

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC(A) 17

Appellate Division / Civil Appeal No 86 of 2025

Between

- (1) Deepak Mishra
- (2) Nimisha Pandey

... Appellants

And

Rashmi Bothra

... Respondent

In the matter of Originating Claim No 593 of 2023

Between

- (1) Deepak Mishra
- (2) Nimisha Pandey

... Claimants

And

Rashmi Bothra

... Defendant

Counterclaim of Defendant

Between

Rashmi Bothra

... *Claimant in Counterclaim*

And

- (1) Deepak Mishra
- (2) Nimisha Pandey

... *Defendants in Counterclaim*

GROUPS OF DECISION

[Contract — Illegality and public policy]

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Deepak Mishra and another

v

Rashmi Bothra

[2026] SGHC(A) 17

Appellate Division of the High Court — Civil Appeal No 86 of 2025
Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD
2 March 2026

5 June 2026

See Kee Oon JAD (delivering the grounds of decision of the court):

Introduction

1 This matter revolves around a running account (“Running Account”) between the appellants, Mr Deepak Mishra (“Deepak”) and Ms Nimisha Pandey (“Nimisha”) (collectively, “Appellants”), and the respondent, Mrs Rashmi Bothra (“Respondent”). The Appellants had claimed in HC/OC 593/2023 (“OC 593”) that the Respondent owed them US\$54,752,064 under the Running Account. The Respondent counterclaimed against the Appellants for a sum of US\$137,112,023 allegedly owing to her under the Running Account. Following oral testimony given by Deepak, the Appellants decided to withdraw their claims on the ground that the whole Running Account was unenforceable for illegality, save for one claim on which they had pleaded an alternative basis. The Respondent disputed the alleged illegality and proceeded with her counterclaim.

2 The judge who presided over the trial in the General Division of the High Court (“Judge”) found 15 transactions under the Running Account to be illegal and unenforceable as they were part of a sham business. The Judge allowed the Respondent’s counterclaim in part and entered judgment for the Respondent: *Deepak Mishra v Rashmi Bothra* [2025] SGHC 170 (“Judgment”) at [151].

3 On appeal, the Appellants’ primary argument was that the Judge erred as he should have found 10 other transactions that were allegedly made in connection with the sham business to also be illegal. Alternatively, the Judge should have found that the 15 illegal transactions, which he had found to be illegal and unenforceable, were sufficiently material to taint the entire Running Account, rendering the entire Running Account unenforceable for illegality.

4 At the conclusion of the hearing of the appeal on 2 March 2026, we dismissed the appeal. The grounds of our decision are set out below.

Background

The parties and their relationship

5 Deepak and Nimisha are husband and wife. The Respondent and her husband, Mr Rajesh Bothra (“Rajesh”), were previously close friends of the Appellants. In 2011, the parties started having business dealings with each other in their personal names and using corporate entities which they beneficially owned and/or controlled and/or instructed payment to (“Appellants’ Entities” and “Respondent’s Entities” respectively). For the purposes of this appeal, the relevant Appellants’ Entities are Brindille Holdings Inc (“Brindille”), Capital Systematics Pte Ltd (“Capital Systematics”), Metro Capital Limited (“Metro”), Polygon Far East Corporation (“Polygon”), Sundance Delight International Inc (“Sundance”), and Skytex Advance Group Ltd (“Skytex”). The relevant

Respondent's Entities are FarEast Distribution and Logistics Private Limited ("FarEast") and FarEast Distribution and Logistic Pte Ltd ("FarEast BVI").

6 The business dealings led to the formation of the Running Account between the Appellants and the Respondent. Rajesh was not a party to the Running Account but the Respondent left it to Rajesh to handle the transactions under that account. The existence of the Running Account was undisputed, and it comprised 287 transactions which took place between 1 July 2011 and 13 July 2022.

7 The parties' relationship broke down sometime in 2021, after Rajesh was declared bankrupt. On 8 September 2023, the Appellants commenced their claim in OC 593.

The trial proceedings

8 At trial, 198 transactions under the Running Account were undisputed ("Undisputed Transactions") while 89 were disputed ("Disputed Transactions"). The Disputed Transactions were grouped into 10 categories, which were described as Issues 1 to 10. Issues 1, 2, 4, 5, and 9 stemmed from claims by the Appellants; Issues 3, 6, 7, and 8 stemmed from claims by the Respondent; Issue 10 stemmed from cross-claims by both parties.

9 As only Issues 6 and 10 arose for determination on appeal, we focused solely on those two issues. For present purposes, it is unnecessary to set out the details of the remaining eight issues. In any case, the relevant background for Issues 1 to 10 is described in the Judgment at [14].

10 Issue 6 related to 28 transactions totalling US\$81,743,922 paid by the Respondent's Entities, namely FarEast and FarEast BVI, to the Appellants' Entities, namely Capital Systematics, Brindille, Polygon, Skytex, Metro, and Sundance. The parties disputed whether the 28 transactions were repayments of sums previously extended and/or were previously settled against dealings involving the Respondent, specifically letter of credit discounting transactions ("LC Discount Trades").

