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

[2021] SGHC 154

Suit No 678 of 2018

Between

Choo Cheng Tong Wilfred

… *Plaintiff*

And

(1) Phua Swee Khiang
(2) Ding Pei Chai

… *Defendants*

And Between

Phua Swee Khiang

… *Plaintiff in counterclaim*

And

Choo Cheng Tong Wilfred

… *Defendant in counterclaim*

And Between

Ding Pei Chai

… *Plaintiff in counterclaim*

And

Choo Cheng Tong Wilfred

… *Defendant in counterclaim*

Version No 1: 23 Jul 2021 (14:26 hrs)

JUDGMENT

[Contract] — [Formation] — [Oral agreements]
[Contract] — [Contractual terms]
[Contract] — [Illegality and public policy] — [Maintenance and champerty]
[Equity] — [Remedies] — [Account]
[Legal Profession] — [Remuneration] — [Unauthorised person acting as advocate or solicitor]
[Limitation of Actions] — [Particular causes of action] — [Contract]
[Limitation of Actions] — [Extension of limitation period] — [Part-payment]
[Limitation of Actions] — [When time begins to run]

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Choo Cheng Tong Wilfred
v
Phua Swee Khiang and another

[2021] SGHC 154

General Division of the High Court — Suit No 678 of 2018
Tan Siong Thye J
17–19, 22–26 February, 1–4 March, 27, 28 May 2021

29 June 2021 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff, Mr Choo Cheng Tong Wilfred ("Mr Choo"), has a Bachelor of Laws degree.[1] He was admitted as an advocate and solicitor of the Supreme Court of Singapore in 1989.[2] He had a valid practising certificate under the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") from 1 April 1992 to 31 March 2000 and from 1 April 2006 to 31 March 2014.[3]

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1 Particulars Served Pursuant to Request by Second Defendant ("FBP for Second Defendant") at para 1(a)(e); Particulars Served Pursuant to First Request by First Defendant ("FBP-1 for First Defendant") at para 1(1)(e).

2 FBP for Second Defendant at para 1(a)(g); FBP-1 for First Defendant at para 1(1)(g).

3 First Agreed Statement of Facts ("ASOF-1") at para 6; Second Agreed Statement of Facts ("ASOF-2") at para 3.

2 Mr Choo was also a stock dealer in Phillip Securities Pte Ltd ("Phillip Securities")[4] for a brief period from around August 2000 to 2001 or 2002.[5] In this Suit, Mr Choo claims a total sum of S$2,089,080 from the defendants as payment of his consultancy fees for work done under various alleged agreements made between 2000 and 2012.[6]

3 The first defendant, Mr Phua Swee Khiang Tom ("Mr Phua"), was the plaintiff's colleague in Phillip Securities and the second defendant, Mr Ding Pei Chai Peter ("Mr Ding"), is a Malaysian businessman[7] (collectively, "the defendants"). The defendants' primary argument is that Mr Choo infringed the LPA as he did not have a valid practising certificate at the relevant periods when he rendered his legal services for a fee.[8]

4 Further, the defendants dispute the existence of most of the alleged agreements and contend that Mr Choo was to be remunerated in accordance with a contingent arrangement which is void for champerty.[9] In the alternative, the defendants argue that Mr Choo has already been paid the sums to which he claims to be entitled.[10] Moreover, the defendants assert that they had fully and finally settled all the fees payable by them to Mr Choo in 2013.[11] In any event,

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4 ASOF-2 at para 2.

5 Transcript (17 February 2021), p 40 at line 5; Transcript (19 February 2021), p 99 at lines 2–6.

6 Plaintiff's Statement of Claim (Amendment No. 1) ("PSOC") at paras 50 and 53.

7 ASOF-2 at paras 5–6.

8 First Defendant's Defence and Counterclaim (Amendment No 2) ("1DDC") at para 6(1).

9 Second Defendant's Defence and Counterclaim (Amendment No 2) ("2DDC") at para 5(3).

10 1DDC at paras 5–6 and 8–11; 2DDC at paras 5(4)–5(6).

11 1DDC at paras 5(7) and 6(6); 2DDC at para 11(1).

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the defendants submit that Mr Choo's claims are time-barred under the Limitation Act (Cap 163, 1996 Rev Ed).[12]

5 In addition, Mr Phua counterclaims against Mr Choo and seeks an account and inquiry in respect of the proceeds from the sale of 3.53 million shares in Atech Holdings Limited ("Atech") which he held on trust for Mr Phua and sold without authorisation.[13] Further or in the alternative, Mr Phua seeks damages in respect of the loss and/or damage caused by Mr Choo's failure to account for the sale proceeds of these shares.[14] Separately, Mr Ding counterclaims against Mr Choo for repayment of loans which amounted to S$24,000.[15]

The Legal Profession Act

6 The LPA prohibits a person from practising as an advocate and solicitor or doing any act as an advocate and solicitor if he does not have in force a practising certificate (ss 32 and 33 of the LPA). He is also not permitted to recover costs in respect of anything done by him as an advocate or solicitor (s 36 of the LPA). As Chan Sek Keong JC (as he then was) explained in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* [1988] 1 SLR(R) 281 ("*Turner*") at [34], the primary object of these provisions of the LPA is to "protect the public from claims to legal services by unauthorised persons". These provisions serve the important function of ensuring that members of the public are not charged fees for legal services rendered by

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12 1DDC at para 6(4); 2DDC at para 5(8).

13 1DDC, p 21 at para (1).

14 1DDC at para 20.

15 2DDC at paras 18–19; Transcript (22 February 2021), p 4 at lines 17–18.

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persons who are not authorised to provide such services. More broadly, these provisions also help to preserve public confidence in the legal profession.

7 The operation and correct application of ss 32, 33 and 36 of the LPA are critical to the findings in the present case.

Background to the dispute

8 The background of this case is important, albeit undisputed, in order to fully appreciate the disputes of the parties. Accordingly, I shall outline the relationship between the defendants, Mr Lee Wan Hoi ("Mr Lee"), and Mr Yip Wui Kuen ("Mr Yip") which started off well, until they liquidated their joint property investment in Australia in 2000. Thereafter, disputes between the defendants and Mr Lee arose. Mr Choo submits that he offered his consultancy services to the defendants in this context.

9 Most of the background facts were set out by Belinda Ang Saw Ean J (as she then was) in *Australia and New Zealand Banking Group Ltd v Ding Pei Chai and others* [2004] 3 SLR(R) 489 (Originating Summons No 902 of 2002) ("*ANZ v Ding*"), a related case. Thus, I shall refer to the relevant paragraphs of *ANZ v Ding* where appropriate.

The Melbourne property investments

10 The defendants and Mr Lee were initially business associates and friends. In 1993 and 1994, they collaborated to invest in and develop several properties in Melbourne, Australia (the "Melbourne Properties"). The Melbourne Properties were held through two trust companies incorporated in the British Virgin Islands (the "BVI"). These were SEAA Enterprises Pty Limited Trust ("SEPLT") and SEAA Properties Trust ("SPT") (collectively, the

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"Trusts"). The Trusts were managed by SEAA Enterprises Pty Limited, a company incorporated in Australia (the "Trustee Company"). Mr Lee held 60% of the beneficial interest in the investment and the defendants each held 20%.[16] At all material times, Mr Lee was the managing director and chairman of the Trustee Company, while the defendants were passive investors (see *ANZ v Ding* at [4] and [7]).

11 In or around June 1998, the defendants and Mr Lee agreed to contribute working capital for the investments in the Melbourne Properties in the same proportions as their beneficial interests: 60% from Mr Lee, and 20% each from the defendants.[17]

The Atech shares transaction with Mr Yip and the interpleader proceedings in OS 601786/2001

12 To raise funds for his 60% share of the working capital, on or around 17 June 1998, Mr Lee entered into an agreement to sell 14 million ordinary shares and 4 million options of Atech to Mr Yip and his nominees, Mr Xiao Yongle and Tartan Capital Limited, for A$3.65m (the "Yip Atech Shares Transaction"). Ms Mei Leong, a lawyer at M/s Mei Leong, Lam & Co ("M/s Mei Leong"), which was then a law firm in Hong Kong, acted for Mr Yip and his nominees.[18] Under this agreement, Mr Yip and/or his nominees paid A$750,000 to Phillip Securities to be held as a deposit for the Yip Atech Shares Transaction.[19]

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16 ASOF-1 at para 8; ASOF-2 at paras 8–9.

17 ASOF-2 at para 10.

18 ASOF-2 at para 11.

19 ASOF-2 at para 12.

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13 Subsequently, in or around December 1998, Mr Yip and his nominees agreed to accept 3.4 million Atech shares (the "3.4 million Yip Atech Shares") as part-performance of the Yip Atech Shares Transaction, in exchange for an advance payment of A$820,000 from Mr Yip (the "A$820,000 Advance"). Accordingly, in or around January 1999, the scrips for the 3.4 million Yip Atech Shares were delivered to M/s Mei Leong and Mr Yip paid the A$820,000 Advance to Mr Lee.[20] However, M/s Mei Leong were unable to effect the transfer of the 3.4 million Yip Atech Shares because, around that time, the Atech shares became scripless and could only be transferred electronically.[21] At this point, Mr Phua got involved in this transaction. and executed two letters of indemnity dated 15 January 1999 and 8 July 1999 in favour of Mr Yip and his nominees in relation to the delivery of the 3.4 million Yip Atech Shares and the return of the A$820,000 Advance (the "Letters of Indemnity").[22]

14 The Yip Atech Shares Transaction was eventually aborted in or around December 1999.[23] Subsequently, on 15 October 2001, Mr Phua and M/s Mei Leong (acting on behalf of Mr Yip and his nominees) entered into a settlement agreement regarding the Letters of Indemnity (the "2001 Mei Leong Settlement Agreement").[24] Under cll 1–3 of the 2001 Mei Leong Settlement Agreement Mr Phua was relieved of his obligations under the Letters of Indemnity; a settlement sum of A$900,000 was to be paid to Mr Yip; and the physical scrips of the 3.4 million Yip Atech Shares were to be returned to Mr Phua. With regard to the settlement sum of A$900,000, A$820,000 had already been set aside by

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20 ASOF-2 at para 13.

21 Plaintiff's Opening Statement at para 12; Transcript (17 February 2021) at pp 9–10.

22 ASOF-2 at para 14; Transcript (17 February 2021), p 10 at lines 5–8.

23 ASOF-2 at para 15.

24 Agreed Bundle of Documents ("ABOD"), Vol 3 at pp 1465–1466.

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the defendants and Mr Lee to repay Mr Yip (as I shall explain further at [18] below), and the balance of A$80,000 was to be paid by the defendants.[25] However, as I shall elaborate on shortly, the actual repayment of the A$820,000 did not go smoothly.

15 The sum of A$750,000, which was initially paid by Mr Yip and/or his nominees to Phillip Securities pursuant to his agreement with Mr Lee (see [12] above), eventually became the subject of interpleader proceedings before the High Court in Originating Summons No 601786 of 2001 (the "OS 601 Interpleader Proceedings"). The OS 601 Interpleader Proceedings were commenced on 30 November 2001. On the advice of Mr Choo, the defendants were represented by JC Ho & Kang LLC ("JCHK") in the OS 601 Interpleader Proceedings.[26] I shall describe how Mr Choo came to be involved at [28] below. The OS 601 Interpleader Proceedings were eventually settled in February 2004 with the A$750,000 being fully returned to Mr Yip and/or his nominees.[27]

The dispute with Mr Lee and the court proceedings in OS 902/2002, Australia, the BVI, and S 420/2014

16 At this point, I return briefly to the year 2000. The Melbourne Properties were sold in or around July 2000 for about A$15m, and the sale was completed on 28 September 2000.[28] On or around 3 October 2000, Mr Lee made unauthorised transfers of about A$8.4m from the sale proceeds of the Melbourne Properties to various accounts under his control.[29] Thereafter, from

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25 ASOF-2 at para 17.

26 ASOF-2 at para 32(a).

27 ASOF-2 at para 18.

28 ASOF-2 at para 19.

29 ASOF-2 at para 20.

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25 to 27 October 2000, Mr Lee returned A$5.25m out of the A$8.4m to the defendants and himself in the proportion of 20%, 20%, and 60% respectively. This was the return of the capital that they had invested in the Melbourne Properties.[30]

17 The defendants were initially unaware of the unauthorised transfers made by Mr Lee at the time the transfers were made. The defendants only found out about these transfers one or two months later, after their capital had been returned to them.[31] Even after the return of the capital, there were still moneys under Mr Lee's control which he refused to remit to the Trustee Company (see *ANZ v Ding* at [13]). This gave rise to disputes between the defendants and Mr Lee who refused to disclose the accounting records showing the expenses and sale proceeds from the Melbourne Properties.[32]

18 On 8 December 2000, the defendants and Mr Lee entered into an agreement to set aside A$1.8m of the sale proceeds from the Melbourne Properties to meet various contingent liabilities arising from their investments in the Melbourne Properties and the Yip Atech Shares Transaction. In or around January 2001, this sum of A$1.8m was deposited in an Asian Currency Unit account (the "ACU Account") placed with the Australia and New Zealand Banking Group Limited, Singapore branch ("ANZ Bank"). I shall refer to the moneys in the ACU Account as the "ACU Account Moneys". The accountholder of the ACU Account was Gracedale Technology Limited ("Gracedale"), a BVI company.[33] The original authorised signatories of the

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30 ASOF-2 at para 21.

31 Transcript (1 March 2021), p 18 at lines 3–11.

32 Transcript (17 February 2021), p 5 at lines 10–13.

33 ASOF-2 at para 22.

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ACU Account were Mr Lee and his wife in one group, and Mr Ding's nominee and Mr Phua in the other (see *ANZ v Ding* at [11]).

19 Out of the ACU Account Moneys, a sum of A$820,000 was set aside to meet any potential claims by M/s Mei Leong or its clients in connection with the Yip Atech Shares Transaction.[34] Specifically, Mr Yip had a potential claim against Mr Phua under the 8 July 1999 Letter of Indemnity for the return of the A$820,000 Advance he had paid to Mr Lee in January 1999 (see *ANZ v Ding* at [14]). The remaining A$1m of the ACU Account Moneys was set aside for capital gains and related taxes[35] as well as other miscellaneous expenses such as foreign exchange losses and legal costs (see *ANZ v Ding* at [14]).[36]

20 On 8 December 2000, Mr Lee also agreed to make available to the defendants the financial accounts of the two Trusts. In December 2001, Mr Ding requested the auditing of these financial accounts and the inspection of the financial records of the Trustee Company. However, Mr Lee was not forthcoming with the audited accounts and the financial records. This led the defendants to assert control over Gracedale and the ACU Account in March 2002 by removing Mr Lee's wife as a director of Gracedale and withdrawing Mr Lee and his wife as authorised signatories of the ACU Account (see *ANZ v Ding* at [9] and [15]–[29]).

21 Subsequently, around June 2002, the defendants instructed ANZ Bank to remit A$820,000 of the ACU Account Moneys to M/s Mei Leong and A$150,000 to Mr Choo for his consultancy services. However, these

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34 ASOF-2 at para 22(a).

35 ASOF-2 at para 22(b).

36 ASOF-2 at para 22(c).

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instructions were countermanded by Mr Lee's wife. These conflicting instructions led ANZ Bank to file for interpleader relief in Originating Summons No 902 of 2002 (the "OS 902 Interpleader Proceedings") on 1 July 2002.[37] On the advice of Mr Choo, the defendants were also represented by JCHK in the OS 902 Interpleader Proceedings.[38]

22 The issue to be decided in the OS 902 Interpleader Proceedings was who had the authority to act for and on behalf of Gracedale in operating the ACU Account. The defendants' position was that Mr Lee had agreed to relinquish control of Gracedale and the ACU Account to them. Hence, they had the authority to act for and on behalf of Gracedale in operating the ACU Account. Therefore, they had the authority to pay the A$820,000 to M/s Mei Leong as Mr Lee had previously agreed to this payment (see *ANZ v Ding* at [10]). On the other hand, Mr Lee's wife argued that she and Mr Lee had never agreed to cede control of Gracedale and the ACU Account to the defendants (see *ANZ v Ding* at [11]).

23 The OS 902 Interpleader Proceedings culminated in the judgment of Ang J (as she then was) in *ANZ v Ding*, which was delivered on 30 June 2004. In that judgment, Ang J found that there was indeed an agreement by Mr Lee to entrust control of Gracedale and the ACU Account to the defendants, such that they had authority to act for and on behalf of Gracedale in operating the ACU Account. However, Ang J ordered that the ACU Account Moneys were to be retained in the ACU Account until further order. This was because there were other unresolved issues which had to be determined with reference to Gracedale's articles of association and the laws of the BVI, which were outside

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37 ASOF-2 at para 23.

38 ASOF-2 at para 32(a).

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the scope of those proceedings. In particular, whether 144 Gracedale bearer shares had been properly issued on 24 July 2001 (see *ANZ v Ding* at [57]–[58] and [61]).[39]

24 Subsequently, in or around 2007, the defendants commenced proceedings against Mr Lee in the Federal Court of Australia to compel Mr Lee to produce the audited financial accounts of the two Trusts (the "Australian Proceedings"). On the advice of Mr Choo, the defendants were represented by M/s Harding & Co in the Australian Proceedings. The Australian Proceedings concluded in or around March 2008 with a court order for Mr Lee to produce the accounts sought by the defendants.[40]

25 On or around 18 October 2012, the defendants commenced proceedings against Mr Lee and Gracedale in the High Court of the BVI to seek ratification of the issuance of the 144 Gracedale bearer shares (the "BVI Proceedings"). On the advice of Mr Choo, the defendants were represented by M/s Farara Kerins in the BVI Proceedings. The BVI Proceedings concluded on or around 9 July 2013, when the defendants and Mr Lee agreed to stay these proceedings and have their disputes determined by the Singapore courts.[41]

26 On or around 16 April 2014, the defendants commenced Suit No 420 of 2014 in the High Court against Mr Lee ("S 420"). S 420 was the defendants' claim against Mr Lee for, *inter alia*, breach of fiduciary duties and for the recovery of the ACU Account Moneys. On the advice of Mr Choo, the

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39 ASOF-2 at para 27.

40 Affidavit of Evidence-in-Chief of Ding Pei Chai ("DPC") at para 11(1)(c); ASOF-2 at para 32(b).

41 ASOF-2 at para 32(c); Second Defendant's Closing Submissions ("2DCS") at para 38.

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defendants were represented by Rajah & Tann Singapore LLP ("R&T") in S 420.[42]

27 In 2016, the defendants entered into a settlement agreement with Mr Lee (the "2016 Lee Settlement Agreement"). Pursuant to the 2016 Lee Settlement Agreement, the defendants recovered a sum of approximately US$1.04m from the ACU Account,[43] and S 420 was discontinued in or around August 2016.[44]

Mr Choo's involvement

Appointment of Mr Choo

28 Mr Choo was first appointed by Mr Phua sometime in 2000, and by Mr Ding sometime in 2001, to provide them with advice and assistance in relation to the legal disputes outlined above. The precise nature of this advice and assistance is one of the key issues in dispute between the parties and will be analysed in detail below.

29 First, it is not disputed that in July 2001, the defendants agreed to pay Mr Choo a fixed fee of A$50,000 if he successfully negotiated a settlement with M/s Mei Leong regarding the Letters of Indemnity which had been executed by Mr Phua in 1999 (the "Mei Leong Indemnity Agreement").[45] The terms of engagement under this agreement were set out in an e-mail from Mr Choo to Mr Phua dated 25 July 2001 (the "25 July 2001 E-mail").[46] The sum of A$50,000 comprised an initial deposit of A$20,000 and a further A$30,000 if

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42 ASOF-2 at para 32(d).

43 ASOF-2 at para 30.

44 ASOF-2 at para 32(d).

45 PSOC at paras 30–31; Schedule of Agreements at s/n 7.

46 ABOD, Vol 2 at p 680.

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the negotiation was successful.[47] The negotiation was successful and culminated in the 2001 Mei Leong Settlement Agreement,[48] the terms of which are outlined at [14] above.

30 It is also common ground that the parties entered into the following *written* agreements relating to Mr Choo's services and remuneration, both of which were drafted by Mr Choo:[49]

(a) A Consultancy Agreement dated 14 February 2003 was signed by the defendants and Mr Choo (the "Consultancy Agreement").[50] Under the Consultancy Agreement, Mr Choo was to receive 20% of all moneys recoverable from the two Trusts (including the ACU Account Moneys), which represent the profits of the investments in the Melbourne Properties, less all expenses and allowances already paid to Mr Choo (including overseas allowances and expenses). I shall refer to this particular arrangement under the Consultancy Agreement as the "20% Remuneration Arrangement". Further, Mr Choo was to be paid: (i) A$6,000 *per* trip for a four-day period to Hong Kong or Australia, and A$500 *per* day for any length of stay greater than four days; and (ii) A$600 *per* trip to Kuala Lumpur.[51]

(b) A Tripartite Agreement dated 6 July 2012 was signed by the defendants and Mr Choo (the "Tripartite Agreement").[52] Under the

47 ASOF-2 at para 16.

48 Transcript (17 February 2021), p 126 at lines 11–17.

49 ASOF-2 at para 31.

50 Schedule of Agreements at s/n 12; Core Bundle of Documents ("CBOD") at Tab 3.

51 ASOF-2 at para 26.

52 Schedule of Agreements at s/n 14; CBOD at Tab 5.

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> Tripartite Agreement, Mr Phua's claim to the ACU Account Moneys was to rank secondary to the claims of Mr Ding and Mr Choo, in consideration of Mr Ding and Mr Choo undertaking to share equally the legal costs of the BVI Proceedings.[53]

31 However, the parties disagree on the existence, terms and effect of the various other alleged *oral* agreements regarding Mr Choo's remuneration. These alleged oral agreements, which are outlined at [37] below, form the basis of Mr Choo's claim.

32 Further, pursuant to a Deed of Agreement of Transfer of Beneficial Interest dated 9 January 2013, signed by the defendants (the "DATBI"),[54] Mr Ding agreed to assume Mr Phua's liability to pay the fees owing to Mr Choo for services rendered since 2000. In consideration, Mr Phua agreed to unconditionally and immediately transfer his beneficial interest in the ACU Account to Mr Ding.[55] It is undisputed that the DATBI was drafted by Mr Choo.[56] However, Mr Choo argues that the version of the DATBI before this court is not the original version of the DATBI, which he claims was signed together with the Tripartite Agreement and witnessed by him on 6 July 2012.[57] I shall refer to this alleged original version of the DATBI as the "2012 DATBI". According to Mr Choo, the 2012 DATBI contained an additional clause stating that Mr Ding would pay Mr Choo a sum of S$200,000 as part-payment towards

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53 ASOF-2 at para 28.

54 Schedule of Agreements at s/n 15; CBOD at Tab 6.

55 ASOF-2 at para 29.

56 ASOF-2 at para 31.

57 Plaintiff's Reply and Defence to Counterclaim ("PRDC"), p 13 at para 61 and p 31 at para 50; Transcript (18 February 2021), p 119 at lines 16–21 and p 120 at lines 8–10.

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Mr Choo's fees, but this additional clause was removed from the DATBI dated 9 January 2013.[58]

Transfer of 3.53 million Atech shares from Mr Phua to Mr Choo

33 In 2002, Mr Choo received a total of 3.53 million Atech shares from Mr Phua (which I shall refer to as the "3.53 million Choo Atech Shares") as trustee under two separate written agreements, which were both drafted by Mr Choo.[59] The 3.53 million Choo Atech Shares were transferred to Mr Choo as security for the payment of his consultancy fees. The two written agreements were:

(a) A Letter of Agreement and Undertaking (the "LOAU 1") signed on 13 July 2002 by Mr Phua's nominees (Mr Tan Boh Liang and Ms Alice Phua Mui Kiang) and Mr Choo. Pursuant to the LOAU 1, a total of 1.08 million Atech shares were transferred to Mr Choo to be held on trust for Mr Phua.[60] The LOAU 1 stated that the 1.08 million Atech shares were meant to be security for the payment of Mr Choo's "legal fee".

(b) A Trust Agreement (the "Trust Agreement") signed on 23 November 2002 by Mr Phua and Mr Choo. Pursuant to the Trust Agreement, a further 2.45 million Atech shares were transferred by Mr Phua to Mr Choo to be held on trust for Mr Phua.[61] The proceeds of the liquidation of the shares would be held on trust for several purposes

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58 PRDC, p 14 at para 65; ASOF-2 at para 31; Plaintiff's Closing Submissions ("PCS") at para 139; Plaintiff's Reply Submissions ("PRS") at para 17.

59 ASOF-2 at paras 31 and 34.

60 Schedule of Agreements at s/n 10; CBOD at Tab 1; ASOF-2 at para 24.

61 Schedule of Agreements at s/n 11; CBOD at Tab 2; ASOF-2 at para 25.

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including the payment of A$150,000 to Mr Choo for his "consultancy services".

34 In July 2004, Mr Phua and Mr Choo signed another Letter of Agreement and Undertaking (the "LOAU 2"). Pursuant to the LOAU 2, Mr Choo was entitled to 50% of the 1.08 million Atech shares which had been transferred to him under the LOAU 1 (*ie*, 540,000 Atech shares), in consideration of Mr Choo "taking care of $76,000 of [Mr] Phua's legal costs of $95,000 due to [JCHK]".[62]

35 It is undisputed that the 3.53 million Choo Atech Shares have since been sold by Mr Choo.[63]

Transfers of moneys from Mr Ding to Mr Choo

36 In 2013, Mr Choo received at least S$150,000 from Mr Ding. In or around December 2015, Mr Choo received a further S$15,000 from Mr Ding.[64]

The parties' cases

Mr Choo's claim

37 Mr Choo claims that his services were law-related *business consultancy* services and that he is entitled to be paid consultancy fees by Mr Phua and/or Mr Ding under the following six oral agreements:

(a) An oral agreement made in September 2000 for Mr Phua to pay Mr Choo a fixed fee of S$50,000 for his services in relation to the recovery of the capital from the investments in the Melbourne

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62 Schedule of Agreements at s/n 13; CBOD at Tab 4.

63 ASOF-2 at para 34.

64 ASOF-2 at para 33.

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Properties. These services included advising on possible litigation in Australia relating to the Melbourne Properties (the "Melbourne Capital Agreement").[65]

(b) An oral agreement made in September 2000 for Mr Phua to pay Mr Choo hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters. These services related to the recovery of the profits from the investments in the Melbourne Properties and advising on possible issues in Australia and the BVI regarding the Melbourne Properties (*eg*, directors' duties, taxes, accounts, and breaches of trust) (the "Melbourne Profits Agreement (Phua)").[66] Mr Choo claims that Mr Phua owes him a total of S$100,750 for work done pursuant to this agreement between September 2000 and June 2001.[67]

(c) An oral agreement made in December 2000 for Mr Phua to pay Mr Choo hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters, for his services in relation to the OS 601 Interpleader Proceedings (the "Interpleader Agreement").[68] In addition, Mr Choo claims that he is entitled to be paid expenses and overseas fees of S$8,000 for each of his two trips to Hong Kong under this agreement.[69] Mr Choo claims that

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65 PSOC at paras 22–23; Schedule of Agreements at s/n 2 (read with Transcript (19 February 2021), p 3 at lines 14–24).

66 PSOC at paras 24–25; Schedule of Agreements at s/n 3.

67 PSOC at para 24(c).

68 PSOC at paras 28–29; Schedule of Agreements at s/n 5.

69 PRDC, Annex A at p 134; Particulars Served Pursuant to Second Request by First Defendant ("FBP-2 for First Defendant") at p 52, item 2.

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Mr Phua owes him a total of S$193,880 for work done pursuant to this agreement for four years from December 2000 to 2004.

(d) An oral agreement made in June 2001 for the defendants to pay Mr Choo hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters (the "Melbourne Profits Agreement (Joint)").[70] Mr Choo's services under this agreement related to the recovery of the profits from the investments in the Melbourne Properties. These services included advising on possible issues in Australia and the BVI regarding the Melbourne Properties (*eg*, directors' duties, taxes, accounts, and breaches of trust). In addition, Mr Choo claims that he is entitled to be paid expenses and overseas fees of A$50,000 *per* trip to Australia[71] and S$4,500 *per* trip to Kuala Lumpur.[72] According to Mr Choo, the defendants agreed to pay him these overseas fees as part of the oral Melbourne Profits Agreement (Joint).[73] Mr Choo claims that the defendants owe him a total of S$1,456,550 for work done pursuant to this agreement from June 2001 to June 2018.[74]

(e) The Mei Leong Indemnity Agreement.[75] Mr Choo claims that the defendants have not paid him the fixed fee of A$50,000 to which he is entitled under this agreement for successfully negotiating the 2001 Mei Leong Settlement Agreement.

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70 PSOC at paras 26–27; Schedule of Agreements at s/n 6.

71 PSOC at para 40.

72 FBP for Second Defendant at para 3(b).

73 PSOC at p 13; Transcript (17 February 2021), p 96 at lines 7–22.

74 PSOC at para 26(c).

75 PSOC at paras 30–31; Schedule of Agreements at s/n 7.

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(f) An oral agreement made in or around April 2002[76] between Mr Choo and M/s Mei Leong, for M/s Mei Leong to pay Mr Choo a retainer of A$30,000 *per* year for his services in ensuring that its client's claim to the A$820,000 set aside in the ACU Account was looked after (the "Lee Claim Agreement").[77] Mr Choo claims that the defendants owe him a total of A$420,000 for his work in this regard: A$240,000 for eight years of work done pursuant to the oral Lee Claim Agreement during the period from 2002 to 2012 (with breaks in between factored in),[78] and A$180,000 for six years of work done pursuant to the Tripartite Agreement from 2012 to 2018.[79]

38 Mr Choo further argues that the 20% Remuneration Arrangement in the Consultancy Agreement is limited to work done from February 2002 onwards[80] and work done specifically for the OS 902 Interpleader Proceedings.[81] Hence, Mr Choo's position is that the Consultancy Agreement was terminated by the judgment in *ANZ v Ding* in 2004, and the parties agreed to revert to the hourly rates of S$800 and S$1,200 *per* hour thereafter.[82]

39 In addition, Mr Choo submits that it is undisputed that he expended time and labour in doing work for the defendants. The oral and written agreements between the parties show that he was not providing his services to the

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76 Transcript (18 February 2021), p 74 at lines 19–20.

77 PSOC at paras 32–34; FBP-1 for First Defendant at paras 8(1)(d) and 9(1)(a); Schedule of Agreements at s/n 9.

78 PSOC at para 38(a).

79 PSOC at para 38(b).

80 Transcript (17 February 2021), p 137 at lines 16–21.

81 Transcript (22 February 2021), p 49 at lines 4–11.

82 Transcript (22 February 2021), p 52 at lines 8–11.

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defendants gratuitously or out of goodwill. Therefore, he is entitled to fair and adequate compensation as consideration for his work.[83] However, during his oral submissions, Mr Choo's counsel admitted that no *quantum meruit* claim had been pleaded and he acknowledged the difficulty of making this claim.[84] It is well established that a claim based on *quantum meruit* must be pleaded (see *Loy Chin Associates Pte Ltd v Autohouse Trading Pte Ltd* [1991] 1 SLR(R) 740 at [19]–[22]). Therefore, I shall not consider the issue of whether Mr Choo could have brought an alternative claim based on *quantum meruit*.

The defendants' defences to Mr Choo's claim

40 First, the defendants submit that Mr Choo held himself out to be a lawyer and provided *legal* advice and services. Thus, Mr Choo proffered the services of an advocate and solicitor for a fee.[85] It is undisputed that Mr Choo did not have a valid practising certificate under the LPA in force from 1 April 2000 to 31 March 2006, and from 1 April 2014 onwards.[86] Consequently, the defendants contend that Mr Choo was an unauthorised person within the definition in s 32(2)(*b*) of the LPA when he provided these legal services for a fee. Hence, Mr Choo's provision of these legal services contravened s 33 of the LPA and his claim for unpaid legal fees is barred on the ground of illegality.[87]

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83 PCS at paras 118–123; Transcript (27 May 2021), p 97 at lines 10–25 and p 98 at lines 1–16.

84 Transcript (28 May 2021), p 7 at lines 24–25 and p 89 at lines 17–18.

85 1DDC at paras 5(2) and 6(1); 2DDC at para 5(2).

86 ASOF-1 at para 7; ASOF-2 at para 4.

87 1DDC at para 6(1).

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41 Second, the defendants contend that none of the oral agreements alleged by Mr Choo existed (save for the Mei Leong Indemnity Agreement).[88] Instead, Mr Choo was to be remunerated in accordance with the 20% Remuneration Arrangement.[89] According to the defendants, this 20% Remuneration Arrangement was based on the following oral agreements (the existence of which Mr Choo disputes), which were eventually reduced to writing in the Consultancy Agreement:

(a) an oral agreement made in November 2000 for Mr Phua to pay Mr Choo 20% of any moneys recovered by Mr Choo for Mr Phua from the profits of the investments in the Melbourne Properties (the "Choo-Phua 2000 Oral Agreement");[90] and

(b) an oral agreement made in February 2002 for the defendants to pay Mr Choo 20% of any moneys recovered by Mr Choo for the defendants from the profits of the investments in the Melbourne Properties (the "Choo-Phua-Ding 2002 Oral Agreement").[91]

42 According to Mr Ding, the 20% Remuneration Arrangement agreed on in the Choo-Phua-Ding 2002 Oral Agreement was proposed by Mr Choo in February 2002. The defendants agreed to this proposal in principle and it was then formalised in the Consultancy Agreement in 2003.[92]

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88 1DDC at para 10A; 2DDC at para 9; First Defendant's Closing Submissions ("1DCS") at para 48; 2DCS at para 46.

89 1DDC at para 5(2); 2DDC at para 5(2).

90 Schedule of Agreements at s/n 4; 1DDC at para 5(2).

91 Schedule of Agreements at s/n 8.

92 DPC at paras 15–16; Transcript (3 March 2021), p 101 at lines 13–25 and p 102 at lines 1–5.

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43 The defendants argue that this 20% Remuneration Arrangement is champertous or savours of maintenance. It is, therefore, void and unenforceable as it is contrary to public policy.[93] In the alternative, the defendants argue that Mr Choo has been paid more than 20% of the moneys recovered from the ACU Account after deducting expenses, allowances and other sums paid to Mr Choo. As noted at [27] above, the defendants recovered a sum of US$1.04m from the ACU Account. Twenty percent of this sum would have been less than S$290,000, and Mr Choo has already been paid more than this amount.[94]

44 Third, with regard to the Mei Leong Indemnity Agreement, the defendants admit that this agreement existed.[95] However, they argue that Mr Choo's fixed fee of A$50,000 was fully paid to him by Mr Ding on behalf of both defendants in 2001. This sum was paid in two instalments: an advance of A$20,000 on 21 September 2001 and the balance sum of A$30,000 on 23 and 24 November 2001.[96]

45 Fourth, the defendants submit that they entered into an oral agreement with Mr Choo in or around March or April 2013 whereby Mr Choo agreed to accept S$200,000 from Mr Ding in full and final settlement of all fees payable by the defendants. Mr Choo also agreed to relinquish any and all claims that he might have to the ACU Account Moneys (the "2013 Choo Settlement Agreement").[97] The defendants' position is that the full sum of S$200,000 was

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93 1DDC at paras 5(2), 5(4) and 6(2); 2DDC at para 5(3).

