IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(I) 19

Suit No 3 of 2018 (Summons No 25 of 2021)

Between

Michael A Baker (executor of the estate of Chantal Burnison, deceased)

… *Plaintiff*

And

(1) BCS Business Consulting Services Pte Ltd
(2) Marcus Weber
(3) Renslade Holdings Limited

… *Defendants*

JUDGMENT

[Equity] — [Remedies] — [Account]

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Baker, Michael A (executor of the estate of Chantal Burnison, deceased)
v
BCS Business Consulting Services Pte Ltd and others

[2021] SGHC(I) 19

Singapore International Commercial Court — Suit No 3 of 2018 (Summons No 25 of 2021)
Quentin Loh JAD, Carolyn Berger IJ and Dominique Hascher IJ
23, 24 September 2021

27 December 2021 Judgment reserved.

Quentin Loh JAD, Carolyn Berger IJ and Dominique Hascher IJ:

Introduction

1 SIC/SUM 25/2021 ("SUM 25") is the final tranche of the dispute between the parties over the rights to the inventions and patents of the compound, "Ethocyn" ("the Ethocyn Rights"), and the income or proceeds generated therefrom (collectively, "the Trust Assets"), and the moneys paid by Nu Skin International Inc ("Nu Skin") to the first defendant, BCS Business Consulting Services Pte Ltd ("BCS") ("the Trust Moneys"). In *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] 4 SLR 85 ("the Judgment"), we had found, *inter alia*, that BCS and/or the third defendant, Renslade Holdings Limited ("Renslade (HK)"), held the Trust Assets and/or Trust Moneys and/or any other income or proceeds generated from the Trust Assets on trust for the

plaintiff, Michael Baker ("Baker"), as executor of the estate of Chantal Burnison ("Chantal" or "the Estate", as the case may be). Accordingly, we ordered BCS, Marcus Weber ("Weber") and Renslade (HK) (collectively, "the Defendants") to provide a detailed account of all transactions that had taken place in respect of the Trust Assets and/or Trust Moneys, and granted an order that the Defendants pay to the plaintiff all the sums due to the plaintiff on the taking of the account.

2 After several rounds of correspondence, Baker remained dissatisfied with the account that the Defendants had provided. SUM 25 is Baker's application for the Defendants to pay (a) US$10,313,895.25 and CHF1,662,894.67, being the amount that Baker claims is due to the Estate on the taking of the account of the Trust Assets and Trust Moneys; and (b) interest on the Trust Assets and Trust Moneys at the rate of 5.33% per annum from 30 October 2017 until the date when the Trust Assets and Trust Moneys are fully paid and returned to him.

Facts

3 The detailed facts concerning this dispute can be found in the Judgment. For present purposes, we summarise the dispute between the parties and the decision of this court as found in the Judgment, which provides the context for the analysis below.

The parties

4 Chantal was the co-inventor of Ethocyn. The Ethocyn Rights were initially assigned to California-incorporated companies controlled by Chantal ("the Chantal Companies"). The Chantal Companies entered bankruptcy proceedings in February 1999, and the Ethocyn Rights, among other assets,

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were sold to a New Zealand company ("Renslade (NZ)") before being transferred to a Singapore company ("Renslade (S)"), and finally to BCS.

5 In June 2003, the Defendants entered into an agreement with Nu Skin to supply Ethocyn (the "Nu Skin SDA"). These payments formed the bulk of moneys generated from the Ethocyn Rights, which we referred to earlier as the "Trust Moneys". Sometime in or around 2007, the bulk of Trust Moneys were transferred from BCS to Renslade (HK). In or around 2014, Weber also withdrew a sum of CHF9.5m from the Trust Moneys. After Chantal passed away on 2 October 2016, Baker became the executor of the Estate. He sought to have the assets of the trust and Trust Moneys transferred to the Estate. When this was not done, Baker commenced the present suit ("the Suit") in Singapore.

Background to the dispute and this court's judgment

6 The central issue in dispute in the Suit was the beneficial ownership of the Trust Assets and the Trust Moneys. Baker claimed that Chantal remained the beneficial owner of the Ethocyn Rights. She had entered into an agreement with Weber ("the Trust Agreement") for Weber to acquire the Ethocyn Rights from Renslade (NZ) and to hold any income or proceeds generated from the Ethocyn Rights on trust for her (we refer to this trust as "the Trust"). Under this Trust Agreement, the Defendants were entitled to retain only 5% of the proceeds generated. Further, although Chantal had agreed to loan Weber CHF6m, Weber then took the CHF9.5m from the Trust Moneys without her knowledge or consent. Baker therefore sought the return of the Trust Assets and Trust Moneys, as well as a return of the CHF9.5m taken by Weber.

7 After a trial of the matter, we issued our Judgment on 29 April 2020, in which we held as follows:

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(a) There was a Trust Agreement between Chantal and Weber. Renslade (NZ) had held the Ethocyn Rights on trust for Chantal. When the Rights were transferred to Renslade (S), Chantal remained the beneficial owner of those Rights. This remained the case when the Ethocyn Rights were assigned or transferred to BCS. Therefore, Chantal had always been the beneficial owner of the Ethocyn Rights, the Trust Moneys and the Trust Assets (see the Judgment at [187]–[188]).

(b) Weber had withdrawn CHF9.5m from the profits made under the Nu Skin SDA without Chantal's knowledge or consent, and had not repaid that amount or rendered an account of any interest as of the date of the Judgment (see the Judgment at [199]).

(c) The Trust Agreement was governed by Singapore law (see the Judgment at [214]). Under Singapore law, there was an express trust (at [226]) and, in any event, a resulting trust would also arise on the facts (at [230]). In the alternative, if the Trust Agreement were governed by California law, a trust would also have arisen (at [240]). We rejected the claim that the trust was unenforceable for illegality, finding that the Trust Agreement was enforceable under both Singapore (at [258]–[269]) and California law (at [298]).

(d) As the Trust Agreement was valid and enforceable,

(i) the Defendants had breached their fiduciary duty to Chantal by failing to provide an account of the Trust and the Trust Moneys;

(ii) the Defendants had breached the Trust Agreement by unilaterally increasing the commission from 5% to 10% from 2016 to 2017 without Chantal's knowledge and consent;

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(iii) Weber had breached his fiduciary duty to Chantal by failing to procure BCS or Renslade (HK) to return the Trust Assets, and also breached his contractual obligation *vis-à-vis* Chantal to return CHF9.5m with 3% annual interest; and

(iv) by claiming legal and beneficial ownership over the Trust Assets and Trust Moneys, the Defendants had conspired with the intention of injuring Chantal and/or the Estate (see the Judgment at [299]).

8 We therefore made orders pertaining to the relief sought by the plaintiff. The parties have since extracted the order of court in SIC/JUD 5/2020 ("the Order"), and we reproduce the relevant portions here:

> 1. it is hereby declared that [BCS] and/or [Renslade (HK)] hold the intellectual property rights to the inventions and the patents of Ethocyn ('the Ethocyn Rights') and 95% of any income or proceeds generated from the Ethocyn Rights ('the Trust Assets') including 95% of the monies which were paid by Nu Skin International Inc to [BCS] and any other income or proceeds generated from the Trust Assets on trust for the Plaintiff ('the Trust Assets and Trust Monies');
>
> 2. the Defendants are to provide a detailed account of all the transactions which have taken place in respect of the Trust Assets and Trust Monies within 14 days from the date of judgment; [we refer to this as the "Account Order"]
>
> 3. the Defendants are to account to the Plaintiff the Trust Assets and Trust Monies, and the Plaintiff is at liberty to trace and recover the Trust Assets and Trust Monies, if necessary. The Defendants shall pay the Plaintiff all sums due to the Plaintiff on the taking of the account of the Trust Assets and Trust Monies; [we refer to this as the "Payment Order"]
>
> …
>
> 5. [Weber] is to pay to the Plaintiff CHF9.5 million plus interest at the rate of 3% per annum calculated from the date the sum of CHF9.5 million was loaned to [Weber] to the date of judgment and the post judgment interest rate of 5.33% calculated from after the date of judgment until the said sum of CHF9.5 million

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> plus interest is repaid; [we refer to this as the “Loan Repayment Order”]
>
> 6. the sum of US$10,330,658.91 which was paid by [Renslade (HK)] into Court pursuant to the Order of Court No. 2 of 2020 dated 11 January 2020, shall be released to the Plaintiff, Michael Alan Baker, and/or his solicitors, Drew & Napier LLC; [we refer to this as the “Release Order”] and
>
> 7. the Defendants are to pay the Plaintiffs the costs of the action. …
>
> [emphasis in original omitted]

9 Subsequently, in CA/CA 76/2020, the Defendants appealed against our decision in the Judgment (“the Appeal”). On 19 January 2021, the Court of Appeal dismissed the Appeal in its entirety and affirmed the Judgment of this court.

Steps taken in the provision of the account

10 The parties’ correspondence over the Defendants’ provision of the account is extensive, and we summarise only the salient developments in the following timeline:[1]

S/N	Date	Event
1.	13 October 2020	Defendants file an affidavit, Weber’s 19th Affidavit, to account for Trust Assets and Trust Moneys
2.	22 October 2020	Baker’s solicitors, Drew & Napier LLC (“D&N”), reply in a letter with objections to the account, requesting the Defendants file a further affidavit within three weeks to address the deficiencies. These deficiencies concerned the outgoings in the accounts in particular.

1 This sequence of events was narrated in the letter dated 2 March 2021 from Baker to the SICC. See also paras 6–22 of Baker’s 24th Affidavit (dated 14 May 2021) (“Baker 24”) (JBOD Vol A5 at pp 2534–2539).

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S/N	Date	Event
3.	29 December 2020	Defendants' solicitors, WongPartnership LLP ("WongP"), write with further account for the period of 2000–2006
4.	19 January 2021	The Appeal is dismissed
5.	3 February 2021	D&N reiterates the deficiencies in the account in a letter to WongP
6.	16 February 2021	WongP replies addressing the deficiencies in part
7.	18 February 2021	D&N seeks a full response to the deficiencies highlighted in earlier correspondence concerning the outgoings
8.	23 February 2021	WongP replies addressing (according to Baker) only some of the issues with the outgoings raised in the 22 October 2020 letter. WongP claims to need until 23 March 2021 to review and respond to the queries.
9.	2 March 2021	D&N writes to court seeking directions
10.	8 March 2021	This court issues directions according to timelines proposed by D&N, with adjustments by one week
11.	19 March 2021	Defendants file a further affidavit, Weber's 20th Affidavit, providing a combined account of the Trust Assets and Trust Moneys for 2000 to 2021 ("the Combined Account")
12.	30 March 2021	Pursuant to D&N's request for adjustments to the timelines on 26 March 2021, this court issues further directions

S/N	Date	Event
13.	5 April 2021	Pursuant to the court's directions, Baker files an affidavit, Baker's 23rd Affidavit, giving notice of the errors and omissions ("Objections") in the Combined Account in Weber's 20th Affidavit
14.	12 April 2021	Baker demands payment of US$14,377,533.62 and CHF1,721,816.99 by 26 April 2021 comprising: (a) the sums due on the taking of account (US$10,361,395.25 and CHF1,662,894.67); and (b) interest at the rate of 5.33% p.a. from 30 October 2017 to 26 April 2021
15.	26 April 2021	WongP replies disagreeing with most of the Objections. Payment is not made. WongP also discloses documents responding to the Objections
16.	14 May 2021	Baker files SUM 25, with a supporting affidavit, Baker's 24th Affidavit

The Combined Account and the Objections

11 By the time SUM 25 was brought, the dispute between the parties had crystallised to a significant extent. The Defendants' case is encapsulated in its Combined Account, while Baker's Objections pertain to specific aspects of that Combined Account. The Combined Account consists of two parts: (a) "Income", representing the income received; and (b) "Outgoings", representing the amounts sought to be deducted from the income. Included under the "Outgoings" is a tax provision of US$70m that the Defendants seek to make in respect of alleged tax liability in the United States of America ("the US"). Most of the dispute in SUM 25 concerns the "Outgoings", and references to various serial numbers ("S/Ns") throughout this judgment refer to the serial numbers in the Outgoings section of the Combined Account, unless otherwise indicated.

12 Before turning to the parties' cases, we briefly summarise the Combined Account which the Defendants had provided, and highlight the areas of disagreement raised by Baker (in bold and underlined):

S/N	Description	Defendants' position	Baker's position
1.	Total amount received by Defendants from 2000 to 2017	US$85,935,845.12	US$85,935,845.12 + **US$200,000 (A)**
2.	Total outgoings from 2000 to 2021	(US$85,935,845.12) (as stated in the "Outgoings" section of the Combined Account)	(US$85,935,845.12) (**US$10,000 (B)**) (5% management fee on additional US$200,000 income) + **US$10,104,400.23 and CHF 1,662,894.67 (C)** (objections to Outgoings)
3.	Adjustment for exchange rate at S/N 429 of outgoings in the Combined Account	N/A	+ **US$19,495.02 (D)**
4.	Amount to be paid	NIL	**US$10,313,895.25 and CHF1,662,894.67 (E)**
5.	Tax provision	US$70m	**NIL (F)**

13 Baker's Objections can be categorised as follows: (a) objections arising from the failure to include the income of US$200,000 (*ie*, (A) in the above table and the corresponding deduction for the 5% that BCS/Weber are entitled to

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retain at (B)); (b) objections pertaining to the "Outgoings" (*ie*, (C) and (D) above); and (c) consequently, a difference in view as to the amount due from the Defendants (*ie*, (E) above). In addition, there is a dispute over a tax provision that the Defendants wish to make (*ie*, (F) above). We further note that the Combined Account was modified in certain respects by Weber's later affidavits. In the following, we focus on the Combined Account, and deal with Weber's modifications after considering the specific objections raised by the plaintiff.

14 For context, we note that the "Outgoings" identified in the Combined Account already incorporated (a) the payment of US$10,330,658.91 to D&N which was released to Baker under the Release Order (S/N 427); (b) the payments of US$11,498,045.20 (S/N 428) and US$784,216.14 (S/N 429) pursuant to the Court of Appeal's order in CA/ORC 122/2020 which required the Defendants to pay the sums due under this court's Loan Repayment Order to D&N pending disposal of the Appeal. The sums sought by Baker in SUM 25 are therefore additional to these amounts.

The parties' cases

Baker's case

15 SUM 25 consists of three main prayers. The third prayer is no longer being pursued since the Defendants have disclosed the desired documents.[2] The two remaining prayers are as follows:

> 1. the Defendants are to pay the Plaintiff US$10,313,895.25 and CHF1,662,894.67, being the amount due to the Plaintiff on the taking of the account of the Trust Assets and Trust Monies (as defined in paragraph 1 of SIC/JUD 5/2020);
>
> 2. the Defendants are to pay the Plaintiff interest on the Trust Assets and Trust Monies, which shall accrue at the rate of

[2] Plaintiff's Written Submissions (SUM 25) at para 203.

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> 5.33% per annum from 30 October 2017 until the date when the Trust Assets and Trust Monies have been fully paid and returned to the Plaintiff;

16 Baker argues that the account provided by the Defendants is defective in terms of the income and outgoings, and seeks to surcharge and falsify entries in the account. The bulk of SUM 25 deals with the specific contentions over the income and deductions. Further, Baker seeks pre-judgment and post-judgment interest at the rate of 5.33% per annum. Finally, Baker argues that there is no basis for a US$70m tax provision that the Defendants have sought to make.

Defendants' case

17 The Defendants argue that the account was properly given, and that no money is owing upon the account being taken. Further, no pre-judgment interest should be awarded, or, if there is to be pre-judgment interest, it is to be at the lower rate of 3.7% per annum. Finally, the Defendants should be allowed to make a tax provision to the value of US$70m due to an alleged tax liability in the US.

Issues to be determined

18 Based on the foregoing, the following issues arise for our determination:

(a) First, in relation to the account:

(i) whether the account should be surcharged with a sum of US$200,000; and

(ii) whether and to what extent the disputed outgoings should be falsified.

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(b) Secondly, whether and to what extent interest should be awarded on the sums due under the Trust.

(c) Thirdly, whether the Defendants should be allowed to make a provision of US$70m for the alleged tax liability.

Taking of the account

Applicable law and standards

19 In the taking of accounts, it must first be decided whether the accounts should be taken on a common basis or on a wilful default basis (see *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 ("*Cheong Soh Chin*") at [71]). In the present case, we had already found various breaches of fiduciary duties on the Defendants' part (Judgment at [299]). Notwithstanding this, the difference between an account on a common basis and a wilful default basis does not take centre stage in this case – there is no attempt by the plaintiff to require the Defendants to account for that which they *might* have received if it had not been for their default (*Cheong Soh Chin* at [82]) or to ask the court to undertake a "roving commission" to inquire into all aspects of the Defendants' administration of the Trust, including misconduct that was neither pleaded nor mentioned at the hearing at which the accounting was directed (*UVJ and others v UVH and others and another appeal* [2020] 2 SLR 336 ("*UVJ*") at [36] and [47]). The only difference that we note in this case is that in an account on a wilful default basis, "the accounting party … carries a much more substantial burden of proof than that which applies to him in the case of a common account" (*Ong Jane Rebecca v Lim Lie Hoa and others* [2005] SGCA 4 at [55]). This point was not pressed by the plaintiff, but, in fairness and in recognition of the reality that this account is being taken after adverse findings were made against the Defendants, we take into account our

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findings relating to the Defendants' conduct when we come to assess the specific entries in dispute. The extent of the effect of our findings will depend on the timing and nature of the specific outgoings in dispute.

20 When a trustee provides an account which discloses what the beneficiary considers to be discrepancies, the beneficiary may choose to:

(a) falsify a wrongful expense or loss charged to the account, which would then require the expense or loss to be deleted or disallowed (*Cheong Soh Chin* at [78]; *UVJ* at [28]); or

(b) surcharge an account, *ie*, assert that the trustee has received more than what the account records (see *Cheong Soh Chin* at [79]; *UVJ* at [28]).

21 When a beneficiary falsifies an entry in the account, the beneficiary is challenging or disputing the alleged use of funds. The burden then lies on the *trustee* to prove that the disbursement was authorised (see *Cheong Soh Chin* at [78], applied by the Court of Appeal in *Dextra Partners Pte Ltd and another v Lavrentiadis, Lavrentios and another appeal and another matter* [2021] SGCA 24 at [46]). In contrast, when a beneficiary seeks a surcharge, the burden lies on the *beneficiary* to show that the trustee received more than the account records (see *Cheong Soh Chin* at [79]).

