IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 65

Suit No 5 of 2017 (Summons No 365 of 2021)

Between

XVI

… *Plaintiff*

And

(1) XVJ
(2) XVK

… *Defendants*

JUDGMENT

[Probate And Administration — Administration of assets]
[Equity — Remedies — Account]

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v
XVJ and another

[2025] SGHCF 65

General Division of the High Court (Family Division) — Suit No 5 of 2017 (Summons No 365 of 2021)
Mavis Chionh Sze Chyi J
3 March 2022, 1–2 July, 15, 31 October 2025

27 November 2025 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 This case concerns a dispute between two brothers – the plaintiff, [XVI] and the first defendant, [XVJ] – over the administration of their late father's (the "Testator's") estate (the "Estate"). The first defendant was appointed as executor of the Estate by the High Court in Probate No [redacted]. The Grant of Probate was dated 1 June 1990 and issued on 2 November 1992.[1] The plaintiff was appointed co-executor of the Estate in [redacted]. The Grant of Probate was dated 12 April 2017 and issued on 20 June 2017.[2] The plaintiff brought the action in HCF/S 5/2017 both in his capacity as the co-executor of the Estate and

1 Statement of Claim (Amendment No 2) dated 11 November 2019 ("SOC") at para 5.

2 SOC at para 6.

as a beneficiary of the Estate.[3] The first defendant in HCF/S 5/2017 is being sued both in his capacity as co-executor of the Estate and in his capacity as a beneficiary of the Estate.[4]

2 The second defendant is another brother, [XVK], who is also a beneficiary of the Estate. The second defendant took no active part in the hearing fixed before me for the taking of an account of the first defendant's administration of the Estate, but his solicitor was on watching brief during the hearing and made submissions on his behalf on the issue of costs at the conclusion of the hearing.

Background to the dispute

3 I will first outline the main facts.

4 The Testator died testate in Singapore on 30 October 1989, having executed about seven years earlier a will dated 27 February 1982 in respect of his properties situated in Singapore.[5] The main asset of the Estate was a two-storey shophouse located at [address redacted] (the "Property").[6]

5 As I noted earlier, the first defendant was appointed as executor of the Estate by the High Court in Probate No [redacted], while the plaintiff was added as co-executor *vide* the Grant of Probate issued on 20 June 2017.[7]

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3 SOC at para 1.

4 SOC at para 2.

5 SOC at para 3.

6 Affidavit of Evidence-in-Chief of [XVI] dated 30 August 2019 at para 16.

7 SOC at para 6.

6 The first defendant was the registered proprietor of the Property. He held the title as tenants-in-common with one-half share for himself and the remaining one-half share on trust for the Estate.[8] The plaintiff had initially contended that the half-share registered in the first defendant's name belonged beneficially to the Estate; and that the Estate was accordingly entitled to 100% of the rental and licence income from the Property.[9] However, in an *ex tempore* judgement, the Court of Appeal rejected the plaintiff's contention and affirmed the first defendant's beneficial interest in the half-share registered in his name.

7 The first defendant controlled and rented out the entire ground floor of the Property. As to the upper floor of the Property, save for one room which was used and occupied by the plaintiff and his wife, the first defendant controlled and used all the other six rooms, and rented out some of these other rooms from time to time.[10] The first defendant collected and kept all the rents and profits from the Property.[11]

8 In HCF/S 5/2017, the plaintiff (both in his capacity as co-executor and as beneficiary of the Estate) brought a claim against the first defendant (both in his capacity as an executor and in his personal capacity) for, *inter alia,* the following reliefs:

(a) That the following accounts and enquiries be taken and made of the Estate:[12]

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8 SOC at para 71.

9 Affidavit of [XVI] dated 14 January 2022 at paras 9–10.

10 SOC at para 75; Defence of 1st Defendant (Amendment No. 2) dated 8 November 2019 ("Defence") at para 60.

11 SOC at para 76; Defence at para 61.

12 SOC at para 103(3).

(i) An account of the property of the Testator coming to the hands of the first defendant, as executor of the Testator's estate, or to the hand of any person or persons by the order or for the use of the first defendant.

(ii) An inquiry as to what parts, if any, of the Testator's property are outstanding or undisposed.

(b) That the Testator's rights, title and interest in the Property and in any other real and/or personal property be sold subject to the directions of the Court and the sale proceeds be paid into Court until further order of the Court.[13]

9 HCF/S 5/2017 was tried before Judicial Commissioner Tan Puay Boon ("Tan JC") from 5 to 8 November 2019.[14] In HCF/JUD 2/2020, delivered on 6 February 2020, Tan JC ordered, *inter alia*, that an account be taken of the Estate on the footing of wilful default on the part of the first defendant in his administration of the Estate.[15] For ease of reference, a copy of HCF/JUD 2/2020 is attached as Annex 1 to these grounds of decision.

10 Subsequent to Tan JC's decision, the parties jointly appointed an accountant, Mr Iain Potter on 20 August 2020 as the expert witness for the taking of account.[16] Mr Potter filed his report on 24 November 2021 (the "Potter report"). In the Potter report, Mr Potter concluded that it was "highly likely" that the Property *could have* been used to generate more rental income than was

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13 SOC at para 103(4).

14 HCF/JUD 2/2020 filed on 8 May 2020.

15 HCF/JUD 2/2020 filed on 8 May 2020 at para 3.

16 Affidavit of Iain Potter dated 24 November 2021 at para 3.

recorded in the first defendant's rent ledger.[17] He presented two alternative methods of calculating the rental income which the first defendant could have obtained for the Property – and accordingly, the difference between the rental amount derived *per* each alternative method and the rental income reported by the first defendant in his rental ledger.[18] Mr Potter was unable to say whether the first defendant had in fact collected more rental income from the Property than was recorded in the said ledger and noted that this was a point of dispute between the parties.[19]

HCF/SUM 365/2021

11 Following the filing of the Potter report, the plaintiff filed HCF/SUM 365/2021 ("SUM 365") on 17 December 2021 seeking directions for further accounts or enquiries to be taken of the Estate for the purposes of determining the amount payable by the first defendant to the Estate in relation to rental and licence fees derived from the Property ("Prayer 1"). In particular, the plaintiff applied for:[20]

> (a) the account to be taken on the basis that the first defendant had not provided complete records of the rental and licence fee income, and;

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17 Expert Report of Iain Potter dated 4 November 2021 ("Potter Report") at para 1.2 (Affidavit of Iain Potter dated 24 November 2021 at p 11).

18 Potter Report at paras 1.3, 4.5–4.6 (Affidavit of Iain Potter dated 24 November 2021 at pp 11, 25–26).

19 Potter Report at paras 1.2–1.3 (Affidavit of Iain Potter dated 24 November 2021 at p 11).

20 HCF/SUM 365/2021 filed on 17 December 2021: Summons for Taking of Accounts ("SUM 365"), Prayer 1.

(b) the amount payable to be calculated on the basis not only of the rental income in fact received but also the rental income which may or could have been received by the first defendant.

12 The plaintiff also asked for:[21]

(a) directions to be made for the determination of the costs and expenses in relation to the taking of account ("Prayer 2");

(b) directions to be made for the determination of the plaintiff's claim for breach of trust and/or breach of fiduciary duties on the part of the first defendant ("Prayer 3");

(c) directions to be made for the plaintiff's claim for interest ("Prayer 4");

(d) directions to be made for the determination of the plaintiff's claim for costs of the trial of this action ("Prayer 5");

(e) the costs of and incidental to the application in SUM 365 ("Prayer 6").

13 On 16 September 2022, prior to the substantive hearing for the taking of account, the Property was sold.[22] The net sale proceeds were deposited with the Accountant-General's Department on 20 September 2022.[23] In HCF/SUM 183/2022, Chan Seng Onn J ordered, *inter alia*, the sum of $230,338.13 to be paid by the Accountant-General's Department to the Estate's account from the

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21 SUM 365, Prayers 2–6.

22 Agreed Statement of Facts dated 7 July 2025 ("ASOF") at para 1.

23 ASOF at para 1.

first defendant's half-share of the sale proceeds.[24] This sum of $230,338.13 represented the undisputed minimum sum owed by the first defendant to the Estate, based on the sums provided in Mr Potter's report.[25]

Prayer 1

14 The hearing before me was concerned with determining the amount payable by the first defendant to the Estate in relation to rental and licence fees derived from the Property from the date of the Testator's death (30 October 1989) up to the date of the sale of the Property (16 September 2022). As I alluded to earlier, *per* Tan JC's judgment in HCF/JUD 2/2020 (at [3]), the account was to be taken on a wilful default basis.

Applicable law

15 In conducting the taking of account, I bore in mind the following established principles. First, the beneficiary seeking an account on a wilful default basis must allege and prove at least one act of wilful neglect or default. Unlike the common account, the taking of an account on a wilful default basis is not available to a beneficiary "as of right" (*Cheong Soh Chin v Eng Chiet Shoong* [2019] 4 SLR 714 ("*Cheong Soh Chin*") at [80]).

16 Second, as the Court of Appeal held in *UVJ v UVH* [2020] 2 SLR 336 ("*UVJ*") at [25], citing *Ong Jane Rebecca v Lim Lie Hoa* [2005] SGCA 4 ("*Ong Jane Rebecca*") at [55], the scope of an account on a wilful default basis is wider than that of an account on a common basis. In an account on the basis of wilful default, the trustee is not only required to account for what he has received, *but*

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24 ASOF at para 2(a).

25 ASOF at para 2(a).

also for what he might have received had it not been for the default: in other words, the trustee is also liable to account for what he might have received if he had been diligent in his duty (*Cheong Soh Chin* at [85]). This may be contrasted against a common account, where the trustee only has to account for what was actually received or paid out (*Cheong Soh Chin* at [82]).

