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DISTRICT JUDGE CHIAH KOK KHUN

7 April 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 124

District Court Originating Claim No 563 of 2024

Between

Cheng Tim Jin

... Claimant

And

Chan Kam Piew

... Defendant

JUDGMENT

[Trusts — Trustees — Fiduciary relationship — Trustee holding shares in company on trust for beneficiary — Trustee terminating sale of shares in company to third party — Whether trustee's actions breach of trust — Whether breach of fiduciary duties —

Whether trustee's actions caused beneficiary to lose chance to sell shares to third party — Whether chance lost real or substantial — Whether chance lost speculative — Section 3A Trustees Act 1967]

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Cheng Tim Jin
v
Chan Kam Piew

[2026] SGDC 124

District Court Originating Claim No 563 of 2024
District Judge Chiah Kok Khun
5 December 2025, 6, 9 February, 23 March 2026

7 April 2026

Judgment reserved.

District Judge Chiah Kok Khun:

Introduction

1 The claimant is an advocate and solicitor and a director of Wilberforce TJC Law Corporation. The defendant was a director of Alvamar Capital Pte Ltd (“ACPL”), which was engaged in the business of providing financial advisory and accounting services.

2 On 7 August 2017, the defendant and one Moinul Alam (“Moinul”) a Bangladeshi businessman, entered into a sale and purchase of shares agreement (“SPA”) for the sale of 11,100 ACPL shares to Moinul (“Sale Shares”) at the price of \$660,000.00.¹ Half of the Sale Shares was owned by the defendant, and the other half was owned by the claimant. The shares owned by the claimant

¹ Bundle of affidavits vol 1 (IBA) pp 130- 138.

were held by the defendant under a trust arrangement (“Trust Shares”) in accordance with a trust deed agreement (“Trust Deed”).

3 The SPA is at the heart of the dispute before me. The SPA provides for payment of the Sale Shares to be made in three tranches as follows:

(a) Moinul to pay \$220,000 upon executing the SPA, and the defendant to transfer one-third of the Sale Shares (3,700 shares) to Moinul.

(b) Moinul to pay \$220,000 within six months of signing the SPA, and the defendant to transfer the second one-third tranche of the Sale Shares (3,700 shares) to Moinul.

(c) Moinul to pay the balance \$220,000.00 within 12 months of executing the SPA, and the defendant to transfer the final one-third tranche of the Sale Shares (3,700 shares) to Moinul.

4 Moinul paid the sum of \$220,000 upon signing the SPA. However, he did not make the second tranche payment by the due date of 7 February 2018.² On 1 April 2019, the defendant issued a written notice to Moinul to terminate the SPA.³ The claimant claims against the defendant for breach of trust and fiduciary duties resulting in the loss of a chance for the claimant to receive the sum of \$220,000.00 from the sale of shares in ACPL to Moinul, because of the defendant’s termination of the SPA.

5 For the reasons set out below, I am dismissing the claimant’s claim.

² 1BA pp 15.

³ 1BA pp 18- 19; 175.

Issues to be determined

- 6 The issues to be determined by me are as follows:
- (a) Whether any of the defendant’s actions relating to the SPA constituted a breach of the Trust Deed or a breach of his fiduciary duties.
 - (b) If a breach is established, whether the claimant suffered any loss, including a loss of chance to receive \$220,000 from Moinul under the SPA.

Analysis and findings

The legal principles relating to a trustee’s duties

7 It is uncontroverted that a trustee owes a duty to the beneficiary to administer trust property in accordance with the terms of the trust. In the Court of Appeal case of *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 (“*Winsta*”), it was held at [100] as follows:

100 It is fundamental to the law of trusts that **trustees** owe a duty to their beneficiaries to administer trust property *in accordance with the terms of the trust*. Trustees owe a **custodial stewardship duty** and a **management stewardship duty**. Breach of the former duty occurs where the trustee *misapplies trust assets*. The trustee commits a different breach when he breaches his management stewardship duty; it occurs where he *fails to administer the trust fund in accordance with his equitable duties*, such as when he administers the trust negligently, in breach of his equitable duty of care. Using the trichotomy of breaches Tipping J elucidated (see [87] above), a breach of the custodial stewardship duty is the first kind of breach (*ie*, a breach leading directly to damage to or loss of the trust property), and a breach of the management stewardship duty is likely to be the third kind of breach (*ie*, a breach involving a lack of appropriate skill or care).

