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

[2023] SGHC 68

Suit No 663 of 2020

Between

Kotagaralahalli Peddappaiah Nagaraja

… *Plaintiff*

And

(1) Moussa Salem
(2) Serene Phey Sai Lin
(3) SLI Developments Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Costs — Standard or indemnity basis]
[Civil Procedure — Costs — Quantum]

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v
Moussa Salem and others

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30 January, 9, 20 February, 20 March 2023

31 March 2023 Judgment reserved.

Vinodh Coomaraswamy J:

Introduction

1 The plaintiff commenced this action seeking to vindicate his claim to be the beneficial owner of one share or one-third of the shares in the third defendant under or by reason of a trust declared by the second defendant by deed on 23 July 2015 ("the 2015 Trust Deed"). I delivered my judgment on the merits of this action in January 2023 (see *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem and others* [2023] SGHC 6 ("*KPN*")). In that judgment, I dismissed the plaintiff's claim in its entirety.

2 I now set out my judgment on the costs of this action. It should be read together with *KPN*. All abbreviations in this judgment are to bear the meanings ascribed to them in *KPN*. All sums of money in this judgment have been

converted to Singapore dollars at the rates provided by the parties and rounded off to the nearest dollar.

3 The plaintiff's statement of claim in this action originally pleaded four claims against four defendants: (a) breach of contract;[1] (b) a conspiracy against him by two or more of the defendants;[2] (c) minority oppression under s 216 of the Companies Act 1967 (2020 Rev Ed);[3] and (d) breach of the express trust constituted by the 2015 Trust Deed.[4]

4 In December 2020, I struck out as being plainly and obviously unsustainable all of the plaintiff's claims except for the last claim: that that there had been a breach of the express trust constituted by the 2015 Trust Deed.[5] It is that single claim which proceeded to trial and which I adjudicated upon on the merits in *KPN*. I shall refer to the plaintiff's claims which I struck out in December 2020 collectively as "the unsustainable claims".

5 In September 2021, the plaintiff discontinued his claim against one of the defendants, Mr Gluck, paying costs to Mr Gluck in order to do so (*KPN* at [11]).[6] This action therefore proceeded to trial against only the three defendants who are now named in its title.

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1 Statement of Claim dated 23 July 2020 ("SOC") at paras 23, 32(1), 33 and 38.

2 SOC at paras 34 and 39–41; Certified Transcript 4 December 2020 in HC/SUM 3307/2020, HC/SUM 3780/2020, HC/SUM 3781/2020, HC SUM 4421/2020 and HC/SUM 4422/2020 at pp 13–14, p 17 lines 10–14 and p 28 lines 24–31.

3 SOC at paras 48–50.

4 SOC at paras 42–46.

5 HC/ORC 7028/2020 dated 22 December 2020, extracted 29 December 2020.

6 Certified Transcript 17 September 2021 in HC/SUM 3826/2021 at p 100 lines 3–12.

6 In *KPN*, I held that the presumption of a resulting trust arose over the Shares in favour of the first defendant because the first defendant: (a) paid the direct consideration for the Shares; and (b) undertook and discharged the contractual obligation which had causative force in vesting the Shares in the second defendant (*KPN* at [84]–[92] and [122]–[124]). I found further that this presumption stood unrebutted because there was no objective intention that anyone other than the first defendant was to have any part of the beneficial interest in the Shares (*KPN* at [93]–[118]).

7 As a result, I held that the first defendant was the sole beneficial owner of all of the Shares. The 2015 Trust Deed was nothing more than an imperfect gift which equity would not assist the plaintiff to perfect, the plaintiff being a volunteer (*KPN* at [118]). I therefore dismissed the plaintiff's action in its entirety.

8 Each of the defendants now seeks an order that its costs of and incidental to this action be paid by the plaintiff. Having considered the oral and written submissions from the parties on costs, I now make my orders as to costs.

The first defendant

The event

9 I begin by considering the first defendant's claim for costs against the plaintiff.

10 The starting point in exercising the discretion to award costs is ascertaining the event (*Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 ("*Comfort Management*") at [27]). The event is the outcome of the litigation overall (*Comfort Management* at [28]). If a court

is minded to make any order for costs at all, its discretion ought ordinarily to be exercised to order that costs follow the event (O 59 r 3(2) of the Rules of Court (Cap 322, 2014 Rev Ed) ("Rules of Court 2014")).

11 The event in this action is undoubtedly against the plaintiff and undoubtedly in favour of the first defendant (*Comfort Management* at [28]–[29]). The first defendant is therefore *prima facie* entitled to an order that the plaintiff pay the first defendant's costs of and incidental to this action (*Comfort Management* at [39]).

12 Further, the event in this action is entirely against the plaintiff and entirely in favour of the first defendant. There are therefore no grounds for ordering that the first defendant be deprived of any part of his costs, let alone for ordering the first defendant to pay any part of the plaintiff's costs.

13 The only two questions to be determined on the first defendant's claim for his costs are: (a) whether the first defendant's costs should be assessed on the standard basis or the indemnity basis; and (b) the quantum of those costs.

Standard or indemnity basis

14 The first defendant submits that his costs should be assessed on the indemnity basis for four reasons. First, the plaintiff commenced this action in bad faith and with an improper purpose.[7] Second, the plaintiff's case was

[7] 1st Defendant's Written Submissions dated 30 January 2023 ("D1WS") at paras 24–33.

constantly evolving.[8] Third, the plaintiff behaved dishonestly, abusively and improperly.[9] Fourth, the plaintiff was an evasive and untruthful witness.[10]

15 I do not accept that the first defendant's costs should be assessed on the indemnity basis for any of the four reasons he advances.

Action commenced in bad faith and with an improper purpose

16 The first reason the first defendant advances for his costs to be assessed on the indemnity basis is that the plaintiff commenced this action in bad faith and with an improper purpose and put forward claims which are fabricated and plainly unsustainable.[11] Although the first defendant does not elaborate on the nature of the improper purpose, I take it as a submission that the plaintiff commenced the action and advanced his claims – including both the unsustainable claims (see [4] above) *and* the claim on the 2015 Trust Deed – with no genuine belief that he had a plausible claim on the facts or on the law but for the improper purpose of creating a bargaining chip to secure an advantage in continued negotiations with the first defendant for the compensation the plaintiff was to receive for his contributions to the third defendant's business.

17 I do not accept the first defendant's submission. All of the first defendant's costs of and incidental to this action can be put into one of two categories: (a) the costs of and incidental to the unsustainable claims; and (b) the costs of and incidental to the claim on the 2015 Trust Deed. I do not accept that

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8 D1WS at paras 34–38.

9 D1WS at paras 39–41.

10 D1WS at paras 42–44.

11 D1WS at paras 24–33.

there is any basis for assessing the first defendant's costs in either of these two categories on the indemnity basis on the ground that the plaintiff commenced this action in bad faith or for an improper purpose.

18 I take each of these two categories of costs in turn.

(1) The costs of the unsustainable claims

19 To the extent that the plaintiff caused the first defendant to incur costs in this action by advancing fabricated or plainly unsustainable claims, the first defendant has already received a deemed indemnity against those costs. When I struck out the plaintiff's unsustainable claims in December 2020 (see [4] above), I ordered the plaintiff to pay costs of $20,455 to Mr Gluck[12] and costs of $17,072 to the first defendant.[13] Those costs were sought and assessed on the standard basis. These costs were a deemed indemnity to the first defendant and Mr Gluck for each of their costs of and incidental to defending the unsustainable claims. In *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 at [197], I explained the indemnity principle which underlies the court's discretion to award costs and explained, in that context, the concept of a deemed indemnity as opposed to an actual indemnity.

20 Having awarded the first defendant a deemed indemnity for the costs of and incidental to the unsustainable claims, I consider that it would be wrong in principle for me now to enhance the basis of assessment for the first defendant's deemed indemnity for those costs from the standard basis to the indemnity basis.

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12 HC/ORC 7028/2020 dated 22 December 2020, extracted 29 December 2020.

13 HC/ORC 7029/2020 dated 22 December 2020, extracted 29 December 2020.

21 It is true that I found all of the claims that the plaintiff originally pleaded to be unsustainable, with the exception only of the claim on the 2015 Trust Deed. But when I struck out the unsustainable claims, the first defendant could have then invited me to assess the first defendant's costs of and incidental to the unsustainable claims on the indemnity basis on the grounds that that those claims were *so* unsustainable that they warranted the inference that the first defendant now invites me to draw (see [16] above). He did not do so then. I consider it too late for him to do so now.

22 There is, of course, no rule of law which precludes the first defendant from inviting me now to enhance the basis on which I assessed his costs of and incidental to the unsustainable claims. My interlocutory award of costs in favour of the first defendant creates no *res judicata* or issue estoppel of any sort which now binds the first defendant and the plaintiff, or which now constrains my discretion on costs. But I consider it wrong in principle to revisit this issue, at least in the absence of changed circumstances. And I do not consider the fact that the first defendant has succeeded entirely in this action as a relevant change of circumstances. That is because the outcome of the striking out application was, in and of itself, an event for the purposes of an award of costs. The event in this litigation overall is an entirely separate and independent event. It is a circumstance of no relevance to the event which gave rise to the earlier award of costs.

(2) The costs of the claim on the 2015 Trust Deed

23 I now turn to the second category of the first defendant's costs of this action (see [17] above): the costs of and incidental to the claim on the 2015 Trust Deed.

24 Even if I were to assume, in favour of the first defendant, that the plaintiff advanced the unsustainable claims in bad faith and for an improper purpose, I do not consider that to be a proper basis from which to draw the inference that the plaintiff advanced his claim *on the 2015 Trust Deed* in bad faith and for an improper purpose.

25 It is certainly true that the abject failure of all but one claim in the plaintiff's elaborate case to survive a striking out application could justify the inference that the first defendant invites me to draw (see [16] above) about the only claim which did survive. It is also true that that single claim is a fairly narrow and technical claim on the 2015 Trust Deed. But that claim cannot on its face be stigmatised as tenuous or contrived. It is an objectively sustainable claim, both on the facts and on the law. That is the very reason I did not strike it out and allowed it to continue to trial. I do not consider that it would be correct in principle for me to draw – from the nature or the failure of this claim – the inference that the first defendant invites me to draw about the plaintiff's motive in bringing his claim on the 2015 Trust Deed.

