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

[2024] SGHC 117

Suit No 703 of 2020

Between

Tarun Hotchand Chainani

… *Plaintiff*

And

(1) Avinderpal Singh s/o Ranjit Singh
(2) Avitar Enterprises Pte Ltd
(3) Avitar Holdings Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Directors — Duties]
[Companies — Oppression]

Version No 1: 06 May 2024 (17:11 hrs)

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Tarun Hotchand Chainani
v
Avinderpal Singh s/o Ranjit Singh and others

[2024] SGHC 117

General Division of the High Court — Suit No 703 of 2020
Kristy Tan JC
7–10 November 2023, 8 February 2024

6 May 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 HC/S 703/2020 is a shareholder oppression action for relief under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("s 216").

The parties

2 The second defendant, Avitar Enterprises Pte Ltd (the "Company"), was incorporated in 1999 by the plaintiff, Mr Tarun Hotchand Chainani ("Mr Chainani" or the "Plaintiff"), and the first defendant, Mr Avinderpal Singh s/o Ranjit Singh ("Mr Singh" or the "1st Defendant"), as equal shareholders.[1]

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[1] Statement of Claim (Amendment No 3) ("SOC3") at paras 1 to 4; Defence (Amendment No 2) ("D2") at paras 6 to 7; Mr Chainani's Affidavit of Evidence-in-Chief ("AEIC") at para 11.

The Company was in the business of general wholesale trade, in particular, of electronic products and mobile phones.[2] The Company is presently dormant.[3]

3 The third defendant, Avitar Holdings Pte Ltd (the "Holding Company"), was incorporated in 2004 by Mr Chainani and Mr Singh, who transferred their respective shares in the Company to the Holding Company. Mr Chainani and Mr Singh are equal shareholders in the Holding Company, which in turn wholly owns the Company.[4] The Holding Company is presently dormant and owns no other subsidiary companies.[5]

4 Mr Chainani and Mr Singh are the only two directors in both the Company and the Holding Company.[6]

5 The Company and the Holding Company are not legally represented in, and were absent at the trial of, this action. Mr Singh had proposed in August 2020, after the commencement of this action, that a law firm be appointed to represent the interests of the Company and the Holding Company in this action, but this was opposed by Mr Chainani.[7]

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2 SOC3 at para 3; D2 at para 6; Reply (Amendment No 2) ("R2") at para 6.

3 Transcript of trial on 8 November 2023 ("Day 2 Transcript") at p 57 lines 23 to 24; Transcript of trial on 10 November 2023 ("Day 4 Transcript") at p 123 lines 13 to 15.

4 SOC3 at paras 1, 2, 4 and 5; D2 at paras 4, 5 and 7; Mr Chainani's AEIC at para 18.

5 Day 2 Transcript at p 57 line 25 to p 58 line 13; Day 4 Transcript at p 123 lines 3 to15.

6 SOC3 at paras 1 to 2; D2 at paras 4 to 5; Mr Chainani's AEIC at paras 3 to 4; Mr Singh's AEIC at para 4.

7 Transcript of trial on 7 November 2023 ("Day 1 Transcript") at p 24 line 8 to p 25 line 15; Agreed Bundle of Documents ("AB") Vol 27 at pp 59 to 61.

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The parties' cases

Mr Chainani's case

6 Mr Chainani pleads that the Company and the Holding Company were run as "a quasi-partnership based on mutual trust and confidence" between Mr Singh and himself.[8]

7 The centrepiece of Mr Chainani's case is that he and Mr Singh reached an understanding in 2005 to use the Company's funds to invest in stocks and/or real estate on behalf of the Company. They were to account to each other and to the Company for the principal sums invested and the profits made from such investments, with such profits to be distributed equally between Mr Chainani and Mr Singh as equal shareholders of the Holding Company (the "Understanding").[9] Mr Chainani identifies nine specific Singapore properties,[10] listed shares in two specific counters,[11] and ten specific overseas properties,[12] which he claims had been acquired by Mr Singh in part and/or entirely with the Company's funds pursuant to the Understanding, and in respect of which Mr Singh failed to account to the Company and to him (*ie*, Mr Chainani).[13]

8 Mr Chainani further claims that:

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8 SOC3 at para 6.

9 SOC3 at para 8.

10 SOC3 at paras 10(a) to 10(i).

11 SOC3 at para 11.

12 SOC3 at paras 13(a) to 13(j).

13 SOC3 at para 14.

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(a) Mr Singh took unauthorised loans and/or payments from the Company and failed to account to the Company and Mr Chainani for these loans and/or payments;[14]

(b) Mr Singh failed to account to the Company and to Mr Chainani for Mr Singh's insertion of a credit entry dated 1 January 2011 for a sum of US$1,634,217.17 (the "US$1.6m Entry") in Mr Singh's ledger with the Company;[15] and

(c) Mr Singh procured a declaration of a S$1.5m dividend by the Company for the year ending 31 December 2009 (the "Dividend") but there is no record of the Holding Company's receipt of the Dividend. Mr Chainani has not received a sum of S$750,000, being half of the Dividend, as the holder of half of the shares in the Holding Company.[16]

9 These acts constitute breaches of Mr Singh's duties as a director of the Company and/or a violation of Mr Chainani's trust, and, consequently, Mr Chainani was subjected to oppression within the meaning of s 216, and the relationship between Mr Chainani and Mr Singh has irretrievably broken down.[17] As confirmed by Mr Chainani's counsel, Mr Chainani has not brought any trust claims against Mr Singh;[18] Mr Chainani's primary case is for relief under s 216.[19]

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14 SOC3 at paras 21 to 22.

15 SOC3 at paras 17 to 20 and 22.

16 SOC3 at para 22A.

17 SOC3 at paras 27 to 34.

18 Transcript of hearing on 8 February 2024 ("Day 5 Transcript") at p 28 lines 24 to 26.

19 Day 5 Transcript at p 17 lines 21 to 32.

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10 Mr Chainani seeks orders for (a) various accounts to be taken from Mr Singh; (b) the payment by Mr Singh to the Company and Mr Chainani of all sums found due upon the taking of accounts; and (c) the winding up of the Company and the Holding Company upon such payment.[20] On 15 October 2023, shortly before the trial of this action was scheduled to begin, Mr Chainani submitted that the accounts for the assets acquired pursuant to the Understanding should be taken on a wilful default basis.[21]

Mr Singh's case

11 At the commencement of this action, Mr Singh denied the existence of the Understanding. However, following Mr Chainani and Mr Singh's entry into a settlement agreement dated 26 July 2021 (the "Settlement Agreement"), Mr Singh changed his position and accepted that the Understanding applied to all but one of the disputed properties identified by Mr Chainani.[22] To be clear, the parties are *ad idem* that the Settlement Agreement does not affect, exclude or limit the claims in this action.[23] Mr Singh attempts to provide certain accounts in his AEIC filed in this action. However, he opposes the taking of accounts on a wilful default basis and submits that accounts should be taken on a common basis.[24]

12 With respect to the entries in his ledger with the Company described as loans or payments to Mr Singh, Mr Singh denies that these were performed

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20 SOC3 at pp 18 to 19.

21 Plaintiff's Skeletal Submissions dated 15 October 2023 at para 1.

22 D2 at para 13.

23 Day 5 Transcript at p 7 line 9 to p 9 line 14.

24 1st Defendant's written Opening Statement dated 30 October 2023 (the "1st Defendant's Opening Statement") at para 20.

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without Mr Chainani's knowledge and/or consent, that the entries were false, or that the entries were made as afterthoughts.[25] Mr Singh also denies having a duty to account to Mr Chainani for matters concerning the Company's business.[26]

13 In respect of the US$1.6m Entry, Mr Singh denies that he was obliged to provide Mr Chainani with an explanation.[27] Having said that, Mr Singh explains the transaction in his AEIC.

14 In respect of the Dividend, Mr Singh avers that it was declared with Mr Chainani's knowledge and consent. The Company declared the Dividend to the Holding Company to set off amounts due from the Holding Company for new shares issued by the Company. Neither Mr Chainani nor Mr Singh received any moneys from this declaration of the Dividend.[28] Mr Singh further elaborates on this transaction in his AEIC.

15 Mr Singh further avers that Mr Chainani (a) continues to be a director and the corporate secretary of both the Company and the Holding Company; (b) was never prevented from accessing information that Mr Chainani would have had access to in that capacity; and (c) signed off on the financial statements of the Company and the Holding Company every year until the year ending 2015.[29]

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25 D2 at para 18.

26 D2 at para 19.

27 D2 at para 17.

28 D2 at para 19A.

29 D2 at para 27.

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16 Finally, Mr Singh claims that, should he be found due to pay any sums to Mr Chainani, he (*ie*, Mr Singh) is entitled to set off the amount of S$263,654.85 (which Mr Singh says is due from Mr Chainani to him) against such sums.[30]

17 For completeness, limitation and laches are pleaded in Mr Singh's defence as grounds for not having to account,[31] but these defences were abandoned as they were not raised in the 1st Defendant's Opening Statement, at trial, or in the 1st Defendant's written Closing Submissions dated 12 January 2024 (the "1st Defendant's Closing Submissions"). I therefore say nothing further about this.

Issues to be determined

18 The main issues arising for my determination in this action are:

(a) whether the acts alleged by Mr Chainani constitute commercially unfair conduct on Mr Singh's part within the meaning of s 216;

(b) whether Mr Singh has a duty to account to Mr Chainani in respect of the various matters claimed by Mr Chainani; and

(c) the appropriate relief (if any) to be granted.

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30 D2 at para 32.

31 D2 at para 31.

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Alleged acts of oppression

Whether the Company and the Holding Company were run as a quasi-partnership between Mr Chainani and Mr Singh

19 It is apposite to first address Mr Chainani's case that:

> From when the [Company] was incorporated on 16 November 1999 and when the [Holding Company] was incorporated on 24 December 2004, till August 2017, the [Company and the Holding Company] were run as a quasi-partnership based on mutual trust and confidence between [Mr Chainani] and [Mr Singh].[32]

20 Mr Singh denies that the Company and the Holding Company were run as a quasi-partnership. He avers that they were run as incorporated private companies limited by shares.[33]

21 The relevance of whether a company is a "quasi-partnership" must first be situated in the context of a s 216 action.

22 A shareholder who brings a s 216 action must demonstrate that the conduct complained of amounts to commercially unfair conduct. Such unfairness will generally be found where there has been "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae*") at [81]. In deciding whether to grant relief under s 216, the court takes into account not only the legal rights, but also the legitimate expectations of the parties: *Sakae* at [82]. The understanding between the shareholders of a company, whether contained in a formal agreement or in the form of an informal understanding,

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32 SOC3 at para 6.

33 D2 at para 8.

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will generally form the backdrop against which the court determines whether there has been commercial unfairness: *Sakae* at [172]. Put another way, "[t]he commercial agreement between the parties sets the frame against which commercial unfairness is to be judged": *Oon Swee Gek and others v Violet Oon Inc Pte Ltd and others and other matter* [2024] SGHC 13 at [26]. The breach of an informal understanding may amount to commercial unfairness under s 216: see, *eg*, *Anita Hatta v Lee Siow Kiang Georgia and others* [2020] 5 SLR 304 ("*Anita Hatta*") at [148]–[150].

23 Whether a company is characterised as a "quasi-partnership" is not determinative of whether there may be informal understandings giving rise to legitimate expectations: *Anita Hatta* at [69] and [71]; *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 at [181]. Instead, it is more pertinent to focus on determining the substance of the commercial agreement between the shareholders as demonstrated by the evidence, keeping in mind the essential context of their personal relationship: *Deniyal bin Kamis v Mapo Engineering Pte Ltd and others* [2023] SGHC 183 at [85]–[91]. It is *not* the mutual trust and confidence between the shareholders which determines the *content* of the legitimate expectations; that content depends on the commercial agreement between the parties: *Anita Hatta* at [72].

24 Although the "quasi-partnership" label is not determinative, I would accept that it applies to describe the form of association between Mr Chainani and Mr Singh in the Company and the Holding Company in the present case. The key characteristic of a quasi-partnership is that the shareholders agree to associate on the basis of a personal relationship involving mutual trust and confidence: *Thio Syn Kym Wendy and others v Thio Syn Pyn and others* [2017] SGHC 169 at [45], citing *Lim Kok Wah and others v Lim Boh Yong and*

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others and other matters [2015] 5 SLR 307 ("*Lim Kok Wah*") at [105]. In this connection, Mr Chainani gave evidence that he and Mr Singh were former schoolmates who had decided to start a business venture trading in consumer electronics and had incorporated the Company in November 1999 for that purpose;[34] and that the business was run informally and based on mutual trust and consultation between shareholders.[35] Mr Singh did not dispute this. In fact, his counsel put it to Mr Chainani that the trust between Mr Chainani and Mr Singh was deep and they were not just business partners, but also friends.[36]

25 However, that adds little to the s 216 analysis. Where a "quasi-partnership" exists, that frame forms a convenient label where a common understanding is implicit within the course of conduct and expectations appurtenant to partners: *Anita Hatta* at [72]. Nevertheless, the *content* of the common understanding within the "quasi-partnership" must still be ascertained. As I explain below, the only common understanding I find in the present case, that was capable of giving rise to legitimate expectations against which any commercial unfairness under s 216 is to be assessed, is the Understanding.