94 1DDC at para 6(7); 2DDC at para 5(6).

95 1DDC at para 10A; 2DDC at para 9; 1DCS at para 48.

96 1DDC at para 10A; ASOF-2 at paras 35(a)–35(b) (read with Transcript (1 March 2021) at pp 1–2).

97 1DDC at paras 5(7) and 6(6); 2DDC at paras 5(4) and 11(1); Schedule of Agreements at s/n 16; CBOD at Tab 7; 1DCS at para 111; 2DCS at paras 34 and 97–107.

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paid by Mr Ding to Mr Choo in 2013. This was in two instalments: S$150,000 by bank transfer in May 2013 and S$50,000 in cash which was paid to Mr Choo by hand in early June 2013.[98]

46 Further, Mr Phua argues that under the DATBI, any liabilities that he had to pay Mr Choo's unpaid fees were novated to Mr Ding with Mr Choo's knowledge, consent and/or acquiescence. In consideration, Mr Phua "irrevocably agree[d] to transfer all his beneficial interest in the Gracedale's [*sic*] account to Ding without any conditions attached".[99] Therefore, Mr Choo has no claim against Mr Phua for these fees.[100]

47 Fifth, the defendants argue that Mr Choo's claims are time-barred under the Limitation Act in so far as his legal services were rendered more than six years prior to the issuance of the writ of summons in this Suit.[101]

Mr Phua's counterclaim

48 Mr Phua submits that Mr Choo was only entitled to sell the 3.53 million Choo Atech Shares after the US$1.04m was recovered by the defendants from the ACU Account under the 2016 Lee Settlement Agreement.[102] Furthermore, the conditions in the LOAU 1, the Trust Agreement and the LOAU 2 had to be fulfilled before Mr Choo could sell the 3.53 million Choo Atech Shares. For instance, under the LOAU 1 and the Trust Agreement, Mr Phua must have failed to pay Mr Choo his legal consultancy fees as specified in those documents

98 ASOF-2 at para 35(c).

99 CBOD, Tab 6 at p 2.

100 1DDC at para 6(5).

101 1DDC at para 6(4).

102 Transcript (2 March 2021), p 140 at lines 4–14.

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before Mr Choo could sell the shares. These shares were held by Mr Choo on trust for Mr Phua. Thus, Mr Phua counterclaims against Mr Choo for an account and inquiry into all sums, interests, profits and assets arising from or traceable to the sale proceeds of the 3.53 million Choo Atech Shares and for the same to be paid by Mr Choo to Mr Phua upon the taking of an account and inquiry.[103]

Mr Choo's defence to Mr Phua's counterclaim

49 Mr Choo contends that Mr Phua consented to the sale of 2.45 million of the 3.53 million Choo Atech Shares in or around early 2004, and to the sale of the remaining 1.08 million shares in or around 2012. According to Mr Choo, he received A$147,000 from the sale of the first 2.45 million shares at A$0.06 *per* share, and a further A$64,800 from the sale of the remaining 1.08 million shares, also at an average price of A$0.06 *per* share.[104] In respect of the latter sum of A$64,800, Mr Choo argues that he is fully entitled to half of this amount (*ie*, A$32,400) because he was entitled to 540,000 of the 1.08 million shares under the LOAU 2.[105]

50 Further, Mr Choo claims that Mr Phua orally agreed in August 2000 to pay him a fixed fee of S$200,000 for his services in resolving the dispute between Mr Phua and Phillip Securities in relation to contra losses incurred by Mr Phua (the "PS Consultancy Agreement").[106] Mr Choo's cause of action under the PS Consultancy Agreement was struck out by an assistant registrar on

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103 1DDC, p 21 at para (1).

104 Affidavit of Choo Cheng Tong Wilfred (Atech Shares) ("CCTW (Atech Shares)") at paras 9 and 13–15; Plaintiff's Opening Statement at paras 56–57.

105 CCTW (Atech Shares) at para 14; Plaintiff's Opening Statement at para 56(b).

106 PSOC at para 21; Schedule of Agreements at s/n 1.

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the ground that it was time-barred.[107] Nevertheless, the PS Consultancy Agreement is relevant in the present proceedings as Mr Choo argues that at least part of the sale proceeds from the 3.53 million Choo Atech Shares was payment due to him for work done under the PS Consultancy Agreement. On this basis, Mr Choo argues that he can set off the sale proceeds of the 3.53 million Choo Atech Shares against his claims for Mr Phua's unpaid fees in the present Suit.[108]

Mr Ding's counterclaim

51 Mr Ding submits that he extended loans amounting to S$24,000 to Mr Choo.[109] A loan of S$9,000 was given by Mr Ding to Mr Choo on 30 April 2015. A further loan of S$15,000 was given by Mr Ding to Mr Choo on 15 December 2015. According to Mr Ding, he demanded (by way of a letter dated 9 May 2018 from R&T to Mr Choo's then solicitors (the "2018 R&T Letter of Demand"))[110] that Mr Choo repay these loans within 14 days from the date of the letter, but Mr Choo has not done so.[111]

Mr Choo's defence to Mr Ding's counterclaim

52 Mr Choo does not dispute that he received S$15,000 from Mr Ding in or around December 2015.[112] However, Mr Choo claims that he did not receive the sum of S$9,000 from Mr Ding.

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107 HC/SUM 5484/2018, HC/ORC 1333/2019.

108 Plaintiff's Opening Statement at para 58.

109 2DCS at para 150.

110 ABOD, Vol 4 at pp 2045–2046.

111 2DDC at paras 18–19; ASOF-2 at para 35(d).

112 ASOF-2 at para 33.

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53 Mr Choo contends that the S$15,000 was not a loan as there are no official loan documents or correspondence between the parties showing that this sum was meant to be a loan. Instead the S$15,000 was part-payment of the outstanding fees owed to him by Mr Ding.[113] Further, Mr Choo submits that Mr Ding's counterclaim should fail because Mr Ding had not laid claim to this alleged loan since 2015.[114]

Issues to be determined

54 The central issues to be determined in relation to Mr Choo's claim for unpaid fees are as follows:

(a) First, do the fees claimed by Mr Choo constitute remuneration in respect of legal work done as an advocate or solicitor when he did not have a practising certificate at the relevant time, and is he barred from recovering these fees under s 36(1) of the LPA?

(b) Second, what was the basis on which the parties agreed Mr Choo was to be remunerated?

(c) Third, if Mr Choo was to be remunerated based on the 20% Remuneration Arrangement, is this arrangement void on the ground that it is champertous?

(d) Fourth, if Mr Choo is legally entitled to be remunerated for his services, has he been remunerated by the defendants?

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113 PRDC, p 34 at para 72; Plaintiff's Opening Statement at para 60.

114 PRS at para 39(e).

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55 The issues pertaining to Mr Phua's counterclaim regarding the 3.53 million Choo Atech Shares are as follows:

(a) First, was Mr Choo entitled to sell the 3.53 million Choo Atech Shares at the time at which he sold them?

(b) Second, could Mr Choo use the sale proceeds from the 3.53 million Choo Atech Shares to offset Mr Phua's fees owing to him for the work done under the alleged PS Consultancy Agreement?

56 As for Mr Ding's counterclaim for repayment of the loans amounting to S$24,000, the issues to be determined are as follows:

(a) First, did Mr Choo receive the loans totalling S$24,000 from Mr Ding in 2015?

(b) Second, were these moneys loans to Mr Choo or part-payments of Mr Choo's outstanding fees owed by Mr Ding?

My decision

Assessment of the key witnesses

57 The critical issues in this case, particularly Mr Choo's version of his claims, depend heavily on parol evidence without corroboration. Therefore, it is crucial to evaluate the credibility and reliability of Mr Choo, Mr Phua and Mr Ding before I deal with the specific issues outlined above.

General observations regarding Mr Choo's credibility and reliability

58 Having heard Mr Choo's testimony at the trial and measured it against the evidence in this case, I find that he is an extremely unreliable witness. His

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testimony was like shifting sands and was beset with numerous inconsistencies and vacillations, including frequent departures from positions he had previously affirmed in his affidavits and his pleadings. He claimed that his case was supported by various documents which did not in fact support his claims, or which, upon further questioning, he was unwilling or unable to produce in court for inspection. On numerous occasions, while he was on the witness stand, he sought to correct alleged errors in the documentary evidence he himself had placed before the court.

59 At this point, I shall illustrate the enormously unreliable and sieve-like nature of Mr Choo's testimony with some examples. I shall also elaborate on Mr Choo's parsimony with the truth in my judgment below when I discuss the various issues. This will further reveal Mr Choo's lack of honesty and integrity.

60 The first example relates to an invoice that was requested by Mr Ding to enable him to make a bank transfer of some money to Mr Choo in 2013. Mr Ding's evidence is that the bank wanted an invoice before it would transfer the money to Mr Choo.[115] This request was conveyed to Mr Choo. Mr Choo claimed that he had deliberately made an addition error in the invoice dated 8 June 2013 (the "8 June 2013 Invoice")[116] because he found Mr Ding's instructions suspicious. The 8 June 2013 Invoice stated that the fees owed to Mr Choo for services rendered from 2004 to 2013 were S$120,000 for advice and S$80,000 for attending meetings and discussions, amounting to an (incorrect) total of S$100,000. According to Mr Choo, the actual invoice was for S$100,000, but Mr Ding had instructed Mr Choo to change the fees for advice to S$120,000 and the fees for attending meetings and discussions to

115 DPC at paras 40–42.

116 CBOD, Tab 7 at p 5.

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S$80,000.[117] Therefore, Mr Choo became suspicious and deliberately left the total as the incorrect figure of S$100,000 because he wanted to invalidate the invoice to prevent Mr Ding from using it.[118] On the witness stand, when asked by Mr Phua's counsel what the correct dates and figures were, Mr Choo amended the invoice to state that the fees owed to him for services rendered from 2012 to 2013 were S$116,680 for advice and S$65,270 for attending meetings and discussions.[119] This was materially inconsistent with Mr Choo's affidavit of evidence-in-chief which stated that the original invoice, which he labelled the "$100K Invoice Accurate", was for services rendered from 2004 to 2013, with his fees being S$60,000 and S$40,000 respectively.[120] Mr Choo was unable to provide any satisfactory explanation for these significant and substantial discrepancies.[121] In my view, if Mr Choo had in fact been so suspicious of Mr Ding's intentions, he could have declined to issue this invoice entirely, instead of deliberately voiding the 8 June 2013 Invoice. His explanation in court is incredible.

61 In contrast, Mr Ding offers a far more logical and credible explanation for the incorrect figures in the 8 June 2013 Invoice. According to Mr Ding, when Mr Choo first issued the 8 June 2013 Invoice to him, he noticed that the total bill was incorrect. He told Mr Choo over the phone that there was an error in the invoice and Mr Choo told him to return the invoice for correction. Mr Choo then cancelled the figure of S$100,000, wrote the figure of S$200,000 in its place and returned the amended invoice to Mr Ding with the total corrected

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117 Transcript (18 February 2021), p 150 at lines 20–25.

118 Transcript (18 February 2021), p 149 at lines 16–18.

119 Transcript (24 February 2021) at pp 60–61 and 66–72; CBOD, Tab 15 at p 503A.

120 Affidavit of Evidence-in-Chief of Choo Cheng Tong Wilfred (Amendment No 1) ("CCTW") at para 17.

121 Transcript (24 February 2021) at pp 76–78.

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to S$200,000.[122] Mr Ding exhibited his copy of this amended invoice in his affidavit of evidence-in-chief.[123]

62 The second example of a serious discrepancy in Mr Choo's evidence is his assertion during his cross-examination by Mr Phua's counsel that Mr Phua had, in his affidavit and/or Defence and Counterclaim, admitted to the oral Melbourne Capital Agreement alleged by Mr Choo. To appreciate this example, it is pertinent to give some background to the purported oral Melbourne Capital Agreement. As noted at [3737(a)] above, Mr Choo alleges that an oral agreement was made in September 2000 under which Mr Phua agreed to pay him S$50,000 in relation to the recovery of the capital from the investments in the Melbourne Properties from Mr Lee. Mr Phua denies that there was such an agreement as Mr Lee was prepared to return the capital to the defendants. It was also in the parties' second Agreed Statement of Facts that, "[b]etween 25–27 October 2000, Lee returned A$5.25 million out of the A$8.4 million [which Mr Lee had transferred without authorisation] to Lee, Ding and Phua in the proportion of 60%, 20%, and 20% respectively as a return of their capital investment in the Melbourne Properties".[124] Hence, there was no requirement for Mr Choo's involvement regarding the return of the Melbourne Property investments as there was no dispute regarding the return of the capital by Mr Lee.[125] Mr Choo initially insisted that Mr Phua had admitted to this oral Melbourne Capital Agreement. Mr Choo said:

> A. Your client [*ie*, Mr Phua] has admitted to the oral agreement. … And in his AEIC, he has also admitted

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122 Transcript (4 March 2021), p 149 at lines 6–22.

123 DPC at para 44 and p 497 (Exhibit DPC-9); CBOD at Tab 8.

124 ASOF-2 at para 21.

125 Transcript (24 February 2021), p 109 at lines 16–25, p 110 at lines 1–13, and p 116 at lines 3–18.

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> engaging me to try and settle this – the return of his capital.

63 However, when Mr Phua's counsel asked Mr Choo to point to the specific paragraphs of these documents that supported his assertion, he was unable to do so. After some resistance, he eventually admitted that these documents did not specifically refer to such an oral agreement and that there was no documentary evidence to support his claim:[126]

> Q. So where does it talk about recovery of the capital?
>
> A. That is the time he hasn't got his money and then –
>
> Q. Mr Choo, where does it say recovery of the capital?
>
> A. But he states the oral agreement with me.
>
> Q. It says "20%", it doesn't say 50,000?
>
> A. That's where the dispute come from.
>
> Q. Mr Choo, there's nothing here that refers to an oral agreement where Tom was supposed to pay you 50,000 in exchange for your advice or help in relation to the capital of the Melbourne properties. There's nothing there. Can I bring you to paragraph 8 of this – can you just answer this first, *there's nothing there, right, on the face of it?*
>
> A. *It did not specifically refer to –*
>
> Q. *Precisely.*
>
> A. *Yes.*
>
> Q. *Did not specifically refer to it.*
>
> …
>
> [Q.] So, Mr Choo, paragraph 8, "alleged Melbourne Capital Agreement", referring specifically to paragraphs 22 to 23 of your statement of claim where you've pleaded this expressly denied Wilfred is put to strict proof. So where are you coming out and conjuring this alleged admission by Tom? Where? Where, Mr Choo?

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126 Transcript (24 February 2021) at pp 115–118.

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> A. *My evidence is the three Capital cheque issued by – three cheques issued by Capital Bank*, I believe. … The three cheques is the payment by Mr Lee to Mr Phua for the return of his capital. The capital was supposed to be returned around September.
>
> Q. The capital was returned by 27 October 2000, correct?
>
> A. October, yes.
>
> Q. Precisely.
>
> A. The completion date was September.
>
> Q. Yes. So the cheques returning capital to Mr Tom Phua doesn't evidence there is an agreement to pay you 50k, correct?
>
> A. *No evidence, yes.*
>
> [emphasis added]

64 The third example of Mr Choo's conflicting testimony of a material nature was when he testified in court and gave the impression that he had made contemporaneous annotations of time spent on work done for the defendants. On the fifth day of his cross-examination by Mr Phua's counsel, Mr Choo claimed for the first time that, from around 2010 onwards, he had made contemporaneous annotations indicating the time spent on various meetings that he attended for the defendants shortly after these meetings took place.[127] These annotations were not exhibited by Mr Choo, nor were they mentioned in his affidavits. However, even though Mr Phua's counsel invited Mr Choo to produce these annotations for review,[128] Mr Choo stated that he was reluctant to do so because he might then be cross-examined by Mr Phua's counsel.[129] He subsequently confirmed that he did not intend to produce these annotations.[130]

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127 Transcript (23 February 2021), p 17 at lines 10–25 and p 18 at lines 5–8.

128 Transcript (23 February 2021), p 116 at lines 3–5.

129 Transcript (23 February 2021), p 161 at lines 6–8.

130 Transcript (25 February 2021), p 1 at lines 22–25 and p 2 at lines 2–5.

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65 The fourth example of Mr Choo's contradictory evidence of a significant nature was when he testified that there was another set of original invoices besides the 26 alleged invoices dated 30 August 2016 that were exhibited in his Reply and Defence to Counterclaim.[131] I shall refer to the 26 alleged invoices dated 30 August 2016 collectively as the "Invoices" and to each of these invoices individually as an "Invoice". This happened during his cross-examination by Mr Phua's counsel, when Mr Choo claimed (again for the first time) that the total time costs allegedly owed to him by the defendants had been put in writing in an "original bill" sent to the defendants in September or November 2016.[132] He did not produce this alleged original bill before the court.[133] Minutes later, Mr Choo said that the only bills he sent to the defendants were the 26 alleged Invoices,[134] only to then change his position once again by claiming that he had sent the defendants a separate original bill.[135] However, Mr Choo was unable to produce a copy of this alleged original bill.[136]

66 The fifth example of Mr Choo's unreliability as a witness was when he misquoted Mr Ding's affidavit evidence. In Mr Choo's Reply and Defence to Counterclaim, he claimed that Mr Ding had admitted, in his affidavit filed in the OS 902 Interpleader Proceedings, that the defendants had "agreed to pay [Mr Choo] A$50,000 if he could reach a settlement with M/s Mei Leong *and A$50,0000 for each overseas trip*" [emphasis added].[137] However, the

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131 PRDC at Annex A.

132 Transcript (25 February 2021), p 25 at lines 4–12 and p 30 at lines 22–23.

133 Transcript (25 February 2021), p 26 at lines 5 and 24.

134 Transcript (25 February 2021), p 29 at lines 16–20 and p 30 at lines 1–2.

135 Transcript (25 February 2021), p 30 at lines 18–23.

136 Transcript (25 February 2021), p 32 at lines 1–3, 12, and 17.

137 PRDC, p 10 at para 42.

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corresponding paragraph of Mr Ding's affidavit did not state that the defendants had agreed to pay Mr Choo A$50,000 for each overseas trip. Mr Ding stated only that the defendants had agreed to pay Mr Choo A$50,000 if he could reach a settlement with M/s Mei Leong, with an advance payment of A$20,000.[138] During his cross-examination by Mr Ding's counsel, Mr Choo could not offer any explanation for this clear discrepancy apart from stating that it was "a genuine error",[139] and he admitted that it "ought to be deleted" and was "wrong".[140] At best, this casts further doubt on the reliability of Mr Choo's evidence. At worst, as the defendants submit,[141] it may suggest that Mr Choo may have deliberately misrepresented or lied about Mr Ding's affidavit evidence in an attempt to mislead the court.

67 I am, therefore, of the view that Mr Choo's evidence is dangerously unreliable and must be treated with extreme caution. It is prudent not to accept his testimony readily at face value without careful evaluation together with other evidence. This does not mean that I have completely rejected Mr Choo's evidence *in toto* without careful proper assessment.

General observations regarding the defendants' credibility

68 In contrast, I find the defendants to be generally reliable, honest and credible. Their evidence was cogent and largely consistent with their pleadings, affidavits and testimony at the trial. I am, therefore, generally more inclined to believe the defendants' version of the events, particularly where it is supported

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138 Second Defendant's Bundle of Documents, Affidavit of Ding Pei Chai filed in OS 902/2002 at para 131.

139 Transcript (17 February 2021), p 110 at line 6.

140 Transcript (17 February 2021), p 109 at lines 16 and 23.

141 1DCS at paras 82–84; 2DCS at para 95.

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by corroborative evidence. With this in mind, I shall now consider each of the specific issues which arise for determination.

Mr Choo's claim for unpaid fees

Nature of the work done by Mr Choo

69 The defendants submit that the services rendered to them by Mr Choo were clearly legal services. Mr Choo did not have a practising certificate in force between 1 April 2000 and 31 March 2006 and from 1 April 2014 onwards. Hence, the services he rendered to the defendants during these periods were rendered in breach of ss 32(1) and 33 of the LPA. Consequently, Mr Choo is not allowed to recover his purported fees for these services pursuant to s 36(1) of the LPA.[142]

70 In addition, Mr Phua submits that even during the period when Mr Choo *did* have a practising certificate in force (*ie*, from 1 April 2006 to 31 March 2014), Mr Choo is not entitled to recover his purported fees. When I questioned Mr Choo, he admitted that a condition imposed by the Law Society of Singapore (the "Law Society") on the renewal of his practising certificate during this period was that he could not take on any clients.[143] Mr Choo stated that he only renewed his practising certificate so that he could attend and experience court proceedings.[144] On this basis, Mr Phua submits that Mr Choo's provision of legal services to the defendants breached the LPA even during the period when he had a practising certificate in force.[145] The legal services provided to the

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142 1DCS at paras 8(1), 9 and 39; 2DCS at para 149; First Defendant's Reply Submissions ("1DRS") at paras 14–15.

143 Transcript (26 February 2021), p 92 at lines 4–10 and 19–22.

144 Transcript (26 February 2021), p 91 at lines 12–21 and p 92 at lines 6–7 and 12–14.

145 1DCS at para 41.

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defendants during this period would not have been covered by his practising certificate.[146] Mr Phua also contends that Mr Choo admitted that he did not use his practising certificate to solicit for clients. Mr Choo also affirmed in his affidavits that he only provided law-related business consultancy services even during the period when he had a practising certificate in force. Thus, Mr Choo made a carefully considered factual and legal concession that he was not relying on his practising certificate to legitimise his services to the defendants. Consequently, if it is found that Mr Choo provided legal services to the defendants, Mr Choo cannot then be allowed to rely on his practising certificate *ex post facto* as a shield against the provisions of the LPA. In this regard, Mr Phua relies on the Court of Appeal's decision in *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal and another appeal and another matter* [2021] 1 SLR 342 at [103]–[111].[147]

71 The defendants, therefore, submit that Mr Choo cannot be allowed to claim his purported legal fees for the legal services he provided to them in breach of the LPA. If Mr Choo, who brazenly admitted that he was unregulated by any Bar association and did not have any legal liability or professional insurance coverage,[148] were allowed to claim such fees, this would result in a failure to protect the public from unauthorised persons who carry out acts typically done by advocates and solicitors. This would have grave legal, financial and other implications on their clients.[149]

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146 1DCS at para 43.

147 1DCS at para 42.

148 Transcript (19 February 2021), p 133 at lines 4–16.

149 1DCS at para 44.

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72 In addition, the defendants argue that Mr Choo's claim is barred by statutory and common law illegality as follows:

(a) Mr Phua submits that the LPA not only prohibits the *conduct* of providing legal services without a practising certificate and bars any civil claim for fees arising therefrom, but also impliedly prohibits *contracts* for such services. This is because ss 32–36 of the LPA were enacted to protect the public from claims to legal services by unauthorised persons. The agreement for Mr Choo's legal services was formed when Mr Choo did not have a valid practising certificate in force. Mr Choo's contravention of the LPA strikes at the very root of the contract and such illegality cannot be cured by subsequently obtaining a practising certificate. Thus, Mr Choo is barred from claiming his legal fees for *all* his legal services rendered to the defendants, including those rendered during the period when he had a practising certificate in force.[150]

(b) Mr Ding submits that, applying the factors set out by the Court of Appeal in *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*"), it is clear that the court should deny Mr Choo any recovery. The legislative intent of the LPA is to protect the public from claims to legal services by unauthorised persons. Further, the defendants' agreement to appoint Mr Choo as their legal adviser is for the very act prohibited under the LPA and Mr Choo cannot be allowed to profit from his own wrong. Mr Ding contends that

150 1DCS at para 44A.

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> Mr Choo is a menace to society and that the court should not condone his actions by allowing his claim.[151]

73 On the other hand, Mr Choo denies providing legal services in breach of the LPA when he did not have a practising certificate in force. Instead, Mr Choo submits that he only provided the defendants with law-related *business consultancy* services, which are not governed by the LPA, and in respect of which he is entitled to claim consultancy fees.[152] In response to Mr Phua's argument that he is not entitled to rely on his practising certificate which was in force from 1 April 2006 to 31 March 2014, Mr Choo clarified that what he was trying to express was that he was not required to maintain and file accounts for his sole proprietorship law firm, "WChoo & Company", because he did not take on any paying clients during that period.[153]

(1) The applicable law

74 As a preliminary point, I note that Mr Choo's work was performed over a period spanning from 2000 to (on Mr Choo's account) 2018. During this period of 18 years, several different versions of the LPA were in force. However, the relevant provisions are *in pari materia* with the current version of the LPA and the parties have referred to the current version in their submissions, thus I shall similarly refer to the current version.

75 Section 32(1) of the LPA provides that no person shall practise as an advocate and solicitor, or do any act as an advocate and solicitor, unless his name is on the roll and he has in force a practising certificate. If a person does

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151 2DCS at paras 146–148.

152 PCS at paras 7 and 20.

153 PRS at para 15.

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not have in force a practising certificate, he is an "unauthorised person" for the purposes of the LPA (s 32(2)(*b*) of the LPA).

76 Pursuant to s 36(1) of the LPA, no costs in respect of anything done by an unauthorised person as an advocate or a solicitor, or in respect of any act which is an offence under s 33, shall be recoverable in any action, suit or matter. "Costs" are defined in s 2(1) of the LPA as including fees, charges, disbursements, expenses and remuneration. It is important to note that there are two disjunctive limbs of s 36(1): it bars the recovery of any costs in respect of anything done by an unauthorised person as an advocate or solicitor, *or* acts which are an offence under s 33. Hence, it is not necessary for an act to be an offence under s 33 in order for s 36(1) to apply. Section 36(1) will bar an unauthorised person from recovering his costs so long as those costs are in respect of acts done as an advocate or solicitor. Further, under s 36(2), any payment to an unauthorised person for anything done by him which is an offence under s 33 may be recovered by the person who paid the money.

77 Under s 33(1) of the LPA, an offence is committed by any unauthorised person who acts as an advocate or solicitor or agent for any party to proceedings, or performs certain acts as such advocate or solicitor, or wilfully or falsely uses any title or description implying that he is duly qualified or authorised to act as an advocate or solicitor:

> **Unauthorised person acting as advocate or solicitor**
>
> **33.**—(1) Any unauthorised person who —
>
> (a) acts as an advocate or a solicitor or an agent for any party to proceedings, or, as such advocate, solicitor or agent —
>
> (i) sues out any writ, summons or process;
>
> (ii) commences, carries on, solicits or defends any action, suit or other proceeding in the name

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> of any other person, or in his own name, in any of the courts in Singapore; or
>
> (iii) draws or prepares any document or instrument relating to any proceeding in the courts in Singapore; or
>
> (b) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorised to act as an advocate or a solicitor, or that he is recognised by law as so qualified or authorised,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both.

78 Section 33(2) of the LPA lists examples of specific acts that will fall within the prohibition in s 33(1). This includes an unauthorised person who, directly or indirectly, "draws or prepares any document or instrument relating to any movable or immovable property or to any legal proceeding" (s 33(2)(*a*)), unless he proves that the act was not done for or in expectation of any fee, gain or reward.

79 The LPA does not define what it means to act as an advocate and solicitor for the purposes of ss 32(1), 33(1), and 36(1). However, the tests for determining when a person is acting as an advocate and solicitor were set out by Chan Sek Keong JC (as he then was) in *Turner*. Chan JC noted that what constitutes acting as an advocate and solicitor could be inferred from the list of specific acts set out in what is now s 33(2) of the LPA, but that this list was not exhaustive of all the acts or services of an advocate and solicitor (*Turner* at [14]). Having considered the text of the relevant provisions as well as case law from different jurisdictions, Chan JC said (*Turner* at [20]):

> In my view, two tests may be constructed from these authorities and the provisions of ss 29 and 30 of the Act:

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> (a) Other than those specific acts listed in ss 30(1) and 30(2), an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function to provide, *eg giving advice on legal rights and obligations*, drafting contracts and pleadings and pleading in a court of law [the "first *Turner* test"].
>
> (b) A person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is *employed to act as such in any matter connected with his profession* [the "second *Turner* test"].
>
> [emphasis added]

80 *Turner* concerned a firm of New York attorneys who had purported to represent one party (the subcontractor) in the arbitration proceedings. The other party to those proceedings (the contractor) had applied for an interim injunction restraining the New York attorneys from acting in the arbitration, on the ground that this would contravene the then s 29(1) or s 30(1) of the LPA (now s 32(1) and s 33(1) of the LPA). It was undisputed that the New York attorneys would be providing services which included advising on the subcontractor's rights and liabilities under the subcontract between the parties and drafting such documents as might be required for the arbitration (see *Turner* at [4]–[5], [7] and [10]). Applying the two *Turner* tests, Chan JC found that it was "beyond any doubt" that the New York attorneys would be acting as advocates and solicitors in providing their services to the subcontractor. The first *Turner* test was satisfied as these were "services customarily provided by advocates and solicitors of the Supreme Court" and indeed could be said to "constitute the core services of the legal profession". The second *Turner* test was also satisfied as the New York attorneys' employment in the arbitration proceedings was "in connection with their profession as attorneys and because they [were] attorneys", rather than in "some other non-legal capacity" (*Turner* at [21]). Consequently, Chan JC found that the New York attorneys' representation of the subcontractor in the arbitration proceedings in Singapore would contravene

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the then-s 29(1) and/or s 30(1) of the LPA and ordered the interim injunction to be made permanent (*Turner* at [35]). Chan JC also remarked that even though the New York attorneys were acting in only one dispute, the "degree and duration" of their participation in the proceedings were "relevant factors to be taken into account". In *Turner*, the dispute was "of a substantial character which [might] take a long time to be resolved by arbitration and/or in further proceedings by way of appeal". Hence, they would be practising as advocates and solicitors for the duration of the case (*Turner* at [25]).

81 While Chan JC's remarks were made with reference to ss 29 and 30 of an earlier version of the LPA, these provisions are *in pari materia* with ss 32 and 33 of the LPA (as extracted at [77] above) respectively. Further, in my view, the two *Turner* tests are equally applicable in determining whether an act was "done by an unauthorised person as an advocate or a solicitor" for the purposes of the current s 36(1) of the LPA. Following Chan JC's decision in *Turner*, the LPA was amended to provide that ss 32 and 33 would not extend to arbitration proceedings. This was done through the introduction of what is now s 35 of the LPA.[154] The purpose of this amendment was to overcome the "unintended adverse effects [of *Turner*] on the commercial reputation of Singapore as a centre for international arbitrations" and to "enable the Singapore International Arbitration Centre to be as competitive as the other centres", such as Kuala Lumpur and Hong Kong, which allowed foreign lawyers to appear in arbitration proceedings (*Singapore Parliamentary Debates, Official Report* (27 February 1992) vol 59 at col 425 (Prof S Jayakumar, Minister for Law)). However, no other amendments were made to the LPA to alter the effect of the other aspects of the *Turner* decision. Hence, I disagree with Mr Choo's counsel, who suggested in his oral submissions that the reasoning in *Turner* (which was

154 Transcript (27 May 2021), p 123 at lines 12–14.

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decided in 1988) is no longer applicable in "our current economic and business climate".[155]

82 Moreover, I accept the defendants' submission that the two *Turner* tests should be read disjunctively and not conjunctively.[156] Thus, only one of the tests needs to be satisfied for a person to be found to have acted as an advocate and solicitor.

83 In particular, while the giving of advice on legal rights and obligations is not specifically listed in s 33 of the LPA, it is one of the quintessential services rendered by advocates and solicitors. In the words of the Supreme Court of Victoria in *Cornall v Nagle* [1995] 2 VR 188 at p 208, "the giving of legal advice, at least as part of a course of conduct and for reward, can properly be said to lie *at or near the very centre of the practice of the law*, and hence of the notion of acting or practising as a solicitor" [emphasis added].

84 Based on the above, there are three types of work for which an unauthorised person cannot claim any remuneration and which are relevant in the present case:

(a) work that he was employed to do as an advocate and solicitor in any matter connected with the profession of advocates and solicitors (the second *Turner* test);

(b) work done by him that falls within any of the specific categories set out in s 33 of the LPA (in particular, acting as an advocate or solicitor in preparing any document relating to any legal proceeding); and

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155 Transcript (28 May 2021), p 63 at lines 1–11.

156 Transcript (27 May 2021), p 112 at lines 3–16.

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(c) work done by him that is customarily within the exclusive function of advocates and solicitors to provide (in particular, giving advice on legal rights and obligations) (the first *Turner* test).

85 At this juncture, I would like to address Mr Choo's arguments regarding the interpretation of the above provisions of the LPA. He submits that s 33 of the LPA states exactly the scope of services that an unauthorised person is disallowed from carrying out, and that the list of disallowed acts under s 33 must be exhaustive since they attract potential criminal sanctions. Accordingly, Mr Choo contends that the LPA places no restrictions on the following acts: (a) business consultants referring their clients to professional lawyers to commence legal proceedings; (b) business consultants giving inputs on legal issues during the course of their consultancy services; and (c) all types of consultancy work (*eg*, mediation, negotiation, and drafting contractual documents) that may contain legal elements.[157] To support this argument, Mr Choo relies on cases such as *Public Prosecutor v Bhaskaran Shamkumar* [2005] SGDC 147 ("*Bhaskaran*"), *Public Prosecutor v Mahadevan Lukshumayeh* [2005] SGDC 129 and *Public Prosecutor v Jasvendar Kaur d/o Avtar Singh* [2006] SGDC 216, where the accused persons were charged under s 33 of the LPA.

86 In my view, this argument is flawed for two reasons. First, in *Turner*, Chan JC expressly stated that acts other than the specific acts listed in (what is now) ss 33(1) and 33(2) of the LPA may nevertheless be acts of an advocate and solicitor (*Turner* at [20]). Second, Mr Choo's argument fails to consider the operation of s 36(1) of the LPA which, as stated at [76] above, has two disjunctive limbs. In this case, Mr Choo was an unauthorised person even

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157 PCS at paras 12–13.

