

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 325

Suit No 354 of 2021

Between

Chng Heow Ho @ Victor
Chng

... Plaintiff

And

Roger Chng Choon Ming

... Defendant

JUDGMENT

[Contract — Formation — Certainty of terms — Whether contract was formed]

[Trusts — Constructive trusts — Common intention constructive trusts — Whether trusts made out]

[Trusts — Express trusts — Certainties — Whether certainties of intention and subject matter of trusts made out]

[Trusts — Resulting trusts — Presumed resulting trusts — Whether trusts made out]

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Chng Heow Ho (alias Victor Chng)

v

Chng Choon Ming Roger

[2023] SGHC 325

General Division of the High Court — Suit No 354 of 2021

Audrey Lim J

24 – 28 April, 2–5, 8–11, 15–17, 19 May, 28 August 2023

16 November 2023

Judgment reserved.

Audrey Lim J:

1 In these proceedings (“the Suit”) the plaintiff Mr Victor Chng (“Victor”) claims against the defendant Mr Roger Chng (“Roger”) essentially for moneys held by the latter which the former claims he has a one-quarter share in pursuant to a purported agreement made in 2006.

Background

2 The parties are part of the Chng family (“Chng clan”) of which Madam Lim (“Mdm Lim”) was the matriarch before she passed away on 23 May 2022. Mdm Lim had four sons (in addition to daughters), namely Mr Michael Chng (“Michael”) the eldest son, Victor, Mr Tony Chng (“Tony”) and Mr David Chng (“David”), whom I will term collectively as the “Brothers” and individually “Brother”. The third generation of the Chng clan includes Roger who is

Michael’s son, Mr Eugene Chng (“Eugene”) who is Victor’s son, and Mr Cedric Chng (“Cedric”) who is Tony’s son. Michael passed away on 8 October 2016.

3 In the 1970s, the Brothers ventured into businesses in the food and beverage industry, property investment, and hotel management, among others. This included setting up Fortuna Hotel Hanoi (“FHH”) in Vietnam which commenced business in 1998 and acquiring Fortuna Hotel Singapore (“FHS”) in the 1990s.¹ Chng Holdings Pte Ltd (“Chng Holdings”) initially held the Brothers’ interests in FHH. Their interests were subsequently transferred to Chng Investments Pte Ltd (“Chng Investments”). Over time, other entities were incorporated to hold the assets or for the business of one or more Brothers. The entities relevant to the Suit are as follows (the “Chng Companies”):²

Entity	Incorporation date	Remarks
Key Estate Developments Pte Ltd (“KED”)	10 August 2006	
Key Overseas Investments Pte Ltd (“KOI”)	26 November 1993	
Hanoi Club Company Limited (“HCCL”)		Operates Hanoi Club in Vietnam ³
Fortuna City Pte Ltd (“FCPL”)	17 July 2001	Owns FHS

¹ Statement of Claim (Amd No. 1) (“SOC”) at [11] and [13]; Defence (Amd No. 1) (“Defence”) at [8] and [10]; Affidavit of Evidence-in-Chief of Victor Chng (“Victor’s AEIC”) at [14].

² SOC at [16]; 2AB 103; 6AB 20–28 (“Summary of Chng Family Companies”); Victor’s AEIC at [32]; 5/5/23 NE 22–24.

³ SOC at [16]; 27/4/23 NE 93.

Worldwide Investment Specialist Corporation Pte Ltd (“ Wiscorp ”)	2 June 2005	
Nanyu Developments Pte Ltd (“ Nanyu ”)	22 November 2011	
Lion Provident Pte Ltd (“ LPPL ”)	21 February 2007	
Hornblower Bosworth Pte Ltd (“ Hornblower ”)	17 April 2005	
Key Hospitality Management Pte Ltd (“ KHM ”)	10 January 1998	
Fortuna Hotel Hanoi Limited (“ FHHL ”)	9 February 1995	Owns FHH with a Vietnamese joint-venture partner ⁴
Mekong Growth Fund Pte Ltd (“ MGF ”)	23 February 2007	Wholly-owned by LPPL (which shareholders then were Roger and Eugene) ⁵

On 5 June 2017, MGF was struck off, leaving 10 companies (the “10 Companies”). I will refer to the Chng Companies and any other businesses owned by one or more of the Brothers as the “family business” in general.

4 In around November 2002, the Brothers were made bankrupt. As they could not hold shares or directorships in the Chng Companies, their shares were held through their respective sons. Roger held shares on Michael’s behalf, whilst Eugene and Cedric held shares on Victor’s and Tony’s behalf respectively. Roger and Eugene were also made directors in various Chng

⁴ 5/5/23 NE 20, 22; 6AB 20.

⁵ 6AB 23, 25.

Companies. In June 2006, the Brothers were discharged from bankruptcy.⁶ The evidence (of named shareholders in the Chng Companies) showed that not all the Brothers had a share (directly or indirectly) in every one of the companies at all times, nor was their shareholding always equal (see [47] to [51] below).⁷

5 In May 2002, an account was opened with Standard Chartered Bank (“SC18 Account”) in the names of Roger and his wife (“Rachel”). In April 2007, another Standard Chartered Bank account was opened (“SC38 Account”) in Roger and Rachel’s names. In February 2008, Eugene was added as an account holder of both accounts.⁸ Roger was managing the accounts and Eugene was not involved. Roger claimed he managed the accounts (in addition to other bank accounts and sources of money) on Michael’s behalf.⁹

6 Roger does not dispute that profits from one or more of the Chng Companies (the “profits”) would occasionally be transferred to one or more of the above accounts and the moneys therein were used for the benefit of the Brothers, Mdm Lim and his aunts.¹⁰ This included profits from FHH, which the Brothers and Roger would carry in cash (in US Dollars) from Vietnam to Singapore.¹¹ I will refer to the bank accounts that Roger managed and which held the profits as the “Family Accounts”, and the moneys placed therein as the “Family Funds”. Victor was aware of the Family Accounts and Family Funds

⁶ Victor’s AEIC at [19], [25]; 26/4/23 NE 10, 12; 27/4/23 NE 33–34, 122, 137; 10/5/23 NE 85–87.

⁷ 6AB 20–28.

⁸ SOC at [15]; Defence at [12]; 6AB 6; 25/4/23 NE 22, 26, 51; 8/5/23 NE 53–54.

⁹ 27/4/23 NE 144, 148, 151, 164–165; Affidavit of Evidence-in-Chief of Roger Chng (“Roger’s AEIC”) at [36]–[43].

¹⁰ 4/5/23 NE 128, 132; 5/5/23 NE 9, 29–31; 8/5/23 NE 30–31; 9/5/23 NE 134, 140; Defendant’s Closing Submissions dated 31 July 2023 (“DCS”) at [49].

¹¹ 25/4/23 NE 96–99; 4/5/23 NE 138–140.

as he was given fund summaries, prepared by Roger, from 2006 to around January 2013 (“Fund Summaries”). Victor never disputed the contents thereof or how the Family Funds were deployed as reflected in the Fund Summaries.¹²

7 It is undisputed that the Family Funds in the Family Accounts were used: (a) to make distributions (of between \$820,000 to \$5m) to each Brother and Mdm Lim, and described in the Fund Summaries as a “Dividend Distribution” (“Distribution(s)”); (b) to pay “allowances” (of tens of thousands) to the Brothers, Roger and Eugene (“allowance(s)”);¹³ and (c) for other purposes.

8 The Chng clan is a traditional Chinese family where the male members are treated more favourably than the female members, and that only the male members are entitled to the fruits or profits of the family business.¹⁴

2006 Meeting in Hanoi (Vietnam) and the Purported Agreement

9 In 2006, there was a meeting at FHH in Hanoi, Vietnam attended by the Brothers, Mdm Lim and Roger (“Hanoi Meeting”). Victor claims this meeting occurred in around April or May 2006 when the Brothers were still bankrupt.¹⁵

10 Victor claims that at the Hanoi Meeting, there was an agreement (“Purported Agreement”), essentially among the Brothers, that: (a) a \$1m Distribution would be made to each Brother and Mdm Lim from the profits held in the SC18 Account; and (b) the profits would be placed in the SC18 Account

¹² 1AB 443–458; 26/4/23 NE 86–87, 104–105, 159.

¹³ Victor’s AEIC at [55]–[57]; 1AB 132–134.

¹⁴ 24/4/23 NE 14–15; 25/4 NE 69; Affidavit of Evidence-in-Chief of Margaret Chong (“Margaret’s AEIC”) at [20].

¹⁵ SOC at [19]; Defence at [16]; List of Issues dated 7 June 2023 (“List of Issues”) at s/n 5a; 26/4/23 NE 13; 8/5/23 NE 38.

for the benefit of the Brothers equally and would be distributed equally to every Brother. Victor claims that all the profits were to benefit only the Brothers.¹⁶

11 Roger denies the existence of the Purported Agreement. He claims that \$1m was paid to every Brother and Mdm Lim in 2006 because the Brothers and Mdm Lim expressed the view that such a distribution should be made. Michael thus exercised his discretion as the patriarch of the Chng clan to do so and he directed Roger to make the distribution. Roger claims the Chng clan was a traditional Chinese family where the patriarch had the final say. In this case, Michael was then the eldest male in the family as his father had passed on.¹⁷

Tony leaving the family business and the Settlement Agreement

12 After Michael’s passing on 8 October 2016, the cracks in the relationship among the Chng clan members started to appear.

13 In particular, Cedric and Tony were upset when they discovered they had been issued preference (and not ordinary) shares in KED with no voting rights.¹⁸ On 28 December 2017, Straits Law Practice LLC (“Straits Law”), then representing Cedric (who was holding KED shares on Tony’s behalf), wrote to Roger, Eugene and Rachel regarding payments made to Cedric or Tony totalling \$15.5m which they understood as “dividends” due to them from KED and its subsidiaries (“28/12/17 SL Letter”). Straits Law asked for clarification on, among others, the nature of the payments; the reason they were made from a joint account of Roger, Eugene and Rachel and not KED’s bank account; the breakdown of the moneys that were derived from the wholly-owned subsidiaries

¹⁶ SOC at [19]–[21]; 24/4/23 NE 41–42; 26/4/23 NE 114.

¹⁷ Defence at [16]; Roger’s AEIC at [4], [5], [21(a)] and [99].