11 Issue 10 related to a residential investment property, which was a unit at the condominium, The Berth By The Cove, in Singapore ("Berth Penthouse"). The Berth Penthouse was co-owned by the parties. It was purchased in 2014 for S\$3.5m and was registered in the names of Nimisha and the Respondent as tenants-in-common in equal shares. The parties had agreed to split (a) the acquisition costs ("Acquisition Costs"), which were financed in part by a mortgage loan of S\$1.4m ("EFG Loan"), and (b) any shortfall remaining after the rental income earned had been set off against any expenses incurred to maintain and hold the Berth Penthouse ("Berth Expenses"). Issue 10 involved cross claims over the Acquisition Costs, the Berth Expenses and repayment of the EFG Loan. The parties disputed both liability and quantum.

12 The trial commenced on 2 May 2025 with the Respondent taking the witness stand as agreed between the parties, since Deepak was not available to testify then. Rajesh then took the stand from 6 to 8 May 2025, during which he disputed entering into the LC Discount Trades with Deepak. The issue of illegality first came to light on 8 May 2025 when Deepak gave oral testimony regarding the LC Discount Trades. Deepak explained the three-step process by which the LC Discount Trades made money through interest rate arbitrage:

- (a) In the first step (“Step 1”), Deepak remitted (through one of the Appellants’ Entities) a sum of money in US\$ to a third party. In return, the third party would place the money on fixed deposit in Indian rupees.
- (b) The third party would purport to purchase goods from one of the Respondent’s Entities. In the second step (“Step 2”), the third party procured a letter of credit (“LC”), which fell due for payment in 180 days, to be issued in favour of one of the Respondent’s Entities to pay for the goods. As the LCs were opened in US\$, the third party paid interest at a lower rate than what was earned on the fixed deposit in Indian rupees.
- (c) Rajesh then arranged for each LC to be discounted. In the third step (“Step 3”), Rajesh (through one of the Respondent’s Entities) remitted the proceeds from discounting the LC (“Discounting Proceeds”) in US\$ to one of the Appellants’ Entities. This was to repay Deepak for the sums remitted in Step 1.

On Deepak’s case, the Respondent’s counterclaims relating to the LC Discount Trades stemmed from the payments made under Step 3.

13 In particular, Deepak gave evidence for the first time on 8 May 2025 that, in reality, “there [had been] no actual movement of goods”. Deepak’s testimony meant that the “bank[s] [had] been defrauded” by these sham transactions, thus giving rise to “an issue of illegality”. The Judge then indicated that he was “going to have to call [Rajesh] back to the stand to explain the sales”, to which the Respondent’s counsel stated that he would need to “take instructions” from Rajesh.

14 On the next day of trial (*ie*, 13 May 2025), the Respondent’s counsel “request[ed] for leave for [Rajesh] to file an affidavit in seven days and to take the stand [the] next week, addressing solely the issue of whether or not there were shipments made”. There was no objection from the Appellants and the Judge granted permission to the Respondent.

15 On 14 May 2025, after the Appellants had completed their oral testimonies, the Appellants’ counsel informed the court by letter that they were “withdrawing all their claims except for those relating to the Berth [Penthouse]” under Issue 10. The Appellants’ position was that, based on Deepak’s evidence, the whole Running Account was unenforceable on grounds of illegality but their claim under Issue 10 could proceed as the Appellants had pleaded an alternative claim independent of the Running Account. This was notwithstanding that the Appellants’ pleaded case made no mention of illegality: see Judgment at [57].

16 On 15 May 2025, the Appellants confirmed that they would be withdrawing their claims under Issues 1, 2, 4, 5, and 9. They only maintained their claim under Issue 10. The Respondent denied the allegation of illegality and confirmed that she would be proceeding with her counterclaim. The Respondent also informed the court that Rajesh would not be filing a supplemental AEIC as he had no new documents to produce.

17 On 26 August 2025, the Judge allowed the Respondent’s counterclaim in part and entered judgment for the Respondent.

18 The Appellants appealed against the whole of the Judge’s decision. The Respondent had attempted to file a notice of appeal against the Judgment and the Judge’s decision on costs. However, her notice of appeal was rejected as it was filed out of time. The Respondent’s application in AD/OA 42/2025 for an

extension of time to file her notice of appeal was dismissed as the reasons for the delay were inexcusable and the Respondent’s prospects of success on appeal were hopeless.

Decision below

19 Under Issue 6, the Judge found that the LC Discount Trades had an illegal object of defrauding the banks into believing that the sales of goods to the third parties were genuine, and to issue and discount LCs on that basis: Judgment at [60] and [62]. Of the 28 payments under Issue 6, the Appellants accepted that three transactions were unrelated to the LC transactions: Judgment at [76]. Of the remaining 25 transactions, the Judge found that the Appellants had proved that 15 of the payments were related to the illegal LC Discount Trades: Judgment at [56]. The Judge thus found these 15 payments to be unenforceable on grounds of illegality (“15 Illegal LC Payments”), although the Running Account itself was still enforceable: Judgment at [67].