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though he was admitted as an advocate and solicitor of the Supreme Court under s 16 of the LPA as he did not have a practising certificate in force during the relevant periods (see s 32(2)(*b*) of the LPA). Therefore, so long as the work done by him was done "as an advocate or a solicitor", s 36 operates to bar his *civil* claim for fees charged in connection with that work. It is not necessary for me to ascertain whether he is guilty of an offence under s 33.

87 This accords with the policy concerns underlying the prohibition on unauthorised persons acting as advocates and solicitors, namely, that members of the public should receive and pay for legal services only from those duly qualified and authorised to carry on legal work. The acts undertaken by advocates and solicitors have "grave financial and other implications on their clients, including potential loss of liberty in personal criminal matters" (*Bhaskaran* at [12]). Unauthorised persons who conduct themselves as advocates and solicitors undermine public confidence in, and the repute of, the legal profession. Furthermore, they also expose their clients to possible loss because they do not possess the necessary professional indemnity insurance cover (see *Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 at [5] and [8]). Further, advocates and solicitors are subject to "a stringent set of professional rules and restrictions" (*Bhaskaran* at [12]), including rules relating to professional practice, conduct and discipline (in Part VI of the LPA), as well as rules relating to the recovery and taxation of costs (in Part IX of the LPA). While the rules and restrictions prescribed in the LPA may apply to both authorised and unauthorised persons, the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) (the "LP(PC)R") do not apply to solicitors who do not have a practising certificate in force (see r 3 of the LP(PC)R). The LP(PC)R contains important and detailed rules governing legal practitioners' duties to their clients and the professional fees and costs they can charge. The following observations made in *Bhaskaran* at [17] are worth setting out in full:

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> First, the statutory prohibition against the practice of law in the absence of a valid practicing certificate is for the protection of the public. *Even though the accused may have the legal and personal ability to practice, he is immune from control, regulation and, in the case of misconduct, from discipline by the Law Society for any ethical or disciplinary matters.* Second, the client of a lawyer who is authorized to practice has *the protection and benefit of the high professional standards of care that the law requires of lawyers, as well as the authority that the courts do exercise over them.* Other safeguards include group professional liability insurance up to $1 million for each and every claim for civil liability that may be incurred by a practising lawyer, rights with respect to the assessment of lawyers' accounts, rules regarding trust funds, and the requirements for the maintenance of funds financed by lawyers to compensate clients who have been victimized by dishonest lawyers. *In contrast, all such safeguards are absent in the case of an unauthorised person who acts as an advocate or solicitor.*
>
> [emphasis added]

88 During his oral submissions, Mr Choo's counsel sought to argue that there are alternative forms of recourse against unauthorised persons who act as advocates and solicitors, namely: suing such persons in court, prosecuting them for offences and relying on principles of contract law.[158] This submission misses the point. The LPA and the LP(PC)R form a key part of the regulatory framework governing unauthorised persons who act as advocates and solicitors. To argue that the provisions of the LPA and LP(PC)R should not be given their full effect simply because other forms of recourse might also be available to those in the defendants' position would severely undermine this regulatory framework.

89 Similarly, Mr Choo's argument that he was a "legally trained business consultant", and was, therefore, not governed by the LPA,[159] holds no water. What is crucial is the nature of the work done by the unauthorised person. If the

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158 Transcript (28 May 2021), p 85 at lines 11–20 and p 86 at lines 1–18.

159 PRS at para 5.

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nature of the work done is in fact *legal* work, then the fact that it is provided by a self-styled "business consultant" is no defence under the LPA.

(2) My findings

90 It is not disputed that Mr Choo did not have a valid practising certificate in force from 1 April 2000 to 31 March 2006, and from 1 April 2014 onwards (see [40] above). Mr Choo was, therefore, an unauthorised person during these periods. With this in mind, I shall now consider whether the work done and services rendered by Mr Choo during the periods when he did not have a valid practising certificate fall within the types of work outlined at [84] above.

(A) WORK DONE IN THE COURSE OF EMPLOYMENT AS AN ADVOCATE AND SOLICITOR

91 I shall first consider whether Mr Choo was employed by the defendants to act as an advocate and solicitor in any matter connected with the profession of advocates and solicitors.

92 Mr Choo contends that he never held himself out to be a qualified advocate and solicitor. He submits that the defendants engaged him as their *business consultant* to deal with their business matters, which involved several legal disputes, and not as an advocate and solicitor.[160] He relies on the fact that he was referred to as a consultant in various documents, such as the LOAU 1, the Trust Agreement, the Consultancy Agreement and the Tripartite Agreement.[161] Further, he argues that in so far as terms such as "legal fees", "legal services" and "legal consultant" were used in the written agreements between the parties, this does not indicate that he was acting as an advocate and

160 PRDC, p 9 at para 36 and pp 27–28 at paras 30–31; PCS at paras 20–21.

161 PCS at paras 54–69.

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solicitor. Instead, Mr Choo said these terms were either used erroneously by him,[162] or indicate only that he expected the business consultancy work he did for the defendants to touch on legal issues.[163]

93 Mr Choo distinguishes the facts of *Turner* from the present case on two grounds: (a) he did not draft documents for legal proceedings, lead evidence on behalf of the defendants and cross-examine witnesses, or make submissions on the law or the facts in legal proceedings; and (b) there was never a warrant to act or letter of engagement signed between Mr Choo and the defendants formally appointing him as their advocate and solicitor.[164] On this basis, Mr Choo argues that his scope of works for the defendants was nowhere near to the package of legal services provided by the New York attorneys in *Turner*.[165]

94 In addition, Mr Choo argues that there was no solicitor-client relationship between himself and the defendants. He relies on the case of *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 ("*Rabiah*"), where Judith Prakash J (as she then was) found that the defendant was not the plaintiff's solicitor because the defendant had not issued any express retainer or other document in which he purported to act as the plaintiff's solicitor or gave legal advice to the plaintiff in her personal capacity. Prakash J remarked that, in the absence of an express agreement or express assertion of authority to act on the purported client's behalf, one would need to show that an objective consideration of all the circumstances led to the conclusion that an intention to enter into a solicitor-client relationship ought fairly and properly be imputed to

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162 PCS at para 55.

163 PCS at para 39.

164 PCS at paras 40–41.

165 PCS at para 70(b).

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both parties. The implication that a solicitor-client relationship existed must be "so clear that the solicitor ought to have appreciated it" (at [58]). Mr Choo submits that he falls squarely within the facts of *Rabiah* because there was no formal document or contract, such as a warrant to act or letter of engagement, indicating that the defendants had engaged Mr Choo as their solicitor, and the defendants had also appointed various external counsel during the material time.[166]

95 Further, Mr Choo contends that the defendants ultimately relied on the advice of their instructed solicitors to protect and further their legal interests. He relies on Mr Ding's testimony that if the defendants' appointed foreign lawyers gave advice that conflicted with Mr Choo's, Mr Ding would accept the foreign lawyers' advice.[167] If the defendants' appointed local lawyers gave advice that conflicted with Mr Choo's, Mr Ding would apply his own mind to decide whose advice to follow.[168] On this basis, Mr Choo argues that he was simply providing his views as a business consultant, and that if he had been the primary provider of legal advice to the defendants, there would have been no need for the defendants to engage these instructed solicitors. He further argues that he could not have been providing legal services when these instructed solicitors were already the solicitors in charge doing substantial legal work for the defendants.[169] Moreover, these instructed solicitors would do the final checks and seek the defendants' clearance before any court documents were filed.[170] There is no written evidence showing that Mr Choo was appointed as

166 PRS at paras 6–7.

167 PCS at para 42.

168 PCS at para 43.

169 PRS at para 3, table of Written Agreements at s/n 4(2).

170 PCS at para 44.

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the defendants' "instructing solicitor".[171] Instead, he acted merely as a business consultant to assist and liaise with the defendants' instructed solicitors in the legal proceedings,[172] and to "supplement and support" these instructed solicitors.[173]

96 On the other hand, the defendants submit that they engaged Mr Choo to act as their lawyer and legal adviser, to do all things legal in nature relating to the recovery of the profits of their investments in the Melbourne Properties.[174] They always saw Mr Choo as their lawyer and engaged Mr Choo solely for his legal expertise and knowledge. They testified that Mr Choo did not provide them with financial or other services.[175]

97 When Mr Phua and Mr Choo became colleagues in Phillip Securities, Mr Choo shared with Mr Phua that he had previously studied law and practised as a lawyer.[176] During their conversations as colleagues, Mr Choo told Mr Phua that he could provide him with legal advice and help him resolve his legal problems relating to the Melbourne Properties. He also shared with Mr Phua that he had a wide knowledge of the law.[177] Subsequently, at their first meeting in Kuala Lumpur, Mr Choo introduced himself to Mr Ding as someone who was capable of providing legal advice and legal assistance in relation to, among other matters, the aborted Yip Atech Shares Transaction, including the OS 601

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171 PCS at paras 52–53.

172 PCS at para 65.

173 PRS at para 3, table of Written Agreements at s/n 4(3).

174 1DCS at para 5; 2DCS at paras 136 and 141–142.

175 1DCS at para 36; 2DCS at paras 142–143.

176 Affidavit of Evidence-in-Chief of Phua Swee Khiang ("PSK") at para 7.

177 PSK at para 25.

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Interpleader Proceedings.[178] At this meeting, Mr Choo gave Mr Ding his Phillip Securities name card, which stated "Barrister-at-Law" and "Advocate & Solicitor" under his name.[179]

98 I pause here to note that Mr Choo contends that the words "Advocate & Solicitor" were printed on his name card merely to reflect his past work experience and qualifications.[180] When I questioned him on his name card, Mr Choo acknowledged that it was wrong to state that he was an advocate and solicitor on his name card as he did not have a practising certificate at that time.[181] During his cross-examination by Mr Ding's counsel, he blamed it on Phillip Securities for putting these details about his legal qualifications on his name card and argued that the printing and distribution of his name cards were beyond his control.[182] I find this explanation unsatisfactory. Phillip Securities must have sought Mr Choo's approval on the details of his name cards before they were sent for printing. Mr Choo could have rejected the name cards and sought a reprint of the name cards without his legal qualifications. Even if I accept his explanation, Mr Choo could have chosen not to distribute his name cards or could have easily cancelled his legal qualifications from his name cards so as not to mislead others into perceiving that he could offer legal services for a fee. None of these steps were taken in this case. Indeed, by Mr Choo's own account, he allegedly took steps to rectify the information on his name card

178 PSK at para 28; DPC at para 12.

179 ABOD, Vol 2 at p 673; Transcript (3 March 2021), p 57 at lines 5–7; Transcript (4 March 2021) at p 22–23; 1DCS at para 33; 2DCS at para 141(1).

180 PCS at para 23.

181 Transcript (17 February 2021), p 81 at lines 11–25 and p 82 at lines 1–13.

182 Transcript (17 February 2021), p 74 at lines 10–16 and p 80 at lines 4–11; PCS at para 22.

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around six months after it was given to Mr Ding in Kuala Lumpur.[183] This attempt to rectify his name card belies Mr Choo's argument that the words "Advocate & Solicitor" were merely a reflection of his past work experience and qualifications. I also agree with the defendants' submission that the natural reading of the words "advocate and solicitor" is that they describe one's *current* occupation, and not past work and experience.[184]

99 Consequently, the defendants submit that they agreed to appoint Mr Choo as their "legal adviser and mediator".[185] Mr Phua referred to Mr Choo as such in his fax to Mr Lee dated 13 July 2001 (in which Mr Ding was copied).[186] To the defendants, there is no difference between a legal adviser and a lawyer.[187]

100 Further, Mr Phua states in his affidavit that, from the time he and Mr Ding appointed Mr Choo in 2001, they "always saw him as [their] lawyer" and had appointed him in this capacity.[188] Mr Phua emphasises that the defendants only appointed Mr Choo to provide them with *legal* advice and *legal* services in respect of the disputes relating to the investments in the Melbourne Properties.[189] It was Mr Choo who recommended that the defendants appoint JCHK to act for them in the OS 902 Interpleader Proceedings and the OS 601 Interpleader Proceedings. Nevertheless, Mr Phua still relied on Mr Choo to do

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183 Transcript (17 February 2021), p 80 at lines 15–18.

184 1DRS at para 11.

185 PSK at para 29.

186 ABOD, p 674 at para 1.

187 Transcript (26 February 2021), p 132 at lines 1–4; Transcript (3 March 2021), p 48 at lines 10–16.

188 PSK at para 53.

189 PSK at paras 21, 32(6), 36–37.

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all the legal work.[190] Indeed, Mr Phua went so far as to say that he thought that JCHK was "just a postbox for Wilfred Choo".[191] Similarly, Mr Ding describes Mr Choo as his "chief legal strategist" in the disputes regarding the ACU Account in various jurisdictions.[192] For example, it was Mr Choo who advised Mr Ding to proceed with what later became the OS 902 Interpleader Proceedings. At this point in time, Mr Ding had no other lawyers.[193] Further, according to Mr Ding, during his meetings with Mr Choo, Mr Choo consistently took the lead in discussing the defendants' legal strategy.[194] In particular, it was Mr Choo who advised the defendants to commence proceedings in various countries and to appoint various instructed solicitors in those countries.[195]

101 The defendants also contend that they relied primarily on Mr Choo for his *legal* expertise. During the trial, Mr Phua stated specially that he trusted Mr Choo's extensive knowledge of the law. Apart from Mr Choo's legal knowledge, Mr Choo was not of use to him and Mr Ding for accounting and other financial matters.[196] Mr Phua also stated that when he first engaged Mr Choo in 2000, his impression was that Mr Choo was a lawyer who would provide legal services, and he trusted Mr Choo's expertise in *legal* work.[197] He did not need to appoint Mr Choo to handle any financial work because he already had his ex-colleague, Mr Patrick Leong, to help him with the accounts

190 Transcript (2 March 2021), p 8 at lines 11–13 and p 10 at lines 15 and 24–25.

191 Transcript (2 March 2012), p 8 at lines 12–13.

192 Transcript (4 March 2021), p 139 at lines 11–13.

193 Transcript (4 March 2021), p 133 at line 25 and p 134 at lines 1–14.

194 Transcript (4 March 2021), p 135 at lines 20–23.

195 Transcript (4 March 2021), p 136 at lines 5–9 and 19–23.

196 Transcript (26 February 2021) p 122 at lines 10–16.

197 Transcript (1 March 2021), p 38 at lines 1–2 and 9–12.

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relating to the Melbourne Properties.[198] Similarly, Mr Ding testified that Mr Choo was engaged by them to render legal advice and handle legal matters, not financial matters, because Mr Choo did not have financial expertise. Mr Ding had others (including his own professional auditors) to assist him in financial matters.[199]

102 Consequently, the defendants submit that they have given clear and unequivocal testimonies that Mr Choo was engaged to provide them with legal services and he was not employed in some other non-legal capacity.[200] The problems that beset the defendants were disputes of a legal nature with Mr Lee and others. Hence, they sought legal advice and services from Mr Choo.

103 In my view, it is clear that the defendants employed Mr Choo to act as an advocate and solicitor, rather than in some other non-legal capacity. Much like the New York attorneys in *Turner* who were employed in the arbitration proceedings "in connection with their profession as attorneys and because they are attorneys", and not "to act as experts in the science of building construction or the valuation of works done under the subcontract or in some other non-legal capacity" (*Turner* at [21]), Mr Choo was engaged by the defendants specifically for his expertise *in law*. This was the basis on which the defendants first engaged his services. This is also consistent with the work subsequently done by him in relation to the defendants' various legal disputes. This is further corroborated by Mr Ding's e-mail dated 9 July 2014 (the "9 July 2014 E-mail"), in which he stated that he had "fully trusted" Mr Choo and "act[ed] according to [his] advice" from the beginning, including appointing various lawyers, because he

198 Transcript (1 March 2021), p 43 at line 25 and p 44, lines 1–8 and 12–15.

199 Transcript (4 March 2021), p 101 at lines 19–25, p 102 at lines 1–25, and p 103 at lines 1–12.

200 1DRS at para 4.

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had been told by Mr Phua that Mr Choo had "very wide legal knowledge".[201] The grounds on which Mr Choo sought to distinguish his case from *Turner* are, therefore, not persuasive. In particular, the absence of a warrant to act or letter of engagement signed between Mr Choo and the defendants does not prevent the court from finding that the defendants, as laypersons, in substance engaged Mr Choo to provide them with legal services as their lawyer.

104 The foundation of Mr Choo's case in relation to the LPA is that he rendered business consultancy services, and not legal services, to the defendants. However, Mr Choo's counsel conceded that there was not a single document before the court describing Mr Choo as a business consultant.[202] Mr Choo's counsel asserted that Mr Choo was engaged by the defendants as a business consultant to protect their business interests, whose work incidentally involved advising the defendants on legal disputes relating to their investments in the Melbourne Properties.[203] However, there is no evidence that Mr Choo provided the defendants with financial or investment advice relating to the Melbourne Properties. Instead, it is clear that Mr Choo was engaged for the purpose of assisting the defendants in disputes that were fundamentally *legal* in nature, from the negotiation of the 2001 Mei Leong Settlement Agreement to their long-running dispute with Mr Lee in various jurisdictions over the Melbourne Properties.

105 The case of *Rabiah* does not assist Mr Choo. In *Rabiah*, the plaintiff and the defendant, who were siblings, had entered into a joint venture to invest in properties in London. The parties' relationship soured and the plaintiff brought

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201 CBOD, Tab 11 at p 2.

202 Transcript (28 May 2021), p 68 at lines 22–24 and p 74 at lines 5–18.

203 Transcript (27 May 2021), p 8 at lines 5–16.

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a claim against the defendant alleging, among other things, that he had breached the fiduciary duties he owed to her as her solicitor. The defendant was a practising lawyer and had acted as the plaintiff's solicitor when she was conducting her fashion business. The relevant issue before the court in *Rabiah* was, therefore, whether the defendant was acting in his capacity as the plaintiff's lawyer for the joint venture (see *Rabiah* at [51]–[52]). It was in this context that the court held that the defendant was not the plaintiff's personal solicitor and that any advice he gave was given to her in his capacity as her business partner, with the aim of protecting and advancing the interests of the joint venture. Such advice was not directed to protecting or advancing the individual interest of the plaintiff (*Rabiah* at [60]). Further, in *Rabiah*, the defendant does not appear to have received any remuneration for his advice. The circumstances of the present case are completely different. In this case, the issue is not whether Mr Choo has breached the professional duties he owed the defendants as their solicitor, but instead whether Mr Choo was engaged by the defendants to perform the work of an advocate and solicitor while he was an unauthorised person, and whether he should be allowed to claim fees for such work from them.

106 Given that Mr Choo had rendered his legal services to the defendants (who are laypersons with regard to the law), it was incumbent on him to inform them that he was unable to render legal services to them because he did not have a practising certificate in force. However, Mr Choo did not do so.[204] Even after the 9 July 2014 E-mail in which Mr Ding clearly indicated to Mr Choo that he was relying on his legal knowledge and expertise, Mr Choo took no steps to correct Mr Ding's perception of him as their legal adviser.[205] When Mr Phua's counsel asked why he had omitted to take any such steps, Mr Choo's only

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204 Transcript (26 February 2021), p 97 at lines 23–25 and p 98 at lines 1 and 4.

205 Transcript (24 February 2021), p 84 at lines 8–11 and 16–21.

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explanation was that he "[does not] control somebody else's opinion" and he thought these were "trivial matters".[206] This is a flimsy and unacceptable explanation in the face of overwhelming evidence from the defendants that they perceived Mr Choo as an advocate and solicitor and engaged him to act for them as such. In these circumstances, it certainly does not lie in Mr Choo's mouth to argue that he "cannot be responsible for the impression [the defendants] had of him", to shift the blame to the defendants for not conducting their own checks to ensure that Mr Choo had a valid practising certificate or that his qualifications were accurately stated.[207] Mr Choo also cannot allege that the defendants' "mistaken perceptions" that he was a lawyer were "their own fault".[208]

107 I also agree with the defendants' submission[209] that this court should reject Mr Choo's argument that he was not performing legal services because the defendants ultimately relied on the advice of their instructed solicitors.[210] The defendants explained that they relied on Mr Choo as their chief legal strategist throughout, including before they had engaged any other instructed solicitors. Indeed, it was Mr Choo who advised the defendants to appoint several of their instructed solicitors (see [100] above). I cannot accept Mr Choo's submission that his recommendation of various lawyers to the defendants "shows not only his own awareness that he cannot practice as an advocate and solicitor, but the honesty to communicate it to the [d]efendants as well".[211] As a lawyer, Mr Choo was aware that he could not practise as an

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206 Transcript (24 February 2021), p 86 at lines 14 and 23–24.

207 PCS at paras 25–26 and 31.

208 PRS at para 14.

209 2DCS at para 145.

210 PCS at para 44.

211 PRS at paras 9 and 37.

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advocate and solicitor when he did not have a practising certificate, yet he did, in fact, act as an advocate and solicitor for the defendants during the relevant periods. The evidence also shows that Mr Choo took no steps to communicate to the defendants that he could not act as their lawyer (see [106] above). In these circumstances, Mr Choo's behaviour and conduct *vis-à-vis* the defendants can hardly be described as "honest".

108 Further, I agree with the defendants' submission that Mr Choo's interpretation of the LPA would mean that an unauthorised person could purport to give legal advice and prepare documents relating to legal proceedings, charge exorbitant fees, and yet remain "untouched by the regulatory system" applicable to solicitors with practising certificates, so long as his final work product is ultimately cleared by a practising lawyer.[212] This would be wholly illogical and an undesirable outcome.

109 The contemporaneous written correspondence and agreements between the parties, which were sent or drafted by Mr Choo, also suggest that Mr Choo was employed as an advocate and solicitor to provide the defendants with *legal* services. The following evidence shows that Mr Choo provided legal services:

(a) In his 25 July 2001 E-mail to Mr Phua, Mr Choo described his services as "legal services", referred to the provision of his "legal opinion", and described his fee as a "legal fee".[213] At the trial, Mr Choo admitted that he was offering legal services in this e-mail to the defendants.[214]

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212 Transcript (27 May 2021), p 131 at lines 17–25 and p 132 at lines 1–14.

213 ABOD, Vol 2 at p 680, items 1, 2 and 5.

214 Transcript (19 February 2021), p 115 at lines 6–16.

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(b) The LOAU 1, which was the first written agreement between Mr Choo and Mr Phua, referred to Mr Choo's "legal fee" thrice.[215]

(c) Under the Consultancy Agreement, Mr Choo was to "[a]ttend to all matters whether legal or factual in nature in respect of the interpleader proceedings under Originating Summons No 601786 of 2001 in the High Court of Singapore, and … instruct [the defendant's] solicitors as and when it [was] appropriate"; "[a]dvise on the strategy which includes assisting [in the] drafting of the Statement of Claims [*sic*], affidavits and other procedural matters"; "[s]ubmit all documents relevant to the interpleader proceedings"; and "[p]repare [the defendants'] solicitors for the trial proceedings to be held in Chambers".[216] During his cross-examination by Mr Phua's counsel, Mr Choo admitted that the services he was engaged to provide under the Consultancy Agreement required him to use his legal expertise and knowledge to assist the defendants.[217]

(d) In cll 2(d) and 3 of the DATBI, Mr Choo was described as Mr Phua's "legal consultant" to whom "consultancy and *legal fees*" [emphasis added] were owed.[218]

(e) In the two e-mails sent by Mr Choo to Mr Ding on 10 June 2013, Mr Choo referred to his "legal fee" twice in respect of work already done and work to be done for the defendants.[219]

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215 CBOD at Tab 1.

216 CBOD, Tab 3 at p 2.

217 Transcript (22 February 2021), p 69 at lines 16–19.

218 CBOD, Tab 6 at pp 1–2.

219 CBOD at Tab 15.

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110 Similarly, in his affidavit of evidence-in-chief filed in the OS 902 Interpleader Proceedings, Mr Choo described himself as the defendants' "legal consultant".[220]

111 When Mr Choo was cross-examined by Mr Phua's counsel on his repeated use of the word "legal" to describe his services and fees, he eventually admitted that this word choice was deliberate.[221] I find Mr Choo's subsequent attempt to qualify his admission by claiming on the stand that he used the word "legal" deliberately only in relation to his *fees*, and not in relation to his *appointment*,[222] wholly unconvincing. In my view, it is unbelievable that a legally trained person such as Mr Choo, who had drafted several documents for the defendants, would have used the word "legal" so many times without appreciating its meaning and implications. It is similarly unbelievable that such a person would have used the word "legal" deliberately only to describe his fees, but not his appointment.

112 Further, Mr Choo's invoice dated 7 July 2014 addressed to Mr Ding (the "7 July 2014 Invoice") was issued in the name of "WChoo & Company",[223] which was the law firm Mr Choo had set up in 2006 as a sole proprietorship.[224] I agree with the defendants' submission that this further suggests that Mr Choo viewed himself as being engaged by the defendants to act as an advocate and solicitor and to provide legal services, and that he was charging legal fees for

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220 Affidavit of Evidence-in-Chief of Choo Cheng Tong Wilfred in the OS 902 Interpleader Proceedings ("CCTW (OS 902)") at paras 1 and 14.

221 Transcript (24 February 2021), p 32 at lines 6–7.

222 Transcript (24 February 2021), p 36 at lines 20–24.

223 CBOD, Tab 9 at p 4.

224 PSK, Exhibit PSK-11; Transcript (24 February 2021), p 40 at lines 9–22, p 80 at line 25, and p 81 at lines 1–2.

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the same.[225] In court, I asked Mr Choo if the defendants were his clients after he had renewed his practising certificate and set up his sole proprietorship law firm. He answered that the defendants were not his clients.[226] If this was so, why did he issue an invoice in the name of his law firm to Mr Ding? According to Mr Choo, the condition which the Law Society had imposed on the renewal of his practising certificate from 1 April 2006 to 31 March 2014 was that he could not practise as an advocate or solicitor and could not take on any clients (see [70] above). Hence, Mr Choo should not even have issued the 8 June 2013 Invoice to Mr Ding in the name of his law firm.

113 I, therefore, find that Mr Choo was engaged by the defendants to act as an advocate and solicitor, and that the work he performed for them was done in this capacity. The second *Turner* test is thus satisfied.

(B) PREPARATION OF DOCUMENTS FOR THE PURPOSE OF COURT PROCEEDINGS

114 I turn now to consider whether Mr Choo's work falls within any of the specific categories set out in s 33 of the LPA. In the present case, the relevant category is drawing or preparing any document or instrument relating to any legal proceeding, under s 33(2)(*a*) of the LPA. Both *direct* and *indirect* drawing or preparing of documents would fall within this provision.

115 The defendants submit that Mr Choo drafted various court documents, such as affidavits.[227] On the other hand, Mr Choo submits that he did not draft any court documents for the defendants in contravention of the LPA. He argues

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225 1DCS at para 37.

226 Transcript (26 February 2021), p 90 at lines 8–15, p 92 at lines 23–25, and p 93 at lines 1–3.

227 1DCS at paras 29 and 31; 2DCS at para 143(2)(ii).

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that these services were performed by the defendants' instructed solicitors, who provided the final drafts of court documents for the defendants' approval before those documents were filed.[228]

116 However, Mr Choo's own descriptions of his work done for the defendants in his Invoices suggest that he prepared various documents relating to legal proceedings, in particular, their affidavits. I set out several examples of this:

(a) In his Invoice for work done from January 2002 to December 2002, Mr Choo stated that his work included "[d]rafting affidavit for Phua and Madam Chan Ying Leng" in relation to the dispute concerning the Yip Atech Shares Transaction.[229]

(b) In his Invoice for work done from January 2003 to December 2003, Mr Choo stated that his work involved the "[p]reparing and drafting of Ding and Phua's affidavits for the interpleader proceedings", as well as six meetings with Mr Phua "for drafting his affidavit".[230] Mr Choo confirmed during his cross-examination by Mr Phua's counsel that this referred to the OS 902 Interpleader Proceedings.[231] He also admitted that this involved drafting Mr Phua's affidavit and acknowledged that this was a court document.[232]

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228 PCS at paras 48–50.

229 PRDC, Annex A at p 135.

230 PRDC, Annex A, p 100, para 2 on the page and p 101, para 1 on the page.

231 Transcript (22 February 2021), p 94 at lines 6–9 and p 95 at lines 18–23.

232 Transcript (22 February 2021), p 101 at lines 16–18.

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(c) In his Invoice for work done from January 2004 to December 2004, Mr Choo stated that his work involved "[r]eviewing and editing" of the defendants' affidavits.[233] Again, this refers to the defendants' affidavits in the OS 902 Interpleader Proceedings.[234] During his cross-examination by Mr Phua's counsel, Mr Choo admitted that this again involved the drafting of a court document by him.[235]

(d) In his Invoice for work done from January 2005 to December 2005, Mr Choo stated that his work involved "[d]rafting affidavit for Ding for interlocutory application for the release of A$50,000 from the ACU account of Gracedale".[236]

(e) In his Invoice for work done from January 2016 to December 2016, Mr Choo stated that his work involved "[d]rafting affidavits of evidence in chief for you (Ding)".[237]

117 At the trial, Mr Choo realised the significance of drafting the affidavits for the defendants and the adverse implications for his case. Thus, he tried to change his evidence to mitigate the damage to his case and blatantly lied that he had only *assisted* in the drafting of these affidavits by providing the defendants' instructed solicitors with input in his capacity as a "designated person"[238] and "recounting the facts" that the defendants wished to state in the affidavits.[239] He

233 PRDC, Annex A at p 102.

234 Transcript (22 February 2021), p 101 at lines 22–24.

235 Transcript (22 February 2021), p 101 at line 25 and p 102 at lines 1–2.

236 PRDC, Annex A, p 103, para 2 on the page.

237 PRDC, Annex A, p 129, para 3 on the page.

238 Transcript (26 February 2021), p 49 at lines 7–12 and 16–18.

239 PRS at para 11.

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insisted that he did not directly draft any of these affidavits in the capacity of an advocate and solicitor or file any documents in court.[240] On this basis, Mr Choo claimed that his own Invoices were incorrect as they should have stated that he *assisted* in the drafting of these affidavits, instead of stating that he *drafted* them.[241] Mr Choo also emphasised that his input was limited to providing the necessary factual information because he had been familiar with the case since 2000.[242]

118 I am not convinced by Mr Choo's attempt to correct the clear statements in his own Invoices, which were prepared by him, that he *drafted* these affidavits. He did not merely assist in drafting them. Mr Choo's emphasis on the fact that he was not responsible for *finalising* or *filing* the affidavits in court for any of the proceedings[243] is also beside the point since the evidence clearly indicates that Mr Choo prepared these affidavits. Furthermore, even if Mr Choo only *assisted* with drafting these affidavits, I agree with the defendants' submission that this would still fall within the scope of s 33(2)(*a*) of the LPA, which makes clear that the drawing or preparing of documents relating to legal proceedings may not be done by any unauthorised person for any fee, gain or reward, whether directly *or indirectly*.[244] Mr Choo's counsel sought to argue that s 33(2)(*a*) would only apply if Mr Choo had singlehandedly drafted these affidavits, without input or confirmation from the defendants' instructed solicitors.[245] However, he provided no authority in support of this argument, nor

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240 Transcript (22 February 2021), p 96 at lines 1–7 and 14; Transcript (26 February 2021), p 23 at lines 21–25.

241 Transcript (22 February 2021), p 97 at lines 9–14.

242 Transcript (26 February 2021), p 23 at lines 14–25.

243 PRS at para 11.

244 Transcript (27 May 2021), p 128 at lines 14–25 and p 129 at lines 1–14.

245 Transcript (27 May 2021), p 39 at lines 2–9 and p 43 at lines 19–25.

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did he explain how to reconcile this interpretation with the fact that the plain wording of s 33(2)(*a*) encompasses the *indirect* drafting of documents.

119 Mr Choo's descriptions of his work in his Invoices is corroborated by the defendants' testimony. Mr Ding stated that, other than his affidavit for S 420, all of his other affidavits were drafted by Mr Choo.[246] Similarly, Mr Phua stated in his affidavit of evidence-in-chief that from the time he and Mr Ding appointed Mr Choo in 2001, Mr Choo drafted their affidavits,[247] including in particular Mr Phua's affidavit that was eventually filed in the OS 601 Interpleader Proceedings.[248] According to Mr Phua, Mr Choo had informed him and Mr Ding sometime in 2001 that he would be the one handling the entire case from start to finish as an instructing solicitor, including drafting the relevant cause papers on their behalf.[249] Mr Phua maintained that Mr Choo, and not JCHK (their instructed solicitors in the OS 601 Interpleader Proceedings), had drafted their statement of claim and affidavits for these proceedings.[250]

120 Having considered the evidence before me, I find that Mr Choo did prepare documents relating to legal proceedings. I am unable to accept Mr Choo's assertions that his involvement was limited to assisting the defendants' instructed solicitors in drafting these affidavits by providing factual input. These changes in Mr Choo's testimony in court are false assertions and are unsupported by any evidence, and indeed are inconsistent with how Mr Choo himself described his work in his Invoices.

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246 Transcript (4 March 2021), p 153 at lines 21–23.

247 PSK at para 53.

248 PSK at para 55.

249 PSK at para 54.

250 PSK at para 57; Transcript (2 March 2021), p 42 at lines 8, 20, and 22, and p 44 at lines 12–14 and 20.

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121 Even in the further breakdowns of his Invoices which Mr Choo provided as a result of the Further and Better Particulars requested by the defendants, there is no mention of his involvement being limited to *assisting* the defendants' instructed solicitors in the drafting process. On the contrary, Mr Choo's further breakdown of the Invoice for work done from January 2003 to December 2003 states that his work involved "drawing up your (Ding and Phua [*sic*]) draft affidavits".[251] Similarly, Mr Choo's further breakdown of the Invoice for work done from January 2005 to December 2005 states that Mr Ding "sought and obtained permission from your solicitor to allow Choo drafting [*sic*] the preliminary affidavit for the interlocutory application".[252] A plain reading of the Invoices and the corresponding further breakdowns in the Further and Better Particulars supports the defendants' position that Mr Choo *drafted* these documents as an advocate and solicitor and did not merely provide factual input to assist the defendants' instructed solicitors in drafting these documents.

122 Consequently, I find that Mr Choo's work involved the preparation of documents relating to legal proceedings, within the scope of s 33(2)(*a*) of the LPA, while he was an unauthorised person.

(C) GIVING ADVICE ON LEGAL RIGHTS AND OBLIGATIONS

123 I turn next to consider whether the work done by Mr Choo was work customarily within the exclusive function of advocates and solicitors to provide, the first *Turner* test. The most relevant type of work in this case is the giving of advice on legal rights and obligations.

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251 FBP-2 for First Defendant at p 14, item 1.

