

Ang Tin Gee v Pang Teck Guan
[2013] SGHCR 26

Case Number : Suit No 697 of 2010
Decision Date : 07 November 2013
Tribunal/Court : High Court
Coram : Justin Yeo AR
Counsel Name(s) : Mr Lai Kwok Seng (Lai Mun Onn & Co) for the Plaintiff; Mr Leslie Yeo Choon Hsien (Sterling Law Corporation) for the Defendant.
Parties : Ang Tin Gee — Pang Teck Guan

Partnership – Partners inter se – Accounts

7 November 2013

Justin Yeo AR:

1 This court is called upon to take accounts arising out of the decision of Belinda Ang J (“the Judge”) in *Ang Tin Gee v Pang Teck Guan* [2011] SGHC 259 (“*Ang Tin Gee*”).

Background to this matter

Background facts

2 The background facts are found in *Ang Tin Gee*, and need only be briefly mentioned in this judgment. Mdm Ang Tin Gee (“the Plaintiff”) and Mr Pang Teck Guan (“the Defendant”) are partners in a business called Japco TG International Enterprise (“Japco”). Japco was registered by the parties sometime on or around 25 July 1996. Prior to registration, they had discussed the terms of the partnership and an agreement governing the terms was signed by the parties on 3 August 1996.

3 As Japco was not performing well, a business called Office Consumables Supplies (“OCS”) was registered on 3 March 2000 by the Defendant as a sole proprietorship. OCS served as the “selling arm” of Japco: Japco would buy office consumable products, OCS would purchase those products from Japco and sell them. Under this “business model”, OCS was the significant buyer of Japco’s products. Although Japco continued to sell its products to other customers, such third party sales formed only a small part of Japco’s revenue. Both Japco and OCS operated from the same premises.

4 Japco’s overdrafts in two United Overseas Bank (“UOB”) accounts (*viz*, UOB Account No 101-XXX-XXX-3 (“UOB Account No 1”) and UOB Account No 101-XXX-XXX-1 (“UOB Account No 2”)) were the sources of funds to finance the business operations of Japco and OCS. The Judge noted that Japco and OCS operated in a manner in which Japco funded OCS’s start-up costs and operating expenses (*Ang Tin Gee* at [26]). It is common ground that Japco’s Balance Sheet and Profit and Loss Statement for each financial year were prepared by the Defendant and that he would give them to the Plaintiff for her tax returns (*Ang Tin Gee* at [27]). These arrangements continued until the parties fell out on or about 7 April 2006 (*Ang Tin Gee* at [36] and [41]).

The decision in Ang Tin Gee

5 The Judge heard a 10-day trial of the action (7-9, 14-17, 21-22 March 2011 and 3 May 2011), and rendered an 80-page judgment, which included two detailed schedules setting out (a) the difference between the sales of Japco and the purchases of OCS from September 2000 to 7 April 2006 ("Schedule 1") and (b) OCS's profit and loss accounts for the same period ("Schedule 2"). In summary, the Judge made the following orders in the last paragraph of the judgment, of which only order (1) was the subject of the present taking of accounts (*Ang Tin Gee* at [150]):

(1) I find in favour of the plaintiff and make the following orders:

- a) A declaration that the plaintiff and defendant were equal partners of Japco;
- b) An order that the defendant renders an account to the plaintiff of OCS's operating expenses from 26 March 2002 to 31 December 2006 that were paid by Japco but not repaid or reimbursed by OCS;
- c) An order for payment by the defendant to Japco of all moneys found to have paid by [Japco] for OCS's operating expenses on the taking of such account ordered in para (b) hereof;
- d) An order that the defendant renders an account to the plaintiff of OCS's gross profits from 26 March 2002 to 31 December 2006;
- e) An order that the defendant renders an account to the plaintiff of OCS's net profits from 26 March 2002 to 31 December 2006 on the taking of such account ordered in paras (b) & (d) hereof;
- f) An order for payment by the defendant to Japco of all net profits of OCS on the taking of such account ordered in para (e) hereof;
- g) That to give effect to the dissolution of the partnership there be a final accounting between the plaintiff and defendant as partners of Japco on the assets and liabilities of the partnership including what is due between the partners, and in doing so to take into account the plaintiff's capital contribution;
- h) Costs in relation to the taking of accounts and the issue of interest are to be reserved to the Registrar taking the accounts; and
- i) There shall be liberty to apply.

(2) I further declare that the plaintiff is entitled to a contribution from the defendant of a half share in any sum she may be liable to pay UOB in respect of UOB Account No 1 and UOB Account No 2.

(3) The defendant's counterclaim is dismissed.

(4) The defendant is to pay the plaintiff costs of the action and counterclaim to be taxed if not agreed.

Procedural Overview

6 The taking of accounts in this case involved a complex accounting exercise which required six

days of trial across two tranches. Each side had one factual witness (*ie* the parties themselves) and one expert witness. The expert witnesses, Ms Chan Wing Yan ("Ms Chan") for the Plaintiff and Mr Cheng Soon Keong ("Mr Cheng") for the Defendant, are experienced Certified Public Accountants. Each expert witness had put in an expert's report prior to the first tranche of trial ("Ms Chan's First Report" and "Mr Cheng's Report" respectively).

7 At the first tranche of trial, counsel for the Defendant, Mr Leslie Yeo ("Mr Yeo") had substantially cross-examined Ms Chan on her First Report, when counsel for the Plaintiff, Mr Lai Kwok Seng ("Mr Lai"), applied for leave for Ms Chan to file a supplementary affidavit to clarify certain matters that had arisen in the course of cross-examination. Although Mr Yeo objected to the filing of the fresh affidavit, he recognised that Ms Chan's position appeared – after cross-examination – to be very close to the Defendant's position. As such, he noted that the possibility of settlement was increased by the prospect of Ms Chan putting in a fresh supplementary affidavit. Ms Chan indicated that she would need one month to put in the supplementary affidavit. The supplementary affidavit was eventually filed on 18 February 2013. It enclosed a supplementary report prepared by Ms Chan ("Ms Chan's Second Report"). At the hearing on 21 February 2013, Mr Yeo sought leave for Mr Cheng to file a reply affidavit to reply to matters in Ms Chan's Second Report. Mr Lai agreed that Mr Cheng should have an opportunity to do so. However, no reply affidavit was filed in the end. At the hearing on 27 March 2013, Mr Yeo confirmed that having had further discussions with Mr Cheng, he had come to the view that a reply affidavit was not necessary. Mr Yeo instead filed written submissions and sought to challenge Ms Chan's Second Report for going beyond the scope of the leave granted by the court. Mr Lai maintained that he was not in a position to respond to Mr Yeo's arguments at that hearing without input from Ms Chan, and that he would need time to consider the technical accounting points raised by Mr Yeo (who, it should be added, had formulated his arguments with the benefit of Mr Cheng's advice over a period of more than one month). As such, a further adjournment was sought, resulting in the second tranche of trial eventually resuming in late April 2013.

8 At the second tranche of trial, Mr Lai raised a preliminary issue of *res judicata* and/or issue estoppel regarding certain responses given by Mr Cheng during cross-examination. I reserved my decision on *res judicata* and/or issue estoppel at that stage in view that the parties' experts were already before me and the cross-examination of Ms Chan had already been completed. The fact that the cross-examination of Mr Cheng was permitted to proceed thus would not preclude me from deciding that the evidence he gave was inadmissible and/or irrelevant to the taking of accounts on the grounds of *res judicata* and/or issue estoppel. After four days of trial in the second tranche, parties sought time to consider the notes of evidence before putting in their submissions. Given the complexity of the matter and the undeniably poor state of Japco's and OCS's accounts, much time was needed for the parties and their respective experts to unravel the accounts and formulate their submissions. I ordered the submissions to be exchanged sequentially (with the Defendant going first) rather than simultaneously, so as to ensure that parties crossed swords on the relevant issues in the submissions. The parties eventually required a total of four months to put in one set of submissions and reply submissions each.

9 At the hearing on 23 October 2013, I indicated to Mr Yeo and Mr Lai that I was minded to grant them a final opportunity to seek the Judge's clarification of *Ang Tin Gee* prior to the rendering of this judgment. This is because in the respective written submissions, they had fundamentally disagreed on the interpretation of *Ang Tin Gee*, and this fundamental disagreement had an important impact on the issue of *res judicata* and/or issue estoppel. In this regard, it should be noted that the Judge had expressly granted parties the liberty to apply (see [150(1)(i)] of *Ang Tin Gee*).

10 However, both Mr Yeo and Mr Lai indicated that they did not intend to seek any clarification from the Judge. Although they substantially disagreed on the ambit of the Judge's order, they were

both of the view that the decision in *Ang Tin Gee* was clearly in favour of their respective interpretations. They expressed a preference for me to render my decision first, and that they would take whatever consequences flowed from electing for this course of action. I therefore rendered this judgment on 7 November 2013.

Issues before this court

11 Pursuant to [150(1)] of *Ang Tin Gee*, this court had to make the following determinations:

- (a) The amount paid by Japco for OCS's operating expenses from 26 March 2002 to 31 December 2006 ("the Relevant Period") that was not repaid or reimbursed by OCS ("the Operating Expenses Issue");
- (b) The amount of OCS's gross and net profits for the Relevant Period ("the Profits Issue"); and
- (c) The final accounting between the Plaintiff and Defendant as partners of Japco on the assets and liabilities of the partnership including what is due between the partners, taking into account the Plaintiff's capital contribution ("the Final Accounting Issue").

12 However, before turning to determine the above issues, I pause to make some preliminary observations on the expert evidence.

The expert evidence

13 I found both experts to be credible and experienced professionals who provided their genuine professional opinions to the court. Although the methods they employed differed and they expressed differences of opinion, most of these differences stemmed from the significant amount of missing source documents in this case, as well as the different starting points that they had been instructed to adopt (which were, in turn, based on the respective parties' interpretation of *Ang Tin Gee*). I elaborate on both points.