¹⁸ 2AB 183; 10/5/23 NE 38–40; 11/5/23 NE 8–11.

of KED; and for supporting bank and financial statements. On 15 January 2018, Chan & Goh LLP (“Chan & Goh”) replied on behalf of Roger, Eugene and Rachel to state that the \$15.5m paid to Cedric or Tony were distributions of the Family Funds and not dividends paid out from KED (“15/1/18 CG Letter”).¹⁹

14 Several other incidents with Roger upset Tony, and the accumulation of these matters led to Tony’s desire to part ways and leave the family business.²⁰

15 The parties thus attempted to settle the matter, with Tony and Cedric on one side; and Roger, Eugene (representing Victor’s interest in the Chng Companies) and David on the other. Pursuant to a mediation, Cedric, Roger, David, Eugene, Tony, Rachel and KED signed a settlement agreement (“SA”) on 7 May 2018.²¹ In return for Cedric transferring his shares in KED to Roger, Eugene and/or David, the SA broadly provided as follows:

(a) Roger, Eugene and David would jointly and severally purchase Cedric’s shares in KED for \$49m (“Settlement Sum”), comprising \$1m to be paid upfront; \$16m to be paid by 9 September 2018 and which sum could be secured by a mortgage on FHS (“Mortgaged Sum”), and the balance payment in four equal instalments thereafter.

(b) Under cl 6, Cedric and Tony agree to “waive all rights, remedies and claims ... arising out of or in connection with each of their interest as shareholder, director or in any other capacity ... in relation to any of the companies, businesses or family arrangements, including but not limited to the Chng Family Companies ... and all other monies which

¹⁹ 2AB 330–333, 338–340; 3AB 224–226.

²⁰ 10/5/23 NE 30, 38–42.

²¹ 2AB 467–474.

may be deemed family monies over which either may have a present or future interest ...” The term “Chng Family Companies” was defined in cl 13 to comprise the 10 Companies (as MGF had ceased to exist).

(c) Further, “Parties confirm and agree that this is the full and final settlement reached between the Parties and there are no outstanding issues between them save as set out in this [SA] ... [T]here are no outstanding amounts or claims due to Cedric or Tony, or other benefits which accrue to either of them and they each agree to fully release all of the Chng family members ... in respect of all obligations or claims”.

16 At the mediation, Tony and Cedric were represented by Straits Law, whilst Roger, Eugene, Rachel and KED were represented by Chan & Goh.

17 Tony and Cedric attest that the intent of the SA was for them to leave the family business completely and achieve a “clean break”. They would no longer have any claims to any moneys, profits or the Family Funds.²²

Victor and David’s rift with Roger and restructuring of the 10 Companies

18 However, Victor was unhappy as he felt that the Settlement Sum under the SA for Cedric’s shares in KED was not justifiable and that FHS had to be mortgaged to pay \$16m to Cedric or Tony. Together with David and Eugene, he visited Roger at FHH in Hanoi in May 2018 to find out about the corporate structure of the Chng Companies. As he felt Roger was not forthcoming with information, Victor began to distrust him.²³

²² 10/5/23 NE 31–32, 75–76, 103.

²³ Victor’s AEIC at [139]–[140], [143]–[144], [159]; 27/4/23 NE 57, 61; 3AB 132 (Victor’s “Untold Story”).

19 Eventually, Eugene and David refused to cause FHS to be mortgaged to raise the Mortgaged Sum, and Victor and David decided to part ways with Roger. This led to a Restructuring Agreement (“RA”) signed by Victor, David, Roger and Eugene whereby: (a) the 10 Companies would be divided such that Roger would own five, and Victor/Eugene and David the other five; and (b) every party to the RA undertook to one another and to the 10 Companies to essentially waive “any loans and/or outstanding(s)” due to them in the companies.²⁴ Hence, from about 18 February 2019, the 10 Companies were restructured with Roger parting ways with Victor, David and Eugene.

Events subsequent

20 After the RA was signed, Victor and David decided to examine the accounts of KED and its subsidiaries. In around August to September 2019, they discovered that moneys had been transferred from FCPL’s bank account between 2009 and 2018, and from KOI’s bank account in 2018.²⁵ Victor also discovered that US\$6,798,906 in MGF’s bank account (then under Roger’s control) was not returned to the SC18 Account. It is undisputed that MGF was incorporated (in 2007) to provide financial assistance to the Hanoi Club; some US\$5m from the SC18 Account was transferred to MGF for MGF to extend a loan of the same to the Hanoi Club; and the Hanoi Club subsequently repaid the loan with interest to MGF totalling US\$6,798,906 (“MGF Moneys”).²⁶

21 Hence, on 21 October 2019, Victor and David sought from Roger an account of the MGF Moneys and an explanation on various payments or fund

²⁴ 2AB 488–489; Victor’s AEIC at [146].

²⁵ Victor’s AEIC at [79], [82], [92], [159]; 4/5/23 NE 33.

²⁶ SOC at [32]–[34]; Defence at [36]–[37]; Victor’s AEIC at [70]–[73]; 9/5/23 NE 27–28.

transfers pertaining to FCPL. On 1 November 2019, Roger informed them that the payments were made to the Chng family members as dividends over the years, to Cedric as the Settlement Sum under the SA, or otherwise incurred in relation to the restructuring of the various Chng Companies. Roger further stated that in view of the SA and RA, all matters relating to the Chng Companies had been settled on around 18 February 2019, and there was thus “no reason or basis for [them] to dwell on past issue(s) of these companies anymore”.²⁷

22 On 8 December 2020, CNPLaw LLP (“CNP Law”), acting for Victor, demanded an account from Roger of the Family Funds, claiming that there was an agreement among the Brothers that all the profits would be shared equally among them and that the RA did not deal with these moneys (“8/12/20 CNP Letter”). On 12 January 2021, Roger’s lawyers replied to deny Victor’s request and to remind him that he had received his fair share of moneys from the Chng family companies pursuant to the RA (“12/1/21 DN Letter”).²⁸

Commencement of the Suit and claims

23 Victor claims the Purported Agreement was in force until 18 February 2019 when the Chng Companies were restructured pursuant to the RA. Whilst the restructuring put an end to the Purported Agreement, the RA did not apply to waive his rights to the profits transferred from the Chng Companies before 18 February 2019 (*eg*, the moneys placed in the Family Accounts).²⁹ Victor thus commenced the Suit claiming, based on a breach of the Purported Agreement, that essentially Roger has: (a) failed to pay him his share of the profits or Family Funds or account to him for the same; (b) failed to distributed to him his share

²⁷ Victor’s AEIC at [75], [88]; 5AB 37–42, 55–60 and 65–67.

²⁸ 5AB 70–73, 79–82; Victor’s AEIC at [99].

²⁹ SOC at [22]; Victor’s AEIC at [42], [177]–[178].

of the MGF Moneys or account to him for the same; and (c) misappropriated \$9,030,350 from FCPL (“FCPL Moneys”), and \$2.8m from KOI (“KOI Moneys”), which should have been distributed to the Brothers equally.³⁰

24 Victor pleads that alternatively, and relying on the Purported Agreement, Roger held the Family Funds or the profits on an express trust, a common intention constructive trust or a presumed resulting trust, partly for Victor’s benefit. This trust subsisted from 2006 until 18 February 2019 when it was terminated by the RA.³¹

25 As such, Victor claims an account of the profits from the Chng Companies and of the MGF Moneys, FCPL Moneys and KOI Moneys, in which he claims to have a 25% interest. In closing submissions, Victor confirmed he was no longer pursuing the claims for the FCPL Moneys and KOI Moneys.³²

How the Chng clan operated

26 I start by making some findings on how the Chng clan operated.

Who was in charge of the Chng Companies and Family Funds

27 It is undisputed that Mdm Lim was the matriarch and her children respected her desire for unity and harmony in the Chng clan.³³ But this did not mean that her wishes had the effect of creating a legally binding obligation (see [63] below). Further, I find the Chng clan adhered to a patriarchal system where

³⁰ SOC at [30], [34], [39], [49] and [52].

³¹ SOC at [54]–[56] and [61]; Plaintiff’s Closing Submissions dated 31 July 2023 (“PCS”) at [3].

³² PCS at [158]–[161].

³³ 5/5/23 NE 35–37; 10/5/23 NE 68.

the eldest male member controlled the finances in the Chng Companies and decided how the profits or Family Funds would be managed and utilised.

28 In court, Victor denied the Chng clan subscribed to the patriarchal system.³⁴ Yet he claimed to “call the shots” from the day the Brothers started business in the 1970s until the RA was executed, that he was in charge of and made all decisions pertaining to the family business, and that he was the *de facto* chief executive officer of the Chng Companies. He also claimed to call the shots in the distribution of the profits and Family Funds, including when, whether and how much to distribute to each Brother.³⁵ Even as late as 13 February 2019, Victor’s then lawyers, RS Wijaya & Co (“**RS Wijaya**”), stated in an email that Victor was the “patriarch of the family”. I disbelieve Victor that he did not instruct his lawyers as such. He was copied on that email and he never saw fit to correct his lawyers.³⁶ Thus, Victor himself accepted the concept of a patriarch.

29 However, I disbelieve that Victor called the shots or was in charge of the family business. Aside from the patriarchal system which would have put Michael in the driver’s seat, the evidence undermined Victor’s claim and pointed to Michael being in charge. Victor lacked knowledge of the Chng Companies, Family Funds and Family Accounts, although he claimed that he knew every aspect and the nitty-gritty of the Chng Companies.³⁷

³⁴ 24/4/23 NE 14–16; 25/4/23 NE 73.

³⁵ 24/4/23 NE 15–22, 48; 25/4/23 NE 57; 26/4/23 NE 16, 51–52.

³⁶ 3AB 429; 24/4/23 NE 35–37.

³⁷ 25/4/23 NE 16–18; 26/4/23 NE 51–52.

30 First, Victor claims that after the Brothers were adjudged bankrupt, he instructed Michael to open the SC18 Account (being the main account where profits were channelled) to place the profits; that it was opened in the names of Roger, Rachel and Eugene; and that he told Roger to hold and invest the moneys for the Brothers' benefit.³⁸ I disbelieve Victor.

31 The SC18 Account was opened in May 2002 *before* the Brothers' bankruptcy, and in Roger and Rachel's names. Eugene was included as an account holder *more than five years later* in February 2008. The marked disparity between Victor's claims and the undisputed facts showed Victor did not know what was happening despite claiming to be in charge. Further, that the SC18 and SC38 Accounts were opened only in Roger and Rachel's names (with Eugene added later) could only have been on Michael's instructions. If Victor called the shots, it is strange that it was Michael who suggested including Eugene as an account holder and only later.³⁹

32 Second, Victor's claim that he was in control of the family business does not sit with the fact that Michael was effectively managing and controlling the Family Funds and Family Accounts with Roger's assistance (see [5] above); that Victor and Eugene were unaware of the amount of funds in the Family Accounts and did not bother to find out at all material times; that Victor never requested for bank statements of the Family Accounts even until the RA in 2019; and that Victor never requested for fund summaries from Roger after January 2013. This is despite his claim that it was important to know how much was in the Family Accounts and how the moneys were used.⁴⁰

³⁸ Victor's AEIC at [22]–[23] and [30]; 25/4/23 NE 19–21.