252 FBP-2 for First Defendant at p 18, item 2.

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124 It is clear that Mr Choo gave the defendants advice on legal rights and obligations while he was an unauthorised person.

125 Mr Choo's own descriptions of his work in his Invoices and affidavit of evidence-in-chief provide several examples of this:

(a) In the preamble to each and every one of his Invoices, Mr Choo described his "Consulting Charges" as including charges for "legal opinion", amongst other work such as negotiations and meetings.[253]

(b) In his Invoice for work allegedly done from November to December 2000 under the oral Melbourne Capital Agreement, Mr Choo similarly stated that he provided Mr Phua with a "legal opinion".[254] In his affidavit, Mr Choo stated that he "researched and reviewed the laws of Australia", including the relevant provisions on directors' duties, and advised Mr Phua that Mr Lee, as managing director of the Trustee Company, had breached his fiduciary duties under Australian law.[255]

(c) In his Invoice for work allegedly done from September 2000 to June 2001 under the oral Melbourne Profits Agreement (Phua), Mr Choo stated that he had reviewed and provided Mr Phua with an "advisory opinion" on matters including various Australian statutes and Monetary Authority of Singapore regulations governing the requirements for brokers to declare their directorships. The context for this advice was that Mr Phua had not disclosed his directorship in a

253 PRDC, Annex A at pp 94–139.

254 PRDC, Annex A at p 94.

255 CCTW at para 32(a)–32(b).

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company.[256] During his cross-examination by Mr Phua's counsel, Mr Choo refused to explicitly admit that his work involved applying the law to the specific facts of the defendants' case. Instead, he stated that Mr Phua "just wanted to know what are his liabilities, duties in respect of all the various laws".[257] Mr Choo further alleged that Mr Ding sought his advice on "his [Mr Ding's] exposure as director of various companies and his liability to the tax".[258] Mr Choo also admitted that he gave Mr Phua a "general opinion or advisory opinion on the duties of directors, his tax, the tax liabilities of the trustee company and his sister as a director of the trustee company".[259] He also did research to find out what the law was so that he could advise Mr Phua on the application of the law to his circumstances.[260]

(d) In his Invoice for work allegedly done from June to December 2001, the overarching description Mr Choo used for his services included, among other items, "legal opinion".[261] During his cross-examination by Mr Phua's counsel, Mr Choo admitted that by using the phrase "legal opinion", he himself thought that he was charging the defendants for legal services.[262]

(e) In the further breakdown of his Invoice for work allegedly done from January to December 2001, Mr Choo stated that he had spent 60 or

256 PRDC, Annex A at p 95, para 3 on the page.

257 Transcript (22 February 2021), p 80 at lines 2–5.

258 Transcript (22 February 2021), p 80 at lines 21–24.

259 Transcript (22 February 2021), p 80 at line 25 and p 81 at lines 1–3.

260 Transcript (22 February 2021), p 81 at lines 7–14.

261 PRDC, Annex A at p 96.

262 Transcript (19 February 2021), p 138 at lines 23–25 and p 139 at lines 1–4.

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70 hours "reviewing documents [and] relevant laws".[263] During his cross-examination by Mr Phua's counsel, Mr Choo admitted that based on this further breakdown, he had offered and provided legal advice and services to the defendants in expectation of fees.[264]

(f) In his affidavit of evidence-in-chief, Mr Choo stated that under the alleged oral Interpleader Agreement, he had from 2001 to 2004, "researched into and advised Phua on the breach of various Sections 620 of the Corporations Act 2001 including Section 623 of the Corporations Act 2001" [*sic*].[265]

(g) In his Invoice for work allegedly done from January to December 2014, Mr Choo stated that, on 4 June 2014, he had provided an advisory opinion on issues concerning *forum non conveniens* and whether the defendants' claim against Mr Lee was time-barred.[266] In his affidavit, Mr Choo stated that sometime before 4 June 2014, he had advised that the defendants "should rely on equitable relief based on constructive trust supported by relevant facts such as that Lee was managing director of the Trustee Company".[267]

(h) In his Invoice for work allegedly done from January to December 2016, Mr Choo stated that he had provided advisory opinions on whether the Trustee Company's claim against Mr Lee for breach of trust and breach of fiduciary duties as a constructive trustee was time-

263 FBP-2 for First Defendant at p 10, item 1.

264 Transcript (19 February 2021), p 156 at lines 16–22.

265 CCTW at para 60(b).

266 PRDC, Annex A at p 121, para 5 on the page.

267 CCTW at para 323.

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> barred, as well as on Mr Ding's fiduciary duties with regard to the lodgment of tax returns with the Australian Tax Office.[268] In his affidavit, Mr Choo stated that he had advised Mr Ding that the directors of the two Trusts "could face civil action and/or criminal charges" if Mr Lee lodged financial statements that contained fictitious accounting entries, including various offences under the Crimes Act 1958 (Vic).[269] Mr Choo also advised Mr Ding on possible mitigating factors that a judge might take into account in determining the appropriate sentence.[270]

126 This finding is also supported by Mr Choo's affidavit of evidence-in-chief filed in the OS 902 Interpleader Proceedings. In that affidavit, Mr Choo stated that in mid-November 2001, he had advised the defendants about the "legal and official ways of solving the problems of getting the accounts of the … Trusts audited", and told them that they "could rely on the Laws of Australia especially the Corporations Law to compel the company secretary of the … Trustee Company … to have the … Trusts accounts audited".[271] In particular, Mr Choo advised Mr Ding that as director of the Trustee Company, he could invoke s 290(1) of the Australian Corporations Act of 2001 to gain personal access to the financial records of the Trusts, and s 290(3) to make copies of the financial records.[272] Further, in February 2002, the defendants sought his "legal advice" on an extraordinary meeting called by Mr Lee to remove the entire Board of the Trustee Company. Mr Choo advised them that this extraordinary meeting would fail because Mr Lee had not satisfied the requirements set out in

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268 PRDC, Annex A at p 129, paras 4 and 7 on the page.

269 CCTW at paras 441–443.

270 CCTW at para 447.

271 CCTW (OS 902) at para 31.

272 CCTW (OS 902) at para 32.

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the Trustee Company's articles of association.[273] During the cross-examination by Mr Phua's counsel, Mr Choo himself admitted that he had applied the relevant provisions of the Australian law to the facts of the defendants' disputes.[274] Although Mr Choo tried to argue on the witness stand that his advice was still subject to confirmation by another solicitor in Australia,[275] he admitted upon further questioning by Mr Phua's counsel that no other solicitor had confirmed this piece of legal advice.[276] He also admitted that the defendants were entitled to act upon his advice and that he was "[d]efinitely not" qualified to advise on Australian law and yet was nevertheless purporting to charge the defendants for his advice on Australian law.[277]

127 In my view, to ascertain whether Mr Choo's work was prohibited under the LPA when he did not have a practising certificate, it is necessary to consider the substance and nature of his services rendered to the defendants and not merely the label attached to them. Thus, although Mr Choo insists that he only provided the defendants with *business consultancy* services, or legal *opinions* which the defendants were not obliged to follow, it is clear from the evidence that Mr Choo in substance gave the defendants advice on their legal rights and obligations. During the cross-examination by Mr Phua's counsel, Mr Choo admitted that he had taken an area of law, ascertained the facts of the defendants' case, told them what the law was, applied the law to their facts, and purported to charge them for this advice.[278] I agree with the defendants'

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273 CCTW (OS 902) at paras 38–39.

274 Transcript (19 February 2021), p 127 at lines 5–17.

275 Transcript (19 February 2021), p 128 at lines 10–12.

276 Transcript (19 February 2021), p 128 at lines 24–25 and p 129 at lines 1–2.

277 Transcript (19 February 2021), p 129 at lines 18–21 and p 130 at lines 2–5 and 15–17.

278 Transcript (22 February 2021), p 78 at line 25 and p 79 at lines 1–6.

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submission that this plainly amounts to the giving of legal advice for a fee. When this was put to Mr Choo by Mr Phua's counsel, he too conceded that this could be characterised as the giving of legal advice:[279]

> Q. I suggest to you [that] you have given legal advice.
>
> A. If you want to put it that way, okay, I mean …

128 This is consistent with the defendants' understanding that Mr Choo was their *legal* consultant and was providing them with *legal* consultancy services and strategy.[280] Indeed, in Mr Phua's affidavit of evidence-in-chief, he stated that it was Mr Choo who provided the defendants with legal advice on their case and answered their queries in respect of their case with brief references to legal authorities and statutes.[281] According to Mr Phua, even after the defendants appointed the other solicitors, Mr Choo gave his own independent legal advice to the defendants on their case, which the defendants followed accordingly.[282]

129 Consequently, I find that Mr Choo gave the defendants advice on legal rights and obligations for a fee. The evidence is clear that Mr Choo had rendered services customarily provided by advocates and solicitors. Thus, the first *Turner* test is satisfied.

(3) Consequences of these findings

130 In the present civil proceedings, I am concerned only with the consequences of these findings on Mr Choo's claim for unpaid fees. Whether Mr Choo is guilty of an offence under s 33 of the LPA, and whether due cause

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279 Transcript (22 February 2021), p 79 at lines 7–8.

280 PSK at para 37; DPC at para 11.

281 PSK at para 53.

282 PSK at para 54.

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has been shown for Mr Choo to be punished in accordance with s 82A of the LPA, are questions to be decided in separate criminal and disciplinary proceedings respectively.

131 Based on my findings above, I am satisfied, on a balance of probabilities, that the work done by Mr Choo while he was an unauthorised person was work done as an advocate or a solicitor, applying the two tests set out in *Turner*. Therefore, Mr Choo is barred from recovering any remuneration in respect of such work under s 36(1) (read with s 2(1)) of the LPA. In my view, this renders it unnecessary for me to consider the application of the defence of illegality, as explicated in *Ting Siew May* and *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 ("*Ochroid*").

132 Mr Phua also prays for an order that Mr Choo refund all fees paid to him pursuant to s 36(2) of the LPA.[283] However, Mr Ding did not pray for a similar order, and neither defendant made any detailed submissions on the application of s 36(2) to the facts of this case. Nevertheless, I shall deal with this issue for completeness. Section 36(2) of the LPA states:

> **No costs recoverable by unauthorised person**
>
> **36.**— … (2) Any payment to an unauthorised person for anything done by that unauthorised person which is an offence under section 33 may be recovered by the person who paid the money in a court of competent jurisdiction.

133 On the defendants' case, four sums were paid to Mr Choo: (a) a fixed fee of A$50,000 under the Mei Leong Indemnity Agreement, paid by Mr Ding in 2001 (see [44] above); (b) a sum of A$70,000 received by Mr Choo as of

283 1DCS at para 122.

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12 February 2003 for his travelling allowance;[284] (c) a settlement sum of S$200,000, paid by Mr Ding in 2013 (see [45] above);[285] and (d) the sale proceeds of the 3.53 million Choo Atech Shares.[286]

134 However, I decline to make such an order in favour of Mr Phua. The person who paid Mr Choo the fixed fee of A$50,000 and the settlement sum of S$200,000 was Mr Ding, not Mr Phua.[287] Although, pursuant to the DATBI, Mr Ding assumed Mr Phua's liability to pay Mr Choo's fees and in consideration, Mr Phua agreed to transfer his beneficial interest in the ACU Account to Mr Ding (see [32] above), this does not enable Mr Ding to claim a refund of the fees paid to Mr Choo as he has not sought an order under s 36(2) in his pleadings. Mr Ding's counsel confirmed that this was not part of his client's counterclaim.[288] Further, in order for s 36(2) to apply, the payment must have been made for something done by the unauthorised person *which is an offence under s 33*. I am prepared to accept the defendants' submission that a criminal *conviction* under s 33 is not a condition precedent for the application of s 36(2) as the court may find a *prima facie* contravention of ss 32 and/or 33 for the purposes of civil proceedings (see *Turner* at [35]).[289] However, s 36(2) does not avail Mr Phua on the facts. While the payment of A$70,000 to Mr Choo for his travelling allowance was acknowledged in the Consultancy Agreement,[290] travelling allowances are not payments falling within the scope

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284 1DDC at para 6(7)(b)(i); 2DDC at para 5(6)(a).

285 1DDC at para 6(7)(b)(ii); 2DDC at para 5(6)(b).

286 1DDC at para 6(7)(b)(iii); 2DDC at para 5(6)(c); Second Defendant's Reply Submissions ("2DRS") at para 25.

287 Transcript (27 May 2021), p 152 at lines 3–11.

288 Transcript (27 May 2021), p 152 at line 18–22.

289 Transcript (27 May 2021), p 142 at lines 1–13 and p 153 at lines 10–18.

290 CBOD, Tab 3 at p 2; 1DRS at para 37.

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of s 33, as outlined at [77] above. As for the sale proceeds of the 3.53 million Choo Atech Shares, these are the subject of Mr Phua's counterclaim against Mr Choo for an account and inquiry, and I shall deal with this point later in this judgment.

135 I wish to address one final point in relation to the nature of Mr Choo's work. During his oral submissions, Mr Choo's counsel sought to argue that the court should not "crucify" Mr Choo under the LPA.[291] This would be a wholly inaccurate characterisation of my findings above. It bears emphasising that this Suit was *commenced by Mr Choo* to claim an extremely large sum of over S$2m from the defendants as payment for his fees. In view of my findings that these fees were in respect of work done by Mr Choo as an advocate or solicitor while he was an unauthorised person, Mr Choo is statutorily barred from recovering remuneration in respect of this work. This outcome is the result of the application of s 36(1) of the LPA to give effect to the legislative object of "protect[ing] the public from claims to legal services by unauthorised persons" (*Turner* at [34]).

136 These findings are sufficient to dispose of Mr Choo's claim for unpaid fees in respect of work done while he was an unauthorised person, *ie*, from 1 April 2000 to 31 March 2006 and from 1 April 2014 onwards. However, Mr Choo did have a practising certificate in force from 1 April 2006 to 31 March 2014. The question is whether he is also barred from recovering remuneration for work done during that period. Even putting aside Mr Phua's submission that Mr Choo's provision of legal services to the defendants breached the conditions imposed on him by the Law Society when he had a

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[291] Transcript (27 May 2021), p 43 at line 2 and p 44 at line 18; Transcript (28 May 2021), p 82 at line 21.

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practising certificate in force (see [70] above), I am of the view that Mr Choo is also not entitled to claim his fees from the defendants during the period from 2006 to 2014 when he had a practising certificate in force as his remuneration was based on a champertous arrangement with the defendants, *ie*, the 20% Remuneration Arrangement. This was evidenced by the Consultancy Agreement which was drafted by Mr Choo himself. As will be recalled from [30(a)] above, under the 20% Remuneration Arrangement, Mr Choo was to be remunerated 20% of the moneys recovered from the two Trusts (including the ACU Account Moneys) less expenses and allowances already paid to him. The champertous arrangement started in 2000 with the Choo-Phua 2000 Oral Agreement that resulted in the Consultancy Agreement in 2003 when Mr Choo was an unauthorised person providing legal services to the defendants and it continued into the period when Mr Choo had his practising certificate from 2006 to 2014. I shall explain below why I reject Mr Choo's claim that there was an oral agreement that he would charge the defendants at the hourly rates of S$800 for ordinary work and S$1,200 for foreign issues and/or urgent matters.

(4) Summary on the nature of the work done by Mr Choo

137 In summary, applying the two tests set out in *Turner*, I find that the work done by Mr Choo for the defendants was work done as an advocate and solicitor.

138 Mr Choo was employed by the defendants to act as an advocate and solicitor and the work he performed for them was done in this capacity. His contention that he was engaged by the defendants only as a business consultant is untenable. There is overwhelming evidence from the defendants that they always viewed Mr Choo as their lawyer and relied primarily on his *legal* expertise. The defendants did not have to rely on Mr Choo to assist them in financial matters (see [96]–[103] above). This finding is also buttressed by the

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fact that Mr Choo took no steps to correct Mr Ding's perception of him as their legal adviser even after this perception was clearly communicated to him in Mr Ding's 9 July 2014 E-mail (see [106] above).

139 Furthermore, Mr Choo *himself* described the work he did as "legal" work in written correspondence and written agreements with the defendants, the Invoices and his affidavits. His legal work involved preparing documents relating to legal proceedings, in particular, the drafting of the defendants' affidavits. He also gave legal advice on the defendants' rights and obligations. Indeed, even Mr Choo appears to have viewed himself as being engaged by the defendants to act as an advocate and solicitor (see [114]–[129] above).

140 Mr Choo was deeply involved in the preparation of documents relating to legal proceedings. His bare assertion that he had only *assisted* the defendants' instructed solicitors in the drafting of these affidavits is belied by the defendants' evidence, Mr Choo's own Invoices and further breakdowns, as well as his affidavit of evidence-in-chief (see [116]–[122] above).

141 Mr Choo also gave advice on legal rights and obligations, although he insists that he only provided the defendants with *business consultancy* services or legal *opinions*. What is crucial is the substance of the work done and not the label attached to it. Mr Choo advised the defendants on matters including directors' duties, fiduciary duties, *forum non conveniens*, limitation periods, equitable relief and potential criminal liability. This was legal work that should only have been provided for a fee if Mr Choo had a practising certificate in force at the relevant time (see [123]–[129] above).

142 As Mr Choo did not have a valid practising certificate in force from 1 April 2000 to 31 March 2006, and from 1 April 2014 onwards, he was an

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unauthorised person during these periods. Hence, he is barred by s 36(1) (read with s 2(1)) of the LPA from recovering any fees from the defendants for work done during these periods (see [131] above).

143 However, I decline to grant Mr Phua's application for an order for the refund of the various sums of money paid by the defendants to Mr Choo under s 36(2) of the LPA. The person who paid Mr Choo the fixed fee of A$50,000 and the settlement sum of S$200,000 was Mr Ding, not Mr Phua. Further, the payment of A$70,000 to Mr Choo for his travelling allowance does not fall within the scope of s 33 of the LPA (see [134] above).

Basis on which the parties agreed Mr Choo was to be remunerated

144 If, contrary to my findings above, Mr Choo's claim for unpaid fees is not barred by s 36(1) of the LPA, the next issue to be determined is the basis on which the parties agreed Mr Choo was to be remunerated. This will also determine whether Mr Choo can recover his remuneration for work done during the period when he had a practising certificate in force. I shall first deal with the 26 alleged Invoices which Mr Choo adduces in support of his claims, which the defendants contend were fabricated by Mr Choo. As the parties' cases are based on starkly different versions of what was agreed between them, I shall then examine each of the alleged agreements in turn.

(1) Invoices

145 The Invoices were exhibited for the first time in Mr Choo's Reply and Defence to Counterclaim filed on 7 September 2018,[292] in response to the defendants' allegation in their respective Defences that Mr Choo had failed to

[292] PRDC, Annex A.

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provide any itemisation or narrative of the alleged work done or time spent by him.[293] All the Invoices are dated 30 August 2016.

146 According to Mr Choo, he began preparing the Invoices on 30 August 2016 and issued them sometime in September 2016.[294] Mr Choo stated in his affidavit of evidence-in-chief that he was prompted to prepare and issue all the Invoices together as the defendants had not been responding to his attempts to communicate with them.[295] However, when he was confronted (during cross-examination by Mr Ding's counsel) with evidence of his communication with Mr Ding *via* text message in October and November 2016,[296] Mr Choo changed his previous position and stated that he had prepared the Invoices because of his "own feeling" that the defendants had not included him in the 2016 Lee Settlement Agreement.[297] Mr Choo claimed that the Invoices were then hand-delivered to the receptionist at Mr Phua's office at Raffles City Tower.[298] He also claimed to have sent the Invoices by ordinary airmail to Mr Ding's address in Selangor, Malaysia,[299] in or around September 2016. However, neither Mr Phua nor Mr Ding responded to Mr Choo regarding these Invoices.[300] Mr Choo also stated in his affidavit that he did not know whether Mr Phua and Mr Ding received these Invoices.[301]

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293 1DDC at para 6(3); 2DDC at para 13.

294 Transcript (19 February 2021), p 52 at lines 10–14.

295 CCTW at paras 494–495.

296 CCTW at para 493.

297 Transcript (19 February 2021) at pp 66–70.

298 PRDC, p 16 at para 78 and p 36 at para 79; CCTW at para 495(d).

299 CCTW at para 495(e); Transcript (26 February 2021), p 16 at lines 13–19.

300 PRDC, p 16 at para 78 and p 36 at para 79.

301 CCTW at paras 495(d)(ii) and 495(e)(iv).

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147 The defendants maintain that they never received these Invoices.[302] They further allege that the Invoices were fabricated by Mr Choo in 2018 to support his claim. Mr Phua filed a notice of non-admission to challenge their authenticity.[303] The defendants also rely on metadata evidence indicating that the Invoices were only created by Mr Choo on 17 June 2018 and last saved on 6 September 2018 (*ie*, the date before the Invoices were exhibited in Mr Choo's Reply and Defence to Counterclaim) to support their allegation that the Invoices are not authentic as they were not prepared in 2016.[304]

148 I am inclined to accept the defendants' argument that the Invoices were only created in 2018 after the present Suit was commenced and that they were not sent to Mr Phua or Mr Ding in 2016.

149 Mr Choo's version of events is riddled with internal inconsistencies. He claimed that he was prompted to prepare and issue the Invoices because, in August 2016, he became suspicious that the defendants would exclude him from receiving any of the moneys recovered from the ACU Account.[305] Yet, he took no steps to obtain an acknowledgment from either Mr Phua, Mr Ding, or their representatives that the Invoices were received. According to Mr Choo, he did not do so because he did not want to sour the relationship between the parties.[306]

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302 PSK at paras 82 and 84; DPC at para 65; 1DCS at para 70; 2DCS at para 89.

303 PSK at para 81; First Defendant's Opening Statement at paras 12–13; Second Defendant's Opening Statement at paras 4 and 30; 1DCS at para 38, footnote 69 and para 72; 2DCS at para 89–94.

304 First Defendant's Opening Statement at para 14; Second Defendant's Opening Statement at paras 4 and 30; ABOD, Vol 4 at pp 2054–2057; 1DCS at para 72; 2DCS at para 91.

305 Transcript (19 February 2021), p 71 at lines 3–20.

306 Transcript (19 February 2021), p 72 at lines 4–20.

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Further, he would take legal action if they did not respond.[307] I do not find this explanation convincing. The total sum being claimed in these Invoices was over S$2.4m.[308] Given that Mr Choo was claiming such a large amount from the defendants and he already had concerns that they would not pay him, it is implausible that he would not have sought some form of acknowledgment from the defendants that they had received these Invoices. He had already taken pains to prepare them and even personally sent them to Mr Phua's office.

150 Further, the letter of demand dated 16 March 2018 sent to Mr Ding on Mr Choo's behalf by Tan Kok Quan Partnership (the "TKQP Letter of Demand") did not refer to or enclose any of the alleged Invoices.[309] As the defendants submit,[310] if these Invoices had been created in 2016, one would have expected them to be referred to in the TKQP Letter of Demand in support of Mr Choo's demand for unpaid fees. The Invoices are also not referred to in Mr Choo's Statement of Claim in the present Suit. Indeed, as Mr Choo himself acknowledged during his cross-examination by Mr Ding's counsel, the amounts claimed by Mr Choo in his Statement of Claim, the TKQP Letter of Demand and the Invoices all differ. He was unable to provide any explanation for these serious discrepancies, apart from claiming that this was an "error in calculation".[311]

151 The metadata evidence adduced by the defendants casts serious doubt on Mr Choo's claim that the Invoices were created and sent to the defendants in

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307 Transcript (19 February 2021), p 55 at lines 9–14.

308 Transcript (19 February 2021), p 74 at lines 23–25.

309 ABOD, Vol 4 at p 2041–2043.

310 1DCS at para 71; 2DCS at para 90.

311 Transcript (19 February 2021), p 73 at lines 3–25, p 74 at lines 1–25, and p 75 at lines 1–17.

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2016. When questioned by Mr Ding's counsel on this during cross-examination, Mr Choo responded with a bare denial and was unable to explain himself:[312]

> Q. This is a screen shot of the properties of the Word doc when we clicked on the document.
>
> A. Yes.
>
> Q. The author Wilfred; that is you, correct?
>
> A. Correct.
>
> Q. "Content created", can you see around the middle?
>
> A. Correct, yes.
>
> Q. "17/06/2018".
>
> A. Correct, yes.
>
> Q. "Date last saved 06/09/2018", Mr Choo?
>
> A. Correct.
>
> Q. Isn't it the case, Mr Choo, that these 26 alleged invoices were created by you only on 17 June 2018?
>
> A. I'm not a technical person, I cannot verify that.

152 In addition, it is not denied by Mr Choo that he did not have any contemporaneous evidence or documents to assist him in the preparation of the Invoices. Thus, even assuming the Invoices were prepared in 2016 (as Mr Choo claims), some of the Invoices went back to events that took place more than a decade ago. It is impossible for anyone to remember and recall in detail the work done that long ago without records.

153 It is also unclear why the Invoices were not issued periodically when such huge sums were involved. Why were all 26 of the Invoices issued on the same day, *ie*, 30 August 2016? When I questioned him on this point, Mr Choo stated that he decided to issue all the Invoices at once because the defendants

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312 Transcript (19 February 2021), p 76 at lines 10–23.

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had agreed that he would only bill them for the full amount of fees upon the completion of the defendants' various matters, and the matter relating to the financial accounts of the Trusts was only completed in 2016.[313] However, I do not find this purported explanation convincing. It is implausible that the defendants would have agreed to only be informed of the total accrued amount of fees at the end of the matter if they were indeed being charged on an hourly basis. Mr Choo has not produced any evidence to support the existence of such an agreement. In addition, even if I accept Mr Choo's explanation, it only accounts for his omission to *send* the Invoices to the defendants progressively. It does not explain why he did not *prepare* them progressively.

154 Furthermore, Mr Choo explained in court how he prepared the Invoices. He said he first estimated the value of his work. Thereafter, he worked backwards by dividing the estimated value of his work by the number of hours spent to ascertain the applicable hourly rate. He explained his methodology of his billing on two occasions, one of which was in response to my request for him to clarify and explain how he prepared his Invoices.[314]

> COURT: So you determine the value of the work and then from there, if the value of work is 50,000 and if the rate is $1,000 per hour, you divide by $1,000, so it's five hours?
>
> A. Thank you, your Honour, I think that is the way I did it.
>
> …
>
> [MR PHUA'S COUNSEL]: So, Mr Choo, the value of work determined for each item of your invoices is estimated, is based on gut feel; correct? The starting point is gut feel.
>
> A. A valuation, not gut feel.

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313 Transcript (26 February 2021), p 93 at lines 4–25 and p 94 at lines 1–2.

314 Transcript (23 February 2021), p 113 at line 6 to p 115 at line 24.

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Q. Gut feel, evaluation. And it's largely just based on an estimate?

A. Yes, correct.

Q. I want to get your answer correct. Your answer earlier was a valuation, not gut feel?

A. Correct, an evaluation.

Q. A valuation or evaluation?

A. My own valuation.

Q. Your own valuation?

A. Yes.

Q. Which is based on just a sense of what you think is fair?

A. No, based on sometimes what I – I see how people, like Rajah & Tann charges in, you know, some other – those solicitors before that. They just put a lump sum figure, that's all. But coming back to your question, it's more of my own evaluation.

…

My own evaluation. The amount of work done.

Q. All right. And then hourly rates, the number of hours are derived second and third, because first is the main, the big sum and then you work downwards – or you work backwards to derive X times Y. X being time, Y being the rates; correct?

A. Correct.

Q. Which one do you determine first? Do you determine rate first to get the number of hours, or do you determine the number of hours to get rates?

…

A. I usually apply the number of hours, my estimated number of hours, to get the rate.

Q. So normally use estimate number of hours first?

A. Correct, yes.

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155 This reverse methodology of ascertaining the fees payable by the defendants cannot be right. If it were true that Mr Choo had an oral agreement with the defendants in 2000 to bill them on the rates of S$800 and S$1,200 *per* hour (depending on the nature of the work), Mr Choo would have aggregated the hours spent on a piece of work and multiplied the hours spent by the agreed rate. This would have been the proper, logical and fair method of preparing the Invoices. If, indeed, there was such an oral agreement in 2000 for the defendants to pay fees at hourly rates for Mr Choo's legal services, he would have kept, and there would have been, proper contemporaneous records of the number of hours spent. Otherwise, it would have been almost impossible for Mr Choo to prepare these Invoices with reasonable accuracy so many years after the work was done. Further, if the defendants had indeed agreed, *from the outset*, to pay Mr Choo based on hourly rates, he would not have needed to work *backwards* from his estimate of the overall value of his work and the estimated number of hours spent in order to ascertain the applicable hourly rates. Instead, as the defendants submit,[315] he would have simply multiplied the number of hours spent on each piece of work, as recorded in contemporaneous time sheets, by the agreed hourly rates to determine the total fees payable to him.

156 Thus, I have very serious doubts and am deeply suspicious about the authenticity of the Invoices.

157 I shall now consider the various agreements allegedly entered into between the defendants and Mr Choo.

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315 1DCS at para 77; 2DCS at para 87.

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(2) Recovery of capital from the investments in the Melbourne Properties

158 Mr Choo's position is that Mr Phua orally agreed in September 2000 to pay him a fixed fee of S$50,000 for his services in relation to recovering the capital he had invested in the Melbourne Properties and advising on possible litigation in Australia relating to these properties.[316] This is the oral Melbourne Capital Agreement to which I referred at [37(a)] above.

159 On the other hand, Mr Phua submits that no such agreement existed.[317] He makes two arguments. First, that the stark contrast between the absence of any documentary evidence of the alleged oral Melbourne Capital Agreement and Mr Choo's tendency to reduce the parties' various agreements (such as the LOAU 1, the Trust Agreement and the Consultancy Agreement) into writing shows that there was never any such agreement.[318] Second, that there was no reason for him to engage Mr Choo for the purposes of claiming the capital invested in the Melbourne Properties, as there was simply no dispute with Mr Lee in relation to the return of the capital. Indeed, the capital was released by Mr Lee in October 2000 to Mr Phua without any dispute and without any involvement by Mr Choo. Mr Phua only became suspicious of Mr Lee some months after Mr Lee had returned the capital, as the profits were not returned at the same time as the return of the capital.[319]

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316 PSOC at paras 22–23.

317 1DDC at para 8; 1DCS at paras 8(2), 45 and 52.

318 1DCS at para 52.

319 1DCS at para 53.

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(A) DID THE ORAL MELBOURNE CAPITAL AGREEMENT EXIST?

(I) THE APPLICABLE LAW

160 The guiding principles on the proper approach for determining the existence of an oral agreement were distilled in *ARS v ART and another* [2015] SGHC 78 at [53] and recently affirmed in *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 at [32] (the "*ARS v ART* guiding principles"). These are as follows:

(a) In ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time.

(b) Where possible, the court should look first at the relevant documentary evidence.

(c) The availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists.

(d) Oral testimony may be less reliable as it is based on the witness' recollection and it may be affected by subsequent events (such as the dispute between the parties).

(e) Credible oral testimony may clarify the existing documentary evidence.

(f) Where the witness is not legally trained, the court should not place undue emphasis on the choice of words.

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(g) If there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.

(II) MY FINDINGS

161 In the present case, Mr Choo has no evidence other than his bare assertions that the oral Melbourne Capital Agreement existed. During his cross-examination by Mr Phua's counsel, Mr Choo admitted that even though S$50,000 is a substantial sum of money, the oral Melbourne Capital Agreement was not put anywhere in writing.[320] The only documentary evidence before this court that could indicate the existence of such an agreement is Mr Choo's alleged Invoice entitled "Claim Against Lee Wan Hoi for Recovery of Your Investment Capital in the Melbourne Properties". However, as I have found at [148] above, he prepared this Invoice for the purpose of his claim in this Suit.[321] The Invoice purports to charge Mr Phua a "[c]onsultancy fee (agreed)" of [S]$50,000, for work done from November to December 2000. This is inconsistent with the fact that, by 27 October 2000 at the latest, Mr Lee had returned the capital from the investments in the Melbourne Properties to the defendants (see [16] above). Therefore, Mr Choo's legal services would not have been required from November to December 2000. I agree with Mr Phua's submission that this is a serious contradiction in Mr Choo's case.[322]

162 Further, Mr Phua testified that the defendants' relationship with Mr Lee was still very good in September and October 2000. Hence, there was no dispute with Mr Lee regarding the defendants' recovery of their capital from the

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320 Transcript (24 February 2021), p 103 at lines 17–23.

321 PRDC, Annex A at p 94.

322 1DCS at para 54.

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investments in the Melbourne Properties.[323] The first set of legal proceedings (*viz*, the OS 601 Interpleader Proceedings) was only commenced in November 2001. There was, therefore, no reason for Mr Phua to enter into an agreement with Mr Choo in September 2000 to pay him S$50,000 for any services in relation to the recovery of the capital from the investments in the Melbourne Properties. There was simply no need for Mr Choo to be involved.[324] Similarly, there was no need for legal advice on possible litigation in Australia relating to these properties. Furthermore, Mr Choo did not ask for payment of the S$50,000 from the defendants even after Mr Lee returned the capital to the defendants between 25 and 27 October 2000. Mr Choo did not seek payment of the S$50,000 until the invoice was prepared purportedly in 2016, *ie*, 16 years later! There is also no evidence that Mr Choo verbally chased the defendants for this payment. In my view, this is because there was never such an oral Melbourne Capital Agreement as alleged by Mr Choo. Otherwise, he would have asked the defendants for the S$50,000 soon after they were paid by Mr Lee in October 2000. I have no reason to doubt the veracity of Mr Phua's evidence in this regard. Thus, the factual matrix suggests that the oral Melbourne Capital Agreement never existed.

163 Mr Choo's submission that the requirements of s 94(*b*) of the Evidence Act (Cap 97, 1997 Rev Ed) are satisfied[325] misses the point. Section 94 of the Evidence Act governs the *admissibility of evidence* of oral agreements and provides that the existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms *may be proved*. This provision, therefore, does not assist Mr Choo in establishing the

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323 Transcript (1 March 2021), p 17 at lines 11–22 and p 33 at lines 4–14.

324 Transcript (1 March 2021), p 19 at lines 19–25 and p 20 at lines 1–7.

325 PCS at paras 93–94 and 97–100.

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existence of the oral Melbourne Capital Agreement (or, indeed, any of the other oral agreements alleged by him) as a separate oral agreement, when he has adduced *no evidence other than his bare assertions* to prove the existence of the same.

164 Therefore, having regard to the *ARS v ART* guiding principles set out at [160] above, I find that Mr Choo has failed to adduce evidence to prove on a balance of probabilities that the oral Melbourne Capital Agreement existed.

(B) IS MR CHOO'S CLAIM UNDER THE ORAL MELBOURNE CAPITAL AGREEMENT TIME-BARRED?

