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

[2023] SGHCR 6

Suit No 468 of 2021 (Taking of Accounts and Inquiries No 1 of 2023)

Between

Aw Chee Peng

… *Plaintiff*

And

Aw Chee Loo

… *Defendant*

JUDGMENT

[Land — Interest in land — Liability of co-owner to account — Section 73A of the Conveyancing and Law of Property Act]
[Evidence — Admissibility of evidence — Documentary evidence]
[Evidence — Adverse inferences]
[Civil Procedure — Offer to Settle]

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Aw Chee Peng
v
Aw Chee Loo

[2023] SGHCR 6

General Division of the High Court — Suit No 468 of 2021 (Taking of Accounts and Inquiries No 1 of 2023)
AR Gan Kam Yuin
17-19 January 2023

5 June 2023 Judgment reserved

AR Gan Kam Yuin:

Introduction

1 The late great writer F. Scott Fitzgerald is reported to have said, "*Family quarrels are bitter things. They don't go according to any rules. They're not like aches or wounds, they're more like splits in the skin that won't heal because there's not enough material*." The taking of accounts and inquiries ("TAI") which was conducted by me in this case arose out of such a family quarrel.

Facts

2 The facts of the dispute between the parties in this case, who are brothers, have been set out in *Aw Chee Peng v Aw Chee Loo* [2022] 5 SLR 451 (the "Judgment") from [3] to [13]. In essence, the brothers were in dispute over the rental proceeds in respect of two family properties at 12 Jalan Gelenggang

(“No 12”) and 12A Jalan Gelenggang (“No 12A”) (collectively, the “Properties”). No 12 is on the ground floor and No 12A is above it.

3 The Honourable Judge held that, “the defendant was liable to account personally to the plaintiff “for receiving more than his share or proportion of any rents or profits arising from [the Properties]” under s 73A of the CLPA”[1] and found that, “the defendant’s full and unmodified liability to account to the plaintiff dates from 1 January 2021”.[2] The plaintiff therefore became entitled to an account “for rental income received from 1 January 2021 onwards”.[3]

4 There is another family property at 75 Dedap Road (the “Dedap Residence”). The parties live at the Dedap Residence together with other family members. Whilst there is no rental income to account for in relation to the Dedap Residence, the Dedap Residence is relevant to the TAI of the Properties because the defendant said that he had incurred expenses for renovation and maintenance of the Dedap Residence and should be allowed to set off the plaintiff’s share of those expenses from the account of rental income in respect of the Properties. I will deal with this below.

5 In the TAI proceedings before me, the plaintiff testified for himself and relied also on the testimony of three witnesses whose attendance had been procured by way of *subpoena*. The defendant testified for himself.

[1] Judgment at [67]

[2] Judgment at [68]

[3] Judgment at [70]

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Issues to be determined

6 The central issue before me in this TAI is how much the defendant must pay the plaintiff for rental income received from the Properties from 1 January 2021 onwards. To address this question, the following sub-issues require determination:

(a) Issue (1): the amount of rental income received from No 12 for the period 1 January 2021 to 31 December 2022;

(b) Issue (2): the amount of rental income received from No 12A for the period 1 January 2021 to 31 December 2022;

(c) Issue (3): whether the defendant may set off expenses incurred in connection with the Properties and if so, in what amount; and

(d) Issue (4): whether the defendant may set off expenses incurred in connection with the Dedap Residence and if so, in what amount.

7 I note here that the plaintiff will be entitled to one-third of the rental income as he is a one-third owner of the Properties (the other two owners are the defendant and their father). I will also address, as a fifth issue, the costs to be awarded in these TAI proceedings.

Issue (1): the amount of rental income received from No 12 for the period 1 January 2021 to 31 December 2022

8 The parties were in agreement that No 12 was rented from (at least) 1 January 2021 onwards at a monthly rental of $7,950.00 until 9 May 2021.[4] After that a new tenancy agreement was entered into between the defendant and

[4] Defendant's AEIC p 32-43

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the same tenant at a reduced monthly rental of $7,600.00 which will end on 9 May 2024.[5] The parties agreed that the rental income received for No 12 for the period 1 January 2021 to 31 December 2022 which spanned both tenancy agreements amounted to $183,800.00.

9 The security deposit under the tenancy agreement that was in place as at 1 January 2021 and until 9 May 2021 amounted to $23,850.00, this being the equivalent of three months' rental.[6] The security deposit under the new tenancy agreement after that amounted to $22,800.00, this being the equivalent of three months' rental at the reduced monthly rental.[7] The defendant sought to set off the difference of $1,050.00 between the two security deposits such that the amount of rental for which he had to account in respect of No 12 became $182,750.00 ($183,800.00 - $1,050.00 = $182,750.00).

10 I agree with the plaintiff that it is for the defendant to prove that he returned the difference of $1,050.00 to the tenant (see, *Chua Kok Tee David v DBS Bank Ltd* [2015] 5 SLR 231 at [23]; s 105 of the Evidence Act 1893 (2020 Rev Ed) ("*Evidence Act 1893*")). It cannot be disputed that there was no documentary evidence to support this fact. Further, the defendant did not actually say that he had returned the difference of $1,050.00 to the tenant in May 2021 (or at any other time). Rather, in his table of calculations of the rental income, the line item for May 2021 had the statement, "*(S$7,600.00 – S$1,050.00 (return of deposit))*".[8] This somewhat equivocal statement does not suffice. Even if, as the defendant argued, it would be logical to infer that the

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[5] Defendant's AEIC p 44-55

[6] Defendant's AEIC p 32

[7] Defendant's AEIC p 44

[8] Defendant's AEIC at para 13

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tenant would have asked for the return of the difference,[9] I cannot find as a fact that the tenant did so ask and that the defendant did so return.