Missing source documents

14 There was a significant amount of missing source documents in this accounting exercise. In Ms Chan's First Report, she noted that the following documents were missing or incomplete:

- i) OCS and Japco's general ledger or accounting books including cash book, sales and purchases records, payment vouchers, cash transactions, *etc*;
- ii) Japco's balance sheet as at 31 December 2006;
- ii) [*sic*] supporting documents for OCS and Japco sales for FY 2002 to FY 2005 (FY 2006 sales invoices were incomplete);
- iii) supporting documents for OCS and Japco operating expenses for FY 2002 to FY 2005 (FY 2006 supporting documents for expenses were incomplete);
- iv) bank statements of Japco and OCS from 31 March 2002 to 31 December 2004.

15 Similarly, Mr Cheng noted that the following key information and documents were not furnished:

- a) Japco's balance sheet as at 31 December 2006,
- b) OCS and Japco invoices for FY 2002 to 2005 (ie only 2006 sales invoices and purchase invoices were made available),
- c) documents or supports for FY 2002 to 2005 operating expenses shown in the financial statements of Japco and OCS submitted to IRAS,
- d) remainder of FY 2006 supporting documents for operating expenses (ie documents furnished are insufficient to support the operating expenses figures shown in the FY 2006 profit and loss statements furnished to IRAS),
- e) bank statements of Japco and OCS for the period from 31 March 2002 to 31 December 2004, and
- f) OCS and Japco's accounting records including books for recording transactions, cash books, general ledgers etc to show the accounting entries, balances and details of sales, purchases, payments and receipts transactions.

16 In view of the limitation of information, Ms Chan took the position that the financial statements submitted to the Inland Revenue Authority of Singapore ("IRAS") were the best alternative documents to be used in support of her computations, for the following reasons: [\[note: 1\]](#)

- (a) The financial statements submitted to IRAS would have, under normal circumstances, been submitted within 4.5 months of the respective financial year-ends (ie by 15 April of the respective years) and therefore should have been based on some source documents which were probably still on hand with the Defendant at that time; and
- (b) Taxpayers have an obligation of voluntary disclosure if they discover material errors in the financial statements which were submitted to IRAS. No such disclosure has been made by the Defendant except as noted by an IRAS officer in a letter dated 27 October 2006 on an incorrect calculation of depreciation.

17 Mr Cheng, on the other hand, adopted the following approach in determining the accounts:

- (a) With regard to the sales, cost of sales and gross profits, Mr Cheng based these on the figures shown in Japco and OCS financial statements furnished that were submitted to IRAS for financial year ("FY") 2002 to 2006. [\[note: 2\]](#) As Mr Cheng only had supporting documents for FY 2006, he attempted to ascertain the consistency of the supporting documents with the amount submitted to IRAS in FY 2006. He thereafter compared the FY 2006 figures with that for the preceding years, for the purpose of observing the comparability of the figures reported for each year and to obtain a sense of whether the trends established reflected what the Defendant believed to be the appropriate sales and cost figures.
- (b) With regard to operating expenses, due to the limitation of information and the lack of explanation for fluctuations in operating expenses of the financial statements submitted to IRAS, Mr Cheng took the view that it would be prudent to present only the operating expenses that could be reasonably supported by computation or information furnished. [\[note: 3\]](#)

Different starting points

18 With regard to the different starting points that the experts had been instructed to adopt, Ms Chan had been instructed to adhere to the decision in *Ang Tin Gee* by assuming that certain findings of the Judge were not to be revisited or contradicted at the taking of accounts. Indeed, she answered certain questions in cross-examination by stating that some of her conclusions were made, not based on her independent taking of accounts, but rather, in reliance on certain findings in *Ang Tin Gee*.

19 In contrast, Mr Cheng preferred to approach the taking of accounts, in the words of Mr Yeo, “purely on the accounts” and based on his professional opinion as an accountant. [\[note: 4\]](#) The following passage from the cross-examination of Mr Cheng illustrates this point: [\[note: 5\]](#)

Court: So ... you disagreed with [the Judge’s] computation as well as some of the statements that she had made because you had a different way of analysing it as a professional?

A: Yes, Your Honour.

...

Court: I also think that it is well established that ... everybody here was looking at the same documents.

A: Mm.

Court: And Justice Ang came up with version A but you think that that is probably not correct. You are entitled to that because you are a professional.

A: Yes, Your Honour.

20 Mr Cheng adopted this approach because he had been instructed that his expert opinion only needed to be consistent with [150] of *Ang Tin Gee* and not necessarily with the rest of the judgment. As Mr Yeo clarified during the cross-examination of Mr Cheng, Mr Cheng had been instructed to look at the “four paragraph judgment” at [150] of *Ang Tin Gee* rather than the rest of the judgment: [\[note: 6\]](#)

Yeo: And---but even after having given us your indication, Your Honour, my---my learned friend has not referred so far to what I will call the *four paragraph judgment of Justice Ang* ... which is paragraph 1 comprising of (a) to ... (i), paragraph 2, paragraph 3 and paragraph 4. Instead he chooses to look at the Judgment as being a 149 paragraph. So we---as far as *my instructions to Mr Cheng* is concerned, is look at the Judgment. And as far as we are concerned, *the Judgment is paragraph 1 to 4*.

[emphasis added]

21 I now turn to address the issues set out in [11] above.

The Operating Expenses Issue

22 The Judge ordered the Defendant to render an account of OCS’s operating expenses for the Relevant Period that were paid by Japco but not repaid or reimbursed by OCS (*Ang Tin Gee* at [150(1)(b)]), and that the Defendant pay to Japco all of such monies (*Ang Tin Gee* at [150(1)(c)]).

23 Based on the evidence before the Judge at trial, the Judge derived the figure of \$394,012.74 as

OCS's operating expenses paid for by Japco for the period September 2000 to 7 April 2006 (see Schedule 2). It should be noted that this period largely overlaps with the Relevant Period. As such, conceptually, the approach to be taken would be to exclude the accounts for year 2000 to 25 March 2002, and to include the accounts from 8 April 2006 to 31 December 2006 (see also [69] below).

The expert evidence on the Operating Expenses Issue

24 As alluded to in [16]-[17] above, both experts took different approaches towards calculating OCS's operating expenses for the Relevant Period.

Ms Chan's approach

25 In Ms Chan's First Report, Ms Chan found the operating expenses of OCS for the Relevant Period to be \$393,050.96. [\[note: 7\]](#) In Ms Chan's Second Report, she totalled the operating expenses of OCS from 26 March 2002 to 7 April 2006 (instead of 31 December 2006), and obtained a figure of \$336,171.87. However, she noted that the salaries of OCS employees for December 2005 and from 1 January 2006 to 7 April 2006 were paid directly from OCS's bank account as reflected in the bank statements. As such, she deducted the amount of \$11,170 and \$16,622 for OCS's payment of salaries for those periods. [\[note: 8\]](#) She also noted that based on the landlord's statement of accounts, the amount of \$2,010.59 in rent was borne by OCS. As such, she derived a figure of \$306,369.28 (being \$336,171.87 less the sum of \$11,170, \$16,622 and \$2,010.59) for the Relevant Period. [\[note: 9\]](#)

26 Mr Lai was keen to emphasise that Ms Chan's findings in the Second Report (which arguably deviated from the decision in *Ang Tin Gee*) were made merely for the sake of completeness, pursuant to questions raised by Mr Yeo in the first tranche of cross-examination. In Mr Lai's view, all the inquiry court was tasked to do pursuant to *Ang Tin Gee* was to work in reliance on Schedule 2 to make a finding on the amount of OCS's expenses for the Relevant Period, and that this must be the amount repaid to Japco. As such, Mr Lai concluded in his written submissions that given the Judge's finding that Japco had borne *all* of OCS's operating expenses, the Defendant had to account to Japco for the amount of \$393,050.96.

Mr Cheng's approach

27 Mr Cheng approached the question of OCS's operating expenses from a different angle. He began by finding \$235,568.00 to be the "common expenses" (*ie* expenses shared by Japco and OCS) but paid for by Japco. He proceeded to apportion the amount that OCS ought to repay for the operating expenses by using a percentage of contribution of OCS and Japco to the total gross profit of the two entities (which, in Mr Cheng's view, would be computed in the OCS-Japco ratio of 59:41), resulting in \$138,985.00 being the amount that the Defendant had to account to Japco. As an aside, Mr Cheng added that in addition to the \$138,985.00 that OCS had to account to Japco, OCS had its own operating expenses of \$310,304.00. In other words, the necessary conclusion of Mr Cheng's approach is that OCS's overall operating expenses for the Relevant Period amounted to \$449,289.00 (being \$138,985.00 plus \$310,304.00). I would note, at the outset, that the approach taken by Mr Cheng on determining OCS's share of operating expenses – *viz* looking to common expenses and apportioning them in the ratio 59:41 – did not appear consonant with the methodology adopted by and the findings of the Judge.

28 Mr Cheng then went on to suggest that OCS had made regular payments to Japco for its purchases from 26 March 2002 to 28 December 2006, which totalled \$4,542,218.00. [\[note: 10\]](#) However, he verified only the payments in 2005 and 2006, as OCS's and Japco's bank statements for

FY 2002 to FY 2004 were not furnished. Cheng claimed that as the total purchases made by OCS amounted to \$4,370,925.00, there had been an excess of payments over purchases of \$171,293.00 (being \$4,542,218.00 less \$4,370,925). [\[note: 11\]](#) After deducting other payments for fund transfer from OCS to Japco (totalling \$11,110.00) as these payments were not for purchases or operating expenses, Mr Cheng submitted that the excess payments totalling \$160,183.00 in fact constituted payment for OCS's share of operating expenses. He further claimed that given that the amount of excess payment (\$160,183.00) exceeded the amount of OCS's share of operating expenses (\$138,985.00), OCS had already more than paid for its share of the operating expenses, and therefore that no further payment to Japco would be required. [\[note: 12\]](#)

Preliminary issue: res judicata and/or issue estoppel

29 As mentioned at [8] above, Mr Lai raised the preliminary issue of *res judicata* and/or issue estoppel at the second tranche. Mr Lai repeatedly emphasised that the figures provided by the Defendant and/or Mr Cheng should not be considered if they contradicted the figures or findings made by the Judge in *Ang Tin Gee*. The issue that arose was therefore whether the Defendant was precluded, on the grounds of *res judicata* and/or issue estoppel, from revisiting certain findings of the Judge ("the Preliminary Issue")

30 There were three key areas on which the Preliminary Issue was contested, as follows:

(a) First, the figures stated in Schedules 1 and 2 of *Ang Tin Gee*, and whether these figures were binding on the inquiry court.