[emphasis in original]

8 It is seen that regardless of whether it is custodial stewardship duty or management stewardship duty, the duty is to be discharged in accordance with the terms of the trust. The trustee must also act with reasonable skill and care in administering the trust. In this regard, s 3A of the Trustees Act 1967 states as follows:

Trustees' statutory duty of care

3A.—(1) In exercising any power, carrying out any duty or doing any act referred to in the First Schedule, a trustee must exercise such care and skill as is reasonable in the circumstances, having regard in particular —

(a) to any special knowledge or experience that the trustee has or holds himself or herself out as having; and

(b) if the trustee acts as trustee in the course of a business or profession, to any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession.

(2) This section applies in relation to trusts whether created before, on or after 15 December 2004 except if, or insofar as, it appears from the trust instrument that the requirements of subsection (1) are not meant to apply.

9 As seen, the question of reasonableness is not to be assessed in a vacuum. It is to be weighed in the context of the circumstances in which the trustee found himself to be acting. This was reiterated in the Court of Appeal case of *Ng Eng Ghee and others v Mamata Kapildev Dave And Others (Horizon Partners Pte Ltd, intervener) and Another Appeal* [2009] 3 SLR(R) 109, where it was held that the relevant circumstances must be assessed in deciding whether the appropriate standard of care has been observed. The Court of Appeal held at [153] as follows:

153 An SC clearly has a duty to act conscientiously in exercising the power of collective sale. We note that trustees owe a duty of care to their beneficiaries and are bound to take all precautions in the management of the trust property as an

ordinary prudent man of business would take in his own affairs (*Speight v Gaunt* (1883) 9 App Cas 1). Similarly, it was formerly customary to state that even gratuitous agents owed a duty to their principals to act with such skill and care as persons would ordinarily exercise in their own affairs (although recently the more open formulation that the agent's duty is "that which may be reasonably expected of him in all the circumstances" has been used, see *Bowstead & Reynolds* ([108] supra) at para 6-030). The core common law content of an agent's duty of conscientiousness to his principal is not irreconcilably dissimilar from that owed by a trustee in equity to his beneficiaries. It is the paramount duty of trustees "to exercise their powers in the best interests of [all] beneficiaries of the trust" (*Cowan v Scargill* [1985] Ch 270 per Sir Robert Megarry VC at 286–287). The relevant circumstances must be assessed in deciding whether the appropriate standard of care has been observed.

10 It is also seen that a trustee owes a duty of care to his beneficiary to take all precautions in the management of the trust property as an ordinary prudent man of business would take in his own affairs.

11 Besides his duties pursuant to the terms of the trust, a trustee also owes a fiduciary duty to his beneficiary. The Court of Appeal held in *Credit Suisse Trust Limited v Ivanishvili, Bidzina and others* [2024] 2 SLR 164 at [39] as follows:

39 With respect, CS Trust's submission is untenable. It is beyond doubt that an express trustee owes a *fiduciary* duty to perform the trust honestly and in good faith for the benefit of, and in the interest of, the beneficiaries of the trust. This duty is both a fiduciary duty and part of the irreducible core obligations of a trustee: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [187], [191], [194], [205] and [212]. Indeed, this axiomatic duty is inherent in the nature of an express trust, as an express trustee voluntarily undertakes to manage the trust property for the benefit of the beneficiaries, and not for the trustee's own benefit.

[emphasis in original]

12 An express trustee thus owes a fiduciary duty to perform the trust honestly and in good faith for the benefit, and in the interest of, the beneficiary of the trust. In other words, a trustee must perform his duties for the benefit of the beneficiary.

No breach of trust or fiduciary duties

13 With the above legal principles in mind, I turn to the present case. The claimant and the defendant had entered into the Trust Deed on 13 April 2012.⁴ The claimant contends that the following actions of the defendant constituted a breach of the Trust Deed:

- (a) The defendant had, despite the claimant's repeated requests, refused, neglected and/or failed to transfer 11,100 Trust Shares to him.⁵
- (b) The defendant's termination of the SPA.⁶
- (c) The defendant's failure to inform the claimant about Moinul's requests to extend the validity period of the SPA, or his expressed intention to complete the remaining 2nd and 3rd tranche payments under the SPA.⁷
- (d) The defendant's rejection of Moinul's requests to extend the validity period of the SPA without the claimant's knowledge or consent.⁸

⁴ 1BA pp 60- 64.