17 Third, it should be noted that the trustee's exposure to liability is broadened on the wilful default basis because the trustee is subject to what has been called a "roving commission" by the judge taking the accounts (*Cheong Soh Chin* at [83], citing *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] 1 Ch 515, 546 (Brightman LJ)). This means that the judge taking the account is entitled to look into all aspects of the trustee's management of the trust property; and the trustee will be required to explain any suspect transactions, even if the particular transaction has not been complained of by the beneficiary (*Cheong Soh Chin* at [83]).

18 It follows from the second and third points above that there are two parts to the taking of an account on a wilful default basis. The first part involves the accounting party having to account for what he or she actually received. What information and documents an accounting party must provide depends on the circumstances. The essential requirement is that the account must say what the assets were, what was done with them, what the assets now are, and what distributions have taken place. The account must inform and where necessary explain. Depending on the case, the beneficiaries may be entitled to sufficient material to enable them to understand the movements in the account, the income earned, and the expenses paid (*Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 35th Ed, 2024) ("*Snell*'s *Equity*") at para 20-009).

19 The second part of the taking of account is concerned with what the trustee might have received if he had been diligent in his duty. This would "necessarily [require] a hypothetical assessment of what a prudent investor would have done, in order to establish the manner in which the trustee should have acted". This hypothetical assessment entails a causal inquiry to identify what the trustee would have received had he properly discharged his duties (*Sim Poh Ping v Winsta Holdings Pte Ltd* [2020] 1 SLR 1199 ("*Sim Poh Ping*") at [121]).

20 Following the taking of an account on the wilful default basis, a surcharge would ordinarily be the remedy sought (see *UVJ* at [28], citing *Sim Poh Ping* at [120] and *Libertarian Investments Ltd v Thomas Alexej Hall* (2013) 16 HKCFAR 681 ("*Libertarian Investments*") at [170]), although this is not to say that it is the only remedy that can be ordered. A surcharge entails treating the assets which the trustee failed to obtain for the benefit of the trust in breach of his duties as having been duly obtained, and the benefit would be added to the account (*UVJ* at [28], *Sim Poh Ping* at [120]). The trustee will then be ordered to make good the deficiency in the trust by payment of an equivalent monetary sum. This payment of equitable compensation is akin to the payment of damages as compensation for loss (*Sim Poh Ping* at [121], citing *Libertarian Investments* at [170]).

21 In the taking of account before me, which concerned the rental income derived from the Property between the Testator's death on 30 October 1989 and the sale of the Property on 16 September 2022, the plaintiff seeks to surcharge the account by having the first defendant make good the shortfall in rental income which the plaintiff contends he could have obtained if he had been diligent.

Mr Potter's evidence

22 Having outlined the applicable legal principles, I next summarise the evidence given by the expert witness Mr Potter in his report, as well as in his testimony at the hearing before me.

23 In his report, Mr Potter noted that neither party had provided a complete contemporaneous documentary trail for the rental and licence fee income collected from individual tenants of the Property prior to 1 January 2019.[26] The only documents available to Mr Potter were the Estate's tax returns and a manuscript rent ledger which the first defendant claimed to have maintained over the years (but which the plaintiff did not accept as an accurate contemporaneous record of the rental collected).[27] For completeness, Mr Potter also noted that in respect of the details provided by the first defendant of the rental income collected in 2019 and 2020, the plaintiff had raised no specific concerns.[28]

24 Having reviewed the documents provided to him, Mr Potter concluded that it was highly likely that the Property could have been used to generate more rental income than was recorded in the first defendant's rent ledger.[29] He added that based on the documents he had seen, he was not able to conclude whether the first defendant had in fact generated and collected more rental income from the Property than was recorded in the latter's manuscript rent ledger – *ie*,

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26 Potter Report at para 3.7 (Affidavit of Iain Potter dated 24 November 2021 at pp 17–18).

27 Potter Report at para 3.8 (Affidavit of Iain Potter dated 24 November 2021 at p 18).

28 Potter Report at para 3.15 (Affidavit of Iain Potter dated 24 November 2021 at p 22).

29 Potter Report at paras 1.2 and 3.3 (Affidavit of Iain Potter dated 24 November 2021 at pp 11 and 22).

whether the first defendant had "under-declared" the rental income he collected (as the plaintiff alleged).[30]

25 Mr Potter's conclusions were as follows:

(a) First, in the event that the first defendant was found to have accurately recorded rental and licence fee income from the Property, Mr Potter's calculations showed the total rental income collected by the first defendant on behalf of the Estate to be $456,788.13 ($448,158.00 plus interest of $8,630.13).[31] In coming to this calculation, Mr Potter relied on the Estate's tax returns and the manuscript ledger maintained by the first defendant.[32]

(b) Second, in the event that the first defendant was found to have under-declared the total rental income he collected on behalf of the Estate, Mr Potter provided two alternative methods for determining the rental income that the first defendant *could* have received for the entire period from 1989 up to 16 September 2022:[33]

(i) Using the first method, Mr Potter estimated that the first defendant could have received total rental income of $605,121.04 ($576,613.06 plus interest of $28,507.98).

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30 Potter Report at para 1.2 (Affidavit of Iain Potter dated 24 November 2021 at p 11).

31 Annex 4: Calculations of Rent and Licence Fees Collected (Updated During Hearing on 2 July 2025) ("Annex 4").

32 Potter Report at para 3.8 (Affidavit of Iain Potter dated 24 November 2021 at p 18).

33 Annex 4.

(ii) Using the second method, Mr Potter estimated that the first defendant could have received total rental income of $1,027,193.21 ($945,122.87 plus interest of $82,070.34).

First method

26 Mr Potter's first method involved three steps. At the first step, Mr Potter derived the annual rateable value of the Property by referring to the Property's annual value ("AV") as recorded by the Inland Revenue Authority of Singapore ("IRAS").[34] As IRAS could not provide Mr Potter with the Property's AV prior to 1994,[35] Mr Potter used the Urban Redevelopment Authority Commercial Property Price Index ("URA CPI") to estimate market rental rates for the years prior to 1994.[36] He did this by calculating the ratio between the URA CPI for each of the earlier years and 1994, before multiplying this ratio by the Property's AV in 1994 (*ie*, $21,000), so as to derive an estimated AV for that earlier year.[37]

27 To illustrate, the URA CPI for 1994 was 110.35 while the URA CPI for 1989 was 79.50. To obtain the estimated AV for 1989, Mr Potter took the ratio between the URA CPI of 1989 and 1994 and multiplied this by the Property's AV in 1994 (*ie*, 79.50 / 110.35 x $21,000 = $15,129.13).

28 At the second step, Mr Potter assessed the extent to which the rental income declared by the first defendant fell short of its annual rateable value for

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34 Potter Report at para 4.5(a) (Affidavit of Iain Potter dated 24 November 2021 at p 25); NEs of Hearing on 2 July 2025 at p 11, lines 13–18.

35 Potter Report at para 4.5(b) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July at p 11 lines 20–22.

36 Potter Report at para 4.5(b) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July at p 11 lines 27–28.

37 NEs of Hearing on 2 July 2025 at p 11 line 26–p 12 line 5.

the years 2012 to 2018.[38] Mr Potter focused on the years 2012 to 2018 because he assumed that the first defendant's declarations of the rental income collected from 2012 to 2018 were accurate.[39] As he explained, he had the following grounds for this assumption:

(a) There was a significant increase in declared income in 2012 relative to prior years.[40]

(b) The declared income for 2012 was 91% of the Property's AV for 2012, suggesting that there was little undeclared income, if any, that year.[41]

(c) Shortfalls between the declared income and the potential income for the Property could be attributable to two reasons. First, both parties appeared to agree that they themselves were occupying the Property to differing extents at different points in time. Second, it was possible (and neither party seemed to disagree) that there were periods when there were no tenants for parts of the property, or there were periods when tenants did not pay their rent and therefore some rent was not collected.[42]

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38 Potter Report at para 4.5(c) (Affidavit of Iain Potter dated 24 November 2021 at p 26).

39 Potter Report at para 4.7 (Affidavit of Iain Potter dated 24 November 2021 at p 26).

40 Potter Report at para 4.7(a) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 13 lines 4–6 and p 19 lines 5–8.

41 Potter Report at para 4.7(b) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 13 lines 8–9 and p 18 line 28–p 19 line 3.

42 Potter Report at para 4.7(c) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 13 lines 11–23 and p 19 lines 15–23.

29 Pursuant to the above analysis, Mr Potter determined that the average actual rental income received over the period between 2012 to 2018 was 62% of the annual rateable value of the Property in the same period.[43]

30 At the third step, Mr Potter applied this percentage figure of 62% to the Property's AV for the years 1989–2011 and 2021–2022 to arrive at the expected gross rental income.[44] He did not do the same thing for the years 2019 and 2020 as the parties were in agreement on the amount of rental and licence fees collected by the first defendant during these years.[45]

31 Using this first method of estimation, Mr Potter estimated that the rental income which the first defendant could have obtained on behalf of the Estate for the entire period from 1989 up to 16 September 2022 amounted to $576,613.06, plus interest of $28,507.98.[46]

Second method

32 Mr Potter's second method involved four steps ("Steps A–D"). At Step A, Mr Potter calculated the annual per square metre rental rates for the ground floor of the Property. These were based on the market rates provided in a valuation report prepared by RHT Chestertons (the "RHT Chestertons Report").[47] The figures in the RHT Chestertons Report were based on rental data obtained from URA as well as data in the possession of RHT Chestertons about

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43 NEs of Hearing on 2 July 2025 at p 14 lines 5–12.