26 Before I leave this point, I should make clear that none of what I have said about the nature of the plaintiff's unsustainable claims or my decision to strike them out is intended as any criticism of the plaintiff's solicitors. I am satisfied that they conducted themselves at all times in accordance with their instructions and, more importantly, with their professional duties both under written law and at common law, in advancing his many claims.

Case constantly evolving

27 The second reason the first defendant advances for his costs to be assessed on the indemnity basis is that the plaintiff's case was constantly evolving.[14]

28 It is true that the plaintiff amended his statement of claim four times before trial. But the first and second round of amendments took place before I struck out the unsustainable claims.[15] The third round of amendments took place as a result of my order striking out the unsustainable claims *ie*, in order give effect to my order by removing these claims from the pleadings and to refocus the plaintiff's pleading on the 2015 Trust Deed.[16] Therefore, the costs order I made when I struck out the unsustainable claims incorporated a deemed indemnity to the first defendant for his costs of and incidental to three out of the plaintiff's four rounds of amendments.

29 The plaintiff's fourth round of amendments took place after I struck out the unsustainable claims and was not necessitated by the striking out.[17] But when I granted the plaintiff leave to make his final round of amendments, I ordered him to pay to Mr Gluck and the first defendant, who were then jointly represented, a single set of costs fixed at $12,000.[18] Again, the time for the plaintiff to ask for his costs arising from the plaintiff's conduct in evolving his case one more time to be assessed on the indemnity basis was when I made that

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14 D1WS at paras 34–38.

15 D1WS at para 36; Statement of Claim (Amendment No. 1) dated 18 September 2020; Statement of Claim (Amendment No. 2) dated 16 November 2020.

16 D1WS at para 36; Statement of Claim (Amendment No. 3) dated 15 January 2021.

17 D1WS at para 37; Statement of Claim (Amendment No. 4) dated 24 September 2021.

18 Certified Transcript 17 September 2021 in HC/SUM 3826/2021 at p 100 lines 15–16.

order for costs. The plaintiff did not do so then. I do not consider there to have been any change of circumstances to render it appropriate for him to do so now.

30 Finally, even taking the first defendant's case at its highest, I do not consider that I can take the fact that the plaintiff's case was constantly evolving as a basis to draw the inference that the first defendant now invites me to draw (see [16] above) about his claim on the 2015 Trust Deed. It is not uncommon for a party to amend its pleadings before trial. It is also not uncommon for a party to do so multiple times. The fact that the plaintiff made four rounds of amendments is not a factor which is enough, either in itself or taken with the other factors that the plaintiff advances, to warrant an order that the first defendant's costs of and incidental to this action be assessed on the indemnity basis.

Stop notice

31 The third reason the first defendant advances for his costs to be assessed on the indemnity basis is that the plaintiff behaved dishonestly, abusively and improperly when he applied to have the court issue a stop notice to prevent the third defendant from registering any transfer of the Shares and from paying any dividends on the Shares while this action was pending.[19]

32 It is true that the plaintiff did apply for a stop notice to be issued.[20] If he had made that application by way of an interlocutory summons in this action, it might be possible to take that conduct into account as a basis for assessing the first defendant's costs of the action on the indemnity basis. But that is not what

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19 D1WS at paras 39–41.

20 HC/OS 1287/2020.

the plaintiff did. He instead made that application by way of a separate originating summons.[21] That originating summons was issued in December 2020, six days after I struck out the unsustainable claims. In January 2021, the first defendant, the third defendant and Mr Gluck applied to have that originating summons struck out as an abuse of the process of the court.[22] The grounds which they raised then to stigmatise the originating summons as an abuse are the very same grounds that the first defendant now raises to submit that the plaintiff has behaved so dishonestly, abusively or improperly as to warrant an award of costs assessed on the indemnity basis.

33 In March 2021, I declined to strike out the plaintiff's originating summons. Despite that, I not only deprived the plaintiff of his costs of that striking out application, I ordered the plaintiff to pay the costs of the application to the first defendant, the third defendant and Mr Gluck, such costs fixed at $21,000 (see *Comfort Management* at [41]–[88] for the applicable principles).[23]

34 The originating summons that the first defendant now complains of caused the first defendant to incur an independent set of costs, entirely separate from the costs of this action. The plaintiff's conduct in taking out that originating summons therefore did not increase the first defendant's costs of defending *this action*. To the extent that the plaintiff incorrectly or improperly brought the originating summons, I took that into account when I ordered him to pay the costs of the application to strike out the originating summons, even though the event on the striking out application was in his favour.

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21 D1WS at para 39.

22 HC/SUM 173/2021 in HC/OS 1287/2020.

23 Certified Transcript 24 March 2021 in HC/OS 1287/2020 at p 111 lines 7–12.

35 The originating summons is still pending. When it concludes, it remains open to the first defendant, if there is a basis, to seek an order that the plaintiff pay the first defendant's costs of the originating summons as a whole assessed on the indemnity basis.

36 For all of the foregoing reasons, it would be wrong in principle for me to take into account the plaintiff's conduct in commencing and prosecuting that originating summons as a ground for assessing the costs of *this action* on the indemnity basis.

37 The first defendant also relies the plaintiff's refusal to withdraw the stop notice after I handed down my judgment in *KPN* in January 2023 as evidence of the plaintiff's dishonest, abusive or improper behaviour.[24] However, the reason which the plaintiff gave for his refusal was that he was considering his right of appeal against my decision in *KPN*.[25] It is, of course, true that my decision in *KPN* bound the plaintiff with immediate effect as soon as it was handed down, and that it did so even if he intended to or actually did file an appeal. He was so bound until and unless my decision was reversed on appeal or was stayed pending appeal. So the plaintiff's conduct in refusing to withdraw the stop notice undoubtedly amounts to arrogating to himself the benefit of a stay of execution without taking the trouble to apply for one, let alone securing one. But I do not consider it correct to characterise conduct of this type as dishonest, abusive or improper. I would characterise it at worst as being overly optimistic and an overreach.

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24 D1WS at paras 40–41.

25 D1WS at pp 66–68.

38 Furthermore, even if the plaintiff's conduct can correctly be characterised as dishonest, abusive or improper, it remains the case that that conduct has taken place in separate proceedings. The first defendant's remedy on all matters related to the stop notice – whether on the merits, on costs or otherwise – lies in those proceedings, not in this action.

Evasive and untruthful

39 The fourth reason the first defendant advances for his costs to be assessed on the indemnity basis is that the plaintiff was an evasive and untruthful witness at the trial of this action.[26]

40 It is true that I found that the plaintiff's evidence was, in critical respects, at variance with the contemporaneous documents and the inherent probabilities. It is also true that I found that the plaintiff changed his evidence in critical respects under cross-examination. However, I did not find that the plaintiff was deliberately or knowingly untruthful or evasive, whether in his written or his oral evidence. That is not to say that I found him *not* to be deliberately or knowingly untruthful. It was simply unnecessary for my decision on the merits of the plaintiff's claim or of the first defendant's defence to make any finding as to the cause of the variance between the plaintiff's evidence and the contemporaneous documents or the inherent probabilities, one way or the other. It sufficed for me merely to find that there was a variance and that the variance warranted rejecting his evidence.

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[26] D1WS at paras 42–44.

41 I therefore do not consider that this reason warrants an order that the costs which the plaintiff must pay to the first defendant be assessed on the indemnity basis.

Conclusion

42 For all of the foregoing reasons, I hold that the costs which the plaintiff will have to pay to the first defendant should not be assessed on the indemnity basis, but should be assessed in the usual way on the standard basis.

Quantum

Section 1 costs

43 On quantum, the first defendant submits that he should be awarded costs of $800,000 assessed on the standard basis for the first defendant's solicitors' professional fees *ie*, what are commonly called Section 1 costs.[27] He recognises that this quantum goes well beyond the scale set out in the Guidelines for Party and Party Costs Awards in the Supreme Court of Singapore found in Appendix G of the Supreme Court Practice Directions 2013 ("Appendix G").[28] But he submits that fixing the quantum of an award of costs is ultimately in the discretion of the court and that Appendix G is only a guideline in the exercise of that discretion. The first defendant therefore invites me to exercise my discretion to fix costs without regard to Appendix G, in the particular circumstances of this case.[29]

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27 D1WS at para 47.

28 D1WS at para 47.

29 D1WS at paras 47–48.

44 In response, the plaintiff submits that the first defendant should be awarded Section 1 costs assessed in accordance with Appendix G, which the plaintiff quantifies at $245,000.[30]

(1) Courts should not depart from Appendix G too readily

45 I decline to exercise my discretion to depart from Appendix G. I must of course accept that Appendix G is only a guideline. Its title expressly describes it as a guideline. Its body expressly provides that it is merely "intended to provide a general indication on the quantum and methodology of party and party costs awards" in the Supreme Court. It expressly reiterates that the "fundamental governing principle is that the precise amount of costs awarded remains at the discretion of the Court" and that the court "may depart from the Costs Guidelines depending on the particular circumstances of each case".

46 Having said that, I consider that the three salutary purposes that Appendix G serves would be undermined if the courts were, when awarding costs, to depart too readily from its guidelines. In the analysis which follows, I use the term "litigation" in the general sense to cover both an originating process or an appeal and an interlocutory application within an originating process or an appeal, all within the classes covered by Appendix G.

47 The first, and most valuable, purpose that Appendix G serves is to assist the court at the conclusion of litigation in fixing the quantum of costs that the paying party must pay to the receiving party. Appendix G enables the courts to achieve a degree of consistency in fixing this deemed indemnity, thereby ensuring that like cases are treated alike when it comes to the award of costs, in

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30 PWS at paras 7–9.

so far as that is possible in a matter that is ultimately within the discretion of the court. By making it easier in this way for the court to award fixed costs, Appendix G also allows litigants to avoid the time and expense of taxation.

