IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 47

Civil Appeal No 142 of 2020

Between

Ng Lim Lee (as administratrix and trustee of the estate of Lee Ker Min)

… *Appellant*

And

(1) Lee Gin Hong (as the executor and trustee of the estate of Ng Ang Chum, deceased)
(2) Lee Gim Moi (as the executor and trustee of the estate of Ng Ang Chum, deceased)

… *Respondents*

In the matter of Suit No 1301 of 2018

Between

Ng Lim Lee (as administratrix and trustee of the estate of Lee Ker Min)

… *Plaintiff*

And

(1) Lee Gin Hong (as the executor and trustee of the estate of Ng Ang Chum, deceased)
(2) Lee Gim Moi (as the executor and trustee of the estate of Ng Ang Chum, deceased)

… *Defendants*

And

(1) Lee Gin Hong (as the executor and trustee of the estate of Ng Ang Chum, deceased)
(2) Lee Gim Moi (as the executor and trustee of the estate of Ng Ang Chum, deceased)

… *Plaintiffs in Counterclaim*

And

Ng Lim Lee (as administratrix and trustee of the estate of Lee Ker Min)

… *Defendant in Counterclaim*

JUDGMENT

[Partnership — Partners *inter se* — Accounts]
[Partnership – Partners *inter se* – Sharing of profits and losses]

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Ng Lim Lee (as administratrix and trustee of the estate of Lee Ker Min, deceased)
v
Lee Gin Hong (as executor and trustee of the estate of Ng Ang Chum, deceased) and another

[2022] SGCA 47

Court of Appeal — Civil Appeal No 142 of 2020
Steven Chong JCA, Woo Bih Li JAD and Quentin Loh JAD
11 April 2022

21 June 2022 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

1 In life, there will be situations when it is prudent to "let sleeping dogs lie". The conventional wisdom of this age-old adage is best exemplified by the facts and eventual outcome of this unfortunate litigation.

2 This appeal concerned an action which was commenced by the litigation representative of the appellant (and later maintained by his estate after his passing) against the estate of his late mother for half of the liability due and owing under an overdraft facility which was extended to their partnership. Both the appellant and his late mother were equal partners of a business which was started by the appellant's late father ("the Partnership"). The appellant's action for half of the liability due under the overdraft facility was undoubtedly predicated on both partners being *equal* partners and hence entitled to an equal

share of *both* the assets and liabilities of the Partnership. However, the appellant failed to recognise that such an action can cut both ways in that his late mother's estate would be entitled to half of the assets of the Partnership. In response to the appellant's action, the late mother's estate brought a counterclaim against the appellant for half of the assets of the Partnership.

3 As it turned out at the trial, the High Court judge ("Judge") found that the appellant had treated the partnership moneys as "his own piggy bank" and had overdrawn sums which far exceeded the amount due under the overdraft facility. The Judge dismissed the appellant's claim in light of her finding that the Partnership was solvent and the appellant's withdrawals (which were made without the knowledge and consent of his late mother) exceeded his half share and the sums due under the overdraft facility. Consequently, the counterclaim was allowed.

4 The executors of the late mother's estate who were aware of the appellant's withdrawals were quite prepared to "let sleeping dogs lie". Notwithstanding the fact that the executors had pleaded that the appellant had withdrawn moneys from the partnership accounts for, *inter alia*, his own real estate purchases and for investments in businesses unrelated to the Partnership, notably, the appellant did not plead that his withdrawals for his personal use were made with the knowledge and consent of his late mother.

5 The appellant could hardly complain that the "sleeping dogs" awoken by his own misguided action could not be persuaded to return to their slumber.

The Judge's decision in allowing the counterclaim was therefore a direct consequence of the appellant's action.

Material background facts

6 The background facts have been comprehensively set out in the judgment below ("the Judgment"). We will therefore only highlight the salient facts pertinent to the appeal.

The parties

7 The appellant and the respondents are siblings. Through his eldest son and litigation representative Lee Kai Teck Roland ("Roland"), the appellant sued his eldest sister Lee Gin Hong ("the first respondent") and youngest sister Lee Gim Moi ("the second respondent") to recover half of the Partnership's liability under an overdraft facility. The respondents are sued personally as well as in their capacities as the executors of the estate of their late mother Ng Ang Chum ("the late mother") who passed away in December 2014.

8 The appellant was incapacitated by a severe stroke in July 2014 and Roland became his litigation representative in February 2016. Shortly before the appeal was scheduled to be heard in March 2021, the appellant passed away. The appeal was adjourned, and an application was later made (and granted) at the hearing to change the appellant's name to reflect his wife as the administratrix and trustee of his estate.

Background to the dispute

9 The Partnership first commenced business as a sole proprietorship by the appellant's late father in 1958. The Partnership was a retailer of motorcycles, motor scooters, spare parts and accessories. It also operated a workshop. The

appellant subsequently joined the business as a partner in 1975. After his father's death in 1981, the appellant's late mother was registered as a partner.

10 The respondents started working for the Partnership in the 1980s as administration clerks until they resigned in August 2016. They lived with their late mother at No 75 Chua Chu Kang Road ("75 CCK") for over 30 years until her passing. The respondents' late mother bequeathed 75 CCK to them in her will.

11 In or around 1994, the appellant decided to set up LH Motor Pte Ltd ("LHMPL"), in which he held 70% of the shares while his late mother and the respondents held 10% of the shares each. The Partnership's business in the sale and purchase of new motorcycles was then moved to LHMPL. The appellant used the Partnership's moneys for the initial capital investment in LHMPL and when LHMPL made sales, the money was either collected directly by the Partnership, or repaid by LHMPL to the Partnership.