11 Accordingly, on Issue (1), I find that the amount of rental income received from No 12 for the period 1 January 2021 to 31 December 2022 is $183,800.00.

Issue (2): the amount of rental income received from No 12A for the period 1 January 2021 to 31 December 2022

12 No 12A was rented to Zheng Guangjun ("PW2") and his wife Wu Mengling ("PW4"), Tee Kim Ming Leslie ("PW1"), and Huang Zhenglong ("Huang"). PW1, PW2 and PW4 all testified under *subpoena* at the plaintiff's behest. Huang did not testify, having apparently left his job in Singapore and returned to China on 12 January 2023, shortly before the TAI hearing started on 17 January 2023.[10]

13 Parties agreed that the amount of rental income received from PW2 and PW4 together for the period January 2021 to August 2022 was $14,600.00, and for the period September 2022 to December 2022 was $3,160.00, which totalled $17,760.00.

14 PW1 testified that his rental was $510.00 per month as at January 2021, increased to $560.00 per month with effect from July 2021, increased to $610.00 for July 2022 and August 2022, and then increased to $660.00 per month with effect from September 2022, which totalled $13,640.00 as at December 2022. The plaintiff accepted the evidence of PW1 whereas the defendant said that

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[9] Defendant's Closing Submissions at para 21

[10] NE 17 January 2023 p 32 lines 2-11

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PW1 only paid, in total, $13,600.00. The difference of $40.00 in total for the four months September to December 2022 apparently arose from fees of $10.00 per month for the use of the internet. The defendant submitted that due to a dispute between PW1 and PW2, PW1 paid this $10.00 to the defendant who handed it over to PW2; the defendant also relied on exhibit P1, being PW1's handwritten note on which the words "*Internet $10*" were written.[11] The defendant's argument appeared to be that $10.00 per month for September to December 2022 should be deducted from the amount paid by PW1 to him and therefore from the amount he had to account to the plaintiff for.

15 I do not accept the defendant's argument. No evidence was adduced before me about the supposed dispute between PW1 and PW2 and why that supposed dispute should have led to the defendant being a go-between. Neither was any such case put to either PW1 or PW2 during the course of their respective oral testimonies so that they might have had an opportunity to respond to it. PW4 was not in a position to shed any light on this as her testimony was that her husband PW2 was in charge of all matters concerning the rental for No 12A.[12] Exhibit P1 does not assist the defendant as the words, "*Internet $10*" do not, by themselves, support the defendant's case about why that sum should be deducted from the amounts paid by PW1 for the months September to December 2022. Exhibit P1 merely shows that a sum of $10.00 was chargeable or charged for the use of the internet but does not say to whom that sum was chargeable or charged. I thus find that PW1 paid a total amount of $13,640.00 for the period January 2021 to December 2022.

[11] Defendant's Closing Submissions at paras 29-30

[12] NE 18 January 2023 p 7 line 3; p 8 lines 1-8; p 11 line 21-p 14 line 25

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16 As for Huang, parties agreed that Huang paid rental of $640.00 per month for September 2022 to December 2022, totalling $2,560.00, and that before September 2022, Huang had paid $600.00 per month. Parties disagreed as to whether Huang started renting a room at No 12A from January 2021 onwards (which the plaintiff said was the case) or from March 2022 onwards (which the defendant contended).

17 The plaintiff urged me to draw an adverse inference against the defendant and to find that Huang started renting a room from January 2021 onwards, contrary to what the defendant said.[13] Amongst other reasons, the plaintiff pointed out that the defendant had maintained throughout the TAI proceedings, starting with his accounting affidavit on 6 June 2022 and including an Answers to Interrogatories on 15 August 2022, that there was no rental income for No 12A. This position was repeated in sworn statements as well as correspondence through his then-lawyers. The plaintiff tracked down the tenants and compelled them to testify. It was only in his Affidavit of Evidence-in-Chief ("AEIC") on 13 January 2023, two working days before the TAI hearing started, that the defendant disclosed that he had collected rental income from No 12A since at least January 2021, for which he had to account to the plaintiff.

18 In his AEIC, the defendant dealt with this *volte face* by saying that (i) there had been miscommunications or gaps in his instructions to his then-lawyers, (ii) he thought that the rental barely covered the utilities and so there was little utility in disclosing the rental, (iii) the tenancy agreements were informal arrangements which need not be declared, and finally (iv) he had

[13] Plaintiff's Closing Submissions at para 67

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signed the Answers to Interrogatories in a rush.[14] When cross-examined, the defendant was unable to provide any better explanation. I do not accept the defendant's reasons. A miscommunication with one's lawyers, or being in a rush, may excuse one error but it cannot excuse repeating the error over a period of seven months and embedding it in both correspondence and sworn documents. Even if the rental had barely covered the utilities (which does not appear to be the case based on the evidence before me) and even if the tenancy agreements were informal (which also does not appear to be the case as the tenants seem to have dealt with the defendant at arms' length rather than being, for instance, family members), it was not for the defendant to decide that he therefore did not have to disclose the rental to the plaintiff. The defendant was represented by counsel throughout the proceedings and should have been properly advised about what he was required to do pursuant to the Judgment.

19 Under s 116(*g*) of the Evidence Act 1893, the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. It appears to me that the defendant had not wanted his tenants to testify in these TAI proceedings because he realised that they would say that they had been renting rooms at No 12A for certain periods of time and had paid rental to the defendant for the same. This desire to prevent that evidence from surfacing would be consistent with the defendant's conduct as described in [17] and [18] above. It is also consistent with what PW1 told the Court – PW1 said the defendant's wife had brought a letter to the tenants some time in September 2022[15] for them to sign, and the letter stated that the tenants were not willing to testify in Court.[16] In the end, the

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[14] Defendant's AEIC at paras 17-20

[15] NE 17 January 2023 p 10 line 32-p 12 line 17; p 18 lines 5-21

[16] 3BCP p 1539

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plaintiff compelled the tenants to testify and the evidence came to light. To that extent it has become unnecessary for me to draw an adverse inference against the defendant generally as regards the evidence of the tenants.