48 The second purpose that Appendix G serves is perhaps less obvious but equally valuable. It serves this purpose even before litigation is commenced and continues to serve it all the while litigation is pending. Appendix G allows solicitors to advise clients with a degree of certainty what their likely costs exposure or costs recovery will be in the litigation as between party and party, however the litigation may ultimately be resolved, whether by adjudication, by compromise or by capitulation. In this way, Appendix G sets litigants' expectations as to costs, both on the downside and the upside, and both at the outset of litigation and as litigation continues. These expectations form a critical part of the continuous cost-benefit analysis which every litigant must bear in mind. Defeating these expectations too readily is undesirable from the litigant's perspective. This is of particular importance to litigants who are individuals, as they are typically more risk averse in litigation than commercial parties. In that sense, upholding the expectations as to costs set by Appendix G also has implications for access to justice (see *eg*, *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 at [29]).

49 Defeating litigants' expectations as to costs too readily is also undesirable from the systemic perspective. No system of civil justice has the resources to resolve by adjudication all of the litigation that is initiated before it. Encouraging litigants to resolve their litigation otherwise than by adjudication is therefore an essential aspect of any system of civil justice. But litigants bargain towards a resolution of their litigation in the shadow of the law, both substantive and procedural. Upholding expectations set by Appendix G

provides the degree of certainty necessary on the issue of costs for litigants to bargain with confidence towards a resolution of their litigation otherwise than by adjudication.

50 The third purpose that Appendix G serves is to set a marker for legal fees as between solicitor and client, however faint that marker might be. It is true that paragraph 3 of Appendix G expressly provides that nothing in Appendix G is intended to guide or influence the charging of fees payable to a solicitor by his own client. That must undoubtedly be the case. Fees as between solicitor and client are a matter of contract. This is subject, obviously and always, to the legal and ethical constraints found in the Legal Profession Act 1996 (2020 Rev Ed), in its subordinate legislation and in the written law and the common law of legal professional ethics. This is also subject to the Supreme Court's supervisory jurisdiction over solicitors (see *eg*, *Law Society of Singapore v Syn Kok Kay* [2023] SGHC 7 at [21]–[24]). Subject to these constraints, and in particular to the very important constraint imposed by r 17(7) of the Legal Profession (Professional Conduct) Rules 2015, there is nothing to prevent a client from agreeing by contract to pay his solicitor a fee which is 30% above the guidelines in Appendix G or 300% above those guidelines. There is nevertheless a clear connection between the guidelines in Appendix G and the fees agreed between solicitor and client. Appendix G is a guideline for fixing the quantum of the policy-based deemed indemnity which the receiving party can recover against the fees it has agreed to pay its own solicitor. Appendix G therefore lays down a marker of reasonableness – a marker which is deliberate, even if it is deliberately indirect and deliberately diffident – for the contractual bargains on fees that solicitors as a class reach with clients as a class.

51 Each of these three purposes is undermined if the courts, having set expectations as to party and party costs *ex ante* through the publication of Appendix G, defeats those expectations *ex post* by departing from its guidelines too readily.

(2) This is not an appropriate case to depart from Appendix G

52 Bearing the foregoing analysis in mind, I do not consider that this is an appropriate case to depart from Appendix G. I say that for three reasons.

53 First, the grounds which the first defendant advances in support of his submission that I should exercise my discretion to depart from Appendix G in the particular circumstances of this case are the very same grounds he advances in support of his submission that I should assess his costs on the indemnity basis. It is undoubtedly true that my discretion to assess costs, even on the standard basis, allows me to take into account the conduct of the parties. But I have already explained why I do not accept that the grounds on which the first defendant relies are a valid basis on which to assess his costs on the indemnity basis. For those same reasons, I do not accept that those grounds are a valid basis on which to depart from Appendix G when assessing his costs on the standard basis. In short, the grounds on which he relies have already been taken into account in my previous awards of fixed costs and are either not sufficiently related to his conduct in relation to the single claim which went to trial in this action or arose in separate proceedings for which the first defendant retains a separate right of recourse in those proceedings.

54 Second, it appears to me that the basis for a departure from Appendix G must be, broadly speaking, related primarily to the inherent factual or legal complexity of the litigation itself and the inadequacy of the guidelines in

Appendix G, in all the circumstances of the case, to yield a figure as a deemed indemnity that is an appropriate marker for the fee that a reasonable litigant in the receiving party's position would reasonably have agreed to pay his own solicitor. That is quite different from the basis on which an award of indemnity costs is, broadly speaking, made. That basis is related primarily to the unreasonable conduct of the paying party in the litigation. The particular circumstances of a case justifying a departure from the guidelines in Appendix G can, no doubt, include the conduct of the paying party in the litigation. But it appears to me that it will be rare for a paying party's conduct in the litigation not to warrant a departure from the general rule that costs are to follow the event (*Comfort Management* at [40]–[51]), or not to warrant an award of indemnity costs but nevertheless to warrant a departure from the guidelines in Appendix G.

55 Third, the first defendant does not submit that there is any feature related to the factual or legal complexity of this litigation that takes it beyond the general run of equity and trusts cases catered for by the guidelines for this class of case in Appendix G. In so far as litigation involving equity and trusts is more factually and legally complex than litigation in other areas of law, Appendix G has already taken that into account in setting the guidelines for pre-trial, trial and post-trial work in this class of case.

56 I therefore turn to consider what quantum of costs the first defendant should be awarded on the standard basis upon an application of the guidelines in Appendix G for an equity and trusts case.

(3) Application of Appendix G

57 The plaintiff submits that the first defendant should be awarded costs of $245,000 under Appendix G, calculated as follows:

(a) $80,000 for pre-trial costs. The plaintiff arrives at this figure by taking as his starting point the figure of $90,000 which the first defendant has claimed in his costs schedule and discounting it by $10,000.[31]

(b) $120,000 for trial costs. The plaintiff arrives at this figure by taking the maximum daily tariff set out in Appendix G of $16,000 per day of trial and multiplying that by the 7½ days that the trial of this action took.[32]

(c) $45,000 for post-trial costs. The plaintiff arrives at this figure by taking the maximum tariff set out in Appendix G for post-trial work and adding to it $10,000 for the one-day hearing for oral closing submissions.[33]

58 With one exception (see [59]–[60] below), I accept that the basis on which the plaintiff has arrived at these figures is a correct application of the guidelines in Appendix G for an equity and trusts case to the facts of this case.

59 The one exception is that I do not accept the plaintiff's submission that the $90,000 claimed by the first defendant for pre-trial work should be discounted by $10,000. The plaintiff applies this discount to account for the fact

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31 PWS at para 8(a).

32 PWS at para 8(b).

33 PWS at para 8(c).

that the same set of solicitors represented the first defendant and Mr Gluck from July 2020 when the plaintiff commenced this action until September 2021, when the plaintiff discontinued his claim against Mr Gluck. Given that I awarded Mr Gluck $20,000 as his costs of this action upon the discontinuance, the plaintiff's case is that half of this award of costs should be attributed to pre-trial work done for the first defendant up to that point.[34]

60 I do not accept this submission. I awarded $20,000 to Mr Gluck for his costs of this action up to the discontinuance, and not for any part of the first defendant's costs up to that stage. The award of $20,000 therefore *follows* an implicit apportionment of the costs of pre-trial work as between Mr Gluck and the first defendant. There is no scope for a further apportionment as between the two of them.

61 In any event, it appears to me that the pre-trial work done in this litigation for the first defendant *alone*, both before and after the discontinuance, warrants an award at the top end of the tariff *ie*, $90,000.

62 It is of course a relevant factor that the first defendant was very ably represented by senior counsel throughout these proceedings, and in particular at trial and in closing submissions. I have taken that factor into account in adopting figures under Appendix G which are at the very top of each tariff.

63 I therefore fix the plaintiff's award for Section 1 at $255,000. For the reasons I have given, I have assessed that figure on the standard basis and in accordance with Appendix G for an equity and trusts case.

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[34] PWS at para 8(a).

Disbursements

64 The first defendant claims from the plaintiff disbursements of $236,464.[35] The plaintiff objects to the following five large disbursements totalling $165,244 out of this claim:[36]

(a) $91,300 for Mr Baldock's fee for all attendances in relation to this action.

(b) $22,272 for Mr Jordan's fee in connection with preparing the affidavits of evidence in chief.

(c) $17,952 for Mr Jordan's fee for attendance at trial.

(d) $16,547 for the first defendant's travel expenses between Singapore and London in May 2022.

(e) $17,173 for a return airfare for Mr Gluck between London and Singapore.

65 The plaintiff also points to a number of smaller disbursements which the first defendant claims, including $235 for a limousine transfer from Changi Airport to the Fullerton Hotel and Mr Gluck's minibar purchases such as a bottle of Evian water at $26.[37] But the plaintiff quite sensibly accepts that these smaller

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35 D1WS at para 22 and Annex B; Letter from WongPartnership LLP ("WP") dated 20 February 2023 at para 7.

36 PWS at para 15; Letter from Allen & Gledhill LLP ("A&G") dated 9 February 2023 at Annex B.

37 Letter from A&G dated 9 February 2023 at pp 28–29 and Annex B, para 6.

disbursements are *de minimis* and takes no objection to the first defendant's claim to recover them.[38]

(1) Mr Baldock's fee

66 When costs are fixed or taxed on the standard basis, it is trite that the burden is on the receiving party to prove two elements: (a) that he has incurred each item of costs which he seeks to recover reasonably; and (b) that the item is reasonable in amount (see *eg*, O 59 r 27(2) of the Rules of Court 2014). Implicit in the first element is the condition precedent that it was the receiving party himself – and not a third party – who has actually incurred the item of costs. As in all civil matters, the receiving party must prove the condition precedent as well as these two elements by adducing admissible evidence to establish each of them on the balance of probabilities.

67 The plaintiff's objections to the first defendant's claim for Mr Baldock's fee are aimed at the condition precedent and the second element. The plaintiff does not, quite rightly, take any point on the first element by suggesting that Mr Baldock's fee was unreasonably incurred. Mr Baldock was quite clearly a material witness of fact on at least three critical issues: (a) the circumstances surrounding the third defendant's incorporation (*KPN* at [19] and [88]); (b) the facts said to give rise to a resulting trust over the Shares in the first defendant's favour (*KPN* at [91]); and (c) whether the first defendant had any donative intent in favour of the plaintiff when the 2015 Trust Deed was conceived and executed (*KPN* at [99] and [108]).