22 A related point concerns the right of a trustee to be indemnified out of trust property for costs and expenses incurred in the course of the trust. This right to be indemnified is not unqualified, as it does not extend to "costs and expenses incurred without authority, either in the trust instrument or from the beneficiaries": *Cheong Soh Chin* at [63]. As an exception to this principle, "a trustee may nevertheless be entitled to claim an indemnity out of the trust

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property for unauthorised transactions which benefit the trust estate and which the trustee incurred in good faith": at [64]. The High Court in *Cheong Soh Chin* held that this was a matter within the court's discretion. As the High Court noted in *Cheong Soh Chin* at [68], the question of whether a specific expense or cost was properly incurred overlaps with the question of whether a particular entry should be falsified. We adopt a similar approach, and treat the question of whether expenses were properly incurred together with whether specific deductions should be falsified.

23 In applying the burden of proof, the court will necessarily have regard to the fact that a trustee owes a duty to keep records and to be ready to give an account: Lynton Tucker, Nicholas Le Poidevin and James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts*") at para 21-031. Further, as the High Court has summarised in *Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 ("*Lalwani*") at [23]:

> As regards the level of disclosure necessary to discharge the duty to furnish account on a common basis, regard must be had to the twin purposes of this duty as identified above. At its core, the accounting process is a means to hold the trustee accountable for his stewardship of trust property. Accordingly, the trustee must by this accounting process give proper, complete, and accurate justification and documentation for his actions as a trustee. This requires information as to the current status of, and past transactions that relate to, each of the constituent trust assets actually received by the trustee (see *Glazier Holdings Pty Ltd v Australian Men's Health Pty Ltd (No 2)* [2001] NSWSC 6 at [38]). What precisely is required for the discharge of this duty is fact-specific. More will likely be required for the specific assets and transactions against which there are allegations of breach of trust. More will also likely be required of a professional trustee, as compared to a non-professional trustee who may be granted 'fair and reasonable allowances' (*Snell's Equity* at para 20-018). Thus, merely providing some financial documents in relation to the trust assets may not be enough (see, *eg*, *Foo Jee Boo* at [93]–[96]).

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That there is an overlap between the nature of a trustee's duty and what a trustee needs to produce in order to satisfy his burden of proof when a claim of falsification is made is only logical. This burden of proof and the trustee's role in responding to a dissatisfied beneficiary's objections reflect the trustee's position in relation to the trust assets and beneficiaries.

24 In this regard, the plaintiff urges us to consider the Defendants as professional trustees. In his submission, we should hold the Defendants to the standard of a professional trustee and be quicker to make adverse findings against them if inadequate records are kept. While the plaintiff has referred us to various documents, we do not think this submission is made out. While Weber may be a businessman, it is not clear that he was in fact a professional trustee. The plaintiff relied in particular on a letter written by Weber, apparently around 4 June 2016, in which Weber stated:[3]

> Trust is my business and I can understand that not all persons are willing to understand this. Without trust I don't like to go on, also I was sure to be the best consultant and partner for you and your girls. …

In context, we find that the reference to "trust" in that first sentence is not "trust" in the technical sense, but more generally, the trust that he had hoped had arisen between him and Chantal. We are unable to find in this correspondence any admission or recognition by Weber that he was a professional trustee.

25 The plaintiff then referred us to our Judgment at [105], where we held, in reference to a facsimile dated 23 March 2000:

> The whole tenor of this facsimile is that of an accountant or other professional agent – Weber – reporting back to the owner – Chantal – as to what he has done so far on the 'agreed' structure. … Crucially, Weber ended the telefax stating that he

[3] JBOD A5 at p 2497.

> was working on Chantal's files. This is wholly inconsistent with his case that Chantal was his business advisor and he was the purchaser of the Ethocyn Rights …

Our reference to Weber as "an accountant or other professional agent" was not a finding that Weber was a professional trustee. In that passage, we simply recognised that Weber was providing services for Chantal, and that these services were, at times, professional services. But we are unable to conclude from this fact that Weber was a professional *trustee*. A helpful indication of what a "professional trustee" is can be found in s 41Q(5) of the Trustees Act (Cap 337, 2005 Rev Ed) – in referring to this provision, we are only taking broad guidance as to what it might mean for a trustee to be acting in his professional capacity:

> (5) For the purposes of this Part, a trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with —
>
> > (*a*) the management or administration of trusts generally or a particular kind of trust; or
> >
> > (*b*) any particular aspect of the management or administration of trusts generally or a particular kind of trust,
>
> and the services he provides to or on behalf of the trust fall within that description.

26 For the purposes of those provisions, a key aspect of a "professional trustee" is that the management or administration of trusts (generally) or a particular kind of trust, or any particular aspect of that management or administration, is part of the "course of a profession or business". We think that this is a sensible definition of a professional trustee, and clarifies the scope of what that term means. This is why a professional trustee is held to higher standards, because the professional trustee has been engaged specifically for his expertise, or because the professional trustee is expected to have the experience

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and competence to properly administer a trust. There is no indication that Weber or the companies (BCS or Renslade (HK)) were in fact in such a course of a profession or business relating to trusts, either generally or of a particular kind. A professional trustee is not necessarily the same as a trustee who is otherwise a professional or businessman, or a company operating a business. Furthermore, we would highlight that the correspondence certainly did not refer to BCS or Renslade (HK) as professional trustees. We therefore do not find much merit to the plaintiff's attempts to paint the Defendants as professional trustees.

27 Having set out these general principles, we elaborate further on the approach that we take to the specific entries when dealing with the parties' contentions below.

Income: whether US$200,000 should be surcharged

28 The sole dispute over the income concerns US$200,000 which Baker argues that BCS had received from a company in the Republic of Korea, Webstone 21. Baker claims that this payment was made pursuant to a letter of credit that Baker had personally negotiated, and that the documentary evidence supports this claim.[4] While Baker no longer has a copy of the original, unamended letter of credit, he has produced a letter of credit with subsequent amendments, with the "applicant" and "beneficiary" fields replaced with fictitious parties, which Baker claims was done as copies of the letter of credit were used "as a teaching aid".[5] He has also referred this court to various emails referring to business with Webstone 21.[6] On the contrary, the Defendants maintain that they have not received any such sum from Webstone 21. While

4 Plaintiff's Written Submissions (SUM 25) at para 43.

5 Plaintiff's Written Submissions (SUM 25) at para 43(b).

6 Plaintiff's Written Submissions (SUM 25) at para 44.

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there were discussions of potential transactions with Webstone 21, these never materialised, and the contemporaneous evidence does not establish that BCS received the alleged sum.[7]

29 As Baker is pursuing a surcharge of the account, the burden lies on him to establish that the Defendants did receive the sum of US$200,000 from Webstone 21 (see [21] above). In our view, the evidence does not sufficiently establish Baker's case that BCS had received US$200,000 from Webstone 21.

30 We accept that the letter of credit presented by Baker does establish, *prima facie*, that there was at least a *contemplated* transaction between BCS and Webstone 21 to the value of US$200,000.[8] Although the handwritten amendments have blocked out some parts of the original letter of credit, Baker's explanation that these were fictitious parties included for the purposes of using the letter of credit as a teaching aid is plausible. What is more telling, in respect of the letter of credit, is that (a) the sum of US$200,000 was stated on the first page; (b) Webstone 21 was referred to as the recipient of the goods (as Webstone 21 is identified as the notify party); and (c) BCS was identified as the beneficiary "before amndmt" (*ie*, before amendment).

31 However, that is as far as the plaintiff's case can go. As counsel for the plaintiff, Ms Woo Shu Yan ("Ms Woo"), rightly conceded before us, there was no evidence that the letter of credit was paid upon.[9] We agree with the Defendants that the mere existence of the letter of credit does not necessarily mean that the transaction was completed or that payment was received by the

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7 Defendants' Written Submissions (SUM 25) at para 9.

8 See Baker's 23rd Affidavit (dated 16 April 2021) ("Baker 23") at pp 170–174 (JBOD Vol A5 at pp 2510–2514).

9 Transcript 23 September 2021 at p 115, ln l–2.

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Defendants. In our view, the surrounding evidence does not justify the inference sought by the plaintiff. First, while Baker has presented emails to show that sometime in mid-2004, a Korean company (which we accept is likely Webstone 21) was preparing to begin marketing Ethocyn products, there are no emails describing the specific transaction in question in September 2004, when the letter of credit was allegedly issued, or any confirmation that the business actually became operational. This is important as the absence of any emails or documentary evidence relating to the specific transaction makes it difficult to infer from the mere existence of a letter of credit that the transaction was completed. Further, even with respect to the general emails, there is no reply following Chantal's email to show that any transfers were ultimately made. Second, on the face of the letter of credit, it is telling that there is no reference number provided by the receiver, suggesting that the letter of credit as presented by Baker was not issued or, at the very least, was not received by the receiving bank by the time the latest amendments were made on 21 October 2004. Third, even if some pattern of conduct is relied upon, no other evidence of the regularity of the transactions or the overarching contract involving Webstone 21 has been provided.

32 Hence, we conclude that Baker has not discharged his burden of proving that BCS had received US$200,000 from Webstone 21. As such, no modification to the account on this basis needs to be made.

Outgoings

33 We turn to consider the "Outgoings" in the Combined Account. The parties' disagreements touch on a number of general points, which, in turn, affect their positions on specific entries in the Combined Account. In the following, we first address the general points, which allows us to formulate the

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approach that we shall take to the specific entries, before turning to the specific outgoings which Baker seeks to falsify.

General disputes

34 The general points of disagreement arising from the parties' respective submissions can be categorised as follows.

(a) What was the extent of Chantal's involvement in the Ethocyn business, and what is the implication of that involvement on the Defendants' burden of justifying the expenses sought to be falsified?

(b) Is Baker, as the executor of the Estate, estopped from disputing the outgoings?

(c) Were the Defendants entitled to compensation above and beyond the 5% compensation agreed between Weber and Chantal? Is Baker, as executor of Chantal's estate, estopped from denying that the Defendants are so entitled?

(d) What is the role and relevance of audited financial statements and expert opinions in this dispute?

(1) Chantal's involvement in the Ethocyn business

35 As the Judgment had touched on a number of aspects of Chantal's involvement in the Ethocyn business, we begin by setting out our findings on this issue.

(a) Chantal was the "driving force for all dealings with Nu Skin … There is no evidence that one would expect to find where the chief operations officer … reports back to the owner on the significant stages

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of the Nu Skin SDA to obtain the owner's agreement. *Chantal made the decisions*" [emphasis added]: see the Judgment at [145].

(b) There were multiple occasions on which Weber had to account for the Trust Moneys to Chantal: see the Judgment at [147].

(c) The Trust Moneys were transferred on Chantal's instructions. "From 2007 to 2016, BCS and Renslade (HK) would, at Chantal's request, unquestioningly transfer millions of dollars each year to companies controlled by Chantal": see the Judgment at [148]. "… Chantal … classified these transfer[s] of moneys (except the one-off request for medical expenses above) for the purposes of operating costs and production. In short, Chantal *directed* the transfer of the alleged Trust Moneys to various entities and stated that these transfers were for operating expenses and costs related to the Ethocyn business. We also find that Chantal did, in a few instances, provide justifications for these transfers" [emphasis in original]: at [152]. This was "in accord with how many private limited companies operate within a private corporate group structure and is consistent with why Chantal, having chosen to keep her beneficial ownership opaque, was nonetheless driving the exploitation of her Ethocyn product": at [153].

(d) Chantal was the one who ran the Ethocyn business, while Weber was given the responsibility "to structure the business entities, manage accounts, and reap the profits": see the Judgment at [237].

36 On Weber's own evidence in SUM 25, the day-to-day running of the Ethocyn business was done by Chantal herself, and "[t]he transactions and

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payments were carried out by [BCS's] staff as instructed by Chantal".[10] In their submissions, the Defendants argue that "[t]ransactions and payments were carried out by [BCS's] staff as instructed by [Chantal]."[11] The Defendants' own case is that Chantal communicated directly with the staff of BCS. Indeed, they go so far as to state, "[Chantal's] role in the business entailed her working closely with [BCS's] staff and giving instructions by telephone or emails with regard to *all* transactions and payments. *At all times* she approved the commercial details and thus exercised control over the Ethocyn business"[12] [emphasis added].

37 The documentary evidence that is available is consistent with our findings in the Judgment and with these aspects of the Defendants' own case. There are multiple emails showing requests by Chantal for transfers to be made (see the Judgment at [148]–[149]). In addition, at least in respect of transfers to a company called "E Cosmetics" and other companies in the USA, Chantal had been presented with a summary of all the relevant transfers, which she then confirmed and approved.[13] Further, her documented involvement extended to relatively minute matters, like the payment of Christmas bonuses.[14] There is also email correspondence showing that Chantal had given specific directions for the payments of invoices, *eg*, for patent counsel.[15]

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10 Weber's 21st Affidavit (dated 10 August 2021) ("Weber 21") at para 11 (JBOD Vol A9 at p 4935).

11 Defendants' Written Submissions (SUM 25) at para 20(c).

12 Defendants' Written Submissions (SUM 25) at para 24.

13 See Weber's 20th Affidavit (dated 14 April 2021) ("Weber 20") at pp 59–63 (JBOD Vol A3 at pp 1197–1201).

14 See Weber 21 at p 102 (JBOD Vol A9 at p 5030).

15 See Weber 21 at p 148 (JBOD Vol A9 at p 5076).

38 The crux of the dispute, however, concerns how this court should approach an *absence* of documentary evidence of specific approval given by Chantal. Baker's standard objection to many of the entries in the "Outgoings" is that they have not been supported by documentary evidence of Chantal's approval or instructions. The Defendants' response is that as Chantal was closely involved in the Ethocyn business, she would have been aware of all of these expenses and outgoings or, at the very least, would have implicitly approved of them insofar as they were for the purpose of the Ethocyn business.[16] We find that neither extreme is sustainable, fair, or justified on the facts of this case.

39 On the one hand, given the facts that we have identified above, it is clear to us that, in general, it was Chantal directing payments to be made. In fact, the Defendants are content, in their own submissions, to attribute *all* transactions and payments to Chantal's instructions. In our view, it was incumbent on the Defendants to keep proper records of such instructions and approval, so that they would be able to render a proper account of the Trust to Chantal or whoever the eventual beneficiaries of the Trust may be. On the facts, we find it more likely than not that the expectation was that Chantal would be asked for approval for transactions and payments, and expenses incurred in relation to the Ethocyn business, especially in the light of the emails that she sent and received. As a starting point, therefore, an absence of documentary evidence would suggest that the Defendants cannot discharge their burden of proof.

40 On the other hand, we recognise the reality that there was an ongoing business relating to the Ethocyn rights, and that Chantal's involvement in the business should count for something in assessing whether expenses and

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16 Defendants' Written Submissions (SUM 25) at para 21.

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outgoings were approved or for the purpose of the Ethocyn business. In this regard, it is significant that Chantal gave instructions directly to the staff of the companies operating the Ethocyn business. In our view, the reality of an operational business may mean that strict records of instructions and approvals may not always be kept, or that certain payments may not necessarily be highlighted in each and every instance to Chantal. Furthermore, we are cognisant that Chantal is no longer able to provide evidence as to the specifics of the Ethocyn business, and that Baker, as executor of the Estate, may not be in full possession of the same facts and evidence as Chantal was. Baker's repeated refrain that he was not aware of specific outgoings or companies is not, with respect, of much assistance.

41 Hence, while the absence of documentary evidence would be a point counted against the Defendants in general, we think that it is only realistic and fair to be open to the possibility that, on an entry by entry basis, the Defendants may be able to otherwise establish that Chantal had approved the transactions even if no *direct* evidence is available, *eg*, because it was part of a series of payments, an established pattern of conduct, or the nature of the payments indicates that they must have been for the Ethocyn business. This must be the case because even if a specific email or written approval is not recorded, the circumstances may lead to the inference that approval *was* given. In such instances, we would have regard to, *inter alia*, the alleged purpose of the payments, the connection that the payments have to the Ethocyn business or to Chantal's personal requests, the timing of the payments in relation to the Defendants' conduct (especially when they began to be in breach of their fiduciary duties), and the manner in which the outgoings have been quantified. This is not, we emphasise, a slackening in the standard of proof placed on a trustee – we caution trustees in general that they take on considerable risk if

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they do not keep proper records. Instead, this is a conclusion on the proper *application* of the burden of proof. The question of fact is ultimately whether, in each instance, there is sufficient evidence to show that the transaction was authorised.

(2) Estoppel in relation to expenses and outgoings

42 The Defendants argue that Baker, as executor of the Estate, is estopped from rejecting the various outgoings as Chantal was informed of these expenses and she did not object. In their submission, it would be expected that if Chantal was not agreeable to the incurring of any of those expenses which she was informed of, then she would have said so. If she did not, then her silence and conduct can be construed as representations that she had no objection to the expenses of that nature and the Defendants were entitled to continue using those proceeds for such expenses, and as the Defendants relied upon the representations, she (and by extension, her Estate) would be estopped from denying that the outgoings were authorised.[17]

43 In our view, and in the light of the parties' submissions, we do not find it necessary to adopt a distinct analysis of estoppel. The same questions of fact that would go towards establishing, as a question of proof, whether Chantal expressly or implicitly approved a particular outgoing would also be relevant to establishing the elements of estoppel. In particular, the same questions of whether Chantal was made aware of the particular expenses and outgoings, and how Chantal responded to such information (or how she might have been expected to respond), would be relevant to both issues. If it is concluded that the evidence does not justify a finding that there was implicit approval of the

[17] Defendants' Written Submissions (SUM 25) at paras 43–46.

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outgoing, it would be difficult to see how estoppel could nevertheless be made out. For this reason, it is sufficient to focus on the specific factual contentions in each instance, paying particular attention to the context and facts pertaining to each outgoing.

(3) The scope of the 5% commission

44 Among the various entries disputed by Baker, a significant number pertains to expenses or remuneration sought by various companies controlled by Weber, and by Weber himself. The question here concerns the scope of the 5% commission which we had found Weber was entitled to, and whether the Defendants are entitled to be paid anything in addition to that 5%. We note here that the Defendants also put forward an additional argument on the basis of estoppel. For similar reasons as those described at [43] above, we do not think that it is necessary to deal with the claim of estoppel separately given the overlapping arguments – it is sufficient for us to consider, on the facts, what was the arrangement between the parties.

45 The Defendants take the position that the 5% of the revenue was intended to be a commission for "acquiring and holding the Ethocyn Rights", but that they then provided various additional services which fell outside the scope of activities that formed part of the Trust Agreement.[18] In contrast, Baker's counsel argues that the Defendants' position is inconsistent with [237] of the Judgment, and that the evidence shows that the 5% commission was paid "in respect of the Defendants' entire services to Chantal and was not confined to merely acquiring and holding the Ethocyn Rights".[19]

18 Defendants' Written Submissions (SUM 25) at para 25.

19 Plaintiff's Written Submissions (SUM 25) at para 64.

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46 To properly set the context of this discussion, we observe that the general rule is that a trustee is *not* entitled to compensation or remuneration unless such remuneration is authorised, *inter alia*, by the beneficiaries or the trust instrument: see *Lewin on Trusts* at para 20-001. This is *distinct* from the right of the trustee to be indemnified against costs and expenses that have been properly incurred as trustee (see [22] above). The scope of this prohibition against remuneration extends to "any allowance for his trouble and loss of time" and "payment for any professional or other special services rendered by him, even though payment for such services would properly be made to a person who is not a trustee" (*Lewin on Trusts* at para 20-001).