20 However, the plaintiff urged me to draw an adverse inference against the defendant specifically in relation to Huang's tenancy and to find that Huang started renting a room at No 12A from January 2021 as the plaintiff suggested, rather than from March 2022 as the defendant suggested. I took into account PW4's testimony under cross-examination that Huang had started living at No 12A in 2022 although she could not recall the month.[17] PW4 did not appear to be making any particular effort to support the defendant's case in her testimony. The defendant's attempts, as described above, to stop the tenants from testifying seemed to have been directed at all of them collectively rather than against Huang specifically. Also, apart from the dispute about the internet fees in respect of PW1, I note that the occupancy dates and rental amounts set out in the defendant's AEIC in relation to PW1, PW2, and PW4 were consistent with their testimony. I thus accept that Huang started renting a room at No 12A from March 2022 onwards and the amount of rental he paid totalled $6,160.00.

21 On issue (2), I find that the total amount of rental collected from No 12A from January 2021 to December 2022 is $37,560.00.

Rental that could have been collected but was not

22 In addition to the rental actually collected from No 12A, the plaintiff sought an order that the defendant should also account to the plaintiff for rental that the defendant could have collected from renting out one of the remaining two untenanted rooms in No 12A but did not (the "Unlet Room"). The plaintiff

[17] NE 18 January 2023 p 10 lines 15-19

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quantified this at $13,640.00 by taking the average of PW1's monthly rental.[18] PW1's monthly rental was the lowest amongst the four tenants and the rental paid by PW2 and PW4 may not be comparable as they rented their room as a couple. Huang's rental, as a single occupant, was higher than PW1's.

23 The plaintiff stated that this claim for unearned rental on the Unlet Room was made in trespass by ouster.[19] Whilst the defendant argued that this could not be allowed as such a claim was not pleaded,[20] the plaintiff countered that it was the defendant's lack of candour regarding his dealings with No 12A that resulted in the plaintiff discovering only at the TAI stage when PW1 was testifying, that there were two untenanted rooms at No 12A.[21] The plaintiff also submitted that the reliefs sought by the plaintiff in the Statement of Claim and granted in the Judgment, are broad enough to encompass an account of rental that ought to have been, but was not, earned for the Unlet Room.[22]

24 I am of the view that I am unable to inquire into the defendant's dealings with the Unlet Room (or, indeed, with the other untenanted room in No 12A). I accept that the account which was ordered in the Judgment was a common or standard account in which the accounting party need only account for what was actually received, as opposed to an account on the basis of wilful default in which the accounting party is not only required to account for what he has received but also for what he might have received had it not been for the default. Another significant difference is that the accounting party carries a much more

[18] Plaintiff's Closing Submissions at para 75

[19] Plaintiff's Further Submissions at para 4

[20] Defendant's Reply Submissions at paras 16-17

[21] Plaintiff's Further Submissions at para 6

[22] Plaintiff's Further Submissions at para 9

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substantial burden of proof when accounting on the basis of a wilful default than that which applies in the case of a common account (see, *Ong Jane Rebecca v Lim Lie Hoa and Others* [2005] SGCA 4 at [55]; *UVJ and others v UVH and others and another appeal* [2020] 2 SLR 336 at [23]-[26]).

25 I had considered whether the effect of this decision is that I would be putting the plaintiff to the need to institute a fresh action dealing specifically with the claim for the Unlet Room (and, perhaps, the other room), and whether this in turn would lead to a waste of costs. I believe it would depend on how the action is conducted. If it is narrowly and appropriately focused, the Court could make considered findings with the aid of proper pleadings and argument. The parties may even agree to use the evidence already given in TAI 1/2023 insofar as it touches on this issue, and supplement it as necessary.[23] The plaintiff may even wish to inquire into the defendant's usage of the other untenanted room as the evidence on that may not have been fully adduced during the hearing before me. I say no more on this but the point is that such investigation could not take place within the framework of TAI 1/2023.

Issue (3): whether the defendant may set off expenses incurred in connection with the Properties and if so, in what amount

26 The plaintiff submitted that the defendant should not be permitted to set off expenses that he incurred voluntarily and unilaterally from January 2021 and onwards.[24] I do not accept this submission. The defendant has been directed to account to the plaintiff for rental income from the Properties from January 2021 and onwards. He should be entitled to set off expenses which were necessarily incurred in order that the rental could be earned. The touchstone must be

[23] NE 18 January 2023 p 48 line 6-p 55 line 11

[24] Plaintiff's Closing Submissions at para 77

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whether the expenses were necessary so that the Properties could be rented, rather than whether the defendant voluntarily paid them without consulting the plaintiff.

27 The defendant's case on the expenses incurred in relation to the Properties, and the plaintiff's response, are set out below. I will deal only with S/Nos 3, 4, 5 and 6 since the plaintiff did not challenge the other items.

