

Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) v Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others
[2014] SGHC 119

Case Number : Suit No 1 of 2012/N
Decision Date : 26 June 2014
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Edwin Lee Peng Khoon, Fu Xianglin Lesley and Jin Shan (Eldan Law LLP) for the plaintiff; Moey Chin Woon Michael (Moey & Yuen) for the first and second defendants; Wee Chow Sing Patrick (Patrick Wee & Partners) for the third defendant; Prem Gurbani (Gurbani & Co) for the fourth defendant
Parties : Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) — Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others

Partnership – Partners Inter Se – Admission of New Partner – Shares in Partnership

26 June 2014

Tay Yong Kwang J :

Brief Summary of Facts

1 This case concerns the distribution of sale proceeds from the sale of the property located at No 145 Killiney Road, Singapore (“the Property”). The Property was registered in the name of Chiam Toh Say. Chiam Toh Say was one of the original partners of Mitre Hotel Proprietors (“MHP”). MHP was constituted in 1951 to take over the running of a hotel business located at the Property. Chiam Toh Say held 1/10 undivided share of the Property on trust for MHP and “the partners for the time being thereof”. [\[note: 1\]](#) The Property was sold pursuant to an Order of Court made in Originating Summons No 830 of 2006/W (“OS 830 of 2006/W”). [\[note: 2\]](#) MHP’s share of the sale proceeds (“the Sale Proceeds”) amounting to \$11,500,000 was paid into Court.

2 Chiam Heng Hsien (“the Plaintiff”) is a partner of MHP. He was admitted as a partner of MHP on 19 November 1974. [\[note: 3\]](#) The Defendants are the personal representatives of the estates of 3 of the original partners of MHP. Chiam Heng Chow and Chiam Heng Tin (“the 1st and 2nd Defendants”) are the executors of the estate of Chiam Toh Say. Chiam Mui Ken (“the 3rd Defendant”) is the executrix of the estate of Chiam Toh Tong. Chiam Heng Suan (“the 4th Defendant”) is the executor of the estate of Chiam Toh Kai.

3 As the executors of the estate of Chiam Toh Say, the 1st and 2nd Defendants continue to be responsible as trustees over the Sale Proceeds. They took out an application in Originating Summons No 1123 of 2010/L (“OS 1123 of 2010/L”) to pay the Sales Proceeds to the Plaintiff and all the Defendants in various proportions. The Plaintiff claimed the entire Sale Proceeds in OS 1123 of 2010/L. The High Court ordered that OS 1123 of 2010/L be adjourned *sine die* in the light of the present suit that was then pending.

4 In the present suit, the Plaintiff claims the entire Sale Proceeds and all interest accruing thereon save for a nominal sum for the 3rd Defendant to be determined by him. The Defendants maintain that the personal representatives of the original partners are entitled to the Sale Proceeds in proportion to their original shares in MHP.

Background Facts

5 The original partners of MHP entered into a Partnership Deed [\[note: 4\]](#) on 28 February 1952 ("the Partnership Deed") setting out their respective shares in the partnership as follows:

S/No.	Name of Partner	Share in MHP
1.	Chiam Toh Moo	21/88
2.	Chiam Toh Say	25/88
3.	Chiam Toh Tong	21/88
4.	Chiam Toh Kai	19/88
5.	Chiam Toh Lew	2/88

6 Clauses 3, 6, 7, 23 and 25 of the Partnership Deed, being the clauses relevant to the present dispute, read as follows:

3. The death or retirement of any partner shall not dissolve the partnership as to the other partners.

...

6. Subject to the provisions of this deed the partners shall be entitled to the capital and property for the time being of the partnership and to the goodwill of the business in the following shares (that is to say) the said Chiam Toh Kai nineteen (19) shares, the said Chiam Toh Moo twenty one (21) shares, the said Chiam Toh Say twenty five (25) shares, the said Chiam Toh Tong twenty one (21) shares and the said Chiam Toh Lew two (2) shares.

7. The capital of the partnership shall be the sum of Dollars Eighty eight thousand (\$88,000/-) to be contributed by the partners in the shares in which they are hereinbefore declared to be entitled to the capital, the property of the partnership and the goodwill of the business and in consideration of the sums of Dollars Nineteen thousand (\$19,000/-) from the said Chiam Toh Kai, Dollars Twenty one thousand (\$21,000/-) from the said Chiam Toh Moo, Dollars Twenty one thousand (\$21,000/-) from the said Chiam Toh Tong, Dollars Two Thousand (\$2,000/-) from the said Chiam Toh Lew (receipt of which sums the said Chiam Toh Say acknowledges) the said Chiam Toh Say assigns to each of them their respective shares in the business property and goodwill of the partnership.

...

23. If any partner shall die during the continuance of the partnership his share of the net profits shall be paid to his legal personal representatives.

...

25. All disputes and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective representatives or between any partners or partner and the representatives of any other partner touching this deed or the construction or application thereof or any clause or thing herein contained or any account valuation or division of assets debts or liabilities to be made hereunder as to any act deed or omission of any partner or as to any other matter in any way relating to the partnership business or the affairs thereof or the rights and duties or liabilities of any person under this deed shall be referred to a single arbitrator in case the parties agree upon one otherwise to two arbitrators one to be appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration Ordinance or any statutory modification thereof for the time being in force.

7 On 21 October 1952, Chiam Toh Say executed a Declaration of Trust ("Trust Deed") stating he held 1/10 undivided share of the Property on trust "for the Firm [MHP] and the partners for the time being thereof" and that he would at their request and cost, convey and assign the share to such persons as the partners for the time being of MHP should direct or appoint. [\[note: 5\]](#)

8 The Plaintiff was admitted as a partner of MHP on 19 November 1974 by the then surviving partners. [\[note: 6\]](#) He claims that he took over his late father, Chiam Toh Moo's, 21/88 share in MHP. [\[note: 7\]](#)

9 Chiam Toh Lew passed away in 1975. In DC Summons No 6648 of 1984 ("DC Summons 6648 of 1984"), a consent judgment was recorded in which the estate of Chiam Toh Lew agreed to withdraw Chiam Toh Lew's name from MHP and relinquish all claims that it had in respect of any share in MHP in consideration for Chiam Toh Kai, Chiam Toh Say and the Plaintiff (who were the defendants in that suit) paying the estate \$7,000 and reimbursing the estate for the "all payments made by [the estate] to the Inland Revenue Department for the years 1983 to 1988". [\[note: 8\]](#)

Plaintiff's Case

10 In the present suit, the Plaintiff claims that he was the sole surviving partner of MHP at the time the Property was sold. He also claims that the estate of Chiam Toh Tong is entitled to a nominal share in MHP, to be determined by him. Therefore, he claims the entire Sale Proceeds and all interest accruing thereon save for a nominal amount for the 3rd Defendant to be determined by him.

11 In the course of the present proceedings, the Plaintiff stated that he intends to give the 3rd Defendant \$150,000 from the Sale Proceeds in view of the estate of Chiam Toh Tong's nominal share in MHP. [\[note: 9\]](#)

Chiam Toh Say's original 25/88 share in MHP

12 Chiam Toh Say passed away on 16 February 1990. The Plaintiff claims that the 1st and 2nd Defendants were not admitted as partners of MHP. [\[note: 10\]](#) According to the Plaintiff, in order to be admitted as a partner of MHP, all the then surviving partners of MHP must give their consent as per s 24(7) of the Partnership Act (Cap 391, 1994 Rev Ed) ("Partnership Act"). [\[note: 11\]](#) He asserts that he never gave his consent for the 1st and 2nd Defendants to be admitted as partners of MHP.

13 The Plaintiff asserts that there was a technical dissolution of MHP upon Chiam Toh Say's death on 16 February 1990 and that Chiam Toh Say's share of partnership assets and profits accrued as a

debt payable to his estate on that date. [\[note: 12\]](#) In 1993, the 1st and 2nd Defendants commenced Suit No 2439 of 1993 against MHP and the Plaintiff to compel the Plaintiff to render accounts of Chiam Toh Say's share in MHP. The Plaintiff claims he rendered such accounts. He further states that as of 1996, the estate of Chiam Toh Say has taken no further steps to recover the sum owing to it. [\[note: 13\]](#) As such, the Plaintiff asserts that the claim is now time-barred by operation of s 6 of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act"). The Plaintiff claims in addition or alternatively that the claim is defeated by laches. [\[note: 14\]](#)

Chiam Toh Tong's original 21/88 share in MHP

14 Chiam Toh Tong passed away on 17 May 1969. Chiam Toh Kai was appointed the executor of Chiam Toh Tong's estate in accordance with his will. [\[note: 15\]](#) The Plaintiff maintains that Chiam Toh Tong's 21/88 share in MHP accrued as a debt payable to his estate on the date of his death. The debt was subject to the contractual six-year limitation period. Chiam Toh Kai, the executor of Chiam Toh Tong's estate, did not take any action to recover the debt. Therefore, any claim to recover the debt is now time barred. [\[note: 16\]](#)

15 However, it appears that the Plaintiff accepts that Chiam Toh Tong's 21/88 share in MHP was not extinguished when MHP was reconstituted among the then surviving partners. Instead, Chiam Toh Kai was holding it on trust for Chiam Toh Tong's estate. However, contrary to the 3rd Defendant's claim that she was admitted as a partner of MHP in respect of that share, the Plaintiff alleges that he acquired the estate of Chiam Toh Tong's 21/88 share in MHP.

16 The Plaintiff asserts that sometime in 1974, Ho Kim Wah, the widowed first wife of Chiam Toh Tong, on behalf of all the beneficiaries of Chiam Toh Tong's estate, requested Chiam Toh Kai to take over Chiam Toh Tong's share in MHP in his personal capacity. The Plaintiff claims that this was because the beneficiaries of Chiam Toh Tong's estate were not prepared to bear responsibility for the substantial accumulated losses of MHP. The Plaintiff asserts that Chiam Toh Kai acceded to this request. [\[note: 17\]](#) He claims that the minutes of a partners meeting dated 6 April 1975 reflected this arrangement. [\[note: 18\]](#)

17 The Plaintiff also points out that the estate of Chiam Toh Tong was not included in the list of partners of MHP submitted by Chiam Toh Say to the Registrar of Businesses in 1974. The Plaintiff claims that this shows that Chiam Toh Kai had taken over the estate of Chiam Toh Tong's share in the partnership. [\[note: 19\]](#) Therefore, the Plaintiff asserts that as of sometime in 1974, Chiam Toh Kai had a 40/88 share in MHP (which comprised his original 19/88 share and the estate of Chiam Toh Tong's 21/88 share in MHP).

18 Sometime in the mid-1980s, Chiang Heng Pout (Chiam Toh Tong's son and a beneficiary of his estate) ran into financial difficulties. He requested a loan of \$50,000 from the Plaintiff. The Plaintiff asserts that Chiam Toh Kai was worried that if Chiam Heng Pout became bankrupt, his creditors would pursue their claims against Chiam Toh Tong's estate which Chiam Toh Kai was responsible for. [\[note: 20\]](#) The Plaintiff also claims that there was a falling out [\[note: 21\]](#) between Chiam Toh Kai and Chiam Heng Pout and that their relationship had deteriorated so much so that Chiam Heng Pout even sent a bouncer from his night club to confront Chiam Toh Kai. [\[note: 22\]](#) The Plaintiff claims that Chiam Toh Kai wanted to prevent such incidents from recurring. As such, he reached an oral agreement with the Plaintiff for the Plaintiff to extend a loan of \$50,000 to Chiam Heng Pout and in consideration he agreed to transfer the entirety of Chiam Toh Tong's original 21/88 share in MHP which he had

assumed in his personal capacity in 1974 (see [16] above) to the Plaintiff, from the date of the loan ("backdating clause"), save for a nominal share of MHP (to be determined by the Plaintiff) that he would hold for the estate of Chiam Toh Tong ("nominal share clause") if:

(a) Chiam Heng Pout failed to repay the \$50,000 loan to the Plaintiff within 6 months of the date of the loan; or if

(b) Chiam Heng Pout was declared a bankrupt.

(the "Loan Agreement") [\[note: 23\]](#)

19 The Plaintiff claims that Chiam Heng Pout signed a note stating the he was fully aware of the terms of the Loan Agreement. [\[note: 24\]](#) The Plaintiff claims that Chiam Siew Juat (Chiam Toh Kai's daughter) and her relative, Chiam Ai Tong, broke into Mitre Hotel sometime around September to October 2008 and stole some documents including this note evidencing the Loan Agreement. [\[note: 25\]](#) The Plaintiff was recuperating from an operation during that period and was not at the Property.

20 Chiam Heng Pout did not repay the \$50,000 loan to the Plaintiff within 6 months. Further he was adjudged a bankrupt in 1988. [\[note: 26\]](#) The Plaintiff claims that he became aware of Chiam Heng Pout's bankruptcy in the early 1990s. Thereafter, he requested Chiam Toh Kai to transfer the estate of Chiam Toh Tong's share in MHP to him save for a nominal share of MHP (to be determined by the Plaintiff) which Chiam Toh Kai would continue to hold for the Chiam Toh Tong's estate as per the Loan Agreement. The Plaintiff claims that Chiam Toh Kai did so and gave him a letter, drafted by his daughter, Chiam Siew Juat, stating that his share in MHP was reduced to his original 19/88 share. The Plaintiff claims that this note was stolen as well. [\[note: 27\]](#)

21 Therefore, according to the Plaintiff, he acquired the estate of Chiam Toh Tong's 21/88 share in MHP sometime in the early 1990s.