⁵ Para 39(a) of the amended statement of claim; 1AB16.

⁶ Para 39(b) of the amended statement of claim; 1AB16.

⁷ Para 39(c) of the amended statement of claim; 1AB16.

⁸ Para 39(d) of the amended statement of claim; 1AB16.

14 As discussed above, in considering whether the defendant's actions constituted a breach of the Trust Deed, the court must consider the terms of the Trust Deed, and the circumstances under which the defendant acted. The starting place in the analysis of the question of whether there was a breach of trust is therefore the terms of the Trust Deed. I note in this regard that the Trust Deed did not contain any express term requiring the defendant to obtain the claimant's consent before exercising any rights under the SPA. Whilst I do not agree with the defendant's contention that the exercise of his rights under the SPA was therefore absolute, it is clear that the claimant does not have the right to direct how the defendant was to exercise his rights under the SPA.

No breach of Trust Deed in relation to the transfer of the Trust Shares

15 I turn first to the claimant's contention that the defendant had, despite the claimant's repeated requests, refused, neglected or failed to transfer 11,100 Trust Shares to him. The claimant refers in his closing submissions to clause 1(B) of the Trust Deed,⁹ which states as follows:

The Trustee agrees to transfer, pay and deal with the Trust Shares and the dividends, interest payable, benefits and other distribution in respect of the Trust Shares in such manner as the Owner shall from time to time direct.

16 To give context to this contention of claimant, the state of the shareholdings in ACPL at the material time should first be noted. After the first tranche of shares was transferred to Moinul, the shareholdings in ACPL were in the following proportions:

Table 1

Shares held by the defendant on trust for the claimant (Trust Shares)	14,800
---	--------

⁹ Paras 14 and 23 of claimant's closing submissions.

Shares held by the defendant	14,800
Shares held by Moinul	3,700
Total	33,300

17 As alluded to above, Moinul paid the sum of \$220,000 upon signing the SPA and the first tranche of shares were transferred to him. However, he did not make the second tranche payment. The refusal of the defendant to transfer 11,100 Trust Shares that the claimant complains about would have taken place after Moinul failed to make the second tranche payment. At this point, the defendant was holding 14,800 Trust Shares for the claimant. In other words, it should be noted at the outset that the claimant's contention is that he had wanted the defendant to transfer only 11,100 out of the 14,800 Trust Shares held by the defendant at the material point in time.

18 In this regard, it is unclear what is the exact nature of the claimant's case. As pointed out by the defendant, the statement of claim does not particularise the exact nature of the breach. At para 39(a) of the Statement Claim (Amendment No 1), it is stated as such:

In breach of clause 2(F) of the Trust Deed and/or the Defendant's fiduciary duties, the Defendant had, despite the Claimant's repeated requests, refused, neglected and/or failed to transfer 11,100 Trust Shares to him.

19 It is seen that it is devoid of particulars. The claimant did not plead when and how the request was made by the claimant; and when and how the defendant had refused the request. Such particulars would be relevant because the transfer of all 14,800 Trust Shares from the defendant to the claimant's nominee took place on 25 October 2024. Further, it is noted that in claiming that the defendant has breach his duty, the claimant pleaded clause 2(F) of the Trust Deed. Clause 2(F) states as follows:

The Trustee hereby fully undertakes to execute any documents and to perform any act reasonably so directed by the Owner in order to protect and preserve the interest of the Owner as beneficiary of the Trust Shares.

20 In this regard, the claimant has not articulated in what way the transfer of 11,100 Trust Shares requested by the claimant is connected to protecting and preserving the interest of the claimant as beneficiary of the Trust Shares.