(b) Second, the finding of the Judge that Japco had completely funded OCS's start-up costs and operating expenses (see [26], [28], [69], [70], [71], [79] and [103] of *Ang Tin Gee*), and whether this finding was binding on the inquiry court. As it is important to note the precise findings made by the Judge, the relevant extracts from the mentioned paragraphs are reproduced here:

26 ... This is consistent with the plaintiff's position that their agreement was that ***Japco would fund the start-up costs and the operating expenses of OCS***. The ***defendant did not refute this allegation***. Interestingly, the ***defendant admitted in cross-examination that Japco had funded OCS's start-up costs and operating expenses***, and Japco paid the suppliers upfront. ...

...

28 ... How the ***defendant's admission that Japco funded OCS's start-up costs and operating expenses*** affects his defence will also be discussed later.

...

69 ... In my judgment, this defence is disingenuous. ***It is an attempt to blur the reality of the situation that for close to six years the office consumer business conducted in OCS was a component of the partnership business with Japco providing the funding. The unassailable fact evidence that the defendant made use of Japco's resources, funds and bank overdrafts for the business of OCS without repaying those operating expenses through OCS's sales receipts which were retained by the defendant***. The upshot of this defence, if true, is that the defendant had wrongfully misappropriated Japco's moneys and that he would be liable to the partnership for the moneys taken. Again, even if

this defence is sustainable, the only reasonable interpretation that one can put on the overall evidence is that the defendant had not been completely open with the plaintiff in the management and control of the business activities of both entities, and that the defendant's conduct in his dealings with the plaintiff was calculated to put the plaintiff off the scent that **OCS's business operations was entirely funded for free by Japco**

...

70 **I find that there is unassailable evidence that the office consumables business conducted in OCS was a component of the partnership business with Japco providing the funding** for the following reasons: first, **Japco completely, funded OCS's start-up costs and operations** ; second, the manner in which capital was injected into OCS and in which its purchases and stocks were financed; third, the state of documentation between the parties.

...

71 On the first point, **the defendant conceded that Japco completely funded OCS's start-up costs and all its operations, from rental expenses, season parking, utilities bills, telephone and fax expenses, OCS's business brochures and calendars and name cards, to even the smallest expense such as the supply of distilled water in OCS's office** . Despite this admission, there were times when the defendant tried to change his testimony. ...

...

79 In addition to the two main points above (ie, the arrangements by which Japco purchased supplies and sold them on to OCS and **the fact that Japco funded OCS in every single aspect of its operations**), there is plenty of other evidence that shows that Japco and OCS operated as partnership businesses. ...

...

103 It is important to note that other than for OCS's payment of purchases (the exact quantum is not proven), **the start-up costs and yearly operating expenses of OCS were paid by Japco and not by OCS** . Yet, OCS disclosed in the Profit & Loss Statements for the period 2000 to 2006 operating expenses incurred by the business such as salaries, CPF, rental and other miscellaneous expenses that amounted to a sum of \$394,012.74 (see Schedule 2 of this Judgment). To this end, as between the plaintiff and the defendant, **it is reasonable to conclude, since the expenses were not paid by OCS** , the entity's profits were in reality, the gross profits which he took for himself. ...

[emphasis added in bold italics; footnotes omitted]

(c) Third, the dismissal by the Judge of the counterclaim relating to OCS's alleged overpayment for purchases from Japco (see [101] and [132]-[136] of *Ang Tin Gee*), and whether the Defendant could re-assert at the taking of accounts that (i) OCS had overpaid for purchases from Japco, and (ii) that these repayments constituted payment for OCS's operating expenses. The relevant extracts from the mentioned paragraphs are reproduced here:

101 As stated earlier ..., Mr Yeo for the defendant argues that Japco did not finance OCS.

To repeat, his reasoning is as follows: for those years that OCS was behind in the payments, he agrees that Japco financed OCS; however, at the end of the day, OCS had overpaid Japco (based on the Defendant's Table) and as such Japco did not finance OCS. I make two comments here. Mr Yeo's submissions do not address the defendant's admission that Japco paid for the start-up costs and operating expenses of OCS (see above ...). Second, Mr Yeo's submissions, at best, are directed at OCS's purchases. I have already commented on the unreliability of the Defendant's Table on the amount of purchases and the amount of payments

...

132 As stated above ..., the Defendant's Table documented these alleged overpayments from OCS to Japco between 1996 and 2006. I have already commented on the discrepancies in the figures presented in the Defendant's Table. Significantly, ***these claims for overpayment were never reflected anywhere***, for example, in (i) the 30 March 2006 Statement; or (ii) subsequent meetings held to discuss Japco's winding up of its business.

133 More crucially, as established above ..., there are no invoices pertaining to OCS's purchases from Japco, so ***the purchase figures in the Defendant's Table are completely without support***. When asked in re-examination how he arrived at these figures, the defendant's explanation was incomprehensible, even to his own counsel.

1 3 4 ***The defendant therefore had no evidence at all that he or OCS had made overpayments for goods bought from Japco***. Indeed, as held above ... in relation to the plaintiff's action for an account, ***it is not even clear whether OCS paid Japco for all the goods Japco purchased on its behalf***.

135 Even more egregiously, it was demonstrated at several points during cross-examination that several cheques referred to by the defendant as evidence of OCS's overpayment to Japco were *not even OCS cheques but cheques from third parties*.

136 I therefore ***dismiss this counterclaim as well***.

[footnotes omitted; emphasis in original, emphasis added in bold italics]

Parties' Arguments

31 On the Preliminary Issue, Mr Yeo attempted to draw a distinction between what he referred to as the "four paragraph judgment" at [150] of *Ang Tin Gee* and the body of the judgment itself. According to Mr Yeo, only [150] of *Ang Tin Gee* was binding on the inquiry court. Mr Yeo submitted that in order to decide whether there should be an order for accounts and inquiries, the Plaintiff had to establish at trial that there was a *prima facie* case that there are discrepancies in the partnership accounts and therefore that accounts had to be taken. [\[note: 13\]](#) He further argued that the findings in *Ang Tin Gee* were relevant to establishing the *prima facie* case, but that the Defendant should not be bound by the figures decided by the Judge in *Ang Tin Gee*, for the following related reasons:

- (a) First, the Judge was not required to make a decision on the actual accounts and did not have the relevant expert evidence to enable the Judge to do so. [\[note: 14\]](#) As such, the Judge had not made a finding on the accounts, as a finding on the accounts was the responsibility of the inquiry court; [\[note: 15\]](#)

(b) Second, the Judge had ordered for accounts to be taken by the inquiry court, on the terms stated in [150] of *Ang Tin Gee*. The figures in the other parts of *Ang Tin Gee* should not be adopted as it would make a mockery of the accounting exercise. [\[note: 16\]](#) If the Judge's findings were treated as "conclusive", it would no longer be necessary for the present taking of accounts;

(c) Third, [150(1)(b)] of *Ang Tin Gee* stipulates that the account would be for operating expenses "that were paid by Japco but not repaid or reimbursed by OCS"; as such, the Defendant should be entitled to revisit, at the taking of accounts, the amounts paid by Japco and the amounts repaid or reimbursed by OCS.

32 In summary, therefore, Mr Yeo accepted that while the Judge's order in [150] of *Ang Tin Gee* was *res judicata* given that the Defendant had not filed any appeal against the decision, he was nonetheless entitled to revisit the figures and findings of the Judge at the taking of accounts stage, because the figures and findings utilised by the Judge were not meant to be conclusive on the issue of accounts. [\[note: 17\]](#)

33 Mr Lai disagreed entirely with Mr Yeo. He raised two main arguments in this regard:

(a) First, the Defendant was trying to *revisit* issues that had been previously determined. Mr Lai pointed out (i) that Mr Cheng had admitted that the version of accounts he presented was based on professional opinion and "common sense", rather than on the findings of the Judge in the *Ang Tin Gee*; [\[note: 18\]](#) and (ii) that Mr Yeo had categorically stated, in response to a question from this court, that the Judge's "conclusion is wrong... [b]ecause she relied on inaccurate figures". Based on these points, Mr Lai argued that the Defendant was trying to "start the matter afresh" and "re-open issues that had already been determined between the parties at a 10-day trial of action". [\[note: 19\]](#) In Mr Lai's view, the doctrine of *res judicata* and/or issue estoppel precluded the Defendant from doing so.

(b) Second, the Defendant was trying to *appeal* against *Ang Tin Gee* through the backdoor. [\[note: 20\]](#) Mr Lai submitted that Mr Cheng was trying to overturn the decision of the Judge with his professional opinion. [\[note: 21\]](#) In Mr Lai's view, if Mr Cheng or the Defendant felt that the Judge had rendered the decision in *Ang Tin Gee* based on inaccurate financial statements which resulted in a wrong decision, the Defendant ought to have appealed against the decision instead of proceeding to the taking of accounts. [\[note: 22\]](#)

34 Relying on the above, Mr Lai argued that the inquiry court did not have the jurisdiction to revisit findings made by the Judge. He also emphasised that "the inquiry court does not sit as the Court of Appeal". [\[note: 23\]](#) In this regard, Mr Lai cited the recent Court of Appeal decision of *Lim Chin San Contractors Pte Ltd v Shiok Kim Seng (trading as IKO Precision Toolings) and another appeal* [2013] SGCA 6 ("*Lim Chin San*") as well as an earlier authority *Lim Teck Cheng v Wyno Marine Pte Ltd (in liquidation)* [1999] SGCA 74 ("*Lim Teck Cheng*").