Chiam Toh Kai's original 19/88 share in MHP

22 Chiam Toh Kai passed away on 20 June 1993. The Plaintiff maintains that the 4th Defendant was not admitted into the partnership. In the alternative, he argues that following the Singapore Court of Appeal's decision in Civil Appeal No 150 of 1991 ("CA 150/1991") issued on 8 September 1993, the 4th Defendant served notice to withdraw from the partnership. [\[note: 28\]](#) The Plaintiff claims that the 4th Defendant did so because he did not want to pay any portion of the amount, allegedly approximating \$400,000, which MHP was ordered to pay the estate of Chiam Toh Say. [\[note: 29\]](#) The documentary evidence on record suggests that MHP paid a total of about \$280,000. [\[note: 30\]](#) The Plaintiff maintains that this amount excludes costs that were ordered against MHP. [\[note: 31\]](#) He further claims that he paid the full amount himself. [\[note: 32\]](#)

23 The Plaintiff claims that the 4th Defendant agreed to remain as a partner holding a nominal share (to be determined by the Plaintiff) on behalf of Chiam Toh Tong's estate. [\[note: 33\]](#)

24 The Plaintiff asserts that Chiam Toh Kai's share of partnership assets and profits accrued as a debt payable to his estate either on the date of his death or alternatively when his estate served notice to withdraw from the partnership sometime soon after 8 September 1993. In either case the claim for the sum owing to the estate is now time-barred by operation of s 6 of the Limitation Act.

The Plaintiff claims in addition or alternatively that the claim is defeated by laches. [\[note: 34\]](#)

Allocation of Profits of MHP by the Plaintiff and Income Tax Payable Thereon

25 The Plaintiff maintains that he never allocated any of the profits and losses of MHP to any of the Defendants in the tax returns he filed with Inland Revenue Authority of Singapore ("IRAS"). [\[note: 35\]](#) He refers to the tax returns he filed for the years 1995 and 1998 – 2009 and points out that he allocated the profits and losses of MHP either solely to himself or left the allocation blank. [\[note: 36\]](#) The tax returns filed in 1997 lists the estate of Chiam Toh Kai as a partner. [\[note: 37\]](#) However the Plaintiff maintains that he listed the estate of Chiam Toh Kai as a partner only in respect of the nominal share that it held for Chiam Toh Tong's estate. [\[note: 38\]](#) He maintains that IRAS' allocation of partnership profits using the basis of allocation indicated in the Partnership Deed did not reflect the true makeup of the partnership at the material times. For instance, when cross-examining the 3rd Defendant, the Plaintiff's counsel pointed out that IRAS' allocation of profits and losses for the accounting period 1 January 1999 to 31 December 1999 lists the estate of Chiam Toh Lew as a partner even though Chiam Toh Lew's name was withdrawn as a partner pursuant to a consent judgment in DC Summons 6648 of 1984 (see [9] above). [\[note: 39\]](#) Therefore the Plaintiff maintains that income tax assessments issued by IRAS cannot be relied upon as proof of admission to the partnership. [\[note: 40\]](#)

26 The Plaintiff points out that he consistently wrote to IRAS objecting to its allocation of partnership profits. [\[note: 41\]](#) He claims that in reality, from 1975 onwards, the partnership profits were allocated on a 50:50 basis between Chiam Toh Kai and himself and that the two of them paid income tax on that basis from 1975 to sometime in the 1990s when Chiam Siew Juat, who took over as the trustee of Chiam Toh Kai's estate, wrote to IRAS requesting her share of the income tax to be reduced to reflect her purported 19/88 share in MHP. [\[note: 42\]](#) Under cross-examination, he explained that Chiam Toh Kai's estate continued paying tax even after 1993 (when, according to him, Chiam Toh Kai's estate withdrew from MHP) because of a prior agreement between him and Chiam Toh Kai to pay tax on a 50:50 basis and settle the difference between themselves. [\[note: 43\]](#)

Originating Summons No 136 of 2002/X

27 In Originating Summons No 136 of 2002/X ("OS 136 of 2002/X") between the 3rd Defendant and the 4th Defendant, it was decided that the estate of Chiam Toh Kai held 21/88 share in MHP on trust for the estate of Chiam Toh Tong. [\[note: 44\]](#) Neither MHP nor the Plaintiff was joined as a party to OS 136 of 2002/X and as such the Plaintiff claims that neither he nor MHP is bound by the decision. [\[note: 45\]](#) The Plaintiff's counsel suggested to the 3rd Defendant in cross-examination that she deliberately did not add the Plaintiff as a party because she did not want him to give evidence of his acquisition of the estate of Chiam Toh Tong's share in MHP. [\[note: 46\]](#)

28 The Plaintiff points out that following the decision, the 4th Defendant failed to get him to sign the form required by Registry of Companies and Businesses ("RCB") for the rectification of the particulars of the partnership even though Judith Prakash J had explicitly directed the 4th Defendant to do so. He asserts that the 4th Defendant failed to do so because he was aware he was no longer a partner in MHP. [\[note: 47\]](#)

Records kept by the Accounting and Corporate Regulatory Authority

29 The Plaintiff claims that the records kept by the Accounting and Corporate Regulatory Authority ("ACRA") and its predecessor, the RCB, are not reflective of the actual partnership makeup of MHP. He insists that these records were merely for administrative purposes and cannot have any legally binding effect nor can they be relied upon as proof of admission to partnership. [\[note: 48\]](#) For instance, he points out that RCB records from 1996 inaccurately lists Chiam Toh Say as a partner of MHP even though Chiam Toh Say had passed away in 1990. [\[note: 49\]](#)

30 The Plaintiff also points out that he was informed by ACRA on 20 January 2011 that

... the registration of estates of the deceased partners, Chiam Toh Say and Chiam Toh Kai, does not confer any rights or impose any obligations on the estates that they would otherwise not have in law, and it does not mean that the estates are admitted into the partnership of Mitre Hotel in law. The registration is for the purpose of notifying the public that the partners had passed away, and that the public should deal with the estates of the deceased partners if they have any issue with the partnership. [\[note: 50\]](#)

The Plaintiff maintains that ACRA's response led him to believe that there was no need for him to apply to rectify the records. [\[note: 51\]](#)

1st and 2nd Defendants' Case

31 The 1st and 2nd Defendants argue that the Trust Deed conferred a beneficial interest in the Property on the original partners. This beneficial interest vested in the respective estates at the moment of the original partners' deaths. Therefore, the estates are now entitled to the Sale Proceeds.

32 The 1st and 2nd Defendants argue that upon a partner's death, his legal representatives are automatically admitted as partners of MHP. They raise a number of arguments in support of this claim. First they claim that Clause 23 of the Partnership Deed which provides that the personal representatives of deceased partners shall be paid the deceased partner's share of profits after their passing must be construed to mean that the personal representatives of deceased partners are automatically admitted as partners after the demise of the original partners. They claim that to construe it otherwise would render its inclusion in the Partnership Deed redundant. [\[note: 52\]](#) They also maintain that such an interpretation would gel with the original partners' intention to create a family business whereby "families of all partners would be provided for when a partner retires or passes away...until the business [is] no more". [\[note: 53\]](#)

33 Second they claim that Chiam Toh Kai, Chiam Toh Say and the Plaintiff's decision by way of consent judgment in DC Summons 6648 of 1984 to pay Chiam Toh Lew's estate \$7,000 and to reimburse the income tax payments made by the estate in consideration of the estate withdrawing Chiam Toh Lew's name as a partner of MHP and relinquishing all claims that it had in respect of any share in MHP is evidence that the then partners recognised that the estates of deceased partners continue as partners of MHP. [\[note: 54\]](#) Essentially, the 1st and 2nd Defendants claim that the partners of MHP bought out the estate of Chiam Toh Lew from the partnership by way of this consent judgment. [\[note: 55\]](#)

34 The 1st and 2nd Defendants also argue that even if legal representatives of a deceased partner are not automatically admitted into the partnership, it can be inferred that they were admitted as partners of MHP. They point out that Chiam Toh Say's estate continued to be registered as a partner

of MHP in ACRA records until MHP's registration was cancelled on 3 May 2011. [\[note: 56\]](#)

35 They also claim that IRAS assessed income tax on Chiam Toh Say's estate until MHP's registration was cancelled. [\[note: 57\]](#) The 1st and 2nd Defendants claim that they continued to pay the income tax as executors of Chiam Toh Say's estate. [\[note: 58\]](#) They also point out that they paid IRAS the estate of Chiam Toh Say's share of property tax for 2008 and 2009 when IRAS demanded the same from them. [\[note: 59\]](#) Prior to 2008, the property tax was nominal as the Property was under rent control. [\[note: 60\]](#) They claim that the Plaintiff neither reimbursed them for this property tax payment nor raised any objections when they paid the property tax.

36 In sum, 1st and 2nd Defendants maintain that they continued as partners of MHP at all material times. They claim that they are entitled to a 25/88 share of the assets of MHP. As such they claim 25/88 share of the Sale Proceeds.

37 In the alternative, the 1st and 2nd Defendants maintain that even if they were not admitted as a partner of MHP as per the Plaintiff's case, the limitation period has not started to run since the Plaintiff has never rendered proper accounts of Chiam Toh Say's share of the assets of the MHP. [\[note: 61\]](#)

3rd Defendant's Case

38 The 3rd Defendant claims that upon Chiam Toh Tong's death on 17 May 1969, his estate continued as a partner of MHP. [\[note: 62\]](#) In support, she points to MHP's balance sheets as at 31 December 1972 and 31 December 1973 both of which list Chiam Toh Tong's estate as a partner in MHP. [\[note: 63\]](#) In addition, she maintains that at all material times, Chiam Toh Tong's estate continued to be entitled to Chiam Toh Tong's original 21/88 share in MHP and that she was eventually admitted into the partnership in respect of that share.

Chiam Toh Kai did not acquire the estate of Chiam Toh Tong's share in MHP in his personal capacity

39 The 3rd Defendant denies that Chiam Toh Kai took over the estate of Chiam Toh Tong's share in MHP in his personal capacity in 1974. [\[note: 64\]](#) She denies that Ho Kim Wah, the widowed first wife of Chiam Toh Tong, consented, on behalf of all the beneficiaries of Chiam Toh Tong's estate, to Chiam Toh Kai's acquisition of the Chiam Toh Tong's share in MHP. [\[note: 65\]](#) She claims that in any case, Ho Kim Wah did not have the requisite authority to give consent on behalf of all the beneficiaries of Chiam Toh Tong's estate. [\[note: 66\]](#) She maintains that if Chiam Toh Kai had transferred Chiam Toh Tong's share to himself, such transfer would have been in breach of trust. [\[note: 67\]](#) She claims that the minutes of the meeting on 6th April 1975 do not state nor support the inference that Chiam Toh Kai had taken over Chiam Toh Tong's share in MHP. [\[note: 68\]](#)

40 Chiam Toh Kai relinquished his position as the sole trustee of the Chiam Toh Tong's estate and appointed the 3rd Defendant and Chiam Heng Pout in his place by a Deed of Appointment dated 27 February 1986. [\[note: 69\]](#) As the outgoing trustee, he rendered accounts of Chiam Toh Tong's estate to the 3rd Defendant and Chiam Heng Pout. [\[note: 70\]](#) In cross-examining the Plaintiff, counsel for the 3rd Defendant referred to one such account, for the period 12 January 1982 to 26 October 1983. [\[note: 71\]](#) By this time, according to the Plaintiff, Chiam Toh Kai had already acquired the estate of

Chiam Toh Tong's share in MHP in his personal capacity. Therefore he need not have attributed any portion of the share of profits he received from MHP to Chiam Toh Tong's estate. Nonetheless, in the accounts for this period, he attributed \$38,940.03 to Chiam Toh Tong's estate. Counsel for the 3rd Defendant contends that this proves that Chiam Toh Kai never took over Chiam Toh Tong's share in MHP in his personal capacity. [\[note: 72\]](#)

41 In cross-examining the Plaintiff, counsel for the 3rd Defendant also referred to a letter dated 26 April 1985 from Chiam Toh Kai's then solicitors, M/s Laycock & Ong, to M/s Chua Hay & Wee who were representing the 3rd Defendant and Chiam Heng Pout. [\[note: 73\]](#) He highlighted that in that letter, Chiam Toh Kai's solicitors stated that their client was holding the estate of Chiam Toh Tong's share on trust for the 3rd Defendant and Chiam Heng Pout. [\[note: 74\]](#)

42 In cross-examining the Plaintiff, counsel for the 3rd Defendant also referred to an affidavit dated 2 June 2011 that the Plaintiff filed in OS 1123 of 2010/L. [\[note: 75\]](#) In paragraph 36 of that affidavit, the Plaintiff stated that sometime in mid-1980s, he and Chiam Toh Kai reached a decision to "buy out" Chiam Toh Tong's share in MHP. Counsel for the 3rd Defendant contends that the fact that Chiam Toh Kai had to "buy out" Chiam Toh Tong's share is evidence that he never acquired Chiam Toh Tong's share in his personal capacity in 1974. [\[note: 76\]](#)

43 The 3rd Defendant also called Chiam Heng Pout to give evidence. Chiam Heng Pout disagrees with the Plaintiff that his mother, Ho Kim Wah, consented to Chiam Toh Kai's acquisition of the Chiam Toh Tong's share in MHP in 1974 because the beneficiaries of Chiam Toh Tong's estate were not prepared to bear responsibility for MHP's substantial accumulated losses amounting to more than \$100,000. He disputes the quantum of the MHP's accumulated losses in 1974. He claims that the estate of Chiam Toh Tong's portion of the accumulated losses in 1974 was only \$7,877.73 which the estate could have easily paid. [\[note: 77\]](#)

There was no Loan Agreement between the Plaintiff and Chiam Toh Kai

44 The 3rd Defendant denies that there was ever any agreement between the Plaintiff and Chiam Toh Kai regarding the loan of \$50,000 that the Plaintiff extended to Chiam Heng Pout. Instead she claims that the Plaintiff "extended a friendly unsecured loan of \$50,000/- free of interest to Chiam Heng Pout" and that the loan was "unconditional". [\[note: 78\]](#) She maintains that the loan was a private arrangement between the Plaintiff and Chiam Heng Pout and it did not involve Chiam Toh Tong's estate. [\[note: 79\]](#)

45 Chiam Heng Pout also states that the loan was unconditional. He denies the Plaintiff's allegation that he signed a note to state that he was fully aware of the terms of the purported Loan Agreement. [\[note: 80\]](#)