[38] Letter from A&G dated 9 February 2023 at Annex B, para 6.

68 The plaintiff's objections to Mr Baldock's fee are threefold. First, Mr Baldock's invoice for this fee is addressed to the third defendant and not to the first defendant.[39] The first defendant has therefore failed to prove that this is a cost which the *first defendant* incurred in connection with this action. Second, a witness of fact, as Mr Baldock was, cannot claim any compensation for his opportunity cost of giving evidence.[40] Third, the first defendant has failed to discharge his burden of proving that Mr Baldock's fee is reasonable in amount.

69 The first defendant's responses to the plaintiff's objections are threefold. First, the first defendant has indeed borne Mr Baldock's fee, even though the invoice is addressed to the third defendant.[41] Second, Mr Baldock's fee is recoverable in principle as between party and party on the authority of *Mero Asia Pacific Pte Ltd v Takenaka Corp* [2002] 2 SLR(R) 1083 ("*Mero Asia Pacific*") at [6].[42] Third, Mr Baldock's fee is reasonable in amount.

(A) THE FIRST DEFENDANT INCURRED MR BALDOCK'S FEE

70 I accept that the first defendant has incurred Mr Baldock's fee. It must, of course, be true that a receiving party who has not incurred a liability for an item of costs cannot recover that item from a paying party. But if an item of costs has, on its face, been incurred by a third party – in the sense that it is a third party and not the receiving party who has actually paid or who is under a contractual obligation to pay that item of costs – that is not the end of the analysis. That item may still be treated as having been incurred by the receiving

39 Letter from A&G dated 9 February 2023 at Annex B.

40 PWS at paras 16–18.

41 Letter from WP dated 20 February 2023 at para 9.

42 Letter from WP dated 20 February 2023 at para 13.

party for the purposes of costs recovery as between party and party if the receiving party can show either that: (a) the receiving party has in fact reimbursed the third party who incurred that item of costs; or (b) the receiving party is either under an obligation or is prepared to undertake an obligation, contractual or otherwise, to reimburse the third party for that item of costs. In both cases, of course, the receiving party must act or have acted reasonably.

71 Of course, it is also possible for a receiving party who has, on its face, incurred a liability to a supplier of goods or services for an item of costs *not* to be entitled to recover that sum as a disbursement from a paying party, *eg,* because the supplier has released the receiving party from all or part of the liability. I need say no more about that situation simply because it does not arise in the case before me.

72 In this case, Mr Baldock's fee was invoiced to the third defendant, not to the first defendant. In a letter to the court dated 20 February 2023, the first defendant's solicitors assert as a fact, on instructions, that the first defendant has in fact borne Mr Baldock's fee.[43] But this assertion and the first defendant's instructions are not evidence. Furthermore, this assertion is entirely unsupported. The first defendant has produced no evidence, documentary or otherwise, showing that the first defendant has paid Mr Baldock his fee or has either reimbursed or undertaken to reimburse the third defendant for paying Mr Baldock's fee.

73 This evidential gap is not, however, fatal to the first defendant's claim. Even if I were to assume in the plaintiff's favour that it was the third defendant who entered into the contract with Mr Baldock under which he issued his

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[43] Letter from WP dated 20 February 2023 at paras 8(a) and 9.

invoice and that it is the third defendant who has incurred Mr Baldock's fee, I am satisfied that the first defendant is under an obligation to reimburse the third defendant for Mr Baldock's fee. That is because the plaintiff made no claim whatsoever against the third defendant in this action, both before and after I struck out the unsustainable claims. The third defendant therefore never had any exposure whatsoever in this action. It is for that reason that the third defendant did not participate substantively in this action and did not appear at trial. Its position was simply that it would abide by any order the court may make in respect of the Shares, subject to being heard on costs.[44]

74 The benefit of Mr Baldock's evidence at trial therefore accrued to, and only to, the first defendant. If the third defendant has paid Mr Baldock's fee even though only the first defendant derived the entire benefit arising from the services underlying the fee, it is my view that the first defendant is under an obligation in equity to reimburse the third defendant for that fee. If the third defendant has not yet paid Mr Baldock's fee, the same principle would subject the first defendant to an obligation in equity to indemnify the third defendant against its liability to pay Mr Baldock's fee.

75 I am therefore satisfied that the first defendant has incurred Mr Baldock's fee for the purposes of a costs award as between party and party. Whether the first defendant has actually reimbursed the third defendant for Mr Baldock's fee or indemnified the third defendant against that fee is immaterial.

76 In any event, for the same reasons I have given at [74] above, I consider it reasonable for the first defendant now to assume voluntarily an obligation to

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[44] Certified Transcript 11 December 2020 in HC/SUM 3307/2020, HC/SUM 3780/2020, HC/SUM 3781/2020, HC SUM 4421/2020 and HC/SUM 4422/2020 at p 15 lines 4–10; Certified Transcript 4 May 2022 in HC/S 663/2020 at p 22 lines 9–14.

reimburse the third defendant for Mr Baldock's fee, even if he has been under no obligation in equity to do so up to this point. I therefore asked counsel for the first defendant in the course of oral submissions whether the first defendant was prepared to give a formal undertaking to the court that, upon recovering a sum referable to Mr Baldock's fee from the plaintiff under an order for costs in this action and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay that sum to Mr Baldock against his fee or to the third defendant by way of reimbursement for having paid Mr Baldock his fee, whichever may be applicable.

77 Following the hearing, the first defendant has given the undertaking I sought.[45] For this reason also, I accept that the first defendant has incurred Mr Baldock's fee for the purposes of this award of costs.

(B) MR BALDOCK'S FEE IS RECOVERABLE IN PRINCIPLE

78 I also accept that Mr Baldock's fee is recoverable in principle as between party and party. It is true, as the plaintiff submits, that a witness giving evidence under subpoena is entitled to be reimbursed only for his costs of attendance.[46] But I do not accept the plaintiff's submission that a witness of fact who volunteers to give evidence is in no better position than a witness of fact who is compelled to give evidence under subpoena.[47]

79 The rule that a witness giving evidence under subpoena is entitled to be reimbursed only for his costs of attendance is not a rule which applies to limit the recovery of an item of costs as between party and party. The rule merely

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45 Letter from WP dated 24 March 2023 at para 4.

46 PWS at para 16.

47 PWS at para 17.

serves to give a witness who is required by a subpoena to attend trial and give evidence a legal excuse for failing to comply with the subpoena.

80 The rule which applies to the recovery of an item of costs as between party and party is the usual rule: it is recoverable if it was reasonably incurred and is reasonable in amount. That is precisely the principle which Choo Han Teck JC (as he then was) applied in *Mero Asia Pacific*. That case stands for the proposition that a receiving party who pays or agrees to pay a sum equal to the opportunity cost incurred by a witness of fact called by the receiving party in giving evidence may in principle recover that sum from a paying party under an order for costs. Of course, the receiving party must also establish that that opportunity cost is one which the *receiving party* has incurred (see [66] and [70] above) and is not merely one which the *witness* has incurred.

81 I also do not accept the plaintiff's submission that a witness giving evidence voluntarily should be in no better position than a witness giving evidence under a subpoena. A witness under subpoena is subject to a statutory obligation to give evidence. As such, the witness has no basis to bargain with the receiving party as to the conditions, financial or otherwise, on which he will give the evidence. He is bound by law to give evidence upon a tender of the expenses of attendance in order to do so. His opportunity cost of attending as a witness will not be the subject matter of a contract which can then be an item of costs to be recovered as between party and party. In contrast, a witness who gives evidence voluntarily is under no obligation whatsoever to give evidence. He therefore has every opportunity to bargain with the receiving party as to the conditions, financial and otherwise, on which he will give evidence. If the receiving party enters into a contract with the witness to compensate him for his opportunity cost of giving evidence and acts reasonably by doing so, the sum

payable under the contract will be recoverable in principle from the paying party as an item of costs as between party and party.

82 Of course, it is also possible for a witness under subpoena to have an opportunity to bargain as to the conditions on which he will give evidence and to have a degree of bargaining power in doing so. That could happen, for example, if the witness can give evidence on a critical issue of fact and is in fact giving evidence voluntarily but cannot be seen to be doing so for one or other reason. Even in that case, therefore, if the receiving party enters into a contract with the witness and acts reasonably by doing so, the sum payable under the contract will be recoverable in principle from the paying party as an item of costs as between party and party. That is so no matter what the procedural rules may say about the circumstances in which that witness could have been excused from liability for failing to comply with the subpoena.

83 Mr Baldock is a professional. His fee-earning time is money. I am therefore satisfied that he suffered an opportunity cost by having to set aside fee-earning time to give evidence at trial and that his invoice reflects that opportunity cost. I also consider it reasonable for the first defendant to have incurred Mr Baldock's fee either by reimbursing the third defendant for it or by undertaking now to reimburse the third defendant for it.

84 I therefore accept that the first defendant can recover Mr Baldock's fee in principle as between party and party.

(C) THE FIRST DEFENDANT HAS FAILED TO PROVE THAT MR BALDOCK'S FEE IS REASONABLE IN AMOUNT

85 I accept the plaintiff's submission hat the first defendant has failed to discharge his burden of proving that Mr Baldock's fee is reasonable in amount.

As I am assessing the first defendant's costs on the standard basis, he bears the burden of proving that Mr Baldock's fee is reasonable in amount. But the first defendant has not provided me with any material by which to assess the reasonableness of Mr Baldock's fee. The only evidence before me is Mr Baldock's invoice. His invoice contains no narrative. It simply invoices the third defendant £55,000 for "[a]ll attendances in relation to claim HC/S 663/2020".[48] I do not know whether Mr Baldock has charged his fee based on his time cost or as a lump sum. If it is the former, I do not know how much time Mr Baldock spent. I do not know what work he spent that time on. I do not know what hourly rate he applied. If it is the latter, I do not know how Mr Baldock arrived at this lump sum figure.