The law

(1) Brief overview on the doctrine of *res judicata*

35 The law discourages re-litigation of the same issues except by means of an appeal (*Arthur JS Hall v Simmons*, *Barratt v Ansell (t/a Seddon (a firm))*, *Harris v Scholfield Roberts & Hill (a firm)* [2000] 1 AC 615 at 701 *per* Lord Hoffmann; and see *Halsbury's Laws of England* vol 12 (Butterworths

LexisNexis, 5th Ed, 2009) at para 1166). The rationale is straightforward: it is not in the interests of justice that there should either be a re-trial of a case potentially resulting in conflicting judicial decisions, or that there should be collateral challenges to judicial decisions. Indeed, there is a danger, not only of unfairness of the parties concerned, but also the broader problem of bringing the administration of justice into disrepute. The doctrine of *res judicata* has been used to address these problems.

36 In *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ("*Goh Nellie*"), Menon JC (as he then was) provided a thorough and instructive exposition on the doctrine of *res judicata* and its three conceptually distinct principles (*viz*, "cause of action estoppel", "issue estoppel" and "abuse of process"). In the present case, the relevant *res judicata* principle is that of issue estoppel.

(2) Issue estoppel

37 Issue estoppel prevents the re-litigation of an issue which the court has already determined on the merits in previous proceedings between the same parties (*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 ("*Wing Joo Loong*") at [165]). In *Goh Nellie* at [18], Menon JC adopted the elaboration provided by Diplock LJ (as he then was) in *Thoday v Thoday* [1964] P 181:

'[I]ssue estoppel,' is an extension of the same rule of public policy. ... If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was.

38 In *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [14] (also cited in *Wing Joo Loong* at [165]), the Court of Appeal held that four requirements must be fulfilled before issue estoppel may be established:

- (a) First, there must be a final and conclusive judgment on the merits of the issue which is said to be the subject of an estoppel ("Requirement (A)");
- (b) Second, the judgment must be by a court of competent jurisdiction ("Requirement (B)");
- (c) Third, the parties in the two actions that are being compared must be identical ("Requirement (C)"); and
- (d) Fourth, there must be identity of subject matter in those two actions ("Requirement (D)").

39 As Requirements (B) and (C) are not in contention in the present case, I need only elaborate on Requirements (A) and (D). I thereafter turn to analyse the two Court of Appeal cases cited by Mr Lai.

(A) Requirement (A): Final and conclusive judgment on the merits of the issue which is said to be the subject of an estoppel

40 Requirement (A) provides that there must be a final and conclusive judgment on the merits of the issue which is said to be the subject of an estoppel. This principle applies also to subsequent proceedings in the same suit, such as in the present case. In *Manganmal Jhamatmal Lalwani v NE*

Vickerama [1999] 3 SLR(R) 149 ("*Manganmal*"), Rajendran J followed Diplock LJ's approach in *Fidelitas Shipping Co Ltd v V/O Exportchleb* [1966] 1 QB 630 ("*Fidelitas*") at 642C-D, viz that:

[w]here the issue separately determined is not decisive of the suit, the judgment upon that issue is an interlocutory judgment and the suit continues. Yet I take it to be too clear to need citation of authority that the parties to the suit are bound by the determination of the issue. **They cannot subsequently in the same suit advance argument or adduce further evidence directed to showing that the issue was wrongly determined** . [emphasis added]

41 A further extract from *Fidelitas*, not cited in *Manganmal*, provides further elaboration (*Fidelitas* at 642E-F):

This is but an example of a specific application of the general rule of public policy, *nemo debet bis vexari pro una et eadem causa* [which means no one shall be harassed twice for the same cause]. The determination of the issue between the parties gives rise to what I ventured to call in *Thoday v. Thoday* an "issue estoppel." It operates in subsequent suits between the same parties in which the same issue arises. *A fortiori it operates in any subsequent proceedings in the same suit in which the issue has been determined* . [emphasis added]

42 It is clear from the above that issue estoppel may arise when a particular issue has been determined by a court at the liability stage of a bifurcated trial (see also the two Court of Appeal decisions at [44] *et seq*). The important question, however, remains that of the precise issues that have been determined by the liability court. This is because issue estoppel "cannot begin to be established unless it can be ascertained with some degree of precision what it was that the dominant judgment... decided" (*Wing Joo Loong* at [169], citing *Turner v London Transport Executive* [1977] ICR 952 at 966).

(B) Requirement (D): identity of subject matter with prior decision

43 Under Requirement (D), the subject matter of the two actions being compared must be identical. *Goh Nellie* identified three "discrete conceptual strands" which could be considered in determining whether Requirement (D) is fulfilled:

(a) First, the prior decision *must traverse the same ground* as that in the subsequent proceeding, and the facts and circumstances giving rise to the earlier decision must not have changed (*Wing Joo Loong* at [167], citing *Goh Nellie* at [34]).

(b) Second, the previous determination in question must have been fundamental and not merely collateral to the previous decision (*Wing Joo Loong* at [167], citing *Goh Nellie* at [35]). The court should adopt a "commonsensical perspective" in ascertaining whether the question was fundamental to the previous decision, "balancing between the important public interest in securing finality and in ensuring that the same issues are not repeatedly litigated on one hand, and on the other, the private interest in not foreclosing a litigant from arguing an issue which, in substance, was not the central issue decided by a previous court" (*Goh Nellie* at [37]).

(c) Third, the issue which is said to be the subject of an estoppel "should be shown in fact to have been raised and argued" (*Wing Joo Loong* at [167], citing *Goh Nellie* at [38]). The relevant principle is that where the issue has in fact been directly covered by the earlier decision, it will be caught by issue estoppel (*Goh Nellie* at [41]).

(C) The decisions of *Lim Chin San* and *Lim Teck Cheng*

44 Two Court of Appeal decisions, viz the decisions of *Lim Chin San* and *Lim Teck Cheng*, deal expressly with the proposition that the assessing court and/or the inquiry court in a bifurcated trial is bound, by the principle of issue estoppel, from re-visiting findings of the court. Each of these decisions will be analysed in turn.

45 In *Lim Chin San*, the Court of Appeal was concerned with a situation where the High Court had made a finding at the liability stage but subsequently departed from its decision at the assessment stage. In brief, in the initial liability decision of *Lim Chin San Contractors Pte Ltd v Shiok Kim Seng* [2011] 1 SLR 433 ("*Lim Chin San (Liability)*"), the High Court found that a proprietary estoppel arose on the facts and that an award of damages would be appropriate, leaving the quantum of the equitable compensation to be assessed by the assessing court. As neither party appealed against *Lim Chin San (Liability)*, it was no longer open to any party to challenge the High Court's finding that an equity had arisen in favour of one of the parties (*Lim Chin San* at [14]). At the assessment stage, the High Court departed from the reliance-based approach it had ordered in *Lim Chin San (Liability)*, instead opting to assess damages based on reliance losses (for the money spent by the respondent) and expectation losses (for the appellant's failure to sell certain premises to the respondent).

46 The Court of Appeal in *Lim Chin San* reiterated, at [22], the High Court decision of *Ho Yew Weng Alan James v Poh Eng Wah Mark t/a SG Vehicles Trading* [1997] SGHC 179, which states as follows:

... The registrar must *assess the damages in accordance with the terms of the judgment*. He *cannot disregard the judgment* and the assessment of damages is *not an occasion for him to set it aside or vary it in any way*. ... [emphasis added]

47 The Court of Appeal also cited, at [23], *Singapore Court Practice 2009* (Jeffrey Pinsler gen ed) (LexisNexis, 2009) at para 37/1-6/8:

Issues of liability are regarded as having been determined and *will not be revisited* at the hearing of the assessment of damages ... the registrar must *assess the damages in the context of the judgment*. He is *not at liberty to vary or modify the judgment in any way* [emphasis added]

48 The Court of Appeal found that, on the facts of the case, there was a "prior binding pronouncement on the approach that was to be taken in the assessment" (*Lim Chin San* at [33]). The Court of Appeal also found that the High Court had departed impermissibly from the terms of *Lim Chin San (Liability)*, which was "*res judicata* and the Judge was bound by it" (*Lim Chin San* at [30]). In this regard, although the Court of Appeal did not specify which of the three distinct *res judicata* principles applied, it appears that the Court of Appeal was relying on the issue estoppel principle.

49 It should be noted that *Lim Chin San* concerned a trial bifurcated into liability and assessment of damages tranches, rather than a taking of accounts scenario (as in the present case). Nonetheless, Mr Lai argued that reasoning by analogy, the principles enunciated in *Lim Chin San* were applicable to the present case. I note, however, that there is a potential distinction between *Lim Chin San* and the present case. In *Lim Chin San (Liability)*, the High Court had set out the precise *measure* of assessment of damages in clear terms. As such, the Court of Appeal in *Lim Chin San* was not dealing with the situation where another court had already made certain binding *findings of fact* in earlier proceedings, as is the scenario in the present case.

