Cheong Soh Chin and others *v* Eng Chiet Shoong and others
[2015] SGHC 173

Case Number	: Suit No 322 of 2012
Decision Date	: 10 July 2015
Tribunal/Court	: High Court
Coram	: Vinodh Coomaraswamy J
Counsel Name(s)	: Philip Jeyaretnam SC, Foo Maw Shen, Daryl Ong, Chu Hua Yi, Charmaine Kong and Jansen Aw (Rodyk & Davidson LLP) for the plaintiffs; Alvin Yeo SC, Koh Swee Yen, Jared Chen, Ho Wei Jie, Keith Han and Jill Ann Koh (WongPartnership LLP) for the defendants.
Parties	: CHEONG SOH CHIN — WEE BOO KUAN — WEE BOO TEE — ENG CHIET SHOONG — LEE SIEW YUEN SYLVIA — C S PARTNERS PTE LTD

Agency – Duties of agents – Accounts

Equity – Fiduciary relationships – When arising – Duties

Restitution – Subjective devaluation

Restitution – Quantum meruit

Restitution – Unjust enrichment

Trusts – Bare trusts

Trusts – Express trusts – Certainties – Constitution – Formalities

Trusts – Quistclose trusts

Trusts – Resulting trusts – Presumed resulting trust

[LawNet Editorial Note: The appeals to this decision in Civil Appeals Nos 97 and 99 of 2014 were allowed in part by the Court of Appeal on 13 July 2016. See [2016] SGCA 45.]

10 July 2015

Vinodh Coomaraswamy J:

Introduction

1 Between 2003 and 2005, the plaintiffs entrusted US$111m [note: 1] to the first and second defendants to be invested on the plaintiffs' behalf in 15 private equity ("PE") funds [note: 2] and five direct investments. [note: 3] These investments were held through a web of special purpose vehicles ("SPVs") controlled by the first and second defendants but established and maintained by them using the plaintiffs' funds.

2 In this action the plaintiffs seek the following principal relief against the defendants: [note: 4]

(a) The transfer to the plaintiffs of ownership and control of all of the plaintiffs' investments, including all of the SPVs holding those investments ("the transfer order"); [note: 5]

(b) An account of all the money the plaintiffs entrusted to the defendants or to SPVs owned or controlled or managed by them and all necessary inquiries ("the accounting order"); [note: 6]

(c) An order that the plaintiff is entitled to trace all such monies and payments into the hands of the defendants and elsewhere as they may be found ("the tracing order"); and [note: 7]

(d) An order that the defendants pay to the plaintiffs all sums found to be due upon the taking of the account and for judgment to be entered for the said sums together with interest ("the payment order"). [note: 8]

3 The defendants accept that the 15 PE funds, the five direct investments and the majority of the SPVs through which the plaintiffs' entire portfolio is held belong to the plaintiffs. Yet, they oppose entirely all of the relief which the plaintiffs seek. In addition, the defendants advance a counterclaim against the plaintiffs for US$18m said to be management fees and related expenses due to the defendants in connection with having managed the plaintiffs' investments for these several years.

4 I have given judgment for the plaintiffs in the following terms: [note: 9]

(a) I have made the transfer order, the accounting order and the payment order.

(b) I have declined to make the tracing order because I consider tracing to be premature. [note: 10] This does not preclude the plaintiffs from pursuing tracing or other appropriate relief once the account has been taken. [note: 11]

(c) I have dismissed [note: 12] the entirety of the defendants' counterclaim save that I have ordered the plaintiffs to pay to the defendants, as expressly agreed, management fees of US$450,000 per annum from the year 2009–2010 until the date on which the defendants transfer to the plaintiffs the PE funds which form the subject-matter of the agreement. [note: 13]

5 The plaintiffs and the defendants have both appealed against parts of my decision. I now give my grounds of decision.

The facts

The parties

6 The plaintiffs are all ultra high net worth individuals. The first plaintiff is the mother of the second and third plaintiffs. [note: 14]

7 The first and second defendants are husband and wife. [note: 15] The third defendant is a Singapore company which the second defendant incorporated in September 2005 [note: 16] to provide "integrated services to families on wealth protection and wealth creation". [note: 17] The second

defendant is the sole shareholder [note: 18] of the third defendant and is its executive director. [note: 19] The first defendant is neither a shareholder nor a director of the third defendant but has rendered services to it since October 2005 pursuant to a consultancy agreement. [note: 20]

8 The plaintiffs did not name the third defendant as a defendant when they commenced this action. It became a defendant on its own application some months later. [note: 21] All three defendants adopt a common position in this litigation and are jointly represented.

9 Although the first plaintiff is a joint owner of the money which the plaintiffs entrusted to the first and second defendants, she plays only a residual role in the underlying facts. So too, it is my finding that the third defendant operated as the first and second defendants' vehicle and did not have any legally significant role in the underlying facts separate from that of the first and second defendants. For ease of exposition, therefore, I shall use the collective term "the parties" to refer only to the second and third plaintiffs on the one hand and first and second defendants on the other.

The relationship between the parties

10 The second defendant's relationship with the plaintiffs is a long-standing one. [note: 22] She was the trusted private banker to the first plaintiff's husband. [note: 23] The plaintiffs, especially the first plaintiff, came to treat the second defendant not just as the family's banker but also as a trusted family friend. [note: 24] After the first plaintiff's husband passed away in 1992, the second defendant's professional relationship with the plaintiffs came to an end, but she continued to keep in touch with them.

11 The first defendant's relationship with the plaintiffs began for present purposes in 2003 through the second defendant's introduction. [note: 25] At that time, the first defendant worked for the Government of Singapore Investment Corporation ("GIC") as a senior vice-president of GIC Special Investments Pte Ltd, a position he had held since 2000. [note: 26] GIC Special Investments Pte Ltd is the arm of GIC which specialises in PE investments. [note: 27]

12 Although the second and third plaintiffs are, and were in 2003, sophisticated investors, they were then unfamiliar with PE funds as an asset class. The first defendant introduced them to world of PE funds. He told them of the "obscene" profits which this asset class offered investors. [note: 28] They wanted to know more. The first defendant obliged. Over the course of 2003 and 2004, he schooled them on PE funds. He taught them how PE funds are structured and how fund managers and investors make their profits. He told them of his expertise in investing in PE funds and of the close personal relationships he had forged during his 14-year career with GIC with the key principals at the world's leading PE fund managers. [note: 29] He offered to introduce the plaintiffs to these fund managers so they could invest directly in PE funds rather than through intermediaries, thereby eliminating an unnecessary layer of fees. The second and third plaintiffs were impressed by the first defendant's knowledge and fascinated and intrigued with the prospect of investing in PE funds. [note: 30] They saw him as their trusted mentor [note: 31] in this field.

The WWW concept

13 By early 2004, the first defendant had hit upon what he called "the WWW concept." [note: 32] The WWW concept was, in essence, a way for the plaintiffs and the first defendant to combine the

first defendant's considerable industry knowledge and personal relationships with the plaintiffs' considerable capital and healthy appetite for risk to enable all of them to profit from PE investments *both* as a fund manager *and* as an investor.

14 The ultimate goal of the WWW concept was for the second and third plaintiffs and the first defendant to find fledgling fund managers, provide them seed capital to start a new fund and assist them in finding investors for the fund. The WWW concept would also finance the customary investment which each fund manager would make in its new fund to align the fund manager's incentives with the investors' and to signal the fund managers' personal commitment to the fund's success.

15 The WWW concept would thereby entitle the second and third plaintiffs and the first defendant, through their stake in the fund manager, to a share of the fund manager's total profit arising from all of the various one-off and recurring fees it would earn over the life of the fund and also to a share of the fund manager's profit as an investor in its own fund.

The plaintiffs' first PE investments

16 The WWW concept was a long-term vision that the parties had a common intention to work towards. Because it was a long-term vision, rather than an immediate executable plan, and because of the close personal relationship of trust and confidence that subsisted between the parties at that time, the parties did not have a binding agreement in the contractual sense – whether oral, written or arising from conduct – governing their rights and obligations in connection with the steps they would take towards the WWW concept and what would happen if it failed. That fact does not, however, detract from the importance of the WWW concept as the factual framework within which the parties took the steps that they did.

17 The first step which the parties took to get the WWW concept off the ground was to build a track record for themselves in PE investments. Without a track record, they would have no credibility with the fledgling fund managers they hoped to invest in, or with the investors whom they hoped to attract and introduce to the fledgling fund managers.

18 To establish that track record, the second and third plaintiffs and the first defendant began to work towards setting up their own PE fund. The plaintiffs were to provide all the necessary capital for the fund. The first defendant was to provide the industry expertise and relationships and to oversee and manage the fund's investments. This initial fund was to be a fund of funds. In other words, the asset class chosen for this initial fund to invest in was other PE funds. Once the fund had a history of good performance, it was to become the first fund under the WWW concept and the plaintiffs would sell down part of their investment to external investors.

19 Some time in late 2004 or 2005, the first defendant brought to the plaintiffs investment opportunities in PE funds managed by some of the world's leading PE fund managers. [note: 33] Using the plaintiffs' SPV Sky Genius Investments Ltd ("Sky Genius"), the plaintiffs made an initial investment of US$30m in five PE funds. [note: 34] I shall call this amount the "Initial PE Investment" and these first five funds "the Initial PE Funds". The Initial PE Funds were meant to be the plaintiffs' personal fund of funds, outside the WWW concept.

20 It is common ground that the plaintiffs agreed to pay the first defendant a management fee of 1.5% of the Initial PE Investment, or US$450,000, per annum, for managing the Initial PE Funds. However, the plaintiffs never agreed to pay the first defendant any fee for introducing these five PE

funds to the plaintiffs. [note: 35] Indeed, the first and second defendants never even discussed an introduction fee with the plaintiffs. [note: 36]

21 Over the ensuing months, the first defendant brought ten more PE funds to the second and third plaintiffs. This led to the plaintiffs' investing an additional US$100m in 10 additional funds. [note: 37] I will call this additional amount of US$100m the "Additional PE Investment" and these next ten funds "the Additional PE Funds". These ten funds were held, not through Sky Genius, but through a limited partnership managed by a general partner. This structure is the typical PE fund structure save that the plaintiffs were, for the time being, the only investor.

22 It is common ground that the second and third plaintiffs' agreement to pay the first defendant a management fee of 1.5% per annum for managing the Initial PE Funds did not extend to the Additional PE Funds. In any event, as in the case of the Initial PE Funds, there was never any discussion, let alone agreement, for the plaintiffs to pay the first defendant any introduction fee for the Additional PE Funds.