44 Potter Report at para 4.5(d) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 24 line 23–p 26 line 4.

45 Potter Report at para 3.15 (Affidavit of Iain Potter dated 24 November 2021 at p 22).

46 Annex 4.

47 Potter Report at para 4.6(a) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 15 lines 17–23.

actual rental transactions for shophouses located along [address redacted] (*ie,* the same street on which the Property was located).[48] At the hearing for the taking of account, Mr Potter explained that the annual per square metre rental rates provided in the RHT Chestertons Report were only for the ground floor of the shophouses.[49] Moreover, the report only provided the figures for the years 2000–2019.[50] For the years 1989–1999 and 2020–2022, Mr Potter used the URA CPI to estimate the annual per square metre rental rates for the Property. His approach involved identifying the nearest available data point from the RHT Chestertons Report and using it as a reference year to estimate the annual per square metre rental rates.[51]

33 For the years 1989 to 1999, Mr Potter used the year 2000 as his reference year, this being the earliest year covered by the RHT Chestertons Report. He calculated the ratio between the URA CPI for each year (*eg*, 1989) and the URA CPI for the reference year 2000. He then multiplied this ratio by the market rate provided in the RHT Chestertons Report for the year 2000, so as to derive an estimated rate for that particular year.[52] By way of illustration, for 1989, Mr Potter first determined the ratio of the 1989 URA CPI to the 2000 URA CPI (79.50 / 116.63). He then took this ratio and multiplied it by the market rate

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48 Valuation Report on the Property by RHT Chestertons Valuation and Advisory Pte Ltd dated 14 June 2019 ("RHT Chestertons Report") at p 15 (Agreed Bundle of Documents for HCF/S 5/2017 dated 29 October ("ABOD") at Vol 3, p 1287); NEs of Hearing on 2 July 2025 at p 16 lines 11–28.

49 NEs of Hearing on 2 July 2025 at p 17 lines 5–8.

50 NEs of Hearing on 2 July 2025 at p 15 lines 17–23.

51 NEs of Hearing on 2 July 2025 at p 17 lines 1–8; Potter Report at Annex 3, pp 27–30 (Affidavit of Iain Potter dated 24 November 2021 at pp 39–42).

52 NEs of Hearing on 2 July 2025 at p 47 line 30–p 48 line 14; Potter Report at Annex 3, pp 27–30 (Affidavit of Iain Potter dated 24 November 2021 at pp 39–42).

provided by the RHT Chestertons Report in 2000 (44.33), thereby deriving 30.22 as the estimated rental rate for 1989 (79.50 / 116.63 x 44.33).

34 For the years following 2019, Mr Potter used the year 2019 as his reference year, this being the most recent year covered by the RHT Chestertons Report. He calculated the ratio between the URA CPI for each year (*eg*, 2020) and the URA CPI for 2019, before multiplying this ratio by the market rate provided in the RHT Chestertons Report for 2019.[53]

35 At Step B, after establishing the annual per square metre rental rates for the years 1989–2022, Mr Potter calculated the annual rent figures for the Property.[54] He did this by multiplying the annual average per square metre rental rate by the floor area of the ground floor and the portion that was available to be let out.[55] In his own words, therefore, the second method involved "the [data from the RHT Chestertons Report] annualised and multiplied by the square metreage of the ground floor".[56]

36 At Step C, Mr Potter assessed the extent to which the rental income declared by the first defendant fell short of the annual rent figure calculated at Step B for the years 2012 to 2018.[57] Mr Potter focused on the years 2012 to 2018 because – for the reasons outlined above in [28] – he assumed that the rental fees collected by the first defendant were accurately declared during this

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53 NEs of Hearing on 2 July 2025 at p 47 line 30–p 48 line 14; Potter Report at Annex 3, pp 27–30 (Affidavit of Iain Potter dated 24 November 2021 at pp 39–42).

54 NEs of Hearing on 2 July 2025 at p 17 lines 8–14.

55 NEs of Hearing on 2 July 2025 at p 17 lines 8–14.

56 NEs of Hearing on 2 July 2025 at p 17 lines 12–14.

57 Potter Report at para 4.6(b) (Affidavit of Iain Potter dated 24 November 2021 at p 26).

period.[58] Pursuant to this analysis, Mr Potter determined that the average actual rental income received over this period would have been 63% of the annual rent figure of the Property between 2012 to 2018.[59]

37 At Step D, Mr Potter applied this percentage figure of 63% to the Property's AV for the years 1989–2011 and 2021–2022 so as to arrive at the expected gross rental and licence fee income.[60] This method was not used in respect of the years 2019 and 2020 as the parties were in agreement on the amount of rental collected by the first defendant during this period.[61]

38 Using this second method, Mr Potter estimated that the rental income which the first defendant could have obtained on behalf of the Estate for the period from 1989 to 16 September 2022 would amount to $945,122.87, plus interest of $82,070.34.[62]

Comparison between the first and second methods

39 As between the above two methods, Mr Potter's evidence was that he preferred the first method over the second because he had two concerns with the market rental figures provided in the RHT Chestertons Report:

> (a) First, for the earlier years, the RHT Chestertons Report suggested "fairly high" annual rentals that would have been received for the ground floor of the Property alone, which were "wildly inconsistent"

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58 Potter Report at para 4.7 (Affidavit of Iain Potter dated 24 November 2021 at p 26).

59 NEs of Hearing on 2 July 2025 at p 17 lines 16–20.

60 Potter Report at para 4.6(c) (Affidavit of Iain Potter dated 24 November 2021 at p 26); NEs of Hearing on 2 July 2025 at p 17 line 22–p 18 line 6; Annex 4.

61 Potter Report at para 3.15 (Affidavit of Iain Potter dated 24 November 2021 at p 22).

62 Annex 4.

with the rateable values assessed by IRAS for the Property in the same period.[63] As there was no reason to think that IRAS was undervaluing the Property, Mr Potter opined that this raised questions about the data in the RHT Chestertons Report and accordingly, the results of the calculations based on this data.[64]

(b) Second, the RHT Chestertons Report focused on the ground floor of shophouses,[65] whereas the IRAS rateable values were based on unfurnished vacant possession and renting out of the entire property.[66] In this connection, I surmise that Mr Potter was saying that using the rental rates for rental transactions relating only to the ground floor as the base for estimating the market rental for the Property would probably have led to more "attractive" rental figures.[67] It should be noted that in Mr Potter's view, this second issue was a "fairly negligible" one.[68]

Parties' submissions

40 I next summarise the key points raised in the parties' submissions.

Plaintiff's submissions

41 As I noted earlier, the plaintiff's case is that the first defendant in fact received, or might have received, more rental income from the Property than the amounts he recorded. Accordingly, the plaintiff submits that there should be

63 NEs of Hearing on 2 July 2025 at p 20 lines 17–22.

64 NEs of Hearing on 2 July 2025 at p 20 lines 22–27.

65 NEs of Hearing on 2 July 2025 at p 20 lines 28–29.

66 NEs of Hearing on 2 July 2025 at p 55 lines 1–6.

67 NEs of Hearing on 2 July 2025 at p 20 line 28–p 21 line 4.

68 NEs of Hearing on 2 July 2025 at p 21 lines 6–7.

a surcharge on the rental income collected by the first defendant on behalf of the Estate.[69]

42 In respect of the first part of the accounting enquiry (*ie*, what the first defendant received as rental income), it will be recalled that Mr Potter's evidence was that assuming the first defendant had accurately recorded rental fees received by him from the Property, the total rental income collected by the first defendant on behalf of the Estate for the period from 1989 to 16 September 2022 would be $456,788.13 ($448,158.00 plus interest of $8,630.13) (see above at [25(a)]).[70] The plaintiff had several criticisms of the documentation furnished by the first defendant,[71] but did not present any alternative calculations. Instead, the plaintiff argued that even assuming the first defendant had correctly recorded the rental and licence fee income, only $406,788.13 had been paid by the first defendant to the Estate's bank account; and as such, there would still be a shortfall amounting to $50,000 (*ie*, $456,788.13 - $406,788.13).[72]

43 In respect of the second part of the accounting enquiry (*ie*, what the first defendant could have received as rental income), the plaintiff argued that the first defendant had clearly failed to act with the diligence required of him as executor and trustee of the Estate in his management of the Property, and that it was therefore highly likely that the Property could have been used to generate more rental income than was recorded by the first defendant.[73] *Inter alia,* the plaintiff sought to show that there was a shortfall in the rental income recorded

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69 Plaintiff's Closing Submissions dated 30 July 2025 ("PCS") at para 2(1).

70 Annex 4.

71 PCS at paras 15–26.

72 PCS at paras 28–29.

73 PCS at paras 31–32.

by the first defendant between year of income tax assessment ("YA") 2015 and YA 2018, by comparing the rental income recorded by the first defendant in those years and the rental stipulated in the tenancy agreements for the ground-floor shop space in the same period. According to the plaintiff, the shortfall in question totalled $99,251; and the existence of such a shortfall showed that the first defendant must have failed to pursue recovery of payment from defaulting tenants and/or to secure new tenants to replace these defaulting tenants.[74] The plaintiff also argued that from his observation, the Property was in relatively good condition for many years after the testator's death;[75] and it generally seemed to enjoy 80% occupancy during the period he himself was living on the premises between December 1996 and 2017.[76] Moreover, according to the plaintiff, given the first defendant's admission that he relied on rental income from the Property to support his family of five, the rental income declared by the first defendant was too low to have allowed him to support his family.[77] For these and various other reasons, the plaintiff argued that the account provided by the first defendant ought to be surcharged for the additional rental income he could have collected had he been diligent in managing the Property.

44 As to the amount to be surcharged, the plaintiff argued for the adoption of Mr Potter's second method of calculation, which was based on market rental figures from the RHT Chestertons Report. The plaintiff sought to downplay Mr Potter's concerns about the inconsistencies between the rental figures shown in the RHT Chestertons Report and the rateable values from IRAS, claiming that RHT Chesterton's figures should be preferred because they reflected the "actual

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74 PCS at paras 41–43.