21 At trial, the claimant referred to a letter through his solicitors to the defendant's solicitors on 15 March 2019.¹⁰ The claimant had stated in the letter that the defendant was to transfer the "Trust Shares (less those shares sold to Moinul)" and give an account of "the balance sum of SGD220,000 due to [claimant] pursuant to the SPA." The claimant likewise referred to this letter of 15 March 2019 in his closing submissions.¹¹ It would therefore appear that the claimant's case is specifically in reference to his request made in the letter of 15 March 2019 to transfer 11,100 Trust Shares to him. In this regard, by a letter dated 27 March 2019 the defendant in turn requested of the claimant that he return all 14,800 Trust Shares to the claimant instead.¹² A draft share transfer form for the transfer of 14,800 Trust Shares was provided to the claimant.¹³ The claimant however, insisted on the transfer of 11,100 shares only. His basis was that 3,700 of his Trust Shares had been sold to Moinul under the SPA. However, this was not so as Moinul had failed to make payment for the second tranche of shares to be sold to him, and the 3,700 Trust Shares had not been transferred to him. The position taken by the claimant resulted in an impasse between the parties, and all 14,800 Trust Shares remained with the defendant.

¹⁰ Agreed bundle vol 2 (2AB) 464.

¹¹ See para 16 of the claimant's closing submissions.

¹² 2AB465-467.

¹³ 2AB183.

22 In June 2019, the defendant again proposed transferring all 14,800 Trust Shares, and also selling his own shares to the claimant. The claimant did not agree, neither did he make any further request for the Trust Shares to be returned to him. It was only in January 2022 that the claimant made a request for all his Trust Shares to be transferred to an entity known as Wilberforce Global Management Pte Ltd. It would be seen therefore that from the time of the correspondence between the parties in March 2019 when the claimant first made the request for transfer of his Trust Shares, the claimant did not initiate any further request for transfer until January 2022. The defendant on the hand maintained his position throughout that he was ready and willing to transfer all the Trust Shares to the claimant provided that he paid for the relevant fees and stamp duties.¹⁴ After the claimant made his request in January 2022, the defendant proceeded to instruct the corporate secretary to prepare the necessary documents for the transfer of the Trust Shares to Wilberforce Global Management Pte Ltd.¹⁵ The claimant however changed his mind on 22 March 2022, and refused to proceed with the transfer of 14,800 shares.¹⁶ On 4 September 2024 the defendant made another request to transfer all the Trust Shares to the claimant.¹⁷ Eventually, the transfer of all 14,800 Trust Shares from the defendant to the claimant's nominee took place on 25 October 2024.¹⁸

23 In my view it is apparent from the above sequence of events that the claimant has not made out his case that the defendant had refused to transfer the Trust Shares as directed by him. On the other hand, the evidence shows that the

¹⁴ 2AB368.

¹⁵ 2AB374.

¹⁶ 2AB379.

¹⁷ 2AB504.

¹⁸ 2AB645-655.

defendant had been actively engaged with the claimant regarding the latter's request for the transfer of the Trust Shares. In fact, the defendant was keen to transfer the Trust Shares to the claimant. It was the claimant who was ambivalent about the transfer. The impasse in March 2019 was attributable to the claimant's view that he could not seek the return of 3,700 Trust Shares from the defendant because they were sold to Moinul. It should be noted that the claimant did not ask for the transfer of 11,100 Trust Shares again. The defendant on the other hand, proposed again in June 2019 to transfer all 14,800 Trust Shares and also to sell his own shares to the claimant. The claimant did not agree, neither did he make any further request for the Trust Shares to be returned until January 2022, when he requested for all his Trust Shares to be transferred to an entity known as Wilberforce Global Management Pte Ltd. As seen, it cannot be said that the defendant had "despite the Claimant's repeated requests, refused, neglected and/or failed to transfer 11,100 Trust Shares to him"¹⁹ as pleaded by the claimant. It cannot be said that the defendant has breached clause 1(B) of the Trust Deed. There is also no evidence of how the transfer of 11,100 Trust Shares is connected to protecting and preserving the interest of the claimant as beneficiary of the Trust Shares under clause 2(F) of the Trust Deed. The claimant's pleaded case in this regard is clearly not made out.

No breach of trust in terminating the SPA

24 I turn now to the termination of the SPA. This constitutes the second contention of the claimant regarding the defendant's breach of the Trust Deed.²⁰ In my view the evidence is clear that the defendant had terminated the SPA only after Moinul repudiated the SPA by failing to meet his payment obligations. The

¹⁹ As per para 39(a) of the Statement Claim (Amendment No 1).