Breach of the Understanding

Whether the Understanding existed, and if so, the properties in dispute in this action to which the Understanding applied

26 The Understanding is pleaded by Mr Chainani in the following terms:

> In or around 2005, [Mr Chainani] and [Mr Singh] arrived at an understanding to *use the [Company's] funds* to invest in stock and/or real estate *on behalf of the [Company]*, pursuant to which, they were to *account to each other and the [Company]* for

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34 Mr Chainani's AEIC at paras 7 to 11.

35 Mr Chainani's AEIC at paras 14 to 17.

36 Day 1 Transcript at p 62 lines 10 to 15; see also Mr Singh's AEIC at para 8.

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> the principal sums so invested as well as the profits made from such investments, with such profits to be distributed equally between [Mr Chainani] and [Mr Singh] *as equal shareholders of the [Holding Company]* …[37] [emphasis added]

27 I highlight three features of the pleaded Understanding:

(a) First, any investments made by either Mr Chainani or Mr Singh using the Company's funds were considered investments made on behalf of the Company. To my mind, it follows that any asset acquired by Mr Chainani or Mr Singh in their (or their nominees') respective names would, to the extent that they were acquired with the Company's funds, be held by them on behalf of and on trust for the Company.

(b) Second, the party who made the investments would have to account to the Company and to the other party for the principal amount of the Company's funds used for, and the profits made from, the said Company's investments.

(c) Third, the profits (if any) from the Company's investments would be distributed equally between Mr Chainani and Mr Singh in their capacity as "equal shareholders of the [Holding Company]". To my mind, profits made on the Company's investments legally belong to the Company. The proper way of effecting this third limb of the Understanding would be for the Company to upstream to the Holding Company any profits made by the Company further to its investments; and in turn, for the Holding Company to pay available profits, in equal proportions, to Mr Chainani and Mr Singh as "equal shareholders of the

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37 SOC3 at para 8.

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[Holding Company]" by way of a declaration of dividends. I return to this point at [126] below.

28 It is undisputed that, from around 2005, Mr Chainani and Mr Singh used the Company's funds to invest in ten properties and conducted themselves in accordance with the Understanding in respect of these investments.[38]

29 For the purposes of the present dispute, Mr Chainani's case is that, pursuant to the Understanding, Mr Singh *also* acquired (in his and/or his nominees' names) the following properties enumerated in the SOC3 at paras 10, 11 and 13(a) to (j) (the "Properties") in part and/or entirely with the Company's funds:

(a) 7 Siglap Road, #06-55 Mandarin Gardens, Singapore 448909 ("Mandarin Gardens");[39]

(b) 15 Evelyn Road, #28-02, Singapore 309311 ("Evelyn Road");[40]

(c) 53B Grange Road, #16-01 Spring Grove, Singapore 249567 ("Spring Grove");[41]

(d) 626 Upper Thomson Road, #01-33 Meadows @ Pierce, Singapore 787130 ("Meadows");[42]

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38 SOC3 at para 9; D2 at para 10; 1st Defendant's Opening Statement at para 3; Day 2 Transcript at p 74 lines 4 to 17.

39 SOC3 at para 10(a).

40 SOC3 at para 10(b).

41 SOC3 at para 10(c).

42 SOC3 at para 10(d).

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(e) 531 Bedok Reservoir Road, #01-111, Singapore 479282 ("Archipelago");[43]

(f) 52 Flora Drive, #08-09, Parc Olympia, Singapore 506869 ("Parc Olympia");[44]

(g) 21 Marina Way, #19-11, Singapore 018978 ("Marina 19");[45]

(h) 21 Marina Way, #20-09, Singapore 018978 ("Marina 20");[46]

(i) 48 Spottiswoode Park Road, #22-06 Spottiswoode Residences, Singapore 088660 ("Spottiswoode");[47]

(j) shares in Far East Orchard Limited ("FEO shares") and Yeo Hiap Seng Limited ("YHS shares") (together, the "Shares");[48]

(k) #27-15 Oxley Diamond, Cambodia ("Oxley Diamond 15");[49]

(l) #27-16 Oxley Diamond, Cambodia ("Oxley Diamond 16");[50]

(m) RM Mira V-V-156, Dubai ("Mira");[51]

(n) The Hills B2-702, Dubai ("The Hills 702");[52]

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43 SOC3 at para 10(e).

44 SOC3 at para 10(f).

45 SOC3 at para 10(g).

46 SOC3 at para 10(h).

47 SOC3 at para 10(i).

48 SOC3 at para 11.

49 SOC3 at para 13(h).

50 SOC3 at para 13(h).

51 SOC3 at para 13(a).

52 SOC3 at para 13(b).

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(o) The Hills B2-1204, Dubai ("The Hills 1204");[53]

(p) The Hills A2-1401, Dubai ("The Hills 1401");[54]

(q) The Hills C1-5-505, Dubai ("The Hills 505");[55]

(r) BD Address FV-21-2105, Dubai ("FV-21-2105");[56]

(s) BD Blvd Point 44-4405, Dubai ("BD Blvd 44");[57]

(t) Burj Vista Tower 1/3305, Dubai ("Burj Vista");[58] and

(u) BD Blvd Point 39-3901, Dubai ("BD Blvd 39").[59]

30 In his pleaded defence, Mr Singh admits that the Understanding applied to the Properties (a) save for BD Blvd 39; and (b) in so far as 35 lots of FEO shares and 20 lots of YHS shares were concerned.[60]

31 In the 1st Defendant's Opening Statement at para 2, Mr Singh further conceded that the Understanding applied to all the Properties save for BD Blvd 39 (which is listed in the SOC3 at para 13(j)), stating:[61]

> In or around 2005, [Mr Chainani] and [Mr Singh] entered into an Understanding to use [the Company's] funds to invest in stock and/or real estate on behalf of [the Company], pursuant to which [Mr Chainani] and [Mr Singh] were to account to each

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53 SOC3 at para 13(c).

54 SOC3 at para 13(g).

55 SOC3 at para 13(i).

56 SOC3 at para 13(d).

57 SOC3 at para 13(e).

58 SOC3 at para 13(f).

59 SOC3 at para 13(j).

60 D2 at para 11 read with para 10(b) (s/n 1 to 9 and 13 to 24).

61 1st Defendant's Opening Statement at para 2.

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> other and to [the Company] for the principal sums so invested as well as the profits made from such investments, with such profits to be distributed equally between [Mr Chainani] and [Mr Singh] as equal shareholders of the [Holding Company]. *The Understanding applies to the properties/shares listed at paragraphs 10, 11 and 13(a) to 13(i) of [SOC3].* [emphasis added]

32 In opening Mr Singh's case at trial, his counsel confirmed that the position taken by Mr Singh in the 1st Defendant's Opening Statement at para 2 supersedes any previous statements that may be inconsistent with that position.[62]

33 In cross-examination, Mr Singh confirmed at the outset that the position stated in the 1st Defendant's Opening Statement at para 2 represents his evidence.[63]

34 In the 1st Defendant's Closing Submissions, Mr Singh again conceded the existence of the Understanding since in or around 2005 and that it applied to all the Properties save for BD Blvd 39.[64] He stated, once again and unequivocally, in the 1st Defendant's Closing Submissions at para 2 that:

> In or around 2005, [Mr Chainani] and [Mr Singh] entered into an understanding to use [the Company's] funds to invest in stock and/or real estate on behalf of [the Company], pursuant to which [Mr Chainani] and [Mr Singh] were to account to each other and to [the Company] for the principal sums so invested as well as the profits made from such investments, with such profits to be distributed equally between [Mr Chainani] and [Mr Singh] as equal shareholders of the [Holding Company] ("Understanding"). *The Understanding applies to the properties/shares listed at paragraphs 10, 11 and 13(a) to 13(i) of [SOC3].* [emphasis in original omitted; emphasis added in italics]

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62 Day 2 Transcript at p 66 lines 8 to 22.

63 Day 2 Transcript at p 73 line 3 to p 74 line 3.

64 1st Defendant's Closing Submissions at paras 2 and 23.

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35 In oral closing submissions, Mr Singh's counsel reiterated that Mr Singh was not resiling from his admissions as to the Understanding.[65]

36 In the face of these overwhelming admissions by Mr Singh (see [30]–[35] above), it would be unreasonable for me to find otherwise than that Mr Chainani and Mr Singh did enter into the Understanding in or around 2005, and further, that the Understanding applied to the Properties enumerated at [29(a)]–[29(t)] above.

37 As for BD Blvd 39 (at [29(u)] above), which is not identified in the express admissions made by Mr Singh in his pleadings, the 1st Defendant's Opening Statement and the 1st Defendant's Closing Submissions (see [30]–[35] above), I find that the Understanding applied to BD Blvd 39 as well, for two reasons. First, Mr Singh does not dispute that he purchased and sold BD Blvd 39.[66] Pursuant to Mr Singh's instructions, his personal assistant, Ms Kristin Callang ("Ms Callang"),[67] sent Mr Chainani an email dated 14 September 2016 enclosing a spreadsheet titled "DUBAI PROPERTY PAYMENT MADE FROM AVITAR" (the "14 September 2016 Dubai Spreadsheet") which showed that the Company's funds had been used for the purchase of, among other properties, BD Blvd 39.[68] The fact that Mr Singh had used moneys from the Company to purchase BD Blvd 39 and had seen fit to inform Mr Chainani of the same supports the view that BD Blvd 39 was a property acquired pursuant to the Understanding. Second, although Mr Singh stated in his AEIC at para 136 that he did not agree that he had any duty to account for the moneys used to

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65 Day 5 Transcript at p 8 lines 3 to 9.

66 Mr Singh's AEIC at para 137.

67 Mr Chainani's AEIC at para 26(e).

68 Mr Chainani's AEIC at paras 34, 35, 69 and 70 and pp 58 to 59.

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purchase BD Blvd 39, when he was taken to para 136 of his AEIC in cross-examination and asked whether or not he had a duty to account for BD Blvd 39, he admitted that he *did* have a duty to account for BD Blvd 39.[69]

38 I therefore find (a) that Mr Chainani and Mr Singh had entered into the Understanding in or around 2005; and further, (b) that the Understanding applied to all the Properties enumerated at [29] above, including BD Blvd 39.

39 For completeness, Mr Singh had, in the 1st Defendant's Closing Submissions, suggested that certain Properties had been acquired by way of "loans" taken by him from the Company.[70] To the extent that Mr Singh suggests that any of the Properties had been acquired by him *for his own benefit* using "loans" he obtained from the Company, it would not, in my view, be open to him to run such a contradictory case. The implication of Mr Singh's admissions is that the Properties were acquired by him (or his nominees) on behalf of the Company using the Company's funds. His admissions are further reinforced by the fact that he provided Mr Chainani with some information on some of the Properties from around 2013 to before the commencement of this action (see [43], [44], [46], [48] and [51]–[55] below): there would have been no reason for him to do so had the Properties not been acquired on behalf of the Company. Any so-called "loan" sums taken by Mr Singh from the Company to invest in the Properties should therefore properly be regarded as moneys of the Company applied by Mr Singh towards investment in the Properties on the Company's behalf.

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69 Day 4 Transcript at p 71 line 11 to p 72 line 17.

70 1st Defendant's Closing Submissions at paras 51, 56, 59, 62, 66, 70 and 71.

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40 I further find that Mr Singh owes a duty to account to the Company for the investments (including principal sums invested and any profits made on the investments) made with the use of the Company's funds. This duty to account to the Company arises given that, in accordance with the Understanding, the investments were made by Mr Singh on behalf of, and correspondingly would be held by Mr Singh on trust for, the Company.

41 I find that Mr Singh also owes a duty to account to Mr Chainani for the investments (including principal sums invested and any profits made on the investments) made with the use of the Company's funds. This duty to account to Mr Chainani was assumed by Mr Singh according to the terms of the Understanding. The Understanding provided for the investing party to account to the other party for the principal sums and any profits in respect of an investment made with the Company's funds. By entering into the Understanding which provided for the parties to account in this manner to each other, Mr Singh had "voluntarily place[d] himself in a position where the law can objectively impute an intention on his … part to undertake" a fiduciary obligation to account to Mr Chainani for the investments made with the use of the Company's funds (see *Tan Teck Kee v Ratan Kumar Rai* [2022] 2 SLR 1250 ("*Tan Teck Kee*") at [69] and [77], citing *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [194]). In light of this finding, it is unnecessary for me to address the other bases proffered by Mr Chainani for why Mr Singh should be found to owe him (*ie*, Mr Chainani) a duty to account in respect of the investments, namely, that such a duty had arisen by reason of proprietary estoppel or a constructive trust over profits attained pursuant to the

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Understanding.[71] I make only the following brief comments as to why those alternative bases would fail:

(a) Mr Chainani's claim that Mr Singh is his fiduciary by reason of proprietary estoppel fails because, among other reasons: (i) Mr Chainani has not pleaded proprietary estoppel (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [43]–[44]); (ii) the representation required to found a proprietary estoppel must be made *by the landowner* (*Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong*") at [170]), which, on Mr Chainani's own case in respect of properties acquired with the Company's funds, Mr Singh is not; and (iii) Mr Chainani has not shown that he incurred any detriment in reliance on Mr Singh's alleged representation under the Understanding.[72] Mr Chainani has not explained what *change of position*, which is *causally related* to the alleged representation, there is in his case (*Hong Leong* at [208]; *In re Basham, decd* [1986] 1 WLR 1498 at 1504).