12 The parties disputed the details of how the Partnership was managed. According to the respondents, their late mother was illiterate, and the business of the Partnership was conducted and managed by the appellant. Their late mother had no say in the management or running of the business, and apart from performing simple tasks such as sweeping the floor, cooking and making beverages, she took no part in the Partnership's business. The appellant also did not share the profits of the Partnership and only gave his late mother a monthly allowance of about $1,000. After the appellant was incapacitated, his second son Lee Kai Leong Jeffrey ("Jeffrey") managed the Partnership.

13 The appellant did not admit that his late mother was illiterate. Instead, his position was that she was a savvy businesswoman who was smart and well

versed with every aspect of the Partnership, of which she was a cheque signatory. She would handle the cashier's machine, collect payments from customers and gave them change as well as make payment to vendors. The appellant's late mother took part in the management of the Partnership and the appellant therefore did not manage the Partnership solely. In fact, after the appellant's incapacitation in July 2014, his late mother retained control of the Partnership while the respondents, from whom Jeffrey took instructions, ran the entire business.

14 After the appellant's mother passed away, the appellant, through Roland sued the respondents for half of the liability due and owing under an overdraft facility of $1.5m extended to the Partnership by United Overseas Bank ("the UOB overdraft facility") in 2018. The respondents counterclaimed against the appellant, alleging that he withdrew moneys from the UOB overdraft facility and other bank accounts of the Partnership for, *inter alia*, his own real estate purchases and for investments in businesses unrelated to the Partnership. They also contended that the appellant was liable to account for private profits he withdrew from the Partnership. The parties' respective cases will be set out in greater detail below.

15 The respondents, as part of their counterclaim, alleged that the appellant had withdrawn the following sums for his personal use:

Category	**Partnership moneys used by the appellant (S$)**
The purchase of a property at Blk 223 Choa Chu Kang ("Blk 223 CCK")	123,999.50

The construction of two semi-detached houses at 59 and 59A Choa Chu Kang (59A CCK")	890,253.82
The purchase of a property at 615 Balestier Road ("615 Balestier Rd")	605,131.50
The investment in Everfit Motor Pte Ltd ("Everfit")	46,910.00
The investment in Bikelink Pte Ltd ("Bikelink")	88,000.00
The investment in Cycle Trade Enterprise ("Cycle Trade")	103,531.31
The investment in Arrow Speed Auto Services ("Arrow Speed")	5,000.00
The investment in a property at 34 Norris Road ("34 Norris Rd")	294,627.73
The purchase of vehicles for his own use ("Cars")	126,974.37
Personal and family expenses ("Family")	222,614.35
Others	92,500.00
Total	**2,599,542.58**

16 The above sums are the aggregate of various transactions detailed in Annexures A and B to the Defence and Counterclaim, as well as various withdrawals by the appellant detailed in Appendix 21 of the report of the appellant's expert, Tee Wey Lih ("Tee" and "Tee's report").

17 It was not disputed that the appellant withdrew moneys from the Partnership for purposes unrelated to the Partnership. The appellant's response to the counterclaim was essentially that the withdrawals were approved by his late mother and/or he had deposited more moneys into the Partnership's accounts than he had withdrawn. His expert, Tee, accepted the accuracy of the items listed in Annexures A and B. However, his position was that withdrawals prior to 2002 need not be taken into account. This will be explained in greater detail below at [23].

The parties' cases below

The appellant's case below

The claim

18 The appellant's claim in essence was that his late mother, as an equal partner, should bear half of the liability of the Partnership. In the Statement of Claim, the appellant asserted that the Partnership was insolvent as of the date of dissolution in December 2014 ("Date of Dissolution"), when his late mother passed away. Relying on Tee's report, the appellant argued that the Partnership had a net liability of $710,214 due and owing under the UOB overdraft facility as well as interest. His late mother was responsible for half of that sum as she was an equal partner of the Partnership.

19 He further alleged that the respondents had acted in bad faith in administering the estate of their late mother in breach of trust without regard for the debts of the Partnership when they were aware of the UOB overdraft facility. They should therefore be personally liable for their late mother's share of the Partnership's debts.

20 The appellant also claimed for $20,000, which he alleged the respondents had withdrawn from the Partnership's account for the funeral expenses of their late mother.

21 In his Reply, the appellant disputed the manner in which the Partnership was managed, the details of which are set out above (at [12] to [13]).

The defence to the counterclaim

22 In response to the counterclaim, the appellant did not dispute that he had withdrawn moneys from the Partnership for purposes unrelated to the Partnership. Instead, he claimed in his Defence to the Counterclaim that he had deposited his own moneys amounting to $1,016,655 back into the Partnership accounts from 2002 to 2014, which exceeded the sums that he had withdrawn during that same period.

23 As mentioned above at [17], Tee's report concluded that transactions prior to 2002 are not relevant. Based on Tee's review of the Partnership's accounts prior to 2002, the only account which could have indicated a debt owing by the appellant to the Partnership would be "Sundry Debtors". The Partnership had Sundry Debtors for the financial years ending 31 December 1995 to 31 December 1997. However, since the accounts as at 31 December 2001 indicated that there were no Sundry Debtors, the appellant could not have been a debtor of the Partnership as at 31 December 2001. There was therefore no need to look at any withdrawals prior to 2002. Only withdrawals from 2002 were relevant, since the Sundry Debtors account was only created again in 2002 and did not exist as at 31 December 2001.

24 Notably, the appellant did not offer any other response in his Defence to the Counterclaim. That the appellant's withdrawals were approved by his late

mother was mentioned for the first time in Roland's affidavit of evidence-in-chief. It was alleged that both the appellant and his late mother had approved the accounts of the Partnership, which meant that all of the appellant's withdrawals were approved.