47 In our Judgment, we have already found that the 5% was intended to be the commission or remuneration for services provided by Weber to Chantal. We had referred to the 5% variously as a sum of money retained by Weber as a commission or remuneration (see the Judgment at [22(c)], [190], [221] and [223]), or retained by "BCS or Weber as commission" (at [25]), or as "compensation for services provided by Weber to her or BCS Pharma Corporation" (at [159]). At [188(k)], we concluded as follows:

> The retention of 5% of the proceeds … by BCS from the sale of the Ethocyn Products pursuant to the Nu Skin SDA and other similar agreements, if any, was commission or remuneration for Weber and the 1st and 2nd Defendants under the Trust Agreement between Chantal and Weber.

However, we recognise that the exact scope of what this "commission" or "remuneration" was for was not in issue during the trial and we have not yet expressly considered this issue. We therefore now consider, on the submissions and evidence before us, what the scope of the commission/remuneration was.

48 First, we observe that Chantal's references to this 5% commission or remuneration were ambiguous. The most probative email for Baker's case was

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an email dated 24 May 2016 sent by Chantal to Weber, in which Chantal referred to the 5% as "our agreed compensation for your services provided me/BCS Pharma each year since our coming together".[20] However, here, the word "your" in this context refers to Weber, not BCS. Similarly, in another e-mail relied upon by Baker dated 9 June 2016 from Chantal to Mr Urs Wehinger ("Wehinger"), she stated that the "agreement from the beginning in 1999 was 5% participation to [S]ingapore in gross singapore [*sic*] managed funds", but in the context, this only referred to Weber's claims for compensation.[21] This is consistent with the fact that the 5% arrangement dated back to 1999, when BCS was not yet in the picture (as the Ethocyn Rights were first assigned to BCS in 2002) (see the Judgment at [138]). It seems to follow that the understanding was that the 5% was intended to be the personal commission paid to *Weber alone* for his assistance in Chantal's business. To the extent that Weber was in control of the various companies which held the Ethocyn Rights on trust for Chantal, there may have been some blurring of the distinction between the entities, but it is not clear that the 5% commission/remuneration was intended by Chantal to be the cap of what could be deducted as expenses or costs, or even as compensation for services rendered by other entities.

49 Baker attempts to rely on [237] of our Judgment, which reads:

> From 2002, until her death in 2016, Chantal ran the Ethocyn business successfully. She arranged for and supervised the manufacture of Ethocyn, and she negotiated licensing agreements with distributors. She relied on Weber to structure the business entities, manage accounts, and reap the profits. He received a 5% commission for those services.

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[20] See Baker 23 at pp 149–150 (JBOD Vol A5 at pp 2489–2490).

[21] See Baker 23 at p 165 (JBOD Vol A5 at p 2505).

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However, this statement does not necessarily preclude other compensation for services provided by persons or entities *other than* Weber. In other words, it is consistent with the last two sentences quoted above for compensation to be payable in respect of services rendered by such other persons or entities, since the 5% was, based on what was written at [237] of the Judgment, only the commission for *Weber's* services.

50 Secondly, on a related note, Chantal's conduct showed that she made a distinction between the 5% commission/remuneration and other expenses and costs that were incurred in the Ethocyn business. It follows that a distinction must be drawn between remuneration (which is covered by the 5%) and reimbursement for expenses. Baker's own case was that the 5% commission was already a part of the Trust Agreement from as early as 1999 (see the Judgment at [22]).[22] At the same time, we had found at [146] of the Judgment that Chantal did reimburse Weber for expenses incurred for the Ethocyn business, even apart from the 5% commission that (on Baker's own case) already applied from 1999 onwards:

> 146 … Chantal would reimburse Weber for his out-of-pocket expenses that he incurred for the Ethocyn business. For example, on 16 August 2000 (before the Nu Skin SDA), Weber e-mailed Chantal requesting payments for (a) royalties, (b) invoices by other companies for business related expenses and (c) 'invoice for [his] services'. In another email from Chantal to Weber on 8 September 2002, Weber informed Chantal that he would send her an invoice 'for the expedition of the Ethocy[n] to USA' and that he had paid for that invoice. On 20 September 2002, Chantal replied, reminding Weber to 'always pay [his] expenses and needs/fees regarding [Ethocyn] from the money in Switzerland by Amalfino', which was where Chantal would transfer the funds to. The Defendants did not challenge these documents in cross-examination.

22 See SOC (Amendment No 3) at paras 13–14.

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This distinction is consistent with the law relating to a trustee's remuneration (see [46] above), which distinguishes between an indemnity for expenses and remuneration for services or time.

51 Therefore, we find that Weber was only entitled to 5% of the revenue as his commission or compensation for any services that he rendered to Chantal and the Ethocyn business. However, there is insufficient basis on which to conclude that the 5% was the ceiling for *any and all* compensation or renumeration for all other services provided by other entities, even entities controlled by Weber, or reimbursement for expenses incurred by the Defendants (even by Weber) in the process of the provision of those services and in the conduct of the Ethocyn business. The question in relation to such other renumeration or reimbursement would be whether there was sufficient evidence of authorisation, and it is insufficient for Baker to simply point to the 5% commission/renumeration to preclude the deduction of such outgoings from the account.

(4) Role and relevance of audited financial statements and expert opinions

52 Throughout their submissions, the Defendants have repeatedly referred to the facts (a) that certain financial statements, especially those of Renslade (HK), had been audited; and (b) that certain outgoings had been verified by their expert, Mr Chaitanya Arora ("Mr Arora"). Before turning to the specific entries, we deal here with the general question of the role and relevance of such financial statements and Mr Arora's expert opinion.

53 In relation to audited financial statements, we accept Baker's point that mere provision of financial statements would not *necessarily* suffice to

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discharge a trustee's duty to account: see *Lalwani* at [33].[23] Beyond merely showing that certain outgoings were incurred, an audited financial statement does not, in and of itself, mean that the outgoings were authorised or for the purpose of the Trust or Ethocyn business. This is particularly so if the outgoings identified by the financial statements are unexplained or if it remains unclear, on the face of the financial statements, what the outgoings were for. At the same time, if the purpose of the outgoings is clear on the face of the financial statements, it may be possible to draw the inference that the outgoings were part and parcel of the Ethocyn business and, in the light of any other evidence, may have been approved by Chantal. Once again, as we have repeatedly emphasised, the inquiry before this court is one of fact, and an audited financial statement would not be conclusive *either way*.

54 Furthermore, even if particular statements or figures from such audited statements were provided to Chantal, this does not necessarily absolve the trustee of all further responsibility. The scope and specificity of the information provided to Chantal would have to be considered. For example, the Defendants emphasise an email sent to Chantal by Weber which incorporated a table of figures that they say match the figures from the corresponding audited financial statements.[24] However, all that the table provided was an entry described as "Other fees" reflecting that sum, without providing any details as to what that category entailed. While the Defendants suggest that Chantal knew that there were audited financial statements and failed to request them, we fail to see how that would mean that the Defendants need not now provide an account of these figures. Chantal may not have raised any questions at the time for a variety of

23 Plaintiff's Written Submissions (SUM 25) at para 57.

24 Email at JBOD Vol A9 at p 5038; see statement at A4 at p 1884. See Transcript 24 September 2021 at p 14.

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reasons, and the context of the discussions is important to consider. We would be slow to conclude that the mere provision of figures at that level of generality would satisfy a trustee's duty to account, or, in the context of falsification, would mean that any claim to falsify deductions would necessarily fail.

55 Turning to Mr Arora's expert opinion, we note the caution sounded by the High Court in *Cheong Soh Chin* at [32]–[36]:

> 32 … Both parties engaged and adduced expert evidence from forensic accountants. The accountants have expressed views on whether an expense was incurred, in the sense that money was actually paid out; whether that money was paid out for a valid reason, in the sense that it was connected either directly or indirectly to the Wees' investments; and whether the expense claimed was reasonable in amount. They have even expressed views on whether a disputed expense should be allowed or disallowed.
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> 33 In expressing these views, both experts have ventured beyond the remit of an expert. These issues are not matters of accounting practice but issues of fact or law which the court has to decide. Both experts have also regrettably shown themselves too ready to adopt the views of the party who engaged them as to whether a disputed expense should be allowed or disallowed. In other words, the experts were wrong to express a view on an issue of fact or an issue of law and were even more wrong in being too ready to adopt a view that was not their own.
>
> 34 This is impermissible on several levels. First, it is impermissible because the question whether any specific expense should be allowed or disallowed when taking an account on a wilful default basis in equity is outside the realm of a forensic accountant's expertise.
>
> 35 Second, and flowing from the first, expressing a view on this issue essentially contravenes the ultimate issue rule. That rule prohibits an expert from giving his opinion on the very issue which the court has to decide. While the rule has lost some force today, especially in civil cases, it remains live. On this point, the Court of Appeal's observations in *Eu Lim Hoklai v PP* [2011] 3 SLR 167 at [44] bear repeating:
>
>> Ultimately, all questions – whether of law or of fact – placed before a court are intended to be adjudicated and decided by a judge and not by experts. An expert or

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> scientific witness is there only to assist the court in arriving at its decision; he or she is not there to arrogate the court's functions to himself or herself …
>
> 36 Third, the expert's duty to the court is to express his own *independent* view and not merely to adopt the views of the party engaging him. … Experts do not assist the court on matters within their expertise by merely adopting their client's views.

56 Not all of the criticisms that the High Court had of the experts in *Cheong Soh Chin* apply to Mr Arora's opinion in this case. As we will discuss below at [70], Mr Arora was candid concerning the scope of his remit and the limitations of his analysis, and we do not think he was merely parroting his clients' instructions or passing off their views as his own. However, the other cautions expressed in the quoted passage above remain relevant. Insofar as Mr Arora was expressing a view that certain expenses were documented to his satisfaction as a matter of accounting practice, we are willing to take that into account as part of the factual background for our determination. However, Mr Arora's opinion will not, and cannot be, determinative of any matter that is properly for this court to decide, including whether outgoings were in fact incurred and, more importantly, whether they were *properly* incurred. Indeed, Mr Arora's evidence has no real bearing on the latter question at all, since the question of falsification (which is a matter of this court's supervision of the accounting process) is not, with all due respect, one that is properly within his expertise. Bearing in mind these principles, Mr Arora's expert opinion is potentially relevant, but only to a narrow subset of the issues that are before us in this application.

Specific entries

57 Having set out our views on the issues of general dispute between the parties, and having considered the approach that we take in this case, we turn now to consider the specific entries. As will become apparent from our analysis,

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the burden of proof plays a central role in this application. The fundamental basis for our decision on each of these objections is whether, in our view, the Defendants have sufficiently discharged their burden of proving and justifying the relevant outgoings.

58 For the purposes of this judgment, we proceed on the basis of the categorisation of objections provided by Baker, as he is the party seeking to falsify the relevant entries. We deal with each category of objections in turn.

(1) Payment of US$15,400 from BCS to Renslade (S)

59 This category pertains to S/Ns 4, 5 and 14 of the "Outgoings" in the Combined Account, on 20 October 2000, 29 December 2000 and 18 May 2001 respectively. These entries were described as being payments from BCS *to* Renslade (S) for consulting services provided in respect of the Ethocyn business. Baker's primary argument relating to the sum of US$15,400 paid by BCS to Renslade (S) is that the Defendants are not entitled to claim any additional payment for any alleged consulting services as Chantal only agreed to 5% remuneration.[25]

60 We find that the documentary evidence, consisting of three invoices for each of the payments,[26] shows that these payments were made. The purpose of these payments, however, is not entirely clear. It is worth noting that Renslade (S) was in fact incorporated on or about 23 May 2000 (see the Judgment at [23]). The assignment of the Ethocyn Rights from Renslade (NZ) to Renslade (S) was dated 24 May 2000, although we observed that there was evidence that this was probably decided in September 2001 and the assignment was backdated to 24

25 Plaintiff's Written Submissions (SUM 25) at paras 75–77.

26 Weber 20 at pp 567, 569 and 583 (JBOD Vol A3 at pp 1705, 1707 and 1721).

May 2000 (see the Judgment at [13]). It follows that the payments in question here were made when Renslade (S) was in fact holding the Ethocyn Rights.

61 In this context, despite the fact that there were invoices,[27] it is not at all clear *what* Renslade (S) did for BCS which would justify BCS paying these sums of money out *to* Renslade (S). At the material time, Renslade (S) was the entity holding the Ethocyn Rights, and it is not clear what other activity was undertaken by that company and what was the nature of the alleged "[c]onsulting services rendered in relation to sub-distributor appointment".[28] Indeed, this justification for the payments from BCS to Renslade (S) *contradicts* the explanation that the Defendants give for the management fees paid *to* BCS, which were "for management services provided to Renslade [(S)], whose *sole* business purpose was … to hold the Ethocyn proceeds" [emphasis added].[29] Furthermore, since Renslade (S) was holding the Ethocyn Rights at the material time, it is unclear why *BCS* should be entitled to deduct any sums from the Trust for payments that it made to Renslade (S), given that BCS was not the trustee at that time.

62 As the burden lies on the Defendants to show that these payments were authorised and justified, in the absence of any real explanation for what Renslade (S) did in the context described above, we are unable to find that these sums were properly deducted as outgoings. The Defendants in their submissions have also not provided any evidence to show that these expenses were *specifically* brought to Chantal's attention. Hence, these entries should be falsified.

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27 Arora's Expert Report at para 2.84 (JBOD Vol A6 at p 3314)

28 Weber 20 at pp 567, 569 and 583 (JBOD Vol A3 at pp 1705, 1707 and 1721).

29 Weber 21 at para 74 (JBOD Vol A9 at p 4972).

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(2) Payment of management fees to BCS for a total of US$25,142.97

63 This concerns S/Ns 6, 10, 11, 13, 16, 18, 21, 22, 24, 26, 27, 29, 31, 33, 34 and 36 of the "Outgoings" recorded in the Combined Account. These were payments dating between 5 January 2001 to 25 February 2003, pertaining to management fees charged by BCS to Renslade (S) for the period from January 2001 to December 2002. The Defendants have provided invoices and payment vouchers evidencing the transfers.[30] The dispute turns again on whether the payment of these fees was authorised. At the outset, based on our views above at [51], we do not think that the 5% commission due to Weber prevents these deductions from being proper, given that these were fees for services provided *by BCS* and not Weber personally. Further, we note that BCS became the holder of the Ethocyn Rights on 1 April 2002 (see the Judgment at [15]), that is, during the period when the management fees were paid by Renslade to BCS. Hence, in that sense, BCS was not a trustee of the Ethocyn Rights for most of this period.

64 Having regard to the evidence, we think that the management fees were justified expenses (at least in part) and were likely approved by Chantal. We note that these fees were justified by the Defendants as being for services provided to Renslade (S), which held the Ethocyn proceeds. Until April 2002, Renslade (S) was the holder of the Ethocyn Rights. There was therefore a good reason for BCS to be providing services to Renslade (S). As for the period after the transfer of the Ethocyn Rights, it is not implausible that some more work needed to be done to resolve any business that Renslade (S) had. We therefore find that the management fees are plausible in this context. Although the Defendants have not been able to show specific emails or documents in which Chantal authorised these payments, the inherent plausibility of BCS providing

30 See Weber 20 at pp 346–433 (JBOD Vol A3 at pp 1484–1571).

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services to Renslade (S), together with the facts that Chantal "spearheaded and made key decisions in relation to the transfer of the Ethocyn Rights from Renslade (NZ) to Renslade (S)" (see the Judgment at [97]), that Weber was assisting in the setting up of this structure (at [107]), and that it was Chantal who "arranged for the transfer of the Ethocyn Rights from Renslade (S) to BCS" (at [135]), suggests that Chantal would have known about such payments and (given the fact that they were effected) approved them.

65 Therefore, we do not agree with the plaintiff that these entries should be falsified.

(3) Payments to Plexus AG for a total of US$331,269.08

66 This concerns S/Ns 12 and 15 of the outgoings in the Combined Account. The Defendants allege that these payments were made to a company known as Plexus AG at the instruction of Chantal. They recognise that they have not been able to find documentary evidence of Chantal's instructions, referring to the length of the intervening period and the possibility that the instructions were given orally.[31] Baker takes the position that there is no documentary evidence to corroborate this assertion, and that there is no evidence that Plexus AG was owned by Chantal and her ex-husband as the Defendants had claimed.[32]

67 We find that these entries should be falsified. The burden lies on the Defendants to show that these transactions were authorised. Apart from their own claim that Chantal had given instructions for these transfers and that she had told the Defendants that Plexus AG was owned by her and her ex-husband, there is no documentary evidence of these specific claims. The only documents

[31] Defendants' Written Submissions (SUM 25) at para 93.

[32] Plaintiff's Written Submissions (SUM 25) at paras 87–88.

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provided show an invoice from Plexus AG in respect of "Purchase agreement re. Mac Molly Tetra" and "Delivery of goods and software" (which pertains to only one of the transfers),[33] and the evidence of the transfers themselves from Renslade (S) to Plexus AG.[34] However, no explanation is forthcoming regarding the purpose of these transfers, save for the Defendants' assertion that these were upon Chantal's request.[35] The mere fact that the payment voucher for the invoice was signed by someone from BCS is insufficient basis for us to draw the inference that it was approved by Chantal.[36] Given the absence of any other transfers to Plexus AG, the absence of documentary evidence concerning Chantal's authorisation, the lack of evidence that would allow inferences to be drawn concerning the purpose of these transfers, we conclude that the Defendants have not discharged their burden of proof in relation to these entries.

(4) Payments of BCS's personnel and administrative overhead costs for a total of US$2.7m

68 This concerns S/Ns 35, 39, 52, 68, 82, 100, 121, 158, 195, 231, 264, 305, 340, 378, 408, 420, 422 and 424 of the "Outgoings" in the Combined Account.[37] This comprises annual charges of US$150,000 from 2002 to 2019. In this regard, the Defendants rely on their expert, Mr Arora, to confirm the services that were provided and that this was reasonable.[38] Baker argues that (a) there is no evidence that the amount of US$150,000 per year was actually charged by or paid to BCS; (b) the amount was an "arbitrary figure conjured by the

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33 Weber 20 at p 344 (JBOD Vol A3 at p 1482).