²⁰ Para 39(b) of the statement of claim; 1AB16.

evidence is plain that Moinul was reticent despite repeated attempts to elicit a commitment from him to make payment for the second tranche of Sale Shares. The defendant made repeated attempts to contact Moinul between 6 March 2018 and 30 March 2019,²¹ by way of WeChat messages, and calls on WeChat, all of which went unanswered.²²

25 By 1 April 2019, Moinul has failed to pay the 2nd tranche payment by more than 14 months, and to pay the 3rd tranche payment by more than eight months. The defendant took the view that there was no longer any basis to assume Moinul would perform his obligations under the SPA and that Moinul had been in repudiatory breach of the SPA by reason of his failure to make the payments. The defendant proceeded to send a letter to Moinul informing him that he was in material breach of the terms of the SPA, that the defendant was therefore terminating the SPA. A copy of this letter was forwarded by the defendant to the claimant.

26 As pointed out by the defendant, the completion of the SPA was wholly contingent on the actions of Moinul. Neither the claimant nor the defendant had any control over his actions. In my view, the termination of the SPA was a prudent step taken by the defendant given the circumstances. It was a necessary step to protect the claimant's interests. Hope is perennial, and often times a hard decision has to be taken. In fact, the defendant had an equal interest in Moinul fulfilling his obligation to pay for the second tranche of Sale Shares. He stood to receive the same amount of sale proceeds as the claimant. Moinul was not going to pay, and it was a prudent decision that the defendant had to take as a businessman and as a trustee.

²¹ 2AB 421-433.

²² Para 66 of the defendant's AEIC.

27 I note for completeness that there is no legal obligation imposed on the defendant under the Trust Deed to seek the claimant's consent before any decision with respect to the SPA could be made, including the right to terminate the SPA upon Moinul's repudiation. I agree with the defendant that his exercise of his rights under the SPA was absolute, subject only to the fiduciary duties of honesty, good faith, and reasonable care and skill. In my view, the claimant has not made out his case that the defendant was in breach of his fiduciary duties in terminating the SPA.

No requirement to inform claimant of Moinul's expressed intention to complete the remaining 2nd and 3rd tranche payments

28 I also note that the terms of the Trust Deed did not specify that the defendant had to inform the claimant of all communications between the defendant and Moinul in respect of the SPA. In this regard, I turn now to the question of the defendant not informing the claimant about Moinul's requests to extend the validity period of the SPA, or Moinul's expressed intention to complete the remaining 2nd and 3rd tranche payments under the SPA. This constitutes the third contention of the claimant regarding the defendant's breach of the Trust Deed.²³

29 After the letter of termination was issued on 1 April 2019, nothing was heard from Moinul till 6 May 2019, some 35 days later.²⁴ Moinul requested for the validity of the SPA be extended until 31 December 2019, to allow him to purchase the remaining shares by then. He also requested that the defendant send him a supplementary agreement should the defendant agree to his request. In the same e-mail, Moinul further indicated that he was keen to explore other

²³ Para 39(c) of the statement of claim; 1AB16.

²⁴ Paras 59-60 of defendant's AEIC.

business options with the defendant and invited him to visit Bangladesh for further discussion. However, Moinul then went silent again after the defendant responded to him. This was so for a further 14 days, until 20 May 2019,²⁵ when he reiterated his request to extend the validity period of the SPA.²⁶

30 The defendant replied by way of an e-mail on 28 May 2019, which was copied to the claimant, and informed Moinul that he had not been able to reach him through various modes of communication. The defendant added that as the SPA had already been repudiated, there could be legal implications if he were to agree to extend the validity of the SPA. What followed was further attempts by the defendant on 24 July 2019 and 18 October 2019 to correspond with Moinul. Moinul remained unforthcoming.²⁷ In my view, it would be objectively plain by that stage that Moinul wanted no further part of the SPA.

31 The defendant did not inform the claimant of Moinul's requests to extend the validity period of the SPA to 31 December 2019, or of Moinul's offer to complete the purchase of the remaining shares under the SPA by 31 December 2019. Neither did the defendant sought the claimant's views with respect to Moinul's requests. The defendant position is that he had no reason to believe that Moinul would keep his word and make payment of the balance sums under the SPA.²⁸ In this regard, I agree with the defendant that given the conduct of Moinul as detailed above, there was no basis to believe that he would make good his promise and keep his side of the bargain. I also agree with the defendant that there was no requirement for him to keep the claimant informed

²⁵ Paras 61 of defendant's AEIC.