75 PCS at para 33.

76 PCS at para 35; NEs of hearing on 1 July 2025 at p 22 lines 4–6.

77 PCS at paras 36–38.

market situation".[78] The plaintiff also disputed Mr Potter's observation that the market rental data in the RHT Chestertons Report only focused on the ground floor of shophouses, claiming that the rental figures should be understood as being for the whole shophouse.[79]

45 Using Mr Potter's second method of calculation, the plaintiff submitted that the account provided by the first defendant should be surcharged with the sum of $1,027,193.20.[80] In addition, the plaintiff argued that Mr Potter's calculations failed to take into account the shortfall in rental income reported by the first defendant between YA 2015 and YA 2018 (see above at [43]). According to the plaintiff, a comparison between the rental rates stated in various tenancy agreements in this period and the rental income collected by the first defendant showed a shortfall in the first defendant's rental collections, which the plaintiff calculated as being $99,251. The plaintiff submitted that in order to cure this "deficiency", the figure of $99,251 should be added to the amount to be surcharged, thereby resulting in a revised total of $1,126,444.20 ($1,027,193.20 + $99,251).[81]

46 Thereafter, according to the plaintiff, the sum of $406,788.13 – which represented the amount already paid to the Estate by the first defendant – would have to be deducted from the figure of $1,126,444.20, while a further sum of $50,000 – which (according to the plaintiff) represented the shortfall in payment by the first defendant (see above at [42]) – should be added to the amount to be

78 PCS at para 49.

79 PCS at para 50.

80 PCS at para 51.

81 PCS at para 53.

surcharged. *Per* the plaintiff's calculations, the amount to be surcharged should be $769,656.07.[82]

First defendant's submission

47 The first defendant, for his part, made the following two main arguments.

48 First, the first defendant devoted a substantial portion of his submissions to arguing that the appropriate outcome of the taking of account should be a finding that there was no act of wilful default by the first defendant in the administration of the Estate. The first defendant argued that although Tan JC had decided that the first defendant was in wilful default of his duty as executor and had ordered that an account be taken on a wilful default basis, Tan JC had not specified clearly which act or omission by the first defendant constituted the wilful default.[83] The first defendant contended that although the plaintiff had pleaded particulars of alleged breaches of the first defendant's duties as executor and trustee,[84] Tan JC did not make any express findings on the particulars pleaded. Further, according to the first defendant, although Tan JC had decided that the first defendant was in wilful default of his duty, Tan JC also acknowledged at the same time the "possibility" that the taking of account on a wilful default basis might show "no wrongdoing" by the first defendant.[85] *Per* the first defendant's argument, Tan JC was actually prepared to "wait" for

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82 PCS at para 54.

83 1st Defendant's Closing Submissions dated 30 July 2025 ("1DCS") at para 3(i).

84 SOC at para 88.

85 1DCS at para 3(ii).

the taking of account before he made any "final" determination of wrongdoing by the first defendant.[86]

49 Further, the first defendant sought to shore up the above argument by characterising the plaintiff's case as being one of under-declared rental, as opposed to a case of the first defendant having failed to maximise the rental income that could have been earned from the Property.[87] As such, according to the first defendant, the taking of account should not focus on what income the first defendant could have derived from the Property if he had been diligent in maximising such income, but should instead focus on determining whether there had in fact been an under-declaration of rental income by the first defendant (and, if so, the amount of rental income under declared).[88] In this connection, the first defendant claimed that there was no evidence of his having under-declared the rental collected from tenants over the years; and that the rental income he had declared was consistent with the amounts recorded in his rental ledger, his personal income tax filings, and his income tax filings on behalf of the Estate.[89] Additionally, the first defendant claimed that he did not depend solely on rental income to support himself and his family, because he had "personal savings" and his children were all working adults.[90]

50 As for his second main argument, the first defendant contended "even if" any act of wilful default were to be "[found]" in the taking of account, there was no evidence of any additional amount which the Estate could have received

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86 1DCS at para 3(ii).

87 1DCS at paras 17–18.

88 1DCS at para 19.

89 1DCS at para 27.

90 1DCS at paras 23–24.

but for his default.[91] To support this second argument, the first defendant made the following submissions:

(a) If the act of wilful default in question was his alleged failure to complete the administration of the Estate earlier, there was no evidence before the court of any loss or damage suffered by the Estate due to any delay in his completing administration.[92]

(b) If the act of wilful default in question was an under-declaration of the rental income collected, the plaintiff had no evidence of what rental income was allegedly collected.[93]

(c) If the act of wilful default in question was the first defendant's failure to consult with the plaintiff since the latter's appointment as co-executor of the Estate, there was similarly no evidence of any loss or damage to the Estate arising from such failure to consult.[94]

(d) If the act of wilful default in question was the failure by the first defendant to maximise the rental income from the Property, the first defendant argued that Mr Potter's evidence was so flawed as to provide no basis for determining the rental income which could have been obtained. For example, the first defendant claimed that since Mr Potter had presented two alternative methods of calculation and since these two methods resulted in very different figures, this showed that there was

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91 1DCS at para 34.

92 1DCS at para 31(i).

93 1DCS at para 31(ii).

94 1DCS at para 31(iii).

> "no single objective quantification of the maximised income".[95] As another example, the first defendant claimed that Mr Potter's use of URA CPI data for those periods where no data on the Property's AV was available from IRAS was flawed because Mr Potter himself acknowledged that offices spaces were not exactly analogous to shophouses for property valuation purposes.[96] Indeed, according to the first defendant, all the URA CPI data relied on from 1989 to 1994 and all the market rental data in the RHT Chestertons Report were "unreliable".[97]

51 Following from his claims about the unreliability of Mr Potter's calculations, the first defendant argued that the court should simply make a finding that the amount which the first defendant should be ordered to pay the Estate was precisely the amount which he had already paid to the Estate pursuant to HCF/SUM 183/2022 – *ie*, $230,338.13 (see above at [13]).[98]

Analysis and decision

52 I now set out my decision and the reasons therefor.

Order made by Tan JC for taking of account on wilful default basis

53 At the outset, I should make it clear that the first defendant's argument that the taking of account should result in a finding of no wilful default on his part is entirely misconceived and devoid of merit. In *UVJ* (which I referred to

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95 1DCS at para 31(iv)(a).

96 1DCS at para 31(iv)(c).

97 1DCS at para 8.

98 1DCS at para 32.

earlier at [16]), the Court of Appeal made it clear that an account on the footing of wilful default is premised on misconduct by the trustee and is not available to a beneficiary as of right: to obtain an order for the taking of account on such basis, the beneficiary must allege and prove at least one act of wilful neglect or default (*UVJ* at [25], citing *Ong Jane Rebecca* at [61] and *Cheong Soh Chin* at [80] and [81]).

54 In the present case, Tan JC's judgment of 6 February 2020 expressly ordered the taking of account on a wilful default basis.[99] That Tan JC made this order meant that he had already made a finding as to the first defendant having acted in wilful default in his administration of the Estate. That Tan JC made this finding known to all parties on 6 February 2020 is apparent from the transcript of the hearing held before him on that date. I reproduce below the relevant extract from the trial transcript. In so doing, I highlight two points. First, counsel for the first defendant in the taking of account before me is the same counsel who acted for the first defendant in the proceedings before Tan JC. Second, counsel for the first defendant had on 6 February 2020 expressly asked Tan JC whether the court was "making the finding that the [first defendant was] in wilful default" or whether that decision would be made "after" the taking of account on wilful default basis; and in response, Tan JC had pointed out that he had to decide that the first defendant acted in wilful default of his duty *before* he could order the taking of account on a wilful default basis:[100]

> Twang: Your Honour, just to seek some clarity. I note Your Honour is ordering that the accounts be taken on a wilful default basis.
>
> Court: Yes.

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99 HCF/JUD 2/2020 filed on 8 May 2020 at para 3.

100 NEs of Hearing on 6 February 2020 at p 12, lines 18–32.

> Twang: Is Your Honour also making the finding that the 1st defendant is in wilful default or will that decision be made after these accounts on wilful default basis has been taken.
>
> Court: In order to make an order for wilful default account basis---
>
> Twang: So Your Honour is make---yes, okay.
>
> Court: ---I'm making---I have to decide that he has acted in wilful default of his duty here.
>
> Twang: Yes.
>
> Court: Otherwise I cannot make that order.
>
> Twang: Yes.
>
> Court: I think the directions and so on can come in later but---
>
> Twang: Yes.

55 Given Tan JC's clear explanation of his reasoning at the hearing on 6 February 2020, it makes no sense for the first defendant to claim at this stage that Tan JC did not make any finding of wilful default against him or that Tan JC was waiting for the taking of account to be concluded before he decided whether there was any wilful default shown.

56 As to the first defendant's argument that Tan JC failed to identify the specific act or omission constituting the wilful default on his part, this argument is equally misconceived and devoid of merit. It is true that Tan JC did not issue written grounds of decision. However, the plaintiff had expressly pleaded the first defendant's failure to account for the rental received from the Property as one of the particulars of the latter's wilful default in the administration of the Estate.[101] In the trial before Tan JC, the plaintiff submitted (*inter alia*) that the rental income declared by the first defendant from YA 1990 onwards was "very much lower than what would have been reasonably expected to yield [*sic*] based

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101 SOC at para 88(b).

on" the evidence adduced by the plaintiff in the form of the RHT Chestertons Report and an expert report from the firm Morrison Corporate Advisory Pte Ltd.[102] In ordering that an account be taken on wilful default basis of the first defendant's administration of the Estate, Tan JC directed that the scope of such taking of account would include "rentals/licence fees received or may have been received by the Testator's estate from the Property from the date of the Testator's death (30 October 1989) till the date of taking of account" and the interest that could have been earned on such income.[103] The ineluctable conclusion to be drawn is that Tan JC found the first defendant to be in wilful default in the administration of the Estate *vis-à-vis* (at the very least) the rental income received from the Property; and the order for an account on wilful default basis was made so as to require that the first defendant account not only for the rental actually received, but also for what might have been received had it not been for his default.