³⁹ Roger's AEIC at [36]–[38]; Victor's AEIC at [23]; 25/4/23 NE 17, 24.

⁴⁰ SOC at [17]; 24/4/23 NE 47, 50–52; 25/4/23 NE 16–18, 36–39, 51; 27/4/23 NE 148.

33 I disbelieve that Victor completely trusted Roger to manage the Family Funds or that he did not ask Roger for fund summaries after January 2013 because Michael was seriously ill. Victor knew there were substantial moneys in the Family Accounts, and he agreed that the inflow and outflow of moneys was very important to him if he were calling the shots. He could also have asked Eugene to obtain information on the SC18 and SC38 Accounts, especially from around May 2018 when he claimed to have begun to distrust Roger. Yet he did not.⁴¹ Victor's lack of activity showed that Michael was in charge. Indeed, Victor admitted he could not demand fund summaries from Roger and that was why he did not pursue Roger for fund summaries after he ceased to receive them in 2013. This coheres with Roger's testimony that he prepared the Fund Summaries for his own reference and voluntarily extended a copy to Victor.⁴²

34 Third, it was Roger who placed the Family Funds into various accounts, and used the Family Funds for various expenditure which were substantial, all without ever obtaining or needing to obtain Victor's approval. Indeed, Victor claims he was unaware that the SC38 Account was opened by Roger to maintain the Family Funds or that Eugene was an account holder. Such conduct is incongruent with Victor calling the shots.⁴³

35 Fourth, Victor did not even know the purpose for the SC18 Account. Whilst he claimed initially that it was opened to manage profits from all the Chng Companies, in court he claimed it was *solely* for the purpose of keeping the profits derived from FHH, before reverting to his earlier claim.⁴⁴

⁴¹ 24/4/23 NE 48; 25/4/23 NE 38, 41, 51–52; Victor's AEIC at [159].

⁴² 25/4/21 NE 200–201; Roger's AEIC at [81], [84] and [86].

⁴³ 25/4/23 NE 103; 26/4/23 NE 88–93, 100–101, 107–108, 131–132, 154–156, 160–164, 170–172; 1AB 443–458.

⁴⁴ Victor's AEIC at [31]; 25/4/23 NE 91–92, 117–118.

36 Fifth, Victor was unaware of the structure of, or the financial situation in, the Chng Companies, despite his claim to know about their operations and profitability and to be actively involved in the companies.⁴⁵

(a) He did not know how much cash was carried back to Singapore from FHH in Hanoi. This was because the profits from FHH were carried back to Singapore on Michael’s instructions and Michael determined how much to carry back and by whom.⁴⁶

(b) He did not know why KED was incorporated with Roger as the sole shareholder, despite his assertion that every Brother was to have an equal share in the Chng Companies. KED was one of the two holding entities of the Chng Companies, and which indirectly owned two major assets (FHS and the Hanoi Club). Victor could not explain why Eugene was not a shareholder of KED until more than three and a half years later. He did not know whether Tony and David were allotted shares at the material time and why they were allotted preference shares, and he even claimed not to know what preference shares were.⁴⁷

(c) He seemed unaware of the corporate structure of the Chng Companies or its cash flow, so much so that in May 2018 he, Eugene and David travelled to Hanoi to find out from Roger, and to find out if there were sufficient funds to service a mortgage if FHS had to be mortgaged to pay the Mortgaged Sum to Cedric or Tony under the SA.⁴⁸

⁴⁵ 26/4/23 NE 51–52.

⁴⁶ 25/4/23 NE 98–102.

⁴⁷ 26/4/23 NE 16, 21–24, 27, 32–34, 42–45; 6AB 20.

⁴⁸ Victor’s AEIC at [143]; 8/5/23 NE 71–72.

(d) He was not even aware of various transfers of the FCPL Moneys and KOI Moneys, amounting to some \$12m (see [20] above), which were made between 2009 and 2018.

37 Indeed, Victor’s assertion that the Brothers held equal shares and directorships (including via their respective sons) in the Chng Companies at all material times, flew in the face of the objective records that showed they had unequal shareholdings and not all of them were represented on the board of directors of every company (see [47] to [51] below).⁴⁹

38 Sixth, Victor’s claim – that he called the shots even in deciding *whether* any distributions of the profits or Family Funds should be made, to whom and how much⁵⁰ – is incongruent with his claim of the Purported Agreement by which all the profits were to be distributed *equally* among the Brothers.

39 The evidence above support on balance that Michael was in charge of the Chng Companies and he determined how the profits and Family Funds would be utilised, and that Roger assisted him. I give some other examples.

(a) Victor admitted that Roger operated and controlled the SC18 Account without consulting anyone. The Fund Summaries from 2006 to January 2013 showed Roger caused numerous payments to be made to third parties (outside of the Chng clan) for which he did not seek, or even need to seek, Victor’s approval. Victor also never objected to the payments, which he saw in the Fund Summaries only after the fact.⁵¹

⁴⁹ 26/4/23 NE 8–11; 6AB 20–28.

⁵⁰ 24/4/23 NE 20–21.

⁵¹ Victor’s AEIC at [33]; 26/4/23 NE 86–87, 93, 98, 100–101, 104–107, 117–118, 131–132, 154–155, 160–161, 163–164, 170–172.

(b) The Family Funds were deployed for operational matters pertaining to the Chng Companies, such as legal fees, auditing fees, payments to employees, and even keyman insurance for Roger and Eugene; and a disbursement of \$900,000 was made to Margaret Chong (“Margaret”), the Brothers’ sister. This was a departure from Victor’s claim that the moneys were meant to benefit *only* the Brothers as per the Purported Agreement. Yet he never objected to the Family Funds being expended as such. In fact, Victor was not even aware of the purpose of various payments made from the Family Funds, including a “Family Bonus” of \$50,000 to Eugene.⁵²

(c) Victor received two additional Distributions of \$2m each on 7 August 2009 and 2 May 2010, which were decided by Michael without his prior knowledge and without consulting him.⁵³

(d) KED was incorporated with Roger as the sole shareholder for more than three and a half years before the other Brothers were allocated shares (including via their nominees). Eugene did not know why he was appointed a director and he never participated in the management of KED or its subsidiaries.⁵⁴

(e) Pertinently, after the Distribution made to the Brothers in January 2013, and which had been a yearly affair since 2009, there were no Distributions from 2014 to 2016 until the next (and last) Distribution in January 2017 made by Roger. The absence of Distributions from 2014 to 2016 coincided with the deterioration in Michael’s health from cancer

⁵² 26/4/23 NE 89, 93, 100–102, 117–118, 165; 1AB 457.

⁵³ 26/4/23 NE 188–189.

⁵⁴ 28/4/23 NE 6, 8–9.

and his passing in October 2016. As Cedric attested, for two or three years before Michael passed on, there were no Distributions and “[they] just kept quiet”.⁵⁵ Victor could not explain how the Distribution in 2017 came to be, despite claiming to call the shots. More likely than not, the Distribution in 2017 was made at Roger’s discretion (as he explained) as Michael was no longer around.⁵⁶

40 Importantly, Victor attested that in November 2017 when Cedric approached and asked him “when the next ‘Santa Claus’ was coming (payout to family members)”, Victor told Cedric that “it all depended on Roger”. This was recounted by Victor in his “Untold Story”, a document he prepared in 2018 after the SA was signed, and which he shared with Tony, David, Roger and Cedric. In court, Victor admitted that he had added the words “payout to family members”, thereby indicating that “Santa Claus” (whom he acknowledged referred to Roger) was supposed to distribute the payout to family members.⁵⁷

41 In the round, the evidence points on balance to Michael being the patriarch of the Chng clan, who took charge of the family business, the profits and the Family Funds, and he wielded a great deal of discretion on when to make Distributions to each Brother as well as how the moneys would be used. This included paying for expenses relating to the Chng Companies, disbursing \$900,000 to Margaret, and even paying allowances to Roger.

42 I further find that when Michael passed on, Roger being the eldest son of the eldest Brother, stepped into his shoes. It is undisputed that Roger was

⁵⁵ Victor’s AEIC at [63]; 9/5/23 NE 29; 11/5/23 NE 34.

⁵⁶ Victor’s AEIC at [55]–[58]; Roger’s AEIC at [63].

⁵⁷ 3AB 123–132; 27/4/23 NE 18–24, 26, 28.

managing the Family Funds in the Family Accounts even whilst Michael was alive and, after Michael's passing, he continued to pay allowances regularly and almost every month to Victor (or Eugene) until August 2019.⁵⁸ Indeed, when Eugene and David refused to mortgage FHS to settle the Mortgaged Sum to Cedric or Tony under the SA, Roger took the decision to use the Family Funds to discharge the Settlement Sum. Eugene was aware that Roger had used the Family Funds to pay Cedric the first \$1m under the SA (in May 2018) and Eugene had informed Victor, who did not object. Victor and Eugene also did not care how Roger came up with the rest of the moneys to pay the Settlement Sum.⁵⁹ Importantly, Victor admitted that Roger was the "Santa Claus" and that any payout *depended on Roger* (see [40] above).

For whose benefit were the Family Funds held

43 That said, the profits and Family Funds did not belong exclusively to Michael or his family. Although Roger initially asserted as such, he eventually admitted they were family moneys held for the benefit of all the Brothers.⁶⁰ This must be so, as the Brothers participated and held shares in one or more of the Chng Companies. This is also clear from the SA, which effected Tony and Cedric's departure from the family business with a payout based on their shareholding in some of the Chng Companies (namely KED).

44 However, whether Victor is now entitled to any of the profits or Family Funds (and if so, in what percentage) is premised essentially on the existence of the Purported Agreement and the effect of the RA. I will return to these issues.

⁵⁸ 26/4/23 NE 199–201; 1AB 132–134.

⁵⁹ 28/4/23 NE 33–42; 3/5/23 NE 25; 9/5/23 NE 12.

⁶⁰ DCS at [44]; 2AB 338; 3AB 224; 5/5/23 NE 2–4, 70, 73–74; 8/5/23 NE 30–31; 9/5/23 NE 133–134.