²⁶ Paras 63 of defendant's AEIC.

²⁷ Paras 64 of defendant's AEIC.

²⁸ Para 65 of the defendant's AEIC.

of communications from Moinul. As alluded to above, the terms of the Trust Deed do not require the defendant to inform the claimant of all communications between him and Moinul in respect of the SPA.

No requirement for claimant's consent to reject Moinul's requests to extend the validity period of the SPA

32 Likewise, regarding the claimant's fourth contention,²⁹ there is no requirement under the Trust Deed for the defendant to obtain the claimant's consent before rejecting Moinul's requests to extend the validity period of the SPA. As alluded to above, there is no legal obligation imposed on the defendant under the Trust Deed to seek the claimant's consent before any decision with respect to the SPA could be made, including the right to terminate the SPA upon Moinul's repudiation. The exercise of the defendant's rights under the SPA was absolute, subject only to the fiduciary duties of honesty, good faith, and reasonable care and skill.

33 As discussed, the relevant circumstances must be assessed in deciding whether the appropriate standard of care has been observed. In my judgment, the defendant's termination of the SPA is not a breach of his obligations under the Trust Deed. I also find that all actions taken by the defendant in relation to the SPA were undertaken in accordance with his fiduciary duty. The actions were taken honestly, in good faith, and with reasonable care and skill. In short, the defendant had taken actions that a prudent man of business would take in his own affairs. The claimant has failed on a balance of probabilities, to prove there was any breach of trust or breach of fiduciary duties on the part of the defendant.

²⁹ Para 39(d) of the amended statement of claim; 1AB16.

34 For completeness, there was some debate in the course of the trial regarding the date on which the Trust Deed was terminated. In my view, little turns on when exactly the Trust Deed was terminated by parties. In any event, I note that it is unclear by the defendant's case when the Trust Deed was terminated; whilst by the claimant's case, it was terminated in October 2024. In my view, at all material times, the actions taken by the defendant in relation to the SPA were subject to the terms of the Trust Deed and the fiduciary duties owed to the claimant. The date of termination does not detract from my analysis above of the question of whether there was a breach of trust or fiduciary duties.

No evidence of loss and damage caused by the termination of the SPA

35 I have made the finding above that there was no breach of trust or breach of fiduciary duties by the defendant. For reasons of completeness only, I turn to the question of loss and damage.

36 The claimant's case appears to focus on the defendant's refusal to accede to Moinul's requests, made after the termination of the SPA, to extend the validity period of the SPA and for him to complete the purchase of the remaining shares under the SPA by 31 December 2019.³⁰ I would however for completeness proceed on the basis that the claimant's case also includes his contention surrounding the defendant's termination of the SPA.

37 The thrust of the claimant's claim is that the defendant's breach of his obligations under the Trust Deed and fiduciary duties had caused the claimant to lose a real and substantial chance of receiving \$220,000 from the sale of 3,700 Trust Shares to Moinul under the SPA. This follows from the agreement that 50% of the Sale Shares to Moinul under the SPA would come from the

³⁰ P 19 of the claimant's opening statement.

defendant's own shares and the remaining 50% would come from the Trust Shares. The claimant and the defendant would thus each receive \$330,000.00, had Moinul honoured the SPA. As Moinul had paid \$220,000 for the first tranche of the Sale Shares, for which the claimant and the defendant had each received \$110,000, the claimant's complaint is that he missed out on receiving the balance \$220,000. The claimant says that in assessing the amount of equitable compensation that the defendant has to pay him, the 3,700 Trust Shares must be valued as at October 2024.³¹ I understand this to be referring to the claimant's loss of chance to sell the 3,700 Trust Shares to Moinul, leading to the damage suffered in the sum of \$220,000.

38 It is seen therefore that the claimant has not proposed to prove any particularised loss arising from the alleged breaches of the Trust Deed and fiduciary duties. Instead, the claim is one for loss of chance; that he lost the opportunity to sell 3,700 shares in ACPL for \$220,000 under the SPA. In short, the claimant contends that the SPA would have been completed but for the defendant's termination of the SPA and his subsequent refusal to extend its validity.

