], the parties were still working on the basis of Lexicon furnishing a $5m loan to Sandz as at 15 March 2007, but this had changed by 25 April 2007. It was within this same period that the first interim dividend of $2.5m – the very amount that Mr Liaw was supposed to loan back to Sandz – was declared. As set out above at [19], the first interim dividend was paid out in instalments, and it was only following Mr Tan's 14 May 2007 short text message urging Mr Liaw to get his accountants to be "more creative" [note: 28] that the rest of the first interim dividend (after the payment of the first instalment of $225,000) was paid out in instalments. It was also subsequent to Mr Tan's short text message that the Loan and Guarantee Agreement between Lexicon, Sandz and Mr Liaw was executed on 22 May 2007 (see [15] above) and the $2.5m loan from Mr Liaw to Sandz extended on 31 May 2007.

89 Mr Tan further accepted in cross-examination that it was he who had proposed that Sandz should have a minimum NTA of $8m upon the completion of the Sandz-Lexicon deal. This was eventually reflected in the Lexicon SPA, which provided that Sandz would only need to provide a warranty that its NTA at completion was $8m. Indeed, the fact that Lexicon agreed to purchase Sandz at a lower NTA of $8m (and, thus, at a lower paper value) even though the consideration for the company had risen from the $24m initially asked for to $36m is consistent with Mr Liaw's evidence

that the discussions about the declaration of dividends by Sandz were commenced against the backdrop of the Sandz-Lexicon deal potentially failing to take off.

90 Mr Tan also accepted under cross-examination that he told Mr Liaw that the latter could take profits out of Sandz so long as he did not "overdo it". [note: 29] However, Mr Tan disagreed that this meant that Mr Liaw could take out $4m worth of profits from Sandz. He vaguely stated that there should have been a buffer left: [note: 30]

> Q: … I want to know what was your agreement with Mr Liaw. So if one starts on the premise that Sandz had $12 million NTA and you told him to leave behind $8 million NTA and Mr Liaw could take profits from Sandz, it is clear that he could take profits of $4 million?
>
> A: Disagree.
>
> Q: What then are your parameters?
>
> A: From the time that he actually took out the dividend to the completion of the deal where we would actually determine the balance share at that point in time, things could happen. So I have to give some buffer so as the company do[es] not breach the financial covenants that they give us as $8 million NTA.
>
> *So in my mind, it was two and a half to three million dividend allowing another million buffer just in case*. In the six months running – in the run-up to the completion of the deal, he could run into some temporary negative loss or whatever.
>
> That's how I normally do my transactions.
>
> [emphasis added]

Curiously, despite being experienced in transactions similar to the Sandz-Lexicon deal, as is evident from his reference to "how I normally do my transactions", [note: 31] Mr Tan failed to adduce any documentary evidence of his discussions with Mr Liaw about this alleged buffer. In fact, Mr Tan admitted both on affidavit as well as in his defence to the Appellants' counterclaim that he did not give any specifics to how much Mr Liaw could take out of Sandz. He also subsequently conceded that the condition that Mr Liaw must leave behind an NTA of $8m was satisfied, and that he saw no reason to complain "so long as the financial covenants [were] within the parameters of $8-million". [note: 32]

91 It is also significant that on Mr Tan's own evidence, he agreed that *Mr Liaw* – and not more generally the "shareholders" of Sandz – could take profits out of Sandz by way of dividends. For instance, at para 34 of his affidavit of evidence-in-chief, Mr Tan stated as follows: [note: 33]

> … He [*ie*, Mr Liaw] told me that Sandz presently had an NTA of S$12 million. I told him that if that was the case then in principle I would not have any issue if *he* was to take some profits out of Sandz but I also added that he should not overdo it. … [emphasis added]

Further, at para 8D(b) of his defence to the Appellants' counterclaim, Mr Tan stated: [note: 34]

> TCW [*ie*, Mr Tan] did tell the 2nd Defendant [*ie*, Mr Liaw] that if that was the case [*ie*, that Mr Liaw had not taken any money out of Sandz despite working there for many years], then there

would not be any issue if the *2nd Defendant* was to take some profits out of [Sandz], but TCW also added that the 2nd Defendant should be reasonable and not overdo it. [emphasis added]

92 Subsequently, under cross-examination, Mr Tan averred that the use of "he" in para 34 of his affidavit of evidence-in-chief was meant to refer to the shareholders of Sandz collectively. However, this clarification appeared to us to be an afterthought in light of his own pleadings and his affidavit of evidence-in-chief as well as his own conduct subsequent to the declaration of the $4m Dividends, as we will explore below at [94]–[97].