50 I turn next to *Lim Teck Cheng*, which is more directly relevant as it concerns the taking of accounts. In *Lim Teck Cheng*, the Court of Appeal was faced with the issue of whether the ultimate contract price for the sale of a ship had been determined by the High Court in Suit 2274/1993 ("Suit

2274"). In Suit 2274, the High Court found that a particular vessel was sold at \$13,120,000, stating that:

A comparison of the respective contracts between Wyno and Hong Lam, and Hong Lam and AES will show that Hong Lam had made a profit of over S\$3,000,000. *Lim maintained throughout his cross-examination that Hong Lam did not make such a huge profit. He testified that although the contract for WM103 specified the contract price of S\$13,120,000 Hong Lam only received about \$10,000,000. There was no record of the variation in price and at one point, Lim explained the reduction as having arisen from various changes to the construction of the vessel. I find his account to be totally unbelievable and can only conclude that Hong Lam received the contract price for WM102 and WM103 in full from AES.* All documents were in the possession of Hong Lam and it would have been within their means to produce a proper audit of their accounts concerning the contract payments. This was not done. On another instance, under cross-examination, Lim stated that the contract price with AES was inflated in order to deceive IFM. That might well be so, and it underlines the difficulty the court had in finding the truth in this witness. [emphasis added]

51 At the taking of accounts stage, the appellant sought to admit the evidence of an auditor to show that the final contract price for the sale of that vessel was less than \$13,120,000. On appeal against the High Court's decision on the taking of accounts, the Court of Appeal noted that the trial judge had "specifically made his findings" (*Lim Teck Cheng* at [16], referring to the extract reproduced at [50] above). The Court of Appeal emphasised that the applicable principle in a scenario where a particular binding finding of fact is challenged in subsequent proceedings is that of issue estoppel, citing the case of *Fidelitas* at 640 where Lord Denning MR held that:

... But within one cause of action, there may be several issues raised which are necessary for the determination of the whole case. *The rule then is that, once an issue has been raised and distinctly determined between the parties, then, as a general rule, neither party can be allowed to fight that issue all over again.* [emphasis added]

52 The Court of Appeal found that, on the facts, the evidence of the auditor could, with reasonable diligence, have been obtained for the main trial, and that there was no good reason for allowing the evidence to be admitted at the subsequent stage of the taking of accounts (*Lim Teck Cheng* at [24]). The Court of Appeal relied on issue estoppel and held that the appellant was estopped from re-opening the issue of the price at which the vessel was sold because the price had already been finally determined in Suit 2274 (*Lim Teck Cheng* at [18]).

Decision on the Preliminary Issue

53 Mr Yeo raised a general point that if the Judge's findings in *Ang Tin Gee* were "conclusive", there would be no need for the present taking of accounts (see [31(b)] above). This argument is flawed. There is clearly still a role of the inquiry court because the Judge's observations and findings did not foreclose the issue of the quantum of OCS's operating expenses *in the Relevant Period*. Indeed, read holistically, the Judge's intention appears to be that the inquiry court is to carry out the exercise summarised at [23] above, rather than to revisit all the facts found by the Judge.

54 As mentioned at [42] above, with regard to the principle of issue estoppel, the important question is the precise issues that have been determined by the liability court. I turn now to consider whether issue estoppel arises with regard to each of the three findings of the Judge listed at [30] above, viz:

- (a) First, the figures stated by the Judge in Schedules 1 and 2;
- (b) Second, the finding of the Judge that Japco had completely funded OCS's start-up costs and operating expenses; and
- (c) Third, the dismissal by the Judge of the counterclaim relating to OCS's alleged overpayment for purchases from Japco.

55 I am of the view that the Defendant is precluded from re-visiting the three areas just mentioned. The Judge's order at [150] of *Ang Tin Gee* must clearly be read together with the other paragraphs of the judgment which give it its context; when so read, it is clear that the Defendant was in effect impermissibly attempting to re-visit or appeal against the decision of the Judge at the stage of taking of accounts.

56 In this regard, I find that the principle of issue estoppel precludes the Defendant from revisiting the findings of the Judge. Both Requirements (A) and (D) are made out for each of the three areas. The issues in each of the three areas were clearly traversed in *Ang Tin Gee*, not just in the 10-day trial before the Judge, but also as evident from the face of the detailed written judgment rendered (see [30] above and the extracted paragraphs reproduced there). The parties had adduced evidence on those issues, and their respective counsel had submitted upon the same. It cannot be said that the Judge's decisions on those issues were merely "collateral" to the real issues, particularly because both experts in the taking of accounts had access to the same documents that had been placed before the Judge. Indeed, Mr Cheng agreed, in cross-examination, that there was "no new evidence", [\[note: 24\]](#) although he emphasised that he would have analysed the material differently from the Judge. This, I emphasise, is no justification for revisiting the Judge's decision at the taking of accounts stage.

57 I further elaborate on each of the three areas as follows:

- (a) First, with regard to the figures stated by the Judge in Schedules 1 and 2, the Judge had deliberately and carefully tabulated Schedules 1 and 2 to reflect her findings on the figures based on the evidence before her at the trial. The figures were calculated based on evidence put before the court by both parties. The Defendant was unable to show that the Judge had not intended to make any factual findings based on the figures; indeed, based on the carefully reasoned judgment in *Ang Tin Gee*, the contrary position – that the Judge had intended to make binding findings of fact – appears more plausible.
- (b) Second, with regard to the finding of the Judge that Japco had completely funded OCS's start-up costs and OCS's operating expenses, the Judge had also, on no less than seven clear instances (see [30(b)] above), expressly stated that Japco had paid for *all* of OCS's operating expenses; indeed, the Judge found at [71] of *Ang Tin Gee* that the Defendant *conceded* the same. On this point, I note that Mr Cheng raised a query as to what the Defendant might have meant when he conceded that Japco had entirely "funded" OCS. The following exchange in the cross-examination of Mr Cheng illustrates this point:

Court: I have looked through Justice Belinda Ang's judgment as well. There are some points which I think Mr Lai will bring you to because he has been emphasising that to Mr Pang. ... That says for example Japco completely funded ... OCS.

A: Yes, Your Honour.

Court: Would your conclusions mean that Justice Ang's statements are incorrect?

Cheng: Based on my conclusion, er, the---it depends on what Mr Pang mentioned by "funded."

Court: Okay.

A: May I explain, Your Honour?

Court: Okay.

A: Because during the 2002 to 2005 period, a lot of the expenses are still incurred under Japco.

Court: Okay.

A: And also Japco definitely make all the purchases. The---the---in other words, OCS uses the facilities that are signed under the agreement with Japco with the third parties or the suppliers.

Court: Okay.

A: So in that context, Japco is the party that incurred all the cost and expenses.

Court: Okay.

A: That itself would probab---would probably be what Mr Pang mentioned as OCS is funded by Japco. The question is whether has Japco been paid for all the expenses that it has incurred on behalf of OCS, the seco---the question is also whether OCS has enough money to pay Japco---

Court: Okay.

A: ---for all these expenses that incurred on behalf.

Court: Okay.

A: So that is what I set out to do to confirm whether that in itself had happened or not. That's the reason why I said that I could not go 100% with Justice Belinda Ang's, er, er, numbers.

(a) Of course, it is not for Mr Cheng to explain what the Defendant may have meant in making the mentioned concession, *a fortiori* when the Judge had already made a finding on what she interpreted the Defendant to be saying. There is therefore no reason for me to depart from the clear findings of the Judge regarding Japco's financing of *all* of OCS's operating expenses.

(c) Third, the Judge had in unequivocal terms dismissed the counterclaim relating to OCS's alleged overpayment for purchases from Japco, (see [30(c)] above). Having chosen not to appeal against that decision, the Defendant cannot now attempt to prove, at the taking of accounts, that there was in fact overpayment made by OCS to Japco. The approach taken by Mr Cheng on assessing *notional* repayments, based on the assumption that any payments *in excess* of OCS's payment for purchases would automatically be considered as repayment for OCS's operating expenses, goes against the Judge's finding at trial that that there was "no evidence at all that [the Defendant] or OCS had made overpayments for goods bought from Japco", and that the Defendant's explanation as to how he had arrived at the figures was "incomprehensible, even to this own counsel" (*Ang Tin Gee* at [133]). Indeed, based precisely on this finding, the Judge

dismissed the counterclaim on overpayments for goods bought from Japco. It would clearly be a contradiction of the Judge's decision if this court should find, on the very same evidence, that OCS had overpaid Japco. Having not appealed against the dismissal of the counterclaim on overpayment, which the Defendant clearly could have done if he was dissatisfied with the said dismissal, he cannot now be heard to petition the inquiry court to effectively overrule the Judge's decision on the counterclaim.

58 For completeness, I wish to address Mr Yeo's comment that he could not have appealed against the Judge's decision because the Defendant accepted the decision in *Ang Tin Gee* (*viz*, that accounts had to be taken). Although Mr Yeo neither pushed this point any further nor cited any authority for his submission, he may be alluding to the principle that appeals are against orders, not reasoned judgments. In *Lee Kuan Yew v Tang Liang Hong & Anor* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*"), the Court of Appeal noted (at [24]-[25]):

24 The argument was flawed because it is a well-established principle that an appeal lies against the order (that is, the outcome) made by the judge, and not the reasons he gives for his decision: see *Lake v Lake* [1955] P 336. Therefore, if the outcome is accepted by the parties but not the reasons, there can be no appeal against the order. This is so even if the reasons in support of that outcome are absurd. So, if a judge had allowed the deletion because he did not like the colour of Tang's hair, Tang could not appeal against the substantive order to delete if he did not dispute the outcome, however ridiculous the reasons might be.

25 This distinction between the outcome and the reasons given for the outcome was crucial. Since there could be no appeal against the reasons when the outcome was not contested, this meant that the reasons given by the judge need not necessarily be accepted and therefore binding and no longer open to challenge. It followed that, if the reasons later had an impact on the costs order, then the way was still open to argue against these reasons to oppose the order of costs. We could not see how else a costs order could ever be challenged if it were otherwise. Accordingly, this court could not be bound as contended by Mr Davinder Singh, and it must be free to examine whether there was an abuse of process.

[emphasis added]

59 The *Lee Kuan Yew* case was cited in *Singapore Civil Procedure 2013* vol 1 (G P Selvam gen ed) (Sweet & Maxwell Asia, 2013) ("*Singapore Civil Procedure*") at para 57/1/7:

Appeals are against orders, not reasoned judgments – Appeal lies against the order made by the judge, not against the reasons he gave for his decision (*Lake v. Lake* [1955] [1955] P.336; [1955] 2 All E.R. 538, CA; *Lee Kuan Yew v Tang Liang Hong & Anor* [1997] 2 SLR(R) 862, CA). Thus a party who has succeeded in obtaining, or, as the case may be, resisting, all relief sought cannot appeal even though he disagrees with the reasons which the judge has given for deciding all points in his favour. On the other hand, if a party has succeeded in obtaining, or resisting, only part of the relief sought, he can, of course, appeal against the order to the extent that he was unsuccessful.