39 But the evidence discussed above shows that even if the SPA had not been terminated, Moinul was objectively unlikely to have made any further payment. In my view, it is plain by the time the defendant terminated the SPA, Moinul had wanted no further part of the SPA. Even if I find that the defendant's termination and refusal to extend the validity of the SPA caused the claimant to lose the chance to sell 3,700 shares in ACPL for \$220,000, the claimant must still establish that the lost opportunity was a real and substantial one, and not merely speculative.

³¹ Para 139 of claimant's AEIC.

40 The Court of Appeal laid down the approach in adjudicating claims for loss of chance in *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661 (“*Asia Hotel*”). Whilst the decision concerned a claim for breach of contract, there is no reason why the principles enunciated on loss of chance would not be equally applicable to the present case. The Court of Appeal held as follows at [139]:

139 Interestingly, while the fact situation in *Normans Bay* is also different from that in *Chaplin v Hicks*, the respondents accepted (in para 67 of their Case) that it was akin to that of *Chaplin v Hicks*. The truth of the matter is that while the circumstances of two cases may be different, it does not thereby follow that the principles established in the earlier case cannot be applicable to the later case. The important thing to consider is: Are the differences material? At the end of the day, in a case like the present, two questions should be asked and answered. First, did the breach on the part of the defendant cause the plaintiff to lose a chance to acquire an asset or a benefit? Second, *was the chance lost a real or substantial one; or putting it another way, was it speculative?* While, as a rule, the plaintiff always has the burden of proof, the question as to who has to prove a particular fact, and whether in a particular fact situation the evidential burden shifts, are matters dependent wholly on the circumstances. In our opinion, this case is as much akin to *Normans Bay* and *Allied Maples* as it is to *Chaplin v Hicks*, although in none of those cases did the party in default deliberately breach its commitment.

[emphasis added]

41 The Court of Appeal thus held that two questions are relevant:

- (a) First, did the breach on the part of the defendant cause the plaintiff to lose a chance to acquire an asset or a benefit?
- (b) Second, was the chance lost a real or substantial one; or was it speculative?

42 It is seen that the key question is whether the chance lost was a real or substantial one. In other words, whether it was speculative that a chance was

lost. In regard to the question of a real or substantial chance, the Court of Appeal at [47] endorsed the following framework established in *Allied Maples Group Ltd v Simmons & Simmons* [1995] 1 WLR 1602:

... where the plaintiffs' loss depends upon the actions of an independent and third party, it is necessary to consider as a matter of law what it is necessary to establish as a matter of causation, and where causation ends and quantification of damage begins.

(1) What has to be proved to establish a causal link between the negligence of the defendants and the loss sustained by the plaintiffs depends in the first instance on whether the negligence consists of some positive act or misfeasance, or an omission or non-feasance. ...

....

(3) In many cases the plaintiff's loss depends on the hypothetical action of a third party, either in addition to action by the plaintiff, as in this case, or independently of it. In such a case, does the plaintiff have to prove on balance of probability ... that the third party would have acted so as to confer the benefit or avoid the risk to the plaintiff, or can the plaintiff succeed provided he shows that he had a substantial chance rather than a speculative one, the evaluation of the substantial chance being a question of quantification of damages? ...

[T]he plaintiff must prove as a matter of causation that he has a real or substantial chance as opposed to a speculative one. If he succeeds in doing so, the evaluation of the chance is part of the assessment of the quantum of damage, the range lying somewhere between something that just qualifies as real or substantial on the one hand and near certainty on the other. ...

...

43 Therefore, in relation to loss of chance claims, the plaintiff must prove as a matter of causation that he has a real or substantial chance as opposed to a speculative one. In this regard, the burden lies on the claimant to prove that he had a real or substantial chance. This was reiterated by the High Court in *Tembusu Growth Fund Ltd v ACTAtek, Inc and others* [2018] 4 SLR 1213. The High Court held at [116] as follows:

116 *Allied Maples Group* concerned loss suffered as a result of leasing property in reliance on negligent advice by a solicitor. Stuart-Smith LJ set out three general categories of circumstances which he regarded as defining the border between the causation inquiry and the quantum inquiry when ascertaining recoverable loss (at 1609–1611 and 1614):

...