S/N	**Description**	**Quantum which defendant sought to set off**	**Plaintiff's position**	**Plaintiff's position on quantum**
1.	Property Tax for No 12 from 1 January 2021 to 31 December 2022	18,390.17	Accepted	18,390.17
2.	Property Tax for No 12A from 1 January 2021 to 31 December 2022	4,920.00	Accepted	4,920.00
3.	Income Tax for No 12 from 1 January 2021 to 31 December 2021	2,753.60	No evidence of payment	0
4.	Utilities for No 12A from 1 January 2021 to 31 December 2022	16,677.13	Could and should have made the tenants bear the expense. Alternatively, quantum should be S$10,625.79	0
5.	Premium for fire insurance policy	963.02	Premium for period of coverage (January 2021	642.00

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			to April 2021) should be pro-rated	
6.	Repair and maintenance of the Properties	67,142.93	Disputed	0
7.	Legal fees and costs incurred in the tenancy of the Properties	1,000.00	Accepted	1,000.00
TOTAL		111,846.85		24,952.17

S/No 3 Income tax for No 12 from 1 January 2021 to 31 December 2021

28 The defendant said that the income tax deducted by IRAS for the year of assessment 2022 was $2,753.60[25] based on his declaration of net rental income for No 12 for 1 January 2021 to 31 December 2021 at $75,290.00.[26] The plaintiff's objection to this was that there was no adequate proof that this had been the assessed sum and that it had been paid.[27] I am satisfied that this was the assessed sum but I hold that the defendant may not effect the set-off until he provides, to the reasonable satisfaction of the plaintiff, evidence that the said sum has been deducted from his bank account or otherwise paid to IRAS.

29 I grant parties a liberty to apply to me if they cannot work out between themselves whether the defendant has or has not provided the necessary evidence to the reasonable satisfaction of the plaintiff.

30 For completeness, I note that the plaintiff did not object on the basis that, as a matter of principle, the defendant was not entitled to set off his personal

[25] Defendant's AEIC at para 26, p 71

[26] Defendant's AEIC at para 24, p 69

[27] Plaintiff's Closing Submissions at para 103; Plaintiff's Reply Submissions at paras 16-17

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income tax against the rental. I had concerns about this but in the absence of any arguments from the parties, I say no more.

S/No 4 Utilities for No 12A from 1 January 2021 to 31 December 2022

31 The defendant initially claimed $16,677.13 in respect of utilities for No 12A from 1 January 2021 to 31 December 2022[28] but later accepted that his calculations were wrong and instead the plaintiff's calculations as set out in exhibit P4 were correct.[29] The quantum is therefore $10,625.79.[30]

32 The more contentious question was whether the defendant was, in principle, permitted to set off the cost of the utilities. I have considered the plaintiff's argument that the defendant could and should have passed on the utilities cost to the tenants.[31] The plaintiff urged me to find that if the defendant chose not to do that out of some form of misguided charity, this should not prejudice the plaintiff.[32] This submission came on the back of the defendant's testimony that he had made allowances for the tenants' limited financial ability.[33]

33 I have reviewed the transcript of the cross-examination and I take the view that the defendant's first and instinctual response to the question of why he did not pass on the cost of the utilities to the tenants is more credible than his subsequent allusion to the tenants' limited financial ability. He first said that he

[28] Defendant's AEIC at para 29

[29] Defendant's Closing Submissions at para 58

[30] Plaintiff's Closing Submissions at para 107

[31] Plaintiff's Closing Submissions at para 105

[32] Plaintiff's Closing Submissions at para 106

[33] NE 18 January 2023 p 55 lines 27-29; p 57 lines 7-8

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had borne the utilities bills for the tenants and did not pass on the cost of the utilities to them as these tenants were only renting individual rooms, whereas he had or would have passed on the cost of the utilities to the tenant if the tenant rented the entire space.[34] Both PW1 and PW2 testified that the defendant had justified an increase in their respective monthly rentals by telling them that it was due to the increase in utilities bills.[35] I accept their testimony and I find it to be consistent with a situation where the defendant bore the cost of the utilities but reflected that cost implicitly in the monthly rental. In other words, whilst the defendant may not have exercised a contractual right to directly pass the utilities cost to the tenants, the amount of the rental did factor in the utilities cost. The defendant's later answer, where he suggested that he had been gracious in light of the tenants' financial abilities, seemed to me to be an afterthought. Weighing the evidence in its totality, I hold that the defendant may set off $10,625.79.

S/No 5 Premium for fire insurance policy

34 The documentary evidence showed that the defendant paid $481.50 for each of the policy periods 4 April 2020 to 3 April 2021, 4 April 2021 to 3 April 2022 and 4 April 2022 to 3 April 2023.[36] The defendant submitted that it would be equitable to deem that the defendant had paid $963.00 (*ie* $481.50 plus $481.50) for the period 1 January 2021 to 31 December 2022.[37] I find that the defendant is entitled to set off a pro-rated portion of the annual premium for the period 1 January 2021 to 3 April 2021, the annual premium for the period 4 April 2021 to 3 April 2022, and a pro-rated portion of the annual premium for the period 4 April 2022 to 31 December 2022. As this would in effect amount

[34] NE 18 January 2023 p 55 lines 19-27

[35] NE 17 January 2023 p 13 lines 19-30; p 25 lines 27-30

[36] Defendant's AEIC p 104-p 120

[37] Defendant's Closing Submissions at para 63

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to the premium for 24 months, the defendant is entitled to set off an amount of $963.00.

S/No. 6 Repair and maintenance of the Properties

35 The defendant claimed a sum of $67,142.93 for repair and maintenance works on the Properties, broken down as follows:

Maintenance and servicing of air-conditioning units and replacement of old air-conditioning units or parts thereof	$260.00
Painting works	$13,800.00
Roof maintenance and repair	$28,000.00
Tree removal and pruning, removal of weed plants and fence repair	$17,400.00
Repairs of interior ceiling boards (such as replacement of the boards)	$3,000.00
Purchase of household supplies	$182.93
Miscellaneous works	$4,500.00

36 The defendant attached to his AEIC, copies of seven personal petty cash vouchers and six third-party receipts or cash invoices to support the aforesaid works (except for the miscellaneous works), totalling $62,642.93.[38] The seven

[38] Defendant's AEIC at p 122-p 131

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personal petty cash vouchers ("PCV") added up to $62,200.00 whilst the six third-party receipts or cash invoices ("3P RI") added up to $442.93. I set out below some key points in relation to these documents.