23 In addition to the 15 PE funds (comprising the Initial PE Funds and the Additional PE Funds), the first defendant introduced five further ventures to the plaintiffs which they agreed to invest in. The plaintiffs made each of these five investments directly, by acquiring an equity stake in the venture itself, through an SPV and not through an investment in a PE fund. These five direct investments are: [note: 38]

(a) The purchase and redevelopment of the Esplanade Hotel in Albany, Western Australia ("Project Plaza");

(b) An investment in Riviera Group Pty Ltd and Riviera Group Properties Pty Ltd ("Project Sailfish");

(c) An investment in Agis Pte Ltd, a company in the business of navigation solutions, location-based technology and digital maps ("Project Red Spot");

(d) An investment in Hall & Hanson Ltd ("the Bahamas Fund"); and

(e) An investment in the Kendall Court fund ("the Kendall Court Fund").

24 The Initial PE Funds, the Additional PE Funds and these five direct investments were all held through a network of 24 SPVs. The holding structure was designed to mimic how a PE fund would hold these investments and to facilitate an eventual sale of all or part of the plaintiffs' interest in these investments to incoming PE investors.

The personal relationship deteriorates

25 For various reasons, partly to do with the global financial crisis in 2008/2009, the parties came to a dead end with the WWW concept. The long-term vision proved unachievable. The parties' personal and professional relationships became increasingly strained.

26 By November 2011, the plaintiffs had decided to wind down and divest all of their holdings in all of the investments. [note: 39] In December 2011, the plaintiffs demanded that the first and second defendants transfer to the plaintiffs all rights, title and interest in their investments, including control of all the SPVs that held the plaintiffs' investments. [note: 40]

27 By the beginning of 2012, the parties' relationship was irretrievably fractured. On 15 February 2012, the plaintiffs demanded a full accounting and reconciliation of their investment in the Initial PE funds, the Additional PE Funds and the five direct investments. [note: 41] No account had been provided by April 2012. The plaintiffs felt that they had no choice but to commence this action. They did so on 19 April 2012.

The plaintiffs' claim

28 The plaintiff's claim raises six issues:

(a) First, who is liable for the relief which the plaintiffs seek? The plaintiffs contend that it is the first and second defendants who are personally liable. The defendants contend that it is only CSP who is liable.

(b) Second, are the defendants in a relationship with the plaintiffs sufficient to warrant the equitable remedy of an account?

(c) Third, are the plaintiffs entitled to an account of their investments? Or have the defendants complied with any such obligation by rendering the 12 May 2012 file read in light of the expert evidence exchanged in this action?

(d) Fourth, if the plaintiffs are entitled to the remedy of an account of their investments, should the court take that account on the standard basis or on the wilful default basis?

(e) Fifth, are the defendants obliged to transfer the plaintiffs' investments, and the SPVs holding those investments, to the plaintiffs?

(f) Finally, are the plaintiffs entitled to the tracing order which they seek?

29 As neither the plaintiffs nor the defendants have appealed against any part of my decision on the plaintiffs' claim, it suffices for me to provide only an outline of my decision on these six issues.

First issue

30 On the first issue, I have found that, if anyone is liable for the plaintiffs' claims, it is the first and second defendants who are personally liable.

31 The legal relationship which is relevant to the relief which the plaintiffs seek is a relationship which was forged in 2003 and 2004 directly between the three plaintiffs on the one hand and the first and second defendants on the other. That relationship was already settled and in place before CSP was incorporated in September 2005. CSP thereafter functioned merely as the vehicle through which the first defendant and the second defendant acted.

Second issue

32 On the second issue, I have found that the first and second defendants owe fiduciary duties to the plaintiffs, either as trustees for the plaintiffs under a presumed resulting trust; or, at the very least, as the plaintiffs' agents in making and holding the investments in question.

33 It is common ground that the plaintiffs had no intention to make a gift to the first and second

defendants of the money which the plaintiffs transferred to them or of the investments which the first and second defendants purchased with that money. The inevitable consequence of the admitted lack of donative intent is that the plaintiffs' money and investments – or the shares in the SPVs which held and therefore represented them – were held on a presumed resulting trust for the plaintiffs.

34 The defendants argue that, even so, they were nothing more than a bare trustee [note: 42] and therefore owed the plaintiffs no fiduciary duties arising from their trusteeship. [note: 43] I reject this submission for two reasons.

35 The first and second defendants were not passive trustees, merely holding what was transferred to them. They invested the plaintiffs' monies on their behalf and managed and administered those investments. Those acts were carried out in their capacity as fiduciaries and carry fiduciary consequences.

36 Given my finding that the first and second defendants hold the monies and other property entrusted to them as resulting trustees for the plaintiff, it is not necessary for me to analyse further whether they were also agents for the plaintiffs. If it had been necessary for me to decide those points, I would have had no hesitation in holding that they were.

Third issue

37 On the third issue, I find that the first and second defendants have a personal liability to keep and render to the plaintiffs a proper and complete account of all the assets received by them and for all the investments made by them on the plaintiffs' behalf. I also hold that the 12 May 2012 file is insufficient to comply with this duty.

38 The liability to account is a necessary consequence of the first and second defendants' fiduciary relationship with the plaintiffs, whether as trustee under a presumed resulting trust or as the plaintiffs' agent. The first and second defendants are under a personal liability to account even if they are correctly characterised as bare trustees. A trustee's duty to account is so fundamental to a trust that it has been described as being part of the "irreducible core of a trust". In other words, it is one of the essential duties incumbent on all trustees which cannot be excluded and whose absence or exclusion would be inimical to the very existence of a trust: *Armitage v Nurse and others* [1998] Ch 241 at 253 per Millett LJ; *Foreman v Kingston* [2004] 1 NZLR 841 at [71] and [97] per Potter J; *Spellson v George* (1987) 11 NSWLR 300 at 316 per Powell J; David Hayton, "Obligation Characteristic of the Trust" (2001) 117 LQR 96; Andrew Butler and D J Finn, "A Modern Law of Trusts: What is the Least That We Can Expect of a Trustee? Exclusion of Trustees and Exemption of Trustee Liability" (2010) NZ Law Review 459.

39 To the extent that CSP participated as the first and second defendants' vehicle in making, holding or receiving the plaintiffs' investments, it too comes under liability to render an account.

Fourth issue

40 The plaintiffs seek an account on the basis of wilful default rather than on the common or standard basis. The underlying principle is whether "the past conduct of the trustees [is] such as to give rise to a reasonable *prima facie* inference that other breaches of trust not yet known to the plaintiffs or the court have occurred": *Re Tebbs* [1976] 1 All ER 858 at 863 and *Russell v Russell* (1891) 17 VLR 729. These two decisions were cited in *Glazier v Australian Men's Health (No 2)* [2001] NSWSC 6 ("*Glazier*") at [41] which was in turn cited in *Ng Foong Yin v Koh Thong Sam* [2013] 3 SLR 455 ("*Ng Foong Yin*").

41 To secure such an order, therefore, the plaintiffs must prove at least one example of wilful default on the part of the fiduciary or trustee: *Re Tebbs* [1976] 1 All ER 858 at 862; *Sleight v Lawson* (1857) 3 K & J 292 at 299, 69 ER 1119 at 1122 (Page-Wood V-C); *Cooper v Carter* (1852) 2 De G M & G 292, 42 ER 884; *Re Symons* (1882) 21 Ch D 757; *Russell v Russell* (1891) 17 VLR 729; *Glazier* at [41], which was in turn cited in *Ng Foong Yin*.

42 On the evidence before me, and given that a fiduciary's breach of duty, even a wilful breach, need not rise to the level of conscious wrongdoing, I find that the first and second defendants have been in wilful default of their fiduciary duties. The result is that the Assistant Registrar taking the account under Order 43 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) will have a commission to inquire into all aspects of the first and second defendants' administration of the trust property under their care: *Re Stevens* [1897] 1 Ch 422 at 432; *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] Ch 515 at 546; *Coultard v Disco Mix Club* [2001] 1 WLR 707 at 734.

Fifth issue

43 In my view, tracing is not a remedy which the court can or ought to order now. The account will identify what has become of the plaintiffs' money. To the extent that that discloses that the plaintiffs' money is now represented by assets other than the investments to be transferred under the transfer order, the plaintiffs are at liberty to seek separately to trace into those assets.

Sixth issue

44 The plaintiffs have asked for the transfer to them of 20 SPVs. [note: 44] The defendants concede that they are obliged to transfer 13 of these SPVs. [note: 45] The dispute which remains is about seven SPVs.

45 It is clear beyond doubt that the first and second defendants are obliged to transfer all 20 of the SPVs to the plaintiffs or as the plaintiffs direct. The first and second defendants concede that that the person who paid the expenses of each SPV is the owner of that SPV. [note: 46] It is not disputed that the incorporation, set-up and annual maintenance costs of all 20 of the SPVs was paid using the plaintiffs' funds. I reject the first defendant's belated and unsupported allegation in cross-examination that part at least of the money he received from the plaintiffs for this purpose was a loan which he intended to repay.

46 The arguments on this issue are so strongly in the plaintiffs' favour that I am driven to conclude that the first and second defendants' refusal to transfer the seven disputed SPVs to the plaintiffs arises from nothing more than a desire to hold these SPVs hostage as leverage for the defendants' counterclaim. [note: 47] Indeed, the first defendant admitted this in cross-examination. [note: 48]

47 Under the rule in *Saunders v Vautier* (1841) Ch 82, persons who are together entitled to the entire beneficial interest in trust property and who are of adult age and under no disability have a right to require the trustee to transfer the legal estate in that trust property to them and thereby terminate the trust. The defendants are therefore obliged unconditionally to transfer all the shares in these SPVs to the plaintiffs or as the plaintiffs direct.