86 The first defendant has therefore failed to discharge his burden of proving that Mr Baldock's fee is reasonable in amount. It would be wholly disproportionate, however, to disallow Mr Baldock's fee in its entirety on this ground, particularly given my finding about the importance of Mr Baldock's evidence (see [67] above) and that it was reasonable for the first defendant to have incurred Mr Baldock's fee (see [78]–[84] above). Instead, I prefer to assess what is a reasonable amount for Mr Baldock's fee on a broad-brush approach. On that broad-brush approach, I allow only two-third of Mr Baldock's fee *ie*, $60,867 as the sum recoverable for that fee as between party and party.

(D) Conclusion on Mr Baldock's fee

87 In conclusion, I am satisfied that the first defendant incurred Mr Baldock's fee either because he was under an obligation in equity to reimburse the first defendant for it or because he has assumed an obligation by his

[48] Letter from A&G dated 9 February 2023 at p 20.

undertaking to reimburse the first defendant for it[49] in circumstances in which it is reasonable for him to do so. I accept that Mr Baldock's fee was reasonably incurred. And I find that the sum of $60,867 is a reasonable amount for his fee.

88 I therefore hold that the first defendant is entitled to recover from the plaintiff the sum of $60,867 as a deemed indemnity for Mr Baldock's fee.

(2) Mr Jordan's fees

89 The first defendant claims $22,272 for Mr Jordan's fee for preparing affidavits of evidence in chief for trial. The plaintiff's objection to this fee is that the opportunity cost incurred by a witness of fact in the process of producing his affidavit of evidence in chief in conjunction with a party's lawyers is not recoverable as between party and party.

90 The first defendant also claims $17,952 for Mr Jordan's fee for attendance at trial.[50] The plaintiff's objection to this fee is the same as the second objection which he takes to Mr Baldock's fee (see [68] above) *ie*, that a witness of fact is entitled as between party and party to be reimbursed only for his costs of attendance.[51]

91 No question arises as to who incurred both of Mr Jordan's fees, as his firm invoiced the first defendant personally for the fees.

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49 Letter from WP dated 24 March 2023 at para 4.

50 D1WS at Annex A.

51 Letter from A&G dated 9 February 2023 at Annex B.

(A) PREPARING AFFIDAVITS OF EVIDENCE IN CHIEF

92 I do not accept the plaintiff's objection to the first of Mr Jordan's fees: the work done in connection with preparing affidavits of evidence in chief.

93 As authority for his objection, the plaintiff relies on the English case of *Meretz Investments NV and another v ACP Ltd and others* [2007] EWHC 2635 (Ch). That case arose from a property transaction which turned into litigation. The defendants succeeded at trial. They were represented by the same firm of solicitors in both the transaction and in the litigation. A conveyancing partner in that firm, one Mr Hawkins, was a material witness of fact for the defence at trial. The defendants sought to recover as between party and party the time cost incurred by Mr Hawkins under three heads: (a) assistance and general preparation of the defendants' case as a solicitor; (b) producing his witness statement; and (c) time reasonably spent at court and travelling to and from court to give evidence (at [19] and [38]). Warren J held that Mr Hawkins' time cost under heads (a) and (c) were in principle recoverable. As for head (b), Warren J held (at [39]) that the opportunity cost which an ordinary witness of fact suffers in producing for a party's lawyers the material for them to draft his own witness statement, including the time the witness spends being interviewed or being proofed by the lawyers, is not in principle recoverable as between party and party. The same principle applies, he held, even if the witness is a solicitor and even if the solicitor drafts his own witness statement (at [40]).

94 In my view, this principle is too broadly stated to be of universal application. When costs are awarded as between party and party, the only principle of universal application is reasonableness. Whether it was reasonable for a receiving party to incur a particular disbursement is a fact-sensitive inquiry. Whether a disbursement of this type is recoverable in principle will

depend on the circumstances in which the witness suffered the opportunity cost, the nature of the opportunity cost and the circumstances in which the party accepted an obligation to compensate the witness for the opportunity cost. In theory at least, where the witness happens to be a solicitor, there may in fact be a significant saving of costs in having the solicitor (rather than the lawyers in the litigation team) prepare the first draft of his own witness statement or affidavit of evidence in chief. That course would have the added, albeit incidental, benefit of ensuring that the evidence is expressed in the witness's own words. That is the ideal but is rarely the case.

95 On the facts of this case, I accept that it was reasonable for Mr Jordan to prepare his own affidavit of evidence in chief. I therefore hold that the first defendant is entitled in principle to recover the first of Mr Jordan's two fees from the plaintiff.

(B) ATTENDANCE AT TRIAL

96 As in Mr Baldock's case, I do not accept the plaintiff's objection to the second of Mr Jordan's two fees: for attendance in relation to the trial. I reject this objection for the reasons I have already given when rejecting this objection to Mr Baldock's fee: the objection is not well-founded in law (see [78]–[81] above).

97 The plaintiff, quite rightly, does not submit that Mr Jordan's second fee was unreasonably incurred. He was a material witness of fact (*KPN* at [14], [96]–[105] and [108]). I also accept that Mr Jordan, like Mr Baldock, is a professional. His fee-earning time is equally money. I am therefore satisfied that Mr Jordan suffered an opportunity cost by having to set aside fee-earning time

to give evidence at trial. I am also satisfied that his invoice for his second fee reflects that opportunity cost.

98 I therefore hold that the first defendant is entitled in principle to recover the second of Mr Jordan's two fees from the plaintiff.

(C) THE FIRST DEFENDANT HAS FAILED TO PROVE THAT MR JORDAN'S FEES ARE REASONABLE IN AMOUNT

99 As with Mr Baldock, the first defendant bears the burden of proving that Mr Jordan's fees are reasonable in amount. But, as with Mr Baldock, the first defendant has not provided me with any material by which to assess the reasonableness of Mr Jordan's fees. The only evidence before me are Mr Jordan's invoices. These invoices contain no narrative on their face. They simply invoice the first defendant for "[p]rofessional charges in acting for and advising [the first defendant] on the above matter as detailed in the attached diary narrative".[52] The diary narrative attached to the invoices have not been made available to me. No doubt, that is because they contain material subject to legal professional privilege. It appears that Mr Jordan has charged his fees as time cost. But as with Mr Baldock, I do not know how much time Mr Jordan spent. I do not know what work he spent that time on. I do not know what hourly rate he has applied.

100 The first defendant has therefore failed to discharge his burden of proving that Mr Jordan's fees are reasonable in amount. It would be wholly disproportionate, however, to disallow Mr Jordan's fee in its entirety, particularly given my finding about that Mr Jordan was a material witness (see [97] above) and that it was reasonable for the first defendant to have incurred

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[52] Letter from A&G dated 9 February 2023 at pp 9, 11, 13 and 18.

his fees (see [92]–[98] above). Instead, I prefer to assess what is a reasonable amount for Mr Jordan's fees on a broad-brush approach. On that broad-brush approach, I allow only two-third of Mr Jordan's fees *ie*, $26,816 as the sum recoverable for that fee as between party and party.

101 I therefore hold that the first defendant is entitled to recover from the plaintiff the sum of $26,816 as a deemed indemnity for Mr Jordan's fees.

(3) The first defendant's travel expenses

102 The first defendant claims $21,348 for his travel expenses to and from Singapore for the trial of this action.[53] This sum covers the following three airfares:

(a) A one-way airfare from London to Singapore on 3 May 2022 costing $4,801 ("Airfare 1").

(b) A return airfare between Singapore and London on 5 and 15 May 2022 costing $13,252 ("Airfare 2").

(c) A one-way airfare from Singapore to London on 18 May 2022 costing $3,295 ("Airfare 3").

103 The plaintiff objects to the first defendant's claim for Airfare 2 and Airfare 3, totalling $16,547, on the primary ground that it was unreasonable for the first defendant to incur more than one airfare to travel to Singapore for trial.[54]

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53 D1WS at Annex A; Letter from A&G dated 9 February 2023 at Annex B; Letter from WP dated 20 February 2023 at para 7.

54 Letter from A&G dated 9 February 2023 at Annex B.

The plaintiff therefore submits that only Airfare 1 is recoverable.[55] Further, the plaintiff points out that the travel agent's invoice for Airfare 3 shows that a third party and not the first defendant incurred this airfare.[56]

104 The plaintiff does not submit that any of the airfares are unreasonable in amount if I were to find that they were reasonably incurred.

105 The first defendant submits that all of these airfares were reasonably incurred. He incurred Airfare 1 because he was concerned about the time difference between his home in London and Singapore and possible technical issues arising if he were to use videoconferencing to observe the trial from London while waiting for his turn to take the stand.[57] Airfare 2 was incurred for religious reasons, because he wanted to spend the Sabbath at home in London and return to Singapore just before he was due to take the stand as a witness in his own defence.[58] Airfare 3 was necessary for him to return to his home in London after trial.[59]

106 I accept the first defendant's submissions on these airfares. Although the trial of this action took only 7½ days of court time, those 7½ days were spread over almost two calendar weeks from 4 May 2022 to 17 May 2022. The first defendant was not only a witness but also a litigant, and indeed the only substantive defendant. He was therefore entitled to attend the entire trial. Having said that, he was under no obligation to put his life on hold for almost two weeks

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55 Letter from A&G dated 9 February 2023 at Annex B.

56 Letter from A&G dated 9 February 2023 at Annex B.

57 Letter from WP dated 20 February 2023 at para 10(a).

58 Letter from WP dated 20 February 2023 at para 10(b).

59 Letter from WP dated 20 February 2023 at para 10(c).

in order to do so. After all, the first defendant did not choose to litigate and moreover did not choose to litigate in Singapore, halfway around the world from his home.

107 Further, to the extent that the first defendant returned to his home in London from 5 to 15 May 2022, he avoided the cost of hotel accommodation in Singapore for those ten days. The first defendant thereby avoided a disbursement that I would estimate at about $5,700, being hotel accommodation in Singapore at $570 per night for the ten nights he was in London. This is the all-in rate, including all charges and taxes, which the first defendant paid per night for accommodation at the Fullerton Hotel when he was in Singapore during trial.[60] The plaintiff does not suggest that this was an unreasonable amount for the first defendant to spend per night on hotel accommodation.

108 Given the circumstances, therefore, I accept that it was reasonable for the first defendant to incur the cost of two return trips from London to Singapore during this 13-day period.