165 Even if (contrary to what I have found) the oral Melbourne Capital Agreement did exist, Mr Phua submits that Mr Choo's claim for unpaid fees under this agreement is time-barred. Under s 6(1)(*a*) of the Limitation Act, the limitation period for actions founded on a contract is six years from the date on which the cause of action accrued. The critical phrase is "the date on which the cause of action accrued".

166 Mr Phua submits that the cause of action accrued when the work purportedly done by Mr Choo under the oral Melbourne Capital Agreement was completed. This took place sometime in October 2000 when Mr Phua's capital was returned to him. Since Mr Choo took no steps to claim his alleged fee of S$50,000 for more than six years since October 2000, Mr Choo's claim under this agreement is time-barred.[326]

167 On the other hand, Mr Choo submits that the limitation period only commenced when the Invoices were allegedly sent by him to the defendants and

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326 1DCS at paras 8(6) and 117.

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after they refused to provide payment (*ie*, September 2016) or, alternatively, when he claimed part-payment of his fees by liquidating the 3.53 million Choo Atech Shares.[327] The date on which Mr Choo contends he claimed part-payment of his fees has not remained consistent. In his opening statement, Mr Choo states that this took place in August 2016.[328] However, in his written submissions, Mr Choo states that he claimed part-payment by liquidating the remaining 1.08 million of the 3.53 million Choo Atech Shares around 12 July 2012.[329] Consequently, Mr Choo submits that the writ of summons in the present proceedings was filed well within the applicable limitation period.[330]

168 In respect of contracts for services, the position taken by the English courts is that, absent any agreement to the contrary, the provider of the service is entitled to be paid once the work has been completed. In *Coburn v Colledge* [1897] 1 QB 702 ("*Coburn*"), Lord Esher MR held that a person "who does work for another person at his request on the terms that he is to be paid for it, unless there is some special term of the agreement to the contrary, his right to payment arises as soon as the work is done; and thereupon he can at once bring his action" (at 705). The plaintiff in *Coburn* was a solicitor who sought payment of his bill of costs from the defendant. Applying this principle, the English Court of Appeal held that the plaintiff's cause of action had accrued "the moment that the work which the plaintiff was retained to do was completed" (at 707). This was recently applied in *ICE Architects Ltd v Empowering People Inspiring Communities* [2018] EWHC 281 (QB) ("*ICE Architects*"), where the court remarked that "*Coburn* is authority for the proposition that, absent a special term

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327 PCS at para 82.

328 Plaintiff's Opening Statement at para 48(b).

329 PCS at para 82(b).

330 PCS at para 83.

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of the agreement, the cause of action accrues at the time of completion of works in a services agreement" (at [28]). The approach taken in *ICE Architects* was applied by our High Court in *BMI Tax Services Pte Ltd v Heng Keok Meng and others* [2019] SGHC 9 (see [61] and [63]).

169 I see no reason why the principle articulated in *Coburn* should not also apply in determining when the cause of action accrues in contracts for services for the purpose of our Limitation Act. In view of this, Mr Choo's submissions that the limitation period should only commence after the Invoices were allegedly sent to the defendants and they refused to make payment is unmeritorious. Mr Choo's reliance on authorities such as *Ling Kai Seng and another v Outram Realty Pte Ltd* [1991] 1 SLR(R) 885 and *Asia-American Investments Group Inc v UBS AG (Singapore Branch) and another* [2017] SGHC 113[331] for the proposition that the limitation period runs from the date the claimant is aware that the breach occurred[332] is misplaced as these cases were concerned with the limitation period for breach of contract claims. As explained above, different principles apply in determining when the cause of action accrues under a contract for services. This is logical because, if it were the case that the cause of action accrues only after the bill is sent, a provider of services would be able to postpone the commencement of the limitation period indefinitely by simply delaying the delivery of his bill. That would be "a very anomalous and inconvenient result" (see *Coburn* at 709) and would effectively give Mr Choo free rein to determine when the limitation period would commence for his claim.[333]

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331 PCS at paras 72–75.

332 PCS at para 85.

333 1DRS at para 19; 2DRS at para 33.

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170 Mr Choo's alternative argument is that the limitation period should only commence when he claimed part-payment for his fees by liquidating the 3.53 million Choo Atech Shares. Section 26(2) of the Limitation Act provides that, where any right of action has accrued to recover any debt or other liquidated pecuniary claim, and the person liable for the debt or other liquidated pecuniary claim acknowledges the claim or makes any payment in respect thereof, the right of action shall be deemed to have accrued on, and not before, the date of the acknowledgment or the last payment. Mr Choo contends that since he received full payment for his work done under the PS Consultancy Agreement and part-payment for the work done under the other alleged agreements on 12 July 2012, the limitation period should only begin to run on 12 July 2012.[334] In addition, Mr Choo argues that Mr Phua made a part-payment to him of S$10,000 in or around October 2000 and Mr Ding made a part-payment of S$100,000 around 10 June 2013, and they were willing to pay the excess.[335]

171 I am unable to accept this alternative argument. Mr Choo's contention that he received part-payment from the defendants from the liquidation of the 3.53 million Choo Atech Shares is premised on the assumption that he was entitled to liquidate these shares and to keep the sale proceeds as part-payment of his fees under the PS Consultancy Agreement. I shall deal with this point later in this judgment (see [362]–[385] below). Mr Choo has also not produced any evidence to show that the 3.53 million Choo Atech Shares were in fact sold on 12 July 2012.

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334 PCS at para 86.

335 PCS at para 88.

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172 Further, in the affidavit of Mr Phua on which Mr Choo relies as evidence of Mr Phua's alleged part-payment of S$10,000, Mr Phua clearly states that this sum was given to Mr Choo purely as a matter of goodwill, in gratitude for Mr Choo's attempt to assist him in settling his contra losses with Phillip Securities.[336] Further, this relates to Mr Choo's claim under the alleged *PS Consultancy Agreement*, which has already been struck out on the ground that it is time-barred (see [50] above). Hence, this payment of S$10,000 cannot constitute a part-payment under s 26(2) of the Limitation Act in connection with the oral *Melbourne Capital Agreement*. As for Mr Ding's payment of S$100,000 around 10 June 2013, the defendants contend that this was not a part-payment of Mr Choo's fees, but part of a sum of S$200,000 paid in full and final settlement of any fees owed by the defendants to Mr Choo.[337] I shall deal with this point later in this judgment as well. For present purposes, it suffices to say that Mr Choo has not convinced the court that he received part-payment from the defendants. Therefore, he cannot rely on s 26(2) to argue that his cause of action accrued on a later date.

173 Therefore, in the present case, Mr Choo's cause of action for his unpaid fee under the oral Melbourne Capital Agreement would have accrued on 27 October 2000, after Mr Phua recovered his capital from the investments in the Melbourne Properties from Mr Lee. This would have been when Mr Choo's work under the oral Melbourne Capital Agreement was completed and he became entitled to payment of the fixed fee of S$50,000. As more than six years elapsed between 27 October 2000 and the date on which the writ of summons in the present Suit was filed (*ie*, 5 July 2018), I agree with the defendants that

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336 Bundle of Cause Papers, Tab 1, First Affidavit (Phua Swee Khiang) for HC/SUM 5484/2018 at para 14; 1DRS at para 21.

337 2DRS at para 39.

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even if the oral Melbourne Capital Agreement existed, Mr Choo's claim thereunder would clearly be time-barred.

(C) SUMMARY ON THE ORAL MELBOURNE CAPITAL AGREEMENT

174 In summary, Mr Choo has not proven on a balance of probabilities that the oral Melbourne Capital Agreement existed (see [161]–[164] above). There is no corroborative evidence to substantiate the existence of such an agreement other than Mr Choo's bare assertions. The alleged Invoice for work done from November to December 2000, which Mr Choo relies on, is self-serving and is inconsistent with the fact that the capital from the Melbourne Properties had been returned to the defendants by 27 October 2000 uneventfully.

175 At the time of the alleged oral Melbourne Capital Agreement, the defendants had a very good relationship with Mr Lee. There was no dispute with Mr Lee with regard to the recovery of their capital from the Melbourne Properties. Therefore, there was no reason for Mr Phua to engage Mr Choo's legal expertise and enter into the oral Melbourne Capital Agreement with him.

176 I, therefore, find that Mr Phua did not agree in September 2000 to pay Mr Choo a fixed fee of S$50,000 for his legal services to recover the capital from the investments in the Melbourne Properties. At this time, Mr Phua did not require legal advice on possible litigation in Australia relating to these properties.

177 In any event, Mr Choo's claim for his unpaid fee under the oral Melbourne Capital Agreement is time-barred under s 6(1)(*a*) of the Limitation Act (see [165]–[173] above).

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(3) Recovery of profits from the investments in the Melbourne Properties and the Yip Atech Shares Transaction

(A) MR CHOO'S CASE – HOURLY RATES

178 I shall now deal with Mr Choo's claim that he is entitled to fees, calculated based on hourly rates, for work done in connection with three oral agreements. The three agreements are:

(a) the oral Melbourne Profits Agreement (Phua), entered into with Mr Phua in September 2000 (see [37(b)] above);

(b) the oral Interpleader Agreement, entered into with Mr Phua in December 2000 (see [37(c)] above); and

(c) the oral Melbourne Profits Agreement (Joint), entered into with both Mr Phua and Mr Ding in June 2001 (see [37(d)] above).

179 Under the two oral Melbourne Profits Agreements, Mr Choo's work related to the recovery of the profits (as opposed to the capital) from the investments in the Melbourne Properties and advising on possible legal issues in Australia and the BVI regarding the Melbourne Properties. Under the oral Interpleader Agreement, Mr Choo's work related to the OS 601 Interpleader Proceedings, which arose from the Yip Atech Shares Transaction (see [15] above).

180 Mr Choo's contention in relation to the fees payable to him under these three oral agreements is that Mr Phua and (in the case of the oral Melbourne Profits Agreement (Joint)) Mr Ding agreed to pay him hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters. He submits that, even in the written agreements between the parties (*eg*, the LOAU 1, the Trust Agreement, and the Tripartite

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Agreement), no precise quantum of fees had been specified. Mr Choo argues that this shows that the parties intended for him to be paid on an hourly basis. His explanation for the absence of precise figures was that the parties were not yet able to pinpoint the exact quantum of Mr Choo's fees. Although the Tripartite Agreement refers only to Mr Choo's "consultant fee" without specifying an amount,[338] the LOAU 1 refers to his fees being "not less than A$60,000".[339] Even more precisely, the Trust Agreement states that A$150,000 was to be paid to Mr Choo with the "remaining balance" to be returned to Mr Phua.[340]

181 Mr Choo argues that if, as the defendants contend (see [187]–[191] below), the 20% Remuneration Arrangement (which is encapsulated in the Consultancy Agreement), as opposed to the hourly rates, applied to the three oral agreements above, such an arrangement would have been clearly stated in these written agreements.[341] According to Mr Choo, the scope of the Consultancy Agreement was limited to the work done for the OS 902 Interpleader Proceedings. The text of the Consultancy Agreement states that Mr Choo was appointed to "[a]ttend to all matters… in respect of the interpleader proceedings under Originating Summons No. 601786 of 2001 in the High Court of Singapore".[342] However, Mr Choo's case is that this was a "mistake" and this line should refer to the OS 902 Interpleader Proceedings, instead of the OS 601 Interpleader Proceedings.[343]

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338 PCS at para 117(a)–(b).

339 PCS at para 113.

340 PCS at para 114.

341 PCS at para 117(c).

342 CBOD, Tab 3 at p 2.

343 Transcript (17 February 2021), p 138 at lines 3–7.

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182 Mr Choo further argues that, if the Consultancy Agreement were to apply to all of Mr Choo's past, present and future work for the defendants, the parties would not have had to sign a separate Tripartite Agreement (see [30(b)] above) with a much wider scope. It was only because the scope of the Consultancy Agreement was limited to work done for the OS 902 Interpleader Proceedings that the Tripartite Agreement was signed to provide for Mr Choo's remuneration for his additional work for the defendants.[344]

183 In any event, Mr Choo claims that the Consultancy Agreement was terminated by the judgment in *ANZ v Ding* in 2004, which concluded the OS 902 Interpleader Proceedings.[345] As such, it does not govern their fee arrangements. Indeed, he argues that, even *prior to* the release of the judgment, the parties had agreed to revert back to the hourly rates after the judgment.[346] These hourly rates were within the range of S$800 to S$1,200.[347] In this regard, Mr Choo relies on the clause in the Consultancy Agreement regarding the termination of the agreement (the "Termination Clause"), which states:[348]

> This agreement can only be terminated upon mutual consent of the parties. In any case, any termination compensation shall be determined in accordance with the spirit and intent of the parties.

184 In addition, under the oral Melbourne Profits Agreement (Joint), Mr Choo claims overseas fees of A$50,000 *per* trip to Australia and S$4,500 *per* trip to Kuala Lumpur. Under the oral Interpleader Agreement, Mr Choo also claims overseas fees of S$8,000 *per* trip to Hong Kong.

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344 PCS at paras 127–129.

345 Transcript (22 February 2021), p 52 at lines 2–10.

346 Transcript (22 February 2021), p 52 at lines 10–16.

347 Transcript (26 February 2021), p 32 at lines 12–25 and p 33 at lines 1–6.

348 CBOD, Tab 3 at p 3.

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(B) THE DEFENDANTS' CASE – 20% REMUNERATION ARRANGEMENT

185 On the other hand, the defendants argue that the oral Melbourne Profits Agreement (Phua), the oral Interpleader Agreement, and the oral Melbourne Profits Agreement (Joint) never existed.[349] The defendants contend that Mr Choo has failed to prove the existence of the agreed hourly rates of S$800 and S$1,200 for his appointment. They deny the existence of any such agreement to remunerate Mr Choo based on those rates.[350] Even though Mr Choo was engaged by the defendants for a long period of at least 13 years, there is nothing in writing to show that either of the defendants had agreed to pay Mr Choo on the basis of his alleged hourly rates.[351] On the contrary, none of the contemporaneous documents – including those drafted by Mr Choo himself and which specifically dealt with matters relating to his fees, such as the Trust Agreement, the Consultancy Agreement and the Tripartite Agreement – contain or make reference to any terms stipulating that he was to be remunerated based on his alleged hourly rates, or to any accrued time costs. Further, Mr Choo was the legally trained drafter of these documents, and had a tendency to reduce important matters (such as the parties' agreements and his remuneration) into writing. Mr Choo was continuously engaged by the defendants for at least 13 years. During this long period, there were many opportune moments for Mr Choo to put these allegedly agreed hourly rates or accrued time costs in the written agreements or correspondence between the parties, yet this was not done.[352] The defendants, therefore, contend that the real reason why none of Mr Choo's alleged hourly rates or crystallised sums are

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349 1DDC at paras 9–10; 2DDC at para 7; 1DCS at para 8(2) and 45; 2DCS at para 44(2).

350 1DCS at para 73; 2DCS at para 44(2).

351 1DCS at paras 63–64; 2DCS at paras 3, 6, 58 and 96.

352 1DCS at para 65; 2DCS at paras 59 and 96.

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stated in any of the contemporaneous documents from 2000 to 2014, is that there was never any agreement to engage Mr Choo on his alleged hourly basis to begin with.[353]

186 Further, the defendants point out several inconsistencies in the way in which Mr Choo purported to apply his alleged hourly rates and that his hourly rates were charged in a completely random manner. This demonstrates that the parties never agreed on any determinable hourly rates.[354]

187 Instead, the defendants' case is that Mr Choo's services were always provided based on the 20% Remuneration Arrangement, under which Mr Choo was to be remunerated based on 20% of any sums he recovered for the defendants from the profits of the investments in the Melbourne Properties (which were held in the ACU Account).[355] This is supported by the following events:

(a) The 20% Remuneration Arrangement was first orally agreed between Mr Choo and Mr Phua in November 2000, in the Choo-Phua 2000 Oral Agreement. According to Mr Phua, this agreement also covered the work done by Mr Choo in relation to the OS 601 Interpleader Proceedings.

(b) During a meeting in Melbourne in February 2002, Mr Phua and Mr Ding formally engaged Mr Choo to advise and assist on claims against Mr Lee for the recovery of these profits, in the Choo-Phua-Ding 2002 Oral Agreement.

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353 1DCS at para 66; 2DCS at paras 6 and 70.

354 1DCS at para 75.

355 1DCS at paras 8(3), 87 and 89; 2DCS at paras 29 and 44(2).

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(c) Subsequently, this was subsumed within the Consultancy Agreement in February 2003, whereby the 20% Remuneration Arrangement was reduced to writing.

188 Further, the defendants submit that Mr Choo was to be paid only upon the completion of the matter regarding the two Trusts. This was the established position since the LOAU 1, which was signed on 13 July 2002, and which referred to Mr Choo being paid by Mr Phua "the legal fee of not less than A$60,000 *upon the completion of the said matter*" [emphasis added].[356] The defendants argue that this is consistent with an agreement to pay Mr Choo on a contingency fee basis since it is only at the end of the matter that Mr Choo's legal fees could be determined.[357]

189 The defendants argue that the complete absence of any rates or crystallised time costs further emphasises the only singular express term in the documents that Mr Choo was to be paid a contingency fee.[358] They submit that the 20% Remuneration Arrangement is congruous and consistent with, and borne out by, the contemporaneous documents.[359] In particular, the Consultancy Agreement – which is the only contemporaneous document containing the terms of Mr Choo's remuneration – expressly stated that Mr Choo was to be remunerated based on 20% of the moneys recovered from the ACU Account.[360]

190 According to the defendants, this 20% Remuneration Arrangement encapsulated in the Consultancy Agreement was the overarching arrangement

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356 CBOD at Tab 1.

357 1DCS at para 88.

358 1DCS at para 67.

359 1DCS at para 86.

360 1DCS at paras 90 and 94; 2DCS at paras 69 and 71.

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which applied to *all* work done by Mr Choo in relation to their investments in the Melbourne Properties from the beginning of Mr Choo's appointment by Mr Phua in November 2000, including the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings.[361] The defendants never intended to have different sets of agreements for Mr Choo's engagement.[362] Although (as noted at [181] above) it is stated in the Consultancy Agreement that Mr Choo was engaged to attend to matters in respect of the OS 601 Interpleader Proceedings, the defendants' position is that the Consultancy Agreement also covered work done for the OS 902 Interpleader Proceedings. The defendants submit that this was by virtue of the first clause of the *preamble* to the Consultancy Agreement, which states that the defendants had agreed to appoint Mr Choo "to act for them in the recovery of monies belonging to two trusts namely [SEAAPL and SEAAPT] which includes money in [Gracedale]".[363] The OS 902 Interpleader Proceedings concerned the issue of who had the authority to act for and on behalf of Gracedale in operating the ACU Account. Therefore, the work done for the OS 902 Interpleader Proceedings also falls within the scope of the Consultancy Agreement. The defendants argue that Mr Choo had included the reference to OS 601 in the first clause of the Consultancy Agreement to ensure that all of the work he had done during his entire engagement, *including* the work done for the OS 601 Interpleader Proceedings, was captured in the Consultancy Agreement.[364]

191 In addition, the defendants argue that Mr Phua had given a compelling and believable reason for his engagement of Mr Choo on a contingency fee

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361 1DCS at para 94–96; 2DCS at para 81.

362 Transcript (3 March 2021), p 31 at lines 5–25, p 32 at lines 11–12, p 106 at lines 5–9, and p 115 at line 3.

363 CBOD, Tab 3 at p 1.

364 1DCS at para 95; 2DCS at paras 80–81 .

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basis, namely, that he was in financial hardship and could not have afforded to engage Mr Choo on his alleged high hourly rates. In contrast, a contingency fee ensured that he would not need to pay unless he was successful in recovering the profits of his investment in the Melbourne Properties.[365]

(C) MY FINDINGS

192 Mr Choo's purported mistake that the interpleader proceeding mentioned in the Consultancy Agreement should be OS 902 and not OS 601 was raised by Mr Choo for the first time during the trial.[366] The Consultancy Agreement was drafted by him in 2003 and he tried to change the scope of his consultancy work when he was cross-examined by the defendants' counsel in this trial, *ie*, 18 years after he drafted this agreement. He wanted the court to believe that there was a mistake. I am unable to accept this. I agree with the defendants' explanation that Mr Choo's scope of consultancy work covered the interpleader proceedings in OS 601 and OS 902 as the Consultancy Agreement states that "[t]he consultant shall receive 20 percent of all funds recoverable from the two trusts".[367]

193 I also note that Mr Choo's position at the trial regarding the termination of the Consultancy Agreement differs from his pleaded position, which was that the Consultancy Agreement was "rescinded and replaced" by the Tripartite Agreement in 2012.[368] The Tripartite Agreement did not state that it was to rescind and to replace the Consultancy Agreement. If that was so, Mr Choo,

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365 1DCS at para 91; 2DCS at para 66.

366 Transcript (17 February 2021), p 138 at lines 11–13 and p 139 at lines 13–25; Transcript (22 February 2021), p 59 at lines 10–20 and p 61 at line 6.

367 CBOD, Tab 3 at p 2.

368 PRDC, p 12 at para 56.

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being the person who drafted the Tripartite Agreement, would have indicated it in that Agreement. This was not done. In these circumstances, I agree with Mr Ding's submission that Mr Choo's pleaded position that the Consultancy Agreement was replaced by the Tripartite Agreement cannot be believed. There is no evidence to suggest that the Tripartite Agreement was to replace the Consultancy Agreement.

194 Furthermore, the terms of these two agreements are materially different. The Consultancy Agreement deals with the scope of Mr Choo's work for the defendants and the terms of his remuneration, which was based on 20% of the moneys recovered from the two Trusts including the ACU Account Moneys. In contrast, the Tripartite Agreement sets out the *priorities* of the defendants and Mr Choo's claims to the ACU Account Moneys from three sources (namely, the alleged consultancy and retainer fees due from Ms Mei Leong; the alleged consultancy fees due from Mr Phua for services rendered in relation to the High Court case involving the settlement of the moneys with Phillip Securities; and the alleged consultancy fees due from the defendants for services rendered in relation to the various legal proceedings concerning Gracedale, as well as the expenses incurred in relation to those services).[369] The plain wording of the Tripartite Agreement is inconsistent with Mr Choo's assertion that it shows the parties' "intention to put their rights and obligations into writing in replacement of the previous Consultancy Agreement".[370]

195 Even based on Mr Choo's pleaded position, the Consultancy Agreement would have been operative from 2003 to 2012. This period constitutes the bulk

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369 Transcript (18 February 2021), p 96 at lines 8–19.

370 PRS at para 16.

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of his claim which would be based on 20% of the moneys recovered from the ACU Account. Therefore, this argument would not assist him.[371]

196 Mr Choo's version at the trial also differs from his position in his affidavit of evidence-in-chief, in which he stated that it was only *after* the judgment in *ANZ v Ding* (the OS 902 Interpleader Proceedings) was released that the parties agreed to abandon the Consultancy Agreement. According to Mr Choo, he met the defendants after the judgment was released to discuss how to proceed in view of the unexpected court orders made by Ang J. At that meeting, he opined that the effect of Ang J's orders was that the moneys in the ACU Account were frozen indefinitely and that the Consultancy Agreement should, therefore, be abandoned as there was no prospect of any release of funds. He alleged that the defendants had orally agreed to this.[372] At the trial, Mr Choo departed from this by stating instead that *prior to* the release of the judgment, the parties had already agreed to revert back to the hourly rates of S$800 and S$1,200 after the judgment.

197 The evidence clearly shows that the 20% Remuneration Arrangement applied to *all* the work done by Mr Choo for the defendants with respect to the recovery of the profits from their investments in the Melbourne Properties and the Yip Atech Shares Transaction, including both the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings. In my view, Mr Choo has failed to prove, on a balance of probabilities, that the oral Melbourne Profits Agreement (Phua), the oral Interpleader Agreement and the oral Melbourne Profits Agreement (Joint) existed.

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371 2DCS at para 73.

372 CCTW at para 111.

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198 Apart from the Invoices, there is not a shred of documentary evidence to support Mr Choo's alleged hourly rates of S$800 and S$1,200 (as Mr Choo himself admits).[373] These alleged hourly rates are not stated or alluded to in *any* of the written agreements between the parties. As the drafter of these written agreements, Mr Choo had ample opportunity to put these rates in writing, yet he did not do so. For example, the LOAU 1 was the first written agreement between Mr Choo and Mr Phua, and Mr Choo agreed with Mr Phua's counsel that it was an "unique opportunity" for him to record any agreement as to his hourly rates,[374] yet Mr Choo did not state these alleged hourly rates. Mr Choo also did not record the time costs that would have accrued to him at that stage which would have been at least around S$343,250.[375] Mr Choo was unable to explain this omission and stated only that he "should have" put these down in writing but did not do so.[376] Similarly, the Tripartite Agreement made no mention of these alleged hourly rates, even though it specifically set out each of the parties' claims to the ACU Account Moneys. The only explanation proffered by Mr Choo for not stating these rates in the Tripartite Agreement was that he "deliberately left it vague" because his rates would vary with the difficulty of the task and there were "just too many rates to fill in".[377] In my view, this purported explanation is not only difficult to believe, but also inconsistent with Mr Choo's own pleaded case that the applicable hourly rates were either S$800 or S$1,200 *per* hour depending on the type of work involved.

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373 Transcript (25 February 2021), p 23 at lines 4–8.

374 Transcript (19 February 2021), p 176 at lines 15–18.

375 1DCS, para 65 at footnote 114; First Defendant's Bundle of Documents ("1DBOD") at p 131.

376 Transcript (19 February 2021), p 176 at line 20.

377 Transcript (18 February 2021), p 117 at lines 24–25 and p 118 at lines 11 and 22.

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199 Subsequently, when I asked Mr Choo why he did not put his alleged hourly rates in *any* of the written agreements between the parties, Mr Choo was unable to offer any explanation:[378]

> COURT: But would you like to explain to me nowhere in the written agreement did you reflect this rate?
>
> A. Yes, your Honour, nowhere.
>
> COURT: Yes, I know, but why? If you had reflected it, we won't be having this trying to – whether to accept your version or the defendants' versions. Would you agree with me?
>
> A. Yes, your Honour.
>
> COURT: I am trying to understand from you why was it not reflected in all the written agreements, or anywhere else, for that matter?
>
> A. Yes, your Honour.

200 The alleged hourly rates were also not mentioned or alluded to in any of the correspondence between the parties over many years, including the TKQP Letter of Demand.[379]

201 In addition, by the time of the Tripartite Agreement in 2012, Mr Choo's accrued time costs would have been a huge sum of around S$1.3m based on his alleged hourly rates.[380] This would have far exceeded Mr Phua's maximum potential claim to the ACU Account Moneys (*ie*, A$360,000), and indeed even Mr Phua and Mr Ding's maximum potential claims combined (*ie*, A$720,000).[381] It would not have made any logical and economic sense for Mr Ding to engage Mr Choo's legal services to claim his interest to the ACU

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378 Transcript (26 February 2021), p 96 at lines 15–25 and p 97 at line 1.

379 ABOD, Vol 4 at pp 2041–2043; 2DCS at para 41.

380 Transcript (23 February 2021), p 132 at lines 22–24.

381 1DCS at para 68(3).

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Account Moneys. There is also no mention of the amount of these accrued time costs in cll 2.4(II)–2.4(III) of the Tripartite Agreement, which pertain to the fees due from the defendants to Mr Choo. This stands in contrast to cl 2.4(I) of the Tripartite Agreement, which states the total estimated fees due from Ms Mei Leong by 2012. Mr Choo's only explanation for this omission was that he just did not "want to" or did not "make an effort to" crystallise the sum owed to him by the defendants.[382] This explanation is similarly incredible and unbelievable. I agree with the defendants' submission that if Mr Choo had indeed been engaged based on hourly rates, one would have expected him to inform Mr Phua that his fees had ballooned to an amount exceeding his maximum potential claim to the ACU Account Moneys, so as to let Mr Phua know that it was no longer financially feasible to continue his legal battle. It also beggars belief that Mr Phua would have continued to engage Mr Choo to act for him if he had any inkling of how much Mr Choo's alleged accrued time costs amounted to by this point in time.[383]

202 Further, Mr Choo's own account of when these hourly rates were agreed upon shifted and changed repeatedly over the course of the trial. When Mr Phua's counsel asked him to explain how the 20% Remuneration Arrangement envisaged in the Consultancy Agreement could be reconciled with his alleged hourly rates, Mr Choo gave two very different explanations. First, Mr Choo said that the parties had agreed to the hourly rates after the judgment in *ANZ v Ding* was handed down in 2004.[384] Subsequently, after Mr Phua's counsel pointed out that this was inconsistent with Mr Choo's pleaded position that the alleged agreement to pay him hourly rates was made in 2000 (pursuant

382 Transcript (23 February 2021), p 135 at lines 13–17.

383 1DCS at para 68(3).

384 Transcript (22 February 2021), p 59 at lines 7–10 and p 60 at lines 4–6.

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to the oral Melbourne Profits Agreement (Phua)) and 2001 (pursuant to the oral Melbourne Profits Agreement (Joint)),[385] Mr Choo changed his story again and stated that the hourly rates were agreed in 2001, but the parties agreed on the 20% Remuneration Arrangement specifically for the work done in relation to the OS 902 Interpleader Proceedings because the defendants were cash-strapped at the time and could not pay him based on the hourly rates.[386] Mr Choo was unable to produce written evidence of any agreement between the parties that the 20% Remuneration Arrangement would supersede any previously agreed hourly rates.[387]

203 Finally, the hourly rates Mr Choo applied in the Invoices differed from his pleaded position. Mr Choo's pleaded position in his Statement of Claim is that the defendants agreed to pay him based on two *specific* hourly rates: S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters. However, in the Invoices (read together with the further breakdowns supplied by Mr Choo in his Further and Better Particulars), Mr Choo applied a *range* of hourly rates from S$750 *per* hour[388] to S$1,250 *per* hour,[389] and most frequently charged S$1,000 *per* hour for ordinary work such as accompanying the defendants to meetings.[390] This position was maintained in Mr Choo's written submissions, where Mr Choo argued that the defendants had agreed to pay him "*between* S$800 (for ordinary work) and S$1,200 (for work

385 Transcript (22 February 2021), p 61 at lines 8–11.

386 Transcript (22 February 2021), p 63 at lines 9–13.

387 Transcript (22 February 2021), p 64 at lines 17–21.

388 See, *eg*, FBP-2 for First Defendant at p 33, item 4.

389 See, *eg*, FBP-2 for First Defendant at p 41, item 29.

390 See, *eg*, FBP-2 for First Defendant at p 11, item 4.

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regarding foreign issues and/or urgent matters)" [emphasis added].[391] During his oral submissions, Mr Choo's counsel attempted to argue that the two specific hourly rates pleaded by Mr Choo should be used interchangeably with the range of hourly rates.[392] However, these two positions are self-evidently different. During his cross-examination by Mr Ding's counsel, Mr Choo admitted that the rates applied were "discretionary" and he was free to reduce or increase the rate charged depending on what he thought was fair for the work done because he was "not bounded by [*sic*] company's regulation".[393] This is flatly inconsistent with Mr Choo's pleaded position as outlined above. Indeed, as pointed out by Mr Phua's counsel, Mr Choo had attempted to charge the defendants on the basis of at least *14 different rates* (as Mr Choo himself admitted[394]), none of which are evidenced in writing. This inconsistency is not explained anywhere in Mr Choo's pleadings or affidavits.[395] Moreover, Mr Choo also purported to charge for more than the actual alleged hours spent, even though there was nothing in writing allowing him to charge his rates on the basis of each hour *or part thereof* of work.[396] For example, in his further breakdown for his Invoice for work done from November 2000 to December 2000, Mr Choo applied a rate of "S$1,000 *per* hour or part thereof" for his attendance at meetings with Mr Phua. Hence, even though these meetings only lasted around one and a half hours each, Mr Choo purported to charge Mr Phua his alleged hourly rate for *three* hours *per* meeting.[397] This further suggests that there was never any

391 PCS at para 91(a).

392 Transcript (27 May 2021), p 52 at lines 9–15.

393 Transcript (19 February 2021), p 91 at lines 17–19 and 24–25; p 94 at lines 17–23.

394 Transcript (25 February 2021), p 22 at lines 16–25 and p 23 at lines 1–8.

395 1DCS at paras 74–75.

396 1DCS at para 75.

397 FBP-2 for First Defendant at p 9.

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agreement by the defendants to pay Mr Choo's alleged hourly rates. I agree with Mr Ding's submission that the evolving nature of Mr Choo's account of the allegedly "agreed" terms destroys Mr Choo's claim of an alleged oral *agreement* between the parties as to these terms.[398]

204 Mr Choo also admitted during his cross-examination by Mr Ding's counsel that, prior to 2008, he did not keep any contemporaneous time sheets recording the time he spent on his work for the defendants. He claimed that he had kept time sheets from 2008 to 2016, but did not produce any of these time sheets in these proceedings.[399] I agree with the defendants' submission that the absence of any contemporaneous time sheets strongly suggests that the defendants did not agree to pay Mr Choo based on hourly rates.[400] Without such time sheets, there would have been no way for Mr Choo to accurately compute, or for the defendants to objectively verify, the amount of fees owed to him.[401]

205 On the other hand, the evidence and circumstances of the parties' dealings cohere with the 20% Remuneration Arrangement. The written agreements that were entered between the defendants and Mr Choo at different stages after the sale of the Melbourne Properties by Mr Lee and the defendants were largely undisputed save for the interpretations of the terms of those agreements. The first written agreement was the Mei Leong Indemnity Agreement, which was reduced to writing in the 25 July 2001 E-mail from Mr Choo to Mr Phua in which the former set out his terms on which he was to be remunerated for his legal services. There was no mention of the rates of

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398 2DCS at para 88.

399 Transcript (19 February 2021), p 81 at lines 12–25 and p 82 at lines 1–2.

400 1DCS at paras 79–80; 2DCS at para 6.

401 1DCS at para 85.

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S$800 and S$1,200 *per* hour. In fact, the rates Mr Choo charged for preparing a legal opinion were between S$100 and S$150 *per* hour depending on the difficulty and urgency of the matter. However, if Mr Choo was able to seek a complete settlement with M/s Mei Leong regarding Mr Phua's Letters of Indemnity and the release of A$820,000 to M/s Mei Leong, Mr Choo would be paid A$50,000. This sum would include all legal fees to be paid to Mr Choo and other expenses incurred. In other words, the 25 July 2001 E-mail clearly set out the limits of the defendants' financial commitments. Similarly, the Consultancy Agreement clearly set out the limits of the defendants' financial commitments, *ie*, 20% of the amount recovered from the profits of the investments in the Melbourne Properties and the ACU Account.