25 In his Closing Submissions below, the appellant argued, *for the first time*, that his late mother had knowledge of the withdrawals and consented either expressly or impliedly to the withdrawals. It was argued that the respondents knew full well that the appellant had withdrawn moneys from the Partnership for his personal use and having lived with their late mother for 30 years, it was inconceivable that they would not have informed their late mother of the withdrawals. The late mother did not express any unhappiness with the manner in which the appellant had managed the Partnership and there was therefore knowledge and consent on her part to the appellant's withdrawals for personal use.

26 It was also argued *for the first time* in the Closing Submissions below that the equitable defence of laches applied to the respondents' counterclaim for an account. The appellant argued that there was an enormous delay in bringing the claim – four years after the Partnership's dissolution and 39 years after the appellant's late mother had been in business with him. The appellant acknowledged that this defence was not pleaded but argued that it may be raised even if it were not pleaded.

27 The appellant's *pleaded* defence to the counterclaim was therefore that he had deposited more moneys into the Partnership accounts than he had withdrawn.

The respondents' case below

The counterclaim

28 The respondents accepted that their late mother was an equal partner in the Partnership. However, they relied on the report of their expert Mr Mun Siong Yoong ("Mun" and "Mun's report"), and contended that the Partnership was solvent as at the Date of Dissolution. Their late mother was therefore not liable for half of the alleged net liabilities in the sum of $710,214 of the Partnership; instead, she was entitled to half of the net assets of the Partnership. The respondents also counterclaimed against the appellant for an account of two sums of moneys: (a) "Misapplied Sum" and (b) "Private Profits". We will elaborate on these two sums below.

29 Relying on Mun's report as well as the undisputed parts of Tee's report, the respondents produced the following table in their Closing Submissions below to demonstrate that the appellant owed his late mother's estate at least $1,222,618, *ie*, half of the net assets of the Partnership:

No	Assets	Sum (S$)
(a)	Misapplied Sum	1,977,632
(b)	Adjusted plant, property and equipment ("PPE")	86,381
(c)	Cash	90,017
(d)	Stock	140,935
(e)	Sundry Debtors	815,712
(f)	Due from LHMPL	311,993
(g)	Deposits (SP Services)	2,290

	Total Assets	**3,424,960**
	Liabilities	
(h)	UOB Overdraft Account	940,986
(i)	Other creditors and accruals	38,738
	Total Liabilities	**979,724**
	Net Assets	**2,445,236**
	Half of Net Assets	**1,222,618**

(1) Misapplied Sum

30 In their Counterclaim, the respondents alleged that the appellant had breached his fiduciary duties owed to his late mother. In that regard, the appellant had withdrawn substantial sums from the Partnership's accounts for his personal affairs wholly unrelated to the Partnership ("the Misapplied Sum"). The appellant was therefore liable to account for the Misapplied Sum. The aggregate of those withdrawals has been detailed above at [15].

31 The respondents accepted that the appellant did deposit some moneys back into the Partnership accounts but contended that the appellant had not proven *all* of the deposits amounting to $1,016,665 (see above at [22]). In the Closing Submissions below, the respondents' final position as regards the Misapplied Sum after giving credit for the sums which the appellant had deposited was as follows:

Category	Partnership moneys used (S$)	Alleged deposits (S$)	Sums the appellant did not account for (S$)	If the court agrees with the appellant (S$)
Blk 223 CCK	123,999.50	251,665.16 (Disagreed)	123,999.50	0
59A CCK	890,253.82	0	890,253.82	890,253.82
615 Balestier Rd	605,131.50	475,000 (Agreed)	130,131.50	130,131.50
Everfit	46,910.00	190,000 (Agreed)	0	0
Bikelink	88,000.00	0	88,000.00	88,000.00
Cycle Trade	103,531.31	0	103,531.31	103,531.31
Arrow Speed	5,000.00	0	5,000.00	5,000.00
34 Norris Rd	294,627.73	0	294,627.73	294,627.73
Car	126,974.37	0	126,974.37	126,974.37
Family	222,614.35	140,000 (Agreed with 100,000)	122,614.35	82,614.35
Others	92,500.00	0	92,500.00	92,500.00
Total	**2,599,542.58**	**-**	**1,977,632.58**	**1,813,633.08**

32 In their Closing Submissions, the respondents' position was that there was no need for a further account of the Misapplied Sum amounting to

$1,977,632.58 (or $1,813,633.08 if the court agreed with the appellant) because the Misapplied Sum had been pleaded and proved.

(2) Private Profits

33 The respondents also alleged that the appellant withdrew cash from the Partnership for his own use as and when he desired, *ie*, the Private Profits. The respondents relied on two sources of evidence to show that the appellant had withdrawn cash from the Partnership without accounting for it.

34 First, based on the Partnership's accounts, the Partnership earned a total net profit of at least $2,250,896.98 from October 1981 to December 2014. But the late mother never received any profits from the Partnership. As such, the reason why the Partnership had alleged net liabilities of $710,214 as at the Date of Dissolution must have been due to the appellant's withdrawal of the Private Profits. The respondents acknowledged that the Partnership's accounts between 1991 and 2014 indicated that there were drawings by the partners which amounted to $1,473,451.24. However, the respondents pointed to Tee's report which concluded that the records did not show that there were any cheques issued to the partners. Even if the total recorded partner drawings were taken into account, the respondents highlighted that there remained a shortfall of $506,170.77 in profits unaccounted for. The respondents believed that the shortfall was the cash withdrawn by the appellant.