In any event, Chiam Toh Kai was not entitled to the estate of Chiam Toh Tong's share in MHP at the time of the purported transfer

46 Alternatively, the 3rd Defendant argues that even if the Loan Agreement existed, Chiam Toh Kai did not possess the estate of Chiam Toh Tong's share in MHP in the early 1990s when he purportedly transferred the share to the Plaintiff. This is because Chiam Toh Kai appointed the 3rd Defendant and Chiam Heng Pout as the new trustees of Chiam Toh Tong's estate by a deed of appointment on 27 February 1986. The 3rd Defendant maintains that upon the appointment of the new trustees, pursuant to s 41 of the Trustee Act (Cap 337, 2005 Rev Ed) ("Trustees Act") all of the estate of

Chiam Toh Tong's "interest in land, property, chattel and rights" vests in the new trustees. [\[note: 81\]](#) Therefore she claims that the estate of Chiam Toh Tong's share in MHP already vested in herself and Chiam Heng Pout by the time of the purported transfer of the share to the Plaintiff in the early 1990s. [\[note: 82\]](#)

47 However, the Plaintiff maintains that Chiam Toh Kai did not transfer the estate of Chiam Toh Tong's share in MHP to the 3rd Defendant and Chiam Heng Pout. He insists that he had to agree for the share in the MHP to be transferred. He claims that he never gave such consent. [\[note: 83\]](#) He also points out that the 3rd Defendant admitted in her affidavit dated 24 January 2002 that she filed in OS 136 of 2002/X that although Chiam Toh Kai executed the Deed of Appointment dated 27 February 1986, "he did not effect the transfer of the share". [\[note: 84\]](#) The Plaintiff's counsel suggested to Chiam Heng Pout, in cross-examination, that the transfer did not occur because Chiam Heng Pout failed to repay the \$50,000 loan that the Plaintiff had extended to him within 6 months. Therefore Chiam Toh Kai was aware, that pursuant to the Loan Agreement, he was under an obligation to transfer the estate of Chiam Toh Tong's share in MHP to the Plaintiff and that the transfer was to take effect from the date of the loan. The Plaintiff's counsel suggested that Chiam Toh Kai did not transfer the share to the 3rd Defendant and Chiam Heng Pout so as not to breach the Loan Agreement. [\[note: 85\]](#)

48 The 3rd Defendant denies that her affidavit dated 24 January 2002 filed in OS 136 of 2002/X amounts to an admission that the estate of Chiam Toh Tong's share in MHP was never transferred to her and Chiam Heng Pout. She maintains that the share was transferred when the Deed of Appointment was executed, but the change was not reflected in the records kept by RCB. She insists that she commenced OS 136 of 2002/X against Chiam Toh Kai's estate simply to have the estate of Chiam Toh Tong's share in MHP reflected in the records kept by RCB. [\[note: 86\]](#)

Accounts of MHP for the years 1987 – 1990 and 1996

49 The 3rd Defendant refers to the accounts of MHP for the years 1987 – 1990 and 1996 prepared by the Plaintiff for tax purposes. [\[note: 87\]](#) She points out that the Plaintiff continued to state that Chiam Toh Kai's share in MHP is "inclusive of Estate of Chiam Toh Tong Dec'd" notwithstanding his contention that Chiam Toh Kai had transferred the estate of Chiam Toh Tong's share to him pursuant to the Loan Agreement sometime in the early 1990s. Moreover she points out that the accounts reflect that Chiam Toh Tong's estate was rewarded for services rendered to MHP during this period. The 3rd Defendant contends that this proves that Chiam Toh Tong's personal representatives continued as partners in MHP. [\[note: 88\]](#)

Income Tax

50 The 3rd Defendant maintains the estate of Chiam Toh Tong was assessed and it paid income tax to IRAS on the basis that it owned 21/88 share in MHP until MHP's registration was cancelled. [\[note: 89\]](#)

Originating Summons No 136 of 2002/X

51 The 3rd Defendant argues that OS 136 of 2002/X confirms that the estate of Chiam Toh Kai was holding a 21/88 share of MHP on trust for the estate of Chiam Toh Tong. [\[note: 90\]](#) She points out Prakash J explicitly directed Chiam Toh Kai's estate to serve a copy of the order on "the other partners in [MHP] and ... ask them to sign any form in compliance with the Registry of Companies and

Businesses for the rectification of the particulars in the partnership business". The 3rd Defendant argues that the purpose of this direction was to give all interested parties, such as the Plaintiff, an opportunity to make legal protests should they disagree with the court's finding. The 3rd Defendant contends the Plaintiff was duly notified but he accepted the order without making any legal protest. [\[note: 91\]](#) He only wrote a letter to M/s Albert Teo & Lim, the solicitors for Chiam Toh Kai's estate in that matter. Therein, he only stated that Chiam Toh Kai's estate had not been admitted as a partner of MHP. The 3rd Defendant points out that the Plaintiff did not mention that Chiam Toh Tong's estate was no longer entitled to 21/88 share in MHP. Nor did he mention that Chiam Toh Tong's estate was not admitted as a partner of MHP. [\[note: 92\]](#) She claims that the Plaintiff thereby accepted that Chiam Toh Tong's estate was a partner entitled to a 21/88 share of MHP.

52 The 3rd Defendant points out that the Plaintiff even relied on the order in OS 136 of 2002/X in his affidavit dated 31 August 2006 that he filed in OS 830 of 2006/W. [\[note: 93\]](#)

53 In sum, the 3rd Defendant maintains that the estate of Chiam Toh Tong continued as a partner of MHP possessing a 21/88 share in MHP at all material times. [\[note: 94\]](#) She claims that she was eventually admitted into the partnership in respect of that share. Therefore she claims 21/88 share of the Sale Proceeds. [\[note: 95\]](#)

4th Defendant's Case

54 The 4th Defendant argues that the Trust Deed conferred a beneficial interest in the Property on the original partners. This beneficial interest vested in the respective estates at the moment of the original partners' deaths. Therefore, the estates are now entitled to the Sale Proceeds.

55 Alternatively, the 4th Defendant maintains that upon Chiam Toh Kai's death on 20 June 1993, he was admitted as a partner of MHP and continued to be a partner at all material times.

56 The 4th Defendant denies serving notice to withdraw from MHP following the release of the decision in CA 150/1991. [\[note: 96\]](#) He points out that the Plaintiff listed Chiam Toh Kai's estate as a partner of MHP in a partnership account he prepared in 1995 for tax purposes. [\[note: 97\]](#) He also points out that Chiam Toh Kai's estate was assessed and it paid tax to IRAS on the profits of MHP even after 1993, when the Plaintiff alleges that the estate of Chiam Toh Kai had withdrawn as a partner. [\[note: 98\]](#)

57 The 4th Defendant argues that OS 136 of 2002/X confirms that Chiam Toh Kai's estate continued to hold a 19/88 share in MHP. He points out that even the Plaintiff relied on the finding in that order in his affidavit dated 31 August 2006 that he filed in OS 830 of 2006/W without explicitly stating that he was not bound by that decision since he was not a party to those proceedings. [\[note: 99\]](#)

58 The 4th Defendant acknowledges that Chiam Toh Kai's estate was removed as a partner of MHP in the records kept by ACRA for a period. However, he maintains that the removal of the estate of Chiam Toh Kai as a partner of MHP from ACRA records was due to a clerical error. He points out that his then solicitors M/s PKWA Law Practice LLC wrote to ACRA on 17 July 2006 seeking that the clerical error be rectified. [\[note: 100\]](#) ACRA's records were subsequently rectified to show that the estate of Chiam Toh Kai remained a partner of MHP. [\[note: 101\]](#)

59 In sum, the 4th Defendant maintains he continued as a partner of MHP at all material times. He claims that he is entitled to a 21/88 share of the assets of MHP. Therefore he claims 21/88 share of the Sale Proceeds

The Decision of the Court

Facts in the present case must be viewed in light of the underlying family relations between the parties

60 The parties in the present dispute are all related. They are cousins. The Plaintiff as the precedent partner of MHP was running the hotel business in a haphazard manner. The Defendants also did not insist on their strict legal rights. In fact, no real formalities were observed. This is abundantly clear from a number of facts. For example the accounts that the Plaintiff kept of the hotel business were rudimentary. The accounts were simple one-page documents that generally only listed the income from room rentals and the sale of drinks and cigarettes against expenses such as utilities costs, insurance costs and the costs of purchasing the drinks and cigarettes without going into much detail. It appears that the Property was never valued though it was quite possibly the partnership's most valuable asset. In fact, only the accounts from 1987 – 1990 even had an entry for fixed assets under which the Property was listed. Even then, there was no value assigned to the Property. [\[note: 102\]](#)

61 Additionally, even though Clause 23 of the Partnership Deed states that a deceased partner's share of the net profits of the partnership shall be paid to his personal representatives, it seems that the 3rd and 4th Defendants did not pursue all available legal means to obtain what they were owed pursuant to the Partnership Deed. Concerning the estate of Chiam Toh Tong's share of the profits, it transpired during the trial that after Chiam Toh Tong's death, occasional disbursements were made to Chiam Toh Tong's wives (although there was uncertainty as to whether this money came from MHP's profits). [\[note: 103\]](#) As for the estate of Chiam Toh Kai, the 4th Defendant gave evidence that he asked the Plaintiff for the accounts of MHP and that he was occasionally given the accounts. This is contested by the Plaintiff. [\[note: 104\]](#) Even assuming that the 4th Defendant did ask for accounts, it is clear that neither him nor the 3rd Defendant commenced any legal action (eg, an action for account) to recover what was owed to them.

62 In contrast, the 1st and 2nd Defendants did commence an action for an account. In 1993, the Chiam Toh Say's estate commenced Suit No 2439 of 1993 against MHP and the Plaintiff to compel the Plaintiff to render accounts of Chiam Toh Say's share in the profits of MHP and the value of Chiam Toh Say's share in MHP as at 16 February 1990. On 18 July 1994, the Plaintiff filed a fresh defence containing assertions that Chiam Toh Say had retained moneys amounting to more than his capital contribution and that he had also withdrawn all his capital contribution from the partnership. On 5 October 1994, the Plaintiff was ordered to produce all the accounts of MHP and to file an affidavit verifying the said accounts. On 19 October 1994 he filed an affidavit and exhibited four sheets of accounts. [\[note: 105\]](#) The accounts were not verified by affidavit.

63 On 24 November 199, an application to strike out the abovementioned portions of the Plaintiff's defence was heard. The Plaintiff was ordered to comply with the 5 October 1994 order failing which his defence would be struck out and judgment entered against him ("the unless order"). The Plaintiff appealed and argued that he had rendered proper accounts. The issue before Kan Ting Chiu J was whether the unless order was justified. As such, Kan J made no finding on whether the accounts were proper but noted that they were not verified by affidavit. He held that the unless order was justified

since the Plaintiff had not complied with the 5 October 1994 order even though the accounts went to the heart of his defence. Therefore he ordered that judgment be entered against the Plaintiff if he failed to comply with the 5 October 1994 order within a further period of 28 days without good reason (*Chiam Heng Chow and another (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and another* [1996] 1 SLR(R) 899 at [11]). [\[note: 106\]](#) It appears that the Plaintiff did not comply with this order and neither did the 1st and 2nd Defendants take any further action to procure proper accounts.

64 It is understandable why the Defendants did not insist strictly on their legal rights. After all, the Plaintiff was their cousin and crucially, the Property was not only the premises on which the hotel business was carried out, it was also the family home of the Plaintiff and his family. Had any of the Defendants insisted that they be paid their share of the partnership immediately upon the death of the original partner whose estate they represented, the then existing partners may have had to wind-up the partnership. This would have in effect amounted to the Plaintiff and his family being evicted from their family home. The Defendants may not have wanted this to occur. It is noteworthy that the action in OS 830 of 2006/W seeking sale of the Property with vacant possession was not commenced by any of the Defendants in the present suit.

65 In sum, it is clear that the partnership was not run as though it was a strictly commercial affair between parties who were dealing at arm's length. Adhering to strict formalities was not on the top of anyone's minds. This was most likely because of the underlying family relations between the parties. Therefore, the facts in the present case must be viewed in the light of these family relations.

3rd and 4th Defendants' application to amend their defence after parties had filed their written closing submissions

66 After all the parties had filed their written closing submissions, the 3rd and 4th Defendants took out Summons No 1509/2014 and Summons No 1716/2014 respectively, seeking leave to amend their respective defences. They both sought to add a defence based on the writing requirement contained in s 6 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("Civil Law Act"). The 4th Defendant also sought to include a defence based on s 7 of the Civil Law Act and another based on s 12(4) of the Limitation Act.

67 The Plaintiff's counsel accepted that the new defence based on s 12(4) of the Limitation Act concerned a point of law and did not object to its inclusion. However, he argued that the new defences based on the Civil Law Act would cause irreparable prejudice if they were allowed to be included at such a late stage since the Plaintiff was deprived of the opportunity to lead evidence of part performance at trial to challenge the Defendants' case based on the new defences.

68 I allowed the 4th Defendant's application to include the defence based on s 12(4) of the Limitation Act and disallowed the other amendments because the 3rd and 4th Defendants had ample opportunity to raise those defences at an earlier stage but failed to do so. The 3rd and 4th Defendants were ordered to pay costs of \$1,000 each to the Plaintiff in respect of their applications. Undue delay has been accepted as a ground on which to disallow amendments to pleadings: *Lam Soon Oil and Soap Manufacturing Sdn Bhd and another v Whang Tar Choung and another* [2001] 3 SLR(R) 451 at [19a]. In any event, it will be apparent in the course of my grounds of decision that the outcome of the present dispute does not turn on any of these new defences.