20 In arriving at these findings, the Judge categorised the 28 payments into five categories and considered the evidence relating to each individual payment. The Judge’s findings regarding all 28 payments under Issue 6 are summarised below, including those findings relating to payments determined not to be illegal since those were the subject of the appeal:

Category	Judge’s findings
<u>Category 1:</u> <u>No evidence of Steps</u> <u>1 and 2</u> Total number of payments: 6 Number of payments found to be illegal: 0	Category 1 comprised six payments for which the Appellants had not provided any evidence of the corresponding Steps 1 and 2, except for Deepak’s bare assertion that that he believed these payments were related to the LC Discount Trades: Judgment at [28].

	The Judge thus found that the Appellants failed to prove that these six payments were made in connection with the illegal LC Discount Trades: Judgment at [29].
<u>Category 2:</u> <u>Not disputed that payments were from Discounting Proceeds</u> Total number of payments: 14 Number of payments found to be illegal: 14	Category 2 comprised 14 payments, which Rajesh admitted were made from the Discounting Proceeds: Judgment at [30]. Notwithstanding that there was no documentary evidence of the Step 1 remittances for ten of the payments, the Judge found that all 14 payments were Step 3 payments made in connection with the LC Discount Trades. The Appellants had adduced an email from Rajesh to Deepak, which contained an image of a spreadsheet with details consistent with Deepak’s description of the LC Discount Trades. On the other hand, Rajesh had no explanation for the email: Judgment at [31], [34], [38], [39].
<u>Category 3:</u> <u>Not admitted that payments were from Discounting Proceeds</u> Total number of payments: 3 Number of payments found to be illegal: 1	Category 3 comprised three payments, which Rajesh was unable to confirm whether they were made from Discounting Proceeds: Judgment at [48]. The Judge found one of the payments to have been made in connection with the LC Discount Trades as the Appellants had adduced an email from Deepak, which contained details that were broadly consistent with his description of the LC Discount Trades: Judgment at [52]. However, the Judge found that the Appellants had not proven that the payments with respect to Combined Running Account (“CRA”) s/n 213 and 216 were related to the LC Discount Trades as the evidence was inconsistent with Deepak’s description of the LC Discount Trades: Judgment at [49]. For CRA s/n 213, the alleged Step 3 payment was made before the alleged Step 2 LC was issued, such that the alleged Step 3 payment could not have been made using the Discounting Proceeds of that LC: Judgment at [50].

	For CRA s/n 216, the alleged Step 2 LC was issued before the alleged Step 1 remittance was made: Judgment at [51].
<u>Category 4: Disputed LC Discount Trades</u> Total number of payments: 2 Number of payments found to be illegal: 0	Category 4 comprised two payments, which Rajesh denied had anything to do with any LCs: Judgment at [53]. The Judge found that the Appellants had not proven that the payments with respect to CRA s/n 194 and 217 were related to the LC Discount Trades. For CRA s/n 194, the Appellants had not adduced evidence of the issuance of the relevant Step 2 LC. Additionally, the Appellants' evidence was inconsistent with Deepak's description of the LC Discount Trades as the alleged Step 1 remittance was made after the alleged Step 3 payment: Judgment at [54]. For CRA s/n 217, the Appellants' evidence was inconsistent with Deepak's description of the LC Discount Trades as the alleged Step 3 payment was made before the alleged Step 2 LC was issued, such that the alleged Step 3 payment could not have been made using the Discounting Proceeds of that LC: Judgment at [55].
<u>Undisputed non-LC transactions</u> Total number of payments: 3 Number of payments found to be illegal: 0	The last category comprised three payments, which the parties agreed were not related to LC transactions: Judgment at [76]. There was thus no discussion on whether the payments were unenforceable on grounds of illegality.

21 Under Issue 10, the Judge held that the Appellants were to pay the Respondent S\$655,426.21 (or US\$515,271.83) in respect of the Acquisition Costs and US\$534,115 to compensate the Respondent for her repayment of the mortgage loan from EFG Bank AG: Judgment at [109], [143]. The Judge dismissed the Appellants' claim in relation to the Berth Expenses as the total

expenses paid by the Appellants was less than the total rental income received from the Berth Penthouse: Judgment at [133].

The parties' cases

Appellants' case

22 On appeal, the Appellants argued that the Judge erred in finding only 15 transactions to be unenforceable on grounds of illegality on two levels.

(a) On the first level, the Appellants argued that the Judge should have found all 25 payments, which the Appellants had contended were related to the LC Discount Trades, to be illegal. In view of the Respondent's decision not to recall Rajesh to the stand without giving any credible reason, the Judge had drawn an adverse inference against the Respondent to the effect that there was no evidence that the goods ordered by the third parties were in fact shipped for the 15 Illegal LC Payments. However, the adverse inference should instead have been drawn in respect of all 25 payments: see Judgment at [62].