35 Secondly, there was substantially unchallenged evidence to show that the appellant did not deposit all of the cash collected for the business of the Partnership. Mun's review of the records for 2011 to 2013 concluded that there was a significant difference between collections and deposits in the sum of $205,376.

36 The respondents therefore sought an account of the Private Profits withdrawn by the appellant from 1981 to 2014 in their counterclaim.

Defence to the claim

37 In response to the allegations that they had administered the estate of their late mother in bad faith, the respondents contended that they had relied on the accounts forwarded to them by Roland, and they honestly and reasonably believed that the Partnership was solvent before they distributed the assets of their late mother's estate. Tee's report on the accounts of the Partnership as at December 2014 was inaccurate, as the Partnership was solvent and profitable on a year-to-year basis up to December 2014. This was due to the fact that Tee had failed to account for the withdrawals pleaded in the counterclaim (see above at [30]).

38 In the alternative, if their late mother's estate was liable for half of the sum of $710,214, the respondents argued that their late mother's estate was entitled to a set-off and counterclaim for the sums which had been taken out from the Partnership by the appellant. In the further alternative, they pleaded to be relieved from personal liability of their administration under s 60 of the Trustees Act (Cap 337, 2005 Rev Ed).

39 In relation to the $20,000 claim, the respondents argued that the money was not used for their late mother's funeral and was repaid to the Partnership. In any event, the appellant had abandoned this claim during the trial.

Decision below

40 The Judge held (at [203]) that the Partnership was solvent as at the Date of Dissolution. The Judge observed (at [181]) that Tee "did not discharge his

duty to the court nor did he adhere to his professed claim that his duty to the court overrode any obligation to the party (the [appellant]) who engaged him". The Judge observed (at [194]) that Mun's evidence offered "a more objective and balanced analysis of the accounts of the Partnership", and Mun's evidence was therefore to be preferred. The Judge pointed to Tee's analysis of several items listed in the table above at [29] that illustrated his partisan stance.

41 As regards item (a), *ie*, Misapplied Sum, the Judge found (at [162]) that it was illogical for Tee to have excluded withdrawals prior to 2002. There were no authorities or recognised accounting principles cited by Tee in support of his approach and Tee's deliberate omission was aimed at reducing the appellant's indebtedness to the Partnership. The Judge also found (at [205]) that it was wrong for Tee to have adopted a "running account approach" to the appellant's withdrawals and deposits, as that is not how the law treats a breach of fiduciary duties by a partner. Any profits/gains made by the appellant from his investments using the Partnership's moneys could not be credited to him as part of the moneys he had repaid.

42 As regards item (e), *ie*, Sundry Debtors, Tee noted that he could not locate any documents that would provide a breakdown of the respondents' value of $815,712 for Sundry Debtors. Upon a review of the Partnership's accounts, Tee's position was that the Sundry Debtors account should only comprise trade receivables of $75,568.90, likely due from LHMPL. However, any potential recovery would be limited to the known assets of LHMPL, amounting to $27,158.88.

43 As regards item (f), *ie*, the sum of $311,993 due from LHMPL, Tee's position was that it did not tally with the accounting records of LHMPL, which showed that LHMPL owed the Partnership a sum of $248,808. However, since

LHMPL only had cash of $27,158.88 in the bank, his view was that recovery would be limited to that amount, regardless of the actual amount owed. Tee's conclusion for items (e) and (f) was therefore that only $27,158.88 was recoverable from LHMPL.

44 The Judge held (at [158]) that LHMPL's debts should not be written off because the appellant was a 70% shareholder of LHMPL and a partner of the Partnership. Advances made from the Partnership to LHMPL were therefore related party transactions. The Judge also observed (at [158]) that there was no explanation why LHMPL was in a net liability position despite receiving significant sums of moneys from the Partnership. The reason LHMPL became insolvent was due to the fact that Jeffrey, in the course of taking over the Partnership's business, moved all the assets of LHMPL to his newly started business without paying for those assets. The Judge held (at [196]) that it would be "totally unjust if Tee's reductions of LHMPL's debt to the Partnership are accepted as Jeffrey has taken the benefits of the Partnership's and LHMPL's assets for his business – he enriched himself while Roland had Tee write off the inter-company loans of LHMPL. At the same time, Roland sued the [respondents]/the Estate for the outstanding debt of the Partnership".

45 Accordingly, the Judge relied on Mun's evidence and found that the Partnership was solvent as at the Date of Dissolution, and dismissed the appellant's claim.

46 The Judge also held (at [176]) that the appellant did owe fiduciary duties to his late mother, and such duties included not withdrawing the Partnership's moneys for his personal use and not making private profits to the exclusion of his late mother. He had breached those duties by treating the Partnership's moneys as his own "piggy bank" and in withdrawing the Partnership's moneys

for his personal use without his late mother's knowledge (see Judgment at [175]). The sums withdrawn were in excess of the principal outstanding amount due under the UOB overdraft facility, which was the subject of the appellant's claim (see Judgment at [190]). The Judge also rejected the appellant's defence of laches (at [197]) as well as his argument that his late mother knew and consented to the withdrawals (at [169]) since both were not pleaded.

47 The Judge accepted the respondents' position that the late mother was illiterate and did not share in the profits of the Partnership. The late mother's purported drawings were most probably taken by the appellant who then gave his late mother a monthly allowance of around $1,000: see Judgment at [201]. The Judge observed that if the late mother had taken her share of the Partnership's profits and an equal amount of drawings as the appellant, she would have had far more assets and cash than the amount in her estate.

48 The Judge found (at [207]–[209]) that the appellant held the Misapplied Sum and Private Profits as a constructive trustee for the Partnership. The Judge did not make a finding as to the exact amount of the Misapplied Sum or Private Profits (see Judgment at [210]) but instead ordered (at [212]) the appellant to account to his late mother's estate at an inquiry to be conducted by a registrar.