The defendants' counterclaim

Overview of parties' arguments

48 The defendants bring a counterclaim for fees payable to CSP for services rendered and expenses incurred in the management and administration of the plaintiffs' investments. [note: 49] The defendants claim fees and expenses amounting to over $17m. [note: 50] The defendants claim that:

(a) First, the plaintiffs agreed expressly to pay the defendants a management fee of US$450,000 per annum, being 1.5% of the Initial Investment Amount of US$30m committed to the Initial PE Funds. [note: 51]

(b) Second, the plaintiffs impliedly agreed to pay the defendants a fee of 1.5% per annum of the Additional PE Investment committed to Additional PE Funds up to US$129m. [note: 52]

(c) Third, the defendants claim US$9.3m [note: 53] in management fees fixed at: (1) 0.75% of the assets under management ("AUM") under Sky Genius; (2) 1.5% of the AUM under Woolverstone Private Fund of Funds LP Ltd during the "active management phase"; and (3) 1% of the AUM after the active investment phase. [note: 54]

(d) Fourth, the plaintiffs are obliged to pay the defendants management fees and expenses for the work done for Project Plaza amounting to AUD 8m. [note: 55]

(e) Fifth, the defendants claim breakup and facilitation fees amounting to US$0.5m for the sale of CVC Funds and the PEP funds; [note: 56] and

(f) Sixth, the defendants claim a sum of approximately US$0.5m for the work done in administering the plaintiffs' other investments. [note: 57]

49 The plaintiffs concede that they did agree to pay a management fee of 1.5% per annum of the Initial PE Investment of US$30m committed to the Initial PE Funds. [note: 58] As for the rest of the counterclaim, the plaintiffs argue that:

(a) First, the relationship between the parties was not that of a client and a service provider. Instead, the parties were working jointly towards achieving the WWW concept. [note: 59]

(b) Second, there is no basis for the court to imply an agreement that the plaintiffs pay 1.5% per annum of the Additional PE: the existence of any such agreement runs completely contrary to the conduct of the parties. [note: 60]

(c) Third, in relation to the defendants' claim for management fees on a contractual or restitutionary *quantum meruit* fixed at: (1) 0.75% of the AUM under Sky Genius; (2) 1.5% of the AUM under Woolverstone Private Fund of Funds LP Ltd during the "active management phase"; and (3) 1% of the AUM after the active investment phase, [note: 61] the plaintiffs argue the following:

(i) The defendants' only contractual entitlement to remuneration is their entitlement to management fees fixed at 1.5% of the Initial PE Investment of US$30m. There is no room now for the defendants to be remunerated on an entirely different basis. [note: 62]

(ii) It was completely open to the defendants in 2005, 2006, 2007 and 2008 – and indeed all the way up to 2012 before these proceedings commenced – to make clear any

expectation regarding remuneration and to reach agreement on it. [note: 63] They never did so. [note: 64]

(iii) The defendants have not adduced any evidence of market practice to justify the fees claimed. [note: 65]

(d) Fourth, Project Plaza was part of the WWW concept. [note: 66] The defendants were risk-runners. [note: 67] They did work and incurred expenses in connection with Project Plaza expecting to be compensated for their work and reimbursed for their expenses eventually and indirectly through the rewards that would come as part of the WWW concept and not immediately and directly through fees for their services. [note: 68]

(e) Fifth, the defendants' claim for breakup and facilitation fees must fail because there is no evidence of any market practice to charge these fees. [note: 69]

(f) Sixth, the defendants' claim for work done in administering the plaintiffs' other investments must fail because the defendants failed to establish: (1) that they carried out the alleged work for these investments and thereby conferred a benefit on the plaintiffs; and (2) that the amount claimed is reasonable, having regard to market practice. [note: 70]

Issues in the counterclaim

50 The counterclaim raises the following issues:

(a) First, what is the true nature of the relationship between the parties? In particular, was the relationship one of a service provider and a client or were the first and second defendants joint risk-runners working together towards the WWW concept?

(b) Second, is there a basis for the court to imply an agreement that the plaintiffs would pay 1.5% of the Additional PE Investment when the commitment amount of the PE funds was increased from US$30m to US$129m?

(c) Third, are the defendants entitled to management fees on a contractual or restitutionary *quantum meruit* at: (1) 0.75% of the AUM under Sky Genius; (2) 1.5% of the AUM under Woolverstone Private Fund of Funds LP Ltd during the "active management phase" and (3) 1% of the AUM after the active investment phase?

(d) Fourth, are the defendants entitled to be paid management fees and expenses for Project Plaza?

(e) Fifth, are the defendants entitled to recover breakup and facilitation fees?

(f) Sixth and finally, are the defendants entitled to fees for work done in administering the plaintiffs' other investments?

True nature of the relationship between the parties

51 The relationship between the parties is not one of a service provider and a client but one where the parties were joint risk-runners working together towards the WWW concept. The

contemporaneous emails and the evidence of the first and second defendants clearly show that the parties conducted themselves in a way that was entirely consistent with working towards the WWW concept. [note: 71]

52 On 23 October 2007, the second defendant suggested to the plaintiffs in an email that they take up additional PE fund commitments. [note: 72] The first defendant informed the second plaintiff in a follow-up email, also sent on 23 October 2007, that: [note: 73]

> "As discussed. The amount that is being underwritten for a third party fund is now USD48 million, excluding a potential commitment of US$15m to PEP (Bain Aus). In addition, we have USD18m of the house fund (being USD30m) currently committed.
>
> Believe you have the fund commitment – breakdown as tabulated at Sep 2007.

53 The breakdown of fund commitments tabulated on September 2007 which the first defendant refers to in this email was not adduced in evidence. [note: 74] However, what was in evidence is a close approximation in the form of a list of funds held as at 30 June 2007 prepared on behalf of the defendants on 22 August 2007. This list is consistent with the figures in the first defendant's email. [note: 75] In this list: [note: 76]

(a) The funds at S/Nos 1 to 8 of the first section of this list show a total capital commitment of US$18,016,800. [note: 77] This is very close to the amount the first defendant refers to as being committed to the "house fund" in the 23 October 2007 email. [note: 78]

(b) The funds listed at S/No 1 to 4 in the second section and in the third section of this list shows a total capital commitment of US$47,500,000 and US$90,300 respectively. [note: 79] These amounts of capital commitment are also very close to the US$48m of capital the first defendant says is committed to what he calls "the third party fund". [note: 80]

54 The way that the defendants presented the information informed the plaintiffs that their personal investment in the initial PE funds was clearly segregated and amounted to a capital commitment of up to US$30m. [note: 81] In cross-examination, the second plaintiff said that he understood that the funds that comprised the Initial PE Funds from the list of funds prepared by the defendants. [note: 82]

> Q. I went on to ask you, Mr Wee, whether you agreed that the item numbers 1 to 5 on D1 come up to a commitment of less than 15 million.
>
> A. That's correct.
>
> Q. And whether it was the case even if you added the Japan Fund.
>
> A. Yes.
>
> Q. Then my question specifically was whether you treated the Ironbridge Fund, which is serial number 6 on D1, as part of the initial or the additional PE funds, or whether you simply didn't think about it, and I think your answer was you couldn't quite remember.
>
> A. Yes. And I did say that normally in previous times when I received the NAV report, it's

bundled, so – and also you further pointed out that the Japan Fund, from your document, is 2006 and 2007 is definitely not 2004 and 2005, if I recall correctly, counsel. You pointed out that the Japan – because in para 59 it's stated that in the course of the year 2004 and 2005, the first defendant managed to obtained positions in blah, blah, blah, right? Then you pointed out ---

Q. I was just trying to remind you of my question, but I don't think either the court nor myself are going to stop you offering a clarification now. So what do you want to add?

A. So the only thing I want to add is the information from para 59 was actually obtained from the 12 May 2012 file, annex A1. It's, I think, in tab 209 in my AEIC. (Handed)

…

A. Yes, so if you see that, okay, by the way, that's the last NAV report that we ever received from Sylvia, okay, and it was dated as of 25 April 2012. So if you look at the first line, Japan Fund, you move down the third column, year raised and year committed, okay, under that column it specifically states 2003 and in brackets, 2005. So again, I see that there is a – there's a discrepancy between this information and the information that you've given me, in D1.

Q. Okay.

A. Thus, actually – I should add one point, it just goes to show as long as we don't have the source document, I prepared the affidavit based on the 12 May file which was supposed to be the complete and full account of our investments.

55 The first section of the list of funds set out in the 12 May 2012 file referred to by the second plaintiff in the exchange set out above is substantially similar to the first section of the June 2007 List of Funds. [note: 83]

56 During re-examination, the second plaintiff further explained that his understanding of the house fund and the third party fund was that the house fund would belong to the plaintiffs whereas the third party fund was part of WWW fund of funds which was to be sold down to the first defendant's contacts: [note: 84]

Q. What is the difference between the house fund and the third party fund?

A. Again, the house fund is supposed to belong to the Wee family, whereas the third party fund is supposed to form the private equity funds that was supposed to be sold down as the WWW FOF, fund of funds. That's the differentiating factor. So here it's clear that there's this understanding from [the first defendant] that he differentiates the house fund versus the third party fund.

Q. And what is the role of the WWW concept in relation to this third party fund?

A. So again, the idea is for us to take up positions in the PE Funds captured under the third party funds, and then to attract LPs to come to sign to the WWW FOF, so that the GPs at WWW FOF, which the understanding was supposed to be me, my brother, and Shoong, would receive management fees at the WWW FOF. So in this instance, just to be very clear, the original funds, PE funds that are subscribed, would be still held, in this case, still by

Woolverstone Fund of Funds LP.

Q. So at this date, when the $48 million is being described as a third party fund, and you've related the third party fund to this WWW concept, there will be, in your answer, you, your brother and [the first defendant] receiving management fees at the GP company?

A. At the management company, that's correct. That was the understanding, as part of the grand WWW vision.

Q. And if I may turn you to page 143, you were referred to the middle e-email:

"We are preparing LPA to be signed off by LPs and the GP (the latter is WWW owned)."

Could you explain who would own the GP?

A. I think in this case it would be the management company rather than the GP. The GP is the person, the general partner, so in this case, the management company would be owned traditionally by the GPs. They would have shares—the GPs would have shares in the fund management company.

Q. And who would the GPs be referring to here?

A. The GPs would be G1, G3 and G5, which again standing for—

Q. In English means?

A. Mr Eng, myself as G3, and my brother, Mr Wee Boo Tee, as G5.

Q. And the first defendant is talking about an LPA to be signed off by LPs, in the plural. Who did you understanding would be the LPs?

A. This would be the people who subscribed to the WWW FOF programme, and these people are, he mentioned to us, is ex- GIC colleagues – his GIC colleagues as well as his – basically, friends and associates that he knows within his network that he's built over the years with GIC.