(b) Mr Chainani's claim that Mr Singh owes him fiduciary duties because "a common intention constructive trust arises over [Mr Chainani's] share of the profits and the principal sums to be returned to the [Company], such that [Mr Singh] is liable to [Mr Chainani] and the [Company] as a constructive trustee"[73] fails because, among other reasons: (i) Mr Chainani has not pleaded that

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71 *Eg*, Plaintiff's written Closing Submissions dated 12 January 2024 (the "Plaintiff's Closing Submissions") at paras 8(b), 9, 15 and 16.

72 See also 1st Defendant's Closing Submissions at para 35.

73 Plaintiff's Closing Submissions at para 15.

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there was a common intention constructive trust (*UJT v UJR and another matter* [2018] 4 SLR 931 at [47]); (ii) in any event, the Understanding was not about how Mr Chainani and Mr Singh's *beneficial interests* in any property or moneys was to be held and it is *not* Mr Chainani's pleaded case that he had, under the Understanding, any *proprietary interest* or *beneficial ownership* in any properties acquired or profits made from the property transactions conducted pursuant to the Understanding (*Er Kok Yong v Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased) and others* [2023] SGHC 58 at [18]; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [96]–[97]; *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 ("*Ong Chai Soon*") at [34]; *Wong Shu Kiat and another v Chen Jinping Michelle (personal representative of the estate of Tin Koon Ming, deceased) and another* [2023] SGHC 105 ("*Wong Shu Kiat*") at [91]–[92]); and (iii) Mr Chainani has not established any detrimental reliance on the purported common intention (*Ong Chai Soon* at [39] and [41]; *Wong Shu Kiat* at [93]).[74]

Whether Mr Singh breached the Understanding

42 I find that Mr Singh persistently breached the Understanding from around 2013 onwards by failing to account for multiple Properties, contrary to his obligation to do so under the Understanding. He (a) evaded, ignored, or delayed his responses to Mr Chainani's requests for accounts of the investments; and/or (b) provided plainly inadequate information as part of purported attempts to provide accounts. It was only in Mr Singh's AEIC filed on 21 July 2023 in this action that a more serious attempt was made to account

[74] 1st Defendant's Closing Submissions at paras 19 and 34.

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for the investments in the Properties (although there remain deficiencies with these accounts, as explained at [110] below). I elaborate on the evidence giving rise to my findings.

43 Mandarin Gardens was sold in late 2012 and sale proceeds of S$295,496.97 were received by Mr Singh on completion of the sale.[75] When Mr Chainani asked Mr Singh about the profits from the investment, Mr Singh told Mr Chainani that he (*ie*, Mr Singh) had paid S$200,000 in property tax incurred in previous years.[76] On 28 September 2013, Mr Chainani sent Mr Singh an email asking for the statement of accounts for Mandarin Gardens and inquiring about the balance sale proceeds. On 28 September 2013, Mr Singh replied: "Mandarin Gardens: 200k+ was the property tax incurred and as of now no recourse; funds had deposited in HSBC; but wil chk n revert".[77] There was, however, no follow up from Mr Singh. On 7 January 2014, Mr Chainani sent Mr Singh another email seeking Mr Singh's confirmation of his (*ie*, Mr Chainani's) calculation of the profit made from the sale of Mandarin Gardens.[78] Mr Chainani did not receive any response from Mr Singh.[79]

44 Evelyn Road was sold in November 2014.[80] However, it was only on 4 December 2017 that Mr Singh sent Mr Chainani a spreadsheet purporting to account for the Evelyn Road transaction.[81] This three-year delay is hardly

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75 Mr Chainani's AEIC at paras 39 to 41 and pp 123 to 124.

76 Mr Chainani's AEIC at para 41.

77 Mr Chainani's AEIC at para 41 and p 54.

78 Mr Chainani's AEIC at para 42 and p 61.

79 Mr Chainani's AEIC at para 42.

80 Mr Chainani's AEIC at para 46 and pp 146 to 148.

81 Mr Chainani's AEIC at pp 63 to 64.

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reasonable. Further, I accept Mr Chainani's position that the purported account was inadequate because (a) it showed that Mr Singh's wife, Ms Simrit Kaur Dang, was given S$40,000 without any explanation why; (b) it showed that a sum of S$37,222 was paid to Myanma Food For Thought Pte Ltd ("MFFT"), a business run by Mr Singh, without any explanation why; and (c) there were no supporting documents provided to substantiate the figures set out in the purported account.[82]

45 Meadows was sold in August 2015, but Mr Singh did not provide Mr Chainani with any account in relation to this investment.[83]

46 Spring Grove was sold in August 2016.[84] On 23 August 2016, Ms Callang sent Mr Chainani an email purporting to set out "payments done from the proceeds of the sales from Spring Grove", as follows:[85]

BALANCE B/F (HSBC FUNDS)	4,133.95
SALES PROCEED FROM SPRING GROVE	515,127.00
TOTAL BALANCE	519,261.00
LESS:	
AVITAR	-200,000.00
MFFT	-50,000.00
HSBC CC	-21,568.00
MARINA ONE RES	-165,260.00
SWIMMING CLUB	-1,656.00

82 Mr Chainani's AEIC at para 88 and pp 63 to 64.

83 Mr Chainani's AEIC at para 54 and pp 153 to 162.

84 Mr Chainani's AEIC at para 62 and pp 163 to 164.

85 Mr Chainani's AEIC at pp 55 to 56.

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POSB TOP UP	-5,000.00
CIMB FT	-4,755.00
BALANCE	71,022.00

In my view, the information in this email does not constitute a proper account of the principal sums invested in and the profits made from the sale of Spring Grove, as was required of Mr Singh under the Understanding. There was no explanation for the various items and amounts stated in the email, and I accept that Mr Chainani could not make sense of certain entries.[86]

47 Parc Olympia was sold in January 2017, but Mr Singh did not provide Mr Chainani with any account regarding this investment.[87]

48 Archipelago was sold in December 2017, but Mr Singh did not provide Mr Chainani with any account regarding this investment.[88] In fact, when Mr Chainani asked Mr Singh (via WhatsApp messages in March and October 2017) about the net equity in Archipelago after paying off the mortgage and the cost of Archipelago, Mr Chainani did not receive any substantive response.[89] On 13 April 2018, Mr Singh sent Mr Chainani a spreadsheet referring to various properties. One line entry stated "SPOTTISWOOD/ARCHI" with the figure "8,668.00" in the column immediately beside it, and another line entry stated "**ARCHIPELAGO**" with the figure "**465,000.00**" in the second column beside

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86 Mr Chainani's AEIC at paras 65 to 66.

87 Mr Chainani's AEIC at para 79 and pp 165 to 168.

88 Mr Chainani's AEIC at para 90 and pp 169 to 174.

89 Mr Chainani's AEIC at paras 80 to 83 and pp 109 to 110.

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it.[90] It is impossible to make sense of what these figures mean in relation to the Archipelago (or Spottiswoode) investment.

49 Spottiswoode was sold in July 2019, but Mr Singh did not provide Mr Chainani with any account regarding this investment.[91] In fact, when Mr Chainani asked Mr Singh (via a WhatsApp message in March 2017) about the net equity in Spottiswoode after paying off the mortgage, Mr Chainani did not receive any substantive response.[92]

50 In relation to the Properties in Dubai, Burj Vista was sold in July 2013.[93] FV-21-2105, The Hills 1401, The Hills 505 and Mira were sold in 2014.[94] The Hills 702, The Hills 1204, BD Blvd 44 and BD Blvd 39 have also been sold.[95]

51 On 15 July 2015, Mr Chainani asked Mr Singh via a WhatsApp message to remind his (*ie*, Mr Singh's) brother, Mr Davinderpal Singh s/o Ranjit Singh ("Mr Davinderpal"), to provide "the accounts for the Dubai properties". Mr Singh responded "Ok".[96] However, no accounts were forthcoming. On 12 February 2016, Mr Chainani requested via a WhatsApp message that Mr Singh provide "the final accounts for the Dubai properties". Mr Singh did not respond to Mr Chainani.[97] On 12 June 2016, Mr Chainani requested via a WhatsApp message that Mr Singh "[p]lease bring back all Dubai property

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90 Mr Chainani's AEIC at para 95 and pp 67 to 69.

91 Mr Chainani's AEIC at para 102 and pp 175 to 176.

92 Mr Chainani's AEIC at paras 80 to 81 and p 109.

93 Mr Chainani's AEIC at para 40 and pp 127 to 131.

94 Mr Chainani's AEIC at paras 43 to 45 and 48.

95 Mr Singh's AEIC at paras 129, 130, 132 and 137.

96 Mr Chainani's AEIC at paras 52 to 53 and p 95.

97 Mr Chainani's AEIC at paras 57 to 58 and p 98.

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accounts. They are long overdue". Mr Singh replied "Yes ok"; but did not do so.[98] On 21 July 2016, Mr Chainani requested via a WhatsApp message that Mr Singh "please email the Dubai accounts". Mr Singh replied that he was "chasing" Mr Davinderpal.[99] On 19 August 2016, Mr Chainani created a WhatsApp chat group named "DXB Accounts" with Mr Singh, Mr Davinderpal and himself as the chat group members. He sent a message to the group on the same day asking Mr Davinderpal for a "complete account for ALL Dubai property transactions" by 26 August 2016. He sent chaser messages to the group on 25 and 29 August 2016. On 29 August 2016, Mr Singh responded that he had sent certain information to Ms Callang.[100]

52 On 14 September 2016, Ms Callang sent Mr Chainani the 14 September 2016 Dubai Spreadsheet (see [37] above). The spreadsheet refers to eight Properties in Dubai, being all the Properties in Dubai save for Burj Vista.[101] However, while the spreadsheet states the amounts paid for these Dubai Properties, it is wholly unclear how or why other line entries in the spreadsheet relate to the Dubai Properties, and I do not consider the spreadsheet to be a proper account of these Dubai Properties. On 15 September 2016, Mr Chainani informed Mr Singh via a WhatsApp message that the spreadsheet merely showed cash flows between the Company and Mr Singh and were "not accounts". Mr Chainani added that he needed, among other things, "a complete statement of accounts of all properties purchased and sold" and "to see where the proceeds have gone and who has been paid and why". Mr Singh replied:

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98 Mr Chainani's AEIC at paras 59 to 60 and p 99.

99 Mr Chainani's AEIC at para 61 and p 100.

100 Mr Chainani's AEIC at paras 63, 64, 67 and 68 and p 101.

101 Mr Chainani's AEIC at paras 69 to 70 and pp 57 to 59.

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"Wil chk when back".[102] However, there was no follow up on Mr Chainani's request for the accounts for the Dubai Properties.

53 It was only on 10 July 2018 and 31 July 2018 that Mr Singh sent Mr Chainani updated spreadsheets referring to the eight Dubai Properties.[103] These spreadsheets contained more line entries (as compared to the 14 September 2016 Dubai Spreadsheet) pertaining to, among other things, apparent transfers of moneys to the Company. However, they still did not constitute proper accounts of the Dubai Properties. I accept Mr Chainani's objections that Mr Singh failed to (a) state the purchase and sale price of the Dubai Properties; (b) identify the property to which the amounts purportedly received by the Company were linked; and (c) provide supporting documents.[104]

54 On 10 July 2018, Mr Singh sent Mr Chainani a spreadsheet setting out payments made in 2014, 2015 and 2016 for the purchase of Marina 19 and Marina 20.[105] These two Properties are presently unsold.[106]

55 On 31 July 2018, Mr Singh also sent Mr Chainani spreadsheets containing references to the Marina Properties, Spottiswoode, Archipelago, Spring Grove, Mandarin Gardens, shares, Parc Olympia and Meadows.[107] These spreadsheets do not constitute proper accounts of the aforementioned Properties. I accept Mr Chainani's objections that (a) there is no indication of the purchase and sale price or rental income; (b) it is not possible to tell what

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102 Mr Chainani's AEIC at para 71 and p 101.

103 Mr Chainani's AEIC at paras 136 to 138 and pp 74 to 76 and 82 to 83.

104 Mr Chainani's AEIC at para 137.

105 Mr Chainani's AEIC at para 136 and p 77.

106 Mr Singh's AEIC at paras 115 and 119.

107 Mr Chainani's AEIC at para 138 and pp 78 to 86.

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several line entries, described vaguely as "COSTS RELATED TO DOCUMENTATION", "UOB HSE LOAN REPAYMENT", "SPRING GROVE EXPENSES", "OCBC – HOME LOAN", "SPRING GROVE", "MEADOWS@PIERCE", "CHKING ON THE NATURE OF TRANSACTION", "OLYMPIA", were for; and (c) no supporting documents were provided.[108]

56 Mr Chainani finally commenced this action on 3 August 2020.[109]

57 In my view, the foregoing evidence of Mr Singh's conduct from 2013 up to the commencement of this action shows clear and persistent breaches by Mr Singh of his obligation to account under the Understanding. In the course of this action, Mr Singh sought to provide an account of the Properties in his AEIC. Leaving aside that there remain some deficiencies in those accounts (see [110] below), his belated effort to provide accounts after the commencement of this action cannot and does not change the fact that he *did* breach the Understanding.