(b) On the second level, the Appellants contended that a running account is a single and indivisible contractual mechanism and that the court cannot excise selected transactions when the illegality has infected a material component of a running account. Even if this court were to disagree that all 25 payments should have been found to be illegal, the Appellants argued that the 15 Illegal LC Payments were sufficiently material to taint the entire Running Account and render the entire Running Account unenforceable.

23 In the course of the hearing before this court on 2 March 2026, the Appellants made clarificatory submissions as follows:

(a) The Appellants clarified that their first-level argument only extended to the 25 payments under Categories 1 to 4, rather than all 28 payments under Issue 6 (see above at [20]). It was submitted that since the Judge found that 15 payments out of the 25 transactions were tainted by illegality, the remaining ten payments under Issue 6 that were alleged to have been made in connection with the LC Discount Trades (“10 Alleged LC Payments”) should also have been found to be unenforceable on grounds of illegality.

(b) The focus of the Appellants’ second-level argument had shifted from a contention in their Written Submissions that the Running Account’s “core purpose” was to carry out illegal LC Discount Trades. The Appellants confirmed that they were no longer relying on the “core purpose” argument. Instead, they contended that the 15 Illegal LC Payments (or 25 payments, if this court were to accept the Appellants’ first-level argument on appeal) were a material taint on the Running Account. Therefore, the entire Running Account should have been found to be unenforceable.

24 The Appellants further argued that if this court were to agree with the Appellants that the entire Running Account was unenforceable, then certain sums previously credited to the Appellants under the Running Account should be disregarded such that there would still be a sum of S\$312,300 owing by the Respondent to the Appellants for the Acquisition Costs of the Berth Penthouse. As an alternative to urging the court to find that the Running Account was

wholly tainted by illegality, the Appellants suggested that a re-trial should be ordered, particularly on the issue of illegality.

Respondent's case

25 The Respondent raised two preliminary points for why the appeal should be dismissed. First, the Respondent argued that the Appellants' case on appeal (that all the LC Discount Trades were part of the Running Account) was contrary to the one they had run in the court below and they should not be permitted to take such a position in this appeal. Second, the Respondent argued that the Appellants' appeal was based on the false premise that the payments connected to the LC Discount Trades were part of the Running Account.

26 On the substantive appeal, the Respondent argued that the Judge's substantive reasoning should be upheld and the Running Account (save for the 15 Illegal LC Payments) should remain enforceable. The Respondent argued that the Judge's approach of determining each individual transaction under the Running Account was correct and that the high threshold for appellate intervention had not been met.

Issues to be determined

27 The key issues on appeal are summarised as follows:

- (a) whether the Respondent's preliminary arguments should be accepted, viz:
 - (i) the Appellants ran a contrary case in this appeal by arguing that the 15 Illegal LC Payments were part of the Running Account; and

- (ii) the payments connected to the LC Discount Trades were not part of the Running Account;
- (b) whether the remaining ten payments under Issue 6 that were alleged by the Appellants to have been made in connection with the LC Discount Trades (*ie*, the 10 Alleged LC Payments – see [23(a)] above) should also have been found to be unenforceable on grounds of illegality;
- (c) whether the entire Running Account was unenforceable because the 25 or 15 Illegal LC Payments were sufficiently material to taint the entire Running Account with illegality;
- (d) if the court were to find that the entire Running Account was unenforceable, whether the sum of S\$312,300 for Acquisition Costs of the Berth Penthouse was payable to the Appellants; and
- (e) alternatively, if the court were to decide that the issue of illegality should be investigated further, whether a retrial of OC 593 should be ordered.

Respondent's preliminary arguments

28 We begin by briefly addressing why both the Respondent's preliminary arguments had no merit.

Whether the Appellants ran a contrary case on appeal

29 The Respondent argued that the Appellants ran a contrary case on appeal in relation to whether the payments under Issue 6 were part of the Running Account. The Respondent contended that, at all times prior to the Judgment, the

Appellants' position was that the payments under Issue 6 were not part of the Running Account, and they were instead repayments and/or settled through other dealings. On appeal, the Appellants instead argued that the payments under Issue 6 were part of the Running Account.

30 It is uncontroversial that parties are generally not permitted to take one position in the trial below and then run a contrary case on appeal. This may be found to be an abuse of process as it is a waste of court resources, prejudicial to both finality in proceedings and the interest in holding parties to their position, and is unfair to the opposing parties and to the court: *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal* [2021] 1 SLR 342 at [104], [106]; *UJN v UJO* [2021] SGCA 18 at [7].