60 However, I did not think that the *Lee Kuan Yew* decision and the extract from *Singapore Civil Procedure* further Mr Yeo's case, for the following three reasons:

(a) First, it is clear from the last sentence of the extract from *Singapore Civil Procedure* that Mr Yeo could have appealed against the Judge's dismissal of the counterclaim on overpayment. Indeed, the issue of overpayment turned out to be key in the Operating Expenses Issue,

particularly because the heart of the Mr Cheng's approach involves reliance on the purported overpayment as a surrogate for determining OCS's purported reimbursement to Japco for Japco's payment of OCS's operating expenses.

(b) Second, the cited propositions relate to an appeal against the *reasons* for a decision, not *findings of fact*. Mr Yeo did not cite any authority for the position that a party is precluded from appealing against a finding of fact that may have an impact on the assessment or taking of accounts stage of a bifurcated trial.

(c) Third, and in any event, *even if* Mr Yeo had been precluded from appealing on the three findings at [30] above, this would not in and of itself prevent an issue estoppel from arising. The fact is that the Judge's decision on those three findings remains a final and conclusive judgment on the merits of those issues. Mr Yeo did not cite any authority for the proposition that issue estoppel only arises if a party has enjoyed a right of appeal from a particular decision. An argument that issue estoppel does not arise simply because the Defendant has not had an opportunity to appeal against certain findings of fact in *Ang Tin Gee* is, with respect, conceptually incorrect and arguably a *non sequitur* one. Indeed, taken to its logical conclusion, such an argument would mean that issue estoppel can never arise in a situation where a court's first instance decision is a final decision from which no appeal is possible (*eg* matters stated in the Fourth Schedule to the Supreme Court of Judicature (Cap 322, 2007 Rev Ed), or indeed, any interlocutory application taken out at first instance in the Court of Appeal). This cannot be so.

61 Mr Cheng's recognition that his version of the accounts was based on his professional opinion rather than on the findings of the Judge, [\[note: 25\]](#) as well as Mr Yeo's submission that the Judge's "conclusion is wrong... [b]ecause she relied on inaccurate figures", are instances of a party attempting, impermissibly, to depart from a liability judgment that it had chosen not to appeal against. In view of the points canvassed in the preceding paragraphs, this is the wrong forum for the Defendant to mount an attack on the Judge's findings. In this regard, I note that the present case is very similar to the case of *Lim Teck Cheng*, where the Court of Appeal held that a finding of fact made by the High Court at the liability stage was binding at the subsequent taking of accounts. Mr Yeo did not cite any reason as to why the case of *Lim Teck Cheng* should not be followed here, save for an argument that the Judge did not make any reference to figures or calculations in [150] of *Ang Tin Gee*. In my view, it is incorrect to characterise the Judge's decision as, or limit the Judge's decision to, a "four paragraph judgment". I accordingly find that the Defendant is precluded from re-visiting the three areas mentioned in [30] above.

Decision on the Operating Expenses Issue

62 Having found, on the Preliminary Issue, that the Defendant is precluded from re-visiting the three findings mentioned in [30] above, I turn to determine the Operating Expenses Issue.

63 In my view, the approach taken by Ms Chan coheres better with the decision in *Ang Tin Gee*. As mentioned above, Ms Chan relied on the Financial Statements submitted to IRAS. In Ms Chan's First Report, she derived a figure of \$393,050.96 for OCS's operating expenses (see [16] above). This was a reasonable method to utilise in view of the limitation of information noted above. As mentioned at [25] above, Ms Chan subsequently modified her position in her Second Report, where she suggested that it may not be correct to attribute *all* payments for OCS's operating expenses to Japco. She therefore deducted certain sums for salaries that OCS had paid as well as for rental of the premises, and derived the figure of \$306,369.28.

64 It may well be that Ms Chan's revised figure would more accurately represent the amount that

Japco paid for OCS's operating expenses. Be that as it may, as I have already noted above, the taking of accounts is not the proper forum for revisiting the Judge's findings of fact. Given the clear findings of the Judge in *Ang Tin Gee*, I am constrained to agree with Mr Lai and find that Japco had paid for *all* of OCS's operating expenses in the amount of \$393,050.96. In this regard, it is useful to note that the Judge had arrived at the figure of \$394,012.74 for OCS's operating expenses for the period September 2000 to 7 April 2006. Mr Lai's submission that OCS's operating expenses for the Relevant Period amounted to \$393,050.96 seemed patently plausible in light of the Judge's decision.

65 I pause to note that *even if* I were to consider the Defendant's approach in revisiting findings of fact *vis-à-vis* the Operating Expenses Issue, the Defendant failed to prove that there was any reimbursement or repayment to Japco from OCS. It will be recalled that Mr Cheng took the approach of assessing *notional* repayments, based on the assumption that any payments *in excess* of OCS's payment for purchases would automatically be considered as repayment for OCS's operating expenses. While this may ordinarily be a plausible approach to adopt, in the specific factual matrix of the present case, this approach is fundamentally unsound. It is based on the *assumption* that *any* excess in OCS's payment for purchases necessarily goes towards repayment or reimbursement for OCS's expenses. There is no cited basis for this assumption beyond Mr Cheng's mere assertion. Indeed, the Judge had already considered and dismissed such an approach (see [101] of *Ang Tin Gee*). Furthermore, while Mr Cheng emphasised that he had vouched the 2005 and 2006 payments to actual bank documents, this is insufficient to prove the extent of payment that OCS had made to Japco during the Relevant Period, let alone the extent of *overpayment*. The Defendant's failure to produce the 2002-2004 bank statements means that he failed to satisfy his burden of proving the payments (or re-payments) claimed. Therefore, *even on Mr Cheng's own approach* (of reckoning excess payments as notional repayments for operating expenses), the Defendant has *failed to prove* that there were indeed such excess payments, and accordingly failed to prove any payment or repayment for OCS's operating expenses.

66 I therefore find that the amount paid by Japco for OCS's operating expenses for the Relevant Period that was not repaid or reimbursed by OCS is the amount of \$393,050.96.

67 On a related note, Mr Lai attempted to go one step further than merely claiming for OCS's operating expenses. He pointed out that OCS had recognised the capital contribution of \$20,000 in its balance sheet since 2002. On the basis of the Judge's findings that Japco had completely funded OCS's start-up costs, Mr Lai argued that the Defendant must account for \$20,000 to Japco. [\[note: 26\]](#) I did not agree with Mr Lai's claim, for two reasons:

(a) First, it went beyond the ambit of the Judge's order, which sought an accounting of monies paid for OCS's *operating expenses*, rather than start-up costs.

(b) Second, Ms Chan's own evidence is that the accepted accounting practice is that if there is a loss then there is no issue of the capital being repaid to the partners. [\[note: 27\]](#) On Ms Chan's own figures, OCS was in a negative net asset position. As such, it would follow that Japco and/or the Plaintiff cannot now claim for the capital, if any, that was provided at the commencement of OCS's operations.

The Profits Issue

68 The Judge ordered the Defendant to render an account of OCS's gross and net profits for the Relevant Period (*Ang Tin Gee* at [150(1)(d),(e)]), and that the Defendant pay to Japco all net profits of OCS (*Ang Tin Gee* at [150(1)(f)]).

69 The Judge had found that OCS's profits were "in reality, the gross profits which [the Defendant] took for himself" (*Ang Tin Gee* at [103]). The Judge also found that the sum of \$398,324.09 was the total amount of unaccounted gross profits, up until 7 April 2006 (*Ang Tin Gee* at [103]; see also Schedule 2). The Judge further ordered that "[p]recisely what the profits after 7 April 2006 are should be the subject of further account by the defendant trading as OCS until end of 31 December 2006" (*Ang Tin Gee* at [110]). It follows that the role of the inquiry court is to determine the total amount of OCS's gross profits based on the figure of \$398,324.09 less the amount of profits from September 2000 to 25 March 2002 plus the amount of profits from 8 April 2006 to 31 December 2006 (see also [23] above).

70 Both experts used the same method for calculating OCS's gross profits, *ie* total sales amount *less* the cost of goods sold. Based on the financial statements submitted to IRAS for FY 2002 to FY 2006 (see [17(a)] above), Mr Cheng calculated the gross profits of OCS for the Relevant Period to be about \$476,205.00. [\[note: 28\]](#) I accepted this figure as I saw no reason to disagree with his calculation. In this regard, it should be noted that Ms Chan arrived at the figure of \$480,644.86, [\[note: 29\]](#) which presents only a very minor deviation from Mr Cheng's figure.

71 With regard to OCS's net profits, both experts again used the same method, *ie* gross profits *less* operating expenses. Relying on her figures for gross profits (\$480,644.86) and OCS's operating expenses (\$393,036.87), Ms Chan derived the net profit figure of \$87,607.99. [\[note: 30\]](#) Mr Cheng relied on his figures for gross profit (\$476,205.00) and OCS's operating expenses (\$449,289.00), and derived the net profit figure of \$26,916.00. I agreed with the methodology adopted by the experts. Based on the figures I have found above (*viz* OCS's gross profits of \$476,205.00 and operating expenses of \$393,050.96), I find that OCS's net profits amount to \$83,154.04.

72 Accordingly, pursuant to the order given in [150(1)(f)] of *Ang Tin Gee*, the Defendant is to pay Japco the net profits of OCS amounting to \$83,154.04.

The Final Accounting Issue

73 The Judge ordered that to give effect to the dissolution of the partnership, there be a *final accounting* between the Plaintiff and the Defendant as partners of Japco on the assets and liabilities of the partnership including what is due between the partners, and in doing so to take into account the Plaintiff's capital contribution (*Ang Tin Gee* at [150(1)(g)]).