58 In the 1st Defendant's Closing Submissions, Mr Singh submitted that he had not breached the Understanding for the following reasons:[110]

> (a) He had, at various times, provided Mr Chainani with spreadsheets containing the purchase prices, expenses related to the purchase, selling price and expenses related to the sale of various properties, as well as the profits from the sale of the properties.

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108 Mr Chainani's AEIC at para 139.

109 Mr Chainani's AEIC at para 143.

110 1st Defendant's Closing Submissions at paras 23 to 24.

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(b) Further, the documents evidencing the purchase prices, selling prices, and expenses related to the sale and/or purchase were kept in the office premises of the Company and the Holding Company and made available to Mr Chainani at all material times.

(c) At all material times when Mr Singh was requested to provide an account by Mr Chainani, he had not denied his obligation to provide the same and had attempted to render an account to the best of his recollection.

59 However, the evidence does not bear out Mr Singh's first and third assertions. I also reject Mr Singh's second argument because Mr Chainani's access to documents kept in the office premises of the Company and the Holding Company does not absolve Mr Singh of his obligation under the Understanding *to provide accounts*. Where the investments were undertaken by Mr Singh (as opposed to by Mr Chainani) on the Company's behalf, Mr Singh cannot realistically expect Mr Chainani to piece together the accounts on his (*ie*, Mr Chainani's) own simply by reviewing documentary records, without more.

Whether the breach of the Understanding amounts to commercially unfair conduct

60 In the present case, the Understanding was an informal commercial agreement setting out the legitimate expectations of Mr Chainani and Mr Singh as to how the Company's funds would be invested for the benefit of the Company, and ultimately, themselves as shareholders of the Holding Company. In my judgment, applying the legal principles set out at [22] above, Mr Singh's breaches of the Understanding disrupted Mr Chainani's legitimate expectations and amount, under s 216, to commercial unfairness to Mr Chainani in the conduct of the affairs of the Holding Company.

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61 Mr Singh argues that:[111]

(a) First, Mr Chainani is not a shareholder of the Company and any unlawful conduct in relation to the Company's affairs cannot amount to oppression against Mr Chainani.

(b) Second, even if the court considers Mr Chainani and Mr Singh as the ultimate shareholders of the Company through their shareholdings in the Holding Company, Mr Chainani and Mr Singh are "shareholders of *equal shares* in the [Holding Company] and there would not be a *minority* shareholder in such a situation" [emphasis in original].

62 I find no merit in either argument.

63 In respect of the first argument, commercially unfair conduct in the management of a subsidiary is relevant where such conduct affected or impacted the holding company whose shareholder is the party claiming relief from oppression: *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*") at [42]. In *Ng Kek Wee*, the Court of Appeal held that Singalab International (the company that was the subject of the s 216 action) had been incorporated as a holding company and its sole assets were shares in its wholly-owned subsidiary companies. The business of the holding company was therefore, in practical terms, comprised wholly of the businesses of its subsidiaries. Thus, the way in which the appellant-shareholder of Singalab International conducted the business of Singalab International's subsidiary, SPL, would undoubtedly have impacted Singalab International. The trial judge thus did not err when she took into account the appellant's misconduct of SPL's affairs in assessing whether the appellant's conduct of Singalab International's

111 1st Defendant's Closing Submissions at para 32.

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affairs was such as to amount to commercial unfairness (at [26] and [43]). Similarly, in the present case, the Holding Company was incorporated by Mr Chainani and Mr Singh in 2004 for the specific purpose of holding the Company. The Holding Company did not conduct its own business. Mr Chainani and Mr Singh transferred their shares in the Company to the Holding Company and remained the ultimate shareholders of the Company.[112] In these circumstances, Mr Singh's conduct of the Company's affairs in breach of the Understanding (and hence in breach of Mr Chainani's legitimate expectations) undoubtedly resulted in commercial unfairness to Mr Chainani as a shareholder of the Holding Company.

64 In respect of the second argument, there is no requirement under s 216 that only minority shareholders are entitled to bring an action for relief. The touchstone is whether the shareholder bringing the action is unable to stop the allegedly oppressive acts through the ordinary powers he possesses by virtue of his position: *Ng Kek Wee* at [48]. In *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771, the Court of Appeal held that the claimant, a 50% shareholder of the company, lacked the shareholder power to stop the allegedly oppressive acts and was thus not disbarred from claiming relief under s 216 (at [34]). Similarly, in the present case, I accept Mr Chainani's submission that, as a 50% shareholder of the Holding Company, he did not have the requisite shareholder power to stop the commercially unfair conduct by Mr Singh which Mr Chainani complains of (*ie*, breach of the Understanding).[113] Mr Singh has not shown otherwise. I therefore find that Mr Chainani is entitled

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112 Mr Chainani's AEIC at para 18; Mr Singh's AEIC at para 25.

113 Plaintiff's Skeletal Submissions (in response to 1st Defendant's Closing Submissions) dated 7 February 2024 (the "Plaintiff's Reply Submissions") at para 34.

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to pursue (and has made out a case for) a s 216 action in respect of Mr Singh's commercially unfair conduct in breaching the Understanding.

Unauthorised loans and other payments from the Company to Mr Singh

65 The "14 December 2015 Ledger" and the "12 April 2019 Ledger" are Mr Singh's ledger accounts with the Company from 30 June 2008 to those dates respectively.[114] Mr Chainani alleges that the 14 December 2015 Ledger and the 12 April 2019 Ledger reflect various entries described as loans to Mr Singh or payments to Mr Singh, which were taken or made without Mr Chainani's knowledge and/or consent.[115] Mr Chainani's case in respect of these loans and payments appears to be two-fold:

(a) First, Mr Chainani contends that Mr Singh had a duty to account to him (*ie*, Mr Chainani) for the monies drawn out from the Company,[116] and that Mr Singh's failure to do so somehow violated Mr Chainani's "legitimate expectation" as a shareholder and was "commercially unfair".[117]

(b) Second, Mr Chainani contends that Mr Singh breached his duties as a director of the Company in a way that "subjected [Mr Chainani] to oppression within the meaning of [s 216]" as Mr Singh had "utilize[d] the [Company's] funds in a manner which is oppressive to [Mr Chainani] and which is prejudicial to [Mr Chainani's] interests as a

114 SOC3 at para 16, Annex A and Annex B.

115 SOC3 at para 21.

116 SOC3 at para 22; Plaintiff's Closing Submissions at para 37.

117 Plaintiff's Reply Submissions at paras 29 to 30.

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shareholder of the [Holding Company]".[118] The loans Mr Singh took were allegedly unauthorised and illegal.[119]

66 Mr Chainani seeks, as a remedy, an order for Mr Singh to render "a complete account of all '*loans*', as reflected in the 14 December 2015 Ledger and the 12 April 2019 Ledger".[120]

67 Mr Singh denies that the entries described as loans reflect transactions undertaken without Mr Chainani's knowledge and/or consent or that the entries were false or made as afterthoughts.[121] Mr Singh also denies that he was under a duty to account to Mr Chainani for matters concerning the conduct of the Company's business.[122] Mr Singh further argues that any claims in relation to alleged wrongs committed by him, in his capacity as a director of the Company, against the Company, are for the Company, and not Mr Chainani, in his personal capacity, to bring.[123]

68 I observe, to begin with, that in so far as Mr Singh used the Company's funds to acquire the Properties pursuant to the Understanding, he would have to account to the Company and to Mr Chainani for the use of such funds in accordance with the Understanding (and I make orders to such effect at [132] below). However, I disagree that Mr Singh is under a duty to account to Mr Chainani *personally* for all sums drawn by Mr Singh from the Company outside of the Understanding.

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118 SOC3 at paras 31 and 32(a).

119 Plaintiff's Closing Submissions at para 46.

120 SOC3 at p 18 claim (4) against Mr Singh.

121 D2 at para 18.

122 D2 at para 19.

123 1st Defendant's Closing Submissions at para 25.

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69 First, I find that there was no commercial agreement or informal understanding between Mr Chainani and Mr Singh capable of giving rise to a legitimate expectation on Mr Chainani's part for *Mr Singh to account to Mr Chainani personally for all sums paid from the Company to Mr Singh*. Most fundamentally, no such commercial agreement, informal understanding or legitimate expectation was pleaded (in contrast to Mr Chainani's case on the Understanding, which was both pleaded and borne out on the evidence).

70 Neither, in my view, did the parties' evidence bear out any agreement for Mr Singh to render such an account. Mr Chainani's evidence on a "mutual understanding" on how the Company was to be run related to both parties having "a say in the management and direction of the business":[124]

> [Mr Singh] and I operated on the mutual understanding that we would both have a say in the management and direction of the business. In particular:-
>
> a. We would keep each other regularly updated on [the Company's] finances and what each of us was doing on behalf of [the Company]; and
>
> b. We would consult each other on material events which would affect [the Company's] business, including but not limited to whether we wanted [the Company] to move into new business areas or expand outside Singapore, the use of [the Company's] funds, the disposal of [the Company's] assets and the selection of [the Company's] employees.

There is no mention of the parties having to account to each other personally for any and all sums paid from the Company to them, much less Mr Singh having the *singular* obligation to account to Mr Chainani personally for any and all sums paid from the Company to Mr Singh. Indeed, it is undisputed that Mr Chainani himself had drawn funds from the Company and had his own

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124 Mr Chainani's AEIC at para 14.

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ledger accounts with the Company.[125] It is illogical that the parties would have agreed that only Mr Singh had to account to Mr Chainani personally for all moneys taken from the Company, but not *vice versa*.

71 Mr Chainani also asserts that he (a) entrusted Mr Singh with maintaining the Company's accounts and records[126] and handling payments to suppliers;[127] (b) handed over his electronic banking token(s) for the Company's bank accounts to the Company's accounts department employees, who took instructions from Mr Singh in effecting payments of cash out of the Company's bank accounts;[128] (c) left pre-signed cheques for the Company with Mr Singh when he (*ie*, Mr Chainani) travelled;[129] and (d) expected and believed that Mr Singh would handle the Company's bank accounts and affairs with honesty.[130] However, this is insufficient to found a *mutual* understanding between the parties that Mr Singh would account to Mr Chainani personally (as opposed to accounting to the Company) for all sums drawn from the Company. Mr Chainani cannot rely on any *subjective* expectation he might have harboured; he must show an informal agreement or a clear understanding shared by the parties in order to establish a legitimate expectation (*Lim Kok Wah* at [121]).

72 In my view, Mr Singh's evidence supports only the Understanding, but not a further mutual understanding or agreement of having to account to

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125 AB Vol 29(I) at pp 31 to 46.

126 Mr Chainani's AEIC at para 20.

127 Mr Chainani's AEIC at para 23.

128 Mr Chainani's AEIC at para 24.

129 Day 1 Transcript at p 54 lines 3 to 7.

130 Mr Chainani's AEIC at para 24.

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Mr Chainani for all sums drawn by Mr Singh from the Company. Mr Singh stated in his AEIC at para 12:

> As [the Company] was doing very well and had substantial cash in hand, [Mr Chainani] and I decided that for the purposes of our own individual long-term investments, we could borrow from [the Company] whatever capital we may require, as long as there remains sufficient cash in [the Company] for it to conduct its primary business. The monies that were borrowed were to be reflected as loans extended to us in our capacity as directors of [the Company]. As [Mr Chainani] and I were the only shareholders, we ran it in the spirit of mutual trust and on the basis that being the only owners, we were only answerable to each other. [The Company] was the company from which the main trading of business transpired. [Mr Chainani] and I agreed that any of such borrowings had to be properly accounted for and returned within a reasonable time. The terms of repayment were not specifically discussed, but it was understood that it would be repaid within a reasonable time in order to not adversely affect the financial standing of [the Company]. …

While Mr Singh suggested that the shareholders had been permitted to borrow moneys from the Company to make investments on their own behalf, he effectively repudiated this narrative by admitting to the Understanding (see [30]–[35] above) which is premised on the Company's funds being used for *the Company's investments*. As I have found at [41] above, Mr Singh has to account to Mr Chainani for the investments made with the use of the Company's funds. That being so, Mr Singh's evidence at para 12 of his AEIC should not be interpreted to mean that the parties also informally agreed that Mr Singh was to account to Mr Chainani for any and all sums drawn by Mr Singh from the Company outside of the Understanding.

73 The evidence simply does not reveal any practice or course of conduct by the parties where Mr Singh accounted to Mr Chainani for any and every sum paid from the Company to Mr Singh, or loans he took from the Company, *apart from or in addition to* the Understanding.

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74 Second, I do not accept Mr Chainani's argument (relying on the test in *Tan Teck Kee* at [69]) that Mr Singh had voluntarily placed himself in a position which gave rise to him owing a fiduciary duty to account to Mr Chainani for *all* sums paid from the Company to Mr Singh.[131]

75 In making this argument, Mr Chainani relies heavily on certain statements made by Mr Singh in para 19 of Mr Singh's AEIC regarding the parties reposing trust in each other and being answerable to each other as the ultimate owners of the Company.[132] However, these statements must be read and understood in the context of the entire paragraph. What Mr Singh stated was:

> The ultimate owners of [the Holding Company] and [the Company] (through [the Holding Company]) are [Mr Chainani] and me. We operated it on the basis that we were deriving our income and living expenses from [the Company] and [the Holding Company]. In my mind, we were answerable to each other as we were the ultimate owners. Even so, at no point were [Mr Chainani] or I allowed to freely use monies in [the Company]. After all, being the ultimate owners, there was complete trust reposed in each other. The system we both set up mandated the operation of any bank account within [the Company] to be executed on the basis of joint signatories for any cheques or telegraphic transfers issued by [the Company]. In other words, neither [Mr Chainani] [n]or myself were allowed to operate the account without the other's consent and knowledge. I repeat that every loan extended was duly recorded and, after the annual audit by certified Chartered Public Accountants, duly posted as being receivables from each of us as directors or due to us as directors if it remained in [the Company's] books at the end of the financial year, as was the case between 2007 to 2015. … [133]

In context, far from suggesting that Mr Chainani was in a vulnerable position *vis-à-vis* Mr Singh where management of the Company's funds were

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131 Plaintiff's Closing Submissions at paras 39 to 40.