57 Further, while I do not need to and indeed should not go behind the finding of wilful default made by Tan JC, I note for the record that in the hearing before me, the first defendant freely admitted to a number of things demonstrative of his lack of diligence: firstly, that he did not market the Property with a view to maximising occupancy rates because he took the view that "[i]f people [were] interested, they [would] obviously come";[104] secondly, that he did not check on market rental rates and simply charged tenants what they said they were "able and willing to pay";[105] and thirdly, that he collected

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102 Plaintiff's Closing Submissions in HCF/S 5/2017 dated 13 December 2019 at para 105; RHT Chestertons Report (ABOD at Vol 3, pp 1273–1303); Forensic Account's Report by Morrison Corporate Advisory dated 1 July 2019 (ABOD at Vol 3, pp 1304–1850).

103 HCF/JUD 2/2020 filed on 8 May 2020 at para 5(c)(i) and (v).

104 NEs of Hearing on 1 July 2025 at p 68, lines 20–23.

105 NEs of Hearing on 1 July 2025 at p 70, lines 11–31.

the rental that tenants were able to pay but that there were some tenants who could not pay,[106] and he could no longer remember how much some tenants actually paid.[107]

Rental and licence fees received by the first defendant

58 I next consider the amount to be surcharged. I first address the first defendant's account in respect of the rental and licence income actually received on behalf of the Estate.

59 *Per* Mr Potter's calculations, assuming that the first defendant did not under-declare the rental income he collected, the total rental income collected on behalf of the Estate would be $448,158.00. After accounting for interest of $8,630.13, the total amount payable by the first defendant would be $456,788.13.[108]

60 In the hearing before me, the plaintiff argued that the first defendant should be held to have under-declared the rental income received on behalf of the Estate. The law is clear that where a beneficiary asserts that the trustee has received more than the account records, the burden lies on the beneficiary to show this (*Cheong Soh Chin* at [79]). On the basis of the arguments mounted by the plaintiff in this case, I am unable to find that he has discharged this burden. My reasons are as follows.

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106 NEs of Hearing on 1 July 2025 at p 61, lines 4–7; p 68, lines 26–27; p 70, lines 12–13.

107 NEs of Hearing on 1 July 2025 at p 75, lines 17–24; p 80, lines 28–30; p 81, lines 10–14.

108 Annex 4.

61 First, it is not disputed that the rental collections recorded by the first defendant are consistent with the rental income reported by him to IRAS for the purpose of filing income tax returns on behalf of himself and the Estate. The plaintiff himself appears to accept this at paragraph 21 of his closing submissions.

62 Second, the plaintiff argued that the first defendant's income tax returns showed that by YA 2006, the rental income from the Property formed his sole source of income; and that the rental he reported receiving in certain years after 2006 could not have sufficed for him to support his family. In response, the first defendant explained that he had personal savings to draw on; and that moreover, all his sons were working adults by 2006.[109] The plaintiff produced no evidence to refute these explanations. In particular, he could not deny that by 2006, the first defendant's sons were all in their mid to late twenties, had completed their education and national service, and were engaged in some form of work (although he claimed that they were not working "much").[110]

63 Third, the plaintiff sought to show that the rental income recorded by the first defendant did not tally with the rental amounts stated in various tenancy agreements. However, such discrepancies can be explained by the first defendant's admission in cross-examination that there were some tenants who could not pay the rental amounts stipulated and that he simply collected the rentals he was "able" to collect.[111]

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109 NEs of Hearing on 1 July 2025 at p 47, line 27–p 48, line 12.

110 NEs of Hearing on 1 July 2025 at p 23, line 8–p 24 line 13.

111 NEs of Hearing on 1 July 2025 at p 67, lines 30–31.

64 For the reasons set out above, I reject the plaintiff's submission that the first defendant should be held to have under-declared the amount of rental income received on behalf of the Estate. Using Mr Potter's calculations, I accept that the total rental income collected by the first defendant on behalf of the Estate from the date of the Testator's death up to the sale of the Property comes to $448,158.00; and that factoring in the interest of $8,630.13 calculated by Mr Potter, the total amount payable should be $456,788.13.

65 Even if I am wrong in the above finding, however, it does not ultimately impinge on the conclusion I arrive at in this first part of the taking of account. As I observed in the course of the hearing,[112] in order for the first defendant to account for the rental income he *received on behalf of the Estate*, it is not enough for him simply to point to his records of the rental amounts he *collected*; he must show that these rental amounts *have in fact been received by the Estate*. This is common sense: otherwise, a trustee required to account for funds received on behalf of a beneficiary would be able to do nothing more than point to his own records of funds he acquired, without any concomitant evidence that such funds were in fact received by the beneficiary.

66 In the present case, it is not disputed that the Estate's bank account was only opened on 18 January 2019.[113] It is also not disputed that prior to 18 January 2019, whenever the first defendant collected rental and licence fees, he would simply pay all the monies into his personal bank account.[114] In other words, prior to 18 January 2019, the rental income attributable to the Estate's half-share of the Property was paid into the first defendant's personal bank account; and no

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112 NEs of Hearing on 1 July 2025 at p 2 line 21–p 3 line 22; p 81, line 26–p 82, line 12.

113 Agreed Statement of Facts dated 7 July 2025 ("ASOF") at para 3.

114 NEs of Hearing on 1 July 2025 at p 72, lines 9–12.

evidence has been produced by the first defendant to show that these monies were paid to and received by the Estate.

67 Based on the evidence available, I find that the Estate has received from the first defendant a total of $406,788.13, comprising the following sums:

(a) $118,250 paid between January and December 2019;[115]

(b) $58,200 paid between January and December 2020;[116] and

(c) $230,338.13 paid on 7 June 2023 (pursuant to HCF/SUM 183/2022).[117]

Rental income that could have been received by the first defendant on behalf of the Estate if he had been diligent in his duty

68 I next address the second part of the taking of account on the wilful default basis; *ie,* the rental income that the first defendant might have received if he had been diligent in his duty.

69 Having reviewed the evidence, I find that this amount should be calculated using Mr Potter's first method of calculation. I accept Mr Potter's evidence that insofar as the second method of calculation relies on the market rental rates provided in the RHT Chestertons Report, there are several reasons for viewing the data in the said report with circumspection. First, Mr Potter

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115 2nd Addendum to 4 November 2021 Expert Report of Iain Potter dated 11 May 2022 at para 1.3 (Supplementary Affidavit of Evidence in Chief of Iain Potter dated 17 May 2022 at p 7); Annex 4.

116 2nd Addendum to 4 November 2021 Expert Report of Iain Potter dated 11 May 2022 at para 1.3 (Supplementary Affidavit of Evidence in Chief of Iain Potter dated 17 May 2022 at p 7); Annex 4.

117 ASOF at paras 2–3.

noted that the rental data for shophouse rentals along [address redacted] which RHT Chestertons referenced in their report showed "quite a lot of fluctuations period to period", which he attributed to there having been "relatively few transactions taking place": as he put it, "a few transactions could…skew the results for that month".[118] Second, the rental rates for the shophouse rental transactions reported in the RHT Chestertons Report were generally much higher than the annual rateable value for the Property based on IRAS' figures; and there was nothing in the RHT Chestertons Report to explain why this was so. When queried about this by me during the hearing, Mr Potter agreed that it could be due to any number of factors.[119] It could be, for example, that the properties for which RHT Chestertons had reported rental data differed in some significant way from the Property in this case such as being in better condition or in possessing certain features that the Property did not have. The point is that we do not know, because the RHT Chestertons Report does not elaborate. Third, as Mr Potter also noted, in arriving at their rental valuation for the Property, RHT Chestertons chose to take the 75th percentile data point in each month of the rental data in their possession – *ie,* they took the position that the Property would be able to achieve rental rates "towards the top end of the data set they had".[120] Unfortunately, given the lack of information about the shophouse properties from which their rental data was drawn, it is not possible to assess whether their choice of the 75th percentile data point was a reasonable one – as Mr Potter acknowledged during the hearing.[121] Contrary to the plaintiff's submission, therefore, the anomalies in the RHT Chestertons rental values as well as the lack of information on the properties from which those rental values

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118 NEs of Hearing on 2 July 2025 at p 40 lines 22–26.

119 NEs of Hearing on 2 July 2025 at p 42 lines 4–18.

120 NEs of Hearing on 2 July 2025 at p 42 lines 20–24.

121 NEs of Hearing on 2 July 2025 at p 54 lines 2–17.

were drawn make it rather meaningless to speak of those rental values "more accurately" reflecting "actual market situation".

70 I add that in Annex 4 to his report,[122] Mr Potter set out the annual figures he computed for the expected gross rental income based on RHT Chestertons' rental values alongside the expected gross rental income derived from IRAS' AV figures – which made it plain that the former was consistently higher than the latter. The divergence between the two sets of figures is not small. Indeed, in some years, the expected gross rental income derived using the rental values in the RHT Chestertons Report was more than triple the expected gross rental income derived using the Property's AV – as seen from the table below. (For the purposes of achieving a fairer comparison, the table below excludes values calculated for the years before 2000, as the RHT Chestertons Report provided estimated market rental rates for the Property only from 2000 onwards.)