109 Although the first defendant claims three airfares, his claim amounts in substance to two return trips. Airfare 2 is for a return trip from Singapore to London. Airfare 1 and Airfare 3 are for one-way trips to and from Singapore respectively. These two airfares taken together make up a second return trip from London to Singapore. The three airfares taken together therefore amount to two return trips from London to Singapore.

110 The plaintiff also objects to Airfare 3 on the ground that the travel agent's invoices show that this airfare was incurred by a third party, MG Sugars

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[60] Letter from A&G dated 9 February 2023 at Annex A.

Lanka (Private) Limited, and not by the first defendant himself.[61] Again, the first defendant's solicitors assert on instructions but without evidence that the first defendant has borne Airfare 3.[62] For the same reasons I have set out in relation to Mr Baldock's fee (see [74]–[75] above), I do not consider this fatal to the first defendant's claim. I am satisfied that the first defendant is under an obligation in equity to reimburse the third party for, or to indemnify the third party against, Airfare 3. I am therefore satisfied that the first defendant has incurred Airfare 3 for the purposes of this costs award.

111 In any event, I consider it reasonable for the first defendant now to assume voluntarily an obligation to reimburse the third party for Airfare 3, even if he has been under no obligation in equity to do so up to this point. I therefore asked counsel for the first defendant in the course of oral submissions whether the first defendant was prepared to give the same formal undertaking to the court in respect of Airfare 3 as I sought in respect of Mr Baldock's fee (see [76] above), *mutatis mutandis*.

112 Following the hearing, the first defendant gave the undertaking I sought in respect of Airfare 3.[63] I therefore accept that Airfare 3 has been incurred by the first defendant for the purposes of this award of costs.

113 I therefore hold that the first defendant is entitled to recover Airfare 1 and Airfare 2 from the plaintiff in full and without condition. I hold also that the first defendant is entitled to recover Airfare 3 from the plaintiff subject to his formal undertaking to the court that, upon recovering a sum referable to Airfare

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61 Letter from A&G dated 9 February 2023 at Annex B.

62 Letter from WP dated 20 February 2023 at paras 8(b) and 9.

63 Letter from WP dated 24 March 2023 at para 4.

3 from the plaintiff under an order for costs in this action and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay Airfare 3 to Feldan Travel Ltd or reimburse MG Sugars Lanka (Private) Ltd for having paid Airfare 3 to Feldan Travel Ltd, whichever may be applicable.[64]

(4) Mr Gluck's travel expenses

114 The first defendant claims $17,173 for Mr Gluck's return airfare from London to Singapore for the trial of this action.[65] The plaintiff objects to this disbursement on the ground that the travel agent's invoice shows that these travel expenses were incurred by the same third party, MG Sugars Lanka (Private) Limited, and not by the first defendant.[66] The first defendant's response is that he has borne this disbursement.[67]

115 Further, out of this total sum of $17,173, a sum equivalent to $7,229 was invoiced as an "Upgrade and Change Fee" for Mr Gluck's flight from Singapore to London on 15 May 2022.[68] From the description, it appears that this fee was incurred to change the date of Mr Gluck's return flight from Saturday 14 May 2022 to Sunday 15 May 2022 and to upgrade his class of travel.[69] The plaintiff objects to this fee on the additional ground that it "is not something [the first

64 Letter from WP dated 24 March 2023 at para 4.

65 D1WS at Annex A.

66 Letter from A&G dated 9 February 2023 at pp 26–27 and Annex B.

67 Letter from WP dated 20 February 2023 at paras 8(c) and 9.

68 Letter from A&G dated 9 February 2023 at Annex B; Letter from WP dated 20 February 2023 at para 11.

69 Letter from A&G dated 9 February 2023 at p 26; Letter from WP dated 20 February 2023 at para 11.

defendant] can legitimately claim against [the plaintiff]".[70] I take that to be an objection that the fee was not reasonably incurred *ie*, that it was incurred purely for Mr Gluck's own comfort and convenience and was not reasonably necessary for Mr Gluck to give evidence at the trial of this action. The first defendant's response is that this fee was reasonably incurred in that Mr Gluck had planned to return to London by 14 May 2022.[71] However, he had to incur this fee because his cross-examination extended to 13 May 2022.[72]

116 I first address the plaintiff's objection to the entirety of Mr Gluck's travel expenses. I hold that these travel expenses are, in principle, recoverable for broadly the same reasons I have set out in relation to Mr Baldock's fee (see [74]–[75] above) and Airfare 3 (see [110]–[113] above). I am satisfied that the first defendant is under an obligation in equity to reimburse MG Sugars Lanka (Private) Limited for, or to indemnify it against, Mr Gluck's travel expenses. I therefore consider the first defendant to have incurred Mr Gluck's travel expenses for the purposes of this costs award.

117 In any event, I consider it reasonable for the first defendant now to assume voluntarily an obligation to reimburse the third party for Mr Gluck's travel expenses, even if he has been under no obligation in equity to do so up to this point. I therefore asked counsel for the first defendant in the course of oral submissions whether the first defendant was prepared to give the same formal undertaking to the court in respect of Mr Gluck's travel expenses as in respect of Mr Baldock's fee (see [76] above) and Airfare 3 (see [113] above), *mutatis mutandis*.

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70 Letter from A&G dated 9 February 2023 at Annex B.

71 Letter from WP dated 20 February 2023 at para 11.

72 Letter from WP dated 20 February 2023 at para 11.

118 Following the oral submissions, the first defendant gave the undertaking I sought.[73] I therefore accept that Mr Gluck's travel expenses have been incurred by the first defendant for the purposes of this award of costs. Mr Gluck's travel expenses are therefore recoverable in principle, subject to this undertaking.

119 I now turn to address the first defendant's specific claim for the fee of $7,229. I accept the plaintiff's submission that this fee is not recoverable as between party and party. The first defendant has failed to discharge his burden of showing that this fee was reasonably incurred. If Mr Gluck initially planned to return to London on 14 May 2022, the fact that his evidence extended to 13 May 2022 does not on its face necessitate changing the date of travel. Mr Gluck was released as a witness at around 12 noon on 13 May 2022. The first defendant does not suggest, let alone produce any evidence, that Mr Gluck did not have sufficient time after he was released as a witness to catch his originally scheduled flight on 14 May 2022. Further, the first defendant offers no explanation as to how upgrading his class of travel was reasonably necessary for him to give evidence at the trial of this action. I am therefore not satisfied that this fee of $7,229 was reasonably incurred. This fee is irrecoverable as between party and party.

120 I therefore hold that the first defendant is entitled to recover Mr Gluck's travel expenses from the plaintiff, albeit limited to the sum of $9,944, on the first defendant's formal undertaking to the court that, upon recovering a sum of $9,944 from the plaintiff under an order for costs in this action and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay a sum of $9,944 to TravelDesk or reimburse

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[73] Letter from WP dated 24 March 2023 at para 4.

MG Sugars Lanka (Private) Ltd for having paid a sum of $9,944 to TravelDesk, whichever may be applicable.[74]

The second defendant

121 I now turn to consider the second defendant's claim for costs against the plaintiff.

122 The second defendant claims costs in the sum of $140,957 being an indemnity for her costs of this action.[75]

123 The plaintiff denies any liability whatsoever to pay costs to the second defendant. His submission is that she was a nominal defendant in that she was named as a party "only … in order to be bound by the outcome of this case".[76] The plaintiff also points to the fact that the second defendant did not play an active role in the proceedings, not only after I struck out the unsustainable claims in December 2020 but even before I did so.[77]

The second defendant is entitled to costs

124 It is true that the second defendant took little active part in this action both before and after December 2020, leaving it to the first defendant to take the lead. It is also true that the second defendant did not give any discovery or file any affidavits of evidence in chief for the trial of this action. But I do not

74 Letter from WP dated 24 March 2023 at para 4.

75 Letter from Infinitus Law Corporation dated 30 January 2023 at para 4.

76 PWS at para 4.

77 PWS at para 20.

accept that she was a "nominal" party to this action, either when the plaintiff commenced this action or after I struck out the plaintiff's unsustainable claims.

125 When the plaintiff commenced this action, it was part of his positive pleaded case that the second defendant had acted in breach of trust by denying that she holds any Shares on trust for the plaintiff and by purporting to declare a second trust over the Shares by the 2016 Trust Deed (*KPN* at [28]–[29]).[78] That is a serious allegation, especially for a professional trustee. Quite reasonably, the second defendant felt compelled to seek legal representation from the outset, to file a defence and to participate in the action. Even after I struck out the unsustainable claims in December 2020, the plaintiff insisted on retaining the paragraph in his statement of claim which pleaded that the second defendant had acted in breach of trust.[79] It was therefore entirely reasonable for the second defendant to incur legal costs, both before and after I struck out the unsustainable claims.

126 It is true, however, that in no iteration of the plaintiff's statement of claim ever sought any relief related to the breach of trust alleged against the second defendant. Further, the plaintiff indicated at an early stage that he would not seek a finding that the second defendant was in fact in breach of trust.[80] But that does not alter my analysis for three reasons. First, the plaintiff's approach meant that an allegation that the second defendant had acted in breach of trust remained on the record in the pleadings throughout this action. Second, the second defendant is a professional trustee, against whom this is an especially

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78 SOC at paras 42–44.

79 Statement of Claim (Amendment No. 3) dated 15 January 2021 at para 44; Statement of Claim (Amendment No. 4) dated 24 September 2021 at para 44.

80 Certified Transcript 17 September 2021 in HC/SUM 3826/2021 at p 24 lines 1–16 and p 66 lines 8–15.

serious allegation even if it does not or cannot lead to a finding that she acted in breach of trust. Finally, it was open to the plaintiff at any time to withdraw his indication and to invite me to make a finding against the second defendant that she had acted in breach of trust as pleaded. I therefore do not consider it correct to say that the second defendant was a purely nominal party to this action, either when the plaintiff commenced this action or after December 2020.

127 I am therefore satisfied that the second defendant acted reasonably in incurring legal costs of and incidental to defending this action. That is true even though she allowed the first defendant to take the lead in resisting the plaintiff's claim throughout this litigation. That was a very reasonable and sensible approach on the part of the second defendant and her legal representatives to avoid incurring unnecessary costs. To that extent, and given the outcome of the litigation, the benefit of the second defendant's reasonable and sensible approach has enured to the plaintiff.