132 Plaintiff's Closing Submissions at paras 39(a), 39(b) and 39(d).

133 Mr Singh's AEIC at para 19.

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concerned, Mr Singh's point was that both he and Mr Chainani had control over the Company's funds.

76 In cross-examination on para 19 of his AEIC, Mr Singh accepted that what he stated "[came] back to" parties having a duty to account to each other for what they intended to do with the Company's moneys. However, the questions posed in cross-examination addressed the use of the Company's moneys to make investments *pursuant to the Understanding*, and I do not take Mr Singh to have conceded that he had a duty to account to Mr Chainani for *any and all sums drawn by Mr Singh* from the Company even when it *did not relate to the Understanding*:[134]

> Q. So in other words, you could not unilaterally make decisions to use monies in [the Company]; correct?
>
> A. Yes.
>
> Q. You needed Mr Chainani's consent; correct?
>
> A. Yes.
>
> Q. And similarly Mr Chainani could not make use of monies in [the Company] without your consent?
>
> A. Yes.
>
> Q. And in a sense this comes back to this duty to account to each other; correct?
>
> A. Yes.
>
> Q. You have to tell each other what you intend to do with the company's monies; correct?
>
> A. Yes.
>
> Q. And that's also one of the reasons why the bank accounts were set up such that both your signatures were required; correct?
>
> A. Yes.

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134 Day 2 Transcript at p 103 line 18 to p 105 line 5.

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> Q. So no cheques, regardless of the amounts, could be signed if neither you or Mr Chainani signed off jointly on it; correct?
>
> A. Yes.
>
> Q. So the system was that both of you were to fully and, in as transparent a manner as possible, inform each other of what you were doing with [the Company's] funds; correct?
>
> A. Yes.
>
> Q. Sorry?
>
> A. Yes.
>
> Q. *Let's just explore what that entails, right. So if both of you decide to make an investment you first of all have to inform each other what is the purchase price of the investment; correct?*
>
> A. Sorry, the purchase price?
>
> Q. *Yes, if both of you decide to use [the Company's] money to buy or make an investment, you have to tell each other what is the purchase price of the investment?*
>
> A. In the beginning, yes.
>
> [emphasis added]

77 Although Mr Chainani left pre-signed cheques with Mr Singh,[135] that was Mr Chainani's choice. In 2017, Mr Chainani removed himself as a co-signatory for the Company's bank account with Standard Chartered Bank because he decided to transfer his shares in the Company to Mr Singh (although that did not materialise). Mr Chainani removed himself as a co-signatory after informing Mr Singh that no moneys were supposed to be removed from the Company without his (*ie*, Mr Chainani's) consent.[136] This was again an independent choice on Mr Chainani's part. The circumstances do not lend to an objective imputation that Mr Singh had intended to undertake fiduciary

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135 Plaintiff's Closing Submissions at para 39(c).

136 Day 2 Transcript at p 208 line 10 to p 209 line 6; Day 4 Transcript at p 93 line 23 to p 95 line 14.

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obligations to Mr Chainani in respect of the use of the funds of the Company. All this is not to say, however, that Mr Singh did not owe *the Company* a duty to account. Rather, the point is that Mr Singh did not voluntarily place himself in a position to have to account to *Mr Chainani personally* for any and all sums drawn from the Company (outside of funds used to invest in properties pursuant to the Understanding).

78 It follows that there was no commercial unfairness to or oppression of Mr Chainani arising from Mr Singh not accounting to him (*ie*, Mr Chainani) personally for all sums taken by Mr Singh from the Company.

79 Third, in so far as Mr Chainani's allegation, that Mr Singh utilised the Company's funds in a manner "oppressive" and "prejudicial" to Mr Chainani,[137] is in fact an insinuation that Mr Singh misappropriated the Company's funds, I find that this would be a corporate wrong by Mr Singh against the Company and not a personal wrong against Mr Chainani under s 216. In *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 ("*Suying*"), the Court of Appeal explained that misappropriation of a company's assets would by nature reduce the assets of the company, but, in the absence of evidence to the contrary, the "injury" to the minority shareholder in that situation is merely a reflection of the loss to the company and s 216 should not be used to vindicate such a corporate wrong (at [30] and [34]):

> 30 It is well established that *s 216 of the Companies Act should not be used to vindicate wrongs which are in substance wrongs committed against a company, and which are thus corporate rather than personal in nature. … Where the minority shareholder's loss is merely a reflection of the loss suffered by the company* which would be made good if the company were able to and did enforce its rights, *the proper party to recover that loss is the company and not the shareholder … Misappropriation*

137 SOC3 at paras 31 and 32(a).

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> *of the company's assets is by its very nature unlawful and would reduce the assets of the company. Unless there is evidence to the contrary, the "injury" to the minority shareholder in that situation is merely a reflection of the loss to the company. …*
>
> …
>
> 34 It is clear that the framework we set out in *Sakae Holdings* ([22] *supra*) did not in any way limit or diminish the importance of the proper plaintiff rule. Rather, it remains a prerequisite, even where "overlapping" wrongs are concerned, that a ***distinct injury*** must be suffered by the shareholder. *The injury to the minority shareholder thus cannot merely reflect the injury suffered by the company. It must further be shown that the distinct injury amounts to commercial unfairness against the plaintiff as a member of the company.* Commercial unfairness should be assessed against the behaviour the shareholder is entitled to expect or rely on, whether this expectation arises from a formal document or an informal understanding…
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

80 In *Suying*, the plaintiff, Mr Ng, a 35% shareholder of the company ("SMSPL"), alleged that the third defendant, Ms Tan, a 40% shareholder of SMSPL, had acted in an oppressive manner by, among other things, withdrawing moneys from SMSPL's bank account as her gratuity and adjusted pay ("Gratuity Payments"). Mr Ng disputed the propriety of the Gratuity Payments (at [7]–[8]). The Court of Appeal held that Mr Ng could not rely on the Gratuity Payments, which were alleged corporate wrongs committed by Ms Tan, as acts of shareholder oppression (at [113]–[114]):

> 113 In our judgment, *these baseline expectations [of a shareholder] do not provide a sufficient basis on which to find that Mr Ng has suffered a distinct personal injury which would amount to commercial unfairness. To find otherwise would, in our view, suggest that* ***any*** *misappropriation of moneys by a director would constitute a distinct injury to a shareholder.* This would be too broad a construction of the framework the Court of Appeal set out in *Sakae Holdings* and make impermissible inroads into the proper plaintiff rule. *This simply cannot be the case.* Further, the breach of this expectation would be remedied by the recovery of the misappropriated moneys by the company

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> in a corporate action. The Companies Act provides s 216A for this purpose.
>
> 114 As such, in our judgment, while Mr Ng may have been entitled to expect that SMSPL's funds would not be siphoned away, the breach of this expectation did not in itself constitute a distinct injury under s 216 of the Companies Act. … The claim in respect of the Gratuity Payment therefore should not have been brought under s 216. …
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

81 In the present case, it is for the Company to pursue any alleged misappropriation by Mr Singh of its funds, by way of unauthorised or illegal loans or otherwise, and any corporate wrong done to the Company in this regard will be adequately remedied. As I make orders at [102] below for the winding up of the Company (and the Holding Company), the liquidators (when appointed) may consider what, if any, appropriate action should be taken in respect of Mr Chainani's allegations that Mr Singh took unauthorised loans and other payments from the Company. However, Mr Chainani is not able to claim that these are acts of commercial unfairness or oppression, under s 216, against him personally.

US$1.6m Entry in the 14 December 2015 Ledger

82 Mr Chainani points to the following entries in relation to the Company's accounts:

(a) The Company's Journal Entry No 30409 dated 1 January 2011 contains a credit entry described as "AUDIT ENTRIES 2010" for the sum of US$1,634,217.17 in relation to Mr Singh's account (*ie*, the US$1.6m Entry).[138]

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138 SOC3 at para 18 and Annex C; Mr Chainani's AEIC at para 107 and p 193.

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(b) In the 14 December 2015 Ledger, there is a corresponding credit entry dated 1 January 2011 titled "AUDIT ENTRIES 2010" for the same sum of US$1,634,217.17. The origin of this entry is stated as "JE" "30409".[139]

(c) As a result of this credit entry, the cumulative balance in the Company's accounts reduced from US$1,119,099.44 on 31 December 2010[140] to a deficit of US$515,117.73 on 1 January 2011.[141]

83 Mr Chainani complains that Mr Singh did not provide to the Company or to him (*ie*, Mr Chainani) any basis for the insertion of the US$1.6m Entry and the corresponding reduction of the Company's cumulative balance to a deficit of US$515,117.73.[142] Mr Chainani further alleges that Mr Singh's failure to justify and account to the Company and him (*ie*, Mr Chainani) for the insertion of the US$1.6m Entry was a breach of Mr Singh's duties as a director of the Company and/or "a violation of the trust which [Mr Chainani] had reposed in [Mr Singh]".[143] As a result of Mr Singh's alleged breach of director's duties, Mr Chainani was allegedly "subjected to oppression within the meaning of [s 216]" in that Mr Singh had "utilize[d] the [Company's] funds in a manner which is oppressive to [Mr Chainani] and which is prejudicial to [Mr Chainani's] interests as a shareholder of the [Holding Company]".[144]

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139 SOC3 at para 19 and Annex A (row 73); Mr Chainani's AEIC at para 108 and p 182 (row 73).

140 SOC3 at para 17 and Annex A (row 72); Mr Chainani's AEIC at para 106.

141 SOC3 at para 19 and Annex A (row 73); Mr Chainani's AEIC at para 108.

142 SOC3 at paras 20 and 22; Mr Chainani's AEIC at para 109.

143 SOC3 at paras 30 to 31.

144 SOC3 at para 32(a).

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Mr Chainani seeks "[a]n order that [Mr Singh] accounts for the insertion of the [US$1.6m Entry]".[145]

84 Mr Singh gave the following evidence to explain the US$1.6m Entry:

(a) The US$1.6m Entry comprised two separate transactions.[146]

(b) The first transaction involved bringing Mr Singh's director's loan balance of US$1,119,099.44[147] to zero for the year ending 31 December 2010 by transferring that debt from the Company to the Holding Company.[148] This exercise of transferring, to the Holding Company's books, amounts due from the Company's directors to the Company, was not new. It was (a) previously undertaken in 2009, and (b) undertaken in both 2009 and 2010 by Mr Chainani, in respect of amounts due from him (*ie*, Mr Chainani) to the Company.[149]

(c) The second transaction involved a reduction of US$515,117.73 in Mr Singh's loan ledger with the Company. Mr Chainani and Mr Singh had decided to transfer doubtful receivables from the Company's customers to Mr Singh's loan ledger with the Company and to write off the bad debts; these totalled US$607,678.10.[150] The write-

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145 SOC3 at p 18 claim (3) against Mr Singh.

146 Mr Singh's AEIC at para 34.

147 Mr Singh's AEIC at p 189 (row 72).

148 Mr Singh's AEIC at paras 33 to 34.

149 Mr Singh's AEIC at paras 31 and 33 and pp 189 (row 19), 195 (Mr Chainani's account with the Company: JE 2150001 dated 31 December 2009 for "TRANSFER OF AMOUNT DUE FR DIRECT TO AVITAR HOLDGS" in the amount of US$450,935.10) and 197 (Mr Chainani's account with the Company: JE 3100002 dated 1 January 2011 for "AUDIT ENTRIES 2010" in the amount of US$14,686.48).

150 Mr Singh's AEIC at para 40 and pp 330 to 331.

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off of US$607,678.10 entitled Mr Singh to a tax credit of US$81,000, which was recorded in his loan ledger.[151] These, along with some minor adjustments, resulted in a recorded reduction of US$515,117.73 in his loan ledger on 1 January 2011, as the bad debts were only posted to his loan ledger on 31 December 2011.[152]

(d) The sums of US$1,119,099.44 and US$515,117.73 (totalling US$1,634,217.17) together made up the US$1.6m Entry.[153]

85 As I understood Mr Singh's evidence in respect of the first transaction (at [84(b)] above), the transfer to the Holding Company of the debts owed by Mr Chainani and Mr Singh to the Company (the "Director's Company debt") resulted in (a) the Holding Company owing the Company the amount of Mr Chainani and Mr Singh's Director's Company debt, and (b) Mr Chainani and Mr Singh in turn owing the Holding Company (the "Director's Holding Company debt") the respective sums they had owed the Company prior to the debt transfer. Mr Singh further explained that, in 2009 and 2010, the Company and the Holding Company declared dividends. The dividends declared by the Company were used to set off amounts owed by the Holding Company to the Company. The dividends declared by the Holding Company were equally allocated to Mr Chainani and Mr Singh and applied towards setting off amounts owed by them to the Holding Company.[154]

86 In response, Mr Chainani argues that this was unfair to him because:

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151 Mr Singh's AEIC at para 41; Day 4 Transcript at p 120 line 15 to p 122 line 24.