Year	**Annual Rateable Value (Mr Potter's first method of calculation)**	**Potential Annual Rental Income (Mr Potter's second method of calculation)**
2000	$21,000	$72,256.01
2006	$19,200	$60,613.62
2008	$22,080	$76,195.37
2009	$26,400	$85,602.02
2010	$29,600	$99,802.81

71 For the reasons set out above, I have reservations about the reliability of the expected gross rental income figures derived from Mr Potter's second method of calculation. I therefore accept Mr Potter's evidence that his first

[122] Annex 4.

method of calculation is to be preferred. I find that Mr Potter has given a cogent explanation of the basis for the first method of calculation and of the assumptions made in employing this method (see [28]). I find the use of the Property's AV as the basis for deriving expected gross annual rental income to be reasonable. It is not disputed that the annual value of a property represents the estimated gross rental which IRAS assesses the property would fetch if it were to be rented out (excluding furniture, furnishings and maintenance).[123] Neither the plaintiff nor the first defendant has suggested that in its yearly assessment of the Property's AV, IRAS has been under- or over-valuing the Property.

72 In this connection, I note that in his cross-examination of Mr Potter, counsel for the first defendant did not challenge the rationale for using the Property's AV as a basis for calculating the expected gross rental income which could have been earned from the Property. Instead, counsel cavilled at (*inter alia*) Mr Potter's use of the URA CPI to estimate the Property's AV for the few years where no data on the AV was available from IRAS (1989 to 1993). Counsel argued, for example, that "office space and shophouses are not exactly analogous…for property valuation purposes" because "a shophouse has both a residential and commercial component". In my view, this objection is really neither here nor there: it is not disputed that there is no data set available from URA (or any other official source) which relates solely to shophouses. Certainly, the first defendant himself has not suggested that there exist other, better data sets. As Mr Potter pointed out, therefore, reliance on the URA CPI represented the best solution in the absence of any data sets relating solely to shophouses.[124]

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123 NEs of Hearing on 2 July 2025 at p 55 lines 3–6.

124 NEs of Hearing on 2 July 2025 at p 46 line 4–p 47 line 28.

73 As another example, counsel for the first defendant contended in his cross-examination of Mr Potter that the URA CPI showed a number of significant shifts at certain points over the years, which were not replicated in the Property's AV with the same "amplitude".[125] However, Mr Potter pointed out that looking at the data from a broad perspective, it could be seen that there was "some consistency in the movements between [the] rateable value of [the Property] and the URA CPI generally".[126] Mr Potter also pointed out that the AV figures from IRAS were specific to the Property: as he noted, even if a data set relating to "shophouses more broadly in any particular region of Singapore" were to be available, there was no reason to expect that such data set would "track exactly" the "rateable values for one particular property".[127] As between the URA CPI and the Property's AV, one "might see some shifts in the same direction where there's big movements in the index", but "the big movements in the index would be driven by new properties coming online; …refurbishment properties, bigger economic swings that affect offices more than they've affected shophouses".[128]

74 To sum up, therefore, I do not find any merit in the first defendant's objections to Mr Potter's first method of calculation.

75 Lastly, I note that while Mr Potter has premised his calculations on the assumption that the first defendant accurately declared the rental income he collected from 2012 onwards, the plaintiff has argued that this assumption was incorrect because the plaintiff's own calculations showed a shortfall of $99,251

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125 NEs of Hearing on 2 July 2025 at p 49 line 13–p 50 line 3.

126 NEs of Hearing on 2 July 2025 at p 49 lines 19–22.

127 NEs of Hearing on 2 July 2025 at p 50 lines 7–12.

128 NEs of Hearing on 2 July 2025 at p 50 lines 12–17.

between YA 2015 and YA 2018, as between the rental rates stated in various tenancy agreements in this period and the rental income reportedly collected by the first defendant in the same period.[129] The plaintiff submitted that this figure of $99,251 should be factored into the final amount to be surcharged.

76 I reject the plaintiff's argument as Mr Potter has already factored the possibility of shortfalls arising from non-collection into his calculations. In his report dated 11 November 2021, Mr Potter stated that in making the assumption that rental income was accurately declared from 2012 onwards, he had factored in *inter alia* the possibility of "[s]hortfalls between the declared income and potential income of the Property" arising from "tenants failing to pay rent when due or at all".[130]

77 Using Mr Potter's first method of calculation, I find that if the first defendant had been diligent in his duty, he would have collected $576,613.06 in rental and licence fees from the Property from 31 October 1989 to 16 September 2022. After accounting for interest of $28,507.98, this would amount to $605,121.04. The Estate has received a total of only $406,788.13 from the first defendant todate. Accordingly, I hold that the plaintiff is entitled to surcharge the account to include the sum of $198,332.91 (being the difference between $605,121.04 and $406,788.13) on the debit side. The first defendant is to make good this deficit of $198,332.91 to the Estate.

78 Tan JC's judgment provides that "[a]ll sums of money as may be found due to be paid by any party to the Testator's estate upon the taking of account shall be paid promptly by that party to the Testator's estate or shall be deducted

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129 PCS at para 53.

130 Potter Report at para 4.7(c) (Affidavit of Iain Potter dated 24 November 2021 at p 26).

from that party's share of distribution of the Testator's estate".[131] Accordingly, the amount of $198,332.91 is to be deducted from whatever sums remain to be paid to the first defendant from the distribution of the Estate. If the remaining sums due to be paid to the first defendant from the distribution of the Estate should be less than the amount of $198,332.91, or there are no remaining sums due to be paid to the first defendant, the first defendant is to make good the difference to the Estate.

Prayer 3

79 Having dealt with prayer 1 of SUM 365 (which concerns the plaintiff's prayer for determination of the amount to be surcharged in respect of the rental income from the Property), I next address prayer 3.

80 In prayer 3, the plaintiff asked that "[d]irections be made for the determination of [his] claim for breach of trust and/or breach of fiduciary duties on the part of the [first defendant]". Unfortunately, it is difficult (if not impossible) to discern from the plaintiff's submissions exactly what directions he seeks in this prayer. The plaintiff's submissions in this respect are almost entirely to do with the first defendant's failure to account for the rental income from the Property. While the plaintiff also alludes to delay by the first defendant in completing administration of the Estate, the latter's failure to "make proper distribution" of the rental income,[132] and his wrongful mixing of the Estate's share of the rental income with his own funds in his personal account,[133] the plaintiff takes the position that the "appropriate remedy" for all these breaches "would be to compel the first defendant to pay the Estate the amount to be

131 HCF/JUD 2/2020 filed on 8 May 2020 at para 8.

132 PCS at para 64.

133 PCS at para 65.

surcharged on the rental / licence fee income".[134] Further, and in any event, the only evidence led in the hearing before me related entirely to the first defendant's account, firstly, of the rental income received from the Property on the Estate's behalf, and secondly, of the rental income which could have been received had he been diligent in the discharge of his duty. In the circumstances, there is no basis for me to make any directions in respect of any other alleged breaches of trust and/or breaches of fiduciary duties by the first defendant.

81 For the reasons set out above, prayer 3 is dismissed.

Prayer 4

82 In prayer 4 of SUM 365, the plaintiff has submitted that the Estate should be entitled to interest on the sum eventually found payable by the first defendant at the rate of 5.33% from 17 September 2022 (*ie*, following the sale of the Property) to the date of full payment.[135] The first defendant does not dispute that the interest rate of 5.33% should apply for the period from 17 September 2022 (*ie*, following the sale of the Property) to the date of full payment: according to the first defendant, his only real objection in this respect is that such interest should be ordered only "if there is a finding of wilful default which has caused loss".[136] In this connection, I have already rejected the first defendant's argument that there was no finding of wilful default by Tan JC and no loss caused to the Estate. I therefore order interest to run on the sum of $198,332.91 at the rate of 5.33% from 17 September 2022 to the date of full payment.

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134 PCS at para 67.

135 PCS at para 57.

136 1st Defendant's Reply Submissions dated 26 August 2025 at para 32.

Prayers 2, 5 and 6: Costs

83 I next address the costs of the trial on liability before Tan JC (prayer 5) and the costs of the taking of account, including the costs of SUM 365 (prayers 2 and 6).

The "successful party"

84 In HCF/JUD 2/2020, Tan JC ordered that the plaintiff's claim for costs of the trial on liability before him be deferred "until further order of the Court".[137] In considering the issue of costs of the trial on liability, I have reviewed the plaintiff's and the first defendant's closing submissions before me[138] as well as their supplemental submissions on costs and the second defendant's submissions on costs.[139]

85 By way of general principle, it is not disputed that costs are in the discretion of the court; and that generally, if the court decides to make an order, costs should follow the event in that the unsuccessful party should pay the costs of the successful party. The expression "successful party" refers to the "successful party in the litigation" and not the "successful party on any particular issue": *per* the English Court of Appeal in *Kastor Navigation Co Ltd v Axa Global Risks (UK) Ltd* [2004] 2 Lloyd's Rep 119 at [143] (cited by HHJ Paul Matthews (sitting as a High Court judge) in *Stoney-Anderson v Abbas* [2023] EWHC 2964 (Ch) at [38]).

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137 HCF/JUD 2/2020 filed on 8 May 2020 at para 18.

138 Plaintiff's Closing Submissions dated 30 July 2025; 1st Defendant's Closing Submissions dated 30 July 2025.

139 1st Defendant's Reply Submissions on Costs dated 5 September 2025; Plaintiff's Supplementary Submissions dated 24 October 2025; 1st Defendant's Supplementary Submissions dated 29 October 2025; 2nd Defendant's Supplementary Submissions dated 31 October 2025.