Beneficial owner of shares held in Eugene's name

45 I deal briefly with the beneficial ownership of the shares in the Chng Companies held in Eugene's name ("Eugene's Shares"). Although Victor ultimately conceded that he was the beneficial owner,⁶¹ he prevaricated in court on this issue. Victor first asserted in his affidavit of evidence-in-chief ("AEIC") and repeated in court that Eugene was the beneficial owner of Eugene's Shares although he claimed contradictorily that the Brothers were always shareholders in the Chng Companies. Victor then admitted that Eugene's Shares were held on his behalf, just as Roger and Cedric held shares on behalf of their fathers, because the Brothers were made bankrupt; he then changed his story again to say otherwise, before conceding again that he was the beneficial owner of Eugene's Shares.⁶² Pertinently, Eugene attested that the shares belonged to Victor and that the third generation (*ie*, Roger, Eugene and Cedric) held shares on behalf of their respective fathers. This was confirmed by Cedric.⁶³

46 This point is important, because, as Victor realised in cross-examination, his claim to a quarter share of the Family Funds (and the MGF Moneys) is premised on the Brothers' supposed equal shareholding in all the Chng Companies, from which profits were derived and placed in the Family Accounts. As Victor stated, the shareholding reflected the Brothers' ownership of the "Chng empire" and therefore formed the basis for the Purported Agreement, under which the Brothers could claim the profits as their own.⁶⁴

⁶¹ PCS at [35].

⁶² Victor's AEIC at [163]; 26/4/23 NE 9, 38; 27/4/23 NE 6–7, 32–34, 37, 39–43, 101–102.

⁶³ 27/4/23 NE 122, 136–138; 10/5/23 NE 85, 87.

⁶⁴ 26/4/23 NE 77–78.

Shareholding in the Chng Companies

47 Next, contrary to Victor’s assertions at trial,⁶⁵ the Brothers did not own shares across all the Chng Companies equally at all times, particularly from 2006. This diminishes the force of Victor’s claim that they possess an equal entitlement to the profits of the companies.

48 The strongest plank in Victor’s argument appears to be that, from the incorporation of Chng Investments in 1996 to the Brothers’ bankruptcy in 2002, the Brothers were the only four directors and owned one ordinary share each in the company. Chng Investments wholly held the Chng clan’s 70 per cent stake in FHHL before this stake was transferred to Wiscorp and Hornblower.⁶⁶

49 Curiously, however, the shares of Wiscorp and Hornblower were never divided equally among the Brothers. Hornblower was wholly owned by LPPL from February 2007 to February 2019, during which Roger and Eugene were the only two shareholders of LPPL. Roger was also Wiscorp’s sole shareholder until Eugene became a shareholder in December 2007.⁶⁷ If the shareholding in Chng Investments was indeed representative of the Brothers’ broader intention to hold the shares in the Chng Companies in equal proportions, they would have allotted the shares in those companies (such as Hornblower and Wiscorp) equally among the Brothers (whether directly or indirectly). But they did not.

50 Importantly, the Brothers never held equal shares in Chng Holdings which also pre-dated the Brothers’ bankruptcies.⁶⁸ From 1981 to 1998, Michael

⁶⁵ 26/4/23 NE 12–14, 78.

⁶⁶ List of Issues at s/n 2a and s/n 2b; 6AB 27–28.

⁶⁷ 6AB 23–24.

⁶⁸ 6AB 27.

and Victor each held 187,500 shares; Tony and David each held 125,000 shares; and even Mdm Lim, Albert Neo (Margaret's husband) and Sharon Chng (Mdm Lim's daughter) held 125,000 shares each. From 1998 to 2002, Michael held 250,000 shares, Victor held 62,500 shares, Tony held 187,500 shares, David held 375,000 shares, and Mdm Lim continued to hold 125,000 shares.

51 The notion of equality at all times also fails to manifest in the shareholdings of the Brothers in KED and KHM. KED was incorporated (in 2006) with Roger as the only shareholder, until Eugene, David and Cedric were allotted equal shares in May 2010.⁶⁹ KHM's shareholders never included David's and Tony's families.

Whether the Purported Agreement was made

52 Victor's pleaded claims are premised on the existence of the Purported Agreement, as Mr Pillai (Victor's lawyer) clarified in court. In his pleadings, Victor set out a section on "THE DEFENDANT'S BREACHES OF THE [Purported] AGREEMENT", before relying on the breach of that agreement for his claims.⁷⁰ Whilst Mr Pillai in closing submissions submitted that the existence of an express trust, a common intention constructive trust or a presumed resulting trust does not require there to be a legally binding agreement, Victor has claimed a quarter share of the profits or Family Funds from 2006 (from the time of the Purported Agreement) until 18 February 2019.⁷¹ Hence, any expression of a trust by a settlor or any common intention Victor relies on (for a common intention constructive trust) would have been premised

⁶⁹ 6AB 20.

⁷⁰ SOC at Section V1, [34], [39], [42], [49], [52] and [54]; 26/4/23 NE 74–75; 4/5/23 NE 25, 28–29; 8/5/23 NE 81.

⁷¹ PCS at [3] and [24]; SOC at [54]–[57] and [61].

on the intention purportedly formed at the Hanoi Meeting leading to the Purported Agreement.

53 According to Victor, the terms of the Purported Agreement were as follows:⁷²

(a) The Brothers agreed that a \$1m Distribution would be made to each Brother and Mdm Lim from the profits held in the SC18 Account (“First Term”).

(b) The Brothers and Roger agreed that moving forward, any profits would be deposited into the SC18 Account and distributed equally to each Brother at that Brother’s request (“Second Term”). Victor claims that Mdm Lim had at the meeting mentioned that the Brothers were lucky to have enjoyed the success of the Chng Companies and it was her wish for them to share equally in the fruits of that success. Hence, the Second Term was to give effect to her wish.

(c) There was a mutual understanding between the Brothers and Roger that Roger would continue to manage the SC18 Account and the profits, and that he would distribute the profits to each Brother equally whenever that Brother requested for his share (“Third Term”).

(d) There was a mutual understanding between the Brothers and Roger, that if the profits were not distributed, Roger would hold, invest or use the profits for the benefit of each Brother and his family, until such time the payment was requested by that Brother (“Fourth Term”).

⁷² SOC at [19]–[21]; Victor’s AEIC at [38]–[41].

(e) There was a mutual understanding between the Brothers and Roger, that Roger would render an account of the profits to every Brother on a regular basis, or an account of a Brother’s share of the profits if that Brother requested (“Fifth Term”).

54 Essentially, Victor claims the crux of the Purported Agreement was that the Brothers and Roger agreed that all the profits (and any reinvested sums) would belong to and have to be distributed equally among the Brothers, and to no others.⁷³

55 Hence, I first consider whether the Purported Agreement was formed at the Hanoi Meeting. In determining the existence of an oral agreement, the court will consider the relevant documentary evidence and contemporaneous conduct of the parties at the material time, and where possible the court should look at the documentary evidence first. Where there is little or no documentary evidence, the court will examine the precise factual matrix to ascertain if an oral agreement has been concluded between the parties (*ARS v ART and another* [2015] SGHC 78 at [53]). Further, in determining if the parties have actually formed a contract, it is permissible to look at their subsequent conduct (*Econ Corp Ltd v So Say Cheong Pte Ltd* [2004] SGHC 234 at [52]; *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 at [159]; *G-Fuel Pte Ltd v Gulf Petroleum Pte Ltd* [2016] SGHC 62 at [50]).

56 In this regard, I find Victor has not shown, on balance, that the Purported Agreement was formed.

⁷³ 24/4/23 NE 41–42; 26/4/23 NE 113–114.

57 To begin with, there is no contemporaneous documentary evidence to support the existence of the Purported Agreement.

The oral evidence and certainty of terms

58 The oral evidence of the Brothers (who were present at the Hanoi Meeting) also did not show that the Purported Agreement was formed.

59 First, Victor’s testimony casts doubt on the existence of the Purported Agreement:

(a) He claimed to call the shots in the Chng Companies and to retain the ultimate discretion on whether to make any distribution of the profits, to whom and how much. He claimed that a Brother’s entitlement to request for and obtain a distribution of his share of the profits (the Third and Fourth Terms) was subject to his decision.⁷⁴ As Victor claimed he could very much do as he wished with the profits and Family Funds, this contradicted the existence of the Purported Agreement which terms he could override unilaterally (see also [38] above).

(b) He further claimed the Purported Agreement was superseded by a new agreement in 2007 which essentially gave him and Michael the larger share of the profits. More of this will be said later.

60 Second, Victor’s testimony showed the terms if any of the Purported Agreement were uncertain, and contradicted his claim as to the terms therein:

(a) In court, he claimed (more than once) that the “profits from the [Chng Companies]”, which was the subject of discussion at the Hanoi

⁷⁴ 24/4/23 NE 22; 25/4/23 NE 107–108.

Meeting and of the Purported Agreement, pertained only to profits from FHH, and he was “very sure” about that.⁷⁵ This was different from the Second and Third Terms of the Purported Agreement where he claimed the agreement related to profits from the Chng Companies (*ie*, all 11 companies, many of which did not even own FHH). In fact, Victor was not even sure of whether the profits from all the Chng Companies fell within the Purported Agreement. At some point, he claimed that the profits from FHS and the Hanoi Club were included, then claimed the agreement pertained to the profits of all the Chng Companies.⁷⁶

(b) Victor stated in court that the mutual understanding that Roger would hold and invest the profits pertained only to the profits from FHH, and that there was never a discussion with Roger pertaining to holding and investing the profits from other Chng Companies. Victor further admitted that the Third and Fifth Terms were based on a “mutual understanding” which was not expressly conveyed by him (or anyone else) to Roger, but that he had expected Roger to know his obligations. Subsequently, Victor claimed he had expressly conveyed these terms to Roger but Roger kept silent; a claim which I disbelieve.⁷⁷

(c) Indeed, at the time of the Purported Agreement, KED, Nanyu, LPPL and MGF were yet to be incorporated. Victor admitted that at the time of the Purported Agreement, there was no discussion on any companies that the Chng family would incorporate in the future and

⁷⁵ 25/4/23 NE 80–85, 90, 93, 141, 147–149.

⁷⁶ 25/4/23 NE 148–149, 164–165.

⁷⁷ 24/4/23 NE 58–60; 25/4/23 NE 133–134, 141–149.

Roger would also not know of the scope of his responsibilities in relation to the profits in these future companies.⁷⁸

61 Third, and crucially, Tony was unaware of any agreement that: (a) the profits would be distributed equally among the Brothers (as he stated there was never an occasion where the Brothers agreed as such); (b) the profits would be deposited into a bank account maintained by Roger; (c) any profits not paid out would be rolled over in the bank account maintained by Roger and managed for the benefit of the Brothers; or (d) Roger would render an account of all the profits he maintained at any Brother's request. He was also unaware of the SC18 Account or its purpose, that the profits were deposited in bank accounts maintained by Roger, or that the distributions to him emanated from accounts held by Roger. Tony stated that the Hanoi Meeting was merely an "informal gathering" among the Brothers, Mdm Lim and Roger, just like any other family gathering of the Chng clan whenever Mdm Lim visited Hanoi.⁷⁹

62 I find Tony to be an honest and a credible witness, and whose testimony was consistent overall. I also did not see any reason for him to lie. He was subpoenaed to testify, and he did not wish to be involved in the family dispute. Tony was also previously furious with Roger over various incidents, including Cedric being allotted preference shares in KED, which led to Tony and Cedric leaving the family business when they signed the SA (see [13] to [17] above). Tony even claimed that Roger did not like him. Hence, I did not find that he would testify merely to support Roger's rather than Victor's case. This is even if he was on good terms with Michael and seldom spoke to Victor or David.⁸⁰

⁷⁸ 6AB 20 and 23; 25/4/23 NE 175–176.