34 Weber 20 at pp 67–68 (JBOD Vol A3 at pp 1205–1206).

35 Weber 20 at p 306 (JBOD Vol A3 at p 1444).

36 Weber 20 at p 343 (JBOD Vol A3 at p 1481).

37 Defendants' Written Submissions (SUM 25) at para 100.

38 Defendants' Written Submissions (SUM 25) at para 101(a).

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Defendants"; (c) it was suspicious that these costs were not previously included in the account that the Defendants had given earlier in the correspondence; (d) the Defendants were not entitled to anything more than the 5% commission/remuneration; and (e) in any event, the costs from 2016 to 2019 were clearly unauthorised as Baker was never approached to approve these sums.[39]

69 In our judgment, these entries should be falsified. There is no evidence as to whether the US$150,000 per year was actually charged to the Trust's account or claimed as expenses. When we pressed the Defendants' counsel, Ms Monica Chong ("Ms Chong"), on this point, she noted that there were expenses actually incurred, in that salaries for BCS's staff were paid and other expenses were already paid, but she conceded that these sums were not claimed until the present accounts were rendered[40] and that Chantal was not charged for these sums.[41] We have significant doubts with the manner in which this sum was calculated and in which it is now claimed.

70 This sum of US$150,000 per year was provided by the Defendants to their expert, Mr Arora, for his views on whether that sum reflected the cost of the amount of work done by BCS, on the *assumption* provided *by BCS* that the work performed "annually correspond[ed] to, on average, one and half of full-time employees" (see para 2.23 of Mr Arora's report).[42] However, even Mr Arora's report candidly states the absence of direct evidence of any such

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39 Plaintiff's Written Submissions (SUM 25) at paras 89–93.

40 Transcript 24 September 2021 at p 37, ln 18–24.

41 Transcript 24 September 2021 at p 38, ln 8–11.

42 See Mr Arora's Report at para 2.23 (Chaitanya Arora's 1st Affidavit ("Arora 1") at p 25; JBOD Vol A6 at p 3303).

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amounts being charged. We quote the material parts of Mr Arora's report in full here:[43]

> 2.23 It is the Defendants' position that the amount of USD 2,700,000 is the sum of USD 150,000 of cost incurred per year between 2002 and 2019. This is based on the *assumption* that the work performed by BCS employees for the Ethocyn business annually corresponds to, on average, one and half of full-time employees.
>
> …
>
> 2.25 … I have seen evidence that suggests BCS employees have provided services in relation to the Ethocyn business. *However, the available information is not sufficient to opine on the extent of the scope of services actually provided by the BCS employees and whether the amount of USD 150,000 per annum is commensurate with such services.*
>
> 2.26 For the purpose of my verification, *I am instructed that*, between 2002 and 2019, the work performed by BCS employees for the Ethocyn business annually corresponds to, on average, one and half of full-time employees.
>
> 2.27 In the paragraphs below, I have verified whether the annual compensation of one and half full-time employee is USD150,000 based on the information provided to me.
>
> 2.28 I have been provided with the total compensation costs and the total number of employees of BCS, on a group level, between 2004 and 2019. Where possible, I cross-checked the total compensation against those included in the audited financial statements of BCS, and the total number of employees against the submissions BCS made to the Inland Revenue Authority of Singapore …
>
> 2.29 In reference to the total compensation costs, I note that:
>
> …
>
> > (3) I have requested the Defendants to provide additional documents including but not limited to employment records, salary slips and annual compensation letters of the employees over the period 2002 to 2019 to verify the compensation figures. *However, no such information has been provided to me as of the date of this report.*
>
> …

43 Arora 1 at pp 25–28 (JBOD Vol A6 at p 3303–3306).

> 2.33 In light of the above, *assuming that the work performed by BCS employees for the Ethocyn business was equivalent to that of one and half full-time employees between 2002 and 2019, and that the average compensation per employee is indicative of those that performed work for the Ethocyn business,* an annual cost charge of USD 150k appears reasonable. As a result, I consider this category 'Verified'.
>
> [emphasis added]

71 Far from supporting the Defendants' case on these deductions, Mr Arora's report shows that the sum of US$150,000 per year was not based on any actual valuation of the services, but based on various untested assumptions. First, Mr Arora was not able to verify the scope of services provided by BCS employees. Instead, the calculation was based on the *assumption* (provided by the Defendants themselves) that the services amounted to the annual work of one and a half full-time employees. This assumption remained unverified. Secondly, the calculation of US$150,000 was based on the assumption that the figures for compensation provided by the Defendants were accurate, given that the Defendants had not provided any specific documentation like employment records, salary slips or annual compensation letters. Thirdly, this was also based on the methodological assumption that "the average compensation per employee is indicative of those that performed work for the Ethocyn business", *ie*, that the employees who provided that work were compensated along the lines of the average compensation per employee. Fourthly, a further assumption (implicit in the above), is that it was appropriate to draw an equivalence between the value of services provided and the compensation paid by BCS to its own employees. This, however, is open to question given the absence of any evidence as to whether any agreement was entered for BCS to provide these services and the fees for those services.

72 Further, even if the services were provided and the services cost US$150,000 per year, that is very different from establishing that Chantal in

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fact authorised BCS (expressly or implicitly) to deduct *this very sum* from the Trust Moneys every year. There is no evidence whatsoever of this. Indeed, the fact that the Defendants have had to resort to the speculative exercise described above suggests that there *was no* clear figure given to the fees that BCS would be allowed to charge for the services rendered to the Ethocyn business or that BCS would be able to claim back as expenses incurred. In the absence of such a clear figure at all, it is difficult to conclude that Chantal had authorised these deductions from the Trust Moneys. Instead, this appears to be an *ex post facto* attempt by the Defendants to claim more moneys out of the Trust based on what they believed to be the value of the services rendered (assuming that they were indeed rendered) from 2002 onwards. In this regard, it does not help the Defendants to characterise these as payments for personnel and administrative costs. What the Defendants are seeking to do is, in effect, retrospectively identify a cost to be attributed to the services provided by BCS. This is, in substance, a matter of compensation for services, which would be prohibited unless authorisation had been given (see [46] above), not an indemnity for expenses incurred.

73 For these reasons, these deductions are not allowed. These entries amounting to US$2.7m should be falsified.

(5) Payments relating to Legendary Cosmetics, Your World Media and BCS Pharma for a total of US$287,212.31

74 These payments pertain to the following payments relating to the respective companies:

(a) payments relating to Legendary Cosmetics Pte Ltd ("Legendary Cosmetics") amounting to US$59,145.57 (50 payments from July 2007 to 31 December 2016);

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(b) payments relating to Your World Media amounting to US$109,334.51 (34 payments from 15 October 2009 to 30 June 2017); and

(c) payments relating to BCS Pharma Pte Ltd amounting to US$118,732.23 (24 payments from November 2012 to June 2017).

75 In respect of these payments, it does not appear to be disputed that these payments were actually made.[44] The Defendants' case is that these companies were incorporated at Chantal's request, and that the expenses were properly incurred for the operational and administrative expenses of these companies, which the Defendants are entitled to be reimbursed as they were acting on Chantal's instructions in setting up these companies.[45] Baker does not appear to dispute that these companies were incorporated at Chantal's requests, but argues that (a) there is no documentary evidence that Chantal authorised these payments; (b) the Defendants have failed to explain what role these companies had in the Ethocyn business and the businesses conducted by these companies.[46]

76 In our judgment, these entries should not be falsified. There is sufficient documentary evidence that Chantal had in fact requested or approved the incorporation of these companies.[47] For example, in relation to Your World Media, Weber had sent an email on 20 August 2009, stating:[48]

Dear Chantal,

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44 See Defendants' Written Submissions (SUM 25) at para 79; Plaintiff's Written Submissions (SUM 25) at para 95.

45 See Defendants' Written Submissions (SUM 25) at paras 81–87.

46 Plaintiff's Written Submissions (Sum 25) at paras 95–98.

47 See Defendants' Written Submissions (SUM 25) at para 82.

48 JBOD Vol A5 at p 2706.

> First of all the name
>
> YOUR WORLD MEDIA PTE.LTD. Singapore
>
> is free. We can proceed to found.
>
> If you are fine: …

The fact that Your World Media was then incorporated strongly suggests that this was done on Chantal's instructions. As another example, in relation to BCS Pharma Pte Ltd, Chantal had written to Weber on 27 June 2011 asking:[49]

> Question: is it possible for you to form a subsidiary of BCS Business Consulting Services Pte. Ltd in Singapore called BCS Pharma Pte. Ltd?

77 Baker does not appear to dispute that Chantal did request or approve the incorporation of these companies. Contrary to Baker's submissions, however, we think that it follows from Chantal's requests and approval of the incorporation of these entities that she must have approved (either expressly or implicitly) the necessary payments for the administration and operation of these companies. It must follow from the direction that these companies be set up and, in the absence of any direction to wind these companies up, maintained that the necessary expenses incurred in that process also be paid. We also find that there is evidence that some (even if not all) of the expenses were brought to Chantal's attention,[50] and that the absence of any objection corroborates this view that Chantal approved of the expenses necessary to set up and maintain these companies.[51]

78 Baker's argument that the Defendants have not shown what role these companies had in the Ethocyn business, or that the income of these companies

[49] JBOD Vol A9 at p 5234.

[50] See Defendants' Written Submissions (SUM 25) at para 85.

[51] See Transcript 23 September 2021 at p 141, ln 1–7.

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was not accounted for, is not entirely apposite. First, we note that a degree of opacity in the corporate structure of the Ethocyn business was a feature of Chantal's business activities, and the mere fact that Baker claims not to have heard of these companies is neither here nor there. Secondly, it is not the Defendants' case that these deductions were for the Ethocyn business *per se*, but that there were operational expenses consisting of the necessary fees and disbursements for the general and administrative costs of the companies, including filing, book-keeping, and secretarial fees.[52] As such, the role that these companies played is not directly relevant to the expenses claimed.

79 Baker has not put forward any substantive arguments on the actual expenses claimed. Hence, we are of the view that the Defendants have discharged their burden of justifying these deductions, and conclude that these entries should not be falsified.

(6) Payments to Dev Service SA for a total of US$9,523.65

80 This category concerns three payments made to Dev Service SA ("Dev"). For context, Dev had purchased a property in the US which the parties refer to as the "Arrowhead Property", although the beneficial ownership of the Arrowhead Property appears to have been a matter of some dispute between the parties. These payments were allegedly made as follows:

(a) payment of commission of US$4,267.27 to Dev in connection with the acquisition and holding of the Arrowhead Property for 1 January 2014 to 31 December 2014 (S/N 329);

52 Defendants' Written Submissions (SUM 25) at para 84.

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(b) payment of commission of US$4,070.70 to Dev for the same purpose (concerning the Arrowhead Property) for 1 January 2015 to 31 December 2015 (S/N 362); and

(c) a payment of US$1,185.68 to Dev (S/N 372), in respect of which the Defendants concede that they have been unable to find further supporting information or documents.

81 Baker argues that Dev did not provide any services in respect of the Arrowhead Property, and that it was in fact Baker himself who managed the matters relating to that property. In relation to the third payment, Baker highlights the Defendants' failure to provide supporting information or documents.[53]

82 We agree with Baker that the third of these entries, in respect of the payment of US$1,185.68 (S/N 372), should certainly be falsified. The third entry is not justified by any documentation, and there has been no attempt to explain why the expense was incurred – as the burden of proof lies on the Defendants, there is no basis for the deduction and the entry must be falsified.

83 As for the other two entries, we also agree with Baker that the entries should be falsified. It is Baker's case that Dev was the legal owner of the Arrowhead Property, which was held on trust for Chantal.[54] Baker claims that he was the one handling the matters relating to the Arrowhead Property, and that Dev did not have to pay any expenses or provide any services in relation to its holding of the property.[55] Although Weber refers to an email sent by Chantal

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53 Plaintiff's Written Submissions (SUM 25) at paras 100–103.

54 Baker 23 at para 31 (JBOD Vol A5 at p 2354).

55 Baker 23 at para 30 (JBOD Vol A5 at p 2354).

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to himself dated 25 March 2013 in which Chantal requested a Power of Attorney from Dev in respect of the Arrowhead Property,[56] we think that this email in fact supports Baker's case that he was involved in the management of the Arrowhead Property and was given the power of attorney for that reason. Furthermore, we observe that Dev had commenced proceedings in the US claiming that the Arrowhead Property was held on trust for Weber.[57] Indeed, Weber noted that the Defendants' position had been that *they* were the beneficial owners of the Arrowhead Property.[58] This contradicts the claim that Dev should be entitled to commission paid out of the Trust Moneys. Hence, in the absence of evidence contradicting Baker's claim that Dev did not in fact provide any services for the Arrowhead Property, we do not think that the Defendants have satisfied the burden of proof to show that these payments were properly made.

(7) Payments relating to BCS Cosmetics Ltd for a total of US$1,141,767.97

84 This category pertains to S/Ns 403, 412 and 415 of the "Outgoings" in the Combined Account, on 24 October 2016 (US$22,079.52), 23 February 2017 (US$511,920, described as being for share capital and reimbursement), and 18 May 2017 (US$607,768.45, described as being for share capital) respectively.

85 The Defendants' case is that BCS Cosmetics Ltd ("BCS Cosmetics") was a company incorporated in Ireland on 22 June 2016 for the purpose of the transfer of the Ethocyn business to Ireland, following a request by Chantal and Heika Burnison ("Heika"), one of Chantal's daughters, for this to be done. Hence, the payment of US$1,141,767.97 was "clearly for the purpose of the

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56 See the ABOD tendered at trial at p 3075.

57 Baker 23 at para 31 (JBOD Vol A5 at pp 2354–2355).

58 Weber 20 at para 36 (JBOD Vol A3 at p 1148–1149).

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Ethocyn business".[59] Baker, however, argues that (a) there is no evidence that Chantal or Heika had asked the Defendants to set up BCS Cosmetics or to transfer these sums to BCS Cosmetics; (b) the supposed transfer of the Ethocyn business did not actually take place; (c) the Estate is not carrying out any Ethocyn business through BCS Cosmetics; and (d) the payments were made after Chantal's death, but Baker has not authorised any payments to BCS Cosmetics.[60]

86 This court had in fact previously found that there was some evidence of an arrangement for the Trust Assets to be transferred to an Irish company. We quote the relevant parts of our Judgment as follows:

> 181 … Johnson stated in his AEIC that there were discussions at the 12 December 2016 Meeting regarding the transfer of the alleged Trust Assets/Moneys from the Defendants to the Estate via an Irish company, instead of the Foundation, for the purposes of protecting Weber from potential tax liabilities. This was confirmed by Heika in her AEIC. Heika explained in her AEIC that the Irish company would purchase all the alleged Trust Assets and Trust Moneys from the Defendants. …
>
> …
>
> 185 More importantly, we find the Skype Conversation to be consistent with the Estate's case. In the Skype Conversation, Wehinger confirmed that the Defendants proposed the incorporation of a new company in Ireland to hold the alleged Trust Assets for Heika and Birka. In the Skype Conversation, Wehinger mentioned that Heika and Birka will become the 'beneficial owners':
>
>> URS WEHINGER: …Now, one proposal was the -- the forming -- the formation of a company in Dublin, nows [*sic*] -- in -- in – in Ireland. And then he would become a first subscriber and you and your sister would become the -- the other subscriber … *And then we would*

59 Defendants' Written Submissions (SUM 25) at para 92.

60 Plaintiffs' Written Submissions (SUM 25) at paras 104–105.

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> *actually transfer the funds into the -- in -- into the Dublin company*.... But the idea is really that sooner or later, you and your sister will -- will become the -- the beneficial owners.
>
> …
>
> HEIKA BURNISON: … I mean, is that the idea? Essentially? *That everything that's in Singapore now would go to Ireland?*
>
> URS WEHINGER: Which go -- would be shifted to Ireland, yes. But the way how it is -- it can be done is still an open issue.
>
> …

[emphasis in original]

87 The Defendants also point to an email from Chantal dated 29 June 2016 which referred to "bcs in ireland",[61] which most likely refers to BCS Cosmetics. For these reasons, we think that it is sufficiently established that there were plans to move the Ethocyn business to an Irish company, and that BCS Cosmetics was set up for that purpose.

88 In the light of these facts, we find that S/N 403, the transfer of US$22,079.52 to BCS Cosmetics, has been adequately justified as being an expense incurred for the purpose of giving effect to the plan to transfer the assets and moneys to Ireland. At this point in time, around 24 October 2016, it was not yet clear that Weber would act contrary to the Trust, and this sum can be properly deducted from the Trust as an expense.

89 However, the fact remains that this transfer to BCS Cosmetics was never effected, and the present proceedings were commenced on 20 November 2017. In other words, based on the evidence before this court, it appears that BCS Cosmetics did not eventually carry out the Ethocyn business as the Trust Assets

[61] Weber 21 at p 308 (JBOD Vol A9 at p 5236).

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were not transferred to it. In our judgment, the entries for the latter two payments (S/Ns 412 and 415) in February and May 2017 respectively should be falsified. First, the timing of these payments is telling. By this time, the 12 December 2016 Meeting (see the Judgment at [181]) had already taken place, at which, according to Heika, Weber claimed for the first time that the Trust Assets and Trust Moneys belonged to him. Indeed, the Defendants' case at trial concerning the 12 December 2016 Meeting was that it was a discussion concerning Heika's interest in acquiring the Ethocyn business from BCS or Weber at arm's length, a claim that was rejected by this court at [182] of the Judgment. It follows that, in truth, by this time, Weber was already acting in breach of the Trust. Secondly, it appears that although there was some plan for an Irish company to be used to transfer the Trust Assets and Trust Moneys to the Estate, this was never done and the Trust Assets and Trust Moneys were not transferred to the Estate (see the Judgment at [186]). The inference to be drawn is that the payments were not in fact properly made for the purpose of the Ethocyn business, since the plans involving BCS Cosmetics were not followed through with. Thirdly, the Defendants' case that these sums of money (totalling over US$1.1m) was for "share capital" is not justified by any documents or evidence (since the documents presented only show that the sums were transferred out *to* BCS Cosmetics,[62] without showing what the sums were used for). Indeed, the only other documentation shows that it was Weber who gave instructions to the employees at BCS to effect the transfer.[63]

90 The difference between the two later payments and the first of these payments (S/N 403 on 24 October 2016) lies in the dates and the possibility that

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62 See Weber's 19th Affidavit (dated 13 October 2020) ("Weber 19") at pp 1098, 1111–1113 (JBOD Vol A2 at pp 1098, 1111–1113).

63 JBOD Vol A2 at p 1113.

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these were in fact properly incurred for the purposes of a transfer of the Ethocyn business to BCS Cosmetics, pursuant to the discussions as referred to at [86] above. We therefore conclude that the entries S/Ns 412 and 415 should be falsified.