57 On 12 October 2007, shortly before his email of 23 October 2007, the first defendant sent an email to the second and third plaintiffs, copied to the second defendant, [note: 85] in response to the second plaintiff's questions. [note: 86] The relevant parts of the 12 October 2007 email are reproduced below. [note: 87] The first defendant confirms that in this email, the responses ascribed to "Me" (italicised in the extract below) were his responses. [note: 88] The relevant parts of the 12 October 2007 email read as follows: [note: 89]

1. Ownership: how everything is linked to everything (flower diagram)

Me: had earlier given you a flower diagram that is being updated to reflect the recent additions such as Westwood.

In essence, there are 2 different set-ups used to house the investments: one is the special purpose vehicle (SPV) and the other is the GP/LP arrangement.

The SPV is a limited company incorporated in CI. Most of the SPVs in our group are CI and established by; and housed @ Maples and Calder, the largest law firm in the Caymans. SPVs are owned largely by individual shareholder (s) @ this time. A few SPVs though have an intermediate holding company, interposed, as part of the tax structuring advice received.

The GP/LP arrangement is one that is used by all the major global PE firms, including the Blackstone group, CVC and Carlyle. This arrangement calls for LPs (Limited Partners) investing into a fund (via an L.P. Agreement – LPA), with the fund managed by a GP.

In our case, we are establishing 3 LPAs: the FOF, PE direct investments; RE /Hotel direct investments.

Each of the above 3 pools of capital is managed by a separate GP, an SPV held by G1.

2. Flow of funds: how everything is connected – inflows and outflows how to manage this process

Me: All drawdowns have to-date been managed by G3 and G5. And historically, all proceeds from distributions have been returned to bank accounts managed by the same. Some proceeds are being credited to bank accounts managed by G1. These proceeds relate to more recent commitments made by the LPA arrangement noted above – and not earlier commitments made through [Sky Genius]. Going forward, all fund commitments will be made under the LPA arrangement. Follow up: to discuss how to manage the process.

3. Succession of beneficiaries: transfer of beneficiaries, estate planning, tax

Me: Once we complete all 3 LPAs in the next quarter, the bene will move from G1 to G1 successor (G1 S).

Follow up: further transfer of bene, Estate planning, tax.

[Italics added]

58 The 12 October 2007 email shows that the parties intended to implement the WWW concept together. [note: 90] This can be seen from the first defendant's use of the phrases "our group", "we are establishing" and "in our case". [note: 91]

59 The 12 October 2007 email also demonstrates that it was the parties' understanding (or at least, it was the first defendant's representation to the plaintiffs) that: [note: 92]

(a) The relevant fund structures illustrated by the flower diagrams had been set up. [note: 93] Some of the investments were housed using SPVs and the others held using a GP/LP arrangement. [note: 94]

(b) The GP/LP arrangement is the type of structure used by all major global PE firms. [note: 95] Under this arrangement, the fund is structured as a limited partnership with the fund manager as the general partner and with investors investing in the fund as limited partners via a limited partnership agreement. [note: 96]

(c) In this case, the intent was to establish three limited partnerships: the fund of funds PE fund, the direct investment PE fund and the real estate/hotel direct investment PE fund, [note: 97] with each of the three pools of capital managed by a separate GP, being an SPV held by "G1", *ie*, the first defendant; [note: 98]

(d) In terms of the Initial PE Funds and the Additional PE Funds, all drawdowns were managed by the first and second plaintiffs. [note: 99] Some proceeds had been credited to bank accounts managed by the first defendant. [note: 100] But these relate to "*more recent*" commitments made under the limited partnership arrangement – and not earlier commitments made through Sky Genius. [note: 101] Going forward, all fund commitments were to be made under the limited partnership. [note: 102]

60 During cross-examination, the first defendant claimed that the limited partnership for the fund of funds under the WWW concept was never set up. His point was that the entity which subscribed to the Additional PE Funds was a *corporate* entity known as Woolverstone Private Fund of Funds (LP) Limited and was not the *limited partnership* known as Woolverstone Private Fund of Funds LP. [note: 103] However, he conceded that his email did give the impression that the PE fund investments were made using a fund of funds limited partnership. It is that point which confirms that the first defendant saw himself as working towards the WWW concept. [note: 104]

MR JEYARETNAM: That, then, is a little puzzling though. You are stating here that:

"These proceeds relate to more recent commitments made by the LPA arrangement noted above – and not earlier commitments made through [Sky Genius]."

So when you talk about proceeds relating to more recent commitments made by the LPA arrangement noted above, that must be a reference to Woolverstone, right?

A. You are quite right.

Q. So there are proceeds, distributions being made under the fund of funds LPA, right?

A. There are distributions from those private equity funds that were signed up by Woolverstone, that's correct.

Q. That is why you say "These proceeds relate to more recent commitments made by the LPA arrangement, since you've said these are private equity distributions, must be the FOF LPA arrangement, right?

A. I meant the LPA – the LPs that were signed up under Woolverstone, that's correct. That's quite correct.

Q. You are saying that "the LPA arrangement noted above", and the LPA arrangement noted above, there are three of them: the FOF, the PE direct investments, the RE/hotel direct investments. Clearly, the relevant one is FOF, isn't it?

A. Yes, but the investment didn't come through the LPA arrangement. The investment commitment was made by the Woolverstone Private Fund of Funds (LP) Limited.

Q. Which is the LPA arrangement for the FOF?

A. It isn't.

Q. It is, isn't it?

A. It's just –

Q. Mr Eng, what is the LPA arrangement for the FOF if it is not Woolverstone Private Fund of Funds (GP) Limited?

A. If we had invested –

Q. I'm sorry, LP Limited.

A. Yes, if we had invested using the LP agreement, we would have – if I can refer you to page 40798, please. There was a limited partnership called Woolverstone Private Fund of Funds L.P.; that would have been the investment, so that's why there's no LPA.

Q. So you are saying that in fact, you made no investments through Woolverstone Private Fund of Funds L.P.?

A. That's correct.

Q. That is why it is your case that the FOF was never set up, never running, rather? The structure was set up but never –

A. We do have the structure here, that's correct.

Q. The structure is there but never running, never operating, as an LPA arrangement?

A. That's quite correct, Mr Jeyaretnam.

…

Q. You say here:

"These proceeds relate to more recent commitments made by the LPA arrangement noted above…"

This statement means that the recent commitments have been made by the FOF LPA arrangement, right?

A. That's incorrect.

Q. That's incorrect. So what does it mean when you say "the recent commitments made by the LPA arrangement noted above"?

A. The LPA arrangement I talk about calls for the LPs to invest in the fund via an LPA. But we don't have the LPA, so that's the reason why it's not accurate. It's very loosely described.

Q. Yes, the statement may be inaccurate. That's exactly the point I'm coming to, at least

according to you. These proceeds relate to more recent commitments made by the LPA arrangement. What you are telling the Wees, accurately or not, is that the recent commitments have been made by the FOF LPA, correct, isn't it?

A. That's correct.

Q. So what you are telling us is that this statement made by you was false.

A. That's correct.

Q. Then the next sentence, you are telling the Wees that "Going forward, all fund commitments will be made under the LPA arrangement."

By this, you meant that from then on, all the fund commitments would be under the FOF LPA, correct?

A. That's correct.

Q. But your position today is that in fact, the fund commitments were not made under the LPA arrangement?

A. That's correct.

Q. After telling the Wees that this was what you would be doing, on 12 October 2007, and indeed that this was what you had been doing already, did you ever go back to the Wees to say, "No, I made a mistake, the FOF is not in operation yet"?

A. I did. And – and they are fully aware that it was LP Limited that invested on their behalf.

Q. I'm concerned about your going back to them. Where did you go back to them? By e-mail or in another conversation?

A. I told them that it was – it was the LP Limited company that was taking up the –

Q. Did you apologise for the mistake that you made on 12 October 2007?

A. I did, Mr Jeyaretnam.

Q. Did you tell them, "Don't go and tell your mother because it is false"?

A. I did not say that, Mr Jeyaretnam.

The first defendant's allegation that he apologised to the plaintiffs for this mistake appears nowhere in his affidavit. [note: 105]

61 The contemporaneous documents show that instead of correcting the impression that the entity which was to be the fund of funds limited partnership under the WWW concept had been set up, the first defendant went on to reinforce the impression given in the 12 October 2007 email by writing in the 23 October 2007 email that there was in existence a "third party fund": [note: 106]

As discussed. The amount that is being underwritten for a third party fund is now USD48 million,

excluding a potential commitment of US$15m to PEP (Bain Aus). In addition, we have USD18m of the house fund (being USD30m) currently committed.

62 Four days after the first defendant sent the 23 October 2007 email, he wrote another email on 24 October 2007 informing the second plaintiff, amongst other things, that a limited partnership agreement was being prepared for the GP and the LPs of the limited partnership to sign: [note: 107]

We are preparing LPA to be signed off by LPs and the GP (the latter is WWW owned).

For the FOF 30, had suggested 1.5% annual fee on commitment.

63 The close proximity in time between the first defendant's email of 12 October 2007 and 23 October 2007 and his email of 24 October 2007 strongly suggests that both he, the second defendant and the plaintiffs were referring to the WWW concept. [note: 108] Accordingly, the plaintiffs must have understood that the WWW concept was already set in motion at that time, or at least that the WWW concept was to be implemented. [note: 109]

64 Indeed, as the first defendant confirmed in cross-examination, the fund structure of the various other funds mentioned in his email of 12 October 2007 had already been set up as illustrated by the various flower diagrams that he had produced and given to the second plaintiff. [note: 110] The fund structures that had already been created included the fund structure for the fund of funds PE fund, the Project Plaza PE fund and Project Red Spot PE fund. [note: 111] The discussion in the 24 October 2007 email [note: 112] therefore must have been in relation to how the first defendant ought to be remunerated pursuant to the WWW concept. [note: 113]

65 Even by October 2007 (by which time almost all the investments had been acquired), the only remuneration that the first defendant was content to speak of was in relation to the 1.5% per annum of the US$30m that had been paid to him and the second defendant personally in relation to the Initial PE Funds. [note: 114] That is what the first defendant means when says: "For the FOF 30, had suggested 1.5% annual fee on commitment". Nothing was mentioned about how he was to be remunerated in relation to the other investments made pursuant to the WWW concept. [note: 115]

66 The first defendant is a sophisticated man and one well capable of looking after his own financial interests. If the first defendant expected to be remunerated separately and unconditionally for the work done in connection with those other investments, he had every opportunity to broach the subject with the second plaintiff in response to his invitation and to arrive at an agreement. [note: 116] The fact that he did not is therefore indicative of his intention to recover his compensation out of the WWW concept.