31 In our view, such considerations did not arise in the present case as the Appellants had not run a contrary case on appeal. Contrary to the Respondent's contention, the Appellants' position at trial was not that the payments under Issue 6 *did not fall within the defined scope* of the Running Account. Instead, the Appellants' position at trial was that the payments *fell within the scope* of the Running Account but any liability had been extinguished (whether it be due to the sum having been rightly repaid to the Appellants or the alleged sum owing having already been settled through other dealings). Therefore, we did not see why the Appellants should not be permitted to run their case.

Whether payments connected to the LC Discount Trades were part of the Running Account

32 The Respondent also argued that the appeal should be dismissed as it was based on a false premise that payments connected to the LC Discount Trades were part of the Running Account and this was a mischaracterisation of the Judge's decision. We rejected this argument as it was clear from the Judge's

findings that these payments were part of the Running Account. The Judge had stated that “[t]he Running Account comprises 287 transactions” and proceeded to introduce the payments connected to the LC Discount Trades as one category of the Disputed Transactions under the Running Account: Judgment at [14], [14(f)]. After having found that the LC Discount Trades had an illegal object, the Judge also proceeded to analyse whether the entire Running Account was tainted by illegality – an analysis which would not have been necessary if these payments did not even fall within the scope of the Running Account: see Judgment at [62]–[67].

33 Moreover, it was common ground in the parties’ respective pleadings that the LC Discount Trades fell within the scope of the Running Account. The Appellants argued that these trades were within the scope but unenforceable, while the Respondent herself brought counterclaims for these payments as moneys owed “under the Running Account”. Therefore, the Appellants’ arguments were rightfully premised on the fact that the payments connected to the LC Discount Trades were part of the Running Account.

Whether the 10 Alleged LC Payments under Issue 6 were illegal and unenforceable

34 The Appellants’ first principal submission was that the 10 Alleged LC Payments should also have been found to be part of the illegal LC Discount Trades and thus rendered unenforceable. The Appellants contended that the Judge had erred in failing to give due weight to: (a) the self-incriminating nature of Deepak’s evidence; and (b) the fact that Rajesh, despite at first stating that he would retake the stand to present exculpatory evidence, later chose not to do so once it was clear that Deepak had withdrawn his claims. The adverse inference drawn by the Judge regarding the lack of evidence that the goods ordered by the

third parties were in fact shipped should not have been limited to the 15 Illegal LC Payments. Rather, the Judge should have also considered this lack of evidence in determining whether the 10 Alleged LC Payments were made in connection with the LC Discount Trades: see Judgment at [62].

35 In our judgment, the high threshold for appellate intervention in respect of this issue had not been met as the Judge’s findings were not plainly wrong or manifestly against the weight of the evidence: *Yong Kheng Leong v Panweld Trading Pte Ltd* [2013] 1 SLR 173 at [18].

36 The issue was whether the payments in question had been made in connection with the LC Discount Trades. This question turned on whether the Appellants had adduced sufficient evidence of the three-step process for the LC Discount Trades to prove the connection for each payment.

37 The Judge found that the 10 Alleged LC Payments had not been made in connection with the LC Discount Trades for the reasons summarised above (at [20]). On appeal, the Appellants’ main contention was that any inconsistencies or discrepancies between the actual chronological order of the steps for any of the 10 Alleged LC Payments and Deepak’s description of the LC Discount Trades should not have been fatal to the Appellants’ case. The Appellants argued that, ultimately, no other explanation had been provided for the 10 Alleged LC Payments. However, as clarified during the hearing before us, the Appellants accepted that this argument only applied to the two payments under Category 3 (*ie*, CRA s/n 213 and 216) and one of the payments under Category 4 (*ie*, CRA s/n 217). The Appellants further accepted that there was “no evidence in terms of the issuance of an LC” for the remaining seven of the 10 Alleged LC Payments.

38 To recapitulate, Deepak had testified that the process for the LC Discount Trades involved three steps, which occurred in chronological order. Step 1 involved Deepak remitting (through one of the Appellants' Entities) a sum of money to a third party. Step 2 involved an LC being issued in favour of one of the Respondent's Entities. Step 3 involved Rajesh (through one of the Respondent's Entities) remitting the Discounting Proceeds to one of the Appellants' Entities. The inconsistencies in respect of the three payments, each of which had some evidence relating to the issuance of an LC, were as follows:

(a) CRA s/n 213: The alleged Step 3 payment was made on 4 August 2014, before the alleged Step 2 LC was issued on 5 August 2014: Judgment at [50].

(b) CRA s/n 216: The alleged Step 2 LC was issued on 29 August 2014, before the alleged Step 1 remittance was made on 11 September 2014: Judgment at [51].

(c) CRA s/n 217: The alleged Step 3 payment was made on 1 October 2014, before the alleged Step 2 LC was issued on 8 October 2014: Judgment at [55].