86 In the present case, while there are no written grounds of decision by Tan JC, the judgment he issued on 6 February 2020 included orders that the first defendant provide copies of (or allow the plaintiff access to) all books, records and documents in his possession relating to the Estate; that an account be taken of the first defendant's administration of the Estate on a wilful default basis; that the Property be sold and the net sale proceeds be paid into court until further order; and that the first defendant be restrained, until further order of court, from withdrawing or using funds standing in favour of the Estate with any entities. These were the bulk of the reliefs claimed by the plaintiff in the trial before Tan JC.[140] As I alluded to earlier (at [54]), Tan JC also made it clear to parties at the hearing on 6 February 2020 that he would need to have found an act of wilful default on the first defendant's part before making an order for the taking of account on wilful default basis; and as I have explained, it is apparent from the terms of his judgment that he found wilful default by the first defendant in respect of the receipt of rental income from the Property.

87 For the reasons set out above, I accept the plaintiff's submission that he was the successful party in the trial on liability before Tan JC.

88 As for the taking of account before me, I have found that there is a sum of $198,332.91 to be surcharged on the first defendant's account and have ordered that he make good this deficit to the Estate. In the circumstances, I also accept the plaintiff's submission that he has been successful in the taking of account.

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140 SOC at paras 102(1), 103(3), 103(4) and 103(6).

The plaintiff's right to have his costs paid out of the Estate's funds insofar as they are not recovered from or paid by any other person

89 The general principle enshrined in s 41S(1) of the Trustees Act 1967 (2020 Rev Ed) ("Trustees Act") is that a trustee is entitled to an indemnity from the trust fund in respect of reasonable expenses properly incurred by him when acting on behalf of the trust. These costs and expenses include legal costs incurred in trust proceedings: *Lewin on Trusts* (Lynton Tucker *et al*) (Sweet & Maxwell, 20th Ed, 2020) at para 48.004. In the context of proceedings in the Family Division of the High Court such as the plaintiff's suit in HCF/S 5 of 2017, it is also relevant to have regard to rules 855(2) and (3) of the Family Justice Rules 2014 (as in force immediately before 15 October 2025, "FJR 2014"), which state:

> (2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or out of the mortgaged property, as the case may be.
>
> (3) The Court may otherwise order, under paragraph (2), only on the ground that —
>
> > (a) the trustee, personal representative or mortgagee has acted unreasonably; or
> >
> > (b) where the fund is held by the trustee or personal representative, the trustee or personal representative has in substance acted for his own benefit rather than for the benefit of the fund.

90 While the plaintiff stated in his pleadings that he was suing both in his capacity as co-trustee and in his capacity as a beneficiary of the Estate, given the nature of the reliefs sought and eventually granted (see above at [86]), I am satisfied that the proceedings in HCF/S 5 of 2017 were in substance for the benefit of the Estate. It should be noted that the plaintiff and the first defendant

are not the only beneficiaries of the Estate: the Testator's will named a total of four beneficiaries (including the second defendant).[141] Further, having regard to the terms of Tan JC's judgment in the trial on liability and my findings in the taking of account, I find the first defendant's argument about the plaintiff's suit having been "completely unwarranted" to be devoid of merit; indeed, frivolous.

91 In the circumstances, the plaintiff is entitled to have his costs of the trial on liability and the taking of account paid out of the Estate's funds, insofar as they are not recovered from or paid by any other person. In this connection, rule 881 of the FJR 2014 is also relevant. Rule 881 states:

> **Costs payable to trustee out of trust fund, etc.**
>
> 881.—(1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
>
> (2) Where this rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

My decision on costs

92 Having regard to section 41S(1) of the Trustees Act and rule 881 FJR 2014, I assess the plaintiff's legal costs in the trial on liability to be in the sum of $200,000 – on indemnity basis. In arriving at this figure, I have considered all relevant factors, including the moderate level of complexity of the issues in dispute, the volume of documentary evidence involved, and the length of the proceedings. This sum of $200,000 excludes disbursements. As for the plaintiff's legal costs in respect of the taking of account (including the costs of

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141 SOC at para 14; Affidavit of Evidence-in-Chief of [XVI] dated 30 August 2019 at para 10.

and incidental to the filing of SUM 365), I assess these to be in the sum of $70,000 – on indemnity basis. Again, I have considered all relevant factors, including the moderate level of complexity of the issues in dispute, the volume of documentary evidence involved, and the length of the hearing before me. This $70,000 figure excludes disbursements. The plaintiff's costs of the entire proceedings thus total $270,000 – on indemnity basis.

93 Next, I consider that the plaintiff having been the successful party in these proceedings against the first defendant, his costs of the litigation – as assessed on standard basis – should be paid by the first defendant, with the difference between the amount paid by the first defendant and the amount of $270,000 (being the plaintiff's total costs as assessed on indemnity basis) to be paid by the Estate to the plaintiff.

94 Having considered all relevant factors such the complexity of the issues in dispute and the quantity of evidence involved, I assess the costs payable by the first defendant to the plaintiff in the trial on liability to be in the sum of $130,000 and the costs payable by him to the plaintiff in the taking of account to be in the sum of $45,000. These sums exclude disbursements. In assessing on standard basis the costs payable by the first defendant to the plaintiff in the taking of account, I have factored in the costs of and incidental to the filing of SUM 365.

95 In assessing the costs of the taking of account, I have adjusted these costs to take into account *inter alia* the fact that I have rejected the plaintiff's argument about alleged under-declaration of rental and also dismissed prayer 3 of SUM 365.

96 The total costs to be paid by the first defendant to the plaintiff thus come to $175,000 (excluding disbursements). The difference between this sum of $175,000 and the sum of $270,000 ($95,000) is to be paid by the Estate to the plaintiff, pursuant to rule 855(2) of the FJR 2014. In this connection, I reject the second defendant's argument that the plaintiff is entitled to an indemnity from the Estate only if the second defendant has already been paid all funds due to him from the distribution of the Estate. The second defendant cited no authority for this proposition, and it is clearly wrong: the trustee's right to be indemnified out of the trust property takes priority over the claims of any beneficiary: see *EC Investments Holding Pte Ltd v Ridout Residence Pte Ltd* [2013] 4 SLR 123 at [13], cited in *Lalwani Shalini Gobind v Lalwani Ashok Bherumal* [2017] SGHC 90 at [70].

97 As to the disbursements claimed by the plaintiff for the trial on liability, I have reviewed the items of disbursement set out in the plaintiff's schedule of costs[142] and find them to be reasonable, as they comprise fairly standard items such as filing fees, photocopying charges and court hearing fees. The first defendant has highlighted a small error in the plaintiff's calculations: for the photocopying item described as "[P]reparing copies of plaintiff's bundle of authorities (338 pages x 3 sets at $0.15 per page)", the plaintiff has claimed a sum of $304.20, whereas the first defendant has pointed out that the figure – correctly calculated – should work out to only $152.10.[143] I accept the first defendant's submission on this item and reduce the plaintiff's claimable disbursements for the trial on liability phase by $152.10.

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142 PCS at Annex C, pp 42–57.

143 PCS at p 52; 1 DRSC at para 8.

98 Insofar as the expert fees for the trial on liability are concerned, I note that the first defendant has claimed that it was unreasonable of the plaintiff to engage his own expert instead of agreeing to a joint expert. Given the sharp differences between the parties' positions in the proceedings before Tan JC (with the first defendant disputing that he should give an account of his administration of the Estate, let alone an account on wilful default basis), I do not find it at all unreasonable that the plaintiff should have elected to engage his own expert for the purposes of the trial on liability.

99 For the trial on liability, I therefore order that the first defendant is also to pay the disbursements totalling $72,363.25. This figure includes the plaintiff's expert fees and also takes into account the reduction of $152.10 in respect of the photocopying item described above.

100 As to the disbursements claimed by the plaintiff for the taking of account, I have reviewed the items of disbursement set out in the plaintiff's schedule of costs[144] and find them to be reasonable, being comprised in the main of items such as filing fees, photocopying charges and court hearing fees. I therefore order that the first defendant is also to pay the disbursements totalling $5,317.07 set out in the schedule of costs attached as Annex D to the plaintiff's closing submissions.

101 I note that the disbursements claimed by the plaintiff for the taking of account do not include the fees of the jointly appointed expert Mr Potter.[145] The plaintiff has informed that Mr Potter's fees total $46,578.88. *Per* Tan JC's

144 PCS at Annex D, pp 70–75.

145 PCS at para 99.

judgment,[146] these fees would "initially be borne by the Testator's estate", subject to the eventual decision of the court hearing the taking of account, and "be paid out from the funds of the Testator's estate being held by the plaintiff's solicitors, Unilegal LLC, and/or from the bank account of the Testator's estate operated jointly by the plaintiff and the 1st defendant." In his closing submissions, the plaintiff has submitted that the first defendant should be ordered to bear Mr Potter's fee. Bearing in mind the fact that it was the first defendant's breach of his duties as trustee which necessitated the taking of account on wilful default basis, I accept the plaintiff's submissions; and I order that upon the payment of Mr Potter's fees by the Estate, the first defendant shall pay the amount of the said fees to the Estate.

102 Finally, the first defendant having been found to be in wilful default and having been ordered to make good the deficit of $198,332.91 to the Estate, I should make it clear that he is not entitled to recoup from the Estate's funds any part of the costs and expenses incurred by him in the trial on liability as well as the taking of account. As Asplin LJ noted in delivering the judgment of the English Court of Appeal in *Price v Saundry* [2019] EWCA Civ 2261 (at [28]), it "offends all sense of justice" if a trustee who has *unsuccessfully* defended himself against an action for breach of trust were to seek his costs of the litigation from the trust fund.

Conclusion

103 In sum, I make the following orders:

(a) In respect of Prayer 1 of SUM 365, the plaintiff is entitled to surcharge the Estate's account to include the sum of $198,332.91 on the

146 HCF/JUD 2/2020 filed on 8 May 2020 at para 9.

debit side; and the first defendant is to make good this deficit of $198,332.91 to the Estate.