49 As regards the $20,000 allegedly used for funeral expenses, the Judge observed (at [146]) that although Roland had conceded that he was not pursuing the claim, the appellant's position in his Closing Submissions was ambivalent. The Judge found that there was objective evidence that the $20,000 had been repaid in any event.

50 In light of the above findings, the Judge found (at [213]) that it was unnecessary to deal with the respondents' alternative arguments.

The parties' cases on appeal

The appellant's case on appeal

51 On appeal, the appellant made five main submissions. First, the appellant submitted that the Judge had erred in finding that the appellant had breached his fiduciary duties as a partner when he made withdrawals for his personal use. The appellant's late mother was involved in the running of the business and the appellant was transparent about his withdrawals for personal use. Likewise, his late mother and the respondents were also transparent about their withdrawals. There was therefore an understanding between the partners that the Partnership moneys could be used for personal purposes. The appellant also submitted that although the arguments in relation to his late mother's knowledge and consent, as well as laches were not pleaded, the respondents were not caught by surprise. The relevant issues were amply explored and supported by the evidence during the trial.

52 Second, the Judge had erred in finding that the appellant had abandoned his claim for the $20,000 which was used for his late mother's funeral expenses.

53 Third, the Judge had erred in preferring Mun's report to Tee's report as regards the value of the Partnership as at the Date of Dissolution. The court should instead accept Tee's valuation of the Partnership's assets as regards "Sundry Debtors" and the amount "Due from LHMPL" as at the Date of Dissolution. The true value of the Partnership was a net negative value of $632,942.12, half of which the respondents was liable for.

54 Fourth, the Judge had erred in ordering the appellant to account to the respondents for the moneys which he had withdrawn from the Partnership and for those moneys to be held on constructive trust by the appellant.

55 Finally, the Judge had erred in finding that the respondents were not personally liable for the Partnership's liabilities as at the Date of Dissolution.

56 In light of the above, the appellant sought the following alternative consequential orders:

(a) If the court finds that there had been no breach of fiduciary duties by the appellant and accepts Tee's evidence, the court should order the respondents to bear half of the liability of the Partnership as at the Date of Dissolution, including the interest which had accrued on the UOB overdraft facility.

(b) If the court finds that there had been no breach of fiduciary duties by the appellant but rejects both Tee's and Mun's reports, the court should appoint a valuer to ascertain the true value of the Partnership as at the Date of Dissolution and for the liabilities (if the net value is negative) to be borne equally by the partners.

(c) In the event the court is not inclined to make the above orders, the court should order both partners to account for all their withdrawals for their personal use and to appoint a valuer to ascertain the true value of the Partnership.

The respondents' case on appeal

57 The respondents' case on appeal directly addressed the appellant's five main submissions. First, the appellant's argument that he did not breach his fiduciary duties because there was an agreement between the partners that the Partnership's moneys could be withdrawn for personal use was neither pleaded nor proved.

58 Second, the appellant's claim for the $20,000 was an attempt to resurrect a claim that Roland had confirmed he was no longer pursuing.

59 Third, the Judge had rightly observed that Tee's opinion that the "Sundry Debtors" and sum "Due from LHMPL" should be written off was really an attempt by the appellant's family members to enrich themselves with "accounting finesse".

60 Fourth, the Judge's order for an account was for Partnership moneys taken by the appellant in breach of his fiduciary duties. The appellant's argument on appeal for a valuation of the accounts was not pleaded and has no place in the appeal.

61 Finally, the respondents have acted in good faith, honestly and reasonably at all times and thus no personal liability should fall on them.

Our Decision

Whether the Partnership was solvent as at the Date of Dissolution

62 After considering the parties' submissions and the evidence given by Tee and Mun, we find that the Partnership was indeed solvent as at the Date of Dissolution and dismiss the appellant's claim.

63 Tee and Mun reached diametrically opposite conclusions in relation to the solvency of the Partnership as at the Date of Dissolution. Tee concluded that the Partnership had net liabilities of $710,214 as well as accruing interest due and owing under the UOB overdraft facility. On appeal, the appellant accepted some of the respondents' figures and revised the net liabilities to $632,942.12. On the other hand, Mun concluded that the Partnership was solvent as at the Date of Dissolution. As mentioned above (at [40]), the Judge found that Tee did

not properly discharge his duty to the court and his evidence was blatantly slanted in favour of the appellant.

64 We agree with the Judge that Mun's evidence should be preferred. Mun's evidence was more credible and objective, and the conclusions he reached were well-reasoned and supported by the evidence. We therefore agree with the respondents' position as regards the Partnership's accounts (see the table above at [29] and Judgment at [187]). We reproduce the table for ease of reference:

No	Assets	Sum (S$)
(a)	Misapplied Sum	1,977,632
(b)	Adjusted PPE	86,381
(c)	Cash	90,017
(d)	Stock	140,935
(e)	Sundry Debtors	815,712
(f)	Due from LHMPL	311,993
(g)	Deposits (SP Services)	2,290
	Total Assets	**3,424,960**
	Liabilities	
(h)	UOB Overdraft Account	940,986
(i)	Other creditors and accruals	38,738

	Total Liabilities	**979,724**
	Net Assets	**2,445,236**
	Half of Net Assets	**1,222,618**

65 We also reproduce the appellant's position on the Partnership's accounts on appeal:

No	Assets	Sum (S$)
(a)	Misapplied Sum	-
(b)	Adjusted PPE	86,381
(c)	Cash	90,017
(d)	Stock	140,935
(e)	Sundry Debtors	27,158.88
(f)	Due from LHMPL	
(g)	Deposits (SP Services)	2,290
	Total Assets	**346,781.88**
	Liabilities	
(h)	UOB Overdraft Account	940,986
(i)	Other creditors and accruals	38,738
	Total Liabilities	**979,724**
	Net Assets	**-632,942.12**
	Half of Net Assets	**-316,471.06**

66 At the outset, we note that the figures for items (b), (c), (d), (g), (h) and (i) are identical in both tables. The appellant accepted on appeal Mun's

valuation as regards items (b) and (d), *ie*, "Adjusted PPE" and "Stock". The value for items (c), (g), (h) and (i) were obtained from Tee's report and were therefore not disputed as well. Our decision will therefore focus on the disputed items (a), (e), and (f).