Chiam Toh Lew's 2/88 share

69 I note that pursuant to the consent judgment in DC Summons 6648 of 1984, the estate of

Chiam Toh Lew agreed to withdraw Chiam Toh Lew's name from MHP and relinquish all claims that it had in respect of any share in MHP. [\[note: 107\]](#) The 1st and 2nd Defendants characterise this as a buyout of Chiam Toh Lew's estate which they claim was automatically admitted as a partner. [\[note: 108\]](#) The Plaintiff argues that the consent judgment reflects a settlement of the debt owed to Chiam Toh Lew's estate. [\[note: 109\]](#) Irrespective of which characterisation is preferred, I find that the consent judgment did not extinguish Chiam Toh Lew's 2/88 share in MHP. Rather, his share must be proportionately redistributed to the partners of MHP based on their respective shares in MHP.

Are the personal representatives of the original partners entitled to the Sale Proceeds irrespective of whether they were partners of MHP when the Property was sold?

70 The 1st and 2nd Defendants and the 4th Defendant submit that the issues of whether the personal representatives of the original partners had been admitted and whether they subsequently withdrew from MHP are irrelevant. They submit that the Trust Deed conferred a beneficial interest in the Property on the original partners. This beneficial interest vested in the respective estates at the moment of the original partners' death. Therefore, the estates are now entitled to the Sale Proceeds.

71 According to the Trust Deed, Chiam Toh Say held the Property on trust "for the Firm [MHP] and the partners for the time being thereof". The 4th Defendant submits that this phrase must be taken to mean that Chiam Toh Say held the Property on trust for those who were partners of MHP "at the moment" of the creation of the Trust Deed. [\[note: 110\]](#) The Plaintiff argues that the inclusion of the phrase "for the time being thereof" must mean that the Property was held on trust for whoever qualified as a partner of MHP at the "relevant future period". [\[note: 111\]](#)

72 The Plaintiff relies on *Cars & Cars Ltd v Volkswagen AG and another* [2010] 1 SLR 625. In that case, the High Court dealt with a contractual clause which provided for arbitration "in accordance with the Rule of the Singapore Arbitration Centre for the time being in force". The issue was whether the SIAC rules at the time of the conclusion of the contract or the SIAC rules at the time of the commencement of the arbitration applied. The High Court decided that the latter applied. It observed at [25]:

... As a matter of construction, it may be fairly argued that the employment of general phraseology referring to rules "for the time being in force" points to rules that presently cannot be precisely identified. Were the intention to refer to rules existing at the date of the contract, there would not have been need for the general words. The particular set of rules could easily have been identified by name. ...

73 Similarly, in the present case, if the testator's intention was to hold the Property on trust only for the original partners, the partners could have been named individually, or the phrase "existing partners" could have been used instead. Therefore, I agree with the Plaintiff's submission. Only those who were partners of MHP when the Property was sold are now entitled to a share of the Sale Proceeds.

Are the personal representatives of deceased partners automatically admitted as partners of MHP?

74 In partnership law, in the absence of an express provision in the partnership agreement, no person can be admitted as a partner without the consent of all existing partners. This is codified in s 24(7) of the Partnership Act. Therefore when a partner dies, his personal representatives are not automatically admitted into the partnership with the surviving partners, unless there is an agreement

to that effect in the original partnership agreement: *Pearce v Chamberlain* (1750) 2 Ves Sen 33; Roderick I'Anson Banks, *Lindley & Banks on Partnership* (Sweet & Maxwell, 19th Ed) ("*Lindley & Banks on Partnership*") at para 19-49.

75 The 1st and 2nd Defendants argue that Clause 23 of the Partnership Deed which provides that the personal representatives of deceased partners shall be paid the deceased partner's share of profits after their passing must be construed to mean that the personal representatives are automatically admitted as partners after the demise of the original partners. [\[note: 112\]](#) I do not agree with this construction of Clause 23. All this clause requires is for a deceased partner's share of profits to be paid to his personal representative after his passing. It does not operate to automatically admit a personal representative into the partnership. Admission as a partner means that the personal representative would have all the attendant rights of being a partner and would have to bear the liabilities and responsibilities of being one. Nothing in this clause suggests that was intended.

76 The 1st and 2nd Defendants also argue that Clause 25 of the Partnership Deed which allows personal representatives of deceased partners to refer all disputes concerning the Partnership Deed to arbitration must similarly be construed to mean that the personal representatives are automatically admitted as partners. They argue that the personal representatives can only refer disputes to arbitration if they were partners of MHP. [\[note: 113\]](#) Again, I disagree with this interpretation. It is not clear why only partners will be able to refer disputes concerning the Partnership Deed to arbitration. The Partnership Deed clearly confers rights upon the personal representatives (eg, the right to the deceased partner's share of profits pursuant to Clause 23). It must be the case that Clause 25 allows the personal representatives to refer any disputes that are connected with such rights to arbitration. They will be doing so in their capacity as personal representatives of deceased partners and not as partners themselves.

What is the effect of Clause 3 of the Partnership Deed which provides that the partnership shall continue notwithstanding the death of any partner?

77 Subject to agreement to the contrary, a partnership is dissolved by the death of a partner: s 33(1) of the Partnership Act. When the partnership is dissolved, unless otherwise agreed, the business and affairs of the firm must be wound up in the manner prescribed by s 44 of the Partnership Act. As Romer LJ stated in *Bourne v Bourne* [1906] 2 Ch 427 at 431 - 432, "when a partner dies and the partnership comes to an end, it is not only the right, but the duty, of the surviving partner to realize the assets for the purpose of winding up the partnership affairs, including the payment of the partnership debts". However, such a general dissolution is avoided where there is an agreement for the partnership to continue notwithstanding the death of any partner. Instead, a technical dissolution occurs because there is a change in the composition of the partnership: *Chiam Heng Chow and anor (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and others* [1993] 2 SLR(R) 894 at [17].

On the occurrence of a technical dissolution caused by death of a partner, do the surviving partners hold the deceased partner's share in partnership land on trust for his estate?

78 The 4th Defendant submits that by virtue of s 20(1) of the Partnership Act, on the death of any partner, his beneficial interest in partnership land will devolve to his surviving co-partners who will continue to hold it on trust for his estate. Therefore he contends that the action in the present case is one to recover the proceeds of sale of trust property from a trustee. He points out that such an action is not time-barred by virtue of s 22(1)(b) of the Limitation Act. [\[note: 114\]](#)

79 Section 20(1) of the Partnership Act provides that:

Partnership property

20. —(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement:

Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(emphasis added)

Section 22(1)(b) of the Limitation Act provides that:

Limitation of actions in respect of trust property

22. —(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action –

...

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

...

80 The 4th Defendant is in essence proposing that partnership land should be treated in a different manner from other assets of the partnership. He is suggesting that although an action to recover a deceased partner's share of the latter may possibly be subject to a limitation period (he has not conceded this point), no such limitation period should apply to an action to recover a deceased partner's share of partnership land.

81 I do not accept the 4th Defendants' submission. I am of the view that the starting point of the analysis should be s 22 of the Partnership Act. This section provides that whenever land is considered partnership property, it is deemed as the personal rather than real property of the partners (including the representatives and heirs of any partner). This reflects the principle that a partner's share in partnership property, whether it consists of land or not, "is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of partnership debts": *Lindley & Banks on Partnership* at para 19-14. Additionally, commenting on the nature of a partner's share in partnership property upon his death, retirement or expulsion from the partnership, *Lindley & Banks on Partnership* states at para 19-11:

In the absence of any *express* provision in the agreement, the entitlement of the deceased or outgoing partner in respect of his share will, in the normal way, strictly be represented by his proportionate share in the net proceeds remaining after all the partnership assets have been sold and the partnership debts and liabilities paid and discharged.

(emphasis in the original)

82 Therefore, in the absence of an express provision in the partnership agreement, a deceased partner's estate which has an entitlement to a share in partnership land cannot be said to be "beneficially interested in the land" as per the proviso to s 20(1). The estate's entitlement is to the proportionate share of the net proceeds from liquidation of the partnership assets.

83 Additionally, the surviving partners do not hold this amount on trust for the estate of the deceased partner. Rather, s 43 of the Partnership Act makes it clear that this amount accrues as a debt owed to the personal representative of a deceased partner on the date of the death of the partner. Section 43 of the Partnership Act provides:

Retiring or deceased partner's share to be a debt

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Section 43 of our Partnership Act is *in pari materia* with s 43 of the Partnership Act 1890 (53 & 54 Vict, c 39) which is in force in England and Scotland. Sir Frederick Pollock, the draftsman of the Partnership Act 1890 commented in his *A Digest of the Law of Partnership, incorporating the Partnership Act, 1890* (5th Ed) ("*Pollock's Digest*") that the debt which is owed to a personal representative of a deceased partner pursuant to s 43 of the Partnership Act "is in the nature of a simple contract debt, and it is subject to the Statute of Limitations, which runs from the deceased partner's death" (at 121 - 122).

84 Additionally, in *Duncan v The MFV Marigold Pd 145* 2006 SLT 975 the court stated that the objective of s 43 of the Partnership Act 1890 (as ascertained from *Pollock's Digest*) was to ensure that claims from an outgoing partner, or by the representatives of a deceased partner, were subject to the limitation period applicable to ordinary debts, with time running from the date of dissolution. The court stated that the "the intended significance of the use of the word 'debt', in section 43, appears to have been to make it clear that the surviving partners were not trustees for the deceased partner's representatives in respect of his interest in the partnership, and that the claim of the representatives against the surviving partners was therefore subject to the statute of limitation" (at [52]).

85 Therefore on the occurrence of a technical dissolution caused by the death of a partner, the surviving partners do not hold the deceased partner's share in partnership land on trust for his estate. Rather, the deceased partner's share in the partnership accrues as a simple contract debt, owed to his personal representative, on the date of the death of the partner. Hence, the claim of the deceased partner's personal representative is subject to the six-year limitation period prescribed by s 6(1)(a) of the Limitation Act for actions founded on contract. The limitation period starts to run from the date of the death of the partner.

86 This interpretation of ss 20(1), 22 and 43 of the Partnership Act does not render the proviso to s 20(1) otiose. The proviso accommodates situations where parties contract out of ss 22 and 43 (as they are entitled to) and agree that the surviving partners are to hold the deceased partner's share on trust for his estate. In such situations, the estate of the deceased partner's beneficial interest in the land would arise from the express provision in the partnership agreement and the surviving partners would hold the deceased partner's share on trust for his estate in order to give effect to the parties' agreement.

87 In the present case, Clause 23 of the Partnership Deed concerns the treatment of partnership assets after the death of any partner. Clause 23 provides that the personal representative of a deceased partner shall be paid the deceased partner's share of net profits after his passing. In essence, this clause simply reflects the position in the Partnership Act set out above. It makes clear that the personal representative does not have a proprietary interest in the partnership assets. Rather, he is entitled to a share of what remains after partnership assets have been turned into money and applied to discharge partnership debts and liabilities. Therefore, in the present case, the parties have not contracted out of ss 22 or 43 of the Partnership Act. Hence it is not necessary to conclude that surviving partners hold the deceased partner's share on trust for his estate.

88 The 4th Defendant cites two cases in support of his position: *Abdul Majeed v Official Administrator, F.M.S.* [1937 – 1940] 14 FMSLR 242 and *Mehra v Shah and others* [2003] All ER (D) 15 ("Mehra"). Both these cases suggest that a claim by a deceased partner to a share in the partnership land is not time-barred. However, in both these cases, the conclusion was reached without any consideration of ss 22 and 43 of the Partnership Act or any equivalent statutory provision. In fact, when *Mehra* was decided, s 22 of the Partnership Act 1890 had already been repealed.

89 Notwithstanding my conclusion that the surviving partners did not hold the deceased partner's share of the partnership assets on trust for his estate and that a personal representative's claim to recover what is owed to the estate is subject to a six-year limitation period, all the defendants in the present case are nevertheless entitled to a share in the Sale Proceeds because they were admitted into the partnership in their personal capacities.

The 1st and 2nd Defendants were admitted as partners holding 25/88 share in MHP that originally belonged to Chiam Toh Say

90 Existing partners can impliedly accept a new person as a partner: *Lindley & Banks on Partnership* at para 10-256. I find that the 1st and 2nd Defendants were impliedly accepted as partners of MHP by the Plaintiff's conduct for the following reasons. The Plaintiff:

- (a) did not take any action to rectify the records kept with ACRA which showed that Chiam Toh Say's estate was a partner even though he was repeatedly advised to do so.
- (b) did not object to the 1st and 2nd Defendants paying 25/88 of the property tax assessed on the Property in their capacity as partners of MHP. Neither did he reimburse them for this payment.

The Plaintiff's inaction suggests that he impliedly accepted the 1st and 2nd Defendants as partners of MHP.

91 The 1st and 2nd Defendants point out that the estate of Chiam Toh Say continued to be registered as a partner of MHP in in the records kept by ACRA and its predecessor, the RCB, until MHP's registration was cancelled on 3 May 2011. [\[note: 115\]](#) This is not disputed by the Plaintiff. The Plaintiff however maintains that these records are not reflective of the actual partnership makeup of MHP. He insists that these records were kept merely for the purpose of protecting third parties and cannot have any legally binding effect on the rights of partners against one other. They also cannot be relied upon as proof of admission to partnership. [\[note: 116\]](#) For instance, he points out that RCB records from 1996 inaccurately lists Chiam Toh Say as a partner of MHP even though Chiam Toh Say passed away in 1990. [\[note: 117\]](#)

92 I accept that the primary function of registration under the Business Registration Act (Cap 32, 2004 Rev Ed) ("Business Registration Act") is to protect third parties from fraud. This is evident from the structure of the Business Registration Act itself. Section 5 of the Business Registration Act requires every person carrying on business in Singapore to register the business with the Registrar of Business. Section 14 requires changes in the particulars of the business to be notified to the Registrar. Section 21 sets out the consequences that follow when a person carries on a business either without registering or when he has failed to furnish information required under s 14. It provides that any contract entered by him in relation to that particular business that he carries on shall be unenforceable except when the court exercises its discretion to grant relief. Pursuant to s 21(3), the court can grant relief to the person in default, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause. It can also grant relief on other grounds it deems "just and equitable". It was suggested in *Federal Lands Commissioner v Benfort Enterprise* [1997] 3 SLR(R) 895 that the court will exercise this wide power to grant relief when it appears to the court that the counterparty to the contract had not been misled as to the members of the firm with whom he was dealing (at [13] – [14]). It is evident from this that the purpose of registration is to ensure that those who do business in Singapore do not mislead those whom they do business with as to their real identity. Therefore, registration should not affect the rights of the partners against one other. Similarly, Professor Yeo Hwee Ying states in *Partnership Law in Singapore* (Butterworths Asia) ("*Partnership Law in Singapore*") that the Business Registration Act "is only concerned with protecting outside parties from fraud and it thus has no impact on the rights of the parties who are owners of the business" (at 26 – 27).