Methodology for the Final Accounting Issue

74 Broadly speaking, both experts appeared to take the same approach of adopting, as the starting point, Japco's financial position on 31 December 2006. Both experts also held the view that [150(2)] of *Ang Tin Gee* was not within the ambit of the taking of accounts, a view which I agreed with. However, they derived very different conclusions from their respective final accounting exercises.

75 For the final accounting, Mr Yeo, building on Mr Cheng's Report, submitted that the Plaintiff had to account to the Defendant for the amount of \$60,154, as shown in the following table:

Description	Japco		
	ATG	PTG	Total

	S\$	S\$	S\$
Bank O/D balance as at 31 Dec 2006	(137,452)	(137,452)	(274,904)
Partner's withdrawals	(77,298)	77,298	-
Total	(214,750)	(60,154)	(274,904)

[footnotes omitted]

76 There did not seem to be any basis to utilise this method for determining the final accounts. Mr Yeo started from the position that Japco's liability owing to the UOB overdraft balance as at 31 December 2006 of \$274,903.49 (reflected in the rounded figure of \$274,904 in the above table) was the eventual negative net asset financial position of Japco. He explained that given that Ms Chan's figure for negative net assets of Japco (\$236,434.08) was close to the overdraft balance, it would be fair to simply "zero-rize" everything because there were presently no more monies in Japco.

77 I did not agree with Mr Yeo's approach. His approach appeared to disregard the fact that payments had been made to Japco in UOB Account No 1, amounting to \$34,381.95. The approach also ignored the fact that Japco had cash in bank of \$4,087.46. Furthermore, there was absolutely no evidence that the Plaintiff had taken \$77,298.00 by way of partners' drawings. To this, should be added my earlier finding that the Defendant had to account to Japco for OCS's operating expenses in the amount of \$393,050.96 – the inclusion of this component alone would significantly alter the outcome of the final accounting exercise.

78 I preferred Ms Chan's approach to tabulating Japco's eventual final position. Ms Chan formulated a revised balance sheet of Japco as at 31 December 2006 in Appendix T of her Second Report. The balance sheet provided as follows:

Japco's balance sheet as at 31 December 2006

	Notes	As at 31/12/2006 S\$
Current assets		
Debtors	1	34,381.95
Stock		-
Cash in bank	2	4,087.46
		38,469.41
Current liabilities		
GST Payable		-
Creditors		-
Bank overdraft	3	274,903.49

		274,903.49	
Net current assets		(236,434.08)	
Net assets		(236,434.08)	
Financed by:			
Capital from Ang Tin Gee	4	124,041.88	
Retained earnings	5	(335,690.88)	*
Total equity		(211,649.00)	
Variance between "Net Assets" and "Equity"		(24,785.08)	*

[notes omitted]

79 Relying on Ms Chan's balance sheet, Mr Lai pointed out that there were unaccounted differences in the balance sheet in the sum of \$24,785.08 (being the variance between "Net Assets" and "Equity"). [\[note: 31\]](#) However, he could not provide any explanation for the variance, and all that he could say was that the fact that there was a variance meant that the Defendant had to account for it. In this regard, I note that both experts are agreed that the difference could have materialised for many possible reasons. For example, Ms Chan noted that stock in Japco could have been sold without invoicing, stock in Japco could have been misappropriated or unaccounted for due to the lack of proper segregation of duties for the operations of Japco and OCS, the absence of serialised invoicing and proper payment systems between Japco and OCS which resulted in the inability to determine if Japco's invoices were complete or if full payment had been made by OCS, etc. [\[note: 32\]](#) Given the poor state of the accounts, as well as the multitude of possible reasons for the variance, I did not see any basis to order the Defendant to bear the said variance.

80 At the hearing before me on 23 October 2013, Mr Yeo pointed out that as a separate order regarding the bank overdraft of \$274,903.49 had been made pursuant to [150(2)] of *Ang Tin Gee*, the overdraft should not be considered for the purposes of the final accounting as there would be "double counting". Mr Yeo added, separately and for the avoidance of doubt, that the Defendant was willing to paying his half-share of the bank overdraft with interest pursuant to [150(2)] of *Ang Tin Gee*.

81 Mr Lai initially disagreed with this approach, pointing out that both Mr Cheng and Ms Chan had agreed that the prayer under [150(2)] of *Ang Tin Gee* was separate from the accounting exercise. However, he subsequently reconsidered his position and noted that if the Defendant had already been ordered to repay his share of the overdraft pursuant to [150(2)] of *Ang Tin Gee*, he would have no objections to the overdraft figure being removed from the balance sheet so as to avoid double counting in the accounting exercise under [150(1)] of *Ang Tin Gee*.

82 I agreed with Mr Yeo's analysis on the possible risk of "double counting". If the bank overdraft was to be included when deriving Japco's final financial position for the purposes of the final accounting exercise, there would be "double counting" because (a) the Plaintiff's own evidence is that she had already paid up her half-share of the bank overdraft as at 31 January 2012; and (b) the Defendant had already been ordered to pay up his half-share, including interest, pursuant to [150(2)]

of *Ang Tin Gee*. It would not be logical to take into account the bank overdraft one more time when apportioning Japco's assets between the parties, *inter alia* because this has already been accounted for in [150(2)] of *Ang Tin Gee*.

83 Despite this, it should be emphasised that I am not re-writing Japco's balance sheet for the purposes of the final accounting exercise. I am merely making the practical point that if the overdraft liability has already been considered under [150(2)] of *Ang Tin Gee*, it ought not be accounted for again under [150(1)]. This does not change the fact that Japco was a loss-making enterprise.

84 I turn now to deal with several heads of claim put forward by Mr Lai for the purposes of the final accounting exercise, before providing a final figure that must be accounted for by the Defendant to the Plaintiff.

Other heads of claim in the Final Accounting Issue

85 There were several heads of claim that Mr Lai submitted had to be factored in for the final accounting between the Plaintiff and the Defendant. I will address each of these heads in turn and provide brief reasons for my decision on each head.

Unaccounted difference between "sales of Japco" and "purchases of OCS"

86 Mr Lai submitted that the difference between "sales of Japco" and "purchases of OCS" should be considered in the final accounting. According to Ms Chan's First Report, the said difference was \$217,511.87, but the amount was reduced to \$109,093.32 in Ms Chan's Second Report, after Ms Chan took into consideration third party sales for FY 2004, FY 2005 and from 1 January 2006 to 7 April 2006. [\[note: 33\]](#)

87 Mr Yeo submitted that it was not within the scope of the Judge's order for the Defendant to account for the unaccounted difference between the sales of Japco and purchases of OCS. [\[note: 34\]](#)

88 While on the figures stated by Ms Chan there is indeed a discrepancy between the "sales of Japco" and "purchases of OCS", there are many possible reasons for this discrepancy. The discrepancy could have arisen from third party sales that have not been identified yet (as was the case in Ms Chan's First Report). It could also have arisen because Japco's bank statements for FY 2002 to FY 2003 did not appear to have been considered and more third party sales may have been made. Furthermore, Ms Chan noted that there were cheque deposits in Japco's bank account where the sources of funds were not determinable due to the lack of supporting documents, which amounted to \$24,852.34 from FY 2004 to FY 2006. [\[note: 35\]](#) There is also the possibility of Japco sales not being recorded correctly, especially given the poor state of the accounts and the haphazard way in which the businesses were run. In my view, it would be speculative for me to decide that any discrepancy *must* be attributed to the Defendant. As such, I do not make any order regarding the unaccounted difference between "sales of Japco" and "purchases of OCS".

Unaccounted stock

89 The Plaintiff claimed that there was \$168,450.32 of unaccounted stock in Japco. [\[note: 36\]](#) This is because there was a figure of negative \$168,450.32 in stock, in 2006. [\[note: 37\]](#) According to the Plaintiff, much of the unaccounted stock came from the significant amount of \$201,000.93 closing stock in 2005 which was not brought forward as opening stock in 2006. [\[note: 38\]](#) Mr Lai pointed out that the only explanation given by the Defendant was that there was an error in recording which had

perpetuated since the year 2000. Mr Lai queried as to why the Defendant had not disclosed such errors in the financial statements when the statements were submitted to IRAS. [\[note: 39\]](#) Mr Lai went on to argue that the discrepancy in the stock figures, and in particular, the “variance in opening stock” of \$201,000.93 from 2005 to 2006 meant that the Defendant had misappropriated the stock. [\[note: 40\]](#) The Plaintiff claimed only for an account of \$168,450.32 of unaccounted stock (*ie* the gross loss in 2006), [\[note: 41\]](#) because Ms Chan was of the view that the discrepancy of \$168,450.32 remained unaccounted for, and could have been sold without invoicing by Japco or otherwise misappropriated. [\[note: 42\]](#)

90 Mr Lai further suggested that taking the gross profit margin of Japco into account (Ms Chan derived the figure of about 6.8%, while Mr Cheng derived the figure of about 6.7%), the amount of \$11,454.62 (being 6.8% x \$168,450.32) would be the profit attributable to Japco on the unaccounted stock of \$168,450.32. [\[note: 43\]](#)

91 Mr Yeo argued that, on the Defendant’s evidence, Japco never kept such large amounts of stocks because Japco was a trading business and not a stockist, and that the error had perpetuated since the year 2000. [\[note: 44\]](#) On the further claim of profit on the unaccounted stock, Mr Yeo argued that this was not within the ambit of Judge’s orders. [\[note: 45\]](#)

92 It is not appropriate for me to decide on whether the \$210,000.93 (or \$168,450.32) worth of stock was indeed misappropriated by the Defendant. The Judge’s order seeks a *final accounting* on the assets and liabilities of the partnership, which, in my view, means that the inquiry court is to take a snapshot of Japco’s financial position and to apportion the assets and liabilities between the Plaintiff and the Defendant with a view to dissolution of the partnership. The Judge did not order an accounting for each and every variance during the term of the partnership. The Plaintiff may well feel aggrieved that some stock may have gone missing (on which I make no finding). However, in the final accounting exercise, the inquiry court is interested only to give effect to the dissolution of the partnership. I therefore do not consider whether the “missing stock” was indeed misappropriated by the Defendant, and make no order on whether the Defendant has to repay the value of the stock.