206 Therefore, it is not plausible that the defendants would have entered into an oral agreement with Mr Choo on the basis of the hourly rates of S$800 and S$1,200 *per* hour depending on the nature of the work. The defendants would not know the extent of the potential legal costs that they would incur as there would be huge uncertainty on Mr Choo's remuneration based on the high hourly rates. Indeed, Mr Phua testified that Mr Choo never told him that he would be charged these hourly rates and that if Mr Choo had, he would certainly have rejected Mr Choo's services because he was unable to afford these rates at that time. In 2000, Mr Phua was in financial difficulty as he had incurred significant contra losses of around S$2.5m in the course of his work as a trader with Phillip Securities, which he was to repay in instalments over a period of 7 years.[402] This was not disputed by Mr Choo. In the circumstances, the defendants would not have agreed to Mr Choo charging them the alleged hourly rates of S$800 and S$1,200 *per* hour. The defendants were unaware of the rates alleged by

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402 Transcript (2 March 2021), p 98 at lines 6–10 and 19–22; Transcript (3 March 2021), p 29 at lines 1–7.

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Mr Choo until this Suit was commenced on 5 July 2018. There is not an iota of evidence to suggest directly or indirectly that Mr Choo would be charging the defendants the rates of S$800 and S$1,200 *per* hour. If it were true that the defendants had agreed for Mr Choo to charge them based on hourly rates, I would have expected Mr Choo to send his invoices periodically to the defendants. This was not the case here.

207 Furthermore, in Mr Choo's reply to Mr Ding's 9 July 2014 E-mail (the "9 July 2014 Reply"), Mr Choo stated that if Mr Ding was "comfortable in advancing the $100k this amount [would] be deducted from [Mr Choo's] interest in the case".[403] The sum of S$100,000 is not directly relevant for present purposes. What is noteworthy is that, if Mr Choo had indeed been entitled to charge the defendants at the rates of S$800 and S$1,200 *per* hour, he could have simply billed Mr Ding instead of asking if Mr Ding was "comfortable" with advancing the sum of S$100,000 to him. By the end of 2013, Mr Choo's total bill on the alleged hourly basis would have been around S$1.4m.[404] The complete absence of evidence of Mr Choo billing the defendants on an hourly basis is telling and it indicates the falsity of Mr Choo's claim that the defendants had agreed to pay him hourly rates of S$800 and S$1,200 *per* hour.

208 I shall now consider each of the alleged oral agreements in turn.

(I) THE ORAL MELBOURNE PROFITS AGREEMENT (PHUA)

209 The only evidence produced by Mr Choo of the oral Melbourne Profits Agreement (Phua) is his Invoice entitled "Claim Against Lee Wan Hoi for

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403 ABOD, Vol 4 at p 2005.

404 1DBOD at pp 126–128.

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Recovery of Your Profit in the Melbourne Properties",[405] which purports to charge Mr Phua a total of S$100,750 for work done by Mr Choo from September 2000 to June 2001. Mr Choo's further breakdown of this Invoice indicates that the fees charged were calculated based on hourly rates of S$800 *per* hour for reviewing documents and doing research and S$1,000 *per* hour for attending meetings.[406] However, the defendants' relationship with Mr Lee was still very good in September 2000 (as I have explained at [162] above), and Mr Phua was not intending to commence any legal proceedings against Mr Lee at this point in time.[407] The defendants' suspicions that Mr Lee had not fully reported the amount of profits derived from the investments in the Melbourne Properties only arose around November or December 2000, one or two months after they had recovered their capital in late October 2000.[408]

210 Furthermore, in so far as Mr Choo claims that he did *financial* work for Mr Phua in September 2000 regarding the financial documents related to the Melbourne Properties, Mr Phua's position is that he did not need Mr Choo to provide him with any such services because Mr Phua himself was trained in business administration.[409] In addition, as noted at [101] above, Mr Phua already had the assistance of his ex-colleague, Mr Patrick Leong, for accounting and financial matters.[410] The Invoice is not evidence of the oral Melbourne Profits Agreement (Phua) as it was recreated at least 16 years after the work under this agreement was allegedly done. Moreover, it is extremely unlikely that Mr Phua

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405 PRDC, Annex A at p 95.

406 FBP-2 for First Defendant at p 9.

407 Transcript (1 March 2021), p 23 at lines 22–25 and p 24 at lines 1–16.

408 Transcript (1 March 2021), p 18 at lines 5–11 and 23–25 and p 19 at lines 1–4.

409 Transcript (1 March 2021), p 24 at lines 23–25, p 25 at lines 1–5, and p 27 at lines 21–24.

410 Transcript (1 March 2021), p 43 at line 25 and p 44 at lines 1–8 and 12–15.

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would have agreed to Mr Choo's high rates of S$800 and S$1,200 *per* hour in September 2000, given that he had incurred significant contra losses of around S$2.5m in the course of his work as a trader with Phillip Securities in 2000.[411] Hence, the factual matrix does not assist Mr Choo in proving the existence of the oral Melbourne Profits Agreement (Phua).

211 Therefore, I find Mr Phua's version of the events more convincing than Mr Choo's. Having regard to the *ARS v ART* guiding principles set out at [160] above, Mr Choo has failed to prove on a balance of probabilities that the oral Melbourne Profits Agreement (Phua) existed.

(II) THE ORAL INTERPLEADER AGREEMENT

212 Mr Choo claims that the oral Interpleader Agreement regarding the A$750,000 deposit with Phillip Securities was made orally in December 2000. As evidence of the oral Interpleader Agreement, Mr Choo relies only on the Invoices which purport to charge Mr Phua a total of S$193,880 for services rendered from January 2000 to December 2003, in relation to the "dispute between Madam Chan Ying Leng as stakeholder for Lee Wan Hoi and Xiao Yongle as Stakeholder for Yip Wu [*sic*] Kuen".[412] According to Mr Choo's further breakdown, this Invoice was based on hourly rates of S$1,000 *per* hour.[413]

213 Mr Phua admits that in December 2000, he was already anticipating disputes with Mr Lee regarding the A$750,000 which formed the subject of the OS 601 Interpleader Proceedings. Mr Choo did work for him in relation to the

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411 Transcript (2 March 2021), p 97 at lines 14–15.

412 PRDC, Annex A at pp 133–136.

413 FBP-2 for First Defendant at pp 51–54.

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OS 601 Interpleader Proceedings.[414] However, Mr Phua argues that Mr Choo was to be paid based on the 20% Remuneration Arrangement and not on his alleged high hourly rates. Mr Phua testified that Mr Choo never told him that he would be charged these rates. If Mr Choo had done so, he would certainly have rejected Mr Choo's services because he was unable to afford these high rates at that time given that he was in financial difficulty in and around November 2000 (as I have noted at [210] above).[415] Thus, the relevant factual matrix and the circumstantial evidence do not support the existence of the oral Interpleader Agreement.

214 In my view, having regard to the *ARS v ART* guiding principles set out at [160] above, there is no evidence to prove on a balance of probabilities that the oral Interpleader Agreement existed other than Mr Choo's bare assertions. There is not a shred of evidence that Mr Phua agreed to the alleged hourly rates of S$800 and S$1,200 *per* hour. Indeed, I find it improbable that Mr Phua would have agreed to such rates, given the financial difficulties he was facing around the time this agreement was allegedly formed.

215 Even if the oral Interpleader Agreement had existed, Mr Choo's claim for unpaid fees thereunder is time-barred. For the reasons explained at [168]–[169] above, Mr Choo's cause of action accrued upon the completion of his work under the oral Interpleader Agreement, *ie*, in 2004. As more than six years elapsed between 2004 and the filing of the writ of summons in the present Suit on 5 July 2018, Mr Choo's claim under the oral Interpleader Agreement is time-barred under s 6(1)(*a*) of the Limitation Act.

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414 Transcript (1 March 2021), p 62 at lines 3–16.

415 Transcript (1 March 2021) at p 11–13; Transcript (3 March 2021), p 29 at lines 1–7.

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(III) THE ORAL MELBOURNE PROFITS AGREEMENT (JOINT)

216 There is also no evidence, other than Mr Choo's bare assertions, to prove on a balance of probabilities that the oral Melbourne Profits Agreement (Joint) existed. Once again, Mr Choo's only evidence of this agreement is the Invoices issued in respect of work allegedly done from June 2001 to December 2016, in relation to the claim against Mr Lee for the production of the financial reports of the Trusts and the recovery of the profits for the defendants' investments in the Melbourne Properties.[416] There is no evidence whatsoever to show that the defendants agreed to the alleged hourly rates of S$800 and S$1,200 *per* hour.

217 On the contrary, the contemporaneous documentary evidence suggests that no such rates were agreed upon. In Mr Choo's 25 July 2001 E-mail to Mr Phua, which was sent shortly after the oral Melbourne Profits Agreement (Joint) was allegedly made in June 2001, Mr Choo's proposed hourly rates "in respect of the case of Atech Holdings Limited" were S$100 to S$150 *per* hour for reviewing documents and research, and S$250 to S$300 *per* hour for attending meetings and discussions.[417] As the defendants observe in their submissions, these rates are a far cry from the much higher hourly rates alleged by Mr Choo. Mr Choo did not provide any explanation for the vast differential in rates.[418] His argument that the 25 July 2001 E-mail shows that the concept of hourly rates was "clearly not something new and unknown"[419] to Mr Phua therefore completely misses the mark. Even if the defendants had engaged him based on hourly rates before, this does not support his claim that the defendants agreed to the much higher hourly rates which he now alleges.

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416 PRDC, Annex A at pp 96–132.

417 ABOD, Vol 2, p 680 at paras 2–3.

418 2DCS at paras 61 and 63.

419 PRS at para 29.

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218 When I asked Mr Choo about the rates set out in the 25 July 2001 E-mail, he explained that these rates were applicable only to the work done under the Mei Leong Indemnity Agreement in respect of negotiating the 2001 Mei Leong Settlement Agreement, which was a "special case" exempted from the "normal rate" of S$800 to S$1,200 *per* hour.[420] However, if these were indeed special rates and that the alleged rates of S$800 or S$1,200 *per* hour would otherwise apply, one would have expected Mr Choo to make this clear in the 25 July 2001 E-mail, particularly given that the alleged rates were much higher than those set out therein. Mr Choo's feeble and unconvincing explanation for not doing so was that he was simply looking forward to the negotiation fee of A$50,000 that would be paid to him if a complete settlement was achieved.[421] He alleged that he was not motivated by the hourly rates.[422] I find this explanation unsatisfactory. Mr Choo claimed that the rates of S$800 and S$1,200 *per* hour were reasonable rates for his services, taking into account the "inconvenience" of spending his time on this work when he could have retired instead.[423] I find it difficult to believe that he would have valued his services so differently in respect of the other work done for the defendants during the same time period. Furthermore, in terms of chronology, the alleged oral Melbourne Profits Agreement (Joint), which allegedly contained the S$800 and S$1,200 hourly rates, was purportedly agreed one month before the 25 July 2001 E-mail. Yet there was no mention in the 25 July 2001 E-mail that the exorbitant hourly rates of S$800 and S$1,200 would not be applicable. Mr Phua's handwritten note on Mr Choo's 25 July 2001 E-mail to Mr Lee and Mr Ding regarding

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420 Transcript (26 February 2021), p 84 at lines 1–10.

421 ABOD, Vol 2, p 680 at para 5.

422 Transcript (26 February 2021), p 84 at lines 11–20.

423 Transcript (26 February 2021), p 95 at lines 6–10 and 22–25.

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Mr Choo's charges in the e-mail also did not indicate or suggest that Mr Choo's purported exorbitant hourly rates of S$800 and S$1,200 would otherwise apply.

219 Mr Choo further submits that, if the defendants were prepared to pay him S$100 to S$150 *per* hour as a benchmark hourly rate for simple review and research work (as stated in the 25 July 2001 E-mail), he was fully justified in charging S$800 to S$1,200 *per* hour for more complex matters involving the Melbourne Properties.[424] According to Mr Choo, the nature of the work done for the Mei Leong Indemnity Agreement, which involved perusing documents and attending negotiation meetings, was much simpler compared to the vast scope of work required for the other oral agreements.[425] I am unable to accept this submission. The hourly rates of S$800 and S$1,200 which Mr Choo purports to charge the defendants under the oral Melbourne Profits Agreement (Joint) are *at least five times* the hourly rates stated in the 25 July 2001 E-mail. Mr Choo has not produced any evidence to support his argument that his work under the oral Melbourne Profits Agreement (Joint) was so complex as to warrant such drastically higher hourly fees. For clarity, I emphasise that the issue is not whether the hourly rates of S$800 and S$1,200 were extraordinarily high when compared to the hourly rates in the 25 July 2001 E-mail. Rather, the issue is whether there was, indeed, an oral agreement between Mr Choo and the defendants that Mr Choo's legal services were to be charged on hourly rates of S$800 and S$1,200. The discrepancy between the hourly rates alleged by Mr Choo and the hourly rates stated in the 25 July 2001 E-mail suggests that there was never such any oral agreement.

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424 PCS at para 112.

425 PRS at para 29.

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220 Having regard to the *ARS v ART* guiding principles set out at [160] above, the documentary evidence, the parties' contemporaneous conduct at the material time and the factual matrix of the present case do not support Mr Choo's claim that the oral Melbourne Profits Agreement (Joint) existed. I, therefore, find that Mr Choo has failed to prove on a balance of probabilities that the oral Melbourne Profits Agreement (Joint) existed.

(IV) THE 20% REMUNERATION ARRANGEMENT

221 The 20% Remuneration Arrangement alleged by the defendants is supported by the documentary evidence and the circumstantial evidence. This arrangement is also consistent with Mr Phua's account of his financial circumstances in November 2000. As I have noted at [210] above, Mr Phua incurred significant contra losses in the course of his work with Phillip Securities in 2000. During cross-examination, Mr Phua explained that when he engaged Mr Choo in November 2000, it was on a contingent basis because he was "very broke" at the time and would only have agreed to an arrangement premised on the prospect that he might be able to gain or recover something in the future.[426]

222 The defendants allege that the Choo-Phua-Ding 2002 Oral Agreement was eventually evidenced in the Consultancy Agreement. The preamble to the Consultancy Agreement records an agreement made in February 2002 in Melbourne by the defendants to appoint Mr Choo to act for them in the recovery of moneys belonging to the two Trusts. Pursuant to this, Mr Choo was to be "remunerated on the basis of 20 percent of money recovered from the said trusts less all expenses and allowances advanced to [Mr Choo] so far".[427] This

426 Transcript (1 March 2021), p 47 at lines 14–21.

427 CBOD, Tab 3 at p 1.

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corroborates the defendants' case regarding the existence and terms of the Choo-Phua-Ding 2002 Oral Agreement. This also coheres with the terms of the Consultancy Agreement, which clearly provided for Mr Choo to receive "20 percent of all funds recoverable from the two [T]rusts minus all expenses paid so far to [Mr Choo]" for the work done thereunder.[428]

223 As for the scope of the Consultancy Agreement, I am inclined to agree with the defendants' interpretation that it applied to *all* work done by Mr Choo in relation to their investments in the Melbourne Properties, including the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings. The OS 902 Interpleader Proceedings concerned the issue of who had the authority to act for and on behalf of Gracedale in operating the ACU Account. Thus, this work falls within the scope of the first clause of the preamble to the Consultancy Agreement, which refers to the defendants' agreement to appoint Mr Choo to act for them "in the recovery of monies belonging to [the Trusts] *which includes money in Gracedale Technology Ltd*" [emphasis added]. While this clause does not specifically refer to the moneys in the *ACU Account* held in Gracedale's name, it is not disputed that this refers to the ACU Account.[429] The next section of the Consultancy Agreement then begins by stating that the defendants agreed to accept Mr Choo's services on the stated terms and conditions, including the 20% Remuneration Arrangement, "IN CONSIDERATION of *the above said agreement*" [emphasis added].[430]

224 Thus, although the first clause of the Consultancy Agreement refers explicitly to the OS 601 Interpleader Proceedings, I find that the scope of the

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428 CBOD, Tab 3 at p 2.

429 Transcript (17 February 2021) at lines 15–16.

430 CBOD, Tab 3 at p 2.

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Consultancy Agreement was not limited to work done by Mr Choo for OS 601. I accept the defendants' explanation that they agreed to the way this Consultancy Agreement was drafted because they were laypersons, and their understanding was that the scope of the Consultancy Agreement included both the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings.[431]

225 Indeed, at one point during his cross-examination by Mr Ding's counsel, Mr Choo admitted that the scope of his appointment under the Consultancy Agreement was for him to act for the defendants in all matters relating to their investments in the Melbourne Properties, including the recovery of the ACU Account Moneys and the moneys in the control of Mr Lee:[432]

> Q: … Firstly, the scope of the agreement, Mr Choo, the appointment is for you to act for Peter and Tom in the recovery of monies belonging to them in the two trusts, correct?
>
> A. Yes.
>
> Q. This includes the monies in the Gracedale account?
>
> A. Gracedale account as well as money in the control of Lee.
>
> Q. Essentially, whatever that relates to their investment in the Melbourne properties, that is the scope of your appointment?
>
> A. Correct.
>
> Q. Right. And the basis in which you are to be remunerated is that you will get 20 per cent of whatever that they manage to recover?
>
> A. Yes.

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431 Transcript (3 March 2021), p 32 at lines 8–12; Transcript (3 March 2021), p 112 at lines 22–23 and p 114 at lines 18–24.

432 Transcript (17 February 2021), p 140 at lines 18–25 and p 141 at lines 1–8.

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226 Further, this is supported by Mr Ding's 9 July 2014 E-mail to Mr Choo, in which Mr Ding set out the background of the defendants' "long legal battle" against Mr Lee. In that e-mail, Mr Ding stated that he had followed the path directed by Mr Choo "from day 1", including the return of the A$750,000 to Mr Yip and the A$820,000 to M/s Mei Leong.[433] During his cross-examination by Mr Phua's counsel, Mr Choo admitted that the return of the A$750,000 to Mr Yip related to the OS 601 Interpleader Proceedings.[434] Mr Choo also agreed that on a plain and holistic reading of the 9 July 2014 E-mail, it described his appointment as covering *all* matters including the return of the A$820,000 to M/s Mei Leong, the OS 601 Interpleader Proceedings, and the defendants' disputes with Mr Lee in various jurisdictions.[435]

227 On the other hand, I am unable to agree with Mr Choo's claim that the reference to the OS 601 Interpleader Proceedings in the first clause of the Consultancy Agreement is a "mistake" and that this line should instead refer to the OS 902 Interpleader Proceedings only. Even though the Consultancy Agreement was drafted by Mr Choo himself, this claim was raised for the first time at the trial.[436] The language of the agreement plainly refers to the OS 601 Interpleader Proceedings. The inclusion of the work done for OS 601 within Mr Choo's scope of work under the Consultancy Agreement is also consistent with the facts. Thus, I agree with Mr Ding's submission that Mr Choo cannot now rely on his oral evidence to contradict the plain written terms of the

433 CBOD, Tab 18 at pp 510–511.

434 Transcript (24 February 2021), p 87 at lines 5–9.

435 Transcript (24 February 2012), p 88 at lines 10–17.

436 Transcript (17 February 2021), p 138 at lines 11–15 and p 139 at lines 13–21.

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Consultancy Agreement. This is pursuant to s 96 of the Evidence Act,[437] which provides:

> **Exclusion of evidence against application of document to existing facts**
>
> **96.** When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.
>
> *Illustration*
>
> *A* conveys to *B* by deed "my estate at Kranji containing 100 hectares". *A* has an estate at Kranji containing 100 hectares. Evidence may not be given of the fact that the estate meant was one situated at a different place and of a different size.

228 Further, the 20% Remuneration Arrangement encapsulated in the Consultancy Agreement is inconsistent with the hourly rates that Mr Choo claims that he was entitled to charge for work done in relation to the OS 902 Interpleader Proceedings. In his Invoices, Mr Choo purported to charge the defendants for work done in preparing and drafting the defendants' affidavits for OS 902,[438] and preparing for and attending the hearings for OS 902.[439] When he was asked by Mr Phua's counsel to explain this inconsistency, Mr Choo simply said that the defendants had "agreed to the charges".[440] In my view, this purported explanation is untenable as there is no evidence that the defendants agreed to these alleged hourly rates. Instead, they agreed to remunerate Mr Choo based on 20% of the sum recovered from the profits of the investments in the Melbourne Properties.

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437 2DCS at para 76.

438 PRDC, Annex A at pp 100–102; Transcript (22 February 2021), p 55 at lines 3–4.

439 PRDC, Annex A at p 102; Transcript (22 February 2021), p 58 at lines 22–25 and p 59 at lines 1–3.

440 Transcript (22 February 2021), p 59 at lines 7–10.

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229 In addition, I agree with the defendants' submission that Mr Choo's position based on the high hourly rates is inconsistent with the Tripartite Agreement. Clause 2.4 of this agreement states that he was to be paid his fees for "services rendered for the Singapore High Court case involving the settlement of the moneys with Phillip Securities" (cl 2.4(II)) and "services rendered in relation to the legal proceedings in the Singapore High Court, the proceedings in [*sic*] Australia Federal Court and the British Virgin Islands High Court concerning Gracedale" (cl 2.4(III)) from the ACU Account Moneys. During his re-examination, Mr Choo confirmed that cl 2.4(II) referred to the OS 601 Interpleader Proceedings and cl 2.4(III) included the OS 902 Interpleader Proceedings.[441] This is consistent with the defendants' case that, under both the Consultancy Agreement and the Tripartite Agreement, Mr Choo was to be paid for his work done in relation to OS 601 from the ACU Account Moneys. If, as Mr Choo claims, his remuneration under the Consultancy Agreement was limited to *OS 902*, it is unclear on what basis the Tripartite Agreement would subsequently have stated that he was to be paid for his work in *OS 601* from the ACU Account Moneys as well. Indeed, if Mr Choo was really to be remunerated for his work in OS 601 based on hourly rates, his fees would have been capable of being crystallised by the end of 2004 (after the conclusion of the OS 601 Interpleader Proceedings). Mr Choo could have claimed those fees from the defendants at that point. However, there is no record of any crystallised sum of fees save for the alleged Invoices. On the contrary, cl 2.4(II) of the Tripartite Agreement (which was signed in July 2012) only refers vaguely to the "[c]onsultant fee" due from Mr Phua, without specifying any amount.[442]

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441 Transcript (25 February 2021), p 132 at lines 23–25 and p 133 at lines 8–9.

442 1DCS at paras 98(3) and 98(6); 2DCS at paras 79 and 81.

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230 I am also unable to accept Mr Choo's assertion that, *prior to* the release of the judgment in *ANZ v Ding* in 2004, the parties had agreed to revert to the alleged hourly rates of S$800 and S$1,200 after the release of the judgment. Mr Choo's assertion is unsupported by any documentary evidence. If such an oral agreement had indeed existed, one would expect it to be put in writing, especially since it would have wholly changed the basis on which Mr Choo was to be remunerated (from a contingency fee to hourly rates). Yet, even though further written agreements were drafted by Mr Choo after the Consultancy Agreement, there is no mention of any agreement between the parties to revert to the high hourly rates.

231 Although the 20% Remuneration Arrangement is broader than the scope of the written Consultancy Agreement, the existence of the Choo-Phua 2000 Oral Agreement and the Choo-Phua-Ding 2002 Oral Agreement (in which the defendants argue that the 20% Remuneration Arrangement was first agreed on) may be proved by the defendants pursuant to s 94(*b*) of the Evidence Act. The terms of those oral agreements are not inconsistent with the terms of the Consultancy Agreement. Thus, evidence of these oral agreements may be relied on by the defendants for the purpose of adding to the terms of the Consultancy Agreement and proving the existence of the 20% Remuneration Arrangement.

232 Therefore, I find that the agreement between the parties was for Mr Choo to be remunerated based on the 20% Remuneration Arrangement for *all* the work done by Mr Choo for the defendants with respect to the recovery of the profits from their investments in the Melbourne Properties and the Yip Atech Shares Transaction. This includes the work done for *both* the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings. I shall deal with the issue of whether the 20% Remuneration Arrangement is a champertous arrangement at [264] below.

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(V) OVERSEAS FEES AND EXPENSES

233 As for Mr Choo's claim for overseas fees, Mr Choo has not produced any evidence that the defendants agreed to pay him such fees of A$50,000 *per* trip to Australia, S$4,500 *per* trip to Kuala Lumpur and S$8,000 *per* trip to Hong Kong. Indeed, during his cross-examination by both defendants' counsel, he admitted that there was not a single document reflecting these alleged overseas fees[443] and that these rates were made up by him in 2018 for the first time after he filed the present Suit.[444] In his Reply and Defence to Counterclaim, Mr Choo attempted to rely on Mr Ding's affidavit in the OS 902 Interpleader Proceedings to show that the defendants admitted that they had agreed to pay him A$50,000 for each overseas trip. However, this was a misquoting of Mr Ding's affidavit, and Mr Choo admitted that this was "wrong" and "ought to be deleted" (see [66] above).

234 Mr Choo was also unable to explain the stark discrepancy between these alleged overseas fees and the overseas fees recorded in the Consultancy Agreement. In the Consultancy Agreement, the defendants agreed to pay Mr Choo A$6,000 *per* trip for a four-day period to Hong Kong or Australia and A$500 *per* day for any length of stay greater than four days, and A$600 *per* trip to Kuala Lumpur.[445] These fees are a fraction of the alleged overseas fees Mr Choo now claims from the defendants. Mr Choo acknowledged this discrepancy during his cross-examination by Mr Phua's counsel but did not offer any explanation.[446]

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443 Transcript (17 February 2021), p 104 at lines 11–14 and 23–25 and p 105 at lines 1–2; Transcript (25 February 2021), p 32 at lines 20–25.

444 Transcript (25 February 2021), p 35 at lines 12–15.

445 CBOD, Tab 3 at p 2.

446 Transcript (25 February 2021), p 33 at lines 24–25, p 34 at lines 1–2 and 21–25, and p 35 at lines 1–11.

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235 Further, as I have found at [214] and [220] above, the oral Interpleader Agreement and the oral Melbourne Profits Agreement (Joint) did not exist. Hence, Mr Choo cannot rely on these agreements as a basis for claiming these alleged overseas fees.

236 In his reply submissions, Mr Choo's position shifted and he claimed the overseas fees as recorded in the Consultancy Agreement.[447] This is inconsistent with Mr Choo's pleaded position, which was that the Consultancy Agreement was superseded by the Tripartite Agreement in 2012. It is also inconsistent with Mr Choo's evidence at the trial that the Consultancy Agreement was terminated by the judgment in *ANZ v Ding* in 2004. In these circumstances, I agree with the defendants' submission[448] that Mr Choo is precluded from claiming the overseas fees set out in the Consultancy Agreement.

237 Finally, Mr Choo's claim for the expenses he incurred on air tickets and accommodation is unsupported by any documentary evidence. During his cross-examination by Mr Ding's counsel, Mr Choo admitted that he had not produced any invoices or receipts to show that he had incurred these expenses.[449]

238 I, therefore, find that there was no agreement to pay Mr Choo the alleged overseas fees, and that he is not entitled to claim these overseas fees or expenses incurred from the defendants.

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447 PCS at paras 91(b)(iii)(2) and 91(b)(iii)(3).

448 1DRS at para 23.

449 Transcript (17 February 2021), p 101 at lines 18–25 and p 102 at lines 1–2.

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(D) SUMMARY ON THE RECOVERY OF PROFITS FROM THE MELBOURNE PROPERTIES AND THE YIP ATECH SHARES TRANSACTION

239 Mr Choo has not proven on a balance of probabilities that the oral Melbourne Profits Agreement (Phua), the oral Interpleader Agreement and the oral Melbourne Profits Agreement (Joint) existed. Mr Choo claims that he was entitled to charge hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters under these agreements. However, there is not a shred of documentary evidence to support Mr Choo's alleged hourly rates. In particular, these alleged hourly rates are not stated or alluded to in any of the written agreements between the parties, which were drafted by Mr Choo. He was unable to provide any satisfactory explanation for this omission (see [198]–[201] above). There were also inconsistencies between Mr Choo's pleaded position and his testimony at the trial with regard to *when* these alleged hourly rates were agreed on, and even *what* these hourly rates were (see [202]–[203] above). Further, the absence of any contemporaneous time sheets recording the time Mr Choo spent on his work for the defendants strongly suggests that the alleged hourly rates of S$800 and S$1,200 never existed. Finally, the evidence shows that the defendants would not have agreed to these exorbitant hourly rates (see [204]–[206] above).

240 With regard to the oral Melbourne Profits Agreement (Phua), the only documentary evidence Mr Choo relies on is the Invoice for work allegedly done from September 2000 to June 2001. However, the Invoice alone provides no evidence of this agreement, especially in view of the defendants' evidence that there was no dispute with Mr Lee in September 2000 and they also did not need Mr Choo to provide them with any financial services at this time. Further, given that Mr Phua had incurred significant contra losses in 2000, it is unlikely that he would have agreed to Mr Choo's alleged high hourly rates in September 2000 (see [205]–[206] above).

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241 Regarding the oral Interpleader Agreement, the only documentary evidence Mr Choo relies on is the Invoices for work allegedly done from January 2000 to December 2003. Again, these Invoices provide no evidence of this agreement. Further, given Mr Phua's testimony that he was facing serious financial difficulties in November 2000, it is unlikely that he would have agreed to Mr Choo's exorbitant alleged hourly rates at this time (see [206] and [214] above). In any event, even if the oral Interpleader Agreement existed, Mr Choo's claims for unpaid fees thereunder are time-barred under s 6(1)(*a*) of the Limitation Act (see [215] above).

242 As for the oral Melbourne Profits Agreement (Joint), the only documentary evidence Mr Choo relies on is the Invoices for work allegedly done from June 2001 to December 2016. There is no evidence that the defendants agreed to Mr Choo's alleged high hourly rates. On the contrary, the contemporaneous documentary evidence provided by the 25 July 2001 E-mail suggest that no such rates were agreed upon, since Mr Choo's proposed hourly rates in this e-mail were a mere fraction of his alleged hourly rates of S$800 and S$1,200 *per* hour (see [216]–[220] above).

243 Mr Choo has also not proven on a balance of probabilities that the scope of the Consultancy Agreement was limited to the work done for the OS 902 Interpleader Proceedings. I agree with the defendants' interpretation that the Consultancy Agreement applied to all work done by Mr Choo in relation to their investments in the Melbourne Properties, including *both* the OS 601 and the OS 902 Interpleader Proceedings (see [223]–[226] above). Mr Choo's claim at the trial that the reference to OS 601 in the first clause of the Consultancy Agreement was a "mistake" is inconsistent with the hourly rates that Mr Choo purported to charge for work done in relation to OS 902 in his Invoices. It is also inconsistent with the Tripartite Agreement (see [227]–[229] above).

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Further, Mr Choo's assertion that the parties agreed *prior* to the release of the judgment in *ANZ v Ding* to revert to the alleged hourly rates after the release of the judgment is unsupported by any documentary evidence (see [230] above).

244 Therefore, in my view, the defendants never agreed to pay Mr Choo his alleged hourly rates of S$800 and S$1,200. On the contrary, I find that the 20% Remuneration Arrangement applied to *all* the work done by Mr Choo for the defendants with respect to the recovery of the profits from their investments in the Melbourne Properties and the Yip Atech Shares Transaction, including the OS 601 Interpleader Proceedings and the OS 902 Interpleader Proceedings. The 20% Remuneration Arrangement was first orally agreed in the Choo-Phua 2000 Oral Agreement and the Choo-Phua-Ding 2002 Oral Agreement, and subsequently subsumed within the Consultancy Agreement in 2003. Under this 20% Remuneration Arrangement, Mr Choo was to be paid based on 20% of any sums he recovered for them from the profits of the investments in the Melbourne Properties. For the reasons explained at [205]–[206] and [221]–[226] above, the 20% Remuneration Arrangement coheres with the documentary evidence adduced by the parties (including the terms of the Consultancy Agreement) and is more plausible in the circumstances of this case.

245 Further, with regard to Mr Choo's claim for overseas fees and expenses, I find that there is no evidence of any agreement to pay Mr Choo the alleged overseas fees of A$50,000 *per* trip to Australia, S$4,500 *per* trip to Kuala Lumpur, and S$8,000 *per* trip to Hong Kong. Indeed, these alleged overseas fees are inconsistent with the fees recorded in the Consultancy Agreement. Mr Choo has also not produced any evidence to support his claim for expenses. He is, therefore, not entitled to claim these overseas fees or expenses incurred from the defendants (see [233]–[238] above).

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(4) Annual retainer under the oral Lee Claim Agreement and the Tripartite Agreement

246 Finally, Mr Choo claims unpaid fees amounting to A$420,000 based on a retainer of A$30,000 *per* year for 14 years of work done from 2002 to 2018. This sum of A$420,000 comprises A$240,000 for eight years of work allegedly done pursuant to the oral Lee Claim Agreement during the period from 2002 to 2012 (with breaks in between factored in), and a further A$180,000 for six years of work allegedly done pursuant to the Tripartite Agreement from 2012 to 2018.[450] As evidence of this annual retainer, Mr Choo relies on cl 2.4(I) of the Tripartite Agreement, which acknowledged that he had a claim to the moneys in the ACU Account for "[a]n estimated consultant fee of [*sic*] due from Ms Mei Leong of A$240,000 for services rendered for all the various proceedings and a retainer fee of A$240,000 (based on A$30,000 *per* year for 8 years)".[451] Mr Choo also relies on an e-mail dated 30 June 2015 from Ms Mei Leong to him.[452]

247 The precise basis of Mr Choo's claim for this annual retainer is unclear as his position has not been consistent:

(a) In his Statement of Claim, Mr Choo stated that this was an oral agreement by which the defendants, through M/s Mei Leong, agreed to engage Mr Choo to advise them on recovering the ACU Account Moneys from Mr Lee and settling any further payments to M/s Mei Leong.[453] Mr Choo later corrected himself in his Further and Better

450 PSOC at paras 38(a) and 38(b).

451 CBOD, Tab 5 at p 2; PRS at para 3, table of Oral Agreements at s/n 7(3).

452 Transcript (18 February 2021), p 48 at lines 7–10; FBP for Second Defendant at para 6(d)(a).

453 PSOC at paras 32–34.

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Particulars and stated that M/s Mei Leong never acted for the defendants, but they "shared a trustee-beneficiary relationship".[454]

(b) In his affidavit of evidence-in-chief, Mr Choo stated that it was *one of M/s Mei Leong's clients*, a Mr B K Lim, who agreed to engage Mr Choo to take care of his interest on a retainer basis, with Mr Choo's retainer to be paid out of the A$820,000 that had been set aside in the ACU Account to meet potential claims by M/s Mei Leong or its clients. The defendants consented to this arrangement as trustees of the ACU Account.[455] However, when questioned by Mr Ding's counsel during cross-examination, Mr Choo was unable to explain the basis of Mr B K Lim's claim to the A$820,000. While Mr Choo initially stated that Mr B K Lim (and not Mr Yip) was the one who had given the A$820,000 Advance to the defendants and Mr Lee,[456] Mr B K Lim was not one of the individuals named in the Letter of Indemnity dated 15 January 1999[457] and Mr Choo was also unable to produce any evidence of Mr B K Lim holding any roles in Tartan Capital Limited (which was the third entity named in the Letter of Indemnity dated 15 January 1999, after Mr Xiao Yongle and Mr Yip).[458] Mr Choo was only able to produce a name card to show that Mr B K Lim was the managing director of *Tartan Securities (Asia) Limited*.[459] The defendants submit that Mr Choo had to fabricate this story about Mr B K Lim

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454 FBP-1 for First Defendant at paras 8(3)(b) and 9(1)(a).