(8) Expenses incurred by Renslade (S) and BCS for a total of US$17,217.15

91 This category pertains to expenses incurred by Renslade (S) for a total of US$8,716.73 and payments made to BCS for a total of US$8,500.42.

92 The breakdown of each of these expenses incurred by Renslade (S) is as follows:[64]

S/N	Date	Description	Amount (US$)
(a)	28 September 2000	BCS service fee for July to September, and incorporation work	3,174.97
(b)	28 September 2000	Loan to Legendary Cosmetics for invoices payment	2,770.88
(c)	28 September 2000	Loan to Power Post Productions Pte Ltd ("Power Post") for invoices payment	2,770.88
		Total	8,716.73

93 The Defendants argue that these were expenses incurred as a result of the operations of these companies, and that these were also loans to two companies, Legendary Cosmetics and Power Post, which were companies set

64 Weber 21 at para 60 (JBOD Vol A9 at pp 4965–4966).

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up on Chantal's instructions.[65] Baker argues that no records have been produced showing that Chantal had authorised these payments.[66]

94 These expenses were reflected in an expense report dated 11 October 2000 and sent to Chantal.[67] In our view, this is *prima facie* evidence of Chantal's approval of these expenses – the fact is that Chantal was given a report of these expenses, and despite the absence of written confirmation of approval, this is evidence from which it can be inferred that Chantal did approve the transactions. This is buttressed by the fact that Chantal was aware of Legendary Cosmetics and Power Post, and had received various emails concerning the business of these two companies.[68] Specifically, some of these emails referred specifically to invoices due to be paid by Legendary Cosmetics and Power Post. Indeed, on 21 September 2000, Chantal received an email in which she was updated with the following:[69]

> 5) Legendary & Power Post bank accounts
>
> The bank applications has [*sic*] been submitted. We are now waiting for the confirmation letter and account details. For your info, these 2 USD bank accounts has been started with an initial deposit of USD 2,500 each, with monies taken out of the Renslade SIN account.

We therefore think that the Defendants have discharged their burden of justifying these deductions.

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65 Defendants' Written Submissions (SUM 25) at para 85.

66 Plaintiffs' Written Submissions (SUM 25) at para 108.

67 Weber 21 at pp 302–303 (JBOD Vol A9 at pp 5230–5231).

68 See Weber 21 at pp 299–301 (JBOD Vol A9 at pp 5227–5229).

69 JBOD Vol A9 at p 5229. See also Transcript 24 September 2021 at pp 24–26.

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95 In relation to the payments to BCS (S/N (a) of the table at [92] above and the US$8,500.42 paid to BCS), for the reasons that we have elaborated above, we find that these payments to BCS were justified. The evidence shows that these were amounts paid by Renslade (S) to BCS.[70] These pertained to the expenses relating to domiciliation, directorship, taxes, filings, and secretarial fees. Insofar as there is no indication that Chantal had directed that Renslade (S) be wound up or that all activities in relation to that company should cease, it appears that these fees were just part of the general administrative and operational expenses of the company. We therefore find that these deductions are justified.

96 For these reasons, we conclude that these entries should not be falsified.

(9) Payments to Wehinger for legal services for a total of US$24,629.38

97 This category concerns two payments that were made in relation to alleged legal services provided by Wehinger:

> (a) S/N 17 of the "Outgoings" in the Combined Account, referring to a payment of US$6,040.50 to Wehinger on 20 June 2001 allegedly for legal services provided in relation to the Ethocyn business; and
>
> (b) S/N 413 of the "Outgoings", referring to a payment of US$18,588.88 to Wehinger Kaelin Ferrari AG (Wehinger's firm) on 11 April 2017, allegedly for Wehinger's fees in meeting with Heika.

98 There is sufficient evidence that the payments were actually made. The question here is whether they were authorised or properly incurred.

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70 *Eg,* Weber 20 at pp 651–655 (JBOD Vol A4 at pp 1789–1793).

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99 In relation to S/N 17, the payment of US$6,040.50, we see no reason to falsify the entry. Baker's only objection is the standard objection based on the absence of documentary evidence of Chantal's authorisation. However, in this instance, we think that the natural inference is that Wehinger was indeed providing legal services in relation to the Ethocyn business, and Chantal would likely have approved it (expressly or impliedly) in the process of conducting the Ethocyn business. This was in 2001, when relations were good between the various parties. As we observed at [98] of the Judgment, Chantal and Wehinger shared a working relationship from as early as 10 August 1989, and Wehinger was assisting Chantal in the Ethocyn business. The sum is not so significant relative to the Trust Assets and Trust Moneys as to warrant any doubt as to the veracity of the expense. Further, although Wehinger has subsequently adopted a position that he was never engaged by Chantal, it is sufficiently clear, on the facts before this court, that at around 2001, Wehinger was working with Chantal on the Ethocyn business, since Wehinger had confirmed in March 2000 that he, together with Weber, would support her business and assist with setting up the necessary corporate structure in Singapore (see the Judgment at [98]). Given our own clear findings in the Judgment, we proceed on this basis for the sum paid in 2001, and make an order consistent with the evidence before us. Wehinger's position elsewhere is more relevant when there is uncertainty in the evidence, or to periods when the relationship may have soured.

100 In relation to S/N 413, we begin by noting that the payment was made on 11 April 2017, after Chantal's death. As Baker notes, he was not approached for approval as the executor of the beneficiary Estate.[71] As such, *prima facie*, there is no authorisation for this payment unless it can be said that this was a

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71 Plaintiffs' Written Submissions (SUM 25) at para 111.

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continuation of a standing direction from Chantal prior to her passing. Further, we note that the invoice for these charges[72] is stated to be for the period 16 September 2016 to 11 April 2017. In that regard, we highlight material parts of our findings in relation to Wehinger:

(a) There was documentary evidence that was consistent with Chantal's view that Wehinger was acting for her (see the Judgment at [162]). While we declined to "determine the exact nature of Chantal's relationship with Wehinger (*ie*, whether he was in fact acting as Chantal's lawyer) as it is not an issue raised by the parties" (at [163]), this court observed that "Chantal believed that Wehinger was acting on her behalf and, on the evidence before [the court], Wehinger never disabused her of her belief" (at [163]).

(b) There was an agreement at the 12 December 2016 Meeting, at which Wehinger was present, for the Defendants to transfer the Trust Assets and/or Trust Moneys to the Estate via an Irish company, but this was not done (see the Judgment at [188(q)]). It is Baker's case that Wehinger had failed to act promptly and in doing so, supported the Defendants.[73]

101 At the same time, there is an ongoing suit in the US commenced by Baker against Wehinger, described by Weber as being based on Wehinger's "part in assisting Weber in his actions against Chantal and the Estate".[74] In that suit, Wehinger has filed a motion for the suit to be dismissed on the basis that

72 See Weber 20 at p 1173 (JBOD Vol A4 at p 2311).

73 Plaintiff's Written Submissions (SUM 25) at paras 113–114.

74 Baker's 27th Affidavit (dated 20 August 2021) ("Baker 27") at para 84 (JBOD Vol A10 at p 5904).

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the court lacked personal jurisdiction, or on the basis of *forum non conveniens*.[75] For present purposes, what is relevant is that Wehinger has adopted a position in that suit which clearly contradicts any attempt to recover any legal fees from Chantal or the Estate:[76]

> … Defendants … were never retained to provide such legal services for [Chantal] at any time, never actually provided such legal services to [Chantal], never had a contract with [Chantal], never obtained a power of attorney from [Chantal], never sent [Chantal] a bill and never received a single payment from [Chantal], again, at any time for such representation.

102 In the light of this contradictory evidence, and given the fact that at least after December 2016, there appears to be indication that Wehinger was not acting in the Estate's interests, we conclude that the entry at S/N 413 should be falsified. However, we clarify that this is based on a finding that the Defendants have *not proved* that the expense was properly incurred and authorised, rather than any *positive findings* concerning Wehinger's relationship with Chantal or Wehinger's alleged misconduct, which is a matter to be resolved in the ongoing proceedings against Wehinger.

(10) Payments of Renslade (HK)'s general and administrative expenses from 2007 to 2019 for a total of US$1,776,982.12

103 This dispute concerns various payments that Renslade (HK) allegedly made for its "general and administrative expenses", relating to S/Ns 83, 122, 159, 196, 232, 265, 306, 341, 379, 409, 421 and 423 of the outgoings in the Combined Account. These are entered into the Combined Account as annual entries, with some degree of breakdown into various categories of expenses. For

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75 Baker 24 at p 446 (JBOD Vol A5 at p 2977).

76 Baker 24 at p 454 (JBOD Vol A5 at p 2985).

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ease of reference, we set out the annual expenses identified in the Combined Account and the amount disputed by Baker in the following table:

S/N in Outgoings	Period	Amount (US$)	Amount disputed (US$)[77]
83	5 November 2007– 31 December 2008	18,441.00	17,544.00
122	2009	105,017.10	87,345.64
159	2010	98,123.28	89,712.00
196	2011 (and one payment in August 2012)	74,816.00	66,929.53
232	2012 (and one payment in July 2014)	355,830.00	100,519.53
265	2013	729,492.85	190,700.80
306	2014 (and one payment in 2015)	883,225.35	335,655.00
341	2015	418,600.42	293,789.00
379	2016	338,242.47	257,907.30
409	2017	182,645.19	178,155.19
421	2018	75,375.16	71,845.16
423	2019	90,900.97	86,878.97
Total		3,370,709.79	1,776,982.12

77 See Baker 23 at para 33 (JBOD Vol A5 at pp 2356–2367).

We also set out the parties' respective positions on the sub-categories of expenses incurred in each year in Annex A to this judgment.

104 The Defendants' case is that these expenses were incurred in the course of the Ethocyn business and with Chantal's knowledge. They note that these expenses have been verified by two sets of accountants: (a) the general and administrative expenses amounting to US$1,657,241.06 have been reflected in audited financial statements; and (b) an additional verification was undertaken by Mr Arora, confirming that US$1,686,631.47 amounted to properly verified expenses.[78] Baker's objections are largely based on the standard objection that there is an absence of documentary evidence showing Chantal's authorisation for the specific expenses. Further, he raises specific issues with particular outgoings, for example, a US$17,722.64 donation to Foundazione Eco Himalaya, payments to Dev and/or for the Arrowhead Property, bank charges for unauthorised transactions such as a CHF305,000 loan to Goldwing Investment Pte Ltd.[79] Further, payments were made in relation to a patent application that was filed without Chantal's or Baker's approval, and payments were accounted for to Heuking Kuhn Luer Wojtek ("HKLW"), which is Dr Ralf Wojtek's ("Wojtek's") law firm.[80] Other unexplained payments with contradictory explanations include US$3,500 as "staff incentives" which contradicted their claim that Renslade (HK) did not have employees of its own, and shareholding fees paid to BCS Connexion Services Pte Ltd ("BCS Connexion") which remains unexplained as Renslade (HK)'s sole shareholder was Weber and not BCS Connexion.[81]

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78 Defendants' Written Submissions (SUM 25) at paras 64–65.

79 Plaintiff's Written Submissions (SUM 25) at para 120.

80 Plaintiff's Written Submissions (SUM 25) at paras 122–123.

81 Plaintiff's Written Submissions (SUM 25) at paras 128–129.

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105 At the outset, we reiterate that the mere fact that the audited financial statements may refer to these expenses does not mean that they were properly incurred and that they should not be falsified. Similarly, Mr Arora's opinion that they are sufficiently supported by documentation does not resolve the issues that are before us for determination.

106 Our analysis below proceeds on the premise that Renslade (HK) was in fact the company which held the Trust Moneys beginning some time in 2007, after BCS/Weber retained a 5% commission/remuneration. That 95% of the revenue was channelled to Renslade (HK), which held the proceeds on trust (see the Judgment at [140(b)] and [223]). In our judgment, it follows that certain steps had to be taken for Renslade (HK)'s operations and administration, and that the expenses incurred in relation to those steps would be properly incurred. Baker appears to recognise this in that his objections do not extend to *all* of the expenses incurred by Renslade (HK). For example, he has not objected to deductions for auditor's fees, postage and courier expenses, printing and stationery, telephone charges and most of the travelling expenses incurred prior to 2017. However, Baker does maintain objections to other categories of alleged expenses. His position on these categories can be summarised according to the types of expenses. Given the level of specificity at which the parties have joined issue, we provide our findings at a similar degree of granularity, according to the categories of expenses rather than the year in which they were incurred.

(A) ADMINISTRATION, MANAGEMENT, REGISTERED OFFICE AND SECRETARIAL FEES

107 Although the administration, management, registered office and secretarial fees are listed separately in the Combined Account, we deal with these together as the evidence (from Renslade (HK)'s audited reports) shows

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that these fees were paid to BCS Connexion[82] or, from 2012 onwards, an unspecified related company (as the audited financial statements did not provide a further breakdown of the specific related company the fees were paid to). We are satisfied that these expenses were properly incurred for the purposes of the functioning of the Ethocyn business and Renslade (HK). These expenses seem to us to be part and parcel of the operational costs of a business. Baker has provided no reason to doubt that these were actually paid to these related companies, or that these services were not actually rendered. The absence of direct evidence of Chantal's approval of these expenses is not fatal to the Defendants' case here as these fees appear, on the face of it, to pertain to the operation of Renslade (HK), which Chantal was aware of and wished to continue (in the absence of any direction to stop Renslade (HK)'s operations). These entries should therefore not be falsified.

(B) BANK CHARGES AND OVERDRAFT CHARGES

108 We also find that the majority of the bank charges and overdraft charges were properly incurred. Baker's arguments in this regard are primarily that the Defendants have not shown that the bank charges were incurred in relation to transactions directed or approved by Chantal, and that there is no evidence of any authorisation for Renslade (HK) to maintain an overdraft account and to incur overdraft charges thereon. We disagree. While it is true that the Defendants bear the burden of proving that outgoings were properly incurred, we are satisfied that bank charges would be incurred in the normal operation of a business, especially a company which held significant funds and made a significant number of transfers. As for the overdraft account, we do not think it implausible that an overdraft may be incurred as part of the normal operation of

[82] Eg, Weber 20 at p 681; p 716 (JBOD Vol A4 at pp 1819, 1854).

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a company. On the whole, we are satisfied that the burden is sufficiently discharged given the inherent likelihood that these charges may be incurred in the course of operations.

109 As for the specific allegations of unauthorised transactions, however, we are prepared to make deductions accordingly. We proceed only on those transactions that have been highlighted to us given our views that bank charges would generally and normally be incurred in the course of an operational business. Two specific transactions have been highlighted by Baker. One is a transfer of US$50,000 to Your World Media. We do not think that this is ultimately unauthorised (see [118] below) and say no more in this regard. The other is a loan of CHF305,000 to one Goldwing Investment Pte Ltd ("Goldwing"). We agree that there is no indication of how Goldwing was related to the Ethocyn business, and note that the loan agreement with Goldwing that was tendered did have the preamble redacted. It is also telling that the loan agreement was signed by Weber for both sides.[83] The debit note for this sum transferred to Goldwing dated 12 October 2010 shows charges totalling US$107.69.[84] We falsify these entries only to the extent of US$107.69.

(C) BONDS CHARGE

110 This was a sum of US$14,145.00 declared as an expense in 2011. It does not appear that any justification or details have been provided in relation to this sum. Although it appears that Renslade (HK) held a net value of US$2,185,060 in bonds in 2011,[85] it is not apparent that the income from the bonds has ever been accounted for or that these investments were specifically authorised by

83 See Baker 27 at p 317 (JBOD Vol A10 at p 6187).

84 Baker 24 at p 139 (JBOD Vol A5 at p 2739).

85 Weber 20 at p 713 (JBOD Vol A4 at p 1851).

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Chantal. While there was some reference to bonds purchased in 2014,[86] this was a few years after this expense was declared. Given that it is unclear what these bonds were and how they related to the Ethocyn business, this casts doubt on the propriety of charging this expense to the Trust. This expense should therefore be falsified.

(D) CUSTODIAN FEE

111 Custodian fees were paid for in 2015, 2016, 2017, 2018, and 2019,[87] amounting to a total of US$106,698. However, no indication is given of what these custodian fees were for, which is surprising given that these expenses were incurred relatively recently. Insofar as they pertain to investments that Renslade (HK) may have made, we think that these should not be deducted as there is no indication that the profits for the investments were accounted for. Unlike other expenses like administration and secretarial fees, we are unable to arrive at any conclusion on the nature and purpose of these expenses from the face of the financial statements. The absence of any real explanation as to the purpose of these fees justifies falsification of these entries.

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86 Weber 20 at para 50 (JBOD Vol A3 at p 1153).

87 See Weber 20 at pp 1012, 1066, 1115, 1145 and 1164 (JBOD Vol A4 at pp 2150, 2204, 2253, 2283 and 2302).

(E) DIRECTOR'S FEES

112 Directors' fees were paid in 2007–2008,[88] 2009,[89] 2010,[90] 2011,[91] and 2013,[92] amounting to a total of US$26,139.97. This coincided with the periods in which Weber,[93] one Mr Teo Kim Por[94] and one Mr Ang Meng Hai Markus David were appointed as directors.[95] Although Weber has provided these financial statements showing payments to directors, it is not clear to whom the payments were made and whether there were any underlying approvals by Chantal for these payments.[96] Unlike business expenses for the operation of a company, directors' fees are not a necessity and cannot be inferred to have been approved simply because of the company was operational, and unless express approval can be shown for these fees to be charged to Renslade (HK), we conclude that these entries should be falsified.

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88 JBOD Vol A4 at p 1747.

89 JBOD Vol A4 at p 1772.

90 JBOD Vol A4 at p 1815.

91 JBOD Vol A4 at p 1850. No directors' remuneration paid in 2012: JBOD Vol A4 at p 1890.

92 Weber 21 at p 28 (JBOD Vol A9 at p 4956).

93 Appointed 30 November 2007: see JBOD Vol A4 at p 1739, until October 2012: see JBOD Vol A4 at p 1880.

94 Appointed 30 November 2007: see JBOD Vol A4 at p 1739, until 2011: see JBOD Vol A4 at p 1807.

95 Appointed 16 May 2011: see JBOD Vol A4 at p 1807, until October 2012: see JBOD Vol A4 at p 1880.

96 See Baker 23 at p 134 (JBOD Vol A5 at p 2474); Weber 19 at pp 6–29 (JBOD Vol A1 at pp 6–29).

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(F) EXCHANGE LOSSES

113 These exchange losses were identified in the financial statements for 2012, 2014, 2015, 2016, 2018, and 2019. The explanatory notes to the financial statements explain the following relating to foreign exchange:[97]

> Foreign currency transactions are converted at the exchange rate applicable at the transaction date. Foreign currency monetary items are translated into Hong Kong Dollars using exchange rates applicable at the balance sheet date. Gains and losses on foreign exchange are recognised in the income statement.