39 In addressing the Appellants' argument, we bore in mind that the burden lay on the Appellants to prove that a payment had been made in connection with the LC Discount Trades. The Judge rightly found that the Appellants had not satisfied this burden in respect of the 10 Alleged LC Payments. This burden could not have been satisfied when no evidence of the relevant steps had been adduced, as was the case for the six payments under Category 1 and CRA s/n 194 under Category 4. For the remaining three of the 10 Alleged LC Payments, the Appellants did not provide any reasons for the obvious discrepancy in the chronological order of the steps of the purported LC Discount Trades. It was

also unsatisfactory that no other explanation had been provided for the discrepancies since the burden lay on the Appellants to prove the connection between any LC payment and the LC Discount Trades. Therefore, the Appellants had failed to establish that the Judge's finding that the 10 Alleged LC Payments had not been made in connection with the LC Discount Trades was plainly wrong or manifestly against the weight of the evidence.

40 In our assessment, the Judge had not erred in finding that only the 15 Illegal LC Payments had been made in connection with the LC Discount Trades and were thus unenforceable.

Whether the entire Running Account was tainted and unenforceable

41 The Appellants' second principal submission was that the 15 Illegal LC Payments, which amounted to US\$47.2m or approximately 34% of the Respondent's counterclaim, had materially tainted the Running Account with illegality, rendering the entire Running Account unenforceable. As noted earlier, the Appellants contended that running accounts are indivisible contractual mechanisms. As such, where a material part of the single and indivisible running account is tainted with illegality, the entire running account would be rendered unenforceable. The Appellants drew support for this approach from the proportionality principle, which the court applies to determine the enforceability of contracts which are not unlawful *per se* but entered into with the object of committing an illegal act.

42 The Appellants had raised the same argument below, arguing that the entire Running Account should be unenforceable as it was sufficiently tainted with illegality: Judgment at [65]. The Judge rejected this argument, finding that the Appellants had not provided any legal authority to support their proposed

approach. Instead, the Judge held that a claim based on a running account is a claim for the ultimate balance found due on taking the account, which involves determining the validity of each transaction claimed in the running account. The Judge observed that the mere fact that some transactions might be rejected for being illegal was “insufficient to render the entire running account unenforceable”: Judgment at [66].

Whether the Judge had erred in law

43 We disagreed with the Appellants’ contention that the Judge’s approach was wrong in law. The key question was how the court should determine the enforceability of a running account comprising some illegal transactions – whether the court should determine the validity of each individual transaction, or instead focus on the effect of the illegal transaction(s) on the “single, indivisible liability at the end”, as the Appellants put it. The Judge rightly held that the latter approach, advocated for by the Appellants, was unsupported as a matter of law. While the Appellants relied on three cases to support their proposed approach, the Appellants themselves accepted that they were unable to point to any authority demonstrating how *illegality* impacts a running account. Instead, the three cases in question merely provided general descriptions regarding the nature of running accounts or addressed how transactions in running accounts should be treated in specific contexts.

44 The first case relied on by the Appellants was *In re Footman Bower & Co Ltd* [1961] Ch 443 (“*Footman Bower*”), which involved the question of whether a liquidator erred in rejecting a proof of debt for sums paid on account on the basis that they were statute-barred. The Appellants relied on the English court’s observations that running accounts are treated as “a single and undivided debt for the amount of the balance due on the account”: *Footman Bower* at 450.

The second case relied on by the Appellants was *ABN Amro Commercial Finance plc v McGinn* [2014] 2 Lloyd's Rep 333 (“*ABN Amro*”). The Appellants relied on the English court’s analysis of how a running account operates, namely that “[t]here are reciprocal obligations giving rise to credits and debits in a single running account, a single liability to pay the ultimate balance found due on taking the account”: *ABN Amro* at [55], citing *Re Charge Card Services Ltd* [1987] 1 Ch 150 (at 174E-F).

45 While *Footman Bower* and *ABN Amro* described the nature of a party’s liability under a running account, these cases did not address how the court should determine the amount owing under a running account. Neither did they establish that the court is precluded from determining the validity of individual transactions once they are found to fall within the running account. In contrast, the case of *Ding Shu Ju v Chu Sai Keung* [2016] HKCU 1896 (“*Ding Shu Ju*”) relied on by the Respondent provided support for the Judge’s approach. In *Ding Shu Ju*, the Hong Kong Court of First Instance, having established the existence of a running account between the parties on the evidence, found it necessary to then assess each of the individual transactions under the running account to determine the amount owing under the running account (at [54]):

Having regard to those conclusions on the overarching agreements, I must now address each of the 60 transactions that took place and make an assessment of how each of those transactions should be taken into account in the running balance between the various parties. Once I have done that, I will draw the threads together to reach a conclusion as to the amounts that each party may owe to the other, and therefore the amounts of any judgment that I must give.

While the Hong Kong Court of Appeal allowed the appeal against the Hong Kong Court of First Instance’s decision in *Ding Shu Ju* and ordered a re-trial, this was on the basis that a material clause had not been drawn to the trial judge’s attention: *Ding Shu Ju v Chu Sai Keung* [2021] HKCU 2014 at [46]. The Hong

Kong Court of Appeal made no comment on the trial judge's methodology for determining the amount owing under a running account.