93 However, registration as a partner can be of some evidential value. Notwithstanding the statement quoted in the above paragraph, Professor Yeo does accept that "[t]here is some probative utility to registration": *Partnership Law in Singapore* at 26. Indeed, in *Sivagami Achi v P R M Ramanathan Chettiar & Anor* [1959] MLJ 221, the court accepted that "registration is *prima facie* though strong evidence of partnership". The court also held that partners are not estopped from alleging and proving that a person who is registered as a partner is in fact, merely a nominal partner.

94 I accept that in the present case, the registration of Chiam Toh Say's estate as a partner of MHP is not by itself determinative of whether his personal representatives were admitted into the partnership. It is clear from the Plaintiff's correspondence with ACRA that the registration was done more as a matter of ACRA's standard operating procedure than to reflect the true makeup of the partnership. A letter from the RCB to MHP dated 30 March 2000 stated that the words "Estate of" in respect of Chiam Toh Kai and Chiam Toh Say were only entered "to denote that these two persons... have passed away. It does not denote that the estate has been admitted into the partnership". [\[note: 118\]](#) Additionally, in a letter dated 27 November 2006 from ACRA to the Plaintiff, ACRA explained that:

... the change from "Chiam Toh Say" to the "Estate of Chiam Toh Say" was *made by the personal representative of the late Mr Chiam Toh Say* and this change was made in accordance with the Business Registration Regulation. In particular, *regulation 10(2) of the Regulations permits the personal representative of the deceased person to submit the form to be filed for registration where there is a change of registered particulars owing to the death of a person.* [\[note: 119\]](#) (emphasis added)

Lastly, in an email dated 20 January 2011, the Plaintiff was informed by ACRA that:

... the registration of estates of the deceased partners, Chiam Toh Say and Chiam Toh Kai, [did] not confer any rights or impose any obligations on the estates that they would otherwise not have in law, and it does not mean that the estates are admitted into the partnership of Mitre

Hotel in law. The registration is for the purpose of notifying the public that the partners had passed away, and that the public should deal with the estates of the deceased partners if they have any issue with the partnership. [\[note: 120\]](#)

Hence it appears that ACRA simply rectified its records to include Chiam Toh Say's estate as a partner once it was notified of Chiam Toh Say's death by his personal representatives. This seems to have been done as a matter of its standard operating procedure. Therefore the registration of Chiam Toh Say's estate as a partner of MHP alone is not sufficient evidence of the admission of Chiam Toh Say's estate into the partnership.

95 However, I believe that the registration of Chiam Toh Say's estate as a partner of MHP takes on a different complexion when viewed in light of the Plaintiff's failure to take any action to rectify the records kept with ACRA even though he was advised to do so several times.

96 IRAS continued to allocate profits and losses to the estate of Chiam Toh Say as a partner holding 25/88 share of MHP for the period 1996 to 2008. [\[note: 121\]](#) The 1st and 2nd defendants claim that they continued to pay the income tax that was assessed on the profits of MHP as executors of Chiam Toh Say's estate. From the evidence, the partnership was making a loss from 1999 to 2008. [\[note: 122\]](#) Therefore no tax would have been payable for those years. For the period prior to that, the 1st and 2nd defendants must have paid the estate of Chiam Toh Say's share of income tax. It is significant that IRAS continued to allocate profits and losses to the estate of Chiam Toh Say and the Plaintiff was aware of this because these allocations were sent to him in his capacity as the precedent partner of MHP.

97 The Plaintiff points out that he consistently wrote to IRAS objecting to its allocation of partnership profits. [\[note: 123\]](#) He also maintains that the allocations issued by IRAS cannot be relied upon as proof of admission to the partnership because IRAS consistently allocated partnership profits using the historical basis of allocation indicated in the Partnership Deed. [\[note: 124\]](#) The plaintiff insists that the allocation of the profits by IRAS did not take into account changes in the composition of the partnership overtime. For instance when cross-examining the 3rd Defendant, the Plaintiff's counsel pointed out that IRAS' allocation of profits and losses for the accounting period 1 January 1999 to 31 December 1999 lists the estate of Chiam Toh Lew as a partner even though Chiam Toh Lew's name was withdrawn as a partner pursuant to a consent judgment in DC Summons 6648 of 1984 (see [9] above). [\[note: 125\]](#)

98 I accept that IRAS' profit and loss allocations were based on the historical basis of allocation indicated in the Partnership Deed. There is also sufficient evidence on record to support the Plaintiff's claim that he consistently objected to IRAS' allocation of partnership profits. [\[note: 126\]](#) However, the Plaintiff failed to commence any legal proceedings to clarify the respective partners' shares in MHP or to get the legal representatives of the deceased partners to sign the prescribed Form D so as to rectify the records kept by the ACRA to accurately reflect the makeup of the partnership, even though IRAS, Ministry of Finance and ACRA had advised him to do so several times. [\[note: 127\]](#)

99 In fact, the Plaintiff did not even protest when Chiam Toh Say's estate paid 25/88 share of the property tax assessed on the Property *in its capacity as a partner of MHP*. IRAS' property tax assessment on the Property was sent to the estate of Chiam Toh Say since they were holding the Property on trust for MHP. [\[note: 128\]](#) Upon receiving the tax assessment, the solicitors for Chiam Toh Say's estate wrote to the Plaintiff and to the estates of Chiam Toh Kai and Chiam Toh Tong proposing that all "*the partners of [MHP]* pay the property tax due...in proportion to their shares" (emphasis

added). They calculated the estate of Chiam Toh Say's share of the property tax as amounting to \$29,545.45. The 1st and 2nd defendants paid the same in their capacity as partners of MHP. [\[note: 129\]](#) There is no evidence to suggest that the Plaintiff either reimbursed them for this property tax payment or that he raised any objections when they paid the property tax.

100 On cross-examination, the Plaintiff claimed that the 1st and 2nd defendants paid the property tax only because they held the Property as trustees. He pointed out that he had written to the 1st and 2nd Defendants asking them to transfer the trusteeship of the Property to him but the 1st and 2nd Defendants had not acceded to his request. [\[note: 130\]](#) He maintained that had they done so, property tax would have been levied on him alone. [\[note: 131\]](#) However I am not convinced by his explanation for his inaction. The 1st and 2nd defendants made it abundantly clear that they were paying the property tax not as trustees of the Property but as partners of MHP. It is also significant that they only paid 25/88 share of the property tax that was assessed on the Property. This figure represents Chiam Toh Say's original share in MHP. This suggests that they considered themselves to have been admitted as partners in respect of the 25/88 share that was originally held by Chiam Toh Say. The Plaintiff did nothing to make them think otherwise.

101 The payment of tax which is usually assessed on and paid by a partner is one factor that can be taken into consideration in determining whether the person who does so has been accepted into the partnership. In *Chiam Heng Chow and another (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and others* [1993] 2 SLR(R) 894 the Court of Appeal considered Chiam Toh Say's continued payment of tax on his share of the partnership profits from 1976 to 1986 as evidence that the then existing partners of MHP did not give effect to a notice of dissolution issued by Chiam Toh Say's solicitors in 1975. Rather the court held that the partners treated the partnership as subsisting and continued to accept Chiam Toh Say as a partner (at [25] – [26]).

102 Additionally, silent inactivity may be sufficient to signify a party's implied consent to an arrangement if the relationship between the parties is such that the silent party ought to have spoken up or objected: *Giuffrida Luigi v Julius Baer (Singapore) Ltd (in members' voluntary liquidation) and another* [2010] SGHC 96 at [20] ("*Julius Baer*"). In *Julius Baer*, the claimant's account with Julius Baer (Singapore) Ltd ("*JBS*"), a merchant bank incorporated in Singapore, was in credit. JBS informed the claimant by letter that his account would be transferred to Bank Julius Baer & Co Ltd which was incorporated in Switzerland. The claimant maintained that he never saw the letter and that he did not consent to the transfer and sought payment from JBS instead. The court found that by virtue of a clause in the Account Mandate that the claimant had signed when he opened the account with JBS, he had given instructions for his mail to be held by JBS. The mail was deemed delivered and received by him. The court held that in the circumstances, "there was a duty on [the claimant] to speak out, based on his deemed knowledge, if he wanted to object". His failure to object was a factor that the court took into consideration in coming to the conclusion that the claimant had impliedly consented to his account being transferred.

103 In the present case, the Plaintiff knew that the 1st and 2nd defendants' action in paying the property tax in their capacity as partners was diametrically opposed to the position that he maintained – *ie*, that they were never admitted into the partnership. Yet, he did not object but rather opportunistically went along. This, when viewed in light of the other factors discussed above, suggests that the Plaintiff had impliedly accepted the 1st and 2nd defendants as partners of MHP.

The 3rd defendant was admitted as a partner and she held the 21/88 share in MHP that originally belonged to Chiam Toh Tong when the property was sold

104 Chiam Toh Tong passed away on 17 May 1969. Chiam Toh Kai was appointed the executor of Chiam Toh Tong's estate in accordance with his will. [\[note: 132\]](#) Chiam Toh Tong's 21/88 share in MHP accrued as a debt payable to his estate on the date of his death. The debt was subject to the contractual six-year limitation period. Chiam Toh Kai, the executor of Chiam Toh Tong's estate, did not take any action to recover the debt. Any claim to recover the debt is now time barred.

105 However, it is clear that Chiam Toh Tong's 21/88 share in MHP was not extinguished when MHP was reconstituted among the then surviving partners. Instead, Chiam Toh Kai was holding it on trust for Chiam Toh Tong's estate.

106 However the Plaintiff alleges that he acquired the estate of Chiam Toh Tong's 21/88 share in MHP through a series of transactions. First, he claims that Chiam Toh Kai personally acquired the estate of Chiam Toh Tong's share in 1974. Next, the Plaintiff claims that he acquired Chiam Toh Tong's share from Chiam Toh Kai in 1986 pursuant to the Loan Agreement. I am not convinced that either of these two events happened.

Chiam Toh Kai did not acquire the estate of Chiam Toh Tong's share in MHP in his personal capacity

107 I am of the view that Chiam Toh Kai never acquired the estate of Chiam Toh Tong's share in MHP in his personal capacity in 1974 for a number of reasons.

108 The Plaintiff has not produced any evidence to substantiate his assertion that the beneficiaries of Chiam Toh Tong's estate were not prepared to bear responsibility for the accumulated losses of MHP which the High Court in *Chiam Toh Say v Mitre Hotel* [1991] SGHC 132 found to amount to \$103,805. Neither has he proved that Ho Kim Wah, the widowed first wife of Chiam Toh Tong, had the authority to consent to Chiam Toh Kai's acquisition of the estate of Chiam Toh Tong's share on behalf of all the beneficiaries of Chiam Toh Tong's estate. Both the 3rd Defendant and the Chiam Heng Pout, who are the beneficiaries of Chiam Toh Tong's estate, deny authorising Ho Kim Wah to consent to the Chiam Toh Kai's acquisition of the estate of Chiam Toh Tong's share in MHP. [\[note: 133\]](#)

109 I am not convinced that the minutes of the partners meeting dated 6 April 1975 [\[note: 134\]](#) prove that Chiam Toh Kai had acquired the estate of Chiam Toh Tong's share in MHP in his personal capacity. The pertinent parts of the minutes read:

This meeting is held to discuss the future of the business since Chiam Toh Say has served Notice to dissolve the partnership on 31.3.75 and verbally threaten to close the banking account and pull down the partnership business. It seems that there is unlikely to be an early settlement on this matter.

The following agreements have been reached: -

Chiam Toh Kai & Chiam Heng Hsien have agreed to share equally and personally the risks under Chiam Toh Say's name prior to the dissolution effected by his Notice since Chiam Toh Lew is financially very weak and Chiam Heng Pout has expressed reluctance in taking business risks under his present financial position.

As partnership could only accept a living person as its member, Chiam Toh Kai is prepared to shoulder the shares of the risks, responsibilities etc under the name of the late Chiam Toh Tong.

(emphasis added)

All that the minutes say is that Chiam Toh Kai would assume responsibility for the estate of Chiam Toh Tong's share of liabilities of MHP. It does not state unequivocally that Chiam Toh Kai had acquired the estate of Chiam Toh Tong's share in his personal capacity.

110 The Plaintiff also points out that the estate of Chiam Toh Tong is not included in the list of partners of MHP submitted by Chiam Toh Say to the Registrar of Businesses in 1974 ("Form B") to support his case. The Plaintiff claims that this shows that Chiam Toh Kai had taken over the estate of Chiam Toh Tong's share in the partnership. [\[note: 135\]](#) However, Form B does not set out the shareholding of each partner. Without details of the shareholding of each of the partner, it is not possible to draw the inference that Chiam Toh Kai had acquired the estate of Chiam Toh Tong's share in MHP. A more plausible explanation for the omission is that the 3rd Defendant and Chiam Heng Pout, who were the beneficiaries of the estate of Chiam Toh Tong, were not admitted as partners of MHP at that time.