(b) The amount of $198,332.91 is to be deducted from whatever sums remain to be paid to the first defendant from the distribution of the Estate. If the remaining sums due to be paid to the first defendant from the distribution of the Estate should be less than the amount of $198,332.91, or there are no remaining sums due to be paid to the first defendant, the first defendant is to make good the difference to the Estate.

(c) Prayer 3 of SUM 365 is dismissed.

(d) In respect of Prayer 4 of SUM 365, interest is to run on the sum of $198,332.91 at the rate of 5.33% from 17 September 2022 to the date of full payment.

(e) In respect of Prayers 2, 5 and 6 of SUM 365:

(i) The plaintiff's costs of the entire proceedings total $270,000, as assessed on indemnity basis (excluding disbursements).

(ii) The total costs to be paid by the first defendant to the plaintiff is $175,000 as assessed on standard basis (excluding disbursements).

(iii) The difference between the sum of $175,000 and the sum of $270,000 (being $95,000) is to be paid by the Estate to the plaintiff, pursuant to rule 855(2) of the FJR 2014.

(iv) The first defendant is to pay the plaintiff his disbursements for the trial on liability and the taking of account, being $72,363.25 and $5,317.07 respectively.

(v) Upon the payment of Mr Potter's fees by the Estate, the first defendant shall pay the amount of the said fees to the Estate.

(vi) The first defendant is not entitled to recoup from the Estate's funds any part of the costs and expenses incurred by him in the trial on liability and the taking of account.

Mavis Chionh Sze Chyi J
Judge of the High Court

Ranvir Kumar Singh (UniLegal LLC) for the plaintiff;
Twang Kern Zern and Simone Bamapriya Chettiar (Central Chambers Law Corporation) for the first defendant.
Akesh Abhilash (Silvester Legal LLC) for the second defendant (watching brief).

Annex 1: HCF/JUD 2/2020

JUDGMENT

Before: Judicial Commissioner Tan Puay Boon in Open Court
Date of Judgment: 06-February-2020

This action having been tried before The Honourable Judicial Commissioner Tan Puay Boon from 5 to 8 November 2019:

It is this day adjudged/ordered that:

1. By agreement of the parties, the bequest by [A] ("the Testator") in his Will dated 27/02/1982 to his wife, [B], remained undisposed and passed into intestacy due to [B] pre-deceasing the Testator. Accordingly, such partial intestacy of the Testator's estate combined with the absolute assignment by the Testator's daughters, ie [C], [D], and [E], of all their shares, interests and rights in the Testator's estate as well as in [B]'s estate to the plaintiff result in the shares of the parties in the Testator's estate as follows: (i) plaintiff (50%), 1st defendant (25%) and 2nd defendant (25%).

2. The 1st defendant do produce to the plaintiff copies of, or allow the plaintiff access to, all books, records and documents in his possession, power or control relating to the Testator's estate, provided that all the documents disclosed by the 1st defendant in this action in relation to the Testator's estate shall be deemed to have been produced by the 1st defendant to the plaintiff.

3. An account be taken of the Testator's estate on the footing of wilful default on the part of the 1st defendant in his administration of the Testator's estate.

4. An enquiry be made as to what parts, if any, of the Testator's property are outstanding or undisposed.

5. The scope of such taking of account and enquiry shall:

(a) exclude (by agreement of the parties) the verification of the movement of funds standing in favour of the Testator's estate with the various financial institutions/entities (as disclosed by the 1st defendant) and the verification of interest income earned by the Testator's estate from such funds (as disclosed by the 1st defendant).

(b) exclude (by agreement of the parties), the expenses incurred by the Testator's estate (as disclosed by the 1st defendant) of the following matters:

(i) repairs and maintenance of the property known as [address redacted] ("the Property"), from the date of the Testator's death (30 October 1989).

(ii) income tax.

(iii) property tax in relation to the Property.

(c) include (but not limited to) the following:

(i) rentals/licence fees received or may have been received by the Testator's estate from the Property from the date of the Testator's death (30 October 1989) till the date of taking of account.

(ii) rental benefits derived from the Testator's estate by the plaintiff by his use and occupancy of the Property.

(iii) rental benefits derived from the Testator's estate by the 1st defendant by his use and occupancy of the Property, provided that the court adjudicates in [redacted] that the 1st defendant is holding his half-share in the Property beneficially for the Testator's estate.

(iv) any other property of the Testator's estate coming to the hands of the 1st defendant, as executor of the Testator's estate, or to the hand of any person or persons by the order or for the use of the 1st defendant.

(v) the interest that could have been earned for the income/benefits mentioned in sub-paras (i) to (iv) above.

(vi) the Balance Sheet and Statement of Receipts & Payments in relation to the Testator's estate up to the date of the taking of account.

(vii) the sum payable, if any, by any of the parties to the Testator's estate.

6. For the purpose of the taking of account,

(a) the following documents shall be taken as the documents filed pursuant to rules 684 and 686 of the Family Justice Rules:

(i) affidavit of evidence-in-chief of Elango Subramaniam affirmed on 22/8/2019 in this action.

(ii) affidavit of evidence-in-chief of Farooq Ahmad Mann affirmed on 30/8/2019 in this action.

(iii) Agreed Bundle of Documents Volumes I to V filed for the trial of this action.

(b) the parties shall be at liberty to produce further documents.

7. Subject to any further order of the Court, the process for the taking of account shall be as follows:

(a) the plaintiff and the 1st defendant shall jointly appoint an accountant within 6 months from the date of this Judgment, or such longer period as they may mutually agree, to undertake the taking of account, which shall be completed within 3 months from the date of appointment or such longer period as the plaintiff and the 1st defendant shall mutually agree or as may be further ordered by the Court. In the event that the plaintiff and the 1st defendant are unable to agree on the appointment of an accountant, then the plaintiff and the 1st defendant shall each propose the names of 3 accountants for consideration by the Court in appointing an accountant.

(b) the plaintiff and the 1st defendant shall promptly produce to the accountant the Agreed Bundle of Documents Volumes I to V filed for the trial of this action and any further documents as may be required by the accountant for the purpose of the taking of account.

(c) the parties shall be at liberty to request specific discovery of documents. Any such request for discovery shall be made within 10 weeks from the date of this Judgment and response to such request shall be made within 2 weeks from the date of the request. Parties shall be at liberty to apply to Court for specific discovery of documents and any such application shall be filed within 14 weeks from the date of this Judgment.

(d) upon the completion of the taking of account, the account shall be duly verified by the accountant's affidavit and filed by the plaintiff.

(e) in the event of any dispute or disagreement arising in relation to the appointment of an accountant and/or in relation to the taking of account, the parties shall be at liberty to apply to Court for further directions.

8. All sums of money as may be found due to be paid by any party to the Testator's estate upon the taking of account shall be paid promptly by that party to the Testator's estate or shall be deducted from that party's share of distribution of the Testator's estate.

9. The costs and expenses in relation to the taking of account shall be decided by the Court but shall initially be borne by the Testator's estate and be paid out from the funds of the Testator's estate being held by the plaintiff's solicitors, Unilegal LLC,and/or from the bank account of the Testator's estate operated jointly by the plaintiff and the 1st defendant.

10. Any order on the plaintiff's claim for breach of trust and/or breach of fiduciary duties on the part of the 1st defendant be deferred until further order of the Court.

11. Pursuant to section 35 of the Conveyancing and Law of Property Act (Cap 61) and to the consent of the 1st defendant, the Property be sold free from

encumbrances and with either vacant possession or subject to tenancy of tenants with written tenancy agreements.

12. The plaintiff and the 2nd defendant shall withdraw, on or before the completion of the sale, their caveats lodged against the Property.

13. The sale price shall be based on the updated appraised value of the Property, provided that the plaintiff and the 1st defendant shall be at liberty, upon mutual agreement, to sell at a lower price than the updated appraised value of the Property.

14. Subject to any further order of the Court, the process for the sale shall be as follows:

(a) the plaintiff and the 1st defendant shall have joint conduct of the sale and shall appoint real estate agent(s) (either jointly or separately) within 6 months from the date of this Judgment to undertake the sale, which shall be completed within 6 months from the date of appointment or such longer period as the plaintiff and the 1st defendant shall mutually agree or as may be further ordered by the Court.

(b) the plaintiff and the 1st defendant shall promptly produce to the real estate agent(s) all relevant documents as may be required by the real estate agent(s) for the purpose of the sale.

(c) the sale may be by either private treaty or by public auction.

(d) the plaintiff and the 1st defendant shall jointly determine the terms and conditions of the sale, provided that the parties shall be at liberty to apply to Court to settle the terms and conditions of sale.

(e) the net proceeds of the sale (after deducting costs and expenses of the sale and of the real estate agent(s) commission) shall be promptly paid into Court until further order of the Court.

(f) in the event of any dispute or disagreement arising in relation to the appointment of real estate agent(s) and/or in relation to the sale, the parties shall be at liberty to apply to Court for further directions.

15. Save as is provided herein and in the Orders of Court dated 4 July 2019 (Doc. No. HCF/ORC 240/2019) and dated 7 August 2019 (Doc. No. HCF/ORC 241/2019), the 1st defendant be restrained, until further order of the Court, from withdrawing or using funds standing in favour of the Testator's estate with any entities.

16. Save as is provided herein, no part of the Testator's estate shall be received by the 1st defendant or distributed to the 1st defendant until further order of the Court.

17. Any order on the plaintiff's claim for interest be deferred until further order of the Court.

18. Any order on the plaintiff's claim for costs of this action be deferred until further order of the Court.

19. Parties shall be at liberty to apply.