S/No	Document	Amount	Disclosed in Defendant's 6 June 2022 affidavit	Disputed in Plaintiff's Notice of Non-Admission	Attached to AEIC for TAI 1/2023	Original adduced in TAI 1/2023
1	PCV 25 June 2021	8,900.00	Yes	Yes	Yes	No
2	PCV 4 March 2021	5,200.00	Yes	Yes	Yes	No
3	PCV 21 March 2022	14,000.00	Yes	Yes	Yes	No
4	PCV 20 April 2021	14,000.00	Yes	Yes	Yes	No
5	PCV 23 March 2021	8,600.00	Yes	Yes	Yes	No
6	PCV 31 March 2022	8,500.00	Yes	Yes	Yes	No
7	PCV 28 April 2021	3,000.00	Yes	Yes	Yes	No
8	3P RI 4 January 2021	165.00	Yes	No	Yes	No
9	3P RI 20 August 2021	95.00	Yes	No	Yes	No
10	3P RI 18 April 2022	20.00	Yes	No	Yes	No

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11	3P RI 24 October 2022	99.90	No	No	Yes	No
12	12 November 2022	8.03	No	No	Yes	No
13	19 November 2022	55.00	No	No	Yes	No

37 The defendant's first argument about these documents relied on the decision of the Court of Appeal in *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd* [2022] SGCA(I) 8 ("*Baker*"). Relying on *Baker* at [30], [31], and [36], the defendant urged me to accept that he had adduced as much documentary evidence as he was able to, and to accept his oral testimony for the rest of the expenses incurred.[39] The defendant's second point about these documents was that the plaintiff had no basis to claim that the defendant had forged the payment vouchers.[40] I need not make a finding on forgery because, as I will explain below, I disagree with the defendant on his first argument.

38 As to the defendant's first argument, I understand from the decision in *Baker* that the trustee's duty to provide proper, complete, and accurate justification and documentation may be fulfilled in different ways or to different degrees, and the question of what is, or is not, sufficient, is fact-centric and depends on, amongst others, whether the trustee is a lay trustee or a professional trustee, the type of expenses in question, the quantum in issue, and evidence of

[39] Defendant's Closing Submissions at paras 65-68

[40] Defendant's Closing Submissions at para 69

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the surrounding factual context. As the Court of Appeal reiterated, "while the legal burden is on an accounting party to justify payments made for the benefit of the beneficiary, "how that burden is discharged will vary from case to case"" (see, *Baker* at [36]).

39 However, the documents which the defendant sought to rely on in the present case to prove the expenses incurred for the repair and maintenance of the Properties were challenged on their *admissibility* and not just on their *sufficiency*. Thus, it appears to me that in relying on *Baker*, the defendant has missed the anterior question of whether the disputed documents were admitted in evidence for TAI 1/2023 in the first place.

40 The question is whether the seven PCV and the six 3P RI were proved by primary evidence, meaning the document itself produced for the inspection of the Court, as required by s 66 read with s 67 and s 64 of the Evidence Act 1893. The defendant cannot dispute that he did not produce for the inspection of the Court any of the documents of the seven PCV or six 3P RI.

41 The defendant relied on the decision of the Court of Appeal in *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holding*"). Specifically, the defendant submitted, firstly, that if the documents are marked and admitted into evidence without objection, the other party cannot object to the admission of the documents later.[41] Secondly, the defendant went on to say that a party is generally deemed to admit the authenticity of documents in an opponent's list of documents unless he had issued a notice of non-admission within 14 days

[41] Defendant's Reply Submissions at para 29

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after inspection of the documents.[42] Finally, the defendant argued that counsel for the plaintiff did not question the defendant during the hearing about the authenticity of the seven PCV or ask him to produce the originals for the inspection of the Court and thus the plaintiff was deemed to have waived any objection to admissibility.[43]

42 I will deal with the defendant's three arguments in turn. First, *Jet Holding* does not assist the defendant. The passage which the defendant relied on in *Jet Holding* at [51] expressly refers to documents having been marked and admitted into evidence and there is discussion elsewhere in *Jet Holding* about the use of an agreed bundle of documents to surmount any problems of authenticity (see, for example, *Jet Holding* at [44], [56]). There was no agreed bundle of documents in TAI 1/2023.

43 Secondly, even if the plaintiff's Notice of Non-Admission of Authenticity of Documents was served on 28 July 2022, more than 14 days after the original documents were inspected by the plaintiff on 27 June 2022, the deemed admission of authenticity under Order 27 r 4(1) of the Rules of Court (2014 Rev Ed) ("Rules of Court 2014") does not apply as the seven PCV and three of the six 3P RI which the plaintiff inspected were disclosed in the defendant's accounting affidavit filed on 6 June 2022, not by way of a list of documents served pursuant to Order 24 or pursuant to an order made under Order 24. The remaining three of the six 3P RI were only disclosed in the defendant's AEIC for the TAI proceedings.

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[42] Defendant's Reply Submissions at paras 30-36

[43] Defendant's Reply Submissions at para 37

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44 Thirdly, I do not understand how the defendant could have suggested that the defendant was not questioned during the hearing about the authenticity of the seven PCV. On the contrary, he was questioned at length about the seven PCV and also the six 3P RI. It is also not right to suggest that the onus was on the plaintiff to ask the defendant to produce the originals for the inspection of the Court. This argument turns the burden of proof on its head and is unmeritorious.