152 Mr Singh's AEIC at para 41 and pp 189 (rows 73 to 76) and 191 (row 165).

153 Mr Singh's AEIC at paras 34 and 41.

154 Mr Singh's AEIC at paras 32, 36, 44 and 45.

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(a) A larger proportion of the Director's Company debt that was allegedly transferred to the Holding Company comprised Mr Singh's (rather than Mr Chainani's) Director's Company debt.[155]

(b) The dividends declared by the Company went towards payment of the amounts owed by the Holding Company to the Company. The amounts owed by the Holding Company to the Company arose in part as a result of the transfer of the Director's Company debt.[156]

(c) Mr Singh allegedly had no intention of paying his Director's Holding Company debt. Thus, "by a sleight of hand achieved by the [US$1.6m Entry]", Mr Singh procured the Company, through the dividend declared in 2009, to pay off his liability, which he transferred to the Holding Company.[157]

87 I find, first, that Mr Chainani's claim for Mr Singh to account for the insertion of the US$1.6m Entry in the 14 December 2015 Ledger is academic, since Mr Singh gave evidence to explain the transactions underlying the US$1.6m Entry. Indeed, Mr Chainani takes issue with the substance of the transactions explained by Mr Singh, implicitly acknowledging that explanations have been provided.

88 Second, in my view, Mr Chainani's apparent dissatisfaction with the transactions underlying the US$1.6m Entry relates to corporate wrongs, if any.

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155 Plaintiff's Closing Submissions at para 47.

156 Plaintiff's Closing Submissions at para 48.

157 Plaintiff's Closing Submissions at para 49; Plaintiff's Reply Submissions at para 28(a).

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(a) In respect of the first transaction (at [84(b)] above), it pertains to moneys owed by Mr Singh to the Company and/or the Holding Company, and it is for the Company and/or the Holding Company to pursue any alleged wrongdoing in this connection. There is no commercial unfairness to Mr Chainani within the meaning of s 216. Following the transfer of the Director's Company debt to the Holding Company, Mr Singh owed the Holding Company the same amount of debt he had owed the Company prior to the transfer. Dividends declared by the Company to the Holding Company and applied by the Holding Company to set off amounts owed by the Holding Company to the Company would not affect the quantum of Mr Singh's Director's Holding Company debt. If Mr Singh failed or refused to repay his Director's Holding Company debt, that would be a corporate wrong for the Holding Company to pursue.

(b) In respect of the second transaction (at [84(c)] above), it is unclear that there was even any wrong done to the Company. Based on Mr Singh's explanation, the ledger record appeared as it did due to a difference in the timing of when the relevant entries were posted to Mr Singh's loan ledger; there was no net outflow from the Company to Mr Singh.

89 For completeness, there was also brief speculation by Mr Chainani's counsel in oral closing submissions that Mr Singh might have "violated or breached" the Understanding by "carrying out" the US$1.6m Entry,[158] but as neither evidence nor substantiation of this assertion was provided, I say no more about it.

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158 Day 5 Transcript at p 16 line 18 to p 17 line 3.

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90 In summary, I find that Mr Chainani's allegations in relation to the US$1.6m Entry do not constitute any act of commercial unfairness against him under s 216.

Dividend declared by the Company to the Holding Company

91 The minutes of a meeting of the Company's board of directors on 19 November 2009 ("19 November 2009 Minutes"), signed by Mr Chainani and Mr Singh, record that the directors had resolved that an interim dividend of S$1.5m for the year ending 31 December 2009 (*ie*, the Dividend) would be paid to the Company's shareholders (*ie*, the Holding Company).[159]

92 On 20 November 2009, the Company issued a notice to the Holding Company advising that the Dividend was declared and payable to the Holding Company. The notice was signed by Mr Singh.[160]

93 Mr Chainani's case is that:

(a) It was Mr Singh who "procured" the Company to declare the Dividend.[161]

(b) There was no record of the Dividend being received by the Holding Company.[162]

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159 1st Defendant's Bundle of Documents ("DB") at p 4.

160 DB at p 6.

161 SOC3 at para 22A.

162 SOC3 at para 22A.

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(c) As a 50% shareholder of the Holding Company, he should have received, but did not receive, half of the Dividend, *ie*, S$750,000.[163]

(d) Mr Singh failed and/or refused to account to the Company and Mr Chainani for the Dividend.[164] This is a breach of Mr Singh's duties as a director of the Company and/or is "a violation of the trust which [Mr Chainani] had reposed in [Mr Singh]".[165]

(e) Mr Singh's aforesaid conduct is in disregard of and/or prejudicial to the Company's interests as well as Mr Chainani's interests as a shareholder of the Company.[166] Mr Chainani was allegedly "subjected to oppression within the meaning of [s 216]" in that Mr Singh had "utilize[d] the [Company's] funds in a manner which is oppressive to [Mr Chainani] and which is prejudicial to [Mr Chainani's] interests as a shareholder of the [Holding Company]".[167]

(f) Mr Chainani seeks "[a]n order that [Mr Singh] renders a complete account of the Dividend".[168]

94 Mr Singh gave evidence explaining that:

(a) Sometime in 2005, the Company issued 500,000 new shares at S$1 per share and the Company's total number of shares increased to 1m shares. In 2008, the Company issued 1m new shares at S$1 per share

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163 SOC3 at para 22A; Mr Chainani's AEIC at para 156.

164 SOC3 at para 22A.

165 SOC3 at para 31A.

166 SOC3 at para 22A.

167 SOC3 at para 32(a).

168 SOC3 at p 18 claim (5) against Mr Singh.

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and its total number of shares increased to 2m shares.[169] The Holding Company thus owed the Company S$1.5m for the new shares issued in 2005 and 2008.[170] The moneys that were to be paid by the Company to the Holding Company were reflected in the financial statements of the Company as "amount due from holding company":[171] in the financial statements for the year ending 31 December 2007, this amount was S$502,800 (of which S$500,000 was owed by the Holding Company to the Company for the Company's 500,000 new shares in 2005);[172] and in 2008, the amount increased to US$1,061,067.[173]

(b) In 2009, Mr Chainani's Director's Company debt in the amount of US$450,935[174] and Mr Singh's Director's Company debt in the amount of S$55,398[175] were transferred to the Holding Company's books, increasing the amount due from the Holding Company to Company to US$1,566,618 (from US$1,061,067).[176]

(c) In 2009, the Company declared a dividend of S$1.5m (equivalent to about US$1.068m), *ie*, the Dividend. This reduced the amount due from the Holding Company to the Company to about

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169 Mr Singh's AEIC at para 26 and p 247.

170 Mr Singh's AEIC at para 26.

171 Mr Singh's AEIC at para 27.

172 Mr Singh's AEIC at para 28 and pp 85 and 95.

173 Mr Singh's AEIC at paras 29 to 30 and p 280.

174 Mr Singh's AEIC at p 195 (Mr Chainani's account with the Company: JE 2150001 dated 31 December 2009 for "TRANSFER OF AMOUNT DUE FR DIRECT TO AVITAR HOLDGS" in the amount of US$450,935.10).

175 Mr Singh's AEIC at p 189 (row 19).

176 Mr Singh's AEIC at para 31 read with paras 29 to 30.

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US$0.498m, as reflected in the financial statements of the Company for the year ending 31 December 2009.[177]

(d) The Dividend is reflected in the Company's financial statements for 2009 and 2010.[178] Mr Singh also asserted that Mr Chainani had signed off on both sets of financial statements declaring them to be true and correct.[179]

(e) Mr Singh never received any moneys by way of the Dividend.[180]

95 I find, first, that Mr Chainani's claim for Mr Singh to render an account for the Dividend is academic, since Mr Singh gave evidence to explain the declaration and application of the Dividend.

96 Second, I find that Mr Chainani has not proven any wrongdoing on Mr Singh's part in connection with the Dividend. In cross-examination, Mr Chainani struggled and failed to articulate what was supposedly wrong with the Dividend transaction in light of Mr Singh's account of the transaction.[181] For example:

(a) Despite claiming not to recall signing the 19 November 2009 Minutes, Mr Chainani expressly confirmed in cross-examination that he did not dispute the authenticity of his signatures in the document.[182] I do not see how Mr Chainani can dispute the *bona fides* of the declaration

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177 Mr Singh's AEIC at para 32 and p 280.

178 Mr Singh's AEIC at para 44 and pp 267 and 328.

179 Mr Singh's AEIC at para 44.

180 Mr Singh's AEIC at para 74; D2 at para 19A.

181 Day 1 Transcript at p 137 line 22 to p 141 line 24.

182 Day 1 Transcript at p 116 line 7 to p 117 line 11; DB at p 4.

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of the Dividend which he had himself approved as a director of the Company.

(b) Mr Chainani accepted in cross-examination that, because the Holding Company did not have a bank account, the declaration of the Dividend was not followed by payment.[183] This coheres with Mr Singh's explanation that the Dividend was not paid, but instead set off against amounts owed by the Holding Company to the Company.

(c) Mr Chainani also conceded that it was "[p]robably not" his case that Mr Singh had received the Dividend moneys.[184] To begin with, the Dividend was declared by the Company in favour of the *Holding Company*, and there was no basis for *Mr Chainani* to claim a direct entitlement to half of the Dividend amount. Leaving that aside, the point is that Mr Chainani conceded that Mr Singh had not received the Dividend moneys either. This is consistent with Mr Singh's explanation that the Dividend was set off against amounts owed by the Holding Company to the Company.

(d) The Company's financial statements for the years ending 31 December 2009 and 2010 reflect that the Dividend was declared by the Company to the Holding Company.[185] Although the copy of the former adduced by Mr Singh is unsigned[186] and the copy of the latter adduced by Mr Singh is an incomplete document,[187] the Holding

183 Day 1 Transcript at p 139 lines 8 to 12.

184 Day 1 Transcript at p 139 lines 13 to 15.

185 Mr Singh's AEIC at pp 267 and 328.

186 Mr Singh's AEIC at pp 260 to 263.

187 Mr Singh's AEIC at pp 309 to 328.

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> Company's financial statements for the years ending 31 December 2009 and 2010 *also* reflect that the Dividend was received by the Holding Company in 2009.[188] Mr Chainani signed off on both sets of financial statements as a director of the Holding Company, confirming that they gave a true and fair view of the state of the group and of the Holding Company as at 31 December 2009 and 2010 respectively.[189] Further, Mr Chainani agreed in cross-examination that the Dividend was reflected in the financial statements of the Holding Company and the Company, and that he had signed off on the financial statements containing this record.[190] I do not accept Mr Chainani's self-serving explanation that he signed the financial statements only because Mr Singh signed them too.[191] Mr Chainani has been a businessman since around 1999. He has been most punctilious in demanding from Mr Singh accounts of the investments made with the Company's funds and what he (*ie*, Mr Chainani) considers to be his share of the profits. I do not accept that Mr Chainani would have thoughtlessly signed off on financial statements if he truly had a concern with the Dividend (or any other matters) recorded in the financial statements.

I therefore find that Mr Chainani has not shown any wrongdoing on Mr Singh's part in relation to the Dividend.

97 Third, even if there was any wrongdoing, it would be a corporate wrong for the Company (which declared the Dividend) or the Holding Company (to

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188 AB Vol 29(I) at pp 437 and 464.

189 AB Vol 29(I) at pp 434 to 435 and 461 to 462.

190 Day 2 Transcript at p 54 lines 12 to 18.

191 Day 1 Transcript at p 99 line 25 to p 100 line 8.

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whom the Dividend was declared) to pursue. I find that Mr Chainani's allegations in relation to the Dividend do not constitute any act of commercial unfairness against him under s 216.

The appropriate relief

98 Having found that Mr Singh's breaches of the Understanding constitute commercial unfairness within the meaning of s 216, I must determine the appropriate relief. Subject to the limitation that any order made under s 216 must be made with a view to bringing to an end or remedying the matters which rightly form the subject of complaint, the court's power to make an order under s 216 is very wide and much depends on the matters complained of and the circumstances prevailing at the time of hearing: *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 ("*Kumagai Gumi*") at [71]. The court has a wide discretion to fashion such relief as it considers just: *Sakae* at [118].

Winding up of the Holding Company and the Company

99 Section 216(2)(*f*) expressly states that the court may make an order that a company be wound up. Section 216(3) adds that, where an order that the company be wound up is made pursuant to subsection (2)(*f*), the legislative provisions relating to the winding up of a company apply, with such adaptations as are necessary, as if the order had been made upon an application duly made to the court by the company.

100 An order for winding up would be an appropriate remedy when winding up is a realistic means of securing to a plaintiff in a s 216 action his share of the value of the company. This may be the case where, for example, the company is in large measure non-trading or not running a business and/or where its

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corporate assets are substantially realisable: *Snell v Glatis (No 2)* [2020] NSWCA 166 at [39]–[40] and [42].