93 We would add that from a common-sense perspective, it was inconceivable that Mr Liaw would have agreed to the new terms of the Sandz- Lexicon deal (which required him to provide half of the $5m cash injection into Sandz, instead of Lexicon providing the entire sum) had he known that Strategic was going to claim a quarter of the excess NTA being declared as dividends. Strategic had only entered the picture for a short period from 20 April 2007 to 30 May 2007 for the purpose of "flipping" the 25% stake in Sandz and had no involvement in Sandz's business. Strategic certainly played no part in creating the value or assets of the company. Moreover, it made no commercial sense for Mr Liaw to have agreed to give Strategic a right to 25% of Sandz's assets (*ie*, $3m out of Sandz's NTA of $12m) when Strategic had paid only $2.5m for the 25% stake in Sandz. Indeed, by acting as the intermediary in Strategic's purchase of the 25% stake in Sandz, Mr Liaw suffered a not insubstantial detriment of having to fork out an additional $200,000 for that 25% stake, which sum has, to date, not been repaid.

94 As alluded to above at [87] and [91]–[92], Strategic did not appear to contemplate any claim for its share of dividends declared by Sandz during the discussions on that subject. Moreover, subsequent to the declaration of the $4m Dividends by Sandz, Mr Tan and/or Strategic were conspicuously silent about Strategic's alleged right to a 25% share of those dividends up until the time the 25 May 2009 Letter of Demand was sent.

95 Mr Tan ought to have known of Sandz's declaration and payment of dividends since this was his own suggested method to Mr Liaw for monetising the value of Sandz. Further, the first interim dividend declared by Sandz was stated in the financial due diligence report rendered by Deloitte on 31 May 2007 ("the Deloitte report"), and both the first and the second interim dividends were reflected in the legal due diligence report rendered by Colin Ng & Partners on 28 September 2007 ("the Colin Ng report"). As one of only two executive directors of Lexicon, Mr Tan would have had access to these reports. In any case, Mr Tan admitted under cross-examination that he would have seen both reports, and that he had seen Sandz's declaration of the first interim dividend in the Deloitte report as well as the declaration of both interim dividends in the Colin Ng report.

96 Another piece of objective evidence came from the minutes of a meeting of Lexicon's board of directors on 4 January 2008. Significantly, both Mr Liaw and Mr Tan were present at this meeting according to the minutes, and the minutes recorded their words nearly verbatim. During the meeting, Mr Liaw stated that: (a) he had declared the $4m Dividends as he had been told that Lexicon required Sandz to have an NTA of only $8m; and (b) subsequently, he had loaned $2.5m back to Sandz. He averred that this was a "zero sum game" [note: 35] because he had effectively put back into Sandz what he had taken out by way of dividends. Although Mr Tan, who was present at the meeting, could have taken the opportunity to clarify what he had told Mr Liaw apropos the declaration of dividends by Sandz or refute the latter's account of why the $4m Dividends had been declared, he remained conspicuously silent. Moreover, as an executive director of Lexicon, Mr Tan would have approved the aforesaid minutes; yet, he never sought to rebut Mr Liaw's allegations.

97 At this juncture, we think it apposite to reiterate those findings of the Judge (set out at [74] above) that have not been challenged by the respondents. Mr Tan's knowledge of the $4m Dividends declared by Sandz can clearly be imputed to Strategic. Neither Mr Tan nor Strategic has been able to provide a plausible explanation for their silence, prior to the sending of the 25 May 2009 Letter of Demand, as to Strategic's alleged right to a 25% share of the $4m Dividends. We find their silence consistent with the Appellants' case that there was an understanding between the parties that Strategic would have no further interest in Sandz beyond quickly "flipping" the 25% stake in Sandz. The action by Strategic to claim a 25% share of the $4m Dividends appears to be an opportunistic move, which, we note, was made only after the Sandz-Lexicon deal had unravelled.