45 The plaintiff served a Notice of Non-Admission of Authenticity of Documents which clearly stated that the plaintiff did not admit the authenticity of, and required the defendant to prove at trial, the seven PCV.[44] In his AEIC which responded to the defendant's 6 June 2022 accounting affidavit, the plaintiff unequivocally put the defendant to proof that he had in fact incurred the expenses, including the seven PCV.[45] During the course of cross-examination, the defendant was expressly challenged on the seven PCV and the six 3P RI.[46] I thus find that, similar to the situation in *Jet Holding* at [73], "It is clear, in [my] view, that the [plaintiff] had in fact objected to the introduction of the [seven PCV and the six 3P RI]. In the circumstances, the [defendant] ought therefore to have satisfied the requisite requirements under the Evidence Act – in particular those contained in s 66. On this ground alone, [the seven PCV and the six 3P RI] were not admitted into evidence. That was, of course, fatal to the [defendant's] case in so far as the quantum of [$62,642.93] claimed was concerned."

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[44] Plaintiff's AEIC at p 301-p 303

[45] Plaintiff's AEIC at paras 86-94

[46] NE 18 January 2023 p 100 line 1-p 103 line 31

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46 The defendant does not fall within any of the exceptions in s 67 of the Evidence Act 1893 such that secondary evidence (meaning, copies as defined in s 65 of the Evidence Act 1893) of the disputed documents could be relied on.

47 The plaintiff went on to submit that even if the documents were proved as required under s 66 or s 67 of the Evidence Act 1893, they were hearsay evidence and therefore inadmissible.[47] In light of my finding on authenticity, it is unnecessary for me to consider the arguments based on hearsay. The defendant should have adduced the seven PCV and the six 3P RI for the purposes of the TAI proceedings but failed to do so. Without the documentary evidence, there is simply unsupported oral evidence from the defendant, which is insufficient to discharge the burden of proving that he had incurred a significant sum of $62,642.93 in various repair and maintenance works on the Properties.

48 As for the miscellaneous works amounting to $4,500.00 which the defendant did not proffer any documents for, it is difficult to accept that there is a reasoned basis for this claim. I can understand a party making an estimate in the absence of documents, perhaps due to the passage of time or the relative size of the amounts incurred. However, after the Judgment which ordered the defendant to account was delivered on 30 March 2022, the defendant could have begun to accumulate the necessary receipts relating to miscellaneous expenses. When the accounting affidavit was filed on 6 June 2022, the defendant gave a figure of $4,000.00 for the miscellaneous works with no supporting documents.[48] When the AEIC was filed on 13 January 2023, he could by then have had nine months' worth of relevant documents (starting after the Judgment

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[47] Plaintiff's Closing Submissions at para 84

[48] Affidavit at para 24

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was delivered on 30 March 2022) from which to extrapolate, explain and provide a basis to estimate the cost of any earlier miscellaneous works, but he did not do so. Instead, in the AEIC, he repeated, almost word-for-word, what had been stated in his accounting affidavit but simply increased the figure to $4,500.00.[49]

49 The defendant submitted that it would be "grossly inequitable to the defendant if the Court were to make a finding that none of these costs had been incurred".[50] I think the defendant has misunderstood the situation. I am not making a finding that none of the costs for miscellaneous works at the Properties had been incurred. I am, however, making a finding that the defendant has not discharged the burden of proving that those costs had been incurred. There is nothing inequitable about this. As the Court of Appeal said in *Jet Holding* at [38]:

> The provisions set out above (in particular, s 66) have, as their core rationale, the aim of ensuring that the best evidence is available before the court… That is why the general rule (again, in s 66) is that all documents must be proved by primary evidence, with 'primary evidence' being defined (in s 64) as meaning 'the document itself produced for the inspection of the court' [emphasis added]."

50 I thus find that the defendant is not entitled to deduct $67,142.93 from the account he has to give to the plaintiff.

Issue (4): whether the defendant may set off expenses incurred in connection with the Dedap Residence and if so, in what amount

51 The defendant's position was that he had incurred expenses in relation to the Dedap Residence. As I mentioned at the outset of this judgment, the

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[49] Defendant's AEIC at para 36

[50] Defendant's Closing Submissions at para 95

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parties live at the Dedap Residence together with other family members. The defendant testified that over the period 1 January 2021 to 31 December 2022 he incurred at least an estimated sum of $28,800.00 for maintenance, renovation and repairs and an estimated sum of $13,490.55 for utilities at the Dedap Residence.[51]

52 The defendant harked back to the finding of the Honourable Judge that there had been an arrangement between the father and the defendant which the plaintiff accepted ("the Arrangement"), and that the Arrangement included using the rental proceeds from the Properties to renovate and maintain the Dedap Residence.[52] The Honourable Judge had also found that the Arrangement had terminated by 1 January 2021 (which is why the defendant has to account to the plaintiff from 1 January 2021).[53]

53 Notwithstanding this, the defendant submitted that it would only be fair and expedient that the defendant be allowed to set off the plaintiff's share of the Dedap Residence expenses and that not allowing him to do so would result in the plaintiff being unjustly enriched at the defendant's expense.[54] The plaintiff disagreed with the defendant and in any event said, for similar reasons as with the seven PCV, that the defendant had not properly proved these expenses.

54 In light of the Honourable Judge's decision that the Arrangement ended by 1 January 2021, I find no merit in the defendant's argument and I do not allow the defendant to set off any part of the expenses supposedly incurred by him for the Dedap Residence from 1 January 2021 onwards on the basis of

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[51] Defendant's AEIC at paras 40-45

[52] Judgment at [50], [53], [60]; Defendant's Closing Submissions at para 100

[53] Judgment at [68]

[54] Defendant's Closing Submissions at paras 101-102

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fairness, expediency, or justice. What the defendant is really saying is that as a matter of good conscience, the plaintiff should be contributing towards maintenance, renovation, repairs and utilities for the Dedap Residence since he is also living there. Whether or not that is so is not something I can or should decide. Because of my finding on this issue, it is not necessary for me to address the dispute over whether the expenses for the Dedap Residence were properly proved by the defendant.