Item (a): Misapplied Sum

67 As mentioned above, the appellant calculated the Misapplied Sum as $2,599,542.58, based on Annexures A and B to the Defence and Counterclaim as well as parts of Tee's report (see above at [16]). The figure of $1,977,632.58 was reached after taking into account various sums of moneys that the appellant had deposited back into the Partnership accounts, which the respondents agreed with (see above at [31]). The respondents did not, however, agree with certain sums that the appellant had allegedly deposited back into the Partnership accounts in relation to "Blk 223 CCK" and "Family" (see above at [31]).

68 It was not disputed that the appellant did withdraw moneys from the Partnership for purposes unrelated to the Partnership, although the appellant's position was that withdrawals prior to 2002 need not be taken into account. We entirely agree with the Judge that it was illogical for Tee to have excluded withdrawals prior to 2002 for the reasons which we have detailed above at [41].

69 We accept Mun's evidence as regards the sum of $1,977,632 as the Misapplied Sum withdrawn by the appellant for his personal use. As we will explain below (at [72]–[76]), the appellant had breached his fiduciary duties and therefore held the Misapplied Sum as constructive trustee for the Partnership. The Misapplied Sum was therefore an asset of the Partnership.

Items (e) and (f): Sundry Debtors and Due from LHMPL

70 The appellant essentially reiterated his arguments below as regards these two items. We agree with the Judge that items (e) and (f) should not be reduced to $27,158.88 for the reasons detailed above at [44]. Further, as the Judge observed (at [184]), Tee's scope of works was *not* on recoverability of debts but rather, on the extent of indebtedness and the Partnership's financial position as at the Date of Dissolution. Accordingly, we agree with the Judge that Mun's evidence should be preferred and accept the figures of $815,712 and $311,993 for items (e) and (f) respectively.

71 For the above reasons, we agree with the respondents' position as regards the accounts of the Partnership (above at [64]) and find the Partnership to be solvent as at the Date of Dissolution, with a net asset position of $2,445,236. Since the appellant's claim is premised on the Partnership being insolvent, it follows that the appellant's appeal for the respondents to bear half of the *liabilities* of the Partnership as at the Date of Dissolution is simply unsustainable.

Whether the appellant was in breach of fiduciary duty with respect to the Misapplied Sum

72 It was not in dispute that the appellant and his late mother were equal partners and were hence entitled to an equal share of the assets and liabilities of the Partnership. In fact, as mentioned above, the claim brought by the appellant was predicated on his late mother being an equal partner at all material times.

73 It was also not in dispute that the appellant owed fiduciary duties to his late mother as a partner. That the appellant had withdrawn sums from the Partnership for his personal use was also not disputed.

74 We accept the appellant's argument that the mere fact that the appellant had withdrawn moneys for his own personal use did not inexorably mean that he had breached his fiduciary duties to his late mother. The critical issue is whether his late mother had knowledge of and consented to those withdrawals for the appellant's personal use ("the Consent defence").

75 There are, however, several insurmountable impediments to the appellant raising the Consent defence:

(a) First, on appeal, the appellant raised the argument that there was a *common understanding* that the partners were entitled to withdraw moneys for their personal expenses. This is not quite the same as the informed consent defence belatedly raised by the appellant in his Closing Submissions below. Nonetheless, whatever shape or form this defence may be presented on appeal, it is undisputed that neither informed consent nor common understanding was pleaded. Questions relating to such a defence are quintessentially questions of fact which must be pleaded and proved.

(b) What was instead the focus of the Defence to the Counterclaim was that the appellant's late mother was involved in the business of the Partnership. However, mere involvement in the business does not translate to knowledge and consent to the withdrawals. Furthermore, the fact that the appellant's late mother had approved the Partnership accounts did not *per se* amount to consent to the appellant's withdrawals for his personal use since the accounts did not particularise any of the appellant's withdrawals. In any event, the accounts were only signed by the appellant.

(c) Second, the claim brought by the appellant in fact undermines this unpleaded case theory. The appellant had brought a claim for the return of the $20,000 for his later mother's funeral expenses. Nothing could be more personal than funeral expenses for a deceased partner and yet the appellant's case is that his late mother was not entitled to use the Partnership's moneys for such personal expenses. Obviously, by the appellant's own case, there could not have been any such common understanding. For completeness, we should add that it is disingenuous for the appellant to resurrect his claim for the return of the $20,000. This claim was clearly abandoned in the court below. In any event, we agree with the Judge that this sum has since been repaid to the Partnership.

(d) Third, the respondents testified under cross-examination that they did not inform their late mother about the appellant's withdrawals for his personal use and that their late mother was not aware of those withdrawals. This evidence was conspicuously not challenged. Pursuant to the rule in *Browne v Dunn* (1893) 6 R 67, the appellant is precluded from submitting that his late mother was aware of and had approved the withdrawals.