101 The court's power also extends to making an order that the company's subsidiary company be wound up. This may be appropriate where, for example, the subsidiary company is a mere vehicle of the parent company and has been used to further a defendant's oppressive conduct. In *Kumagai Gumi*, the plaintiff-shareholder ("Kumagai") of a joint venture company ("KZ") alleged oppression against the defendant-shareholder ("Zenecon") in KZ. KZ owned a majority stake in a subsidiary company ("KPM"). The remaining stake in KPM was held by one Low, who was the controller of Zenecon (at [3] and [7]). Kumagai sought, among others, orders that KZ and KPM be wound up (at [21]). The Court of Appeal found that, as the nominee director of KZ on the board of KPM, Low had carried on the business of KPM in a manner that served only his and/or Zenecon's interest, in disregard of the interest of KZ. Such conduct on his part was conduct in the affairs of KZ and oppressive to Kumagai as a shareholder of KZ (at [57]). The Court of Appeal observed that some subsidiaries are truly independent of their parent company, while others are not. In that case, KPM was used by Low as a mere vehicle of KZ (at [59]). The trial judge below had seen fit to order that both KZ and KPM be wound up, and these orders were not disturbed on appeal (at [72]).

102 In the present case, I order that the Holding Company and the Company be wound up. I consider these orders appropriate for three reasons. First, it is undisputed that the Holding Company and the Company are dormant (see [2]–[3] above). Second, Mr Chainani desires that the Holding Company and the

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Company be wound up,[192] and Mr Singh does not object to the winding up *per se*.[193] Third, both companies should be wound up as the Company is a mere vehicle for the Holding Company and its ultimate shareholders, Mr Chainani and Mr Singh.

103 I will hear parties regarding the appointment of liquidators and any other consequential orders or directions as may be necessary further to my orders at [102] above.

Taking of accounts from Mr Singh

104 Having found that, in light of the Understanding, Mr Singh owes a duty to account to the Company and to Mr Chainani for the investments (including principal sums invested and any profits made on the investments) made with the use of the Company's funds (see [40]–[41] above), and that Mr Singh had not provided certain accounts as required (see [57] above), I consider it appropriate to make an order against Mr Singh for the taking of accounts. The taking of accounts is a procedure for the accounting of funds and is not in itself a remedy for wrongdoing: *UVJ and others v UVH and others and another appeal* [2020] 2 SLR 336 ("*UVJ*") at [24]. I therefore order him to give an account of the principal sums from the Company used to acquire stocks and/or real estate pursuant to the Understanding and the profits made from these investments of the Company (the "Account").

105 Issues arise as to:

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192 SOC3 at pp 18 to 19 claim (1) against the Company and Holding Company; Day 3 Transcript at p 190 lines 12 to 13.

193 Day 3 Transcript at p 192 lines 6 to 7.

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(a) whether any of the Properties should be excluded from the Account;

(b) the basis on which the Account should be taken, *ie*, on a common basis or on a wilful default basis;

(c) to whom the Account should be provided; and

(d) whether, as sought by Mr Chainani,[194] Mr Singh should be ordered to pay over any sums to Mr Chainani upon the taking of the Account.

106 I address these issues in turn.

Whether any of the Properties should be excluded from the Account

107 In my view, the Account should include all the Properties. I do not accept Mr Singh's suggestions otherwise.

108 First, Mr Singh submits that he had led evidence to show that no Company funds had been used for the purchase of Parc Olympia and that there should thus be no order for the Account to include Parc Olympia.[195] He also asserted in his AEIC that there was nothing for him to account for in relation to the Shares as he "believe[d] that these shares were not procured with [the Company's] funds".[196] There are, however, two difficulties with his position. One, by admitting that the Understanding applied to the Properties, Mr Singh implicitly admitted that the Properties (including Parc Olympia and the Shares) had been acquired using the Company's funds. Two, the trial of this action was

194 SOC3 at p 18 claim (6) against Mr Singh.

195 1st Defendant's Closing Submissions at paras 64 to 65.

196 Mr Singh's AEIC at para 141.

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to determine Mr Singh's liability as regards Mr Chainani's s 216 claim and the appropriate relief (if liability was established), and not for the taking of accounts. The order for the taking of the Account should therefore include Parc Olympia and the Shares. If Mr Singh maintains his present position with respect to Parc Olympia and the Shares, that will be dealt with at the stage when the Account is taken.

109 Second, Mr Singh submits that "the accounts have been settled by [Mr Singh's AEIC] … and [Mr Chainani] does not have a right to an account",[197] referring to his attempt to provide accounts of the Properties in his AEIC filed in this action. I do not accept his submission. A defendant who contends that he has been released from his duty to account by a settlement bears the burden of establishing that the accounts have been settled: *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [24]. Mr Singh has not established this.

110 To the contrary, Mr Singh's counsel conceded in oral closing submissions that there were "gaps" in the information provided by Mr Singh in his AEIC; that the "opportunity to account ought to be afforded to [Mr Singh]"; and that Mr Singh "ha[d] not discharged his duty to account fully on all the categories".[198] Examples of gaps in the information provided by Mr Singh in his AEIC include:

(a) In respect of Mandarin Gardens, Mr Singh provided an estimated amount of rent collected in 2012, claiming that there was no record of the actual rent collected.[199] However, he agreed in cross-examination

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197 1st Defendant's Opening Statement at para 18.

198 Day 5 Transcript at p 23 lines 8 to 27; 1st Defendant's Closing Submissions at paras 50 to 75.

199 Mr Singh's AEIC at p 394; Day 3 Transcript at p 5 line 24 to p 6 line 6.

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that, based on contemporaneous documentary records, the actual amount of rent collected from the start of 2012 until 2 November 2012 was higher.[200] Mr Singh also stated in his purported account that he had paid interest of S$11,897.63 on a loan taken from Standard Chartered Bank for the property.[201] However, the bank's statement showed that interest of only S$4,013.90 was paid in 2011 prior to redemption of the loan in April 2011.[202] Mr Singh was unable to explain the discrepancy between his figure and the figure stated in the bank's statement.[203]

(b) In respect of Evelyn Road, the property was mortgaged to OCBC Bank in 2011 for a housing loan in the amount of S$1,702,741 and a term loan in the amount of S$563,659.[204] In his purported account for this property, Mr Singh aggregated the interest on the term loan in 2014 (S$5,660.08)[205] and the interest on the housing loan in 2014 (S$16,981.15),[206] and claimed "LOAN INTEREST 2014" in the amount of S$22,641 as an expense item.[207] He agreed in cross-examination that this was "not correct",[208] although he purported not to have details on what the term loan was used for.[209]

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200 AB Vol 3 at p 152; Day 3 Transcript at p 9 line 22 to p 10 line 15.

201 Mr Singh's AEIC at p 394.

202 AB Vol 3 at p 108.

203 Day 3 Transcript at p 55 line 6 to p 56 line 1.

204 AB Vol 4 at pp 36 and 38.

205 AB Vol 4 at p 185.

206 AB Vol 4 at p 183.

207 Mr Singh's AEIC at p 406; Day 3 Transcript at p 87 line 22 to p 88 line 14.

208 Day 3 Transcript at p 88 lines 15 to 17.

209 Day 3 Transcript at p 89 lines 8 to 21.

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(c) In respect of Spring Grove, Mr Singh indicated that "LEGAL FEES ON SALES (ESTIMATED)" in the amount of S$2,500 was an expense incurred on the investment.[210] In cross-examination, however, Mr Singh conceded that, based on the contemporaneous documents relating to the sale of Spring Grove provided by conveyancing lawyers, the legal fees incurred were only S$2,000.[211] Further, questions remain as to whether Mr Singh properly accounted for all sums taken from the Company to finance the purchase of Spring Grove, such as the option fee of S$18,500.[212]

(d) In respect of Archipelago, Mr Singh indicated that "LEGAL FEES ON SALE (ESTIMATED)" in the amount of S$3,000 was an expense incurred on the investment.[213] In cross-examination, however, Mr Singh conceded that, based on the contemporaneous documents relating to the sale of Archipelago provided by the conveyancing lawyers, the legal fees incurred were only S$2,200.[214]

(e) In respect of Parc Olympia, Mr Singh indicated that "LEGAL FEES ON SALES (APPROX)" in the amount of S$3,000 was an expense incurred on the investment.[215] In cross-examination, however,

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210 Mr Singh's AEIC at p 414.

211 AB Vol 5 at pp 289 to 290; Day 3 Transcript at p 96 lines 2 to 17.

212 SOC3 at Annex A (row 13); AB Vol 5 at p 2; Day 3 Transcript at p 103 line 9 to p 107 line 7; *cf*, Mr Singh's AEIC at p 414.

213 Mr Singh's AEIC at p 460.

214 AB Vol 7 at pp 505 to 506; Day 4 Transcript at p 25 lines 10 to 25.

215 Mr Singh's AEIC at p 484.

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Mr Singh conceded that the completion account he received on the sale of Parc Olympia shows that the legal fees incurred were only S$2,000.[216]

(f) In respect of Marina 19, Mr Singh stated in his AEIC "TOP UP FROM AEPL 447,616.58"[217] as well as "TOP UP FROM AEPL 410,004.72".[218] It is unclear on the face of these statements whether S$447,616.58 or S$410,004.72 of the Company's funds had been used for the investment, although Mr Singh stated in cross-examination that it "look[ed] like" the former amount had been used.[219]

(g) In respect of Spottiswoode, Mr Singh stated in his AEIC "AEPL FUNDS USED 367,951.43"[220] as well as "AEPL FUNDS USED 386,925.43".[221] Mr Singh was unable to explain the discrepancy between the figures,[222] and the amount of the Company's funds used for the investment remains unclear.

111 Further, although the parties touched on the information provided in Mr Singh's AEIC in the course of the trial, accounts were not taken at the trial. It is premature to conclude at this stage that Mr Singh has settled the accounts for any of the Properties.

112 For these reasons, the Account is to cover all the Properties.

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216 AB Vol 8 at p 368; Day 4 Transcript at p 32 line 12 to p 33 line 18.

217 Mr Singh's AEIC at p 488.

218 Mr Singh's AEIC at p 489.

219 Day 3 Transcript at p 213 line 10 to p 214 line 2.

220 Mr Singh's AEIC at p 443.

221 Mr Singh's AEIC at p 444.

222 Day 4 Transcript at p 11 line 11 to p 12 line 21.

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Whether the Account should be taken on a common or wilful default basis

113 Whether an account is to be provided on a common or wilful default basis has to be decided by the court before the account is ordered to be given: *Innovative Corp Pte Ltd v Ow Chun Ming and another* [2023] 3 SLR 1488 at [12].

114 An account may be ordered on a wilful default basis where the past misconduct of the fiduciary is such as to give rise to a reasonable *prima facie* inference that there may be other instances of wilful default which have yet to be uncovered: *Tan Teck Kee* at [90]; *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2015] SGHC 173 at [40]. Examples of misconduct which have been found to warrant the taking of accounts on a wilful default basis include concealing or misrepresenting information in breach of the duty to account (see *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 at [96]), and making improper deductions from payouts due to an investor (see *Ratan Kumar Rai v Seah Hock Thiam and others* [2021] SGHC 276 at [121]–[132]; *Tan Teck Kee* at [92], [94] and [98]).

115 In the present case, I find that Mr Singh's conduct exhibits the following instances of wilful default.

116 First, as I have found at [42]–[57] above, Mr Singh persistently breached his obligation to account under the Understanding, from 2013 and until the commencement of this action. His failure to account took the form of (a) evading, ignoring, or delaying his responses to, Mr Chainani's requests for accounts of the investments; and/or (b) providing plainly inadequate information as part of purported attempts to provide accounts. These failures to account constitute wilful default on his part.

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117 Second, Mr Singh improperly denied that the Company's funds were used to invest in the Shares. In his AEIC, he asserted that the Shares which he had purchased, including 20,000 YHS shares and 35,000 FEO shares he had sold in May 2013 and 50,000 FEO shares he had sold in April 2015,[223] were not procured with the Company's funds.[224] Not only is this position contrary to his admission of the Understanding (see [30]–[35] above), it is contrary to the contemporaneous evidence showing that Mr Singh did not deny having to account for the sale of the Shares:

(a) In an email dated 28 September 2013, Mr Chainani asked Mr Singh about the "[s]ales proceeds from YHS".[225] Mr Singh replied via email on the same day that "YHS: shud be in my account in Posb; wil chk on monday and settle it..".[226] Mr Singh's reply implicitly accepted that he had to account for and "settle" the sale of YHS shares. There was no necessity for him to do so unless the YHS shares had been purchased with the Company's funds as an investment made on behalf of the Company.

(b) In an email dated 7 January 2014, Mr Chainani asked Mr Singh to confirm that the sale proceeds from the disposal of 35 lots of FEO shares and 20 lots of YHS shares were S$77,115.83 and S$61,623.11 respectively.[227] Mr Singh did not respond. If he genuinely disputed that the Shares had been purchased with the Company's funds, such that he had to account for the proceeds when the Shares were sold, he would

223 Mr Singh's AEIC at paras 138(a), (b), (c) and (i).

224 Mr Singh's AEIC at para 141.

225 Mr Chainani's AEIC at p 54.

226 Mr Chainani's AEIC at p 54.

227 Mr Chainani's AEIC at p 61.

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have made some contemporaneous protest against Mr Chainani's request.

(c) In a series of WhatsApp messages on 8 April 2015, Mr Singh informed Mr Chainani: "Cleared 50k far east orchard@1.675"; "Earlier today"; and "Tomo wil chk bal and clear".[228] There was no need for Mr Singh to inform Mr Chainani about the sale of 50,000 FEO shares unless those shares had been purchased with the Company's funds.