67 The second defendant was also aware that the parties were conducting themselves to advance the WWW concept. [note: 117] The second defendant was copied on the 23 October 2007 email. [note: 118] In an email dated 12 March 2010, the second defendant herself wrote an email to the first defendant and to the first and second plaintiffs where she referred to the Bridgepoint fund as being the Plaintiffs' "*earlier fund under the first US$30 million portfolio*." [note: 119] Her explanation during trial was that she did not understand why there was a demarcation between the Initial PE Funds and the Additional PE Funds and that all she did was to do the work and to take care of the funds: [note: 120]

Q. Madam Lee, I don't have to detain you further on that. You have seen the first defendant using the expression "third party fund" and "house fund", but your evidence is you didn't quite understand what it referred to. I will go on from there and show you 39AB 31158. If you have that, that is your own e-mail of 12 March 2010 to the first defendant and Mr BK Wee and Mr BT Wee. You yourself, when referring to Bridgepoint, describe it as being your "earlier fund under the first US$30 million portfolio".

A. Counsel, yeah.

Q. So my question to you is, did you not in fact understand that there was a first US$30 million portfolio, meaning a commitment up to US$30 million, which was sometimes called the "house fund", and that there were additional funds which were to be part of a third party fund?

A. Counsel, my understanding was that Mr Wee has paid 1.5 per cent of the 30 million, so to me, I thought all the assets belongs to them.

Q. No. That's not my question, is it, right? We know all the assets belonged to them. That's not in dispute, I'm glad you're not disputing it. But my question is relating to whether you understood this demarcation between the house fund, the US$30 million commitment and the additional funds.

A. I do not understand whether –

Q. So even though you mentioned "first US$30 million portfolio in this e-mail", your evidence is still that you don't understand?

A. Yes.

68 I reject the second defendant's explanation as disingenuous, if not dishonest. The defendants prepared a PowerPoint presentation for the purposes of selling the interests in the fund of funds PE fund to investors. [note: 121] This presentation was prepared by the first and second defendant's son, Jonathan Eng, and Xann Lee, an employee of CSP. [note: 122] Xann Lee's evidence was that all documents relating to the PE Funds were kept in a locked cupboard which could only be accessed by her and the second defendant. [note: 123] It was also the second defendant who would have unrestricted access to the online data room maintained by the PE funds: [note: 124]

Q. You've mentioned receiving documents from the various fund managers. Who had access to those documents?

A. The second defendant and I and the first defendant has a password to access the data room. Because the fund manager will post documents in this data room.

Q. So each fund would have a data room?

A. Not every funds, but almost.

Q. This data room, is it a physical data room or something online?

A. Online.

Q. Could you explain what are the documents that would be accessible in the data room?

A. For example, PPM, the subscription documents, tax documents, drawdown notices, distribution notices, and quarterly reports, so and so on.

Q. What is PPM?

A. Private placement memorandum.

Q. You mentioned that the three of you, yourself, the first defendant and the second defendant, had passwords. Did you all have the same level of access?

A. No. the second defendant would have the password for all the funds, and her level of access is everything. But for me, will be just a few funds, and I'm having the restricted access. For example, I cannot access tax documents. And the first defendant, he also has a few -- password for -- not all the funds.

Q. What about physical documents? Did you receive physical documents from the funds as well?

A. Sometimes, yes.

Q. Where were these kept?

A. In the locked cupboard in the office.

Q. Who held the key to this locked cupboard?

A. ED and myself -- sorry, the second defendant and myself.

Q. Which part of the office?

A. In the office.

Q. The general office.

A. Yes, general office.

(a) The second defendant confirmed that when the Powerpoint presentation was prepared she had taken a quick look at it and was concerned about the information relating to the PE fund managers and the other information contained in it. [note: 125]

(b) The second defendant also confirmed that Jonathan Eng and Xann Lee do not have the authority to put together a Powerpoint presentation such as this without checking with her. [note: 126] The Powerpoint presentation was also sent out via the second defendant's email. [note: 127] She testified as follows: [note: 128]

Q. And sent out by you under your email. That's Jonathan and Xann. Do Jonathan and Xann have the authority to put together something like this, without checking with you?

A. They will not, and I understand that this was prepared for Mr Wee Boo Kuan and Wee Boo Tee.

(c) Most importantly, the second defendant's conduct after she sent out the email demonstrated that she knew the purpose of the presentation. In her email dated 18 November 2009 at 12:19 hours, the second defendant wrote: [note: 129]

> WPFOF is currently registered in Cayman.
>
> The MFO team can talk to potential LPs on their preferred jurisdiction once the LPs are identified. Same for process, presentation and follow up. However, as CSP has no licence to sell investment or collect proceeds in Singapore at the moment, we are not able to sell openly. But I believe CSP can assist in the documentation.

69 The evidence shows clearly that all of the parties were working towards the WWW concept with the expectation that all of their rewards would come when the WWW concept succeeded. The parties therefore never had an agreement on fees. Further, the first and second defendant never addressed their mind as to what was to happen if the WWW concept failed and the anticipated reward for their efforts failed to materialise.

Management fees for the initial commitment amount of US$30m

70 It is common ground that the defendants are entitled to management fees of US$450,000 per annum for the Initial PE Investment of US$30m. [note: 130] It is also common ground that the defendants in fact managed and administered the Initial PE Funds from 2005 to date. The annual fee being an agreed fee, it is irrelevant whether it is commensurate with the amount of work which had to be done in managing and administering those funds.

71 The plaintiffs made 3 payments of US$450,000 for management fees. There are two disputes: [note: 131]

(a) For which years these payments should be credited; [note: 132] and

(b) Whether the plaintiffs' separate payment of GBP 257,731.96 in February 2006 was also a payment of management fees. [note: 133]

72 The plaintiffs credit the 3 payments of US$450,000 to the fees due for the years 2006–2007, 2007–2008 and 2008–2009. [note: 134] The defendants on the other hand credit these payments to the fees due for the years 2005–2006, 2006–2007 and 2007–2008. [note: 135]

73 In the 12 May 2012 file, the defendants classify the GBP 257,731.96 as expenses for Project Plaza. [note: 136] The first defendant reiterated this in his testimony: [note: 137]

> Q. So if the 257.731.96 was not management fees, what was it?
>
> A. 257.731?
>
> Q. Yes, what was it for?
>
> A. We have set aside for Project Plaza.
>
> Q. In other words, according to what you're saying now, it's the Wees' money?

A. Yes.

Q. So it indeed ought to be reflected as an inflow?

A. Yes, I believe so.

Q. So in addition to what Mr Stone has confirmed as being surplus for the Wees, there should also be this sum of 257.731.96 paid back to the Wees?

A. If this sum is being set aside for Project Plaza purposes, and not part of the management fees, then I agree.

Q. It is your evidence that it's not part of the management fee, right?

A. That's not what we are saying today, yes.

Q. I want to know what your position is, Madam Lee. Is it management fee, or is it the Wee's money for the Project Plaza?

A. It is not management fee.

Q. So it is the Wee's money set aside for Project Plaza?

A. Yes.

Q. So on your evidence, you should pay this money back to the Wees now?

A. I agree.

Q. When can the Wees expect it back?

A. Currently, there are a lot of things that is still unresolved, Mr Jeyaratnam. No doubt, there are amounts in our accounts that belongs to the Wees, but there are also fees that the Wees are owing to us. So if things are not resolved, we do not know how to account for all these things. That is -- that is why we are here, to resolve the issue.

Q. What you have said today, that these moneys are repayable to the Wees -- "these moneys" being GBP 257,731 -- is not reflected in Mr Stone's report because you didn't tell him that?

A. No. This particular sum, perhaps Mr Stone did not take into account because it came to the account of where the fees and personal use was. So it's the same as – sorry. It's the same as the 300,000. I'm not sure if Mr Stone has taken that into account.

Q. Do you actually have the money, the GBP 257,000? Is it still in the HSBC account?

A. You see, Mr Jeyaratnam, the funds is inside my account. For the fees, we do use them, so if there is anything that is not belonging to us, we will want to return it back to the Wees. We don't want them. But if it's expenses that are used by us for Mr Wee's purposes, then I think he should rightly, rightfully bear these expenses.

74 But this contradicts the first defendant's email of 15 August 2006 at 21:19 hours in which he

said that the GBP 257,731.96 was for payment of management fees: [note: 138]

> Meant: have your trsfd for period Aug 06 to Jul 07 the amount of US$450K.
>
> The first amt would have been for Aug 05 to Jul 06.
>
> Shall return you the 300K loan end of this year if ok with you!
>
> That was indeed recd – funding other deals.

The first defendant's email was in response to the second plaintiff's email written at 16:45 hours the same day: [note: 139]

> Mystery solved! 257,731 sterling pounds (US$450K equivalent approx) wired into your HSBC account 20 Feb via SKY!

75 On the same day at 22:20 hours, the first defendant wrote a further email confirming what he meant in his earlier email: [note: 140]

> Apologies if I am confusing all.
>
> The Jul 06 email was requesting for the management fee for the period Aug 06 to Jul 07.
>
> *The 450K already received was for Aug 05 to Jul 06.*
>
> The loan was received and shall be re-paid by the end of this year. Need to re-shape personal portfolio especially with new co-investments such as Riviera etc…
>
> [emphasis added]

76 I therefore find that the sum of GBP 257,731.96 was a payment in pounds sterling of the US$450,000 management fee for 2005–2006. I do not accept the first defendant's oral evidence that he was mistaken when he said contemporaneously in his email that this sterling payment was for management fees 2005–2006. [note: 141] It also appears to me to be reasonable that these management fees (save for the first payment) were paid in advance rather than in arrears. That would explain why the first two annual payments both came in the calendar year 2006. They were a payment in arrears for 2005–2006 and a payment in advance for 2006–2007.

77 If the defendants have a contractual right to be paid $450,000 per annum, that right continues to subsist until that right expires, is determined in accordance with the terms of the parties' agreement or until the parties' agreement as a whole is brought to an end. There is no evidence before me of any such event having taken place. The right being contractual, it is unaffected by the defendants' failure to ask for further management fees after the last payment on 7 August 2008 covering the period up to August 2009. In the absence of any unequivocal representation by the defendants of an intention to disclaim those fees or any detrimental reliance by the plaintiffs on any such a representation, neither of which is suggested, the defendants are not precluded by any estoppel from claiming those fees now, by way of counterclaim in this action, merely because they failed to ask for those fees earlier. In any event, any such estoppel would not extinguish the defendants' right to the fees in question but would merely entitle the plaintiffs to reasonable notice before the defendants insisted on enforcing their strict legal rights.