46 The third case relied on by the Appellants was *Living the Link Pte Ltd v Tan Lay Tin Tina* [2016] 3 SLR 621 ("*Living the Link*"), which involved liquidators seeking the reversal of cash transfers that were allegedly undue preferences. The Appellants relied on the Singapore High Court's acceptance (at [48]) of the definition of a running account and its relevance to preference law as expounded on by the High Court of Australia in *Airservices Australia v Ferrier* (1996) 185 CLR 483 (at 504–505). The Appellants submitted as follows:

... In *Living the Link Pte Ltd v Tan Lay Tin Tina and others* [2016] 3 SLR 621, Justice Steven Chong (as His Honour then was) held, in the context of determining whether an unfair preference was given, that a running account contemplated a continuing relationship of debtor and creditor and it was therefore necessary for the Court to '*consider the ultimate and not the immediate effect of individual payments*' ...

[emphasis in original]

47 However, this case was clearly of limited relevance since, as the Appellants had accepted, the Singapore High Court's observations were made in the context of preference transactions in an insolvency scenario. The defendants in *Living the Link* were relying on the common law running account principle in preference law, which provides that parties can rely on the continuing debtor-creditor relationship between parties to a running account (since payments are typically connected to the future supply of goods or services) to argue that a transaction is not an undue preference: *Living the Link* at [46], [48]. The High Court's observations as referred to by the Appellants must be limited to the common law running account principle in preference law.

The case does not lay down a legal principle of general application to all analyses of running accounts.

48 In our view, the Appellants had not established that the Judge erred in law in his approach to determining the validity of transactions in a running account comprising some illegal transactions.

Whether the Judge had erred on the facts

49 Even if the Judge had erred on the law, the Appellants had not demonstrated why the 15 Illegal LC Payments would constitute a material taint on the Running Account, save for a bare assertion that the present case involved a “material quantum in terms of what has been found illegal” that was not *de minimis*. At the hearing before us, the question of where one would draw the line to determine whether a quantum was *de minimis*, was a question which the Appellants’ counsel himself conceded he had difficulty with.

50 Furthermore, it was not clear to us why payments in the other categories of the Running Account would be tainted by the 15 Illegal LC Payments. These payments were in a distinct category (*ie*, Issue 6) from the other transactions. The other categories involved payments between different entities and did not even involve LCs.

Other reliefs

51 Our determination on the above grounds was sufficiently dispositive of the appeal. Nevertheless, for completeness, we also briefly address why we did not order a re-trial.

Retrial

52 The Appellants submitted that this court should order a retrial if it were of the view that further factual findings were necessary to determine the effect of illegality on the Running Account. The Appellate Division of the High Court’s power to order a retrial arises from s 43(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with O 19 r 7(6) of the Rules of Court 2021 (“ROC 2021”). The parties were in agreement that the threshold for ordering a retrial is high, and a retrial should only be ordered if “substantial injustice will be caused otherwise”: O 19 r 7(6) of the ROC 2021.

53 The Appellants argued that the Judge had erred in failing to adjourn the trial and to direct parties to adduce further evidence when he considered the evidence on illegality (specifically the evidence on the Running Account’s alleged illegal core purpose) to be insufficient. As a result, this error deprived the Appellants of a substantial and realistic opportunity to disprove the Respondent’s counterclaim. Moreover, the court should have ordered a retrial in view of the highly circumspect circumstances involving substantial sums of money from transactions tainted by illegality.

54 In our assessment, no substantial injustice was caused and there was thus no basis for ordering a retrial. First, we did not agree that any error had taken place. This was not a situation where the court had not heard evidence on or failed to investigate the illegality. The Appellants had not pleaded illegality to begin with since the issue only arose from Deepak’s own evidence in the middle of trial. The Judge nonetheless heard and reviewed the Appellants’ evidence regarding the illegal transactions. There was sufficient investigation of the issue on the Judge’s part and there is no obligation on the court to investigate further in every case where there is insufficient evidence to make out the illegality.

55 Second, we disagreed that the Appellants were deprived of a substantial and realistic opportunity to disprove the Respondent’s counterclaim. There was no need for Rajesh to be recalled for further cross-examination on the issue of illegality. The Appellants had the benefit of evidence from Deepak without any challenge by evidence from Rajesh. They failed to resist the Respondent’s claim because of the deficiencies in their own evidence and arguments.

56 Third, it would not be just and right to order a retrial. Ordering a retrial would effectively entitle the Appellants to have a second bite of the cherry despite having already had the opportunity to flesh out their case and test the evidence in full, and this would be grossly unfair to the Respondent: see *Tian Kong Buddhist Temple v Tuan Kong Beo (Teochew) Temple* [2021] 4 SLR 286 at [21]. Furthermore, the Appellants’ argument about the risk of the Respondent standing to reap a substantial sum of money was not persuasive. This cuts both ways. The Appellants would correspondingly benefit by avoiding payouts if the payments were found to be unenforceable on the ground of illegality.