(c) In the third category fall cases in which the plaintiff's loss depends upon the hypothetical action of a third party, whether in addition to action by the plaintiff or independently of it. Here, the plaintiff need only show that he had a "real or substantial chance" of the third party acting in such a way as to benefit him. Claims falling under this category are those which are properly to be regarded as claims for a loss of chance as an independent head of loss.

44 Turning back to the present case, I had made the finding above that the defendant's termination of the SPA was not a breach of his obligations under the Trust Deed and that all actions taken by the defendant in relation to the SPA were undertaken in accordance with his fiduciary duty. Therefore, in regard to the first question in *Asia Hotel*, the answer is that there was no breach on the part of the defendant which caused the claimant to lose a chance to acquire an asset or a benefit. For completeness, even if the claimant did lose such a chance as a result of a breach by the claimant, he still must show that the chance lost a real or substantial one; and that it was not speculative. He must show that he had a real or substantial chance of Moinul acting in such a way as to benefit him. This concerns the second question under which the burden lies on the claimant to show that Moinul would have performed his side of the bargain and completed the purchase.

45 I agree with the defendant in this regard that on the evidence, any chance of completion of the SPA was remote and speculative. As discussed above, by 1 April 2019, there had been no cooperation, no payment, and no sign

of continued commitment by Moinul for over a year.³² Moreover, even by 28 May 2019, when the defendant declined to extend the validity of the SPA, Moinul still did not exhibit any intention or indicate that he had the financial means to complete the purchase. On the evidence, any alleged opportunity was speculative and dependent entirely on the uncertain actions of a third party who had shown no intention or ability to perform. Even if breach were established, the claimant has not met the legal requirements for the recovery of damages or equitable compensation.

46 For completeness as well, the claimant also contends that the failure of the defendant to inform him of various communication from Moinul post termination of the SPA to constitute a breach of the Trust Deed. However, the claimant has not shown any loss or damage that was caused by such failure. No evidence was adduced in this regard. It would appear that the claimant is proceeding on the same premise as his contention in respect of the termination of the SPA; that the breach led to the loss of chance of receiving \$220,000 from the sale of the 3,700 Trust Shares to Moinul. In this regard, as discussed above, I do not find the chance to be one that is real nor substantial. It is plainly speculative.

47 In view of the foregoing, I find therefore that the claimant has in any event not proved that he suffered any loss, or that he is entitled to any of the reliefs claimed for damages or equitable compensation.

Conclusion

48 In the premises of all of the above, I find that the claimant has on the balance of probabilities failed to prove his claim. The defendant's termination

³² Para 53 of defendant's AEIC.

of the SPA was not a breach of his obligations under the Trust Deed. I find on the evidence that all actions taken by the defendant in relation to the SPA were undertaken in accordance with his fiduciary duty. Further, the claimant has in any event failed to prove that he suffered any loss, or that he is entitled to any of the reliefs claimed for damages or in equitable compensation. I accordingly dismiss the claim.

49 As for costs, so as to save time and further attendance of parties, I had directed parties to address me on the question of costs in their closing submissions. There is no reason why costs should not follow the event in this case, and costs is payable by the claimant to the defendant. As for the quantum of costs, I consider the following:

- (a) The guideline laid down in Pt III, Table A(i)(5) of Appendix H of State Courts Practice Directions 2021, in respect of trials involving equity and trusts.
- (b) The amount of the claim.
- (c) The amount of work done by parties for the case.
- (d) The two and a half days of trial.
- (e) The legal research on the points of law on trust and fiduciary duties.

50 Taking into consideration the above factors, I fix costs at \$41,750 (pre-trial costs: \$22,000; trial costs: \$13,750 (\$5,500 x 2.5); post-trial costs: \$6,000) to be paid by the claimant to the defendant. Disbursements payable by the claimant is fixed at \$5,681.60.

Chiah Kok Khun
District Judge

Ang Wee Tiong and Katie Lee Shih Ying (Lumiere Law LLP) for the
claimant;
Ganga Avadiar and Lim Yi Zheng (Advocatus Law LLP) for the
defendant.