⁷⁹ 10/5/23 NE 24, 26, 48–49, 52–53, 59, 61–64.

⁸⁰ 10/5/23 NE 38–42, 58.

63 Additionally, even if various terms (as set out in the Purported Agreement) were discussed, the evidence shows there was no intention to create legal relations. This is even if I accept that Mdm Lim had expressed her wish for the fruits of the Chng Companies to be shared among the Brothers.

(a) Despite being a seasoned businessman, Victor was unsure as to whether he could take legal action if the Purported Agreement were breached. He initially “disagreed” that the agreement was binding or that he could take legal action on it, before qualifying to say that he did not at that time think of “any legal” implication, then claimed there was an agreement, and then prevaricated on whether he could take legal action if the agreement were breached. Whilst Victor claimed that Mdm Lim had “stipulated” the profits to be shared equally among the Brothers, he admitted the “stipulation” was merely a “suggestion”.⁸¹ In fact, Victor’s assertion, that the Brothers would obey Mdm Lim’s stipulation and that this led to the Purported Agreement, was unbelievable as he claimed he could unilaterally override its terms.

(b) Even David, who claimed that the Brothers and Mdm Lim agreed that the profits would be distributed equally to them or reinvested (by Roger) for their benefit, stated that it was merely a “loose family understanding” and not a legally binding contract.⁸² In this regard, I disbelieve David that there was such an agreement in the first place, and I find that he was a partial witness who aligned his testimony to support

⁸¹ 24/4/23 NE 8–11, 30.

⁸² 2/5/23 NE 29.

Victor (see [72] to [74] below). Pertinently, David did not attest to the existence of the First or Fifth Term of the Purported Agreement.⁸³

Subsequent conduct

64 Further, the existence of the Purported Agreement was directly contradicted by Victor’s subsequent conduct and the objective evidence that showed how the profits and Family Funds were treated.

65 Despite the terms of the Purported Agreement to share the profits or Family Funds *equally* and *only* among the Brothers, the Brothers did not receive equal amounts. In support of the Purported Agreement, Victor pleaded and set out in his AEIC a table of Distributions made to the Brothers from 2009 to 2013 and in 2017 (“the Table”). However, the Table shows that in aggregate Michael and Victor obtained more.⁸⁴ David confirmed that he received less than Michael and Victor, a fact which he knew when the Distributions were made, *but to which he did not object*. As for Tony, he did not even know how much was distributed to each Brother.⁸⁵ Victor knew that he and Michael obtained a significantly larger Distribution in some years, and he did not reveal this to Tony and David.⁸⁶ The Brothers’ conduct strongly suggests there was no agreement to distribute the profits or Family Funds equally among them.

66 Indeed, I find that Victor deliberately hid the fact that the Brothers did not receive equal Distributions and that he (and Michael) received a larger share in an attempt to shore up the existence of the Purported Agreement.

⁸³ Affidavit of evidence-in-chief of David Chong at [22]; 2/5/23 NE 26–27; 3/5/23 NE 5.

⁸⁴ SOC at [26]; Victor’s AEIC at [55]–[57].

⁸⁵ 2/5/23 NE 17–18, 28–29; 10/5/23 NE 21.

⁸⁶ 26/4/23 NE 179–180.

(a) Apart from not revealing the aggregate sum of Distributions to each Brother in the Table, he failed to reveal that he had received an additional \$2m in May 2010. Victor's claim to have made a mistake in omitting to reveal the \$2m cannot be believed. He knew of this payment at the material time as he had seen the Fund Summaries.⁸⁷

(b) He also failed to disclose that he had received allowances and bonuses up to November 2018 and in 2019 (albeit paid to Eugene), which amounted to a few hundred thousand dollars a year. This was despite being in possession of a document provided in discovery by Roger (the "Family Allowances") before the preparation of his AEIC. Victor admitted to the accuracy of the Family Allowances in so far as they related to payments made to him. When queried, he reluctantly admitted they were also paid out from the profits and were essentially distributions, but claimed it was unnecessary to reveal these payments. Indeed, the Family Allowances (which Victor does not dispute) show Victor (and Michael) obtained far greater amounts than Tony or David. In particular, Victor received approximately \$26m, while David received around \$15.9m (which David accepts).⁸⁸

67 Next, the profits and Family Funds were expended on various matters, including personal expenses of the Brothers' families and the operating expenses of the Chng Companies; payments to Roger and Eugene as bonuses; payments to employees and ex-employees of the Chng Companies; a loan for the construction of FHS; and even a gift of \$900,000 to Margaret. The Family Funds were also used to pay insurance premiums of over \$4m for the benefit of

⁸⁷ 1AB 456; 26/4/23 NE 188, 191–192.

⁸⁸ 1AB 132–134; 26/4/23 NE 200–205; 2/5/23 NE 18.

Roger and Eugene. The use of the Family Funds to benefit Roger, Eugene and Margaret would have reduced the overall funds for the benefit of the Brothers, particularly Tony and David.⁸⁹ Victor was aware of all these payments at the material time, which he agreed were contrary to the Purported Agreement.⁹⁰ I disbelieve Victor that these payments were made with the knowledge and consent of the Brothers. David and Tony stated that they were unaware of the payments at the material time and of the existence of the Fund Summaries.⁹¹

68 Finally, in Victor’s Untold Story in 2018, he stated, in response to Cedric’s question as to “when the next ‘Santa Claus’ was coming (payout to family members)”, that it “all depended on Roger”. I find this was an admission by Victor that the Distributions would be subject to Roger’s discretion.

69 The subsequent conduct of the parties thus militates against a finding that the Purported Agreement existed. Not only were the profits not distributed equally among the Brothers, but they were also used, at Michael’s and Roger’s discretion, to benefit other members of the Chng clan and to pay for expenses.

The 2007 Agreement

70 At trial, Victor then claimed an oral agreement was made in 2007 between the Brothers and Mdm Lim (“2007 Agreement”). Victor claims to have discussed with Mdm Lim, who agreed to Michael and him receiving a greater proportion of the Family Funds because they were more involved in the business than Tony and David. Victor claims he informed David of this arrangement

⁸⁹ 26/4/23 NE 58, 92–96, 100–103, 106–109, 117–119, 131–132, 160–167, 171–174, 194–198.

⁹⁰ 26/4/23 NE 114–116.

⁹¹ Victor’s AEIC at [64]–[65]; 2/5/23 NE 15–16, 19–20; 3/5/23 NE 6; 10/5/23 NE 18, 19, 65.

which David agreed to, whilst Michael was responsible for informing Tony. The 2007 Agreement therefore varied the terms of the Purported Agreement, such that Michael and Victor would be able to receive more Distributions compared to Tony and David, and which Victor claims all the Brothers agreed to.⁹²

71 Victor's claim of the 2007 Agreement, which (he admitted) would have varied the Purported Agreement, merely evidences his lack of credibility on the existence of the Purported Agreement. Pertinently, the existence of the 2007 Agreement, if accepted, would have superseded the Purported Agreement.⁹³ In any event, I am not satisfied that the 2007 Agreement existed. Victor mentioned the 2007 Agreement for the first time during cross-examination and only after he was challenged on his assertion that he had the overall discretion to distribute the Family Funds.⁹⁴ Further, David, whom Victor ostensibly informed of the 2007 Agreement, claimed the Purported Agreement was never changed in 2007.⁹⁵ I thus find Victor's assertion of the existence of the 2007 Agreement to be an afterthought, to justify the unequal distributions of the Family Funds among the Brothers which would have highlighted its inconsistency with his claim of the Purported Agreement.

David and Margaret's testimony

72 I turn to David and Margaret, who attested in support of Victor. I find them to be unreliable witnesses who were partial to Victor.

⁹² 24/04/23 NE 32–34, 39–43; 26/4/23 NE 80.

⁹³ 25/4/23 NE 179–183.

⁹⁴ 24/4/23 NE 32; 5AB 70.

⁹⁵ 2/5/23 NE 27.

73 David claimed all the Brothers had built up all the Chng Companies, to support Victor’s case that they each had an equal share to the profits or Family Funds. His claim is unconvincing in light of the objective evidence and his contradictory statements. For instance, he claimed KED was established by the Brothers. Yet, he did not know when it was incorporated. He insisted that it was in 2010 despite being informed of the undisputed evidence that it was in 2006, and further claimed (wrongly) that the shareholders at incorporation were Roger, Eugene, Cedric and him. Pertinently, David did not even know who the shareholders or directors of various Chng Companies were at the material time.⁹⁶

74 Indeed, David agreed, at trial, that he was Victor’s “crony” and would do as Victor instructed.⁹⁷ For instance, David emailed Roger on 21 October 2019 (with Victor copied) to ask Roger to clarify matters relating to the Chng Companies. Although Roger replied on 1 November 2019, David asserted in his AEIC that Roger had “refused to answer any of [their] questions”. David agreed that he made such a statement only because Victor had instructed him on what to write in his AEIC. In court, he then changed his evidence and said he did not bother to read Roger’s email.⁹⁸ Hence, I give no weight to David’s evidence in so far as he claims there was an agreement for the profits to be distributed equally. In any event, he stated that this was merely a “loose family understanding” (see [63(b)] above) and, despite the Purported Agreement, he readily accepted receiving less than Michael and Victor.

⁹⁶ 2/5/23 NE 3–4, 7–8; 3/5/23 NE 30–35.

⁹⁷ 4/5/23 NE 38.

⁹⁸ 5AB 57; 4/5/23 NE 37–41.

75 As for Margaret, she was not present at the Hanoi Meeting. Whilst she claims that Mdm Lim informed her, after that meeting, that she (Mdm Lim) was very happy that the Brothers would be receiving equal shares in the Chng Companies, Margaret admitted her claim that the profits from the Chng Companies were to be shared equally among the Brothers was based on her own understanding.⁹⁹ Even if Mdm Lim had told her that the Brothers would share the fruits of the Chng Companies equally, this only shows – at its highest – that there was a “loose family understanding”, as conceded by David.