111 The accounts of Chiam Toh Tong's estate that Chiam Toh Kai rendered to the 3rd defendant and Chiam Heng Pout show that he never acquired the estate of Chiam Toh Tong's share. He continued to allocate a portion of the profits he received from MHP to Chiam Toh Tong's estate even in the 1980s. For example, for the period 12 January 1982 to 26 October 1983, he allocated \$38,940.03 to Chiam Toh Tong's estate as "[s]hare of profit from Mitre Hotel" [\[note: 136\]](#) and for the period 27 October 1983 to 16 January 1986, he allocated \$52,103.20 to Chiam Toh Tong's estate under that same heading. [\[note: 137\]](#) If the Plaintiff's claim is correct, by this time Chiam Toh Kai would have already acquired the estate of Chiam Toh Tong's share in MHP in his personal capacity. Therefore there would have been no need for him to allocate any portion of the share of profits he received from MHP to Chiam Toh Tong's estate. The fact that he did suggests that he never took over the estate of Chiam Toh Tong's share in MHP in his personal capacity. The final statement of account that he rendered as the outgoing trustee of Chiam Toh Tong's estate has "Partnership: Mitre Hotel" listed as one of the assets of Chiam Toh Tong's estate with a value of \$11,455.00 attached to it. This too suggests that he never acquired the estate of Chiam Toh Tong's share.

112 Additionally, in a letter dated 26 April 1985 from Chiam Toh Kai's solicitors to the 3rd Defendant and Chiam Heng Pout's solicitors, Chiam Toh Kai's solicitors stated that their client was holding the estate of Chiam Toh Tong's share on trust for the 3rd Defendant and Chiam Heng Pout. [\[note: 138\]](#)

113 Therefore, on the basis of the documentary evidence, I find that Chiam Toh Kai never acquired the estate of Chiam Toh Tong's share in MHP in his personal capacity in 1974.

The Plaintiff extended an unconditional loan to Chiam Heng Pout

114 I am of the view that no conditions were attached to the loan of \$50,000 that the Plaintiff extended to Chiam Heng Pout. Contrary to what the Plaintiff claims, I believe that it was perfectly reasonable for the Plaintiff to have extended an unsecured loan to the Chiam Heng Pout. Chiam Heng Pout was after all, the Plaintiff's first cousin and the evidence suggests that they were both involved in running MHP (see [124] below). Given their relationship (both personal and professional) it is not inconceivable that the Plaintiff would have extended an unsecured loan to Chiam Heng Pout. This is especially so since it appears that the Plaintiff could have expected repayment shortly. Chiam Heng Pout testified that around the time of the loan, the estate of Chiam Toh Tong was due to receive its share of the profits of the MHP up to 1986. The accounts rendered by Chiam Toh Kai to the 3rd Defendant and Chiam Heng Pout as the outgoing trustee of Chiam Toh Tong's estate show that Chiam Toh Tong's estate was owed \$112,744.08. [\[note: 139\]](#) Chiam Heng Pout was entitled to 60% of this

amount. [\[note: 140\]](#) He claimed that the agreement between the Plaintiff and him was for him to repay the loan once he acquired this sum. [\[note: 141\]](#) I accept this part of his evidence.

115 I also note that although the loan was not repaid within 6 months, the Plaintiff did not take any immediate action for the estate of Chiam Toh Tong's share to be transferred to him. He claims that he waited until the early 1990s before requesting Chiam Toh Kai to transfer the estate of Chiam Toh Tong's share in MHP to him. He claims that he did so because he only became aware of Chiam Heng Pout's bankruptcy then. I find this explanation unsatisfactory. There is no reason why the Plaintiff should have waited until he found out about Chiam Heng Pout's bankruptcy. If the loan was in fact secured on the estate of Chiam Toh Tong's share in MHP, the Plaintiff would have demanded a transfer as soon as Chiam Heng Pout failed to repay the loan within the agreed 6 months period. In the circumstances, I believe that the more plausible explanation is that Plaintiff extended an unsecured and unconditional loan to Chiam Heng Pout.

116 I am disinclined to believe the particulars of the loan alleged by the Plaintiff because they appear highly contrived and specifically tailored to advance his position in the present proceedings. First, the backdating clause allows him to get around the difficulty posed by Chiam Toh Kai's appointment of the 3rd Defendant and Chiam Heng Pout as the new trustees of Chiam Toh Tong's estate by a deed of appointment on 27 February 1986. He conveniently relies on the backdating clause to argue that, notwithstanding this deed of appointment, Chiam Toh Kai did not transfer the estate of Chiam Toh Tong's share in MHP to the new trustees because he knew that he was under an obligation to transfer the share to the Plaintiff from the date of the loan.

117 The Plaintiff argues that the backdating clause was included because he was concerned about Chiam Heng Pout becoming bankrupt before the loan repayment period expired. Chiam Heng Pout admitted that he was having cash flow problems in 1986. However, he was only adjudged a bankrupt in 1988. [\[note: 142\]](#) I am of the view that Chiam Heng Pout's bankruptcy would have been too remote in 1986 for the parties to have seriously considered and made provisions for it.

118 I also find it telling that the Plaintiff appears to be raising the backdating clause for the first time in these proceedings. There was no mention of the backdating clause in the affidavit that he filed on 29 December 2010 in OS 1123 of 2010/L. [\[note: 143\]](#) That was the second affidavit that he filed in that matter and the first one that mentions the loan that he extended to Chiam Heng Pout. The relevant parts of that affidavit where he discusses the loan agreement are as follows:

Heng Pout approached me as he needed money badly to keep his businesses going. ... He wanted a loan for 6 months and assured me that there should not be problem to return me the loan within 6 months. I agreed to give him a loan of \$20,000 but he wanted \$50,000. I told him if he could not return the \$50,000 loan within 6 months or if he becomes a bankrupt, his father's estate in MHP will be gone. He became a bankrupt and the loan never returned to me. I told Toh Kai about the loan so that he did not have to worry about the bankruptcy.

The backdating clause was not mentioned in any of the 4 subsequent affidavits that the Plaintiff filed in that matter either. The fact that the plaintiff only raises the backdating clause at this stage suggests that this clause is more an afterthought than one of the actual terms of the loan between Chiam Heng Pout and him.

119 Moreover, he alleges that Chiam Heng Pout signed a note stating that he was fully aware of the terms of the Loan Agreement. [\[note: 144\]](#) However the Plaintiff has not produced this note. He claims that the note was stolen by Chiam Siew Juat (Chiam Toh Kai's daughter) and Chiam Ai Tong

(another member of the Chiam family not involved in the present proceedings) sometime around September to October 2008. The police investigated the matter and decided that the evidence did not disclose any criminal offence. The Plaintiff was advised to seek civil recourse instead. [\[note: 145\]](#) However, he did not pursue the matter. In the circumstances, the Plaintiff has not adduced any evidence to substantiate his claim the Loan Agreement contained this backdating clause. I find that the backdating clause was not part of the loan agreement between Chiam Heng Pout and him.

120 Second, I find that the nominal share clause is also a contrived attempt to explain away difficulties in the Plaintiff's case. It allows him to explain why he had stated that Chiam Heng Pout and the 3rd Defendant were admitted as partners of MHP in his affidavit dated 31 August 2006 that he filed in OS 830 of 2006/W (see [127] below). It also allows him to explain why he continued to list the estate of Chiam Toh Kai as a partner in the accounts he prepared even though he claims that Chiam Toh Kai's estate was not admitted into the partnership in its own right (see [135] below). In the course of the proceedings I asked the Plaintiff why the estate of Chiam Toh Tong's nominal share in the MHP was not quantified from the outset. In essence, his answer was that there were uncertainties concerning the liabilities of MHP at that time and he did not want to unduly burden Chiam Heng Pout with any part of those liabilities. It appears from the Plaintiff's response that all he wanted to do was to give Chiam Toh Tong's estate a sum of money as a goodwill gesture. He could have simply done so without the nominal share clause. [\[note: 146\]](#) Moreover, he has failed to adduce any independent evidence to substantiate the existence of the nominal share clause. In the circumstances, I find that the nominal share clause was not part of the loan between Chiam Heng Pout and him as well.

121 I am fortified in my view that the loan was an unconditional one based on the Plaintiff's reaction to the order in OS 136 of 2002/X. In that case, it was decided that the estate of Chiam Toh Kai held 21/88 share in MHP on trust for the estate of Chiam Toh Tong. [\[note: 147\]](#) This finding is inconsistent with the Plaintiff's allegation that Chiam Toh Kai transferred the estate of Chiam Toh Tong's share in MHP to him sometime in the early 1990s pursuant to the Loan Agreement. The Plaintiff was notified of the judgment. All he did in response was to write a letter to M/s Albert Teo & Lim, the solicitors for Chiam Toh Kai's estate in that matter. Therein, he only stated that Chiam Toh Kai's estate had not been admitted as a partner of MHP. The Plaintiff did not mention the particulars of the Loan Agreement and that Chiam Toh Tong's estate was no longer entitled to 21/88 share in MHP. [\[note: 148\]](#) Subsequently in his affidavit dated 31 August 2006 that the Plaintiff filed in OS 830 of 2006/W, he even relied on the decision in OS 136 of 2002/X. [\[note: 149\]](#) The pertinent part of his affidavit reads:

14. As for Chiam Toh Tong, he passed away on 17 May 1961. The name of his legal personal representatives (Chiam Heng Pout and Chiam Mui Ken [the 3rd Defendant]) were not reflected in Form B (exhibited as "CHH-11") then, and Chiam Toh Tong's share in [MHP] was initially held on trust by Chiam Toh Kai. *This matter was recently clarified in Originating Summons No. 136 of 2002/X, an action between Chiam Mui Ken (legal personal representative of Chiam Toh Tong, deceased) and Chiam Heng Suan (legal personal representative of Chiam Toh Kai, deceased) concerning their respective shares in [MHP].*

15. Chiam Heng Pout and Chiam Mui Ken (legal personal representatives of Chiam Toh Tong, deceased) have been admitted as partners into [MHP]. Their contribution to [MHP's] business (and their corresponding rewards for their services) are reflected in the profits and loss accounts of [MHP] for the years 1987 – 1990..

...

17. The existence of [MHP] through 1990 is supported by its profits and loss accounts for the years 1973 to 1990, exhibited at pages 57 to 74 of exhibit "CHH-6" in my 1st affidavit. From 1974 to 1986, it is clear that the accounts were signed by at least two partners of [MHP], namely Chiam Toh Kai and myself. The accounts from 1987 to 1990 reflect the partners during those years as myself, Chiam Toh Kai and the legal personal representatives of Chiam Toh Tong (Chiam Heng Pout and Chiam Mui Ken). ...

...

20. *From the proceedings in Originating Summons No. 136 of 2002/X, Chiam Mui Ken (legal personal representative of Chiam Toh Tong, deceased) and Chiam Heng Suan (legal personal representative of Chiam Toh Kai, deceased) have respectively claimed shares in the profits of [MHP] from 1 January 1996 to 25 March 2003 (date of the court order), a period that is after the death of both Chiam Toh Tong and Chiam Toh Kai. The only basis on which they could assert such claims (that is, even after the death of Chiam Toh Tong and Chiam Toh Kai) was because they remained partners of the 8th Defendant, which still subsisted.*

(emphasis added)

When the Plaintiff was cross-examined concerning this affidavit, he stated that the purpose of that affidavit was to prove that MHP was not dissolved and that his reference to OS 136 of 2002/X must be understood in that context. [\[note: 1501\]](#) I do not think that the context affects the contents of what he stated. I am of the view that he would have made it abundantly clear if he had in fact acquired the estate of Chiam Toh Tong's share in MHP pursuant to the Loan Agreement. His reference to OS 136 of 2002/X without doing so suggests that he accepted the decision in OS 136 of 2002/X that Chiam Toh Tong's estate was entitled to 21/88 share in MHP. This in turn indicates that the loan was an unconditional one.

122 I am therefore of the view that the Plaintiff extended an unconditional loan to Chiam Heng Pout. The loan was not secured on the estate of Chiam Toh Tong's share in MHP.

The 21/88 share in MHP vested in the 3rd Defendant and Chiam Heng Pout when they were appointed trustees of Chiam Toh Tong's estate

123 Chiam Toh Kai appointed the 3rd Defendant and Chiam Heng Pout as the new trustees of Chiam Toh Tong's estate by a deed of appointment on 27 February 1986. Appointment by deed has the effect of vesting trust property in the new trustees: s 41 of the Trustees Act; Robert Pearce, John Stevens & Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed) at 813. Section 41 of the Trustees Act provides:

Vesting of trust property in new or continuing trustees

41. —(1) Where by a deed a new trustee is appointed to perform any trust, then –

(a) if the deed contains a declaration by the appointor to the effect that *any estate or interest in land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject*, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

(b) if the deed is made on or after 1st September 1929 and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

...

This section shall not extend –

...

(c) to any share, stock, annuity or property which is only transferable in books kept by company or other body, or in the manner directed by or under any written law.

(emphasis added)

A share in a partnership is trust property with respect to which a declaration by deed that it shall vest in new trustees can be made. The “meaning of the expression ‘choses in action’ or ‘thing in action’ has expanded over time and is now used to describe all personal rights of property which can only be claimed or enforced by action and not by taking personal possession”: *Halsbury Laws of England* vol 13 (Butterworths, 5th Ed, 2009) at para 1. The court in *Re Bainbridge* (1878) 8 Ch D 218 held that a share in a partnership is a “choses in action” because a partner is only entitled “to such share of the partnership property as may exist after all the debts of the partnership are paid and the property has been realized” and that share is something which can only be ascertained by “process of law”. Therefore, a share in a partnership is a “thing in action” with respect to which a declaration by deed that it shall vest in the new trustee could have been made. In the present case, the deed of appointment executed by Chiam Toh Kai is deemed to contain such a declaration by virtue of s 41(1)(b). Additionally, registration is not a prerequisite for the transfer of a share in a partnership to be effective (see [92] above for the purpose of registration). Neither is there a prescribed manner in which a transfer of a share in a partnership must be effected. Therefore the operation of s 41(1)(b) is not affected by s 41(3)(c) in the present case. Hence, the execution of the deed of appointment on 27 February 1986 had the effect of vesting 21/88 share in MHP in the 3rd Defendant and Chiam Heng Pout from that day. Therefore the dispute of whether Chiam Toh Kai actually transferred the share to the new trustees is irrelevant (see [47] – [48] above).