78 The plaintiffs' agreement to pay the first and second defendants US$450,000 per annum therefore continues to bind the plaintiffs. The first and second defendants are entitled to be paid those management fees for the remaining years in which they have been managing and administering the PE funds up to the date on which the structure holding the funds is transferred to the plaintiffs pursuant to the judgment herein, pro-rated if necessary.

Are the defendants entitled to management fees for the Additional PE Investment?

79 The defendants are not entitled to payment of management fees calculated at 1.5% of the Additional PE Investment.

80 It is true that the defendants provided services to the plaintiffs in respect of these Additional PE Funds. It is also true that the first plaintiff admitted that he expected to pay for these services. [note: 142] He testified as follows at trial: [note: 143]

> Q. Mr Wee, in return for what you say was their managing the investments, or making these investments on your behalf -- now I'm just asking you yourself -- would it be fair to say that you expected to pay a fee for this?
>
> A. Generally, yes.
>
> Q. We have your evidence down that all that was actually agreed was the 1.5 per cent for the initial PE funds of up to US$30 million. You have said that before lunch.
>
> A. Yes, that was verbally agreed, and that was – we actually did that for four times, yes.
>
> Q. That's right.
>
> A. Four payments, I mean.
>
> Q. Beyond that, as you say, nothing was agreed. The reason I was asking you this question was you weren't expecting to have this for free, that's what I meant.
>
> A. Yes. That's correct. Although, may I add the context, because we are here to build a business together, that was really the context, where we provided the funding, we provided the expertise, and the connections, access to these funds.
>
> Q. Mr Wee, and that's why I was careful to ask you about this before lunch, there were discussions, according to you, about this, but nothing was actually agreed about that, correct? Nothing was actually agreed beyond paying 1.5 per cent on the initial PE funds of up to US$30 million, correct?
>
> A. Yes.
>
> Q. Essentially, Mr Wee, as more investments were undertaken beyond the initial PE funds amount of US$30 million, the parties didn't really sit down and discuss, or sit down and agree what sort of fee was to be payable for all that, correct?
>
> A. That is correct.

81 But even if the services were provided, and even if the plaintiffs expected to pay for these

services, and even if that expectation was shared by the defendants, that does not suffice to give rise to a legal entitlement to payment. The plaintiffs cannot be compelled to pay for these services unless they agreed expressly or impliedly to do so or unless, despite the absence of an agreement, they are obliged by the law of restitution to do so.

No entitlement to additional management fees on an implied agreement

82 The defendants' case is that although there was no express agreement for these additional fees, the defendants are entitled to management fees of 1.5% of the commitment amount for the additional PE funds under an implied agreement. [note: 144]

83 I find that there is no basis for any such implied agreement. Insofar as it arises from the admitted agreement to pay fees of 1.5% per annum in respect of the Initial PE Investment, the implied agreement advocated by the defendants contradicts the terms of that express agreement and is unsustainable.

84 I find it impossible also to spell out a separate agreement to that effect, arising from the parties' conduct. Indeed, the parties' conduct contradicts any such implied agreement. The defendants asked for management fees to be paid on four occasions (10 February 2006, 22 August 2006, 24 August 2007 and 7 August 2008). On each occasion, those fees were calculated as 1.5% of US$30m. That is so even though the requests in August 2007 and August 2008 came after the commitment amount had been increased from US$30m to US$129m.

85 The suggestion that the parties' express agreement was open-ended, permitting the defendants to claim fees beyond 1.5% per annum of the initial US$30m, or that they entered into a separate agreement by conduct are both disingenuous afterthoughts. I reject this submission.

No entitlement to additional management fees on a quantum meruit

86 The defendants' alternative claim is for additional management fees on a *quantum meruit* fixed at: (1) 0.75% of the AUM under Sky Genius; (2) 1.5% of the AUM under Woolverstone Private Fund of Funds LP Ltd during the "active management phase"; and (3) 1% of the AUM after the "active management phase". [note: 145] I reject this alternative claim for the following reasons.

87 First, the evidence supports a finding that in regard to the Additional PE Funds, the defendants performed their services speculatively, in anticipation of being compensated out of the profit in their overall venture, *ie* the WWW concept. As such, the defendants were taking the risk that that prospect of future compensation would not materialise. Having knowingly and voluntarily taken that risk, they cannot now claim a restitutionary remedy as compensation for the consequences of that risk.

88 Second, there is no room now for the defendants to be remunerated for these additional services on an entirely different basis from that contractually agreed. The plaintiffs and the defendants agreed contractually that the defendants would earn a management fee fixed at 1.5% of the Initial PE Investment of US$30m. [note: 146] Any extension or modification to that contractual agreement to permit the defendants' current claim would itself have to be contractual.

89 Third, the defendants had every opportunity to make clear any expectation regarding remuneration contemporaneously with the services rendered. [note: 147] It was completely open to them to clarify matters in 2005, 2006, 2007 and 2008; and indeed all the way up to 2012. [note: 148]

They failed to do this. [note: 149]

90 Fourth, the defendants have not adduced any independent expert evidence of the market practice on which they rely to justify the entitlement to fees or the quantum of fees. [note: 150] The defendants' evidence on this question was given by the first and second defendants' daughter, Elizabeth Eng, as opinion evidence. Her evidence is neither expert evidence nor independent evidence. It is not expert evidence because the sum total of her expertise in the world of private equity comes in the form of a 1 month internship. [note: 151] Her evidence is also not independent evidence because of her family relationship to the first and second defendants. [note: 152]

91 The plaintiffs' expert evidence on this issue came from Mr Richard Harris, who was both an expert and independent. The defendants did not challenge his expertise or independence. [note: 153] He disagreed with Elizabeth Eng on her basis of charging. I accept his evidence as having by far the greater weight. [note: 154]

92 At trial, the defendants sought to argue instead that this claim was for an introducers' fee rather than a management fee. [note: 155] I reject this argument for two reasons:

(a) First, the defendants have not pleaded that they were entitled to or claiming an introducer's fee. [note: 156] They are therefore precluded from advancing that as the basis for the fee; [note: 157]

(b) Second, Richard Harris's evidence in his affidavit [note: 158] and at trial is that it is typically not an investor who pays an introducer a fee for finding a fund for the investor. Instead, it is the principal of the fund who pays the introducer a fee for finding the investor. And even then, an introduction fee is usually a one-off fee rather than a recurring, annual fee: [note: 159]

> Q. Then I go down to the term "Introducer". Just to get your understanding of it, essentially this is someone or an entity that introduces a client to an investment opportunity and would typically charge an introduction fee, correct?
>
> A. Correct.
>
> Q. Again, you put that at typically -- I get this from paragraph 53 -- 0.5 to 1 per cent and/or a trail fee of 0.2 to 0.5 per cent per annum for a period of years, so it could be a one-off fee or it could be a one-off fee with a trail fee, correct?
>
> A. That's correct.
>
> Q. I suppose it would be possible, if there was someone who was regularly introducing investments to you, it might be possible to also charge this as an annual fee?
>
> A. No, I don't think so. I think that it would be regarded as a commission for an introducer. The other big difference that one should be aware of is an introducer often works for the fund management company, introducing the fund to the client. So the introducer might actually be paid not necessarily by the client but by the fund management company.
>
> Q. That is so, but without going into who pays, I was coming back to my question that it might be incorporated an annual fee, and you didn't agree with me. I just wondered

whether I could cross over to page 30 of your report, and just to give you the context -- I will come back to this, it is just that I am trying to follow up on this particular point -- at page 29 you were giving your comments on 1.3.2, "Fund of Funds fees", and I wanted to show the context. If you come back to page 30 at paragraph (f), you say: "In this sense the word 'introducing' would also imply advising on or recommending a fund, which would happen if, as here, the client does not have another regulated intermediary between himself and the fund. In a MFO, it would not be unusual for an annual fee to incorporate all of this transactional work; as mentioned at paragraph 90 above could be part of the MFO duties.

It really depends how the client wishes to agree fee levels as discussed in advance." I was asking you generally, not specifically in relation to this, that if you had someone who was, say, acting in an advisory role and regularly bringing you investment opportunities -- and I think you mentioned in that statement at page 30 that in a sense when you introduce it, you are also advising or recommending it. It might be possible or it might be the case that you pay that person an annual fee, rather than each time an introduction fee based on a percentage of the commission. That is all I was asking.

A. The answer is no. I think if you are introducing, you are introducing and you are paid a fee. The fee typically would be smaller than an adviser because an introducer typically doesn't have to be regulated. In a sense, an introducer sits in that space where they might be assisting a regulated entity to advise a client. That might be the fund management company.

Q. You say that is for an introducer. It could also be that introduction or introducing -- which term is more appropriate -- could be done as part of, say, someone whom you would describe as an investment adviser or carrying out an investment adviser's role, correct?

A. I'm not sure if that fits. An investment adviser's role would incorporate, if you like, the word "introduction", but that wouldn't be regarded in terms of an introducer's role. An investment adviser would be introducing, in layman's terms, investments to a client.

Q. That's right.

Breakup and facilitation fees

93 I reject the defendants' claim for US$0.5m in breakup and facilitation fees for the sale of the CVC funds and PEP funds. [note: 160]

94 There was never any agreement between the parties for the plaintiffs to pay the defendants facilitation and breakup fees. Indeed, there was never even an informal claim for facilitation and breakup fees until the defendants advanced one in this suit. No such claim was made when the facilitation and breakup services were provided: [note: 161]

Q. I would just like you to confirm that your claim for facilitation and break-up fees, in relation to the sale of PEP and CVC, was made for the first time in this suit?

A. Yes.

Q. At the time of the sale, you did not raise any question of getting fees from the sale of these

CVC and PEP funds?

A. The issue about compensation is always been the -- not in really -- agreement between both parties.

Q. My point is a little bit more specific. You did not ask for fees at the relevant time, did you?

A. No.

Q. Since you did not ask for fees at the relevant time, what is your basis for claiming fees now?

…

A. If the funds will still continue to be in our – our manage, then we will earn also a management fee on this fund. But because the funds has [sic] stopped, then that is why we also suffer a loss on the management of these two funds.

95 The defendants have adduced no admissible evidence to show that it is market practice for an administrator (which is the role which the defendants allege they played) to charge breakup and facilitation fees. [note: 162] The only evidence the defendants put forward is Elizabeth Eng's assertion to that effect. [note: 163] I again accord no weight to Elizabeth Eng's evidence on this issue: she is neither an expert in this field nor independent.