76 Further, Margaret was never involved in the Chng Companies and was unaware of the roles played by each Brother in the companies. Yet, she asserts that Victor “brought the businesses [to] where they [are] today”, an assertion which she qualified in court to say that this was what Mdm Lim had told her.¹⁰⁰ Margaret even asserted that Victor remained in charge of the Chng Companies throughout his bankruptcy although he was not a director, then claimed there was “no business” during the period of the Brothers’ bankruptcy, and later admitted she did not know who was in charge of the Chng Companies.¹⁰¹

77 Additionally, Margaret attested in her AEIC that Roger had handed her a sum of \$900,000 as a gift for the help her family had rendered to the family business. At trial, Margaret claimed the \$900,000 was a gift from Victor, then changed her story to say that it was a gift from Michael.¹⁰²

⁹⁹ Margaret’s AEIC at [18]; 4/5/23 NE 62.

¹⁰⁰ 4/5/23 NE 63, 88–93.

¹⁰¹ 4/5/23 NE 95–97.

¹⁰² Margaret’s AEIC at [21]–[22]; 4/5/23 NE 65, 69, 73–77.

78 The above examples demonstrate that Margaret was an inconsistent and a partial witness who was eager to tailor her evidence to support Victor's position that he was in charge of the Chng Companies and of the existence of the Purported Agreement, even when she had no knowledge regarding the actual state of affairs.

Miscellaneous matters

79 I turn to deal with the evidence which Victor relies on to support the existence of the Purported Agreement.

80 First, the 15/1/18 CG Letter (see [13] above) stated that the Distributions received by Tony and Cedric were made subject to Mdm Lim's approval and were the result of verbal agreements on at least two occasions among the Brothers, Roger and Mdm Lim (the "Supposed Arrangement"). However, the contents of this letter did not assist Victor. The letter was drafted in the lead-up to the mediation with Tony and Cedric. I accept Roger's explanation that it was drafted after numerous internal discussions between Roger and Victor (with Chan & Goh) and the contents were crafted to best posture and frame matters for negotiations with Tony and Cedric.¹⁰³

81 Victor was involved in the internal discussions and communicated with Chan & Goh at the material time. There were numerous correspondence from Chan & Goh's lawyer, Mr Lee See Kiat ("Lee"), who emailed both Roger and Victor recording what had transpired at the meetings and asking them for "instructions" and to "review and comment" on the draft 15/1/18 CG Letter, and subsequently informing both of them when that letter was sent to Straits Law.¹⁰⁴

¹⁰³ Roger's AEIC at [113].

¹⁰⁴ 3AB 198, 205–213.

I disbelieve Victor that he was “[j]ust helping [Roger] to solve the problem” and that he never gave instructions to the lawyers,¹⁰⁵ in light of Lee’s correspondence to him seeking his instructions and comments. Clearly, Victor (who was the beneficiary of Eugene’s Shares) had an indirect interest in Tony and Cedric’s dispute with Roger regarding their shares in the Chng Companies and in respect of which Tony and Cedric were threatening legal proceedings.

82 That the 15/1/18 CG Letter reflected Roger and Eugene/Victor’s “posturing” of the dispute is also evident from the iterations of the draft letter before the final version sent to Straits Law. On 4 January 2018, Lee recorded a meeting whereby Roger had informed him that the moneys transferred to Tony and Cedric were “out of goodwill”. On 9 January 2018, Lee emailed Roger and Victor recording a summary of their meeting on 8 January 2018 (“8/1/18 Meeting”) where Roger reiterated the moneys were paid out of goodwill. Then, on 10 January 2018, Lee asked Roger and Victor to review the draft letter and clarify if the Distributions to Tony and Cedric were goodwill gifts, payments made pursuant to a verbal agreement among the Brothers, or loans.¹⁰⁶ It was only on 11 January 2018 that Lee noted Roger’s instructions that the Distributions to Tony and Cedric were based on the Supposed Arrangement.¹⁰⁷ All these showed that the position taken (for the basis of Distributions to Tony and Cedric) was morphing, and supports Roger’s assertion that he and Victor were posturing and framing a response and setting the tone for negotiations with Tony and Cedric. Victor, knowing of Roger’s assertion at the 8/1/18 Meeting that the

¹⁰⁵ 26/4/23 NE 219, 225.

¹⁰⁶ 3AB 205, 207–208, 210, 215.

¹⁰⁷ 3AB 204, 218.

Distributions to Tony and Cedric were “goodwill” payments, never sought to correct Roger’s position.¹⁰⁸

83 Importantly, Victor, who participated in the meetings with Chan & Goh’s lawyers and who was addressed in the emails, never informed the lawyers that the Distributions were based on the Purported Agreement. On the contrary, Victor’s position (at the 8/1/18 Meeting as reflected in Lee’s email of 9 January 2018) was that the distribution of Family Funds was based on an arrangement among the Brothers to share what they earned (with no agreed percentage) and they would discuss with each other before making a distribution.¹⁰⁹

84 I accept Roger’s testimony that Victor had given inputs and instructions to Chan & Goh and Victor wanted to state (in the 15/1/18 CG Letter) that the verbal agreements were made during family meetings on at least two occasions.¹¹⁰ This is supported by the testimony of Mr Vincent Chan (“Vincent”), a partner at Chan & Goh, who attested that the 15/1/18 CG Letter was prepared with Victor’s inputs. Chan & Goh had been the Brothers’ lawyers for more than 10 years, and Vincent knew by the Brothers’ bankruptcy that their respective children represented their interests.¹¹¹

85 In any event, the Supposed Arrangement did not reflect the Purported Agreement. The 15/1/18 CG Letter stated that distributions of the Family Funds were *subject to Mdm Lim’s approval*; that the verbal agreement was *also made with Roger and Mdm Lim*; that the verbal agreement was *made on at least two*

¹⁰⁸ 27/4/23 NE 5, 13–14, 17.

¹⁰⁹ 3AB 208–209.

¹¹⁰ 10/5/23 NE 7.

¹¹¹ 15/5/23 NE 11–16, 61–64, 84–85.

occasions; and that the Distributions received by each Brother *was decided by Mdm Lim*. Victor was copied on the emails with the drafts of the 15/1/18 CG Letter but he never sought to put forth the Purported Agreement.

86 Second, Victor relies on the mediation case statements filed on behalf of Roger, Rachel and Eugene (“Respondents’ Case”) as well as on Cedric’s behalf (“Claimant’s Case”) during their negotiations in 2018 to support the existence of the Purported Agreement. In the Claimant’s Case, Cedric stated that KED was incorporated on 10 August 2006 to take over the business of Chng Holdings, and the intention was for every Brother to have an equal share in KED’s business. The Respondents’ Case, on the other hand, stated that the Brothers came to a verbal agreement (on at least two occasions) that whenever there were sufficient moneys in the Family Funds, they would be distributed equally among the Brothers subject to Mdm Lim’s approval and instructions.¹¹² But these documents did not support the existence of the Purported Agreement.

87 I accept Roger’s explanation that the contents of the Respondents’ Case were a follow through from the 15/1/18 CG Letter.¹¹³ In any event, the assertion in the Respondents’ Case (at [86] above) was not consistent with the Purported Agreement, as the former stated that the verbal agreement was made on at least two occasions, and that any distribution would be subject to Mdm Lim’s approval. Victor would have known of the contents of the Respondents’ Case as it was filed also on behalf of Eugene who (as Victor admitted in court) was representing his interest at the mediation.¹¹⁴ Importantly, Tony, when pointed to

¹¹² 2AB 181, 270.

¹¹³ 5/5/21 NE 86–88, 90

¹¹⁴ 27/4/23 NE 34–37.

the Respondents' Case, claimed there was never an agreement that the Family Funds would be distributed equally among the Brothers.¹¹⁵

88 As for the Claimant's Case, Cedric did not have personal knowledge of what he had stated therein. He was never involved in KED; and he and Tony did not even know the nature of the \$15.5m payments made to them which led to the 28/12/17 SL Letter (see [13] above).¹¹⁶ Cedric was not present at the Hanoi Meeting and, importantly, Tony has claimed categorically that no Purported Agreement was made (see [61] above).

89 It is important to note that all the above statements were made in the lead-up to and during the mediation, to serve and support the respective parties' positions. As such, I place no weight on these statements.

90 Indeed, that Tony and Cedric were unclear about the arrangement pertaining to the profits or Family Funds is also apparent when they signed the SA. In this regard, Victor relies on cl 6 of the SA (see [15(b)] above) to support the existence of the Purported Agreement. But cl 6 did not support this. In particular, there was no indication in cl 6 that Victor was entitled to an equal share (*ie*, 25%) of the profits or Family Funds. Whilst cl 6 referred to "family arrangements" and "family monies", there was no definition (in the SA) of this family arrangement or a statement that the Brothers had an equal share in the family moneys. Even Cedric could not explain in court what the "family arrangement" in the SA encompassed as he was merely interested to "get paid" under the SA.¹¹⁷

¹¹⁵ 10/5/23 NE 45–46.

¹¹⁶ 10/5/23 NE 82, 107–108.

¹¹⁷ 11/5/23 NE 52–54.

91 Last, I mention the 12/1/21 DN Letter (see [22] above) to CNP Law, written a few months before the Suit was commenced, wherein Roger’s lawyers stated that Victor’s allegation of a Purported Agreement was merely an “informal arrangement” and it was not intended to be legally binding. This document also does not support Victor’s case and was more consistent with David’s assertion that the arrangement was a “loose family understanding”.

Conclusion on the Purported Agreement

92 The burden lies on Victor to prove his claim. Having considered the evidence, I find the Purported Agreement, as pleaded by Victor, did not exist. That being said, I accept the testimony of Roger (who admitted to the Hanoi Meeting) that the Brothers and Mdm Lim had discussed a potential payout of \$1m to several members of the Chng clan and agreed on that issue. Tony stated that Michael had informed them that there would be a Distribution of \$1m to each Brother and Mdm Lim. Hence, as Roger stated, a \$1m Distribution was made on Michael’s instructions.¹¹⁸ But that alone did not give rise to the existence of the Purported Agreement, in particular that the Brothers would distribute all the profits or the Family Funds equally. At best, this showed a decision was made for *a* distribution at that time.

93 Hence, Victor’s claims regarding Roger’s alleged breaches of the Purported Agreement (*eg*, Roger’s failure to distribute moneys from, or provide an account of the moneys in, the Family Funds to Victor; and Roger’s misappropriation of the MGF Moneys)¹¹⁹ must fail.

¹¹⁸ Defence at [16(a)] and [16(b)]; 4/5/23 NE 118–120; 10/5/23 NE 61–62.

¹¹⁹ SOC at [28]–[53].

94 Furthermore, although Victor claims that 25% of the profits or the Family Funds are held on trust for him, his claim of a trust is nevertheless premised on the existence of the Purported Agreement, which provides the foundation for the trust (see [52] above). As I have found the Purported Agreement did not exist, his claims of a trust must also fail.