57 Notwithstanding that a retrial may be ordered even in the absence of an “error” in the appropriate circumstances (*Liau Beng Chye v Chua Wei Jiea* [2026] 3 SLR 797 at [29], [32]), it was clear that the circumstances in the present case militated against taking that course.

Berth Penthouse

58 The Appellants further submitted that the sum of S\$312,300 for the Acquisition Costs was payable to them if this court were to allow the appeal on the issue of illegality and find that all the transactions in the Running Account were unenforceable. As we rejected the Appellants’ argument on illegality

tainting the entire Running Account above (at [41]–[50]), this claim consequently fell away.

Conclusion

59 In sum, the Judge had not erred in finding only the 15 Illegal LC Payments to be unenforceable on grounds of illegality. The appeal was therefore dismissed for the reasons stated above.

60 We also ordered that the judgment below be varied to correct a clerical error in [105(a)] of the Judgment and the consequential errors arising therefrom. At the hearing before us, the parties confirmed that they did not have any objections to the correction of the clerical error. After the conclusion of the hearing, the parties confirmed their agreement that variations should be made to [105(a)], [106], [109], [134], [135], [149], [150], and [151] of the Judgment. Corresponding amendments were to be made to the court order (*ie*, HC/JUD 420/2025) as well. The variations made to the Judgment and the court order can be found in full at Annex A.

61 In relation to costs, both parties submitted that costs should be fixed at S\$130,000 (all-in). However, since the applicable legal principles were not exceedingly complex and the arguments on appeal largely mirrored those raised below, we instead fixed costs at S\$70,000 (all-in) to be paid by the Appellants

to the Respondent. The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Siraj Omar SC, Tan Allister and Fitzgerald Hendroff (Siraj Omar LLC) (instructed), Prakash Pillai, Koh Junxiang, Ng Pi Wei and Tay Zhuo Yan Isaac (Clasis LLC) for the appellants; Vikram Nair, Ashwin Kumar Menon and Han Xin Yi (Rajah & Tann Singapore LLP) for the respondent.

Annex A

A.1 As mentioned at [60] above, this court ordered that the Judgment be varied to correct a clerical error in [105(a)] of the Judgment (*ie*, “\$626,400” should be amended to “\$624,600”) and the consequential errors arising therefrom at [106], [109], [134], [135], [149], [150], and [151] of the Judgment:

105 In this regard, it is not disputed that:

(a) The claimants paid ~~S\$626,400~~ [S\$624,600] comprising the 5% deposit of S\$175,000.00 and stamp duty of S\$449,600.

...

106 ... Thus, according to the claimants, the claimants and the defendant have each paid half of the amount of S\$1,937,252.42 but the claimants have paid an additional ~~S\$626,400~~ [S\$624,600]. Therefore, the defendant was liable to them for half of the latter amount, *ie*, ~~S\$313,200~~ [S\$312,300].

...

109 I therefore find that the claimants have contributed only ~~S\$626,400~~ [S\$624,600] towards the acquisition cost of the property while the defendant has contributed S\$1,937,252.42. This means that the defendant has paid ~~S\$1,310,852.42~~ [S\$1,312,652.42] more than what the claimants have paid. To equalise their respective contributions, the claimants have to pay the defendant half of this amount, *ie*, ~~S\$655,426.21~~ [S\$656,326.21] or ~~US\$515,271.83~~ [US\$515,979.38].

...

134 ... I have found that the claimants have to pay the defendant ~~S\$655,426.21~~ (~~US\$515,271.83~~) [S\$656,326.21 (US\$515,979.38)] in respect of the acquisition cost (see [109] above) and the claimants have no claim against the defendant in respect of the expenses incurred (see [133] above).

135 Accordingly, I find that the defendant is entitled to claim payment of ~~US\$515,271.83~~ [US\$515,979.38] in CRA s/n 279 as part of the Running Account.

...

149 With respect to Issue 10, the defendant is entitled to claim payment of ~~US\$515,271.83~~ [US\$515,979.38] (CRA s/n

279) and US\$534,115 (CRA s/n 265) (see [135] and [143] above).

150 The defendant is therefore entitled to payment of the total amount of ~~US\$71,321,679.83~~ [US\$71,322,387.38] under the Running Account.

...

151 For the above reasons, I enter judgment for the defendant in the sum of ~~US\$71,321,679.83~~ [US\$71,322,387.38] with interest at 5.33% pa from the date of the originating claim until judgment.

A.2 The court order (*ie*, HC/JUD 420/2025) was also to be amended as follows:

...

a. the sum of ~~US\$71,321,679.83~~ [US\$71,322,387.38]; and

b. interest on the sum of ~~US\$71,321,679.83~~ [US\$71,322,387.38] at the rate of 5.33% per annum from 8 September 2023 (the date of the originating claim) until 26 August 2025 (the date of judgment).