128 The second defendant is entitled to recover the costs which she has reasonably incurred from someone. The question is whom. As in the case of the first defendant, the second defendant's costs should follow the event (see [10] above). The plaintiff's claim alleged expressly that the second defendant had acted in breach of trust. The plaintiff has failed entirely in establishing that allegation. Under the general rule, therefore, it is the plaintiff who should pay the second defendant's costs (*Comfort Management* at [39]). There is no basis on which to depart from the general rule.

The award of costs

129 Two questions arise in awarding the second defendant her costs: (a) whether those costs should be assessed on the standard basis or the indemnity

basis; and (b) in what quantum those costs should be assessed. For the reasons which follow (see [130]–[150] below), I find: (a) that the plaintiff is liable to pay costs to the second defendant on the indemnity basis; and (b) that those costs should be assessed in the gross sum of $80,000.

Standard basis or indemnity basis

130 To support her claim for costs on the indemnity basis, the second defendant relies on a letter of indemnity issued by the plaintiff and which the second defendant claims she is entitled to enforce against him. The second defendant relies on the letter of indemnity in two ways. The first way is as a contract. She invites me, in effect, to vindicate her contractual right by awarding her a monetary indemnity for the costs she has incurred of and incidental to defending this action. In the alternative, the second defendant invites me to rely on the existence of the indemnity as a factor in the exercise of my discretion to order that her costs be assessed on the indemnity basis.

131 In order to take the letter of indemnity into account as a factor in the exercise of my discretion, I must form a view as to whether the second defendant indeed has a contractual right to recover her costs of and incidental to this action under the letter of indemnity. For the reasons which follow (see [132]–[145] below), I accept: (a) that the plaintiff owes the second defendant a contractual obligation to indemnify her against legal costs she incurs in the course of providing services to the third defendant as a shareholder and as a director of the third defendant; and (b) that the legal costs she has incurred of and incidental to this action come within the scope of the indemnity. I make these findings not for the purpose of adjudicating on the parties' substantive contractual rights under the letter of indemnity, and therefore binding them by adjudication, but merely to establish that it is legitimate for me to take the letter of indemnity into

account in the exercise of my procedural discretion to award costs (*Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuen, third party*) [2015] 4 SLR 1019 ("*Telemedia Pacific*") at [24]).

(1) The plaintiff is obliged to indemnify the second defendant

132 The letter of indemnity on which the second defendant relies is dated 23 July 2015 (*KPN* at [25]). It is expressly governed by Singapore law.

133 Under the letter of indemnity, the plaintiff undertook an obligation to indemnify the second defendant against claims, including legal fees, which she incurs by reason of accepting appointment as a director and shareholder of the third defendant in the course of her employment by Infinitus Law Corporation. Clause 1 of the indemnity provides as follows:[81]

> In consideration of ILC performing the above acts, Beneficiaries agrees [*sic*] to … indemnify … ILC, its officers, directors [and] employees … from and against any and all claims … (including reasonable legal fees) … arising out of the above mentioned acts and things.

The indemnity defines the plaintiff as one of the "Beneficiaries" who is giving the indemnity in cl 1.

134 The scope of the obligation in cl 1 of the indemnity extends to indemnifying the second defendant against reasonable legal fees "arising out of the above mentioned acts".[82] The recitals to the indemnity make clear that the acts in question are the second defendant providing services as a shareholder and director of the third defendant in the course of her employment by Infinitus

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81 Letter from Infinitus Law Corporation dated 30 January 2023 at p 2.

82 Letter from Infinitus Law Corporation dated 30 January 2023 at p 2.

Law Corporation.[83] There is no dispute that the second defendant provided those services. She was not only a director of the third defendant but also its sole subscribing shareholder (*KPN* at [9] and [21]). There is equally no dispute that she did these acts in the course of her employment by Infinitus Law Corporation (*KPN* at [8]). It is common ground that she is and was at all material times an employee of Infinitus Law Corporation.

135 I accept also that the plaintiff's obligation under cl 1 of the indemnity is one which the second defendant can enforce directly against the plaintiff. I say that for three reasons.

136 First, I accept that the second defendant is a party to the indemnity. It is true that the second defendant is not named as a party to the indemnity. The named parties are "ILC", the plaintiff, the first defendant and Mr Gluck. But the indemnity expressly defines "ILC" not just as Infinitus Law Corporation but as extending to, among others, Infinitus Law Corporation's employees.[84] The second defendant is an employee of Infinitus Law Corporation. She is therefore within the extended meaning of "ILC". As such, she is a party to the indemnity.

137 Second, even if I am wrong on my first reason, I accept that cl 1 of the indemnity "purports to confer a benefit on" the second defendant within the meaning of s 2(1)(*b*) of the Contract (Rights of Third Parties) Act 2001 (2020 Rev Ed) ("C(RTP)A") (*CLAAS Medical Centre Pte Ltd v Ng Boon Ching* [2010] 2 SLR 386 at [28]–[30]). Clause 1 obliges the plaintiff to indemnify the second defendant against legal costs she incurs by reason of accepting appointment as a director and shareholder of the third defendant in the course of her

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83 Letter from Infinitus Law Corporation dated 30 January 2023 at p 2.

84 Letter from Infinitus Law Corporation dated 30 January 2023 at p 2.

employment by Infinitus Law Corporation. That is an undoubted benefit conferred on the second defendant. On this branch of my analysis, I am assuming that the second defendant is not a party to the indemnity and that the plaintiff therefore owes this contractual obligation only to Infinitus Law Corporation and not to the second defendant. But that is the very situation which the C(RTP)A was enacted to address. Further, there is nothing in the indemnity, on its proper construction, which indicates expressly or impliedly that the parties to the indemnity did not intend cl 1 to be enforceable by an employee of Infinitus Law Corporation within the meaning of s 2(2) of the C(RTP)A. The second defendant therefore has a direct right of action against the plaintiff to enforce cl 1 of the indemnity under the C(RTP)A.

138 Finally, if I am wrong on both my first and second reasons, it appears to me that the indemnity is a unilateral contract under which the plaintiff, together with the first defendant and Mr Gluck, undertook to indemnify, amongst others, employees of Infinitus Law Corporation who provide services as a director and shareholder of the third defendant (*Alrich Development Pte Ltd v Rafiq Jumabhoy* [1995] 2 SLR(R) 340 at [41]). The second defendant is an employee of Infinitus Law Corporation. She undoubtedly provided those services with the indemnity in mind. The plaintiff is thereby bound to the terms of the indemnity directly as against the second defendant. She has a contract with the plaintiff and can therefore enforce it directly against the plaintiff.

139 The plaintiff submits that the indemnity no longer binds him as a contract because the consideration, or a part of the consideration, for the indemnity was the continuing validity of the 2015 Trust Deed. I decided in *KPN* that the 2015 Trust Deed was intended to be merely a stop-gap measure and was therefore not evidence of a donative intent which would rebut the presumption

of resulting trust over the Shares arising in favour of the first defendant (at [93]–[112]). I also found that although the 2015 Trust Deed was an express statement in writing that the second defendant intended to hold the Shares on trust for the plaintiff, this amounted to an imperfect gift (*KPN* at [113]–[118]). Thus, the plaintiff submits that there has either been a failure of consideration or that the letter of indemnity is void for common mistake.

140 I do not accept either of the plaintiff's submissions. A failure of consideration is not a vitiating factor in the law of contract. It is an unjust factor in the law of unjust enrichment (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [132]). Common mistake, on the other hand, is a vitiating factor in the law of contract (*TQ v TR and another appeal* [2009] 2 SLR(R) 961 at [97]). Moreover, the common mistake must be sufficiently important or fundamental for it to vitiate a contract (*Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [34]). However, I do not accept that there was any common mistake here sufficiently fundamental to render the letter of indemnity void. Even if the validity of the 2015 Trust Deed was a matter of fundamental importance to the parties, the fact remains it was not the subject-matter of the letter of indemnity. The subject matter of the letter of indemnity was the plaintiff's obligation to indemnify "ILC" for providing services as a shareholder and director of the third defendant.

141 The fact that the plaintiff is described as one of the "Beneficiaries" giving the second defendant the indemnity does not alter my analysis. There is no reference to the 2015 Trust Deed in cl 1 of the letter of indemnity or indeed in any provision of the letter of indemnity which has contractual effect. The only reference to the 2015 Trust Deed is in the background material set out in the

recitals. That is not sufficient for me to conclude on any basis available in law that the letter of indemnity no longer binds the plaintiff.

142 For the foregoing reasons, I am satisfied on the balance of probabilities that the plaintiff does owe the second defendant a contractual obligation under the letter of indemnity to indemnify her against the legal costs she incurs in this litigation.

(2) The costs of this action are within the scope of the indemnity

143 I also accept that the legal costs which the second defendant has incurred of and incidental to defending this action are within the scope of the letter of indemnity. The plaintiff named the second defendant as a party in this action because it was his case that she was an express trustee for him under and by reason of the 2015 Trust Deed. She executed the 2015 Trust Deed in the course of her employment by Infinitus Law Corporation and as a consequence of her status as the third defendant's sole subscribing shareholder (*KPN* at [8]–[9] and [21]).

(3) The second defendant is entitled to indemnity costs

144 For the foregoing reasons, I am satisfied that: (a) the letter of indemnity obliges the plaintiff to indemnify the second defendant for losses she suffers within the scope of the indemnity; and (b) that the second defendant's costs of this action come within its scope. I therefore accept that the letter of indemnity is a factor that I can legitimately take into account in the exercise of my procedural discretion to award costs to the second defendant (*Telemedia Pacific* at [24]).

145 Taking this factor into account, and as a matter of discretion and not as a matter of law, I am prepared to assess the second defendant's costs of and incidental to defending this action on the indemnity basis. Neither the second defendant nor the plaintiff has addressed me on whether the effect of enforcing a contractual right to be indemnified for legal costs yields an outcome which is substantially the same as assessing costs as between party and party on the indemnity basis. There is, in fact, a difference between the two (see *eg*, *Abani Trading Pte Ltd v BNP Paribas and another appeal* [2014] 3 SLR 909 at [93]). I need not discuss that further, as the second defendant and the plaintiff are content to proceed on the basis that these two measures are equivalent.