95 The formation of an express trust requires there to be a certainty of intention, subject matter and the objects of the trust. Regarding the requirement of certainty of intention, the relevant intention is that of the settlor of the trust. In determining if the settlor has evinced such an intention, the court will look at evidence not only of the settlor's words and conduct, but also of the surrounding circumstances and the interpretation of any agreements that might have been entered into between the relevant parties: *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [53] and [58].

96 In this regard, even assuming that the settlors (of the alleged express trust in respect of the profits or Family Funds) were all the Brothers (as Roger conceded in court that the Family Funds belonged to the Brothers),¹²⁰ there was no certainty of intention by all of them. Tony was unaware of any agreement or intention for all the profits or Family Funds to be distributed equally among the Brothers or that any terms akin to the Second Term to Fifth Term of the Purported Agreement were ever discussed. David claimed there was merely a loose family understanding. The subject matter of the trust was also unclear. Victor prevaricated between the profits from all the Chng Companies and the profits from only FHH. Pertinently, at the time the purported expression of trust was made in 2006, some of the Chng Companies did not exist and Victor stated there was no discussion pertaining to any company that might be incorporated

¹²⁰ 8/5/23 NE 30–31.

in the future. Additionally, that the profits or Family Funds were utilized for other purposes and the Brothers never received equal shares of the moneys (and of which they knew) militate against the existence of an express trust.

97 A common intention constructive trust arises where there is a common intention among the parties as to how their beneficial interests are to be held. The common intention between the parties may either be express or inferred, and there must be sufficient and compelling evidence of this common intention (see *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [83]). As I have found the Purported Agreement did not exist, and particularly there was no common intention among the Brothers for the profits or the Family Funds to be distributed equally to the Brothers (see also Tony's testimony in this regard at [61] above), this claim thus fails. I am also unable to infer a common intention that the profits or Family Funds were held equally for the Brothers. The Brothers did not hold equal shares in all the Chng Companies (see [47] to [51]) and they received unequal distributions throughout the years.

98 Next, a presumed resulting trust arises when there is a transfer of property for which the recipient does not provide the whole of the consideration (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [35]). I find Victor's claim based on a presumed resulting trust also fails. If Victor alleges that the relevant trust property comprises the profits or Family Funds, *his* entitlement under a presumed resulting trust must flow from property which *belonged to him* that was transferred to the pool of the profits or Family Funds for no consideration. Victor has adduced no evidence to show to what extent the profits or Family Funds comprised property which *he* owned, such that a presumed resulting trust *over 25%* of the profits or Family Funds arose in his favour. I reiterate that the objective evidence showed that, at all material times, each Brother neither owned shares across *all* the Chng Companies, nor

did they hold the shares *equally*. The profits and Family Funds were also expended to benefit persons other than the Brothers or their immediate families, and the distributions and allowances made to the Brothers were not equal. There is thus no discernible proportion of ownership of the profits or Family Funds that is attributable to each Brother.

99 In relation to the analysis above, I add briefly that Victor’s reliance on any agreement (before the Hanoi Meeting) for his claims do not assist him. Although Victor claims that “from the very start”, there was an “informal or unspoken understanding” to share equally in the profits from the family business, in court he admitted that there was never such an understanding before 2006 or before the Hanoi Meeting.¹²¹ Tony also stated that there was never a time when the Brothers agreed that profits would be distributed equally among them.¹²²

The Restructuring Agreement

100 Regardless of whether the Purported Agreement or a trust existed, I find that the RA would have nevertheless extinguished Victor’s right to make a claim to the profits or Family Funds which had already been paid out from the Chng Companies and managed by Roger at the time the RA was executed.

101 The RA comprised two pages as follows:¹²³

- (a) A chart of the 10 Companies that would be divided into two groups (the “Chart”). One group comprising KED and its subsidiaries

¹²¹ Victor’s AEIC at [16]; 25/4/23 NE 55; 27/4/23 NE 102.

¹²² 10/5/23 NE 49.

¹²³ 2AB 488–489.

(KOI, Nanyu, FCPL and HCCL) would be owned by David and Eugene (holding his interests on Victor’s behalf). The other group comprising LPPL and its subsidiaries (Wiscorp, Hornblower, KHM and FHHL) would be owned by Roger (“LPPL Entities”). The Chart was signed by Victor, David, Roger and Eugene on 21 or 23 January 2019. Additionally, the parties agreed (as shown in the Chart) that:

- (i) all the shares in Fullerton Health, including some two million shares in Roger’s name, would be owned by David and Eugene/Victor; and
 - (ii) Roger would pay \$5m to “Victor/Eugene/David collectively”.
- (b) A letter of waiver (“Waiver Letter”) dated 18 February 2019, signed by Victor, David, Roger and Eugene. Each party undertook to every other party and to the 10 Companies:
- (i) “To waive any loan(s) and/or outstanding(s) due to me in any of the 10 Companies as at the date of such Completion” (cl 1); and
 - (ii) “To procure the waiver by each of the 10 Companies of any loan(s) and/or liabilities owing by any of us to such company as at the date of Completion” (cl 2).

The RA did not include MGF which was struck off in June 2017.

102 Mr Pillai submitted that “outstanding(s)” and “loan(s)” in the RA must be construed together to refer only to any indebtedness by the 10 Companies (the debtor) to Victor, David, Roger and Eugene (the creditors), and that the RA

does not apply to moneys already removed from the 10 Companies (whether deposited into the Family Accounts or otherwise) as these moneys no longer constitute outstandings “in” the 10 Companies. Mr Pillai submitted the context in which the Waiver Letter was prepared and executed must be given due regard.¹²⁴

103 In construing a contract, the starting point is to look at the text the parties have used. At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (so as to place the court in the best possible position to ascertain the parties’ objective intentions by interpreting the expressions used by them). However, the meaning ascribed by the terms of the contract must be one which the expressions used by the parties can reasonably bear (*CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 at [19]; *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, N.A.* [2023] SGCA 28 at [38]).

104 Based on the text and relevant context, I find that the RA (in particular, the Waiver Letter) must be read to mean that the parties would waive all their rights to outstanding sums *pertaining to* the 10 Companies, which includes the profits and Family Funds in the Family Accounts. The words “outstanding(s)” due to a party “in” any of the 10 Companies do not, in my view, refer to the moneys or assets placed only within the 10 Companies. Rather, the focus is on where such moneys were derived from (*ie*, from the 10 Companies), and not on where they were placed when the RA was signed. This meaning is one which the expression used by the parties can reasonably bear, as can be seen from the parties’ common understanding of the matter.

¹²⁴ 8/5/23 NE 91; PCS at [140]–[141].

105 As Mr Pillai submitted, the context in which the RA came to be is important.

106 Victor claims that he and David started to mistrust Roger in May 2018 shortly after the SA was signed. Victor was unhappy that Tony and Cedric would obtain \$49m under the SA, as reflected in Victor’s Untold Story that he sent out shortly after on 30 July 2018.¹²⁵ As Roger attested, Victor perceived Tony to have contributed little to the Chng Companies and felt he should have stepped into Michael’s shoes as the patriarch after Michael’s passing (a position Roger claimed to have assumed as the eldest son of the eldest Brother). In fact, during the mediation (as Roger attested) Victor attempted to convince Tony and Cedric to “gang up” against Roger. Cedric attested that Victor suggested they join forces to “kick Roger out”, and Victor also admitted that during the mediation he had asked Tony and Cedric to switch sides and gang up against Roger.¹²⁶ Victor and David’s rift with Roger eventually led to the former refusing to cause FHS to be mortgaged to pay the Mortgaged Sum. Essentially David and Eugene refused to honour their obligations under the SA in coming up with the further \$16m (collectively with Roger) to pay Cedric or Tony.

107 Victor and David’s distrust of Roger was “so grave” that they decided it would be better for the 10 Companies to be restructured and managed by Victor, David and Eugene, separately from Roger. This distrust pertained to Roger’s management of the companies *including the profits* therefrom. David stated that he suspected Roger had dissipated the profits instead of distributing them to the Brothers and that was why Victor and he wanted to restructure the

¹²⁵ 3AB 132.

¹²⁶ Roger’s AEIC at [132]–[133]; 27/4/23 NE 57; 11/5/23 NE 77.

10 Companies.¹²⁷ Victor asserted that after he and David visited Roger in Hanoi in May 2018 (see [18] above), he examined the accounts of FCPL and KOI and discovered that moneys had been transferred out.¹²⁸

108 Hence, the RA was meant to achieve a “clean break”, with the Brothers (and their respective families) going their separate ways and having no further claims against each other, including on any of the profits regardless of where they had been placed (including in the Family Accounts). The intent of the RA, as per the parties’ common understanding, was to deal with all the moneys *derived from* the 10 Companies. This is shown by the following:

(a) Victor agreed that the splitting up of the 10 Companies included ascertaining how much each Brother was owed in terms of their share of the profits or Family Funds, as they were splitting up everything.¹²⁹

(b) Eugene accepted that moneys due from the 10 Companies to a party pursuant to cl 1 of the Waiver Letter could be due to the party as a shareholder and include profits funnelled into the Family Accounts managed by Roger. He accepted that the RA was intended to provide a clean break and that he would no longer have any claims to moneys from the LPPL Entities or the Family Funds thereafter.¹³⁰

(c) David also agreed that the RA was intended to achieve a clean break with each person going his own way, and after executing the RA the parties would have no claims over each other in relation to the 10

¹²⁷ Victor’s AEIC at [173]; 4/5/23 NE 5.

¹²⁸ Victor’s AEIC at [159].

¹²⁹ 27/4/23 NE 66–68.

¹³⁰ 28/4/23 NE 69–74.

Companies or to any of the profits. He accepted that these profits were the moneys that flowed into the Family Accounts that Roger managed.¹³¹

(d) As Roger explained, the purpose of the RA was to wipe the slate clean, and provide a full and final settlement of all the Chng Companies and moneys, as otherwise it made no sense for him to have signed the RA.¹³²

109 Thus, the reference in cl 1 of the Waiver Letter to any “outstanding(s)” due to a party “in” any of the 10 Companies would have included assets or moneys owed to a party *qua* shareholder, which in turn included outstanding moneys due to a party from the profits generated by the companies, wherever they might have been placed. A “loan”, in its ordinary meaning, means moneys owed to a party *qua* creditor.

110 That the “outstanding(s)” in cl 1 included the profits and Family Funds can also be gleaned from how the Chng Companies were operated, in that the companies did not generally declare dividends to the shareholders. Instead, profits therefrom would be transferred into the Family Accounts as the Family Funds, and the *Family Funds* were then distributed to the Brothers (*eg*, as a “dividend” as Roger described) or utilised for other purposes. Victor knew all these. For instance, cash from FHH (a key asset of the family business) was carried back from Hanoi to Singapore. The Fund Summaries showed Family Funds parked under accounts for “Fortuna City”, “FHH” and “KHM”. Further, in the 28/12/17 SL Letter (see [13] above), Cedric had pointed out that the \$15.5m paid to him and Tony as “dividends” were not accounted for in KED’s

¹³¹ 4/5/23 NE 16, 31–32.