Issue (5): the costs to be awarded in respect of these TAI proceedings

55 The plaintiff sought indemnity costs for the TAI proceedings, relying mainly on the defendant's conduct in attempting to conceal the fact that he had received rental income from No 12A until two working days before the TAI hearing started, as well as the defendant's apparent attempts from late November 2022 onwards to delay the TAI proceedings.[55] The defendant submitted that costs should be in his favour and should be allowed on the scale of matters heard in the Magistrate's Courts as the amounts awarded fall within that jurisdiction.[56] Alternatively, the defendant relied on an Offer to Settle ("OTS") served under Order 22A of the Rules of Court 2014 and asked that the Court should award costs of the TAI proceedings in accordance with Order 22A.[57]

56 I deal first with the OTS.[58] The OTS was served on 17 October 2022 and the defendant offered to pay the plaintiff $50,000.00 from the defendant's share of the net proceeds of sale of the Properties pursuant to HC/OA 659/2022 ("OA

[55] Plaintiff's Closing Submissions at para 125

[56] Defendant's Closing Submissions at paras 137-143

[57] Defendant's Closing Submissions at paras 144-153

[58] Defendant's Closing Submissions p 46-p 48

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659") and within seven days of his receipt of those proceeds. The OTS also stipulated that the plaintiff was to discontinue this case with no order as to costs within seven days from accepting the OTS. OA 659 was an application filed by the defendant on 13 October 2022 asking the Court to order that the Properties be sold.

57 To attract the costs consequences under Order 22A of the Rules of Court 2014, an OTS must be a reasonable, serious or genuine offer aimed at inducing or facilitating settlement, and should not be made just to entail the payment of costs on an indemnity basis, and should not be one where the offeror effectively expected the other party to capitulate (see, *Resorts World at Sentosa Pte Ltd v Goel Adesh Kumar and another appeal* [2018] 2 SLR 1070 ("*Resorts World*") at [20], [22]). What would constitute a serious and genuine offer must depend on the circumstances and issues of the case (see, *Man B&W Diesel S E Asia Pte Ltd and another v PT Bumi International Tankers and another appeal* [2004] 3 SLR(R) 267 ("*B&W*") at [10]). There must be a legitimate basis for the offer made; a modest but realistic offer may be reasonable, serious or genuine for the purposes of Order 22A as it is a defendant's right to assess the likely sum which the plaintiff may be awarded and to make an appropriate offer to settle in order to protect himself from adverse costs consequences (see, *Resorts World* at [22]).

58 In the present case, what troubles me about the OTS is not the amount that was offered ($50,000.00 might indeed have been modest but realistic) but the fact that the amount was to be paid after selling the Properties pursuant to OA 659 whereas the plaintiff was to discontinue this case with no order as to costs within seven days from accepting the OTS. Given that OA 659 was filed by the defendant two working days before the OTS was served, this suggests that the defendant was using the OTS as leverage to get the order he wanted in OA 659 rather than to facilitate or induce settlement of this action.

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59 Another difficulty with the OTS is that because the offered payment was contingent on the happening of future events namely, the defendant's receipt of sale proceeds from the sale of the Properties, the assessment of whether the amount awarded in this TAI is not more favourable than the terms of the OTS should take into account interest lost during that time period. However, the amount of that interest cannot be ascertained at this stage as OA 659 has not concluded and there is no indication that the parties have agreed on a sale of the Properties.

60 Even leaving aside the element of interest lost, which would be a factor that reduces the value of the OTS, the amount awarded by me in this TAI is more favourable than the amount of $50,000.00 that was offered in the OTS.

61 In any event, Order 22A r 9(5) of the Rules of Court 2014 provides that the Court shall have full power to determine by whom and to what extent any costs are to be paid.

62 In this regard, there are two particular factors which have an impact on costs in this TAI. These factors are first, proportionality and second, the defendant's conduct from the time of his accounting affidavit on 6 June 2022 until his AEIC on 13 January 2023. The point as to proportionality is self-evident. I also note in this connection that the defendant had applied to transfer the TAI to the State Courts on the basis that the value of the claim brought it within the jurisdiction of the State Courts. That application was taken out on 29 December 2022 and I heard it three working days later on 4 January 2023. At that time, the TAI proceedings were fixed to start on 16 January 2023. I dismissed the application and the defendant's appeal against my decision was subsequently dismissed.

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63 As for the defendant's conduct, I have said above that I do not accept several of his explanations. The accounting affidavit he signed on 6 June 2022 said, "As for [No 12A] there has been no rental income from 1 January 2021 to date."[59] The AEIC he signed on 13 January 2023 said, "As for [No 12A]… there are four (4) existing occupiers. A breakdown of the rental income received over the years is as follows…." and went on to give the details from January 2021 to December 2022.[60] I have considered both the accounting affidavit signed on 6 June 2022 and the AEIC signed on 13 January 2023. They were very similar both in presentation and in detail: they both reiterated that the plaintiff had denied the Arrangement and commenced this suit, they both stated that the defendant was providing an account for the Properties from 1 January 2021 onwards pursuant to the Judgment, they both set out what the defendant had incurred for upkeep etc for the Properties which should be set off, and they both maintained that the defendant had incurred various sums for upkeep etc for the Dedap Residence which should also be set off. The main point on which they differed was as to the rental for No 12A. It is difficult not to conclude that the defendant consciously concealed the rental for No 12A when he signed his accounting affidavit.