146 Nevertheless, it must be the case conceptually that an award of the costs of and incidental to litigation is but a subset of the costs recoverable on a contractual indemnity against claims and costs. Having chosen to seek and secure an award for her costs of this action on the indemnity basis rather than to commence a separate action on the indemnity, I consider it appropriate to condition my decision to assess the second defendant's costs on the indemnity basis on her accepting this award of costs in full and final discharge of the plaintiff's obligations to her under the letter of indemnity.

147 I therefore hold that the plaintiff is liable to pay the second defendant's costs on the indemnity basis if, and only if, the second defendant and Infinitus Law Corporation each give a formal undertaking to the court that both the second defendant and Messrs Infinitus Law Corporation will not seek to recover from the plaintiff any further sums in respect of their respective costs of or incidental to this action in contract under the letter of indemnity. The plaintiff can hardly complain about this. It operates to his advantage in that the award of indemnity costs coupled with this undertaking terminates his potential liability

under the letter of indemnity for the second defendant's costs of and incidental to this action. That liability may well go beyond the quantum of an award of costs in my discretion assessed on the indemnity basis (see [145] above).

Quantum

148 The second defendant claims an indemnity in the sum of $140,957 broken down as follows:[85]

(a) $47,551 for the pleadings and interlocutory applications for an interim injunction and to strike out the claim.

(b) $1,926 for the second defendant's attendance to matters on behalf of the third defendant in relation to this action and the execution of nine affidavits.

(c) $49,156 for pleadings and interlocutory applications for security for costs, an interim injunction and to strike out the claim.

(d) $4,841 for pleadings and discovery.

(e) $26,403 for discovery and interlocutory applications for specific discovery and amendment.

(f) $11,081 for pleadings, discovery, further security for costs and pre-trial work.

I do not accept that the figure of $140,957 which the defendant claims is anywhere near a reasonable figure for an award of costs to the second defendant, even on the indemnity basis.

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[85] Letter from Infinitus Law Corporation dated 30 January 2023 at pp 4–7.

149 I take as my starting point the quantum of $800,000 which the first defendant claims as costs on the indemnity basis in this action.[86] I take that figure as a reasonable proxy for the first defendant's solicitor and client costs. In my estimation, the legal costs that the second defendant incurred in this action between July 2020 and December 2020 amounts at best to 10% of the legal costs that the first defendant incurred over the full 30 months that this litigation took to conclude, including the 7½ day trial and the oral closing submissions. I also accept the plaintiff's submission, which counsel for the second defendant herself accepted in oral submissions, that the legal costs incurred by the second defendant after December 2020, including the costs associated with keeping track of the progress of this action and making her submissions on costs, were *de minimis*.

150 I therefore fix the quantum of costs which the plaintiff must pay to the second defendant assessed on the indemnity basis at $80,000 including disbursements. Against this sum, the second defendant accepts that she must give credit to the plaintiff for $38,010 comprising the following sums awarded against the plaintiff and to the second defendant as fixed costs in interlocutory proceedings:[87]

(a) $1,200 for the second defendant's application for security for costs.

(b) $9,270 for the plaintiff's application for an interim injunction.

(c) $18,540 for the second defendant's application to strike out the statement of claim.

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86 D1WS at para 20.

87 Letter from Infinitus Law Corporation dated 30 January 2023 at p 8.

(d) $9,000 for the plaintiff's application to amend his statement of claim.

151 All of these costs were awarded to the second defendant on the standard basis. Part of the $80,000 in costs which I now award to the second defendant on the indemnity basis goes to make up the difference between costs on the standard basis and costs on the indemnity basis for the subject matter of these four costs awards. I do not consider that there is anything which precludes the second defendant from seeking this enhancement. That is because, for the reasons I have given above, I accept that the second defendant has a contractual right to an indemnity for these costs from the plaintiff and the second defendant has undertaken to forgo that right in exchange for an award of these costs on the indemnity basis.

152 Deducting $38,010 for the costs already awarded to the second defendant from the $80,000 which I now award her leaves a net sum of $41,990 which the plaintiff must now pay the second defendant.

The third defendant

153 I now turn to consider the third defendant's claim for costs against the plaintiff.

154 The third defendant is a nominal party in this litigation in the true sense of the word. The plaintiff has not made any allegations of wrongdoing against the third defendant in any of the iterations of his statement of claim. Although the third defendant did file a defence in this action, its defence accepted expressly that it was a nominal defendant, joined purely for the purpose of being bound by any order the court may make in so far as it concerned the third

defendant.[88] Consistently with this stand, the third defendant confined its defence to admitting or denying only those matters in the plaintiff's statement of claim which concerned the third defendant.

155 The third defendant now seeks an order that the plaintiff pay to the third defendant its costs of and incidental to this action.[89] The third defendant does not ask for its costs to be assessed on the indemnity basis.

156 In response, the plaintiff submits that the third defendant should not recover any costs at all, precisely because it was only a nominal defendant.[90]

157 I reject the plaintiff's submissions. There is no principle that debars a nominal defendant from recovering its legal costs on that ground alone. The principle remains that a receiving party is entitled to recover a reasonable amount for costs reasonably incurred of and incidental to the action. Even a nominal defendant who makes every effort to avoid incurring legal costs will nevertheless reasonably incur some legal costs. That is inevitable, simply by virtue of being a party on the record, even if only a nominal party.

158 The third defendant has not been found liable for any wrong yet has reasonably had to incur legal costs. The indemnity principle dictates that the third defendant should recover these costs from the substantive parties to the action *ie*, either the plaintiff or the first defendant. Given that the event in the action is against the plaintiff, it is the plaintiff who has wrongly caused the third

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88 3rd Defendant's Defence (Amendment No. 2) dated 8 October 2021 at para 2.

89 Letter from RevLaw LLC dated 30 January 2023 at para 2.

90 PWS at para 4.

defendant to incur these costs by commencing this action. The substantive party who should pay the third defendant's cost is therefore the plaintiff.

159 The costs which the third defendant claims are the costs which it incurred by having solicitors attend various pre-trial conferences and interlocutory applications.[91] I accept that the third defendant's attendance at these hearings was reasonable.

160 For these attendances, the second defendant seeks to recover costs of $4,500 from the plaintiff, including disbursements. I accept that the sum of $4,500 is eminently reasonable in amount.

161 The plaintiff is therefore liable to pay costs to the third defendant assessed on the standard basis at $4,500.

Orders for costs

162 I now set out my formal orders on costs.

163 The plaintiff shall pay to the first defendant the costs of and incidental to this action on the standard basis, such costs fixed as follows:

(a) $255,000 for Section 1 costs.

(b) $111,288 for disbursements.

(c) The additional sum of $60,867 for disbursements against the formal undertaking which the first defendant has already given to the court that, upon recovering this sum of $60,867 from the plaintiff under

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91 Letter from RevLaw LLC dated 30 January 2023 at paras 2–3.

this order for costs and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay the $60,867 to Mr Richard Baldock in settlement of his invoice No. SLI/001 dated 13 July 2022 issued to the third defendant or pay $60,867 to the third defendant for having paid Mr Richard Baldock's invoice, whichever may be applicable.

(d) The additional sum of $3,295 for disbursements against the formal undertaking which the first defendant has already given to the court that, upon recovering this sum of $3,295 from the plaintiff under this order for costs and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay $3,295 to Feldan Travel Ltd or reimburse MG Sugars Lanka (Private) Limited for having paid $3,295 to Feldan Travel Ltd, whichever may be applicable.

(e) The additional sum of $9,944 for disbursements against the formal undertaking which the first defendant has already given to the court that, upon recovering this sum of $9,944 from the plaintiff under this order for costs and if the first defendant has not by that time already done one or the other of the following, the first defendant will either pay $9,944 to TravelDesk or reimburse MG Sugars Lanka (Private) Limited for having paid $9,944 to TravelDesk, whichever may be applicable.

164 The plaintiff shall pay to the second defendant her costs of and incidental to this action, such costs fixed at $80,000 including disbursements; against which the first defendant shall give the plaintiff credit for the sum of $38,010, thereby leaving the plaintiff's net liability to the second defendant for costs under this order at $41,990. This is subject to the second defendant and Infinitus

Law Corporation each giving a formal undertaking to the court that both the second defendant and Messrs Infinitus Law Corporation will not seek to recover any further sums from the plaintiff in respect of their respective costs of or incidental to this action in contract under the letter of indemnity.

165 The plaintiff shall pay to the third defendant its costs of and incidental to this action assessed on the standard basis, such costs fixed at $4,500 including disbursements.

166 This is not part of my order on costs but is intended to govern the first defendant's undertakings (see [163(c)]–[163(e)] above). The plaintiff and the first defendant shall be at liberty to vary the undertakings or to discharge the first defendant entirely from the undertakings by consent in writing, without need for further application to the court or further order of the court. And to the extent that the plaintiff makes any part payments of the costs awarded to the first defendant under this order, it shall be in the absolute discretion of the first defendant to appropriate the part payments to interest, Section 1 costs or disbursements, and as between the various disbursements, as the first defendant considers fit.

Conclusion

167 These orders for costs cover all of the costs of this action as against each defendant in so far as those costs have not been the subject of any separate costs order for costs to be paid forthwith. These costs orders therefore incorporate and subsume all orders that may have been made in this action for costs to be in the cause, for costs to be one or other party's costs in the cause or for costs to be reserved. These costs orders also incorporate and subsume the costs that the

parties have incurred in securing the orders for the costs of this action which I have set out at [163]–[165] above.

168 All of these orders for costs shall carry interest in the usual way from the date that this judgment bears.

169 This action is now concluded in all respects.

Vinodh Coomaraswamy
Judge of the High Court

Ramesh Kumar s/o Ramasamy, Afzal Ali and Edmond Lim (Allen & Gledhill LLP) for the plaintiff;
Koh Swee Yen SC, Lin Chunlong and Chiam Yunxin (WongPartnership LLP) for the first defendant;
Leo Cheng Suan and Lee Shu Xian (Infinitus Law Corporation) for the second defendant;
Chua Sui Tong and Gan Jhia Huei (Rev Law LLC) for the third defendant.