The 3rd Defendant and Chiam Heng Pout were admitted as partners holding 21/88 share in MHP after they were appointed trustees of Chiam Toh Tong’s estate

124 I note that the accounts prepared by the Plaintiff for the years 1987 – 1990 show that the representatives of Chiam Toh Tong’s estate were rewarded for the services that they rendered to MHP. The accounts describe the services rendered as “sacrifices” because they were compensated at a rate below market value. In the course of cross-examination, the Plaintiff described the services as:

... it’s very minor type of service. That is not---I mean, it’s not worth much things you see? Sometime, if I go out to do something and then came back after ½ an hour. [\[note: 151\]](#)

However, I note that Chiam Toh Kai and the Chiam Toh Tong’s estate were given \$24,000 for the services that they rendered to MHP in 1989. This is a sizeable amount which suggests that they had rendered substantial services to MHP. I find it difficult to fathom why the representatives of Chiam Toh Tong’s estate would render substantial services at under market value if they were neither

partners nor entitled to a share in MHP. I believe that the more plausible explanation is that the representatives of Chiam Toh Tong's estate were rendering services to MHP as partners thereof.

125 The affidavit dated 5 March 1998 filed by the Plaintiff in Originating Summons No 31 of 1998 suggests that the 3rd Defendant was admitted as a partner of MHP. [\[note: 152\]](#) This was an application taken out by the 1st and 2nd Defendants before the Property was sold. They sought a declaration that upon the sale of the property, payment of 21/88 share of 1/10 of the sale proceeds to the 3rd defendant, 19/88 share of the same to the 4th defendant and 21/88 share to Chiang Boo Jee (the Plaintiff's mother) will discharge them from "all duties and liabilities arising from the declaration of trust executed by Chiam Toh Say, deceased, dated 21 October 1952 in favour of the partners in the partnership known as [MHP]". The application was adjourned *sine die* with liberty to restore since the Property was not yet sold and the court was of the view that it would not be sold in the foreseeable future.

126 In the Plaintiff's affidavit, he stated at paragraph 4: "Chiam Toh Tong died in 1969 and the Estate was admitted to the partnership under the administrator Chiam Toh Kai." Thereafter, he went on to explain at length that Chiam Toh Say's estate had not been admitted as a partner of MHP. However, he did not mention that he had acquired the 3rd Defendant's share in MHP and that she was not a partner of MHP notwithstanding the fact that in her affidavit dated 9 February 1998, the 3rd Defendant stated that Chiam Toh Tong's estate was entitled to 21/88 share in MHP and claimed 21/88 share of the sale proceeds of the Property. [\[note: 153\]](#) This suggests that the Plaintiff's only objection was that Chiam Toh Say's estate should not be entitled to 25/88 share of the sale proceeds. He appears to have accepted that the court may order 21/88 share of the sale proceeds to be given to the 3rd Defendant. Therefore it can be inferred that the Plaintiff accepted that the 3rd Defendant was a partner holding 21/88 share of MHP.

127 In his affidavit dated 31 August 2006 that the Plaintiff filed in OS 830 of 2006/W, he unequivocally accepted that the 3rd Defendant was a partner of MHP. [\[note: 154\]](#) The pertinent part of his affidavit reads:

14. As for Chiam Toh Tong, he passed away on 17 May 1961. The name of his legal personal representatives (Chiam Heng Pout and Chiam Mui Ken [the 3rd Defendant]) were not reflected in Form B (exhibited as "CHH-11") then, and Chiam Toh Tong's share in [MHP] was initially held on trust by Chiam Toh Kai. This matter was recently clarified in Originating Summons No. 136 of 2002/X, an action between Chiam Mui Ken (legal personal representative of Chiam Toh Tong, deceased) and Chiam Heng Suan (legal personal representative of Chiam Toh Kai, deceased) concerning their respective shares in [MHP].

15. Chiam Heng Pout and Chiam Mui Ken (legal personal representatives of Chiam Toh Tong, deceased) have been admitted as partners into [MHP]. Their contribution to [MHP's] business (and their corresponding rewards for their services) are reflected in the profits and loss accounts of [MHP] for the years 1987 - 1990...

When the Plaintiff was cross-examined concerning this affidavit, he stated that Chiam Heng Pout and the 3rd Defendant had been admitted as partners only in respect of the nominal share that Chiam Toh Kai's estate held for the Chiam Toh Tong's estate. [\[note: 155\]](#) For the reasons stated at [120] above, I do not believe that Chiam Toh Kai's estate was holding a nominal share for Chiam Toh Tong's estate. In my view, this excerpt from his affidavit amounts to an admission on oath that Chiam Heng Pout and the 3rd Defendant were admitted as partners of MHP.

128 For the reasons stated above, I find that the 3rd Defendant and Chiam Heng Pout were admitted as partners of MHP after being appointed the new trustees of Chiam Toh Tong's estate.

129 Chiam Heng Pout discharged himself as executor and appointed the 3rd Defendant the sole executrix of Chiam Toh Tong's estate by a deed of appointment dated 23 October 1996. [\[note: 156\]](#) Therefore, the entirety of the 21/88 share in MHP would have vested in the 3rd Defendant. Therefore, when the property was sold, she was a partner holding 21/88 share in MHP.

The 4th defendant was admitted as a partner holding the 19/88 share in MHP that originally belonged to Chiam Toh Kai

130 Chiam Toh Kai passed away on 20 June 1993. Chiam Toh Kai's 19/88 share in MHP accrued as a debt payable to his estate on the date of his death. The debt was subject to the contractual six-year limitation period. The 4th Defendant, the executor of Chiam Toh Kai's estate, did not take any action to recover the debt. Any claim to recover the debt is now time barred.

131 However, I find that the 4th Defendant was admitted as a partner of MHP upon the death of Chiam Toh Kai. This is evident from the Plaintiff's own admissions. In an affidavit dated 31 August 2006 that the Plaintiff filed in OS 830 of 2006/W [\[note: 157\]](#), he stated:

19. Chiam Toh Kai passed away on 20 June 1993. At the time of his death, the partners in [MHP] were myself and Chiam Heng Pout and Chiam Mui Ken (legal personal representatives of Chiam Toh Tong, deceased). *The legal personal representative of Chiam Toh Kai, deceased, Chiam Heng Suan, was thereafter admitted as a partner into [MHP] by the remaining partners.* The profits and loss accounts of [MHP] for the year 1996 now shown to me and exhibited as "CHH-13" reflect myself, Chiam Heng Pout and Chiam Mui Ken (legal personal representatives of Chiam Toh Tong, deceased) and Chiam Heng Suan (legal personal representative of Chiam Toh Kai, deceased) as its partners.

(emphasis added)

In another affidavit dated 6 June 2011 that the Plaintiff filed in OS 1123 of 2010/L, he again admitted that the 4th Defendant had been admitted into the partnership. He went on to add that the 4th Defendant withdrew from the partnership following the Court of Appeal's decision in CA 150/1991.

43. *Chiam Toh Kai passed away on 20 June 1993. His administrator, the [4th Defendant], was admitted to the partnership, to represent Chiam Toh Kai's estate.* However, after the Court of Appeal's decision for Civil Appeal No. 150 of 1991, which was issued on 8 September 1993, Chiam Toh Kai's estate served notice of its withdrawal from MHP through its solicitors, M/s Laycock & Ong. *This withdrawal was also notified to the Registrar of Businesses, which in turn notified us.* The Court of Appeal had awarded a sum of nearly S\$300,000 (including interest) to the estate of Chiam Toh Say plus substantial costs. To the best of my knowledge, the administrator of Chiam Toh Kai's estate had, after looking into the estate's share of 19/88 in the partnership and the excessive withdrawals made by Chiam Toh Kai from MHP, decided to withdraw from the estate's 19/88 share in the partnership, on the agreement that neither the estate nor MHP would have any further claims against each other after following this settlement. In or around 2006, Siew Juat and the [4th Defendant] approached me with a view to re-joining the partnership. I had no objection in principle to this, but the estate's re-admission had to be subject to an agreement as to the terms of such re-admission. No agreement was ever reached, although I would reiterate that I have no objection to re-admission of the estate of Chiam Toh Kai as a partner, so long as the

terms can be finalised.

(emphasis added)

132 In the present case, the Plaintiff maintains that by these statements, he only meant that the 4th Defendant had been admitted as a partner of MHP to represent the nominal share in MHP that Chiam Toh Kai's estate held for Chiam Toh Tong's estate. For the reasons stated at [120] above, I do not believe that Chiam Toh Kai's estate was holding a nominal share for Chiam Toh Tong's estate. Additionally, it does not seem plausible that the 4th Defendant would have agreed to be a partner only holding a nominal share for Chiam Toh Tong's estate. I also find it telling that the Plaintiff claims that the 3rd Defendant was admitted as a partner in respect of the nominal share that Chiam Toh Kai's estate held for Chiam Toh Tong's estate (see [127] above) and at the same time claims that the 4th Defendant was admitted as a partner to represent the nominal share in MHP that Chiam Toh Kai's estate held for Chiam Toh Tong's estate. If the 3rd Defendant had been admitted as partner to represent her own interests with respect to the nominal share, there would have been no need for the 4th Defendant to be admitted as a partner for the same purpose. In my view, these excerpts from his affidavits amount to an admission on oath that the 4th Defendant was admitted as a partner of MHP.

133 In the alternative, the Plaintiff argues that following the decision in CA 150/1991 issued on 8 September 1993, Chiam Toh Kai's estate served notice to withdraw from the partnership. [\[note: 158\]](#) The Plaintiff claims that the 4th Defendant did so because he did not want to pay any portion of the amount, allegedly approximating \$400,000, which MHP was ordered to pay the estate of Chiam Toh Say. [\[note: 159\]](#) The documentary evidence on record suggests that MHP paid a total of about \$280,000. [\[note: 160\]](#) The Plaintiff maintains that this amount excludes costs that were ordered against MHP. [\[note: 161\]](#)

134 In his affidavit dated 6 June 2011 that the Plaintiff filed in OS 1123 of 2010/L, he claimed that the RCB notified MHP of the 4th Defendant's withdrawal from MHP (see [131] above). He maintains the same position in the present case. He also claims that the estate of Chiam Toh Kai's solicitors had given him a notice of withdrawal. However, the Plaintiff has not produced these documents as evidence in the present case. He claims that these documents were stolen by Chiam Siew Juat and Chiam Ai Tong as well (see [119] above). [\[note: 162\]](#) The Plaintiff relies solely on an ACRA business search conducted on MHP on 13 July 2006 which lists Chiam Toh Kai's estate as a withdrawn partner to support his position. [\[note: 163\]](#) However, another business search conducted on MHP on 26 March 2003 lists Chiam Toh Kai's estate as an owner and not as a withdrawn partner. [\[note: 164\]](#) The 4th Defendant maintains the Chiam Toh Kai's estate was removed as a partner from the records due to a clerical error. He argues that following the order in OS 136 of 2002/X, his solicitors wrote to ACRA for the records to be rectified to show that Chiam Toh Kai held 21/88 share on trust for Chiam Toh Tong's estate. [\[note: 165\]](#) However ACRA erroneously removed Chiam Toh Kai's estate from the partnership altogether. Subsequently, the 4th Defendant's solicitors wrote to ACRA requesting that the records be rectified. [\[note: 166\]](#) It appears that the records were subsequently amended to restore Chiam Toh Kai's estate as a partner. [\[note: 167\]](#) I am of the view that Chiam Toh Kai's estate would not have been restored as a partner if ACRA in fact had a notice of withdrawal issued by the 4th Defendant in its records. The fact that Chiam Toh Kai's estate was restored as a partner and the fact that the ACRA search conducted on 26 March 2003 lists Chiam Toh Kai's estate as an owner and not as a withdrawn partner together suggests that the withdrawal of Chiam Toh Kai's estate was in fact due to a clerical error. In the circumstances, I find that the 4th Defendant did not withdraw from

MHP after the decision in CA 150/1991.

135 I am fortified in my conclusion that the 4th Defendant remained a partner after 1993 because he continued to receive income tax assessments after 1993. He was assessed income tax on 19/88 share of the profits of MHP. [\[note: 168\]](#) The Plaintiff was content to allow the 4th Defendant to pay the sums assessed. He did not offer to reimburse the 4th Defendant. In fact the accounts of MHP for 1994 and 1996 prepared by the Plaintiff for purposes of income tax assessment state explicitly that the Chiam Toh Kai's estate was a partner of MHP. [\[note: 169\]](#) Moreover the tax returns he filed in 1997 list the estate of Chiam Toh Kai as a partner. [\[note: 170\]](#) Both these documents do not sit well with his allegation that the 4th Defendant had withdrawn as a partner of MHP in 1993. The Plaintiff maintains that he listed Chiam Toh Kai's estate as a partner only in respect of the nominal share that it held for Chiam Toh Tong's estate. [\[note: 171\]](#) This is wholly unbelievable because as the precedent partner he was always aware that the 4th Defendant was being assessed on 19/88 share of the profits of MHP and not in respect of a yet to be determined nominal share.

136 For the reasons stated above, I find that the 4th Defendant was admitted as a partner of MHP holding 19/88 share in the partnership after the death of Chiam Toh Kai and continued as a partner when the Property was sold.

Conclusion

137 In the circumstances, the Plaintiff's claim against all the defendants fails. I therefore dismissed his claim and ordered costs to be paid by him to the defendants, such costs to be agreed or taxed.