(e) Consequently, the Judge made a finding at [175] of the Judgment that the late mother was not aware of these withdrawals. Given the unchallenged evidence of the respondents that their late mother was not aware of these withdrawals, there is simply no basis to argue that this finding was against the weight of the evidence.

(f) Finally, assuming that the court is prepared to permit the appellant to raise this new unpleaded defence, there is, however, no evidence that the appellant's late mother ever withdrew moneys from the Partnership for non-partnership related purposes. Here, the appellant

alleged that his late mother had taken $50,000 for her eldest son in November 1995. This was found to be untrue. The appellant also referred to two sums of $11,394.50 and $39,393.52 in 1984 and 1990 respectively that his late mother had used to settle the bankruptcy of the eldest son. Again, this was established to be false at the summary judgment application. Therefore, even if we allow the unpleaded defence to be raised on appeal, there is simply no evidence that the appellant's late mother ever shared the alleged common understanding. The appellant's alleged *unilateral* understanding could not conceivably constitute any alleged *common* understanding of the appellant and his late mother.

(g) At the hearing of the appeal, the appellant referred to a table exhibited in Tee's report with the heading "Withdrawals by [the late mother] for the period January 2002 to December 2014". The table listed partnership-related expenses – such as Central Provident Fund ("CPF") Medisave top-ups and income tax for the Partnership income. The Partnership similarly made those payments for the appellant. Unlike the appellant's withdrawals for his personal use, these expenses were related to the Partnership. The only items which were not clear were the sums of $20,000 for "China Bldg renovation" and "(T) NAC" for $39,000. However, as these two items were not explored at the trial, it is not clear what these two sums were for and whether and how they were connected to the late mother.

(h) The appellant also argued that if his late mother had only received a monthly allowance of $1,000, she would have been impoverished and would not have been able to maintain her property at 75 CCK. Neither would she have been able to leave behind a total sum

> in excess of $300,000 in various joint bank accounts. However, it was never put to the respondents at the trial that their late mother must have received her share of profits beyond her monthly allowance of $1,000 in order for her to maintain 75 CCK and to have savings in excess of $300,000. This submission would be purely speculative especially since the possibility of the late mother having access to funds from her late husband cannot be ruled out.

76 It is thus not open to the appellant to raise the Consent defence. In any event, it would have failed as a matter of evidence. We therefore affirm the Judge's decision that the appellant had breached his fiduciary duties.

Whether the equitable doctrine of laches is available to the appellant

77 If the Consent defence fails, the defence of laches would likewise fail. This is because the late mother's knowledge determines the reference point from which she could have commenced an action but elected not to do so. This is crucial in determining the length of the delay. If the late mother never had knowledge of the appellant's withdrawals for personal use (as we have found to be the case), there would be no operative delay up till the time she passed away. It was only *after* her death in December 2014, when the respondents (who knew of the appellant's personal use of the moneys) were appointed executors of the late mother's estate that any such delay is potentially relevant.

78 A key element of laches is that there must be a substantial lapse of time: see *Ong Chai Soon v Ong Chai Koon and others* [2022] SGCA 36 ("*Ong Chai Soon*") at [45]. The action below was commenced in December 2018 and the counterclaim was filed in January 2019 – a period of about four years since the passing of the late mother cannot be said to be a substantial lapse of time in the present case.

79 Furthermore, in examining this defence, it would be plainly wrong to look just at the length of delay. That delay must render it inequitable or unconscionable for the respondents to mount a belated counterclaim against the appellant. This would typically involve an examination of the prejudice suffered by the appellant as a result of the inordinate delay: see *Ong Chai Soon* at [45]. Quite apart from the fact that this defence was not pleaded and that there was no inordinate delay, there was also no prejudice.

80 The claim against the appellant was brought by way of a counterclaim. As the respondents explained at the trial, they were prepared to "let sleeping dogs lie". It was the appellant who initiated the claim against his late mother's estate. In defending the claim, it was essential for the respondents to raise the counterclaim since both the appellant's claim and the counterclaim are predicated on the same footing, *ie*, that the appellant and his late mother were, at all material times, equal partners. It was also essential to examine the true state of the Partnership accounts. Viewed in this manner, the appellant could hardly complain about the counterclaim as it was the direct consequence of his own decision to sue his late mother for half of the outstanding UOB overdraft facility.

81 As there is no dispute that the appellant had in fact withdrawn moneys from the Partnership's accounts and those withdrawals are well documented, the accounting can be done without much difficulty. There is simply no question of any prejudice occasioned to the appellant.

Whether the appellant was in breach of fiduciary duty with respect to the Private Profits

82 Besides the Misapplied Sum, the respondents also sought an account of the Private Profits. However, unlike the Misapplied Sum, the respondents did

not derive an exact figure in relation to the Private Profits. The respondents' counterclaim was based on two sources of evidence. First, the Partnership earned a total net profit of at least $2,250,896.98 from October 1981 to December 2014, but the late mother never received any profits from the Partnership. Second, there was a significant difference between the collections and deposits in the time the appellant ran the workshop amounting to a shortfall of $506,170.77 in profits. That difference was said to be Private Profits taken out by the appellant.

83 As regards the first source, the Judge made an assessment of the credibility of the witnesses (at [78] and [202]) and found the respondents' evidence to be more credible than that given by the appellant's witnesses. The Judge found that the purported drawings by the partners were most probably taken by the appellant, who then gave his late mother a monthly allowance of around $1,000.