64 There were also attempts made by the plaintiff in between the two affidavits, through correspondence between counsel as well as Interrogatories, to elicit the truth about the rental for No 12A. Unfortunately, the defendant did his best to deliberately conceal the rental he had collected from No 12A until he knew he no longer could.

[59] Affidavit at para 13

[60] Defendant's AEIC at para 14

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65 Taking into account all the factors and in the exercise of my discretion, I will award the plaintiff the costs of the TAI proceedings as guided by Appendix G of the Supreme Court Practice Directions 2013 which applies to matters in the High Court rather than using the scale of costs applicable to matters heard in the Magistrate's Courts, and I award costs on the standard basis rather than the indemnity basis. Section III.A.*(i)* item 4 of Appendix G provides a range of $25,000.00 to $70,000.00 for pre-trial work, $6,000.00 to $16,000.00 as a daily trial tariff, and up to $30,000.00 for post-trial work. The plaintiff sought $25,000.00 in costs and $2,106.08 in disbursements for pre-trial work, $45,000.00 in costs and $7,516.07 in disbursements for the three hearing days, and $15,000.00 in costs and $390.66 in disbursements for post-trial work, on an indemnity basis, which totalled $95,012.81.[61]

66 I award the plaintiff $25,000.00 in costs and $2,106.08 in disbursements for pre-trial work, $30,000.00 in costs and $7,516.07 in disbursements for the three days of the TAI hearing, and $18,000.00 in costs and $390.66 in disbursements for post-trial work, totalling $83,012.81. I have taken into account, in particular, the defendant's conduct starting with the accounting affidavit and until the AEIC was served two working days before the first day of the TAI hearing, as well as the urgent getting-up and other preparatory work which plaintiff's counsel would have had to do since the defendant's AEIC was served only two working days before the TAI hearing commenced. I have also borne in mind that some time, although not a great deal, was spent during the TAI hearing on the issue of whether rental could have been earned on the Unlet Room. I have factored in that additional submissions were requested by me on a few discrete points, after the parties' respective closing and reply submissions.

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[61] Plaintiff's Reply Submissions at para 43

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The plaintiff has applied for a refund of unused hearing fees. If the Court approves any refund, that amount is to be credited to the defendant.

67 I now deal with the costs for two applications on which I had deferred the fixing of the amounts to be awarded. SUM 4581/2022 was the plaintiff's application for an unless order which I granted on 4 January 2023 in order to procure the defendant's AEIC for the purposes of the TAI hearing, with costs in favour of the plaintiff in an amount to be fixed by me later. The plaintiff sought costs of $4,000.00 inclusive of disbursements[62] while the defendant proposed costs of $2,000.00.[63] Guided by Section II.B. item 20 of Appendix G, I fix costs in favour of the plaintiff at $3,000.00 inclusive of disbursements.

68 SUM 4583/2022 was the defendant's application for an extension of time for the exchange of the AEICs for the TAI hearing which I granted on 4 January 2023 although not with the same length of time as sought by the defendant, with costs in favour of the plaintiff in an amount to be fixed by me later. The plaintiff sought costs of $2,000.00 inclusive of disbursements[64] while the defendant proposed no order as to costs.[65] I do not agree that the defendant may make this submission; I had ordered, in respect of SUM 4583/2022, on 4 January 2023, that costs were in the plaintiff's favour although the amount would be fixed by me later and this order was not taken on appeal. Guided by Section II.B. item 2 of Appendix G, I fix costs in favour of the plaintiff at $2,000 inclusive of disbursements.

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[62] Plaintiff's Closing Submissions at para 126

[63] Defendant's Closing Submissions at para 157

[64] Plaintiff's Closing Submissions at para 126

[65] Defendant's Closing Submissions at paras 158-159

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Conclusion

69 In summary, I have found that the defendant is to account to the plaintiff for the following sums:

Rental income received from No 12 for the period 1 January 2021 to 31 December 2022	$183,800.00
Rental income received from No 12A for the period 1 January 2021 to 31 December 2022	$37,560.00
Less: expenses incurred in connection with the Properties	($38,652.56 of which $2,753.60 is subject to the condition at [28] above)
Net amount (subject to the condition as regards the sum of $2,753.60)	$182,707.44

70 The defendant will have to pay the plaintiff one-third of the net amount of $182,707.44, which is $60,902.48. I award the plaintiff interest on the net amount at 5.33% per annum which accrues until the date of this decision; thereafter, interest accrues on the net amount (and also on any unpaid costs awarded in this decision) at 5.33% per annum until payment is made to the plaintiff. The starting point for the interest calculation on the net amount is the day following the date on which the amount was payable to the defendant; by way of illustration, if monthly rental was due to the defendant on 31 January 2021, interest will start on 1 February 2021. Interest should be calculated on the balance amount for the month after setting off any applicable expenses which I

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have allowed the defendant to set off; by way of illustration, interest should run on the balance of the monthly rental for January 2021 after deducting a proportionate amount of the property tax, the income tax (subject to the condition at [28] above), the utilities, and the fire insurance premium. The deduction for the legal fees and costs is to be made in the month in which those legal fees and costs were incurred.

71 I grant parties a liberty to apply to me should they be unable to work out the precise sums in accordance with the decision above.

72 I thank counsel for their assistance throughout these TAI proceedings and express my hope that the parties can find the material to heal the splits in the skin of this family quarrel.

Gan Kam Yuin
Assistant Registrar

Philip Ling, Lim Haan Hui and Low Ziron (Wong Tan & Molly Lim LLC) for the plaintiff;
Cai Enhuai Amos, Tian Keyun and Kieran Jamie Pillai (Yuen Law LLC) for the defendant

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