[\[note: 1\]](#) Agreed Bundle Volume 1 ("1AB"), 42 – 43

[\[note: 2\]](#) 1AB, 645 – 651

[\[note: 3\]](#) 1AB, 90 – 91

[\[note: 4\]](#) 1AB, 32 – 41

[\[note: 5\]](#) 1AB, 42 – 43

[\[note: 6\]](#) 1AB, 90 – 92

[\[note: 7\]](#) Statement of Claim, para 19

[\[note: 8\]](#) 1AB, 136 – 137

[\[note: 9\]](#) Notes of Evidence, 21 January 2014, p 41 at line 8

[\[note: 10\]](#) Statement of Claim, para 26

[\[note: 11\]](#) Plaintiff's Opening Statement, para 8

[\[note: 12\]](#) Plaintiff's Opening Statement, para 12

[\[note: 13\]](#) Statement of Claim, para 29

[\[note: 14\]](#) Statement of Claim, para 30

[\[note: 15\]](#) 1AB, 47 – 50

[\[note: 16\]](#) Plaintiff's Closing Submissions, para 117

[\[note: 17\]](#) Statement of Claim, paras 34 - 37

[\[note: 18\]](#) Bundle of Affidavits of Evidence-in-chief Volume 1 ("1BAEIC") 164

[\[note: 19\]](#) 1AB, 90 – 92

[\[note: 20\]](#) Statement of Claim, para 43

[\[note: 21\]](#) Statement of Claim, para 42

[\[note: 22\]](#) Notes of Evidence, 22 January 2014, p 22 at line 8; Agreed Bundle Volume 3 ("3AB") 1578

[\[note: 23\]](#) Statement of Claim, para 44

[\[note: 24\]](#) Statement of Claim, para 45

[\[note: 25\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 82

[\[note: 26\]](#) 1AB, 134

[\[note: 27\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, paras 87 - 88

[\[note: 28\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 105

[\[note: 29\]](#) Notes of Evidence, 23 January 2014, p 4 at lines 9 – 11

[\[note: 30\]](#) Agreed Bundle Volume 4 ("4AB"), 2630 – 2634

[\[note: 31\]](#) Notes of Evidence, 28 January 2014, p 54 at lines 17 – 22

[\[note: 32\]](#) Notes of Evidence, 23 January 2014, p 6 at lines 23 – 24

[\[note: 33\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 106

[\[note: 34\]](#) Statement of Claim, paras 51 and 55

[\[note: 35\]](#) Notes of Evidence, 22 January 2014, p 142 at line 27

[\[note: 36\]](#) 4AB 2541 – 2544 and 2549 - 2588

[\[note: 37\]](#) Bundle of Affidavits of Evidence-in-chief Volume 2 (“2BAEIC”), 1176 – 1178

[\[note: 38\]](#) Notes of Evidence, 22 January 2014, p 138 at lines 20 – 24

[\[note: 39\]](#) Notes of Evidence, 24 January 2014, p 23 at lines 8 – 18; 1BAEIC, 387

[\[note: 40\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 117

[\[note: 41\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, paras 118 – 119; Plaintiff’s Bundle of Documents, 8 – 18 and 23 – 25

[\[note: 42\]](#) Notes of Evidence, 22 January 2014, p 31 at lines 15 – 30 and p 32 at lines 1 – 18

[\[note: 43\]](#) Notes of Evidence, 22 January 2014, p 76 at lines 8 – 32 and p 77 lines 1 – 18

[\[note: 44\]](#) 1AB 624 – 628

[\[note: 45\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 90

[\[note: 46\]](#) Notes of Evidence, 24 January 2014, p 15 at lines 31 – 32 and p 16 at lines 1 – 2

[\[note: 47\]](#) Notes of Evidence, 22 January 2014, p 137 at lines 15 – 20

[\[note: 48\]](#) Statement of Claim, para 48

[\[note: 49\]](#) Notes of Evidence, 23 January 2014, p 32 at lines 19 – 32, p 33 and p 34 at lines 1 – 4; 1AB, 529 – 530

[\[note: 50\]](#) 2AB, 1233

[\[note: 51\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 48

[\[note: 52\]](#) Defence of the 1st and 2nd Defendant, para 32(a)

[\[note: 53\]](#) Affidavit of Evidence-in-chief of Chiam Heng Chow and Chiam Heng Tin, para 12

[\[note: 54\]](#) Defence of the 1st and 2nd Defendant, para 32(b)

[\[note: 55\]](#) Affidavit of Evidence-in-chief of Chiam Heng Chow and Chiam Heng Tin, paras 13 – 14

[\[note: 56\]](#) Defence of the 1st and 2nd Defendant, para 32(c)

[\[note: 57\]](#) 1BAEIC, 374 – 416; 4AB, 2434 -2476

[\[note: 58\]](#) Defence of the 1st and 2nd Defendant, para 32(d)

[\[note: 59\]](#) Defence of the 1st and 2nd Defendant, para 32(e); 2AB, 800 and 804 - 806

[\[note: 60\]](#) Affidavit of Evidence-in-chief of Chiam Heng Chow and Chiam Heng Tin, para 16

[\[note: 61\]](#) Affidavit of Evidence-in-chief of Chiam Heng Chow and Chiam Heng Tin, para 15

[\[note: 62\]](#) Defence of the 3rd Defendant, para 6

[\[note: 63\]](#) 3rd Defendant's Core Bundle, 25 and 31

[\[note: 64\]](#) Defence of the 3rd Defendant, para 6.1

[\[note: 65\]](#) Defence of the 3rd Defendant, para 15

[\[note: 66\]](#) Defence of the 3rd Defendant, para 16

[\[note: 67\]](#) Defence of the 3rd Defendant, para 19

[\[note: 68\]](#) Defence of the 3rd Defendant, para 20

[\[note: 69\]](#) 1AB, 119 - 120

[\[note: 70\]](#) 3rd Defendant's Core Bundle, 59 - 62

[\[note: 71\]](#) 3rd Defendant's Core Bundle, 59

[\[note: 72\]](#) Notes of Evidence, 21 January 2014, p 118 at lines 21 - 24 and p 119 at lines 4 - 6

[\[note: 73\]](#) 3rd Defendant's Core Bundle, 46

[\[note: 74\]](#) Notes of Evidence, 21 January 2014, p 110 at lines 10 - 28

[\[note: 75\]](#) Defence of the 3rd Defendant, para 19.4(4)

[\[note: 76\]](#) Notes of Evidence, 21 January 2014, p 163 at lines 21 - 23

[\[note: 77\]](#) Affidavit of Evidence-in-chief of Chiam Heng Pout, paras 15 - 19

[\[note: 78\]](#) Defence of the 3rd Defendant, para 23

[\[note: 79\]](#) Defence of the 3rd Defendant, para 26

[\[note: 80\]](#) Affidavit of Evidence-in-chief of Chiam Heng Pout, paras 42 - 43

[\[note: 81\]](#) Defence of the 3rd Defendant, para 7

[\[note: 82\]](#) Defence of the 3rd Defendant, para 25

[\[note: 83\]](#) Notes of Evidence, 23 January 2014, p 21 at lines 25 – 32 and p 22 at lines 1 – 4

[\[note: 84\]](#) 1AB 473 – 477

[\[note: 85\]](#) Notes of Evidence, 24 January 2014, p 57 at lines 23 – 32, p 58, p 59 at lines 1 - 6

[\[note: 86\]](#) Notes of Evidence, 24 January 2014, p 1 at lines 25 – 29

[\[note: 87\]](#) 3rd Defendant's Core Bundle, 83 - 87

[\[note: 88\]](#) Defence of the 3rd Defendant, para 27.1

[\[note: 89\]](#) Defence of the 3rd Defendant, para 27.2

[\[note: 90\]](#) Defence of the 3rd Defendant para 28

[\[note: 91\]](#) Defence of the 3rd Defendant para 29

[\[note: 92\]](#) 4AB, 2267

[\[note: 93\]](#) Defence of the 3rd Defendant, para 30; 2AB, 678 – 728

[\[note: 94\]](#) Defence of the 3rd Defendant, para 6

[\[note: 95\]](#) Defence of the 3rd Defendant, para 36

[\[note: 96\]](#) Defence of the 4th Defendant, para 11

[\[note: 97\]](#) 4AB, 2544

[\[note: 98\]](#) Defence of the 4th Defendant, para 11

[\[note: 99\]](#) Defence of the 4th Defendant, para 13

[\[note: 100\]](#) 1AB, 653

[\[note: 101\]](#) Defence of the 4th Defendant, para 15

[\[note: 102\]](#) 4AB, 2490 - 2493

[\[note: 103\]](#) Notes of Evidence, 24 January 2014, p 51 lines 16 – 24 and p 52 lines 12 – 17

[\[note: 104\]](#) Notes of Evidence, 28 January 2014, p 25 and p 26 lines 1 – 13

[\[note: 105\]](#) 1AB, 196 – 202

[\[note: 106\]](#) 1AB, 203 – 209

[\[note: 107\]](#) 1AB, 136 – 137

[\[note: 108\]](#) 1st and 2nd Defendants' Closing Submissions, para 35

[\[note: 109\]](#) Plaintiff's Closing Submission, para 27

[\[note: 110\]](#) 4th Defendant's Closing Submission, para 17

[\[note: 111\]](#) Plaintiff's Closing Submission, para 180

[\[note: 112\]](#) 1st and 2nd Defendants' Closing Submissions, para 54

[\[note: 113\]](#) 1st and 2nd Defendants' Closing Submissions, paras 57 – 58

[\[note: 114\]](#) 4th Defendant's Closing Submissions, paras 46 – 52

[\[note: 115\]](#) Defence of the 1st and 2nd Defendant, para 32(c)

[\[note: 116\]](#) Statement of Claim, para 48; Plaintiff's Closing Submissions, paras 36 - 47

[\[note: 117\]](#) Notes of Evidence, 23 January 2014, p 32 at lines 19 – 32, p 33 and p 34 at lines 1 – 4; 1AB, 529 – 530

[\[note: 118\]](#) 1AB, 466

[\[note: 119\]](#) 2AB, 1237 – 1238

[\[note: 120\]](#) 2AB, 1233

[\[note: 121\]](#) 1BAEIC, 374 – 416; 4AB, 2434 -2476

[\[note: 122\]](#) 4AB, 2446 – 2476

[\[note: 123\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, paras 118 – 119; Plaintiff's Bundle of Documents, 8 – 18 and 23 – 25

[\[note: 124\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 117

[\[note: 125\]](#) Notes of Evidence, 24 January 2014, p 23 at lines 8 – 18; 1BAEIC, 387

[\[note: 126\]](#) Plaintiff's Bundle of Documents, 8 – 18 and 23 – 25

[\[note: 127\]](#) Plaintiff's Bundle of Documents, 8 – 14, 18 and 23; 2AB, 1237 – 1238

[\[note: 128\]](#) 2AB, 800

[\[note: 129\]](#) Defence of the 1st and 2nd Defendant, para 32(e); 2AB, 800 and 804 - 806

[\[note: 130\]](#) 1AB, 946

[\[note: 131\]](#) Notes of Evidence, 21 January 2014, p 39 at lines 15 – 21

[\[note: 132\]](#) 1AB, 47 – 50

[\[note: 133\]](#) Affidavit of Evidence-in-chief of Chiam Heng Pout, para 24; Affidavit of Evidence-in-chief of Chiam Mui Ken, para 16

[\[note: 134\]](#) 1BAEIC, 164

[\[note: 135\]](#) 1AB, 90 – 92

[\[note: 136\]](#) 3rd Defendant's Core Bundle, 59

[\[note: 137\]](#) 3rd Defendant's Core Bundle, 62

[\[note: 138\]](#) 3rd Defendant's Core Bundle, 46

[\[note: 139\]](#) 3rd Defendant's Core Bundle, 36

[\[note: 140\]](#) 3rd Defendant's Core Bundle, 18 – 20

[\[note: 141\]](#) 3rd Defendant's Written Submissions, para 72

[\[note: 142\]](#) 1AB, 134

[\[note: 143\]](#) 2AB, 1145 - 1148

[\[note: 144\]](#) Statement of Claim, para 45

[\[note: 145\]](#) Plaintiff's Bundle of Documents, 26

[\[note: 146\]](#) Notes of Evidence, 22 January 2014, p 145 at lines 8 – 32; p 146; p 147 at lines 1 – 25

[\[note: 147\]](#) 1AB 624 – 628

[\[note: 148\]](#) 4AB, 2267

[\[note: 149\]](#) Defence of the 3rd Defendant, para 30; 2AB, 678 – 728

[\[note: 150\]](#) Notes of Evidence, 21 January 2014, p 91 at lines 7 – 27

[\[note: 151\]](#) Notes of Evidence, 21 January 2014, p 125 at lines 20 – 22

[\[note: 152\]](#) 1AB, 430 - 434

[\[note: 153\]](#) 1AB, 389 - 393

[\[note: 154\]](#) Defence of the 3rd Defendant, para 30; 2AB, 678 – 728

[\[note: 155\]](#) Notes of Evidence, p 91 at lines 7 – 27

[\[note: 156\]](#) 3rd Defendant's Core Bundle, 128 – 129

[\[note: 157\]](#) 2AB, 678 – 728

[\[note: 158\]](#) Affidavit of Evidence-in-chief of Chiam Heng Hsien, para 105

[\[note: 159\]](#) Notes of Evidence, 23 January 2014, p 4 at lines 9 – 11

[\[note: 160\]](#) 4AB, 2630 – 2634

[\[note: 161\]](#) Notes of Evidence, 28 January 2014, p 54 at lines 17 – 22

[\[note: 162\]](#) Notes of Evidence, 22 January 2014, pp 107 – 108

[\[note: 163\]](#) 1AB, 658 – 659

[\[note: 164\]](#) 1AB, 655 - 656

[\[note: 165\]](#) 1AB, 629

[\[note: 166\]](#) 1AB, 653 - 668

[\[note: 167\]](#) 2AB, 1235 – 1236

[\[note: 168\]](#) 4AB, 2513 – 2540

[\[note: 169\]](#) 4AB, 2544 and 2548

[\[note: 170\]](#) 2BAEIC, 1176 – 1178; 4AB, 2545 – 2547

[\[note: 171\]](#) Notes of Evidence, 22 January 2014, p 138 at lines 20 – 24

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