114 Although the specific transactions are not identified, given the multiple jurisdictions involved in the Ethocyn business and the large sums of money transferred over time, we consider that such losses can be considered part and parcel of the operation of Renslade (HK) as a business, and, on that basis, the Defendants have discharged their burden. We do not see a reason to falsify these entries.

(G) MARKETING FEES

115 These marketing fees were paid to Legendary Cosmetics.[98] As indicated in the Combined Accounts (at S/N 97), the Defendants' case is that "[t]he marketing fee charged by Legendary Cosmetics to Renslade [(S)] or Renslade HK (as the case may be) was for Legendary Cosmetics to be placed with funds for the operation costs to maintain the company."[99] As discussed at [76]–[77] and [93]–[94] above, we agree with the Defendants that Chantal had requested that Legendary Cosmetics be set up, and hence, that there was at the very least

97 See Weber 20 at p 937 (JBOD Vol A4 at p 2075) (2014 financial statement). The other financial statements contain similar notes.

98 *Eg*, Weber 20 at p 681; p 719 (JBOD Vol A4 at pp 1819 and 1857).

99 Weber 20 at p 498 (JBOD Vol 3 at p 1636).

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implicit approval of any costs that were necessary for the operations of that company. Although further details of what Legendary Cosmetics did are not provided, we do not find that is fatal to the Defendants' case given the clear evidence that Chantal had approved the setting up and operation of Legendary Cosmetics. We conclude that these entries should not be falsified.

(H) LEGAL AND PROFESSIONAL FEES

116 In general, we accept that professional fees would be part of the expenses incurred in the operation of Renslade (HK). While Baker has sought to falsify expenses relating to fees paid for patent services in 2017 to 2019, we do not think these expenses should be falsified.[100] We are satisfied that they were incurred for the purpose of maintaining the Ethocyn Rights in various jurisdictions, and given that the Estate will have the benefit of the Ethocyn Rights, we do not think it is right not to charge the expenses relating to these patents to the Trust Moneys.

117 However, there are specific instances where the objections raised by Baker warrant falsification. First, insofar as any payments were made to Dev for the reasons we canvassed above at [83], we do not think any payment is justified. This objection pertains to payments of (a) US$2,260.70 in 2010;[101] (b) US$4,154.53 in 2011;[102] (c) US$3,899.65 in 2012;[103] and (d) $4,173.53 in 2013.[104] These entries, totalling US$14,488.41, should be falsified. Secondly, insofar as any payments were made to HKLW, being Wojtek's law firm, in 2016

100 Baker 27 at paras 39–40.

101 Weber 19 at p 266 (JBOD Vol A1 at p 266).

102 Weber 19 at p 330 (JBOD Vol A1 at p 330).

103 Weber 21 at p 27 (JBOD Vol A9 at p 4955).

104 Weber 19 at p 488 (JBOD Vol A1 at p 488).

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and onwards, we think that these should be falsified as well, for the same reasons as discussed in relation to Wehinger's fees (see [101]–[102] above). In our view, there is sufficient basis on which for us to conclude that around 2016 onwards, Wojtek was not acting in the interests of the Trust – indeed, we found at [181] of the Judgment that Wojtek was representing BCS at the 12 December 2016 Meeting. Even though the Defendants claim that these services were incurred in connection with the Ethocyn business,[105] we ultimately consider that the period of time when these services were allegedly rendered gives rise to the inference that even if the services were done for the Ethocyn business, they were ultimately done so for the Defendants' benefit. As a matter of fairness, we see no reason why these should be charged to the Trust's account. Hence, while we will allow the deduction for payments made in 2016 (since it is not clear when in 2016 Wojtek began to act exclusively for the Defendants at the Estate's expense), we will not allow a deduction of the payments to HKLW in 2017. We note here that in an earlier version of the account, the Defendants had identified four payments to HKLW in 2017 totalling US$80,333.48:[106] (a) US$26,024.30 on 24 January 2017; (b) US$16,174.42 on 16 March 2017; (c) US$18,600.45 on 26 April 2017; and (d) US$19,534.31 on 21 June 2017.[107] The first of these was placed under the legal and professional fees paid by Renslade (HK) in 2016 in the Combined Account, although it was in fact paid out in January 2017.[108] It appears to us that the remaining three were placed under the legal professional fees paid on 2017.[109] Given our reasoning above, we therefore falsify these entries to the extent of US$80,333.48.

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105 Weber 20 at para 45 (JBOD Vol A3 at p 1151–1152).

106 Weber 20 at para 44 (JBOD Vol A3 at p 1151).

107 See Weber 19 at p 28 (JBOD Vol A1 at p 28).

108 See S/N 379, Weber 20 at p 532 (JBOD Vol A3 at p 1670).

109 See S/N 409, Weber 20 at p 536 (JBOD Vol A3 at p 1674).

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(I) LOAN WRITTEN OFF

118 In 2017, the financial statement reflects a loan to a related company of US$50,000 being written off. Based on the details provided of the loans to related companies, it appears that this was a US$50,000 loan to Your World Media.[110] This loan appears on the financial statements from 2010.[111] That the loan was extended sometime in 2010 is also corroborated by the debit note dated 3 March 2010 showing a transfer of US$50,000 in favour of Your World Media.[112] For the reasons noted at [76] above, we find that there is sufficient basis to conclude that Chantal had requested Your World Media to be set up and that expenses would be incurred by that company. While the specific purpose of the loan of US$50,000 is unclear, it appears sufficiently likely to have been part of the funds needed to operate and sustain Your World Media. Although there is no evidence that Chantal had specifically approved the writing off of this loan, given that this was a sum provided to a related company, this suggests that the loan was not intended to be repaid in the first place. We are satisfied that the burden of proof has been satisfied in relation to this sum, which should not be falsified.

(J) PROVISION FOR BAD DEBT

119 One provision for bad debt is shown in the audited financial statements for the year ending 31 December 2013, for the sum of US$117,384. In context, this appears to be a bad debt that was owed by Renslade Holdings Pte Ltd, *ie*, Renslade (S).[113] This loan appears to have been present as early as 2009,

[110] Weber 20 at p 1110 (JBOD Vol A4 at p 2248).

[111] Weber 20 at p 679 (JBOD Vol A4 at p 1817).

[112] JBOD Vol A5 at p 2733.

[113] Weber 20 at p 897 (JBOD Vol A4 at p 2035).

beginning with a loan of US$109,498.[114] For similar reasons as above, we think that the internal transfers of money are not so far from the operation of the Ethocyn business and Renslade (HK) as to warrant a falsification of this entry. For similar reasons, the provision for bad debt in 2014 for the sum of US$7,322, relating also to Renslade (S) appears to be justified.[115] We find that the Defendants have satisfactorily discharged their burden of proof on the face of the documents and in the context of what else we know of the Ethocyn business.

(K) TRAVELLING EXPENSES

120 Baker has not objected to the travelling expenses charged to Renslade (HK) before 2017, but objects to the entries in 2017 and 2019. We agree with Baker that these entries should be falsified. It is clear to us that at least from 2017 onwards, the Defendants had adopted a position fundamentally contrary to their duty as trustees. As we noted at [19] above, this means that we should subject the expenses incurred at around this time to a higher degree of scrutiny. We have not been provided with any evidence of the purposes of these trips, or how they may have contributed to the Ethocyn business. Indeed, as Ms Woo highlighted in her submissions, it was not clear why there was a need to travel to Germany, for example, as there was no Ethocyn business there.[116] In the circumstances, we are unable to conclude that the Defendants have discharged their burden of proof, and find that these expenses, which total US$6,189 (being the sum of US$1,623[117] and US$4,566[118]) should be falsified.

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114 Weber 20 at p 680 (JBOD Vol A4 at p 1818).

115 Weber 20 at p 942 (JBOD Vol A4 at p 2080).

116 See Transcript 24 September 2021 at p 83, ln 25–28.

117 Weber 20 at p 1115 (JBOD A4 at p 2253).

118 Weber 20 at p 1164 (JBOD A4 at p 2302).

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(L) WITHHOLDING TAX

121 Withholding tax was provided for in 2014 to 2018. We accept that such tax appears to be part of the normal operation of the business of Renslade (HK). In the absence of any specific allegation concerning these amounts, we do not think that the Defendants have failed to discharge their burden to justify these outgoings.

(M) DONATION TO FONDAZIONE ECO HIMALAYA

122 The Defendants argue that this sum of US$17,722.64 was transferred on Chantal's instructions.[119] However, in the absence of specific evidence of this request, the absence of any connection to the Ethocyn business and given the absence of any other evidence upon which the inference of instructions or approval may be drawn, we conclude that the Defendants have not discharged their burden of justifying this outgoing.

(N) CONCLUSION CONCERNING RENSLADE (HK)'S EXPENSES

123 Based on our findings above, the total amount to be falsified from these entries would be US$265,824.19, being the sum of US$107.69, US$14,145.00, US$106,698, US$26,139.97, US$14,488.41, US$80,333.48, US$6,189 and US$17,722.64.

(11) Payment of 5% commission/remuneration to Weber for US$2m paid by Nu Skin to BCS Pharma Corporation

124 The dispute here concerns US$2m that was allegedly paid by Nu Skin to BCS Pharma Corporation instead of BCS. This is related to the claims that BCS had brought in the US, and which forms the subject of the anti-suit

[119] Defendants' Written Submissions (SUM 25) at paras 72–73.

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injunction, which we discuss in our judgment relating to that application in SIC/SUM 37/2021, *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Ltd and others* [2021] SGHC(I) 14. In these proceedings, Baker recognises that the US$2m was indeed Trust Moneys. However, he takes the position that because Weber had breached his duties by the time of the payment of US$2m in 2018, he has foregone any right to compensation.[120]

125 We note that the outcome of the US proceedings does not affect the narrow question of whether Weber is entitled to a 5% commission/remuneration for the US$2m paid by Nu Skin, which was intercepted and transferred to BCS Pharma Corporation instead. This is because Baker concedes throughout that these are Trust Moneys. Hence, the only question here is whether Weber is still entitled to the 5% commission/remuneration in 2018.

126 In our view, by 2018, Weber was not entitled to any commission or remuneration on the US$2m. The learned authors of *Lewin on Trusts* at para 20–034 opine as follows:

> … [A] principle has been developed in the context of agents and other fiduciaries, which we consider applies also to trustees, that where an agent or other fiduciary commits a breach of a serious character, the remuneration from the time of the breach, whether or not paid, is forfeited, even though no loss has been caused to the principal and even though the services rendered are valuable. A breach is of a serious character for this purpose where it involves a bribe, misappropriation of property or a breach of fiduciary duty going to the root of the relationship, and is not merely an innocent or collateral breach. …

120 Plaintiff's Written Submissions (SUM 25) at paras 131–133.

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127 The Defendants have not cited any contrary authority or disputed this principle. Their argument here is simply that this argument "is clearly an afterthought".[121] However, this misses the point. The issue of whether Weber is entitled to 5% of this particular transaction was not a question to be determined at trial. This is the appropriate point at which the objection is taken. We think that the principle put forward by Baker is sound – in this case, Weber had asserted his own interest contrary to the interest of the beneficiary, and in doing so, effectively denied the existence of the trust. From that point onwards, there is no basis on which Weber should be allowed to take the benefit of the alternative, that even if his denial of the trust is incorrect, he should be allowed to deduct his commission/remuneration as usual. The very denial of the trust is as fundamental a breach as can happen. We therefore conclude that S/N 426, for US$100,000, should be falsified.

(12) Other outgoings including miscellaneous costs and expenses to a sum of US$3,659,469.30

128 One of the final categories consists of a single entry (S/N 430) listed as "Other outgoings, including miscellaneous costs and expenses", amounting to US$3,659,469.30. The Defendants concede that supporting documents have not been located for these expenses. However, they maintain that these expenses were incurred and provide a number of examples:

(a) Weber provided consulting services "to develop and expand the Ethocyn business that were clearly outside and beyond the scope of the services of a trustee". Weber claimed that his hourly rate was US$400 from 2000 to 2010 and US$500 from 2001 to the present. For example, between 2000 and 2002, he assisted with the work necessary to review

121 Defendants' Written Submissions at para 98.

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a new facility in Budapest, closing that facility, and finding another location for an Ethocyn purification laboratory. In 2000 and 2001, he advised Chantal with respect to the preparation of distribution agreements between different companies. He also provided advice "on all relevant business decisions", helped to expand the business, including expanding into more international market, assisted to find potential packaging and filling suppliers in China in 2013–2014, making business plans for building a production and distribution facility in Europe, providing services in relation to the Nu Skin SDA, making contacts for Chantal in various countries, establishing multiple companies, planning for the transfer of the Ethocyn business to Ireland, discussing the establishment of a foundation, and having meetings with Chantal and her daughters.[122]

(b) This sum also included general and administration expenses incurred by Renslade (S) for the Ethocyn business for 2000 to 2007, totalling around US$1.03m. As this company has been wound up and the records destroyed "after the end of the statutory retention period", Weber claimed that he was unable to provide a breakdown of the expenses incurred. However, the US$1.03m was derived from a comparison with the expenses incurred by Renslade (HK) from 2007 to 2019, which averaged US$147,405.13 per year. Multiplying that by 7 years, the Defendants arrived at the sum of US$1.03m.[123]

(c) Personal expenses were incurred including medical fees relating to Birka Burnison's accident in India in or around 2016, and a payment

122 Weber 21 at paras 86–100 (JBOD Vol A9 at pp 4979–4988).

123 Weber 21 at para 101.

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of US$340,000 in or around 2010 in relation to a blackmailing incident involving Heika.[124] The latter, in particular, was upon Chantal's instructions.

(d) Expenses of about US$50,000 were expended in the establishment of the Amarillis Foundation.[125]

129 We begin with a general observation that the total sum of US$3,659,469.30, of which no breakdown has been provided, is *prima facie* suspicious given that the accounts neatly resulted in no money being owed by the Defendants to Baker. When asked about this coincidence, Ms Chong submitted that this was not a case of backward engineering, but that everything was (or, at least, must have been) spent for the purpose of the Ethocyn business.[126] While the specific expenses under this category included estimations, these were extrapolations from other sources of information. We are not ultimately convinced by this explanation. While we have been willing to allow deductions on the basis of other evidence which has established to our satisfaction that certain deductions were properly incurred, even in the absence of clear documentary evidence of approval or instruction, this cannot go so far as to allow the Defendants' wish to claim broad swathes of expenses with generic explanations. As such, when it comes to S/N 430, we start from the position that *none* of the deductions should be allowed unless the Defendants can show that they have satisfied their burden of proof. We turn then to the categories expressly referred to by the Defendants.

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124 Weber 21 at paras 103–104.

125 Weber 21 at para 105.

126 Transcript 24 September 2021 at p 47, ln 19–26.

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130 First, in relation to Weber's claims to be remunerated for his services, we find that these deductions are not warranted. In the first place, there is no evidence at all of any agreement between Chantal and Weber concerning his remuneration for these services, apart from the 5% commission/remuneration which we deal with in our next point. In this regard, if Weber was indeed providing professional consulting services, it is surprising that no documentation of any contract or retainer has been provided. Certainly, there is no evidence of any agreement as to the US$400 or US$500 hourly rate. In fact, when we sought clarification from Ms Chong concerning the nature of these claims, she candidly recognised that these were not claimed from Chantal or the Trust at the time, and agreed that this was, in effect, an attempt to retrospectively seek compensation.[127] These were not actual payments out of the Trust Moneys, but some kind of notional estimation of the value of services that Weber considers that he has provided to the Ethocyn business. In any event, we find that these services were already compensated for by the 5% commission/remuneration. As we have discussed above at [47] and [51], we find that this 5% sum was intended to compensate Weber for all the services he provided to Chantal and the Ethocyn business. Hence, these deductions are not warranted and should not be charged to the account.

131 Secondly, in relation to Renslade (S)'s alleged expenses, we find that these deductions should not be allowed. First, the Defendants' explanation for why there are no documents is not convincing and, in any event, not excusatory. There is no reason why the documents should have been destroyed even if the statutory retention period had expired (assuming that it did) – any such period would only set the minimum period required, but does not (and Weber cannot

[127] Transcript 24 September 2021 at p 56, ln 14–22.

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suggest that it does) mandate that the documents be destroyed. The absence of documents is therefore a matter entirely within the Defendants' (and particularly, Weber's) responsibility. Further, it is a trustee's duty to maintain records and documents, and any risk as to the absence of documents should be borne by the trustee and not the beneficiary. Secondly, there is no proof that these expenses to the sum of US$1.03m were incurred. The sum arrived at was based on an estimation drawing on the expenses incurred by Renslade (HK) from 2007–2019, and was not based on any evidence as to what was actually paid out. Again, the absence of evidence and documentation is a risk that the trustee is to bear, since the trustee was in a position to maintain accurate records. Thirdly, even this method of estimation is flawed, given that Renslade (HK) was actively receiving and handling the proceeds from the Nu Skin SDA, as these were transferred from BCS to Renslade (HK) to hold, in the period from 2007–2019. However, there is no indication of what Renslade (S) did from 2002–2007 and what expenses would be incurred in that regard, after the Ethocyn rights were transferred to BCS in 2002. Given the weakness in the justification for these expenses, and the absence of any real way of arriving at the expenses actually incurred by Renslade (S), we think that this sum should not be deducted.

132 Thirdly, we turn to the deductions of US$10,000 for Birka's medical expenses in 2016, and US$340,000 for the alleged blackmailing incident involving Heika. We think that the medical expenses of US$10,000 should not be deducted, as there is no indication that Chantal had instructed Weber to make that payment out of the Trust Assets. Indeed, Weber's own evidence is that as Chantal "was already seriously ill at that time", *he* paid for the necessary

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expenses.[128] There is no reason to suggest why Weber should be taken to use the Trust Assets (noting that at the material time, *Chantal* was the beneficiary), and not his own personal funds. As for the US$340,000 deduction, however, we think that it is justified. The situation described by Weber is very specific, and Chantal's request may (in the circumstances) reasonably not have been documented.[129] There are no counterindications that this expense was not directed by Chantal, and, apart from Baker's denial that this ever occurred, he has not put forward any evidence from Heika to dispute Weber's account.

133 Fourthly, in relation to the US$50,000 allegedly expended in setting up the Amarillis Foundation, we think that there is sufficient basis for this expense being deducted. This court found at [177] of the Judgment that "Weber had all along acted as a fiduciary for Chantal and *the May and July 2016 Meetings were for the purposes of discussing how to return the alleged Trust Assets/Moneys back to Chantal and her daughters, through the Foundation*" [emphasis added]. We also note (as above at [89]) that it was apparently only in the December 2016 Meeting that Weber claimed to be the beneficial owner of the Trust Assets (see the Judgment at [181]). At the time that the Foundation was set up and the arrangements were being made, therefore, it appears that there were in fact some steps taken towards effecting the transfer of the Trust Assets through the Foundation. Hence, it may be concluded that these expenses were incurred upon some arrangement for the return of assets to Chantal, and we think that even though this plan was not effected ultimately, the expenses were incurred at the time properly.