455 CCTW at para 520.

456 Transcript (18 February 2021), p 34 at lines 7–15 and p 36 at lines 9–13.

457 CCTW, Tab 33 at p 373.

458 Transcript (19 February 2021), p 43 at lines 3–5.

459 Transcript (19 February 2021), p 42 at lines 24–25 and p 43 at lines 1–2; Plaintiff's Bundle of Documents at Tab 2.

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having provided the A$820,000 Advance because he knew Mr Yip was dead.[460] As for Mr Xiao Yongle, Mr Choo knew that he was in jail.[461] Hence, neither Mr Yip nor Mr Xiao Yongle could possibly have engaged Mr Choo on a retainer of A$30,000 *per* year.

(c) At the trial, Mr Choo's position was that it was *Ms Mei Leong herself* who had engaged Mr Choo to take care of her interest in the ACU Account Moneys (*ie*, the A$820,000 that had been set aside to meet potential claims by M/s Mei Leong or its clients), and that Mr Choo would be paid his retainer only after Ms Mei Leong received her A$820,000.[462] On this version of Mr Choo's claim, the A$820,000 in the ACU Account was held by the defendants on trust for Ms Mei Leong and Mr Choo, with Mr Choo being a beneficiary only to the extent of his annual retainer.[463] The defendants are obliged to pay Mr Choo this retainer as *constructive trustees*, because – as trustees of the ACU Account – they had promised to pay Mr Choo this retainer.[464] Therefore, the defendants were under a "fiduciary duty" to pay Mr Choo the amount due to him.[465] In his written submissions, Mr Choo's position appeared to shift again. He now argues that Ms Mei Leong engaged him on a retainer basis "to look after [her] portion of the ACU Account to ensure Ding and Phua do their best as trustees of [*sic*] ACU Account and return her A$820,000".[466]

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460 Transcript (18 February 2021), p 43 at lines 1–9 and lines 16–18; 1DCS at para 59.

461 Transcript (18 February 2021), p 43 at lines 10–12.

462 Transcript (18 February 2021), p 30 at lines 23–25, p 31 at lines 1–14 and p 35.

463 Transcript (18 February 2021), p 60 at lines 6–25.

464 Transcript (18 February 2021) at pp 56–57.

465 Transcript (18 February 2021), p 59 at lines 19–21.

466 PRS at para 3, table of Oral Agreements at s/n 7(2).

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248 The defendants, on the other hand, contend that the oral Lee Claim Agreement for an annual retainer never existed.[467] They submit that it is unbelievable that the alleged oral Lee Claim Agreement carried on for at least 14 years and Mr Choo's fees thereunder amounted to almost half a million Australian dollars, yet there is no documentary evidence whatsoever to prove that this agreement existed.[468] On the contrary, the available documentary evidence throws the existence of the alleged oral Lee Claim Agreement into serious doubt.[469] Further, Mr Choo himself was not clear on who his client was under this alleged retainer (as outlined at [246] above) or on when it was entered into:[470]

(a) In his Statement of Claim, Mr Choo's pleaded case was that the oral Lee Claim Agreement was made around 2002.[471]

(b) In his affidavit of evidence-in-chief, Mr Choo's position was that the oral Lee Claim Agreement was made around 1 April 2003.[472]

249 Although Mr Choo clarified at the trial that the oral Lee Claim Agreement was entered into in April 2002,[473] he provided no explanation for why he had provided multiple conflicting versions of events in the first place.[474] However, as Mr Choo acknowledged, the date of the alleged oral Lee Claim

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467 1DCS at para 8(2), 45 and 55; 2DCS at para 44(3).

468 1DCS at para 55; 2DCS at para 116.

469 1DCS at paras 56–57.

470 2DCS at paras 117–121.

471 PSOC at para 33.

472 CCTW, p 169 at para 520.

473 Transcript (18 February 2021), p 74 at lines 19–20.

474 2DCS at para 121.

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Agreement was very important given that he was claiming an *annual* retainer.[475] Notwithstanding this, Mr Choo's position regarding when the oral Lee Claim Agreement was entered into was fraught with serious discrepancies. This suggests that Mr Choo's claim based on the oral Lee Claim Agreement is entirely fictitious.[476]

250 Further, the defendants submit that even if the annual retainer existed, it is unenforceable against the defendants as it is neither an agreement that they agreed to nor an agreement that involves them. Hence, Mr Choo has no right to claim his unpaid fees under this alleged retainer from the defendants.[477] Instead, the proper party against which Mr Choo's claim for fees under the alleged retainer should be brought is M/s Mei Leong or its client (as the case may be).[478]

251 In addition, the defendants submit that the alleged annual retainer is absurd and unreasonable. It is unbelievable that M/s Mei Leong would have agreed to allow Mr Choo to claim a retainer of A$30,000 *per* year (to be taken from the sum of A$820,000) to protect its purported interest in the A$820,000, and yet not act upon it at all for more than 14 years, thereby incurring retainer fees of close to half a million Australian dollars.[479]

(A) DID THE ORAL LEE CLAIM AGREEMENT FOR THE ALLEGED ANNUAL RETAINER EXIST?

252 Applying the *ARS v ART* guiding principles set out at [160] above, there is insufficient evidence to prove on a balance of probabilities that the oral Lee

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475 Transcript (18 February 2021), p 75 at lines 1–9.

476 2DCS at para 122.

477 1DCS at para 61; 2DCS at para 123.

478 Second Defendant's Opening Statement at para 33; 2DCS at paras 44(3).

479 1DCS at para 62.

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Claim Agreement existed. I note that the Tripartite Agreement (which was drafted by Mr Choo) states that an annual retainer of A$30,000 *per* year was due from Ms Mei Leong for eight years from 2002 to 2012 (with breaks in between factored in). However, although the oral Lee Claim Agreement was allegedly entered into with *Ms Mei Leong*, there is no evidence that Ms Mei Leong (who was not a party to the Tripartite Agreement) ever agreed to pay Mr Choo this annual retainer. Mr Choo produced one very brief e-mail dated 30 June 2015 sent to him by Ms Mei Leong to suggest that this oral Lee Claim Agreement existed. The e-mail was reproduced by Mr Choo in his Further and Better Particulars:[480]

> Dear Mr. Choo,
>
> Time flies. I wonder what is the development of our recovery of the money like? Are you still pursuing the matter?
>
> With best regards,
>
> Ms. Leong

253 I agree with Mr Ding's counsel that this is "sorely inadequate as any proof of an alleged retainer for nearly half a million dollars".[481] Apart from this, Mr Choo was unable to produce a single document showing that Ms Mei Leong agreed to this alleged retainer,[482] and even admitted that there was "no evidence to suggest that Ms Mei Leong agreed to this arrangement".[483] Given that, by Mr Choo's own account, the retainer was operative for 14 years, it is inherently unbelievable that there would be no documentary evidence of it between Ms Mei Leong and Mr Choo, if it indeed existed. Further, Mr Choo himself

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480 Transcript (18 February 2021), p 48 at lines 7–10; FBP for Second Defendant at para 6(d)(a).

481 Transcript (18 February 2021), p 48 at lines 16–18.

482 Transcript (18 February 2021), p 31 at lines 22–25 and p 32 at lines 14–17; Transcript (19 February 2021), p 41 at lines 4–9.

483 Transcript (18 February 2021), p 46 at lines 2–3.

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appeared to lack a clear understanding of *who exactly* had engaged him to protect his or her interest in the ACU Account Moneys, and *when* the alleged retainer began. I also agree with the defendants' submission that the alleged terms of the oral Lee Claim Agreement are unreasonable and implausible. In these circumstances, I find that an agreement to pay Mr Choo the alleged annual retainer never existed.

(B) CAN MR CHOO RELY ON THE TRIPARTITE AGREEMENT TO CLAIM THE ALLEGED ANNUAL RETAINER?

254 In his Statement of Claim, Mr Choo also relies on the Tripartite Agreement as a basis for claiming his fees under the alleged annual retainer for six years of work done from 2012 to 2018.[484] However, this is unsupported by the plain wording of the Tripartite Agreement. The only clause in the Tripartite Agreement that refers to the annual retainer is cl 2.4(I), which states that Mr Choo was owed a retainer fee of A$240,000 based on A$30,000 *per* year for eight years. It is clear that cl 2.4(I) refers to eight years of work *already* done for Ms Mei Leong. The Tripartite Agreement is completely silent on any agreement to pay Mr Choo an annual retainer of A$30,000 *per* year for work *to be done* for Ms Mei Leong from 2012 to 2018.

255 I, therefore, find that Mr Choo cannot rely on the Tripartite Agreement to claim the alleged annual retainer for the period from 2012 to 2018 from the defendants.

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484 PSOC at para 38(b).

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(C) CAN MR CHOO CLAIM HIS FEES UNDER THE ALLEGED ANNUAL RETAINER FROM THE DEFENDANTS?

256 Even if the annual retainer existed, I agree with the defendants that Mr Choo has no basis to claim his unpaid fees thereunder from them. As I have explained at [18] above, the sum of A$1.8m was set aside in the ACU Account to meet contingent liabilities arising from the defendants' and Mr Lee's investments in the Melbourne Properties, including any potential claims by M/s Mei Leong or its clients in connection with the Yip Atech Shares Transaction. I agree with the defendants' submission that this sum was not held *on trust* for M/s Mei Leong, its clients, or Ms Mei Leong herself.[485]

257 This is consistent with Mr Ding's 9 July 2014 E-mail to Mr Choo, in which Mr Ding envisioned the A$820,000 being divided between himself, Mr Phua, and Mr Lee.[486] If the A$820,000 had in fact been held on trust by the defendants for M/s Mei Leong, its clients, or Ms Mei Leong herself (as Mr Choo claims), it would have been a breach of trust on the defendants' part to divide the A$820,000 amongst them and Mr Lee. If Mr Choo had indeed been engaged to protect the interests of M/s Mei Leong, its clients, or Ms Mei Leong herself, he should have protested and corrected the contents of Mr Ding's 9 July 2014 E-mail. Yet, Mr Choo claims that he did not see any need to inform Mr Ding that this would be a breach of his trust obligations,[487] because this was a "mere exchange of e-mails" and not a "formal action against Mei Leong".[488] I, therefore, agree with the defendants' submission that Mr Choo's lack of a

485 2DCS at para 126.

486 ABOD, Vol 1 at p 339.

487 Transcript (18 February 2021), p 90 at lines 15–17.

488 Transcript (18 February 2021), p 92 at lines 11–21.

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response to Mr Ding's 9 July 2014 E-mail would be unbelievable if he had indeed been engaged for the purpose he alleges.[489]

258 Further, Mr Choo admitted that Mr Lee had always objected to paying M/s Mei Leong the sum of A$820,000.[490] In Mr Lee's affidavit filed in the OS 902 Interpleader Proceedings, he expressly stated that he had never agreed to pay M/s Mei Leong this sum.[491] There was, therefore, no agreement between Mr Lee and the defendants to pay this sum to M/s Mei Leong. In these circumstances, there could not have been an arrangement between Mr Lee and the defendants to hold this sum on trust for M/s Mei Leong.[492]

259 Moreover, Mr Choo was unable to produce any evidence that the defendants were "constructive trustees" in respect of the annual retainer allegedly due to him. During the trial, Mr Choo sought to rely on the Tripartite Agreement for this purpose. However, upon my further questioning, Mr Choo admitted that nowhere in the Tripartite Agreement was it stated that the defendants were trustees:[493]

COURT:	… [Mr Ding's counsel] is asking in this tripartite agreement where did it say that Mr Phua and Mr Ding were trustees?
A.	*It is not mentioned here, your Honour. But I'm implying it.*
COURT:	No –
A.	It is not mentioned here.

489 1DCS at para 57.

490 Transcript (18 February 2021), p 87 at lines 16–19.

491 ABOD, Vol 2, p 502 at para 62.

492 Transcript (18 February 2021), p 87 at lines 20–22; 1DCS at para 60.

493 Transcript (18 February 2021), p 103 at line 25 and p 104 at lines 1–15.

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> COURT: You are the drafter of this document. Why did you not state that they were trustees?
>
> A. Your Honour, the trustee concept only relates to the claim against Mei Leong but not to others.
>
> COURT: Mr Choo, listen to my question. I would appreciate you answer my question.
>
> A. *No, it was not included in it.*
>
> COURT: But why, you were the drafter.
>
> A. *I ought to but I didn't, that's all.*
>
> [emphasis added]

260 Although the Tripartite Agreement, which was made between Mr Choo and the defendants, states that Mr Choo had a claim to the ACU Account Moneys for this annual retainer, cl 2.4(I) of the Tripartite Agreement stated that these fees were "due *from Ms Mei Leong*" [emphasis added].[494] It was expressly drafted by Mr Choo in cl 2.4 of the Tripartite Agreement that he had claims against three separate groups of persons. In cl 2.4(I), Mr Choo claimed from Ms Mei Leong; in cl 2.4(II), he claimed from Mr Phua; and in cl 2.4(III), he claimed from both of the defendants. As I have outlined at [247] above, Mr Choo has not provided any cogent or consistent basis for claiming these retainer fees due from Ms Mei Leong under cl 2.4(I) of the Tripartite Agreement *from the defendants* in this Suit.

261 Thus, even if the oral Lee Claim Agreement indeed existed, Mr Choo's attempt to claim payment of his annual retainer from the defendants is patently misconceived.

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494 CBOD, Tab 5 at p 2.

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(D) SUMMARY ON THE ALLEGED ANNUAL RETAINER UNDER THE ORAL LEE CLAIM AGREEMENT AND THE TRIPARTITE AGREEMENT

262 In summary, Mr Choo has not proven on a balance of probabilities that the oral Lee Claim Agreement, under which he was allegedly to be paid a retainer of A$30,000 *per* year for eight years of work done from 2002 to 2012 (with breaks in between factored in), existed. Mr Choo's final position at the trial and in his written submissions was that it was Ms Mei Leong who had agreed to pay him this annual retainer. However, although the Tripartite Agreement referred to an annual retainer of A$30,000 *per* year due from Ms Mei Leong for eight years from 2002 to 2012, Mr Choo was unable to produce any evidence that Ms Mei Leong (who was not a party to the Tripartite Agreement) had ever entered into this alleged agreement with him even though, by his own account, it was operative for a total of 14 years. Mr Choo relies only on the brief e-mail dated 30 June 2015 from Ms Mei Leong to him, a plain reading of which does not assist Mr Choo at all in showing that the oral Lee Claim Agreement existed (see [252]–[253] above). Further, the plain wording of the Tripartite Agreement does not support Mr Choo's claim for the annual retainer for six years of work allegedly done from 2012 to 2018 (see [254] above).

263 Even if the alleged annual retainer existed, Mr Choo has no basis to claim his unpaid fees thereunder from the defendants. There is no evidence that the defendants were parties to the oral Lee Claim Agreement, or that they held any part of the sum of A$820,000 in the ACU Account as "constructive trustees" for Mr Choo. On the contrary, the A$820,000 was merely one of the sums that was set aside to meet contingent liabilities arising from the investments in the Melbourne Properties, including any potential claims by M/s Mei Leong or its clients. Further, while the defendants were parties to the Tripartite Agreement, cl 2.4(I) of the Tripartite Agreement stated that these

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retainer fees were due from Ms Mei Leong. Mr Choo has not provided any cogent or consistent explanation for his claim that *the defendants* are obliged to pay him these retainer fees (see [256]–[260] above).

Whether the 20% Remuneration Arrangement is void for champerty

264 For the reasons explained at [221]–[232] above, I have found that the parties agreed that Mr Choo was to be remunerated for his work in respect of the recovery of profits from the investments in the Melbourne Properties and the Yip Atech Shares Transaction based on the 20% Remuneration Arrangement. I shall now consider whether this arrangement was champertous or savoured of maintenance and is therefore void *ab initio* and unenforceable as it is contrary to public policy.

265 The defendants submit that the 20% Remuneration Arrangement is unenforceable because it is champertous in nature.[495] Further, the defendants argue that this arrangement is champertous regardless of whether Mr Choo was providing legal services, because champerty can be found even where the party providing assistance is not a lawyer. The underlying policy against champerty is universal and is not limited to advocates and solicitors providing aid in the bringing of a claim.[496] Moreover, according to Mr Ding, the arrangement was proposed by Mr Choo, and Mr Ding was not aware at the material time that such an arrangement was unenforceable for champerty.[497]

266 On the other hand, during his oral submissions, Mr Choo's counsel submitted that the rule against champerty applies primarily to lawyers rendering

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495 1DCS at paras 8(3) and 101; 2DCS at para 9.

496 1DCS at para 102.

497 2DCS at para 71.

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legal services,[498] and does not apply to business consultants whose work has open-ended outcomes.[499] However, he accepted that if Mr Choo is found to have been rendering legal services to the defendants, then Mr Choo's claim would be barred for champerty.[500] Mr Choo further submits that any allegations of champerty are negated by the fact that the Consultancy Agreement was superseded by the Tripartite Agreement on 6 July 2012.[501]

(1) The applicable law

267 It is undisputed that, from 1 April 2000 to 31 March 2006 and from 1 April 2014 onwards, Mr Choo was an unauthorised person for the purposes of the LPA as he did not have a practising certificate in force. Under s 2 of the LPA, Mr Choo was a "solicitor", notwithstanding that he did not have a practising certificate, as he was admitted as an advocate and solicitor of the Supreme Court of Singapore in 1989. Section 107(3) of the LPA states: "A solicitor shall, notwithstanding any provision of this Act, be subject to the law of maintenance and champerty like any other person."

268 Although s 5A(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) abolished the common law tort of maintenance and champerty, s 5A(2) provides that this "does not affect any rule of [Singapore] law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal". It is established that contracts which savour of maintenance or champerty are void as being contrary to public policy at common law (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at [13.068]

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498 Transcript (27 May 2021), p 75 at lines 4–9.

499 Transcript (27 May 2021), p 78 at lines 7–11 and p 83 at lines 15–19.

500 Transcript (27 May 2021), p 77 at lines 5–22.

501 PCS at para 117(d).

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and [13.075]). In *Ochroid* at [39]–[40], the Court of Appeal affirmed the principle that a contract which is prohibited by one of the established heads of common law public policy would be rendered void and unenforceable and no recovery pursuant to the contract would be permitted.

269 The Court of Appeal explained in *Otech Pakistan Pvt Ltd v Clough Engineering Ltd and another* [2007] 1 SLR(R) 989 ("*Otech*") at [32] that "champerty exists where one party agrees to aid another to bring a claim on the basis that the person who gives the aid shall receive a share of what may be recovered in the action". The traditional rationale for treating champertous agreements as contrary to public policy was that such agreements "would tempt the champertous maintainer to subvert the course of justice" (*Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 ("*Kurubalan*") at [42]). Where the champertous agreement is entered into with a lawyer, this rationale has particular force, as such an agreement may hinder "the ability of the lawyer to maintain a sufficient sense of detachment so as to be able to discharge his duty to the court", which is "ultimately paramount and trumps all other duties" (*Kurubalan* at [45]).

(2) My findings

270 Applying these principles in the present case, the 20% Remuneration Arrangement is self-evidently champertous. Under this arrangement, Mr Choo was to be remunerated by the defendants based on 20% of any sums he recovered for them from the profits of the investments in the Melbourne Properties. Mr Choo, therefore, had a direct financial incentive to assist the defendants in recovering as large a sum of moneys as possible. This falls squarely within the scope of the doctrine of champerty as contemplated in *Otech*.

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271 Mr Choo's counsel attempted to distinguish *Otech* on the ground that it concerned a consultant (a company) which was engaged to assist one party in reaching a negotiated settlement with its contractual counterparty.[502] He argued that Mr Choo's case was different because Mr Choo's work had open-ended outcomes: the defendants could have recovered their moneys from the investments in the Melbourne Properties if Mr Lee willingly paid them these sums; or if they won these sums from Mr Lee through litigation; or if they entered into a settlement agreement with Mr Lee. At the time the 20% Remuneration Arrangement was entered into, no one could have accurately predicted which of these three outcomes would eventually materialise.[503] On this basis, Mr Choo's counsel submitted that this was not a situation where Mr Choo "entered into this champertous agreement for his own selfish interests and … structured or tried to influence a settlement such that he [would] get a higher payout".[504]

272 In my view, this was an extremely tenuous basis on which to distinguish *Otech*. The reasoning in *Otech* was not confined to cases of consultants negotiating settlements. On the contrary, in *Otech*, Judith Prakash J (as she then was) emphasised that "[t]he law of champerty stems from public policy considerations that apply to *all types of legal disputes and claims*, whether the parties have chosen to use the court process to enforce their claims or have resorted to a private dispute resolution system like arbitration" and that "the principles behind the doctrine of champerty are general principles and *must apply to whatever mode of proceedings is chosen for the resolution of a claim*" [emphasis added] (at [38]).

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502 Transcript (27 May 2021), p 78 at lines 16–23.

503 Transcript (27 May 2021), p 79 at lines 3–18.

504 Transcript (27 May 2021), p 80 at lines 10–14.

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273 Further, the three outcomes outlined by Mr Choo's counsel are typical of champertous arrangements in that they involve an agreement for the recipient to be remunerated based on a proportion of whatever sums are eventually recovered, regardless of the precise means by which those sums are recovered. Hence, I am unable to accept counsel for Mr Choo's argument that the rule against champerty was inapplicable in the present case.

274 Mr Choo's submission that the Consultancy Agreement was superseded by the Tripartite Agreement on 6 July 2012 is baseless as it is not supported by the wording of the Tripartite Agreement or any other evidence (see [193] above). This submission is also illogical as the terms of the Consultancy Agreement and the Tripartite Agreement are materially different (see [194] above). In any event, even if the Consultancy Agreement was superseded by the Tripartite Agreement, it would have been operative from 2003 to 2012. This period constitutes the bulk of Mr Choo's claim. This submission, therefore, does not assist Mr Choo (see [195] above).

275 Consequently, the Choo-Phua 2000 Oral Agreement, the Choo-Phua-Ding 2002 Oral Agreement and the Consultancy Agreement are void as being contrary to public policy to the extent that they embody the 20% Remuneration Arrangement.

276 Therefore, Mr Choo is not entitled to claim unpaid fees based on the 20% Remuneration Arrangement or under any of these three agreements.

(3) Summary on whether the 20% Remuneration Arrangement is void for champerty

277 In summary, I find that the 20% Remuneration Arrangement is champertous as it was based on Mr Choo receiving a 20% share of whatever the

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defendants recovered from the profits of the investments in the Melbourne Properties. Therefore, this arrangement and the three agreements which embodied it (*ie*, the Choo-Phua 2000 Oral Agreement, the Choo-Phua-Ding 2002 Oral Agreement and the Consultancy Agreement) are void as they are contrary to public policy. Hence, Mr Choo is not entitled to claim unpaid fees based on the 20% Remuneration Arrangement or under any of these agreements.

Whether Mr Choo has already been remunerated for his services

278 Even if, contrary to my findings above, Mr Choo is not barred by s 36(1) of the LPA from recovering his fees from the defendants for work done while he did not have a valid practising certificate in force, the next question that arises is whether Mr Choo has already been remunerated for his services.

279 As I have found that Mr Choo's alleged oral agreements which are disputed by the defendants did not exist, and that the 20% Remuneration Arrangement is void for champerty, I shall now consider whether Mr Choo has been remunerated under the Mei Leong Indemnity Agreement and the 2013 Choo Settlement Agreement.

(1) A$50,000 under the Mei Leong Indemnity Agreement

280 The defendants do not dispute the existence of the Mei Leong Indemnity Agreement.[505] The terms of this agreement were set out by Mr Choo in his 25 July 2001 E-mail to Mr Phua. Under this agreement, the total fee payable to Mr Choo for his legal services was a fixed fee of A$50,000. The issue is whether Mr Choo was paid the full fee of A$50,000.

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505 1DCS at para 48; 2DCS at para 46.

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281 The defendants' position is that this sum was fully paid to Mr Choo in two instalments in 2001 by Mr Ding on behalf of both defendants: an advance of A$20,000 on 21 September 2001 and the balance sum of A$30,000 on 23 and 24 November 2001.[506] With regard to the advance, they rely on four bank drafts dated 21 September 2001, all made payable to "Wilfred Choo Cheng Tong", which amount to A$20,000: one from RHB Bank Berhad for A$5,000,[507] one from Bumiputra Commerce Bank Berhad for A$5,000,[508] one from Malayan Banking Berhad ("Maybank") for A$4,800,[509] and another from Maybank for A$5,200 (collectively, the "21 September Bank Drafts").[510] With regard to the balance sum of A$30,000, the defendants rely on two documents:

(a) an acknowledgment slip dated 23 November 2001, in which Mr Choo acknowledged receipt of RM38,120, which was equivalent to A$20,000, as "a partial payment towards the legal fees pertaining to the settlement of the legal indemnity matter between [M/s Mei Leong] and [Mr Phua]" (the "First Acknowledgment Slip");[511] and

(b) a Maybank cheque dated 23 November 2001 for RM24,000, issued in favour of Mr Choo (the "23 November Cheque"),[512] and an acknowledgment slip dated 23 November 2001 and ostensibly signed by Mr Choo on 24 November 2001 acknowledging receipt of cash of RM24,000, again as "payment towards the legal fees pertaining to the

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506 1DDC at para 10A; ASOF-2 at paras 35(a)–35(b) (read with Transcript (1 March 2021) at pp 1–2); 1DCS at para 48; 2DCS at paras 26–27, 44(1), and 46.

507 ABOD, Vol 4 at p 1963.

508 ABOD, Vol 4 at p 1965.

509 ABOD, Vol 4 at p 1967.

510 ABOD, Vol 4 at p 1969.

511 ABOD, Vol 4 at p 1971.

512 ABOD, Vol 4 at p 1973.

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> settlement of the legal indemnity matter between [M/s Mei Leong] and [Mr Phua]" (the "Second Acknowledgment Slip").[513]

282 On the other hand, Mr Choo denies being paid by the defendants for the above sums.[514] He claims that he never received any of the 21 September Bank Drafts or the 23 November Cheque.[515] He further alleges that he would be unable to bank in the 21 September Bank Drafts because he did not have a bank account in Australia.[516] Mr Ding testified that he prepared the 21 September Bank Drafts based on Mr Choo's instructions to state the addresses of banks in Australia. However, Mr Ding was unable to produce documentary proof that Mr Choo gave such payment instructions.[517] Mr Choo also claims that he did not sign either the First Acknowledgment Slip or the Second Acknowledgment Slip,[518] and questions the authenticity of all of these documents.[519] He states that he does not know the individual named as the remitter on the Maybank bank drafts, one "Hashim Abd Rani".[520] In addition, according to Mr Choo, his address as stated on both the First Acknowledgment Slip and the Second Acknowledgment Slip is wrong, and he does not know the individual named "Loh Khim Kai" who was identified in the First Acknowledgment Slip as his authorised representative.[521] Mr Choo also places emphasis on the fact that

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513 ABOD, Vol 4 at p 1975.

514 PCS at para 104(b).

515 Transcript (17 February 2021), p 122 at line 24.

516 Transcript (19 February 2021), p 161 at lines 16–18; PCS at para 104(b)(iii)(1).

517 Transcript (3 March 2021), p 62 at lines 23–25, p 63 at lines 1–2, p 64 at lines 1–6 and p 65 at lines 10–23; PCS at para 104(b)(iii)(2).

518 Transcript (25 February 2021), p 121 at lines 17–22 and p 122 at lines 18–21.

519 Transcript (17 February 2021), p 123 at line 10 and p 124 at lines 14–15 and 23–24.

520 Transcript (19 February 2021), p 161 at lines 22–25 and p 162 at line 1.

521 Transcript (19 February 2021), p 157 at lines 23–25.

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Mr Ding testified that he was unable to remember the payment mode or provide documentary proof to show which bank account the sum of A$20,000 flowed out from.[522] Further, Mr Choo points out that the RM24,000 recorded in the Second Acknowledgment Slip is equivalent to A$12,244, which exceeds the remaining balance of A$10,000 by A$2,244.[523]

283 I accept the defendants' submission that Mr Choo has been paid the full fixed fee of A$50,000.

284 First, I am unable to accept Mr Choo's allegation that the 21 September Bank Drafts, the 23 November Cheque and the First Acknowledgment Slip and the Second Acknowledgment Slip are not authentic. Mr Choo was unable to produce any evidence that these documents were forged. He also did not file any notice of non-admission to dispute the authenticity of these documents even though they were disclosed during general discovery in Mr Ding's List of Documents filed on 26 September 2019. Consequently, I accept the defendants' submission that Mr Choo is deemed to have admitted the authenticity of these documents pursuant to O 27 r 4(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).[524] These documents were also included in the parties' Agreed Bundle of Documents, the Index to which expressly stated that the parties had agreed on the authenticity of the copies of the documents enclosed therein.[525]

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522 Transcript (3 March 2021), p 89 at lines 18–25 and p 90 at lines 1–9; PCS at para 104(b)(iv)(1); PRS at para 28.

523 Transcript (17 February 2021), p 124 at lines 23–25 and p 125 at lines 9–12.

524 Transcript (19 February 2021), p 162 at lines 23–25 and p 163 at lines 1–3; 1DCS at paras 34(5) and 49; 2DCS at para 48.

525 ABOD, Index to Agreed Bundle of Documents, Scope of Agreement; 2DCS at para 48.

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285 Furthermore, in my view, the concerns raised by Mr Choo at the trial are adequately accounted for by the explanations provided by Mr Ding during his cross-examination. Mr Ding's explanation is as follows:

(a) Mr Ding explained that Hashim Abd Rani was one of his personal assistants who was authorised to sign certain bank documents on his behalf.[526]

(b) According to Mr Ding, the First Acknowledgment Slip and the Second Acknowledgment Slip were prepared by Mr Choo. Mr Ding said that Mr Choo had inserted the address and Loh Khim Kai's name on these documents. He further added that he did not know Mr Choo's address or who Loh Khim Kai was.[527]

(c) As for the Second Acknowledgment Slip, Mr Ding explained why this was signed and dated by Mr Choo one day after the First Acknowledgment Slip (*ie*, on 24 November 2001). Mr Choo had personally collected the 23 November Cheque from Mr Ding in Malaysia on 24 November 2001. Mr Choo signed and dated the Second Acknowledgment Slip in front of Mr Ding on 24 November 2001.[528]

(d) With regard to the excess of A$2,244 that was paid to Mr Choo, Mr Ding explained that he paid this excess amount out of generosity because Mr Choo had told him that the balance sum due was approximately RM24,000, and Mr Ding was too busy to check the applicable conversion rate into Australian dollars.[529] I agree with

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526 Transcript (3 March 2021), p 87 at lines 7–15.

527 Transcript (3 March 2021), p 88 at lines 16–21 and p 89 at lines 1–5.

528 Transcript (3 March 2021), p 94 at lines 7–13.

529 Transcript (3 March 2021), p 99 at lines 8–12; 1DCS at para 50.

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> Mr Ding's submission that the fact that he made a slight overpayment to Mr Choo should not be held against him.[530]

286 Further, I agree with Mr Ding's submission that it would not have made sense for him not to pass the bank drafts to Mr Choo after purchasing them.[531] As Mr Ding explained during his cross-examination, he had to pay for these bank drafts upon their issuance and they could only be cashed in by the named beneficiary of the bank draft, *ie*, Mr Choo.[532]

287 Mr Choo submits that Mr Ding's version of events regarding the Second Acknowledgment Slip (at [285(c)] above) is "unbelievable" because Mr Choo could not have verified, at the 24 November 2001 meeting itself, whether the 23 November Cheque would be honoured.[533] I do not find this objection convincing. Mr Choo knew Mr Ding to be a man of significant financial means and would have had no reason to be concerned that the 23 November Cheque would not be honoured. In these circumstances, I find it entirely believable that Mr Choo signed the Second Acknowledgment Slip upon receiving the 23 November Cheque from Mr Ding.

288 I also accept Mr Ding's explanation for the issuance of the four separate bank drafts amounting to A$20,000 on 21 September 2001, instead of a single bank draft for the same amount. According to Mr Ding, in or around September 2001, after the financial crisis, Malaysia imposed capital controls limiting the amount of money that could be transferred in each bank draft. Splitting the sum of A$20,000 across four separate bank drafts for smaller amounts therefore

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530 2DCS at para 55.

531 2DCS at para 51.

532 Transcript (3 March 2021), p 75 at lines 4–17 and p 76 at lines 14–22.

533 PCS at para 104(b)(iv)(2).

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avoided the need for Mr Ding to obtain approval for the transfers.[534] Mr Choo submits that Mr Ding's explanation is unsupported by any bank documents showing the capital control policy and that it also fails to prove that Mr Ding actually passed the 21 September Bank Drafts to him and that he was able to cash them in.[535] However, I am not convinced by Mr Choo's argument. As I have mentioned at [286] above, I agree with Mr Ding's submission that since he had already purchased the bank drafts and they could only be cashed in by the beneficiary named therein, Mr Ding would have had no reason not to pass them to Mr Choo as payment of his fees under the Mei Leong Indemnity Agreement. In any event, Mr Choo has not adduced any evidence to show that he did not in fact receive the 21 September Bank Drafts or was unable to cash them in.

289 Furthermore, the evidence shows that after the 2001 Mei Leong Settlement Agreement crystallised on 15 October 2001, Mr Choo did not make *any* attempt to demand payment from the defendants.[536] Mr Choo explained that the defendants promised to pay him from the ACU Account Moneys, and that they did in fact instruct ANZ Bank to remit a sum of A$150,000 to Mr Choo, which included the A$50,000 due to him under the Mei Leong Indemnity Agreement.[537] However, after this remittance failed, Mr Choo said that he did not chase the defendants for payment because he trusted that they would pay him.[538] Mr Choo's explanation for not demanding the A$50,000 is not

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534 Transcript (3 March 2021), p 68 at lines 2–6, p 70 at lines 20–25, p 71 at lines 1–2, and p 72 at lines 8–15.