¹³² 8/5/23 NE 90–93.

audited financial statements. Mr Wee Phui Gam (“Wee”), the Brothers’ auditor for over 30 years and the auditor for various Chng Companies (save for the overseas entities), stated that dividends were never declared by the companies that he audited save for one instance.¹³³

111 That the RA was intended to achieve a clean break, by dividing up all assets pertaining to the Chng Companies (including any profits generated therefrom), can also be seen from the fact that pursuant to the RA, Roger would transfer all shares in Fullerton Health (which is *not one of the Chng Companies*) held in his name (but *purchased with the Family Funds*) to David and Eugene; and additionally pay Victor, David and Eugene collectively \$5m. Prior to the execution of the RA, Victor already knew of the Family Funds and Family Accounts. As he admitted, a key component pertaining to the division of the 10 Companies was the issue of the Family Funds in the SC18 Account.¹³⁴

112 Ultimately Victor, David, Eugene and Roger’s entitlement to the profits (whether placed in the Family Accounts or elsewhere) stem from their shareholding (direct or indirect) in the companies, which the RA was meant to deal with once and for all.

113 Mr Pillai relied on cl 6 of the SA, which set out in detail the waiver given by Tony and Cedric and which, unlike cl 1 of the Waiver Letter, included claims arising out of the “family monies” whether “present or future”, to show that Victor/Eugene and David never intended to waive their rights to the profits or

¹³³ 16/5/23 NE 81, 123–126, 137.

¹³⁴ 27/4/23 NE 73–74.

Family Funds managed by Roger outside of the 10 Companies.¹³⁵ I am unable to accept this argument and I repeat my findings at [108] to [111] above.

114 Aside from the fact that Victor has not attested that the difference in wording (as raised by Mr Pillai) between the SA and RA was intentional and meant to distinguish the moneys or assets to be divided under the SA from those to be divided under the RA, it is important to note the circumstances in which both agreements were drafted. Unlike the RA, the SA was drafted with inputs from two sets of lawyers (*ie*, Chan & Goh acting for Roger, Eugene and KED; and Straits Law acting for Tony and Cedric) and after a mediation before a lawyer at the Singapore Mediation Centre.

115 As for the RA, I accept Vincent's testimony that whilst it would have been ideal to draft a proper restructuring agreement, there were constraints at the material time. Victor and David were unhappy with Roger and the terms of the SA, and they refused to cause FHS to be mortgaged to pay the Mortgaged Sum of \$16m to Cedric or Tony under the SA. Eugene and David even claimed (through their lawyers, RS Wijaya) that the SA was void and that they would refuse to comply with it.¹³⁶ At the same time, Straits Law (on Tony and Cedric's behalf) threatened legal proceedings when their clients were not paid the Mortgaged Sum by the stipulated timeline.¹³⁷

116 As the SA could potentially be derailed, and there was a risk of being sued by Tony and Cedric for breaching it, Vincent attested that something had to be done quickly to divide up the Chng empire. Thus, the document to give

¹³⁵ PCS at [143].

¹³⁶ 3AB 403, 426.

¹³⁷ 15/5/23 NE 47; 16/5/23 NE 89–92; 2DB 1–5.

effect to this had to be drafted in a simple manner so that all relevant parties could understand, accept and agree to it with sufficient haste. Hence the RA comprised a one-page diagram (the Chart) to reflect how the 10 Companies would be divided up and the Waiver Letter, to achieve a clean break.¹³⁸

117 The Chart essentially gave effect to the proposal made by Wee following numerous discussions on the restructuring amongst Victor, Eugene, David and Roger. This was in large part captured in an email dated 4 October 2018 circulated by Wee to the four of them recording their draft agreement, which included the following:¹³⁹

- (a) Wee set out how the 10 Companies were to be divided with an accompanying diagram (which was eventually reflected in the Chart).
- (b) Fullerton Health shares would all be owned by Victor/Eugene, including the shares held in Roger's name.
- (c) Roger would undertake to settle the \$49m to Cedric and Tony under the SA and without FHS being mortgaged to raise the Mortgaged Sum. However, Roger would not undertake to settle the \$49m unless the division of the 10 Companies was effected concurrently.

Pertinently, Wee stated in his email that it was important for a decision to be made “as quickly as possible” on the division of the 10 Companies as there was a violation of a condition in the SA whereby FCPL was to pledge its assets to obtain a loan for the SA.

¹³⁸ 15/5/23 NE 47–48.

¹³⁹ 3AB 411–412.

118 Wee's email supports the urgency of the matter as explained by Vincent. It also shows that the parties to the RA intended that when the RA was executed, all sides (including Tony and Cedric) would part ways *once and for all*. The transfer of KED completely to David and Eugene would require Cedric to give up his shares in KED, and this in turn required Roger to discharge the \$49m payment to Cedric and Tony under the SA whilst also relinquishing his shares in KED to David and Eugene. Eugene and David agreed that the restructuring (the RA) was tied to the execution of the terms of the SA.¹⁴⁰

119 That the profits and Family Funds held or managed by Roger formed part of the assets of the restructuring is further borne out by the fact that all parties to the restructuring knew that Roger would undertake to discharge the \$49m Settlement Sum to Cedric and Tony, despite David and Eugene also being jointly liable under the SA for this amount. The \$49m would have come from the Family Funds, as Cedric's 25% share in KED would be transferred to Eugene and David and they did not have to personally pay any consideration for this transfer. Eugene (and Victor) knew at the material time that Roger had already paid Cedric the first \$1m (pursuant to the SA) from the Family Funds (see [42] above), and Eugene and David did not care how Roger would fund the remainder \$48m, although Roger would not receive any KED shares in return.¹⁴¹

120 As such, the parties' testimony and documentary evidence showed the parties to the RA intended for all the assets pertaining to the 10 Companies (including the profits managed by Roger) to be dealt with in the RA. I reiterate, this is supported by the fact that: (a) pursuant to the RA, shares in Fullerton Health (not one of the Chng Companies) held by Roger and purchased with the

¹⁴⁰ 28/4/23 NE 55–60; 4/5/23 NE 2.

¹⁴¹ 28/4/23 NE 34–36; 3/5/23 NE 27.

Family Funds would be transferred to Victor/Eugene and David, and Roger would also pay them a further \$5m; and (b) Roger would discharge the Settlement Sum under the SA. The moneys to pay Victor, Eugene, David, Tony and Cedric would have come from the Family Funds, which Victor would have known.

121 In this regard, Victor sought by the 8/12/20 CNP Letter (see [22] above) to demonstrate that the RA did not apply to profits already paid out of the Chng Companies before the RA was executed. I give no weight to this letter, which was written more than 20 months after the RA was executed and a belated attempt by Victor to lay claim to further moneys from Roger pertaining to the Chng Companies even though he and David had parted ways with Michael's side of the family. Victor's belated attempt is clear from the timing of the events.

122 On 21 October 2019, David and Victor wrote to Roger to seek an account of the MGF Moneys and other moneys or the Family Funds that had been handled by Roger, and an explanation on various payments or fund transfers pertaining to FCPL. Roger informed them shortly after, on 1 November 2019 (see [21] above), that all matters relating to the Chng Companies had been settled by 18 February 2019, in view of the SA and RA, and there was thus no basis to dwell on past issues of these companies anymore ("**Roger's Assertion**"). At that time, Victor did not see it fit to rebut Roger's Assertion. Instead, he merely sent a short email on 11 December 2019 to state that he would revert to Roger in February 2020 in view of the impending festive season and his long travel plans with David. It was not until *one year later*, that the 8/12/20 CNP Letter was sent to rebut Roger's Assertion.¹⁴²

¹⁴² 5AB 62; 27/4/23 NE 86–87.

123 Ultimately, the parties took a rough and ready approach on the division of the Chng empire via the restructuring. This was why, as Eugene agreed, no due diligence or valuation of the 10 Companies was conducted before the restructuring.¹⁴³ Victor or Eugene could have verified the financials of the companies prior to the restructuring. Eugene was then a director (and shareholder) in some of the 10 Companies, and particularly in KED, FCPL and KOI, and he could have easily procured company documents or obtained an independent valuation.¹⁴⁴ Yet, they did not. Victor's explanation for not doing so because he trusted Roger at that time is unbelievable especially given that he had already grown distrustful of Roger shortly after the SA was executed.¹⁴⁵

124 Accordingly, I find that not only did the RA supersede the Purported Agreement (if indeed the latter existed), it would have also extinguished Victor's rights to any further claims on the profits which had been removed from the corporate accounts of the 10 Companies and placed with Roger (such as the Family Funds in the Family Accounts). This would have included the MGF Moneys, which originated from the Family Funds via a transfer from the SC18 Account to MGF and which MGF should have repaid to the SC18 Account (see [20] above). That the MGF Moneys should have been returned to that account but was placed by Roger in another account is thus irrelevant.

Conclusion

125 I observe this to be a case of a dissatisfied Brother (Victor) who thought that he deserved more. He was unhappy with Cedric (and Tony) receiving \$49m under the SA. He was unhappy when he felt that he had obtained an unfair deal

¹⁴³ Roger's AEIC at [150]; 28/4/23 NE 63–65; 4/5/23 NE 14.

¹⁴⁴ 28/4/23 NE 63–64, 75–77.

¹⁴⁵ 27/4/23 NE 67–69; Victor's AEIC at [159].

from the RA, vis-à-vis Roger. But the fact remains that the RA resulted in Victor and David obtaining a sizeable share of the Chng Companies with two main assets, namely FHS and the Hanoi Club. FHS was subsequently sold in April 2022 for nearly \$86m, and Victor and David each received about \$43m.¹⁴⁶ Pursuant to the RA, Roger also transferred all the Fullerton Health shares to Victor and David, and they collectively obtained another \$5m. Throughout the years prior to the RA, Victor had obtained substantial Distributions and allowances, and more than Tony and David.

126 In the round, I find that Victor has failed to discharge the burden of proving his case. The evidence, on balance, did not point to the existence of the Purported Agreement or a trust as Victor has pleaded. In any event, the RA has precluded Victor from making a further claim on the profits or Family Funds. Hence, I dismiss Victor's claims and I will hear the parties on costs.

Audrey Lim J
Judge of the High Court

Subramaniam s/o Ayasamy Pillai, Daphne Francesca Tan, Tan Jin Yi
and Shann Liew Zi Xuan (CNPLAW LLP) for the plaintiff;
Wong Hin Pkin Wendell, Andrew Chua Ruiming and Danica Gan
Fang Ling (Drew & Napier LLC) for the defendant.

¹⁴⁶ 5AB 108–109; 24/4/23 NE 27–28.