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128 Weber 21 at para 103 (JBOD Vol A9 at p 4987).

129 Weber 21 at para 104 (JBOD Vol A9 at pp 4987–4988)

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134 For the above reasons, we conclude that this category of miscellaneous outgoings should be reduced to US$390,000 only (being the sum of US$340,000 and US$50,000).

(13) Payment of CHF1,662,894.67 in relation to the CHF9.5m loan to Weber

135 Apart from the outgoings generally, there are two specific disputes relating to how the Loan Repayment Order (see [8] above) was given effect to by the Defendants. We deal with these disputes here and in the following sub-section.

136 This dispute relates to the Defendants' inclusion at S/Ns 428 and 429 of the "Outgoings" in the Combined Account of a deduction of US$12,282,261.34 from the Trust Moneys (being the sum of US$11,498,045.20 and US$784,216.14 respectively). These sums are equivalent to the CHF9.5m loan that this court had ordered Weber to repay, together with the 3% interest from 30 June 2014 to 29 April 2020. Baker, however, argues that S/Ns 428 and 429 should not include the 3% interest to be paid on the CHF9.5m, which he calculates to be CHF1,662,894.67 ("the Loan Interest"), as Weber is to be personally liable for the 3% interest and should not be allowed to deduct it from the account.[130]

137 At the hearing before us, Ms Chong did not contend strenuously for the Loan Interest to be included in the account.[131] She pointed us to Weber's affidavit, where he stated that he would leave this issue to be addressed by the

130 Plaintiff's Written Submissions (SUM 25) at paras 144–147.

131 Transcript 24 September 2021 at p 106, ln 1–16.

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accounting expert.[132] Ms Chong then referred us to Mr Arora's opinion, where he stated:[133]

> 2.39 The disputed amount is CHF 1,662,894.67.
>
> 2.40 This relates to the 3% interest on the CHF 9.5 million amount that was deemed to be a loan to [Weber] for the period from 30 June 2014 to 29 April 2020.
>
> 2.41 I understand that the CHF 9.5 million was invested by Renslade (HK) in bonds issued by BD Finance Ltd on 17 June 2014 ("BD Finance Bonds"). It therefore appears that the 3% interest is an income to Renslade (HK) rather than an expense.
>
> 2.42 I further understand that the principal for the BD Finance Bonds and the associated interest income has already been paid to [Baker]. As a result, I consider that this item should not be included in the Combined Account.

138 We note here that Mr Arora's opinion is not dispositive of this issue (see also [56] above), and that this is an issue of the proper characterisation of the 3% interest in law, rather than as a matter of accounting practice. This is so because the treatment of this 3% interest is tied up with Weber's liability for CHF9.5m and the proper characterisation of that principal sum.

139 While it may be true that Weber had decided to use the CHF9.5m to invest in bonds, that does not change the fact that this was a sum loaned to him by Chantal (as we have found in the Judgment), and that there was an agreed 3% interest to be paid on that sum. The proper view of the CHF9.5m was that it was *removed* from the Trust Moneys at the time of the loan, becoming the subject of a personal obligation on Weber to repay the CHF9.5m with 3% interest. Whatever he chose to do with that sum of money, it was incumbent on him to return the principal and interest by the necessary date. The Loan

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132 Weber 21 at para 106 (JBOD Vol A9 at p 4988).

133 JBOD Vol A6 at pp 3309–3310.

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Repayment Order extracted from our Judgment reflects this. Strictly speaking, instead of reflecting this as deductions in S/Ns 428 and 429 on the basis that these sums were paid to D&N under the Court of Appeal's order, the sum of CHF9.5m was instead to be deducted at the time when the loan was entered into, as that was when the CHF9.5m was, by Chantal's directions, removed from the Trust and placed on loan to Weber.

140 Seen in this way, it is clear that only CHF9.5m was taken out of the trust and no longer needs to be accounted for in the Trust Moneys. However, any interest on the CHF9.5m is not related to the Trust, and should not be deducted from the Trust Moneys. The 3% interest is due on the *loan*, which is owed directly to Chantal and, now, her Estate. Weber is personally liable for the 3%, and should not be allowed to deduct that 3% from the Trust Moneys. As such, S/Ns 428 and 429 should be reduced by CHF1,662,894.67.

141 We highlight for completeness that this does not result in double-counting of any sum of money. What this means is that CHF1,662,894.67 of the moneys transferred to D&N (and hence, the plaintiff) pursuant to the Loan Repayment Order is to be considered as coming from Weber personally. Under the Combined Account, this sum had been incorrectly included in the deductions from the Trust. This means that, upon this correction being made, there remains an equivalent sum to be paid from the Trust Moneys on the taking of the account.

(14) Difference of US$19,495.02 relating to S/N 429 of the outgoings in the Combined Account

142 This dispute concerns the applicable exchange rate between US dollars and Swiss Francs for the purposes of deducting the payment made by the

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Defendants to D&N in compliance with para 3 of CA/ORC 122/2020.The brief background to this particular head of dispute is as follows:

(a) After the Judgment, the Defendants applied for a stay of execution. The Court of Appeal decided in CA/ORC 122/2020 that Weber should pay D&N CHF9.5m plus 3% interest from 30 June 2014 to 29 April 2020, for D&N to hold pending the disposal of the Appeal.

(b) On 26 August 2020, D&N received US$11,498,045.20. Applying the exchange rate as of 26 August 2020, this was equivalent to CHF10,443,674.46. There was hence a shortfall of CHF719,220.21.

(c) Subsequently, on 4 March 2020, the Defendants instructed their bank to transfer CHF932,589.20 (being CHF719,220.21 plus the 5.33% interest). The effective date of the transfer was 5 March 2021. On 8 March 2021, D&N received US$764,721.12.

143 Baker argues that based on the exchange rate applied on 8 March 2021, when D&N received the payment, the sum of CHF719,220.21 would be equivalent to US$764,721.12, and that only this sum should be deducted from the Trust in the Combined Account.[134] The Defendants argue that the proper exchange rate should be that applied on 4 March 2021, giving the sum of US$784,216.14 (which is reflected in S/N 429).[135] In the alternative, the Defendants are willing to rely on the exchange rate on 5 March 2021 instead, which would give US$778,462.38.[136]

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134 Plaintiff's Written Submissions (SUM 25) at para 153.

135 Defendants' Written Submissions (SUM 25) at paras 162–163.

136 Defendants' Written Submissions (SUM 25) at paras 166–168.

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144 In our view, the ideal exchange rate to have applied would have been the exchange rate *when the CHF9.5m was first taken out of the Trust by Weber*. This follows from our view above that, in truth, when Chantal extended this loan to Weber, the sum was no longer part of the Trust but was the subject of a personal obligation owed by Weber. In reality, this sum ceased to be a trust asset when the loan was granted. However, no evidence has been led of the exchange rate on this date, and we determine this issue on the basis of the parties' respective positions.

145 We find that the exchange rate as of 5 March 2021, the effective date of transfer, should be used. In contrast to the question of whether the full amount has been received by Baker (which justifies the use of the exchange rate on the date of receipt for to calculate the shortfall of the transfer on 26 August 2020), the exercise of accounting is concerned with arriving at the proper value of the Trust Assets and Trust Moneys. In that sense, the relevant valuation is at the time the moneys are transferred out of the Trust Moneys, which would be the effective date of transfer, being 5 March 2021 in this case. Therefore, the appropriate value for the deduction would be US$778,462.38 instead of US$784,216.14, a difference of US$5,753.76.

(15) Conclusion on the specific entries in dispute

146 We therefore find as follows:

(a) S/Ns 4, 5, and 14, referring to a total of US$15,400 by BCS to Renslade (S), should be falsified.

(b) S/Ns 6, 10, 11, 13, 16, 18, 21, 22, 24, 26, 27, 29, 31, 33, 34 and 36, referring to the payment of US$25,142.97 of management fees to BCS should *not* be falsified.

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(c) S/Ns 12 and 15, referring to the payment of US$331,269.08 to Plexus AG should be falsified.

(d) S/Ns 35, 39, 52, 68, 82, 100, 121, 158, 195, 231, 264, 305, 340, 378, 408, 420, 422 and 424, referring to the US$2.7m for BCS's personnel and administrative overhead, should be falsified

(e) The entries for payments of US$59,145.57, US$109,334.51 and US$118,732.23 in respect of Legendary Cosmetic, Your World Media and BCS Pharma Pte Ltd should *not* be falsified.

(f) S/Ns 329, 362 and 372, referring to payments totalling US$9,523.65 to Dev, should be falsified.

(g) S/Ns 412 and 415, referring to payments totalling US$1,119,688.45 (being the sum of US$511,920 and US$607,768.45) should be falsified, while S/N 403 should not be falsified.

(h) Entries for expenses incurred by Renslade (S) to the value of US$8,716.73 and payments to BCS for US$8,500.42 should not be falsified.

(i) Of the payments to Wehinger, S/N 413, referring to a payment of US$18,588.88 to Wehinger's firm on 11 April 2017, should be falsified, but S/N 17 need not be falsified.

(j) Of the payments for Renslade (HK)'s general and administrative expenses, only US$265,824.19 should be falsified, while the remainder should not be falsified.

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(k) S/N 426, an entry for US$100,000, being a claimed 5% commission/remuneration of the US$2m payment by Nu Skin to BCS Pharma Corporation in 2018, should be falsified.

(l) Of the "other outgoings" claimed under S/N 430, the entry should be falsified *except* to the extent of US$390,000, that is, to the value of US$3,269,469.30 (being US$3,659,469.30 – US$390,000).

(m) S/Ns 427 and 428 should be modified to only reflect the CHF9.5m principal that was deducted from the Trust Moneys when the loan to Weber was first made. As such, the 3% interest on the loan, amounting to CHF1,662,894.67 should not be included in any deduction and should be falsified to that extent.

(n) S/N 428 should be modified to reflect the exchange rate on 5 March 2021, which would give US$778,462.38, a difference of US$5,753.76 from the stated sum in S/N 428 of the Combined Account. As such, the outgoings should be reduced by US$5,753.76.

147 In total, therefore, the outgoings in the Combined Account are reduced by US$7,835,517.31 and CHF1,662,894.67. In addition, as we noted at [13] above, the Defendants had modified the outgoings in the Combined Account after it was provided to the plaintiff. We include these modifications here as follows:

(a) A deletion of S/Ns 19 and 25, *ie*, a sum of US$15,786.30, from the Combined Account's outgoings, which the Defendants agreed to in a letter dated 26 April 2021.[137]

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[137] JBOD Vol A5 at p 2601.

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(b) A reduction in the legal and professional fees claimed for 2014, 2017, 2018 and 2019, as follows:[138]

Year	**Figures in Combined Account (US$)**	**Figures in Weber 21 (US$)**	**Difference (US$)**
2014	531,486.14	531,485.60	0.54
2017	75,848.19	65,950.67	9,897.52
2018	5,572.16	4,750.56	821.60
2019	5,781.97	5,534.01	247.96
		Total difference	10,967.62

(c) An addition of US$2,847 to the registered office fee for Renslade (HK) in 2009 and for bank charges in 2010,[139] which categories of outgoings we have found acceptable above.

This results in a net reduction of US$23,906.92 based on Weber's own amendments to the Combined Account, which we find appropriate to incorporate.

148 Given that the account had, at the outset, resulted in no money being owed by the Defendants, the reduction of the outgoings by these amounts (the falsified entries and the modifications to the Combined Account) means that the Defendants are to pay US$7,859,424.23 (being the sum of US$7,835,517.31 and US$23,906.92)and CHF1,662,894.67 on the taking of the account.

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138 Weber 21 at pp 28–32 (JBOD Vol A9 at pp 4956–4960).

139 Weber 21 at para 52 (JBOD Vol A9 at p 4961).

Interest rate

149 The next issue for determination in SUM 25 is the extent of interest to be paid on the sum due from the Defendants to the plaintiff on the taking of the account. Baker's position is that pre-judgment interest should be ordered, and the interest rate of 5.33% per annum should apply to both pre-judgment and post-judgment interest.[140] The Defendants highlight that the award of pre-judgment interest is discretionary, and submit that pre-judgment interest of 3.7% per annum would be fair.[141] There is therefore no dispute over the usual 5.33% per annum as post-judgment interest, and we are concerned here with pre-judgment interest. We address this in two steps: first, whether pre-judgment interest should be awarded, and if so, what the appropriate rate of interest should be.

Whether pre-judgment interest should be ordered

150 The basis for the power to award pre-judgment interest is s 12(1) of the Civil Law Act (Cap 43, 1999 Rev Ed), which reads:

> **12.**—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

We note for completeness that the phrase, "any debt or damages", has been construed broadly to also include sums recoverable in equity: see *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1

140 Plaintiff's Written Submissions (SUM 25) at para 166.

141 Defendants' Written Submissions at paras 135–136.

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SLR(R) 418 at [54], following *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1983] 2 AC 352 at 373.

151 While the Defendants are correct to note that the award of pre-judgment interest is a matter of the court's discretion, the position is more nuanced than that. As the Court of Appeal stated in *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 ("*Grains*") at [138]:

> … While the recoverability of interest is a matter of the court's discretion, we held in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623 ('*Robertson Quay Investment*') at [100]–[103] that *as a general rule, damages should commence from the date of accrual of loss*. As a matter of principle, claimants who have been kept out of pocket without basis should be able to recover interest on money that is found to have been owed to them from the date of their entitlement until the date it is paid. The object of leaving it to judicial discretion as opposed to laying down a fixed rule making interest payable as of right is to enable the courts to achieve justice across the infinite range of factual permutations that may confront the court by tailoring the award to fit the unique circumstances of each case. Such discretion would extend to a determination of whether to award interest at all; what the relevant rate of interest should be; what proportion of the sum should bear interest; and the period for which interest should be awarded (Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 19th Ed, 2014) at para 18-031). [emphasis added]

152 The sole basis for the Defendants' submission that this court should exercise its discretion *not* to award pre-judgment interest is that the Defendants had paid into court the sum of S$10,330,658.91 on 28 January 2020 (*ie*, prior to the Judgment which was handed down on 29 April 2020).[142] However, in our view, this is not sufficient to justify not awarding pre-judgment interest. In particular, the span of time between that payment and the handing down of the Judgment (around three months) is much shorter than the span of time between 30 October 2017 (when the Defendants failed to comply with the demand for

[142] Defendants' Written Submissions at para 135.

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the Trust Assets and Trust Moneys to be accounted for and transferred) to the date of the Judgment or even the date when the initial sum was paid in January 2020. Further, as the rationale for pre-judgment interest is to compensate "a successful claimant for the time value of money the use of which was lost between the date on which the claimant's cause of action arose and the date of the judgment" (*Grains* at [137]), the fact remains that even in respect of the S$10,330,658.91, the plaintiff did lose the time value of the money. We therefore find that pre-judgment interest should be awarded in this case in accordance with the general principle stated in *Grains*.

153 As for the date from which pre-judgment interest should run, we note that there is no dispute. We agree with Baker that this date should be 30 October 2017, which was the deadline given in the letters of demand sent to the Defendants for an account of the Trust Assets and Trust Moneys, and for the return of the said assets and moneys.

The rate of pre-judgment interest

154 Baker argues that 5.33% per annum should be the applicable interest rate, while the Defendants argue that the more appropriate interest rate is 3.7% per annum.

155 Baker's position is essentially that 5.33% per annum is the default interest rate that the courts tend to apply, and that a party must show a reason for and adduce evidence to justify a departure from the 5.33%.[143] Further, Baker argues that the proposed interest rate of 3.7% per annum should not be adopted as the expert opinion relied upon is flawed.[144] In this regard, Baker attacks both

143 Plaintiff's Written Submissions (SUM 25) at paras 175–180.

144 Plaintiffs' Written Submissions (SUM 25) at paras 181–197.

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the assumptions made in the Defendants' reliance on Mr Arora's opinion, and has also relied on its own expert, Mr Montek Mayal ("Mr Mayal"), to suggest that the calculations and results arrived at by Mr Arora are also incorrect.

156 The Defendants argue that the interest rate of 3.7% per annum is appropriate, "as it fairly reflects the return on investments during the time that [Chantal] was in control of the Ethocyn business and/or acquiesced in the investments made by Renslade [(HK)]".[145] They submit that the evidence pertaining to Renslade (HK)'s investments would reflect Chantal's likely investment of the Trust Moneys, and that interest of 3.7% per annum accurately reflects the return on that hypothetical investment. The rate of 5.33% per annum would overcompensate the Estate.

157 We agree with Baker that the authorities show that in the absence of any reason to depart from the default rate, the default interest rate of 5.33% per annum would apply, even in respect of pre-judgment interest: see, *eg*, *Grains* at [143]; *Anuva Technologies Pte Ltd v Advanced Sierra Electrotech Pte Ltd and another suit* [2020] 4 SLR 569 at [70]. One example where the court had so departed was in *Ong Teck Soon (executor of the estate of Ong Kim Nang, deceased) v Ong Teck Seng and another* [2017] 4 SLR 819 ("*Ong Teck Soon*"), where the High Court held that the executor, after confronting the first defendant about the withdrawals, was *content for the funds to remain in the bank account*. As such, the court awarded interest at the actual rates earned in that account (*Ong Teck Soon* at [85]). It is worth pointing out, however, that this lower interest rate was in respect of the period from the accrual of the action to the date of the writ – the usual 5.33% rate applied from the date of the writ to the date of judgment (*Ong Teck Soon* at [80]).

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145 Defendants' Written Submissions (SUM 25) at para 137.

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158 In the present case, it is not necessary for us delve into the details of how Mr Arora arrived at the rate of 3.7% per annum. In our view, the Defendants' position is based on a number of assumptions that are ultimately untenable, even apart from the question of how the specific number should be calculated.

159 First, the reliance on Renslade (HK)'s investments assumes that Chantal had agreed to these investments. We agree with Baker that the Defendants have not shown any basis for this as a matter of fact – the Defendants' only argument is that this would have followed from Chantal's direction of the Ethocyn business and the fact that she was informed of transactions. Further, the Defendants rely on the fact that she had given a CHF6m loan with interest of 3% per annum. However, in our view, this evidence is equivocal. As Baker notes, there is some indication that Weber made independent decisions as to investments, and it is not clear to what extent and to what degree of detail Chantal was updated on these activities.[146]

160 Secondly, in any event, the more crucial difficulty is that the Defendants' arguments assume that the relevant investment strategy is Chantal's. However, there is no reason why this should be the case. Chantal had passed away on 2 October 2016. The pre-judgment interest sought in this case is from 30 October 2017, the deadline for the demands to be complied with by the Defendants. By that time, Baker was already the executor of the Estate, which would have received the payments. In that regard, it is what the *Estate* would have done upon receipt of the payments by 30 October 2017 that is relevant. This is consistent with the approach taken in *Ong Teck Soon* where the *executor's* conduct (and not the testator's) was taken as the relevant factor for

[146] See Baker 27 at para 105 (JBOD Vol A10 at p 5911), quoting from an email from Weber to Chantal dated 10 December 2012 (Baker 27 at p 372; JBOD Vol A10 at p 6242).

adjusting the applicable interest rate. If the purpose of pre-judgment interest is to compensate for the time value relating to the use of the funds, given the fact that the funds *could only* have been used by the Estate, it follows that the relevant value must be considered in respect of what the Estate might have done. In this regard, the Defendants' arguments are flawed.