Management fees and expenses for Project Plaza

96 I reject the defendants' claim for "Management Fees and Expenses" for Project Plaza. [note: 164]

97 It is not alleged that the plaintiffs agreed – either expressly, by implication or by conduct – to pay fees to the defendants for their work on Project Plaza. The defendants' claim for fees can therefore only be in restitution, on a *quantum meruit*.

98 A restitutionary claim must fail. I find once again that the defendants were risk-runners. I accept that the Hotel Plaza was to be injected into a hotel fund as part of the overall WWW concept. [note: 165] The defendants did this work and incurred the associated expenses in connection with Project Plaza with the expectation of recovering compensation for it through the rewards that would come with the hoped-for success of the hotel fund as part of the WWW concept and not through direct and contemporaneous compensation for the services in question. [note: 166] Undoubtedly, the first and second defendants expected to be compensated for their work on Project Plaza. Against that expectation, it was open to the defendants to ask for or negotiate their immediate compensation if they wished. They never attempted to do this. This indicates to me that they were content to wait and recover their fees through the hotel fund.

99 As for expenses, I accept that the plaintiffs' submission that there was no overarching agreement that the plaintiffs were to meet all of the expenses incurred by the defendants in connection with Project Plaza, either directly or by way of reimbursement. [note: 167] Instead, the evidence contradicts any such overarching agreement by showing that they entered into specific agreements from time to time in relation to specific expenses on Project Plaza. [note: 168]

100 There was never any "implied term" or "implied understanding", let alone any agreement in the

contractual sense, for the plaintiffs to be responsible for anything more than that. [note: 169] The very fact that there are specific agreements in place in this regard leaves no room for the operation of any overarching implied agreement or for a claim in restitution. [note: 170]

101 The plaintiffs were not unjustly enriched at the expense of the defendants – the defendants knew and voluntarily accepted the risk inherent in the WWW concept. The nature and extent of the risk voluntarily assumed by a claimant in a claim for *quantum meruit* is a material consideration in determining whether an enrichment is unjust. In *Stephen Donald Architects Ltd v Christopher King* [2003] EWHC 1867, the parties were friends. The defendant did not have the means to pay fees for redevelopment of the property until completion of the project. Mr Richard Seymour QC, sitting as a Judge of the High Court, held that the parties had no contract under which the architect could recover his fees. He then examined the alternative claim on a *quantum meruit*. He observed that a claim for *quantum meruit* was conceptually a claim in restitution. He considered that the nature and the extent of the risk assumed by the party claiming payment on a *quantum meruit* in relation to the abortive transaction was a material consideration in determining whether an enrichment has been unjust. There was nothing unjust about being visited with the consequences of a risk which one has consciously run. That is the position that the defendants now find themselves in.

102 The plaintiffs also resist the defendants' claim for fees in respect of Project Plaza by suggesting that the plaintiffs have not been enriched by the services rendered by the defendants because those services were worth nothing to the plaintiffs or were not worth to the plaintiffs the market value of those services. In the language of the law of restitution, this is the defence of subjective devaluation.

103 The concept of subjective devaluation was introduced by Prof Peter Birks in his seminal work, *An Introduction to the Law of Restitution* (Clarendon Press, 1985) at p 109:

> The critical distinction is between money and benefits in kind. Where the defendant received money, it will be impossible on all ordinary facts for him to argue that he was not enriched. For money is the very measure of enrichment. By contrast benefits in kind are less unequivocally enriching because they are susceptible to an argument which for convenience can be called 'subjective devaluation'. It is an argument based on the presmiss [*sic*] that benefits in kind have a value to a particular individual only so far as he chooses to give them value. What matters is his choice. The fact that there is a market in the good which is in question, or in other words that other people habitually choose to have it and thus create a demand for it, is irrelevant to the case of any one particular individual. He claims the right to dissent from that demand. Market value is not his value. Suppose that without his knowledge his car has been serviced or his roof mended. There is a market in car servicing and roof mending. It is easy to find the market value of work of that kind, what the going rate is between reasonable people. But he says that he had decided to go in for do-it-yourself or to take the risk of disaster by doing nothing. Indeed to make his point he does not even have to say that he had actually decided, let alone prove that he had decided, to dissociate himself from the particular demand. For his point is sufficiently made by saying that he has a continuing liberty to choose how to apply his particular store of value and that in the case of this car-servicing or roof-mending he simply had not made his choice.

104 The concept is now a part of English law. Lord Nicholls of Birkenhead in the House of Lords in *Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners* [2008] 1 AC 561 also gave the following explanation of subjective devaluation (at [119]):

> Here, as elsewhere, the law of restitution is sufficiently flexible to achieve a just result. To avoid

what would otherwise be an unjust outcome the court can, in an appropriate case, depart from the market value approach when assessing the time value of money or, indeed, when assessing the value of any other benefit gained by a defendant. What is ultimately important in restitution is whether, and to what extent, the particular defendant has been benefited: see *Burrows, The Law of Restitution*, 2nd ed (2002), p 18. **A benefit is not always worth its market value to a particular defendant.** When it is not it may be unjust to treat the defendant as having received a benefit possessing the value it has to others. In Professor Birks's language, a benefit received by a defendant may sometimes be subject to 'subjective devaluation': *An Introduction to the Law of Restitution* (1985), p 413.

[emphasis added in bold and in italics]

105 It appears to me that the plaintiffs' argument of subjective devaluation is a self-serving afterthought. It is true that Project Plaza was an abysmal commercial failure. But the failure of Project Plaza was due in large part if not exclusively to: (a) the plaintiffs' conscious decision to entrust part of the task of overseeing this construction project to the defendants, persons who had no experience in overseeing construction projects at all and who never held themselves out as having such experience; and (b) the first plaintiff's flighty and wholly impractical design choices and his inability or unwillingness to accept that they could be translated into reality only with difficulty, delay and expense. [note: 171]

106 If the defendants had not been risk-runners in extending services and incurring expenses in connection with Project Plaza, therefore, I would have held that it was open to them, in principle, to recover compensation for those services and expenses on a *quantum meruit*. But, for the reasons I have set out above, the defendants were risk runners. The risk that the defendants ran was the risk of the WWW concept failing to come to fruition and yielding the anticipated riches. Project Plaza being part of the WWW concept, the risk of Project Plaza failing for the reasons I have set out above at [106] fell within the risk which the defendants ran in extending their services and incurring expenses speculatively, without a prior overarching agreement.

Claim for sum of approximately US$319,150 for work one in administering the plaintiffs' other investments

107 The defendants claim a sum of approximately US$319,150 for the work done in administering the plaintiffs' other investments. [note: 172] To succeed in this claim, the defendants bear the burden of proof in establishing: [note: 173]

(a) That they carried out the alleged work for these investments and thereby conferred a benefit on the plaintiffs; [note: 174] and

(b) That the amount claimed is reasonable, having regard to market practice. [note: 175]

108 The defendants have failed to discharge their burden of proof on both counts. [note: 176] This is because: [note: 177]

(a) First, I do not accept that the defendants did all of the work for which they now claim fees. [note: 178] The defendants have disclosed very few documents that are consistent with the carrying out of the alleged work. All they have are bare assertions of such work done. [note: 179]

(b) Second, the defendants have not produced any evidence to show that the rates that they claim are reasonable. [note: 180]

Conclusion

109 With that, I have dealt with all aspects of the claim and counterclaim. I must say in conclusion that I was unimpressed by many aspects of the evidence and the conduct of both the second and third plaintiffs on the one hand and of the first and second defendants on the other. Each of those four individuals showed themselves, in the historical events in question, quite capable of misleading others for their personal benefit. All four of them also showed themselves, in their evidence before me, of being quite capable of attempting to mislead me in order to succeed in this litigation. The principal difference between the two groups – and the factor which explains the outcome of this action – is that the first and second plaintiffs' attempts to mislead were in relation to matters not connected to the issues which I had to resolve in this action.

110 For all of these reasons, therefore, I have given judgment for the plaintiffs in the following terms: [note: 181]

(a) I have made the transfer order, the accounting order and the payment order.

(b) I have declined to make the tracing order at this point in the litigation, without precluding the plaintiffs from seeking tracing relief against the defendants in the future. [note: 182]

(c) I have dismissed [note: 183] the entirety of the defendants' counterclaim save that I have ordered the plaintiffs to pay to the defendants a management fee of US$450,000 per annum for the years 2009–2010 until the defendants transfer to the plaintiffs the PE funds which form the subject-matter of the agreement. [note: 184]

111 As for the costs of this litigation, I have ordered the defendants to pay the plaintiffs' costs of and incidental to the claim on the standard basis and I have given the plaintiffs a certificate for more than two solicitors. I have declined to order these costs on the indemnity basis. Although the defendants' position on the plaintiffs' claim has been to resist on slight grounds what might otherwise appear to be the obvious outcome, and to do so as leverage for their counterclaim, I do not consider that it has crossed the threshold to justify an order for indemnity costs.

112 As for the costs of the counterclaim, I have ordered the defendants to pay 75% of the costs of the counterclaim to the plaintiffs on the standard basis with no certificate for more than two solicitors.

[note: 1] Plaintiffs' Opening Statement dated 19 March 2013 ("POS"), para 2.

[note: 2] POS, paras 1(a) and 2(a).

[note: 3] POS, paras 1(b) and 2(b).

[note: 4] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 24.

[note: 5] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 24(A).

[note: 6] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 24(B).

[note: 7] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 24(C).

[note: 8] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 24(D).

[note: 9] Minute Sheet dated 27 May 2014.

[note: 10] Minute Sheet dated 27 May 2014, p 1.

[note: 11] Minute Sheet dated 27 May 2014, p 1.

[note: 12] Minute Sheet dated 27 May 2014, p 1.

[note: 13] Minute Sheet dated 27 May 2014, p 1.

[note: 14] Defendants' Opening Statement dated 18 March 2013 ("DOS"), para 8.

[note: 15] DOS, para 9.

[note: 16] Defendants' Closing Submissions dated 9 April 2014 ("DCS"), para 17.

[note: 17] DCS, para 358; Transcript (31 July 2013), p 101, lines 12 to 21.

[note: 18] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 2.

[note: 19] DOS, para 30.

[note: 20] AEIC of Eng Chiet Shoong dated 18 March 2013 ("AEIC ECS"), para 2.

[note: 21] Order made in chambers dated 19 November 2012.

[note: 22] Plaintiffs' Closing Submissions dated 9 April 2014 ("PCS"), para 44; DOS, para 9.