118 It is not credible for Mr Singh to now deny (as he does in his AEIC) that he had purchased the Shares with the Company's funds. His denial in this regard is of concern and, in my view, amounts to a wilful default. For completeness, Mr Chainani maintains that, when the Shares were sold, neither the principal sums used nor the profits made were accounted for by Mr Singh.[229]

119 Third, there are instances of Mr Singh understating the amount of rental income earned (see [110(a)] above), overstating the amount of expenses incurred (see [110(a)]–[110(e)] above), and equivocating on the amount of the Company's funds used (see [110(f)] and [110(g)] above), in the accounts of various Properties he attempted to provide in his AEIC. Mr Singh's counsel submitted that Mr Singh had been candid, at trial, about the errors in his rendition of the accounts in his AEIC, and that these do not rise to the level of misconduct that warrants the taking of accounts on a wilful default basis.[230] I do not accept this submission. The effect of inaccurately stated principal sums, understated income, and overstated expenses, is that there are moneys of the

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228 Mr Chainani's AEIC at pp 92 to 93.

229 Mr Chainani's AEIC at para 38.

230 Day 5 Transcript at p 20 line 19 to p 21 line 2.

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Company that have not been accounted for. These lapses on Mr Singh's part thus give rise to a reasonable *prima facie* inference that there may be other instances of wilful default which have yet to be uncovered.

120 In light of these instances of wilful default, the Account should be rendered by Mr Singh on a wilful default basis.

To whom Mr Singh should render the Account

121 The Account should be rendered by Mr Singh to *both* the liquidators of the Company (following the winding up of the Company, as I have ordered at [102] above) and Mr Chainani. This is appropriate for three related reasons.

122 First, Mr Singh's duty to account under the Understanding is owed to both the Company and Mr Chainani; *not* to Mr Chainani alone (see [40] –[41] above).

123 Second, it is only right and proper that the liquidators of the Company be involved in the taking of the Account when it is the Company's funds that have been used to make investments made on the Company's behalf. Indeed, Mr Singh appeared to recognise the propriety of this as he suggested in August 2020, after the commencement of this action, that lawyers be appointed to represent the interests of the Company and the Holding Company in this action.[231] Mr Chainani opposed this, purportedly because "[his] case was largely against Mr Singh", although he also admitted that he had taken positions against the Company and the Holding Company in this action.[232] In my view, there is no good basis for Mr Chainani to seek to shut out (the liquidators of) the

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231 Day 1 Transcript at p 24 lines 8 to 16; AB Vol 27 at pp 59 to 61.

232 Day 1 Transcript at p 24 line 17 to p 26 line 23.

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Company or their lawyers (if appointed) from the process of taking the Account. Whether Mr Singh's account of the use of *the Company's funds* is satisfactory should be for the liquidators of the Company, and not Mr Chainani alone, to take a view on.

124 Third, the involvement of the Company's liquidators will preserve objectivity in the process of taking the Account. The relationship between Mr Chainani and Mr Singh has undisputedly broken down and is, at present, plainly acrimonious. I have concerns about whether Mr Chainani will take extreme positions if the Account is rendered only to him. The following incidents stand out for giving rise to such concerns:

(a) One, Mr Chainani claimed that, in *April 2018*, he came across a cheque dated 15 March 2010 in the amount of S$70,217 issued from the Company to UOL Development Pte Ltd bearing a forgery of his signature.[233] He agreed that the payment made by that cheque was to the developer for Meadows and was a legitimate payment.[234] Notwithstanding that, in *September 2019* (*ie*, more than a year after purportedly discovering the cheque), he made a police report stating that he suspected that Mr Singh had forged his signature on the cheque.[235] There were no developments following his police report.[236] When asked in cross-examination why he had made the police report instead of inquiring with Mr Singh about the cheque, Mr Chainani stated that his relationship with Mr Singh had broken down and he "just wanted to see

233 AB Vol 6 at p 6; AB Vol 29(I) at p 308.

234 Day 1 Transcript at p 56 lines 20 to 24.

235 AB Vol 29(I) at p 308.

236 Day 1 Transcript at p 54 lines 14 to 20.

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how far that would go with the police" and "effectively to get [Mr Singh] in hot soup".[237] To be clear, whether Mr Chainani's signature on the cheque was forged is not an issue for determination in this action, and no handwriting expert evidence was adduced. I also do not suggest that it is wrong for one to make a police report if they truly believe that their signature has been forged. Rather, it is Mr Chainani's intention behind his action, expressed in strong emotive terms of wanting to get Mr Singh into "hot soup", that is of concern.

(b) Two, it was unreasonable for Mr Chainani to persist in pursuing an allegation of wrongdoing against Mr Singh in relation to the Dividend, when Mr Chainani was contemporaneously involved in the declaration of the Dividend and conceded that it was "[p]robably not" even his case that Mr Singh had received the Dividend moneys[238] (see [96] above).

These incidents reinforce the need to ensure that the taking of the Account is kept on an even keel. This will be ensured by the participation of the liquidators of the Company, on behalf of which the investments were made, in the taking of the Account.

Whether an order should be made for payment by Mr Singh to Mr Chainani upon the taking of the Account

125 Mr Chainani prayed for an order that, upon "payment of all sums found due to the [Company] and Mr Chainani by [Mr Singh]" pursuant to the taking

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237 Day 1 Transcript at p 53 lines 1 to 17 and p 55 lines 1 to 12.

238 Day 1 Transcript at p 139 lines 13 to 15.

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of accounts, the Company and the Holding Company be wound up.[239] For reasons explained above, I consider it more appropriate to order the winding up of the Company and the Holding Company presently (at [102] above), and for Mr Singh to render the Account to the liquidators of the Company and Mr Chainani (at [121] above).

126 While consequential orders will be made after the process of taking the Account has been completed (*UVJ* at [28]), I foreshadow that it is, in my view, inappropriate for any profits made on the investments in the Properties, as may be found due from Mr Singh on the taking of the Account, to be paid by Mr Singh *directly* to Mr Chainani, and I decline to make any order to such effect. Instead, any principal sums or profits as may be found due from Mr Singh should be paid to the Company. Any distributions subsequently made by the liquidators of the Company and the Holding Company will impact Mr Chainani and Mr Singh equally given their equal shareholding in the Holding Company, in keeping with the third feature of the Understanding (see [27(c)] above). I consider this to be the proper course for the following reasons.

127 The Understanding was that investments were made *on behalf of the Company* using *the Company's funds* (at [7] above). Mr Chainani's own evidence was that the properties acquired pursuant to the Understanding were thus held by him or Mr Singh, *as the Company's directors, on trust for the Company*:[240]

> Q. So are you -- is it your case that these properties, which are registered in the name of Mr Singh, ought to have been in the name of the company; is that your case?

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239 SOC3 at pp 18 to 19 claim (1) against the Company and Holding Company.

240 Day 1 Transcript at p 31 lines 16 to 24.

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> A. I'm saying *as directors of the company, as trustees of the company, we held them in trust, we held them in trust for the company*, with an obligation to the company to account to the company. That's my position.
>
> [emphasis added]

128 The following implications flow from this.

129 First, the fundamental principle that a company has a separate legal personality from its shareholders means that, even if one owns all of the shares in a company, one does not own the company's assets; instead, those assets belong to the company alone: *Jhaveri Darsan Jitendra and others v Salgaocar Anil Vassudeva and others* [2018] 5 SLR 689 at [34]. Therefore, even though Mr Chainani and Mr Singh own all of the shares in the Holding Company, and the Holding Company owns all of the shares in the Company, the Properties held on trust for the Company *remain the Company's assets*. That being so, the proceeds, including profits, from the sale of the Company's assets logically remain owned *by the Company* as well.

130 Second, while Mr Chainani asserts that, upon the sale of the Company's assets or investments, Mr Singh holds 50% of the profits derived from the said sale on trust for Mr Chainani,[241] the legal basis for this assertion is unclear and not established. Indeed, the furthest Mr Chainani goes in his pleadings is to plead that Mr Singh holds funds taken from the Company on trust *for the Company*.[242] The assertion that Mr Singh holds profits on trust for Mr Chainani is also factually incongruent with the terms of the pleaded Understanding, which refers to Mr Chainani and Mr Singh having to "account to each other *and the [Company]* for the principal sums so invested *as well as the profits made from*

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241 Plaintiff's Closing Submissions at para 8(b).

242 R2 at para 20.

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such investments" [emphasis added] (see [26] above). It is understandable that Mr Chainani and Mr Singh agreed to account to each other for the profits since, as the ultimate shareholders of the Company, they would be interested to know the quantum of the profits. However, there is no reason for Mr Chainani and Mr Singh to have to account to the Company for the profits (as well as the principal sums invested) unless the profits also belonged to the Company.

131 I circle back to the principle that the court has a wide discretion to make orders under s 216 as it considers just (see [98] above). It comports with legal principle and is just for any principal sums or profits as may be found due from Mr Singh on the taking of the Account to be paid to the Company. Any distributions subsequently made by the liquidators of the Company and the Holding Company will impact Mr Chainani and Mr Singh equally given their equal shareholding in the Holding Company.

Conclusion: order made in relation to the taking of accounts

132 I therefore order that Mr Singh is to render the Account (which covers the Properties) to the Company's liquidators and Mr Chainani. Such Account is to be taken on a wilful default basis.

Mr Chainani's alternative claim for damages

133 In the alternative to his claims for accounts to be taken and for the payment of sums found due upon the taking of accounts, Mr Chainani claims damages to be assessed for the breach of the Understanding.[243] Mr Chainani submits that his alternative claim for damages is intended to "remedy" the "losses" caused by Mr Singh's "oppressive conduct" in breaching the

[243] SOC3 at p 18 claim (7) against Mr Singh.

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Understanding.[244] Given the order made on Mr Chainani's primary claims for accounts (see [132] above), and given also that Mr Chainani did not expound on his alternative claim for damages in his closing submissions, I decline to make any order for damages.

Mr Singh's defence of set-off

134 It is undisputed that:[245]

(a) Pursuant to the Understanding, Mr Chainani acquired a 50% share in three units at 76 Shenton Way (the "Shenton Way Properties") using the Company's funds. The other 50% share was held by one Mr Sayed Tahir.

(b) The Shenton Way Properties were sold between 2017 and 2019.

(c) Mr Chainani's 50% of the net sale proceeds amounted to S$527,309.68.

135 In this action, Mr Singh claims that, should he be found due to pay Mr Chainani any sum of moneys, such payment should be set off against the sum of S$263,654.84 (being half of the sum of S$527,309.68 at [134(c)] above) to which he (*ie*, Mr Singh) was entitled.[246] As I am of view that any sums found due on the taking of the Account should be paid by Mr Singh to the Company (and not to Mr Chainani directly) (see [126] above), the set-off pleaded by Mr Singh does not arise. I observe, however, that it is only proper that Mr Chainani should pay the net sale proceeds of S$527,309.68 he obtained from

244 Plaintiff's written Opening Statement dated 30 October 2023 at para 55.

245 R2 at paras 32(a) to 32(h).

246 D2 at paras 32(d) to 32(e).

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the sale of the Shenton Way Properties to the Company presently, since Mr Chainani had acquired 50% of the Shenton Way Properties with the Company's funds and on the terms of the Understanding.

136 In response to the set-off pleaded by Mr Singh, Mr Chainani admits that Mr Singh is entitled to the sum of S$263,654.84 from the Shenton Way Properties,[247] but argues that this sum should be further set off against the sum of S$168,047.50 allegedly owed by Mr Singh to Mr Chainani pursuant to a purported agreement between them for Mr Chainani to take over Mr Singh's stake in Costcutters Pte Ltd ("Costcutters") and Mr Singh to take over Mr Chainani's stake in MFFT.[248] Given my decision in [135] above, the further set-off alleged by Mr Chainani does not arise. The sum of S$527,309.68 which Mr Chainani ought properly to pay the Company presently is unaffected by any purported agreement between Mr Chainani and Mr Singh relating to Costcutters and MFFT. Given that Mr Chainani makes no claim in this action for Mr Singh to pay him the sum of S$168,047.50 pursuant to the purported agreement relating to Costcutters and MFFT, I make no finding in respect of this purported agreement.

Conclusion

137 In summary:

(a) I find that Mr Chainani has established a case of commercial unfairness within the meaning of s 216 against Mr Singh in respect of Mr Singh's breaches of the Understanding; but not in respect of the other acts of oppression alleged.

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247 Mr Chainani's AEIC at para 145(c).

248 Mr Chainani's AEIC at paras 147 to 151.

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(b) I order that the Holding Company and the Company be wound up. I will hear the parties regarding the appointment of liquidators and any other consequential orders or directions as may be necessary.

(c) I further order that Mr Singh is to render the Account (which covers the Properties) to the Company's liquidators and Mr Chainani. The Account is to be taken on a wilful default basis.

138 I will hear the parties on costs.

Kristy Tan
Judicial Commissioner of the High Court

Samuel Chacko and Joanna Karolina Korycinska (Legis Point LLC) for the plaintiff;
Manoj Prakash Nandwani and Nur Halimatul Syafheqah Binte Rosman (Gabriel Law Corporation) for the first defendant;
The second and third defendants absent and unrepresented.

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