84 Besides the fact that an appellate court should be slow to interfere with a trial judge's assessment of the credibility of the witnesses, we find the Judge's conclusions to be supported by the evidence. The appellant's own witness, Giam Cheng, acknowledged that the late mother was illiterate. Giam Cheng did not give a straight answer as to how the Partnership was managed and repeatedly commented that it was a family business in which "everyone" participated, although he later admitted that the overall person in charge of the business was the appellant. We also reject the appellant's argument that his late mother must have shared in the profits due to the fact that she was able to maintain 75 CCK and leave about $300,000 to the respondents for the reasons explained above at [75(h)].

85 As regards the second source, we note that the appellant acknowledged in his Appellant's Case that on the evidence, the cash collected by the appellant from the customers was indeed less than the cash he later passed to the second respondent. This was also accepted by his counsel during the trial. In his Appellant's Case, the appellant argued that regardless, he was transparent with his withdrawals and never concealed them. However, that argument would only carry weight if the late mother had knowledge of and consented to those withdrawals. Since we have rejected the Consent defence, it would necessarily follow that the appellant would have to account for the Private Profits.

The appropriate remedy for the breach of fiduciary duty

86 Given our above findings (at [76] and [84]–[85]), we affirm the Judge's order for an inquiry but as explained below, we have redefined the scope of the inquiry.

Expansion of the scope of the inquiry

87 Counsel for the appellant, Ms Shobna Chandran ("Ms Chandran") accepted at the hearing that if the court rejects the Consent defence in whatever form and consequently upholds the finding of a breach of fiduciary duty, then her argument would be that the scope of the inquiry ordered by the Judge at [212] of the Judgment should be expanded to include three more items.

88 The first is that the inquiry should include deposits into the Partnership account by the appellant. Counsel for the respondents, Mr Harish Kumar s/o Champaklal, very sensibly acknowledged that the deposits should be taken into account. For the purposes of inquiry, such deposits will not be treated as capital injections. There is no reason for the appellant to have made capital injections and they should be treated as repayments for the appellant's withdrawals for his

personal use. We recognise that depending on whether it can be shown that the appellant had deposited *more* moneys back to the Partnership than the sums accepted by the respondents, the inquiry *may* result in an amount which is different from the $1,977,632 in relation to the Misapplied Sum.

89 The second and third items are items (e) and (f) of the list at [65] above, *ie*, "Sundry Debtors" and "Due from LHMPL". Ms Chandran argued that neither Tee nor Mun had looked at these items very closely. She therefore sought an inquiry to determine the state of the Partnership's assets in relation to items (e) and (f) and urged the court not to accept at face value one expert's evidence over the other when neither of them had fully considered the items. We note that this argument was not raised in the Appellant's Case or the Skeletal Arguments. The Judge had dealt with Tee's evidence in the course of ascertaining the assets and liabilities of the Partnership and found that both items were assets of the Partnership. As we had affirmed the Judge's decision (above at [70]) after due consideration of the Appellant's Case and Skeletal Arguments, it is not open to the appellant to revisit this point at the inquiry.

Parameters of the inquiry

90 We note that the inquiry ordered by the Judge (at [212]) appears to extend only to sums withdrawn without the consent of the late mother. However, we do not think the Judge had intended for the scope of the inquiry to be so narrow. The scope of the inquiry should include any further deposits made by the appellant, any withdrawals (excluding withdrawals for CPF top-ups and income tax) and deposits made by the late mother, as well as any Private Profits which the appellant had taken from the Partnership.

91 In the circumstances, we define the parameters of the inquiry as follows:

(a) The relevant period is from 4 October 1981 to 19 December 2014.

(b) The items to be accounted for are:

(i) Any Private Profits as detailed above at [82]–[85].

(ii) Any deposits the appellant made into the Partnership account not already included in the $1,977,632 figure in item (a) above at [64]. Such deposits will not be treated as capital injections.

(iii) Any withdrawals (excluding withdrawals for CPF top-ups and income tax) and deposits by the late mother.

(iv) Interest accrued under the UOB overdraft facility up to the date of discharge of the UOB overdraft facility.

(c) The appellant is to hold the Misapplied Sum (after taking into account deposits determined at the inquiry) and Private Profits determined at the inquiry as constructive trustee for the Partnership.

(d) The rate and period of interest in respect of sums awarded to the respondents shall be determined by the registrar at the inquiry.

92 We stress that all other items at [64] above, *ie*, (a) the Misapplied Sum, (b) Adjusted PPE, (c) Cash, (d) Stock, (e) Sundry Debtors, (f) Due from LHMPL, (g) Deposits (SP Services), (h) UOB Overdraft Account, and (i) Other creditors and accruals, should *not* be revisited at the inquiry. We have already made our findings in relation to those items in the table at [64] and accepted the figures contained therein.

93 In light of our findings above, there is no need to make a declaration that the respondents be relieved from personal liability of their administration of the late mother's estate. Ms Chandran accepted that if nothing is due from the late mother in light of the finding that the Partnership was solvent, any such declaration would be moot.

Conclusion and costs

94 The appeal is dismissed and the Judge's decision to order an inquiry is affirmed save that the scope has been redefined at [91] above. After the inquiry and settlement of the Partnership's accounts, the appellant is to pay half of the net assets of the Partnership to his late mother's estate, including half of the Private Profits, as well as interest in respect of the sums awarded to the respondents.

95 We award costs to the respondents at $50,000 (all-in) to be borne by the appellant. The costs of the inquiry are reserved to the registrar.

96 The usual consequential orders apply, and the parties are given liberty to apply.

Steven Chong
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Shobna Chandran, Muhammad Taufiq bin Suraidi and Thaddaeus Aaron Tan Yong Zhong (Tan Rajah & Cheah) for the appellant;
Harish Kumar s/o Champaklal and Marissa Zhao Yunan (Rajah & Tann Singapore LLP) for the respondents.