98 In the premises, we find that:

(a) Lexicon, Mr Tan and Mr Liaw did agree that Mr Liaw could take out $4m of Sandz's NTA by way of declaring dividends; and

(b) there was an understanding between Strategic and Sandz and/or Mr Liaw that Strategic would not be entitled to any part of the dividends declared by Sandz.

The Appellants' conspiracy counterclaim

99 We turn now to the Appellants' counterclaim against the respondents for conspiracy. In contrast to their case on conspiracy in the court below (see [34]–[35] above), before us, the Appellants based their conspiracy counterclaim on the contention that Mr Tan and Mr Poon conspired to injure the Appellants by inducing a breach of collateral contract when they caused Strategic to bring the Present Suit. According to the Appellants, the collateral contract was between Strategic, Mr Tan and Mr Poon on the one hand and the Liaw Group on the other, and the terms of that contract were the same as the Representations set out at [11] above. We think it pertinent to note that the Appellants' submissions on this amounted to a mere five lines and their oral submissions in court were similarly brief.

100 Leaving aside the paucity of the Appellants' argument that there was a collateral contract as mentioned at [99] above, the sole evidence adduced by the Appellants of the alleged conspiracy was Mr Tan's and Mr Poon's actual control of Strategic. This factor alone, however, is insufficient to establish a conspiracy between the two men. In any event, we agree with the Judge's finding that the Appellants have suffered no damage as a result of the alleged conspiracy, as the cost incurred by the Appellants in defending the Present Suit was a cost which would have been incurred regardless of whether Strategic's claim against them was well founded or not. We note, further, that the Appellants did not challenge the Judge's findings in this regard.

Conclusion

101 In the premises, we allow this appeal in part. The Judge's decision below that Strategic is entitled to a 25% share of the $4m Dividends is overturned, but her decision dismissing the Appellants' conspiracy counterclaim is upheld.

102 The Appellants are entitled to the costs of Strategic's claim in the Present Suit here and below. We make no order as to the costs of the Appellants' counterclaim. Although the Appellants' case for their counterclaim was a weak one, we note that it successfully fleshed out the relationship between Mr Tan and his surrogates, which formed the linchpin of our decision on Strategic's claim. Moreover, in the context of the broader issues, the time spent on the Appellants' counterclaim was insubstantial. For these reasons, we do not award the respondents the costs of the Appellants' counterclaim even

though we have affirmed the Judge's decision to dismiss the counterclaim. The usual consequential orders are to follow.

[note: 1] Record of Appeal ("ROA") Vol III (Part A), p 116.

[note: 2] ROA Vol III (Part B), pp 21–22.

[note: 3] Appellants' Core Bundle ("ACB") Vol II, p 153.

[note: 4] ACB Vol II, p 17.

[note: 5] ROA Vol V (Part A), p 20.

[note: 6] *Ibid*.

[note: 7] *Ibid*.

[note: 8] ROA Vol V (Part A), p 17.

[note: 9] ROA Vol V (Part A), p 20.

[note: 10] ACB Vol II, p 163.

[note: 11] First Respondent's Case at para 61.

[note: 12] ACB Vol II, p 140.

[note: 13] ACB Vol II, p 207.

[note: 14] ACB Vol II, p 140.

[note: 15] ACB Vol II, p 207.

[note: 16] ACB Vol II, p 143.

[note: 17] ACB Vol II, p 141.

[note: 18] ACB Vol II, p 17.

[note: 19] ACB Vol II, p 56.

[note: 20] ROA Vol III (Part G), pp 48–50.

[note: 21] ROA Vol V (Part F), p 217.

[note: 22] *Ibid*.

[note: 23] ACB Vol II, p 17.

[note: 24] ACB Vol II, p 19.

[note: 25] ROA Vol III (Part D), p 35.

[note: 26] ACB Vol II, p 153.

[note: 27] *Ibid*.

[note: 28] *Ibid*.

[note: 29] ROA Vol III (Part J), p 27.

[note: 30] ROA Vol III (Part J), p 28.

[note: 31] *Ibid*.

[note: 32] ROA Vol III (Part J), p 35.

[note: 33] ROA Vol III (Part A), p 91.

[note: 34] ACB Vol II, pp 31–32.

[note: 35] ROA Vol V (Part D), p 235.