161 Hence, we think that at a very fundamental level, the Defendants' attempts to rely on the returns obtained by Renslade (HK) on its investments are flawed. In the absence of any evidence of what the Estate would have done with the sums that were due on 30 October 2017, there is no reason to depart from the usual rate of 5.33% per annum. As such, we find that the rate of 5.33% should also apply to the pre-judgment interest.

162 There being no dispute over post-judgment interest, it follows that the appropriate interest payable on the sums due to the plaintiff on the taking of the account should be 5.33% per annum from 30 October 2017 until the sums of money are received by the plaintiff. In this regard, the interest on specific sums should only run until the specific sums are received by the plaintiff, if the payment is made in tranches.

Provision for alleged tax liability

163 The final dispute between the parties concerns a tax provision of US$70m for alleged US tax liability that the Defendants have included in the Combined Account (see S/N 431). We note, at the outset, that it remains unclear to us what is sought by the inclusion of this tax provision. Ms Chong has clarified that this does not refer to a sum of money being held for this purpose.[147]

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[147] Transcript 24 September 2021 at p 107, ln 14–18.

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Instead, it appears that it is a notional sum which, we imagine, the Defendants would like to offset against any sums found to be due to the plaintiff. Whatever it may be, however, we find no basis at all for allowing the Defendants to make such provision for alleged tax liability.

164 The Defendants claim that Baker had written to Weber's German counsel, Wojtek, stating that he or the other Defendants may be exposed to tax liability in the USA in connection with the Ethocyn business. Weber claims to understand that this refers to the tax liability related to the funds received by or due to Chantal and/or her Estate during her lifetime. Further, the Defendants argue, Baker's own tax adviser, Mr Wayne Johnson, had given evidence in his affidavit filed on 6 December 2019 that once the Trust Assets were ruled to belong to Chantal, these assets became subject to the attachment of a lien, to secure any claims that the US Inland Revenue Service ("IRS") would have for the taxes payable. The Defendants take the position that unless Baker has complied with all tax obligations in the US, it is reasonable and correct for a tax provision to be made. The Defendants rely on a report by Mr Robert McKenzie ("Mr McKenzie") for an estimate of US$70m in tax provision.[148]

165 Baker takes the position that the Defendants have not shown that *they* would be liable for any US tax liability. Mr McKenzie's report only states that the Estate and/or Baker (as executor of the Estate) would be liable to the IRS. Baker relies on the opinion of his US tax law expert, Mr Mark E Matthews ("Mr Matthews"), who has concluded that the Defendants would not be liable for any taxes if they return the Trust Assets and Trust Moneys to Baker, and that the Estate currently does not owe taxes.[149]

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148 Weber 21 at paras 138−140 (JBOD Vol A9 at pp 4998–5000).

149 Plaintiff's Written Submissions (SUM 25) at paras 198–202.

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166 We first begin by clarifying the scope of Mr Johnson's evidence in his affidavit filed on 6 December 2019. While it is true that Mr Johnson had provided evidence that upon the decision of the court that the Trust Assets and Trust Moneys belonged to the Estate (as they belonged to Chantal), an inchoate lien would attach to secure the claims that IRS might have for estate taxes payable, Mr Johnson did not opine that there were any such outstanding tax liabilities. Indeed, he stated that "[a]t this point there has been no U.S. income tax assessed on the assets", and it is only after the court finds that Chantal was the beneficial owner that Baker would have to report this income and pay any tax associated with it.[150] This evidence is neither here nor there. Further, it is not entirely clear to us what the nature of that inchoate lien would be, and whether it would follow the Trust Assets and Moneys as a proprietary lien, or whether it imposed personal liability on the party holding the Trust Assets and Moneys when the lien arises.

167 We turn to set out, in brief, Mr McKenzie's evidence. In his view, Chantal was the "grantor of a foreign grantor trust", and therefore, had the obligation to file a number of forms with the IRS annually. Upon her death, the Estate, as beneficiary of the trust, had to file similar forms.[151] As these forms were not filed, the Estate would be liable for the unpaid tax (estimated to be within the range of around US$9m to over US$13m) and penalties (ranging from around US$19m to over US$68m).[152] As Baker notes, Mr McKenzie's evidence is limited to the *Estate's* liability for unpaid taxes and the related penalties.[153]

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150 Wayne Johnson's 2nd Affidavit at para 10(c).

151 McKenzie's 1st Affidavit ("McKenzie 01") at p 14 (JBOD Vol A6 at p 3056).

152 See McKenzie 01 at p 21 (JBOD Vol A6 at p 3063).

153 Baker 27 at para 117 (JBOD Vol A10 at p 5915).

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168 Baker's tax expert, Mr Matthews, highlights that the Defendants would not be liable to the IRS for any income tax obligations arising from Chantal's individual tax returns, for any estate tax, or for any of the Estate's tax obligations. He refers to two provisions that could potentially impose liability on the Defendants, but concludes that these would not apply. Having considered Mr McKenzie's report, he was also of the view that the majority of that report was irrelevant as it did not consider the question of the Defendants' liability.[154]

169 While the expert evidence traverses a number of different areas, the central issue, in our judgment, is simply whether there is any basis for the *Defendants* to retain a tax provision, which must turn on whether the *Defendants* would personally be liable for any unpaid tax or tax penalties. If there is no such liability, and if any liability at all would fall on the Estate, then there is no justification at all for a tax provision, since the Defendants would not be liable in the first place, and would certainly then not be liable upon the transfer of the Trust Assets and Trust Moneys. Whatever liabilities would then be for the Estate to resolve and would not involve the Defendants.

170 The expert evidence does not establish that the Defendants would be personally liable for any taxes or penalties. Mr McKenzie's report only deals with the *Estate's* liabilities. Mr Matthews has provided the only indication of possible statutes under which the Defendants might be liable, and has concluded that these would not apply. There is no contrary submission based on US law. As such, the evidence points only one way, which is that the Defendants would *not* be personally liable for any taxes or penalties. It follows that the provision for tax is not justified, since the Defendants are not actually affected by any tax

[154] Mark E Matthews' 1st Affidavit at p 12 (JBOD Vol A9 at p 5310).

liability. Therefore, the tax provision for US$70m should be removed from the Combined Accounts.

Conclusion

171 For the reasons above, we grant the following orders:

(a) The Defendants are to pay the plaintiff the sums of US$7,859,424.23 and CHF1,662,894.67, as the sums due from the Defendants on the taking of the account.

(b) The Defendants are to pay to the plaintiff interest at the rate of 5.33% per annum on the moneys due to the plaintiff on the basis of the Trust, from 30 October 2017 until such date (or dates, if various sums are received at various time) that the sums are received by the plaintiff. For the avoidance of doubt, this interest is also to apply to the sum of US$10,330,658.91 paid to D&N which was released to Baker under the Release Order, and interest on this sum shall run until the date when Baker received the sums under the Release Order.

172 Turning to the issue of costs, we invite the parties to consider coming to an agreement on the costs of this application. In the event and to the extent that parties are unable to agree, they are to file written submissions no longer than 5 pages (excluding annexes and authorities) within one month of this judgment.

Quentin Loh
Judge of the Appellate Division

Carolyn Berger
International Judge

Dominique Hascher
International Judge

Woo Shu Yan, Tay Hong Zhi Gerald and Lim Qiu Yi Regina (Drew & Napier LLC) for the plaintiff;
Chong Pao Lan Monica, Vithiya d/o Rajendra, Wong Zheng Hui Daryl, Wang Yufei and Daryl Kwok Wai Tat (Guo Weide) (WongPartnership LLP) for the defendants.

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Annex A

S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
83	**General and administrative expenses of Renslade (HK) for 2007 and 2008**			
	Auditor's remuneration	897.00	-	-
	Bank charges	6,510.00	6,510.00	Do not falsify
	Directors' fees	5,000.00	5,000.00	Falsify
	General expenses	3,500.00	3,500.00	Do not falsify
	Management fee	2,534.00	2,534.00	Do not falsify
122	**General and administrative expenses of Renslade (HK) for 2009**			
	Auditor's remuneration	1,090.00	-	-
	Bank charges	8,154.00	8,154.00	Do not falsify
	Directors' fees	5,000.00	5,000.00	Falsify
	Donation to Fondazione Eco Himalaya	17,722.64	17,722.64	Falsify
	Interest expenses	15.00	-	-
	Management fee	9,808.00	9,808.00	Do not falsify

S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Marketing fee	44,133.00	44,133.00	Do not falsify
	Postage and courier	209.00	-	-
	Printing and stationery	101.00	-	-
	Professional fee	1,036.00	1,036.00	Do not falsify
	Registered office fee	250.00	250.00	Do not falsify
	Secretarial fee	1,242.00	1,242.00	Do not falsify
	Telephone charges	1,130.00	-	-
	Travelling expenses	15,126.46	-	-
159	**General and administrative expenses of Renslade (HK) for 2010**[155]			
	Administration fee	8,921.00	8,921.00	Do not falsify
	Auditor's remuneration	1,300.00	-	-
	Bank charges	8,154.00	8,154.00	Falsify only to extent of US$107.69
	Director's fees	5,000.00	5,000.00	Falsify

155 See audited financial statement at Weber 20 at p 668 onwards (JBOD Vol A4 at p 1806).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Exchange rate differences	39,905.00	39,905.00	Do not falsify
	Interest expenses	610.00	610.00	Do not falsify
	Management fee	2,500.00	2,500.00	Do not falsify
	Marketing fee	19,908.00	19,908.00	Do not falsify
	Postage and courier	22.00	-	-
	Printing and stationery	62.00	-	-
	Professional fee	3,339.00	3,339.00	Falsify to extent of US$2,260.70
	Registered office fee	500.00	500.00	Do not falsify
	Secretarial fee	875.00	875.00	Do not falsify
	Telephone charges	777.00	-	-
	Travelling expenses	6,250.28	-	-
196	**General and administrative expenses of Renslade (HK) for 2011**[156]			
	Administration fee	9,695.00	9,695.00	Do not falsify

156 See audited financial statement at Weber 20 at p 703 onwards (JBOD Vol A4 at p 1841).

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S/N in Outgoings	**Description**	**Amount claimed (US$) in the Combined Account**	**Amount disputed (US$)**	**Conclusion**
	Auditor's remuneration	1,545.00	-	-
	Bank charges	13,032.00	13,032.00	Do not falsify
	Bank overdraft interest	417.00	417.00	Do not falsify
	Bonds charge	14,145.00	14,145.00	Falsify
	Business registration fees	315.00	-	-
	Directors' fees	5,435.00	5,435.00	Falsify
	Marketing fee	16,399.00	16,399.00	Do not falsify
	Postage and courier	89.00	-	-
	Printing and stationery	24.00	-	-
	Professional fee	8,947.00	4,154.53 (in relation to payment to Dev)	Falsify to extent of US$4,154.53
	Registered office fee	2,522.00	2,522.00	Do not falsify
	Secretarial fee	1,130.00	1,130.00	Do not falsify
	Sundry expenses	71.00	-	-
	Telephone charges	1,050.00	-	-

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
232	**General and administrative expenses of Renslade (HK) for 2012**[157]			
	Administration fee	9,729.00	9,729.00	Do not falsify
	Auditor's remuneration	1,768.00	-	-
	Bank charges	10,937.00	10,937.00	Do not falsify
	Bank overdraft interest	1,611.00	1,611.00	Do not falsify
	Exchange losses, net	58,535.00	58,535.00	Do not falsify
	Marketing fee	15,525.00	15,525.00	Do not falsify
	Postage and courier	262.00	-	-
	Printing and stationery	53.00	-	-
	Professional fee	255,764.00	3,949.53	Falsify to extent of US$3,899.65
	Secretarial fee	233.00	233.00	Do not falsify
	Telephone charges	1,413.00	-	-

[157] See Weber 20 at p 741 (JBOD Vol A4 at p 1879).

S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
265	**General and administrative expenses of Renslade (HK) for 2013**[158]			
	Administration fee	9,763.00	9,763.00	Do not falsify
	Auditor's remuneration	3,121.00	-	-
	Bank charges	19,631.00	19,631.00	Do not falsify
	Legal and professional fee	543,052.85	4,173.53 (to Dev) & 5,188.27 (not supported)	Falsify to extent of US$4,173.53 and US$5,704.97
	Management fee	24,000.00	24,000.00	Do not falsify
	Marketing fee	10,489.00	10,489.00	Do not falsify
	Postage and courier	43.00	-	-
	Printing and stationery	188.00	-	-
	Provision for bad debt	117,383.00	117,383.00	Do not falsify
	Secretarial fee	73.00	73.00	Do not falsify
	Telephone charges	1,749.00	-	-

[158] See Weber 20 at p 885 (JBOD Vol A4 at p 2023).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
306	**General and administrative expenses of Renslade (HK) for 2014**[159]			
	Administration fee	9,710.00	9,710.00	Do not falsify
	Auditor's remuneration	3,185.00	-	-
	Bank charges	61,955.00	61,955.00	Do not falsify
	Exchange losses, net	187,266.00	187,266.00	Do not falsify
	Legal and professional fee	531,486.14	-	-
	Management fee	24,000.00	24,000.00	Do not falsify
	Marketing fee	16,005.00	16,005.00	Do not falsify
	Postage and courier	102.00	-	-
	Printing and stationery	100.00	-	-
	Provision for bad debt	7,322.00	7,322.00	Do not falsify
	Telephone charges	1,428.00	-	-
	Withholding tax	7,692.00	7,692.00	Do not falsify

[159] See Weber 20 at p 928 (JBOD Vol A4 at p 2076).

S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Bank overdraft interest	21,705.00	21,705.00	Do not falsify
	Travel expenses	11,269.21	-	-
341	**General and administrative expenses of Renslade (HK) for 2015**[160]			
	Administration fee	9,010.00	9,010.00	Do not falsify
	Auditor's remuneration	3,225.00	-	-
	Bank charges	15,793.00	15,793.00	Do not falsify
	Custodian fee	20,030.00	20,030.00	Falsify
	Exchange losses	202,583.00	202,583.00	Do not falsify
	Legal and professional fee	120,356.42	-	-
	Management fee	24,000.00	24,000.00	Do not falsify
	Marketing fee	14,606.00	14,606.00	Do not falsify
	Printing and stationery	305.00	-	-
	Secretarial fee	525.00	525.00	Do not falsify
	Telephone charges	925.00	-	-

160 Weber 20 at p 994 (JBOD Vol A4 at p 2132).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Withholding tax	7,242.00	7,242.00	Do not falsify
379	**General and administrative expenses of Renslade (HK) for 2016**[161]			
	Administration fee	8,830.00	8,830.00	Do not falsify
	Auditor's remuneration	3,289.00	-	-
	Bank charges	6,630.00	6,630.00	Do not falsify
	Custodian fee	23,114.00	23,114.00	Falsify
	Exchange losses	150,975.00	150,975.00	Do not falsify
	Legal and professional fee	74,130.47	26,024.30 (in relation to HKLW)	Falsify to extent of US$26,024.30
	Management fee	24,000.00	24,000.00	Do not falsify
	Marketing fee to Legendary Cosmetic	10,860.00	10,860.00	Do not falsify
	Postage and courier	235.00	-	-
	Printing and stationery	130.00	-	-
	Secretarial fee	97.00	97.00	Do not falsify

[161] Weber 20 at p 1047 (JBOD Vol A4 at p 2185).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Telephone charges	596.00	-	-
	Travelling expenses	27,979.00	-	-
	Withholding tax	7,377.00	7,377.00	Do not falsify
409	**General and administrative expenses of Renslade (HK) for 2017**[162]			
	Administration fee	8,291.00	8,291.00	Do not falsify
	Auditor's remuneration	3,455.00	-	-
	Bank charges	7,202.00	7,202.00	Do not falsify
	Custodian fee	27,996.00	27,996.00	Falsify
	Legal and professional fee (excluding legal fees for the Suit)	75,848.19	75,848.19	Falsify to extent of payments to HKLW, amounting to US$54,309.18
	Loan to related company written off	50,000.00	50,000.00	Do not falsify
	Postage and courier	243.00	-	-

162 Weber 20 at p 1096 (JBOD Vol A4 at p 2234).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Printing and stationery	123.00	-	-
	Secretarial fee	5.00	5.00	Do not falsify
	Telephone charges	669.00	-	-
	Travelling expenses	1,623.00	1,623.00	Falsify
	Withholding tax	7,190.00	7,190.00	Do not falsify
421	**General and administrative expenses of Renslade (HK) for 2018**[163]			
	Administration fee	9,326.00	9,326.00	Do not falsify
	Auditor's remuneration	3,446.00	-	-
	Bank charges	1,566.00	1,566.00	Do not falsify
	Custodian fee	29,092.00	29,092.00	Falsify
	Exchange losses	18,567.00	18,567.00	Do not falsify
	Legal and professional fee (excluding legal fees for the Suit)	5,572.16	5,572.16	Do not falsify
	Postage and courier	11.00	-	-

163 Weber 20 at p 1127 (JBOD Vol A4 at p 2265).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Printing and stationery	73.00	-	-
	Secretarial fee	73.00	73.00	Do not falsify
	Withholding tax	7,649.00	7,649.00	Do not falsify
423	**General and administrative expenses of Renslade (HK) for 2019**[164]			
	Administration fee	9,124.00	9,124.00	Do not falsify
	Auditor's remuneration	3,467.00	-	-
	Bank charges	26,288.00	26,288.00	Do not falsify
	Custodian fee	6,466.00	6,466.00	Falsify
	Exchange losses, net	34,155.00	34,155.00	Do not falsify
	General expenses	498.00	498.00	Do not falsify
	Legal and professional fees (excluding legal fees for the Suit)	5,781.97	5,781.97	Do not falsify
	Postage and courier	176.00	-	-
	Printing and stationery	379.00	-	-

164 Weber 20 at p 1148 (JBOD Vol A4 at p 2286).

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S/N in Outgoings	Description	Amount claimed (US$) in the Combined Account	Amount disputed (US$)	Conclusion
	Travelling expenses	4,566.00	4,566.00	Falsify

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