93 For completeness, as I have rejected the claim on unaccounted stock, I necessarily also reject the claim for profit on the unaccounted stock. I should add that the claim for profit on the unaccounted stock was a wholly speculative one.

Plaintiff’s capital contribution

94 Mr Lai pointed out that the Judge had held, at [68] of *Ang Tin Gee*, that the Plaintiff’s capital contribution of \$124,041.88 and the Defendant’s nil contribution to the capital of the partnership would be taken into this consideration. [\[note: 46\]](#) As such, he submitted that the Defendant must repay the Plaintiff the amount of the Plaintiff’s capital contribution of \$124,041.88 less the Plaintiff’s 50% share of Japco’s net loss (if any).

95 While it is true that the Judge ordered that the Plaintiff’s capital contribution to Japco be taken into account, Ms Chan’s own evidence is that the accepted accounting practice is that if there is a loss then there is no issue of the capital being repaid to the partners (see [67(b)] above). [\[note: 47\]](#) Mr Lai acknowledged that his expert has taken such a position, but still proceeded to question the Defendant on whether the Defendant ought to repay the \$124,041.88 capital contribution. Mr Lai was, unsurprisingly, unsuccessful in extracting an answer from the Defendant – it was, after all, really a question of law and accounting. While Mr Lai tried to explain that he was proceeding “... in equity,

of grounds of fairness, I'm just asking the witness whether in common sense way, whether he should put in the [\$124,041.88] so that the holding can be spread out.", [\[note: 48\]](#) he did not provide any accounting or legal basis for proceeding on this line of argument.

96 Mr Lai emphasised that the Judge had ordered that the Plaintiff's capital contribution to Japco be taken into account. However, it should be noted that the Judge had explained (at [67] of *Ang Tin Gee*):

67 ... Therefore, the fact that the defendant never made any capital contributions as per the premise of the Partnership Agreement, does not detract from the partnership being an equal one. However, it *does* affect the division of capital between the partners on a *final settlement of accounts*. *Lindley's* commentary on s 24(1) is apposite and I gratefully adopt it (at para 17-07):

If it be proved that the partners contributed the capital of the partnership in unequal shares it is presumed that, in the absence of an agreement to the contrary, *on a final settlement of accounts*, the capital of the business remaining after the payment of outside debts and liabilities, and of what is due to each partner for advances, will, subject to all proper deductions, be divided amongst the partners in the proportions in which they contributed it and not equally. [emphasis added]

97 It is clear from the extract cited by the Judge that the division of capital between the partners in the proportion which they contributed would only take place if there is "capital of the business remaining after the payment of outside debts and liabilities, and of what is due to each partner for advances". As it is undisputed that Japco had an overall negative net asset position, it would not be possible to take the Plaintiff's capital contribution into account. I therefore reject the claim for the Defendant to account for the Plaintiff's capital contribution to Japco of \$124,041.88.

Summary of the final accounting exercise

98 I summarise the final accounting exercise in the following table, which builds on the table proposed by Ms Chan in both of her reports. It should be noted that parties had agreed on including the figures regarding shortfall of payment for stock from OCS at \$139.95, [\[note: 49\]](#) as well as the Plaintiff's remaining share of contribution to UOB Account 2 of \$731.72.

Description	Amount (\$)	Claim (\$)
Computation 1 – Claims Relating to OCS		
OCS's operating expenses during the Relevant Period	393,050.96	393,050.96
OCS's net profits during the Relevant Period	83,154.04	83,154.04
Total		476,205
Computation 2 – Claims Relating to Japco		
Claims from OCS		476,205
		(from Computation 1)
Shortfall of payment for stock		139.95

Total	476,344.95
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Final Accounting – Claims due from Defendant to Plaintiff

Total claims relating to Japco (Plaintiff has 50% claim)	476,344.95 (from Computation 2)	238,172.48
Share of Japco's net assets (Plaintiff has 50% claim)	38,469.41	19,234.71
** After removing the overdraft of \$274,903.49 from consideration as the overdraft has already been dealt with in [150(2)] of <i>Ang Tin Gee</i>		
Less Plaintiff's remaining share of contribution to UOB Account 2		(731.72)
Total		256,675.47

99 I therefore order, pursuant to [150(1)(g)] of *Ang Tin Gee*, that the Defendant is to pay the Plaintiff the sum of \$256,675.47 with interest.

100 On the issue of the payable interest on the sum of \$256,675.47, at the hearing on 23 October 2013, parties agreed on the rate of 5.33% per annum from the date of the writ (*ie* 25 March 2008) to the date of full payment.

101 On the issue of costs, Mr Yeo and Mr Lai agreed that it would be better for them to address the court on costs at a further hearing given the lengthy procedural history of this accounting exercise. I therefore reserved the issue of costs to a later date.

[\[note: 1\]](#) Ms Chan's First Report at p 6 para 3.3 (Plaintiff's Bundle of Affidavits 8 Jan 2013 at p 40)

[\[note: 2\]](#) Mr Cheng's Report at p 16 para 4.4(a) (Mr Cheng's Affidavit dated 1 Oct 2012 at p 16)

[\[note: 3\]](#) Mr Cheng's Report at p 16 para 4.4(b) (Mr Cheng's Affidavit dated 1 Oct 2012 at p 16)

[\[note: 4\]](#) Defendant's Closing Submissions, para 63

[\[note: 5\]](#) Notes of Evidence, Day 3 p 135 lines 22 to 25, Notes of Evidence, Day 3 p 136 lines 6 to 13

[\[note: 6\]](#) Notes of Evidence, Day 3 p 133 lines 19 to 29

[\[note: 7\]](#) Ms Chan's First Report at p 13 para 4.2.2 (Plaintiff's Bundle of Affidavits 8 Jan 2013 at p 47)

[\[note: 8\]](#) Ms Chan's Second Report at p 3 para 2.2 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 7)

[\[note: 9\]](#) Ms Chan's Second Report at p 3 table 9 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 7)

[\[note: 10\]](#) Mr Cheng's Report at p 23 para 5.18 (Mr Cheng's Affidavit dated 1 Oct 2012 at p 28)

[\[note: 11\]](#) Mr Cheng's Report at p 23 para 5.18 (Mr Cheng's Affidavit dated 1 Oct 2012 at p 28)

[\[note: 12\]](#) Mr Cheng's Report at p 24 para 5.20 (Mr Cheng's Affidavit dated 1 Oct 2012 at p 29)

[\[note: 13\]](#) Defendant's Closing Submissions at para 56

[\[note: 14\]](#) Defendant's Closing Submissions at para 57

[\[note: 15\]](#) Defendant's Closing Submissions at para 59

[\[note: 16\]](#) Defendant's Closing Submissions at para 58

[\[note: 17\]](#) Defendant's Closing Submissions at para 60

[\[note: 18\]](#) Plaintiff's Closing Submissions at para 3

[\[note: 19\]](#) Plaintiff's Closing Submissions at para 1

[\[note: 20\]](#) Plaintiff's Closing Submissions at para 13

[\[note: 21\]](#) Plaintiff's Reply Submissions at para 11

[\[note: 22\]](#) Plaintiff's Reply Submissions at para 13

[\[note: 23\]](#) Plaintiff's Reply Submissions at para 51

[\[note: 24\]](#) Notes of Evidence, Day 3 p 103 line 25 to p 104 line 9; and Notes of Evidence, Day 3 p 136 lines 6 to 9

[\[note: 25\]](#) Plaintiff's Closing Submissions at para 3

[\[note: 26\]](#) Plaintiff's Closing Submissions at para 95

[\[note: 27\]](#) Defendant's Reply Submissions at para 22

[\[note: 28\]](#) Mr Cheng's Report at p 17 table 4 (Mr Cheng's Affidavit dated 1 Oct 2012 at p 22)

[\[note: 29\]](#) Ms Chan's Second Report at p 9 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 13)

[\[note: 30\]](#) Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 24

[\[note: 31\]](#) Plaintiff's Closing Submissions at para 100

[\[note: 32\]](#) Ms Chan's Second Report at p 13 para 4.4.3 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 17)

[\[note: 33\]](#) Ms Chan's Second Report at p 4 Table 10 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 8)

[\[note: 34\]](#) Defendant's Closing Submissions at para 47

[\[note: 35\]](#) Ms Chan's Second Report at p 4 para 2.7 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 8)

[\[note: 36\]](#) Ms Chan's Second Report at p 7 para 3.8 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 11)

[\[note: 37\]](#) Plaintiff's Closing Submissions at para 101

[\[note: 38\]](#) Plaintiff's Closing Submissions at para 100

[\[note: 39\]](#) Plaintiff's Closing Submissions at para 102

[\[note: 40\]](#) Plaintiff's Closing Submissions at para 102

[\[note: 41\]](#) Plaintiff's Closing Submissions at para 102

[\[note: 42\]](#) Ms Chan's Second Report at p 7 para 3.8 (Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 11)

[\[note: 43\]](#) Plaintiff's Closing Submissions at para 104

[\[note: 44\]](#) Defendant's Closing Submissions at para 50(c)

[\[note: 45\]](#) Defendant's Reply Submissions at para 25

[\[note: 46\]](#) Plaintiff's Closing Submissions at para 106

[\[note: 47\]](#) Defendant's Reply Submissions at para 22. Notes of Evidence, Day 1 p 37 lines 18 to 20

[\[note: 48\]](#) Notes of Evidence, Day 2 p 138 lines 30 to 32

[\[note: 49\]](#) Ms Chan's Supplementary Affidavit dated 18 Feb 2013 at p 102