[note: 23] AEIC ECS, para 7.

[note: 24] AEIC ECS, para 7.

[note: 25] PCS, para 51; AEIC of Wee Boo Kuan dated 18 March 2013 ("AEIC WBK"), para 18; DCS,

para 81.

[note: 26] PCS, para 49.

[note: 27] PCS, para 49.

[note: 28] PCS, para 51; AEIC WBK, para 20.

[note: 29] PCS, para 49.

[note: 30] PCS, para 53.

[note: 31] Transcript (1 August 2013), page 13 lines 20 to 25.

[note: 32] Transcript (31 July 2013), page 32 lines 9 to 10.

[note: 33] DCS, para 15.

[note: 34] DCS, para 85; AEIC WBK, para 59; Exhibit D-1; Transcript (18 July 2013), p 98, lines 1 to 3.

[note: 35] DCS, para 84; Transcript (31 July 2013), p 28, lines 4 to 25.

[note: 36] Transcript (31 July 2013), p 28, lines 4 to 25.

[note: 37] Defence and Counterclaim (Amendment No 3) of the first and second defendants re-dated 3 June 2013 ("D&CC"), para 12; POS, Schedules A and B pp 13 to 14.

[note: 38] D&CC, para 12(a).

[note: 39] DCS, para 263.

[note: 40] Statement of Claim (Amendment No 2) re-dated 17 May 2013 in Supplementary Setting Down Bundle, para 14.

[note: 41] D&CC, para 75(b).

[note: 42] Transcript (28 April 2014), p 112, lines 21 to 25; p 113, lines 1 to 9; Defendants' Case and Skeletal Responses to Plaintiffs' Closing Submissions, p 11.

[note: 43] Transcript (28 April 2014), p 112, lines 21 to 25; p 113, lines 1 to 9; Defendants' Case and Skeletal Responses to Plaintiffs' Closing Submissions, p 11.

[note: 44] PCS, para 285.

[note: 45] PCS, para 286; 10 DB 8711.

[note: 46] PCS, para 16(a) and 290; Transcript (30 July 2013), p 105, lines 11 to 25, p 106, lines 1 to 22.

[note: 47] PCS, para 289.

[note: 48] PCS, para 289; Transcript (30 July 2013), p 37, lines 24 to 25, p 38, lines 1 to 25, p 40, lines 1 to 3.

[note: 49] D&CC, para 77; Defence and Counterclaim (Amendment No 3) of CSP re-dated 3 June 2013, para 78.

[note: 50] D&CC, para 80(f).

[note: 51] DCS, para 529.

[note: 52] DCS, para 542.

[note: 53] DCS, para 75.

[note: 54] DCS, para 733.

[note: 55] DCS, para 760.

[note: 56] DCS, paras 75 and 759.

[note: 57] DCS, paras 788 to 789.

[note: 58] PCS, para 342(a).

[note: 59] PCS, para 63.

[note: 60] PCS, paras 345 to 352.

[note: 61] DCS, para 733.

[note: 62] PCS, para 350.

[note: 63] PCS, para 351.

[note: 64] PCS, para 351.

[note: 65] PCS, paras 353 to 358.

[note: 66] PCS, paras 444 to 455.

[note: 67] PCS, paras 444 to 455.

[note: 68] PCS, paras 444 to 455.

[note: 69] PCS, paras 412 to 426.

[note: 70] PCS, para 633.

[note: 71] PCS, para 81.

[note: 72] 3 DCB 141 and 16 AB 12577.

[note: 73] 3 DCB 141 and 16 AB 12577.

[note: 74] PCS, para 83.

[note: 75] PCS, para 83; 3 DCB 101 and 12 AB 9589.

[note: 76] PCS, para 83; 3 DCB 101 and 12 AB 9589.

[note: 77] PCS, para 83(a); 3 DCB 101 and 12 AB 9589.

[note: 78] PCS, para 83(a); 3 DCB 101 and 12 AB 9589.

[note: 79] PCS, para 83(b); 3 DCB 101 and 12 AB 9589.

[note: 80] PCS, para 83(b); 3 DCB 101 and 12 AB 9589.

[note: 81] PCS, para 84.

[note: 82] PCS, para 84; Transcript (19 July 2013), p 8 lines 16 to 25, p 9, p 10, p 11, lines 1 to 23.

[note: 83] AEIC WBK, p 2651.

[note: 84] PCS, para 85; Transcript (25 July 2013), p 147 lines 16 to 25, p 148, p 149, lines 1 to 19.

[note: 85] PCS, para 86; 16 AB 12073.

[note: 86] PCS, para 86; 16 AB 12073.

[note: 87] PCS, para 87; 16 AB 12073.

[note: 88] PCS, para 87; Transcript (31 July 2013), p 58 lines 24 to 25, p 59, line 1.

[note: 89] PCS, para 87; 16 AB 12073.

[note: 90] PCS, para 88; 16 AB 12073.

[note: 91] PCS, para 88; 16 AB 12073.

[note: 92] PCS, para 88; 16 AB 12073.

[note: 93] PCS, para 88(a); 16 AB 12073.

[note: 94] PCS, para 88(a); 16 AB 12073.

[note: 95] PCS, para 88(b); 16 AB 12073.

[note: 96] PCS, para 88(b); 16 AB 12073.

[note: 97] PCS, para 88(c); 16 AB 12073.

[note: 98] PCS, para 88(c); 16 AB 12073.

[note: 99] PCS, para 88(d); 16 AB 12073.

[note: 100] PCS, para 88(d); 16 AB 12073.

[note: 101] PCS, para 88(d); 16 AB 12073.

[note: 102] PCS, para 88(d); 16 AB 12073.

[note: 103] PCS, para 89; Transcript (31 July 2013), p 71 lines 19 to 25, pp 72 to 75, p 76 lines 1 to 5.

[note: 104] PCS, para 89; Transcript (31 July 2013), p 71 lines 19 to 25, pp 72 to 75, p 76 lines 1 to 5.

[note: 105] PCS, para 90.

[note: 106] PCS, para 91; 51 AB 40798.

[note: 107] PCS, para 92; 51 AB 40798.

[note: 108] PCS, para 93.

[note: 109] PCS, para 94.

[note: 110] PCS, para 95; 51 AB 40798; Transcript (31 July 2012), p 59 lines 12 to 25, pp 60 to 62, p 63 lines 1 to 23.

[note: 111] PCS, para 95.

[note: 112] PCS, para 92.

[note: 113] PCS, para 96.

[note: 114] PCS, para 97.

[note: 115] PCS, para 97.

[note: 116] PCS, para 98.

[note: 117] PCS, para 99.

[note: 118] PCS, para 99; 16 AB 12577.

[note: 119] PCS, para 99; 39 AB 31158.

[note: 120] PCS, para 99; Transcript (5 September 2013), p 101, lines 8 to 25; p 102, lines 1 to 11.

[note: 121] PCS, para 100.

[note: 122] PCS, para 100(a).

[note: 123] PCS, para 100(b).

[note: 124] PCS, para 100(b); Transcript (29 July 2013), p 62 lines 5 to 25; p 63, lines 1 to 16.

[note: 125] PCS, para 100(c); Transcript (5 September 2013), p 108 lines 19 to 23.

[note: 126] PCS, para 100(d); Transcript (5 September 2013), p 110 lines 18 to 23.

[note: 127] PCS, para 100(d); Transcript (5 September 2013), p 110 lines 18 to 23.

[note: 128] Transcript (5 September 2013), p 110 lines 18 to 23.

[note: 129] PCS, para 100(e); 37 AB 29733.

[note: 130] PCS, para 342(a).

[note: 131] PCS, para 346.

[note: 132] PCS, para 346.

[note: 133] PCS, para 346(a).

[note: 134] PCS, para 346.

[note: 135] DCS, para 530.

[note: 136] 3 DCB 24; 3 AB 1935.

[note: 137] Transcript (3 September 2013), p 97, lines 19 to 25; p 98, p 99, lines 1 to 22.

[note: 138] 3 AB 1922.

[note: 139] 3 AB 1922.

[note: 140] 3 AB 1935.

[note: 141] Transcript (3 September 2013), p 97, lines 19 to 25; p 98, p 99, lines 1 to 22.

[note: 142] Transcript (18 July 2013), p 101, lines 24 to 25, p 102, p 103, lines 1 to 6.

[note: 143] Transcript (18 July 2013), p 101, lines 24 to 25, p 102, p 103, lines 1 to 6.

[note: 144] DCS, paras 542 to 547.

[note: 145] DCS, para 733.

[note: 146] PCS, para 350.

[note: 147] PCS, para 351.

[note: 148] PCS, para 351.

[note: 149] PCS, para 351.

[note: 150] PCS, paras 353 to 358.

[note: 151] PCS, para 363.

[note: 152] PCS, para 363.

[note: 153] PCS, para 366.

[note: 154] PCS, para 364.

[note: 155] PCS, para 372.

[note: 156] PCS, para 374.

[note: 157] PCS, para 374.

[note: 158] AEIC of Richard Harris dated 15 March 2013, para 53.

[note: 159] PCS, para 375; Transcript (16 January 2014), p 71, lines 2 to 25, p 72, p 73, lines 1 to 21.

[note: 160] DCS, paras 75 and 759.

[note: 161] PCS, para 412; Transcript (6 September 2013), p 28, line 13, p 29, line 1 to 23.

[note: 162] PCS, para 413.

[note: 163] PCS, para 413.

[note: 164] DCS, para 760.

[note: 165] PCS, paras 444 to 455.

[note: 166] PCS, paras 444 to 455.

[note: 167] PCS, paras 29; 456 to 471.

[note: 168] PCS, paras 29; 456 to 471.

[note: 169] PCS, para 458.

[note: 170] PCS, paras 460 to 461.

[note: 171] DCS, paras 645 to 652; 668 to 672.

[note: 172] PCS, para 632.

[note: 173] PCS, para 633.

[note: 174] PCS, para 633(a).

[note: 175] PCS, para 633(b).

[note: 176] PCS, para 634.

[note: 177] PCS, para 634.

[note: 178] PCS, para 634(a).

[note: 179] PCS, para 634(a).

[note: 180] PCS, para 634(b).

[note: 181] Minute Sheet dated 27 May 2014.

[note: 182] Minute Sheet dated 27 May 2014, p 1.

[note: 183] Minute Sheet dated 27 May 2014, p 1.

[note: 184] Minute Sheet dated 27 May 2014, p 1.