535 PCS at para 104(b)(iii)(4).

536 Transcript (25 February 2021), p 47 at lines 9–11 and 24; Transcript (26 February 2021), p 85 at lines 15–18.

537 Transcript (25 February 2021), p 48 at lines 5–10.

538 Transcript (25 February 2021), p 49 at lines 7–10.

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convincing. The LOAU 1 (which was signed on 13 July 2002) made no mention of any sum of A$50,000 owed to Mr Choo under the Mei Leong Indemnity Agreement, even though the very purpose of the LOAU 1 was to provide security for the payment of Mr Choo's fees. In my view, it is unbelievable that Mr Choo would have refrained from demanding payment from the defendants or mentioning the A$50,000 due to him in any of the written agreements or correspondence between the parties from late 2001 onwards, if he had indeed not been paid this sum. I agree with the defendants' submission that Mr Choo did not include his purported claim for the A$50,000 anywhere in the written agreements between the parties (despite being the legally trained drafter of these documents). Mr Choo also made no attempt to demand payment from the defendants for so many years clearly indicates that he had already been paid the A$50,000.[539]

290 Mr Choo's emphasis on Mr Ding's inability to recall the payment mode for the A$20,000 and the lack of documentary evidence showing which bank account the A$20,000 flowed out from is misplaced. Mr Choo submits that this is incongruous with the fact that Mr Ding kept records of the 21 September Bank Drafts.[540] However, the payment of the A$20,000 to Mr Choo was acknowledged by him in the First Acknowledgment Slip, the authenticity of which Mr Choo has not successfully challenged. In these circumstances, the fact that Mr Ding was unable to recall the payment mode or produce further documentary evidence of the transfer of A$20,000, which took place almost two decades ago in 2001, is no basis for Mr Choo to claim that he never received this sum. As Mr Ding explained during his cross-examination, he no longer had his bank statements from 2001 and would not be able to get them from the bank

539 1DCS at para 51; 2DCS at para 54.

540 PRS at para 28.

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so many years later. He would have been able to show them to Mr Choo if the payment had been disputed earlier.[541]

291 In any event, even if (contrary to what I have found above) the fixed fee of A$50,000 was not paid to Mr Choo, or not paid to him in full, I accept the defendants' submission[542] that his claim for this fee is time-barred. For the reasons explained at [168]–[169] above, the relevant cause of action accrued upon Mr Choo completing his work under the Mei Leong Indemnity Agreement, *ie*, on 15 October 2001, when the 2001 Mei Leong Settlement Agreement was concluded. Mr Choo himself admitted during his cross-examination by Mr Ding's counsel that his entitlement to claim the A$50,000 would have become due on 15 October 2001.[543] Yet, Mr Choo took no steps to demand payment of this sum of A$50,000 until the present Suit. Since more than six years elapsed between 15 October 2001 and the filing of the writ of summons in the present Suit on 5 July 2018, Mr Choo's claim under the Mei Leong Indemnity Agreement is time-barred under s 6(1)(*a*) of the Limitation Act.

(2) S$200,000 under the 2013 Choo Settlement Agreement

292 Even if Mr Choo was not fully paid for his work in accordance with any of the agreements discussed above, the defendants submit that pursuant to the 2013 Choo Settlement Agreement, Mr Choo agreed to accept S$200,000 from Mr Ding in full and final settlement of all fees payable by both of the defendants. Consequently, the defendants argue that Mr Choo's alleged claims have been

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541 Transcript (3 March 2021), p 95 at lines 5–14.

542 1DCS at paras 8(6) and 116; 2DCS at paras 44(1) and 56.

543 Transcript (17 February 2021), p 128 at lines 19–22.

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extinguished and Mr Choo is not entitled to claim any further fees from them.[544] The defendants claim that Mr Ding paid the full sum of S$200,000 to Mr Choo in two instalments: approximately S$50,000 by bank transfer on 3 April 2013, S$50,000 in cash on or around 3 or 4 June 2013, and S$100,000 by bank transfer on 10 June 2013.[545] In support of their version of events, the defendants rely on five e-mails between Mr Ding and Mr Choo.

293 The first is an e-mail dated 28 May 2013 from Mr Ding to Mr Choo (the "28 May 2013 E-mail"),[546] which stated:

> Wilfred,
>
> My guy went to the bank to do the 2nd tranche of Sgd 50k, but now they need document to prove reason for TT. In view of this, as I don't hv any invoice,
>
> And since I am mtg u together with Cameron on Mon, I will bring cash to u.

294 It is not disputed that "Mon" refers to 3 June 2013.[547]

295 The second is an e-mail dated 10 June 2013 from Mr Ding to Mr Choo (time-stamped 10.43am) (the "10 June 2013 E-mail"),[548] which stated:

> Hi Wilfred,
>
> Just to recap our understanding / agreement.
>
> *The total fees will be Sgd 200k.*
>
> *You hv no claim over the AUD money in ANZ bank under the name of Gracedale P/L.* The account is under the custody of Thom Phua n Peter Ding.

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544 1DCS at paras 8(5) and 110; 2DCS at paras 5, 34, and 97.

545 DPC at paras 36, 39, and 48; 1DCS at para 113; 2DCS at para 34.

546 ABOD, Vol 1 at p 112.

547 Transcript (25 February 2021), p 152 at lines 6–7.

548 ABOD, Vol 1 at p 149.

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> *So far I hv paid Sgd 100k*, (50k, bt [*sic*] TT and another 50k by cash).
>
> Today, with your invoice, I will do the balance by TT of sgd 100k.
>
> …
>
> [emphasis added]

296 Mr Ding testified that, by "total fees", he was referring to all the fees that had been accumulated up to 10 June 2013, such that after the S$200,000 was paid, Mr Choo would have no further claims against him.[549]

297 The third is Mr Choo's reply on the same day (time-stamped 10.50am) (the "10 June 2013 Reply"),[550] which stated:

> Dear Peter,
>
> *I will have no claim for legal fee against your share of the Gracedale monies.* However, I still have claim against Tom for services rendered to him for fee due on the first case and claim to Mei Leong for representing her interest.
>
> …
>
> [emphasis added]

298 The defendants submit that Mr Ding's 10 June 2013 E-mail and Mr Choo's 10 June 2013 Reply clearly show Mr Choo's unequivocal admission that once the S$200,000 was paid, he would not be entitled to claim any legal fees from the ACU Account Moneys.[551]

299 The fourth is Mr Ding's 9 July 2014 E-mail to Mr Choo.[552] This e-mail was a response to Mr Choo's 7 July 2014 Invoice, which purported to charge

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549 Transcript (4 March 2021), p 143 at line 25 and p 144 at lines 1–3 and 7–8.

550 ABOD, Vol 1 at p 148.

551 1DCS at para 111; 2DCS at paras 98–100.

552 ABOD, Vol 1 at p 339.

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Mr Ding "[n]ominal retainer fee[s]" amounting to S$48,000 for the period from 2012 to 2014.[553] Para 5 of the 9 July 2014 E-mail stated:

> …
>
> *You told me that u want SGD 200k n no claim on the entitlement* but will assist me for a token of fees. I requested for a few instalments which u agreed at that point of time. Later u requested for an early payt as u need the money urgently, *which I complied also.*
>
> …
>
> [emphasis added]

300 The fifth is the 9 July 2014 Reply sent by Mr Choo in response to Mr Ding's 9 July 2014 E-mail. The 9 July 2014 Reply stated:[554]

> Dear Peter
>
> *You are correct that Tom's portion was taken over by you.* I was to be reimbursed from the Mei Leong's portion [*sic*] as part of my legal fee.
>
> I think as we have been very cooperative in all these years *let not my mistake sour our relationship and effort.*
>
> *I am sorry for any misunderstanding.* If you are comfortable in advancing the $100k this amount will be deducted from my interest in the case.
>
> …
>
> [emphasis added]

301 Further, the defendants submit that it is plainly unsustainable for Mr Choo to deny receiving the full sum of S$200,000 in light of his own pleaded case and affidavit of evidence-in-chief, which stated unequivocally that he had received the full sum of S$200,000 in 2013. Indeed, the fact that Mr Choo never once disputed receipt of this full sum in the seven years since 2013 shows that

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553 CBOD, Tab 9 at p 4; DPC at paras 52–54; 1DCS at para 104; 2DCS at paras 101–102.

554 ABOD, Vol 4 at p 2005.

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any attempt to deny receipt of any part of this sum of moneys is a mere afterthought.[555]

302 On the other hand, Mr Choo argues that he only received the sum of S$150,000 and did not receive the further S$50,000 in cash.[556] In addition, Mr Choo asserts that, pursuant to the 2012 DATBI, he was owed a sum of S$200,000 from Mr Ding as part-payment for the fees owed to him by Mr Phua for his services rendered in relation to the OS 601 Interpleader Proceedings.[557] According to Mr Choo, the sum of S$150,000 which he received in 2013 was only a part-payment of his fees,[558] and not part of a full and final settlement. Mr Choo relies on a further e-mail he had sent to Mr Ding after the 10 June 2013 Reply (the "10 June 2013 Further Reply"), which stated:[559]

> Dear Peter,
>
> As per our telephone conversation, we agreed that you are entitled to be reimbursed for all legal fees you had paid out, including fees for Melbourne case and reimbursement for the loan you made to Lee and *the balance to be used to pay for your effort and my legal fee for work to be done.*
>
> …
>
> [emphasis added]

303 Mr Choo contends that the phrase "the balance to be used to pay for … my legal fee for work to be done" shows that the parties anticipated that there would be balance moneys from the ACU Account that could be used to pay his future fees for work done after 10 June 2013 and that there was no full and final

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555 2DCS at paras 8 and 107.

556 Transcript (18 February 2021), p 130 at lines 1–4 and 14–18.

557 CCTW at paras 15 and 20; Transcript (24 February 2021), p 7 at lines 10–15.

558 PCS at para 134(a).

559 ABOD, Vol 1 at p 148.

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settlement in 2013.[560] According to Mr Choo, after the 10 June 2013 e-mails, he did further work for Mr Ding in relation to the BVI Proceedings (which were discontinued around 9 July 2013) and S 420 (which was discontinued around August 2016).[561]

304 Further, Mr Choo argues that if the parties had indeed reached a full and final settlement of Mr Choo's fees, the 9 July 2014 E-mail would have explicitly stated so, instead of referring to the sum paid to Mr Choo as an "early pay[men]t".[562] Mr Choo argues that, viewed holistically, the 9 July 2014 E-mail and the 9 July 2014 Reply show that Mr Ding and Mr Choo had not yet terminated their working relationship, and that Mr Choo was still doing work for Mr Ding in relation to his claim against Mr Lee. This shows that the sum of S$150,000 did not operate as a full and final settlement of Mr Choo's fees.[563]

305 There are, therefore, two issues in dispute: (a) the amount paid by the defendants to Mr Choo in 2013; and (b) the purpose for which this sum was paid to Mr Choo. I shall deal with each of these issues in turn.

(A) AMOUNT PAID BY THE DEFENDANTS TO MR CHOO

306 Mr Choo's position regarding the amount paid by the defendants to him has been inconsistent. In Mr Choo's pleadings[564] and affidavit,[565] he accepted that he received a sum of S$200,000 from Mr Ding in 2013 and disputed only

560 Transcript (26 February 2021), p 7 at lines 4–13; PCS at para 134(b)(iii); Transcript (28 May 2021), p 95 at lines 23–25 and p 96 at lines 1–6.

561 Transcript (26 February 2021), p 7 at lines 13–19; PCS at para 134(e).

562 PCS at para 135(a)(ii).

563 PCS at paras 136–137.

564 PSOC at para 41(c); PRDC at para 66.

565 CCTW at paras 21–22 and 544.

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the purpose for which this sum was paid. In particular, in his Reply and Defence to Counterclaim, Mr Choo expressly accepted that he had been paid S$50,000 in cash by Mr Ding.[566] It was only in Mr Choo's opening statement[567] and at the trial that he claimed, for the first time, that he was not paid the full sum of S$200,000, as he "recollect[ed]" that he had not been paid the S$50,000 in cash.[568] Mr Choo alleged that this was because Mr Ding did not meet him on 3 June 2013[569] and therefore Mr Ding could not have paid him the S$50,000 in cash.[570] He, therefore, claimed that his pleadings and affidavit were both incorrect,[571] and that the sum of S$50,000 remains outstanding to date.[572]

307 At the end of the trial, Mr Choo's counsel made an oral application to amend Mr Choo's Statement of Claim and Reply and Defence to Counterclaim to state that Mr Choo only received S$150,000 out of the sum of S$200,000.[573] Counsel for Mr Phua and Mr Ding objected to this application on the ground that allowing this amendment at this late stage would prejudice the defendants.[574] I disallowed the amendment application as I did not think it was appropriate or fair to the defendants to allow Mr Choo to amend his pleaded and

566 PRDC at para 66.

567 Plaintiff's Opening Statement at para 54(b).

568 Transcript (18 February 2021), p 129 at lines 17–23 and p 130 at lines 1–4.

569 Transcript (25 February 2021), p 152 at lines 8–9 and 19; PCS at para 134(c).

570 Transcript (18 February 2021), p 138 at lines 16–19.

571 Transcript (18 February 2021), p 131 at lines 1–4.

572 PCS at para 134(d).

573 Transcript (4 March 2021), p 155 at lines 1–12.

574 Transcript (4 March 2021), p 164 at lines 19–24 and p 165 at lines 1–12.

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affirmed position in respect of such a hotly contested issue at the very end of the trial.[575]

308 Having considered the evidence before me, I accept the defendants' submission that the full sum of S$200,000 was paid to Mr Choo in 2013, including the S$50,000 in cash which Mr Choo disputes. In the 10 June 2013 E-mail, Mr Ding clearly stated that he had paid Mr Choo S$50,000 in cash. The wording of the 9 July 2014 E-mail also suggests that the full sum of S$200,000 was paid to Mr Choo. Yet, in the period of over seven years between 2013 and the filing of his opening statement, Mr Choo never once disputed receiving the S$50,000 in cash. Indeed, Mr Choo's own pleaded case and affidavit of evidence-in-chief stated that he had received the full sum of S$200,000 in 2013[576] and the defendants proceeded on this basis.[577] Mr Choo's explanation for this was that he was too busy to check his various bank accounts and trusted that Mr Ding had paid him.[578] Given the large sum of moneys involved, I find this explanation implausible.

309 The only basis on which Mr Choo disputes receiving the S$50,000 in cash from Mr Ding is that he did not meet Mr Ding on 3 June 2013. Based on this, it appears that Mr Choo simply *assumed* that Mr Ding could not have paid him the S$50,000. However, Mr Ding explained that although he did not meet Mr Choo on 3 June 2013,[579] he had a separate meeting with Mr Choo on 4 June 2013 where he passed Mr Choo a sum of S$50,000 in cash which he had

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575 Transcript (4 March 2021), p 165 at lines 21–25, p 166 at lines 1 and 24–25, and p 167 at lines 1–2 and 4–10.

576 PSOC at paras 41(c) and 49; PRDC, p 32 at para 58; CCTW at paras 21–22.

577 2DRS at para 23.

578 Transcript (18 February 2021), p 136 at lines 21–25 and p 137 at lines 4–8 and 19–24.

579 Transcript (4 March 2021), p 54 at lines 12–18.

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retrieved from two of his safes.[580] Mr Choo argues that Mr Ding's explanation is unbelievable because Mr Ding was unable to provide documentary proof that he retrieved or paid Mr Choo the sum of S$50,000, and also did not adduce passport extracts to show that he was in Singapore on 4 June 2013.[581] However, it is understandable that there was no documentary proof of the retrieval of this sum of money since it was cash taken directly from Mr Ding's own safes. Mr Choo admitted in his pleadings and affidavit of evidence-in-chief that he had received the full sum of S$200,000. He disputed this for the first time in his opening statement before the trial. The defendants, therefore, proceeded on the basis that the payment of the full S$200,000 was not in dispute.[582] Further, if Mr Ding had not been in Singapore or had not passed Mr Choo the S$50,000, one would have expected Mr Choo to ask Mr Ding for payment or dispute receiving this sum of money, yet Mr Choo did not do so. With Mr Ding's explanation, the entire basis on which Mr Choo disputes the payment of the S$50,000 falls away.

310 I, therefore, find that Mr Choo was paid the full sum of S$200,000 by Mr Ding in two instalments in 2013: S$150,000 in May 2013, and the remaining S$50,000 in June 2013.

(B) PURPOSE FOR WHICH THIS SUM WAS PAID

311 Mr Choo's position regarding the purpose of this payment has, similarly, been inconsistent. In his affidavit of evidence-in-chief, Mr Choo suggests that the S$200,000 was payment for his fees for work done in relation to the OS 601

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580 Transcript (4 March 2021), p 56 at lines 2–6.

581 PCS at paras 133(a)–133(b).

582 2DRS at para 23.

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Interpleader Proceedings.[583] Later in the same affidavit, Mr Choo states that the S$200,000 was consideration for Mr Ding taking over Mr Phua's legal fees in the 2012 DATBI in exchange for Mr Phua transferring his beneficial interest in the ACU Account to Mr Ding.[584] I shall deal with each of Mr Choo's assertions in turn, before considering the defendants' version of events based on the 2013 Choo Settlement Agreement.

(I) Part-payment of Mr Choo's fees for the OS 601 Interpleader Proceedings

312 I am unable to accept Mr Choo's argument that this sum of money was paid to him as a part-payment for his fees for work done for the OS 601 Interpleader Proceedings. By Mr Choo's own account, the Invoices were only prepared in August 2016. Therefore, in 2013, the total outstanding amount of fees that had accrued to Mr Choo would not yet have been clear to the parties. Further, by Mr Choo's calculations, the total amount owed to him for his work done pursuant to the OS 601 Interpleader Proceedings under the oral Interpleader Agreement from December 2000 to 2004 was S$193,880. This amount being less than S$200,000, I do not see how the parties could have agreed, in 2012 or 2013, to pay Mr Choo S$200,000 as *part*-payment for these fees. During his cross-examination by Mr Phua's counsel, Mr Choo provided two different explanations to account for the difference of S$6,120. Initially, he said the difference was to compensate for interest.[585] Later, he said Mr Phua had agreed to the sum of S$193,880 being rounded up to S$200,000.[586] If this was Mr Choo's case he was unable to explain why he is nevertheless claiming the

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583 CCTW, p 55 at paras 185–186.

584 CCTW, p 57 at para 192.

585 Transcript (24 February 2021), p 19 at lines 6–7.

586 Transcript (24 February 2021), p 19 at lines 8–9 and 17–18, and p 20 at lines 7–9.

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sum of S$193,880 again in his Statement of Claim.[587] As Mr Phua's counsel rightly pointed out during cross-examination, if the S$200,000 had indeed been payment towards Mr Choo's fees of S$193,880, he could not have claimed this head of unpaid fees in the present Suit.

313 Further, Mr Choo's submission that the phrase "early pay[men]t" in Mr Ding's 9 July 2014 E-mail shows that the S$200,000 was paid as an early payment, instead of a full and final settlement,[588] is unconvincing. Read in its context, the phrase "early pay[men]t" clearly refers to the payment of the S$200,000 itself, and not Mr Choo's fees. I, therefore, accept the defendants' submission that there is no basis for Mr Choo to argue that the S$200,000 was paid as an early payment of Mr Choo's fees.[589]

(II) 2012 DATBI

314 Alternatively, Mr Choo insists that there was an original DATBI which contained a clause stating that Mr Ding would pay Mr Choo a sum of S$200,000 towards the fees owed to him by Mr Phua. Thus, Mr Choo argues that the DATBI that was exhibited in court was not the original version prepared by him. However, Mr Choo has produced no evidence whatsoever to show that the earlier version of the DATBI existed. Even though the 2012 DATBI was drafted by Mr Choo, he was unable to produce an original of the 2012 DATBI or any drafts of the same.[590] He admitted that *no one* has a copy of this document.[591]

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587 Transcript (24 February 2021), p 24 at lines 7–12.

588 PCS at para 135(a)(ii).

589 2DRS at para 21.

590 Transcript (18 February 2021), p 120 at lines 8–17.

591 Transcript (23 February 2021), p 140 at lines 4–9.

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This beggars belief and Mr Choo has offered no reason why he (as the drafter of this document) does not have a copy of it.

315 Mr Choo further contends that the 2012 DATBI and the Tripartite Agreement were signed at the same time. Mr Choo's insistence defies logic as these two agreements are hugely different and inconsistent with one another. The differences are:

(a) As pointed out by Mr Phua's counsel,[592] the 2012 DATBI and the Tripartite Agreement deal with Mr Phua's interest in the ACU Account Moneys in vastly different ways. Pursuant to cl 3 of the Tripartite Agreement, Mr Phua's claim would rank secondary to that of Mr Ding and Mr Choo. However, under the 2012 DATBI, Mr Phua unconditionally transferred his entire beneficial interest in the ACU Account to Mr Ding. When Mr Choo was questioned by Mr Ding's counsel at the trial, Mr Choo's only response was that the defendants wanted the agreements to be drafted that way and there was "nothing [he could] do".[593] I am not convinced by Mr Choo's explanation.

(b) As pointed out by Mr Ding's counsel, the express language of the DATBI also indicates that it was not signed at the same time as the Tripartite Agreement.[594] Whereas cl 2.1 of the Tripartite Agreement states that it was made in relation to the "*intended* legal proceedings to be commenced in the [BVI]" [emphasis added],[595] cl 2(a) of the DATBI provides that it was made in relation to the legal proceedings that "*ha[d]*

592 Transcript (23 February 2021), p 145 at lines 2–8; 1DCS at para 109.

593 Transcript (23 February 2021), p 145 at lines 2–20.

594 2DCS at para 105(3).

595 CBOD at Tab 5.

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> *been commenced* in the [BVI]" [emphasis added].[596] As noted at [25] above, the BVI Proceedings were commenced on or around 18 October 2012. The defendants' account, that the Tripartite Agreement was signed on 6 July 2012 (before the BVI Proceedings were commenced) and the DATBI was signed on 9 January 2013 (after the BVI Proceedings had been commenced), is, therefore, consistent with the wording of cl 2.1 of the Tripartite Agreement and cl 2(a) of the DATBI.

316 Further, although the DATBI was filed during general discovery in Mr Phua's List of Documents on 26 September 2019, Mr Choo did not file any notice of non-admission to challenge its authenticity. Therefore, Mr Choo is deemed to have admitted the authenticity of these documents pursuant to O 27 r 4(1) of the Rules of Court. In addition, the DATBI was included in the parties' Agreed Bundle of Documents, the Index to which expressly stated that the parties had agreed on the authenticity of the copies of the documents enclosed therein.[597] Mr Choo's attempt to challenge the authenticity of the DATBI at the trial is therefore impermissible and unconvincing.

317 In any event, Mr Choo's argument that the DATBI should have contained a clause stating that Mr Ding would pay Mr Choo a sum of S$200,000 towards the fees owed to him by Mr Phua fell apart over the course of his testimony at the trial. Mr Choo initially said that the 2012 DATBI was meant to ensure that Mr Ding paid him S$200,000 for the fees owed to him by Mr Phua.[598] However, upon my further questioning, Mr Choo quickly conceded that this would have been covered by the more global cl 3 of the DATBI, which

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596 CBOD at Tab 6.

597 2DCS at para 105(1).

598 Transcript (23 February 2021), p 158 at lines 4–7.

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referred to Mr Ding assuming Mr Phua's "consultancy and legal fees owing to [Mr] Choo", and that a separate clause specifically stating that Mr Ding would pay him S$200,000 was unnecessary in these circumstances.[599]

318 Mr Choo's testimony constantly vacillated and morphed to suit the changing contours of his case and other aspects of his evidence. Thus, it is dangerous to accept his testimony at face value without corroboration or independent evidence. I am, therefore, unable to accept Mr Choo's contention that the S$200,000 was paid by Mr Ding pursuant to the 2012 DATBI, or otherwise as a part-payment of Mr Choo's fees.

(III) 2013 CHOO SETTLEMENT AGREEMENT

319 On the other hand, although Mr Choo emphasises that the 2013 Choo Settlement Agreement alleged by the defendants was not directly reduced to writing,[600] this agreement is evidenced in the e-mail correspondence between the parties. In my view, on a plain reading of the 10 June 2013 E-mail and the 10 June 2013 Reply, the understanding reached between Mr Choo and Mr Ding was that Mr Choo would be paid S$200,000. Thereafter, Mr Choo would have no claim for fees against Mr Ding's share of the ACU Account Moneys which was under the custody of the defendants. Otherwise, Mr Choo could claim 20% of the recovered sum from the defendants under the Consultancy Agreement. It is clear from the wording of these e-mails that the payment of S$200,000 was intended as a *settlement*, at least in relation to any claim Mr Choo might have to Mr Ding's share of the ACU Account Moneys. The wording of these e-mails is inconsistent with the S$200,000 being intended as merely a part-payment of Mr Choo's fees.

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599 Transcript (23 February 2021), p 159 at lines 19–23.

600 PCS at para 133(c).

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320 I turn next to Mr Choo's 10 June 2013 Reply, where he said that, notwithstanding the 2013 Choo Settlement Agreement, he would retain his claims against Mr Phua for "services rendered to him for fee due on the first case" and "claim to Mei Leong for representing her interest". According to Mr Phua, when Mr Choo referred to "the first case" in his 10 June 2013 Reply to Mr Ding, he thought Mr Choo was referring to his purported claim for work done under the PS Consultancy Agreement, which was time-barred (see [50] above).[601]

321 Mr Choo's 10 June 2013 Reply seems to suggest that the settlement was confined to Mr Ding's legal fees and that Mr Choo still had recourse against Mr Phua for his portion of the legal fees. However, after Mr Ding reminded Mr Choo in the 9 July 2014 E-mail that he (Mr Choo) had agreed to accept S$200,000 in exchange for relinquishing his claim on the ACU Account Moneys entirely, Mr Choo confirmed in his 9 July 2014 Reply to Mr Ding that Mr Phua's portion had indeed been "taken over" by Mr Ding. Pursuant to the DATBI dated 9 January 2013 (*ie*, before the 10 June 2013 e-mails regarding the full and final settlement), Mr Ding had assumed "[Mr] Phua's consultancy and legal fees owing to [Mr] Choo" in consideration of Mr Phua transferring "all his beneficial interest in the Gracedale's [*sic*] account to [Mr] Ding without any conditions attached". Mr Ding explained this incident when I asked him about the e-mails dated 10 June 2013 and 9 July 2014.[602] In the 9 July 2014 Reply, Mr Choo also acknowledged that his attempt to claim his consultancy fees on a retainer basis from Mr Ding was a "mistake" and apologised for "any misunderstanding". Thus, the evidence shows that Mr Choo acknowledged that

601 PSK at para 75.

602 Transcript (4 March 2021), p 143–148.

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the payment of S$200,000 was a full and final settlement of all the legal fees payable to him by the defendants.

322 Further, I agree with the defendants' submission that Mr Choo's 10 June 2013 Further Reply is consistent with their understanding of the 2013 Choo Settlement Agreement. Mr Ding explained that he understood Mr Choo's reference to his "legal fee for work to be done" to be a token sum that Mr Choo wanted in the event that the defendants resolved their dispute with Mr Lee.[603] This is supported by the 9 July 2014 E-mail from Mr Ding to Mr Choo, which recorded Mr Choo's agreement to accept S$200,000 in exchange for relinquishing his claim to the moneys in the ACU Account and to assist Mr Ding for "a token of fees".[604] Although Mr Choo disputed this agreement regarding the token sum in his affidavit of evidence-in-chief[605] and at the trial,[606] Mr Choo made no attempt to correct Mr Ding in his 9 July 2014 Reply. Indeed, Mr Choo's 7 July 2014 Invoice, which purported to charge Mr Ding "*[n]ominal* retainer fee[s]" [emphasis added],[607] is consistent with Mr Ding's position that Mr Choo was to be paid only a token sum for work done after the 2013 Choo Settlement Agreement.[608] Mr Choo has, therefore, failed to successfully challenge Mr Ding's account.[609] Mr Ding's agreement to pay Mr Choo a token sum is not inconsistent with the sum of S$200,000 being a full and final settlement of all fees payable by the defendants from the ACU Account Moneys.

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603 DPC at paras 46–47.

604 ABOD, Vol 1 at p 339.

605 CCTW at paras 340–341 and 352.

606 See, *eg*, Transcript (18 February 2021), p 143 at lines 20–22.

607 CBOD, Tab 9 at p 4.

608 Transcript (28 May 2021), p 42 at lines 19–25.

609 1DRS at para 37.

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I agree with the defendants' submission that the 2013 Choo Settlement Agreement did not envisage a complete termination of Mr Choo's services for Mr Ding, but rather that Mr Choo would be paid only a token fee for any work done after 10 June 2013.[610]

323 During his oral submissions, Mr Choo's counsel argued that there is nothing in the DATBI to suggest that the parties entered into the 2013 Choo Settlement Agreement for the full and final settlement of his client's fees.[611] This argument is misconceived as the DATBI was signed on 9 January 2013, before the 2013 Choo Settlement Agreement was entered into in or around March or April 2013. Thus, the DATBI was also signed before the settlement sum of S$200,000 was paid to Mr Choo in May and June 2013. In any event, the e-mail correspondence between Mr Ding and Mr Choo in 2013 and 2014, when read together, provides clear evidence of the 2013 Choo Settlement Agreement. I am, therefore, also unable to accept Mr Choo's counsel's further submission that the parties' omission to draft and sign "a proper agreement, with proper wording that is legally binding" indicates that the 2013 Choo Settlement Agreement did not exist.[612] In my view, the contemporaneous documentary evidence establishes the existence and terms of the 2013 Choo Settlement Agreement on a balance of probabilities.

324 The 8 June 2013 Invoice is also not inconsistent with the 2013 Choo Settlement Agreement. The 8 June 2013 Invoice, which was prepared by Mr Choo, reflected that sums amounting to S$200,000 were to be paid to Mr Choo for his fees. The original version of the 8 June 2013 Invoice contained

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610 2DRS at para 20.

611 Transcript (28 May 2021), p 97 at lines 13–17.

612 Transcript (28 May 2021), p 100 at lines 16–25, p 101 at lines 1–6 and 23–25, and p 102 at lines 1–11.

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an addition error (whereby the total sum was incorrectly reflected as S$100,000). Mr Choo's claim that he deliberately made this addition error because he found Mr Ding's instructions suspicious is incredible. In contrast, the amended version of the 8 June 2013 Invoice exhibited by Mr Ding indicates that the correct total sum was S$200,000 (see [60]–[61] above).

325 That said, I note that the 8 June 2013 Invoice was described as a "Statement of Professional Consultancy Fee" and stated that the fees therein were for "legal and professional advice rendered from 2004 to 2013 on the legal issues in respect of the case to be heard in the British Virgin Islands" and "attending meeting and discussions from 2004 to 2013 in Singapore".[613] Thus, on its face, the sum of S$200,000 paid pursuant to the 8 June 2013 Invoice does not appear to be paid in full and final settlement of Mr Choo's fees. Nevertheless, when the 8 June 2013 Invoice is considered in its factual context, I accept the defendants' submission that it covered Mr Choo's legal fees for the entire period from 2004 to 2013.[614] The phrase "the case to be heard in the British Virgin Islands" is ambiguous. At the time of the 8 June 2013 Invoice, the only ongoing court proceedings were the BVI Proceedings, which were commenced in October 2012 and concluded on or around 9 July 2013 (see [25] above). Hence, this phrase could refer to the defendants' broader dispute with Mr Lee which, *as at 8 June 2013*, had yet to be fully "heard in the British Virgin Islands". Further, although the 8 June 2013 Invoice refers to work done from 2004 onwards, the e-mail correspondence between Mr Ding and Mr Choo in 2013 and 2014 does not contain any suggestion that Mr Choo's fees for work done prior to 2004 were still payable by the defendants.

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613 CBOD, Tab 7 at p 5 (Mr Choo's original version); CBOD at Tab 8 (amended version exhibited by Mr Ding).

614 Transcript (28 May 2021), p 35 at lines 10–15.

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326 Moreover, Mr Ding's evidence provides a plausible explanation for why Mr Choo may have been willing to accept the sum of S$200,000 in 2013 in full and final settlement of all fees payable by the defendants. According to Mr Ding, at a meeting in or around February 2013, Mr Choo told Mr Ding that he needed money urgently to settle gambling debts.[615] At a subsequent meeting in late March or early April 2013, Mr Choo again told Mr Ding that he needed money urgently, this time to pay for his brother's medical bills.[616] Mr Choo then offered that if Mr Ding made an advance payment of S$200,000 to him, he was prepared to accept this sum in full and final settlement of all the fees payable by the defendants.[617] According to Mr Ding, on or around 3 April 2013, he called Mr Choo to accept his offer, and it was agreed between Mr Ding and Mr Choo that Mr Ding would make payment of the S$200,000 over a three-month period from April to June 2013.[618] This is consistent with my finding (at [310] above) that Mr Ding paid the sum of S$200,000 to Mr Choo in two instalments in May and June 2013.

327 Therefore, even if Mr Choo were not barred from recovering remuneration for work done by him while he was an unauthorised person, and even if he were entitled to be paid for his services pursuant to the 20% Remuneration Arrangement, I find that Mr Choo's claim for fees from the defendants was fully and finally settled by Mr Ding's payment of S$200,000 to him in 2013. No further fees are due from the defendants to Mr Choo.

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615 DPC at para 33.

616 DPC at para 34.

617 DPC at para 34.

618 DPC at para 35.

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(3) Summary on the remuneration already paid to Mr Choo

328 I now summarise my findings in relation to the amount of remuneration already paid to Mr Choo by the defendants.

329 With regard to the oral Mei Leong Indemnity Agreement, the defendants have proven on a balance of probabilities that Mr Choo was paid the full fixed fee of A$50,000. The defendants' account is corroborated by the four 21 September Bank Drafts, the First Acknowledgment Slip and the Second Acknowledgment Slip (see [281] and [283]–[286] above). I am unable to accept Mr Choo's bare assertion that these documents are not authentic. My finding is buttressed by the fact that Mr Choo made no attempt to demand payment from the defendants and did not mention the A$50,000 allegedly still due to him in any of the written agreements or correspondence between the parties after the crystallisation of the oral Mei Leong Settlement Agreement on 15 October 2001 (see [289] above).

330 In any event, even if the full fixed fee of A$50,000 was not paid to Mr Choo, his claim for this fee is time-barred as more than six years elapsed between Mr Choo's completion of his work under the oral Mei Leong Indemnity Agreement (*ie*, 15 October 2001) and the filing of the writ of summons in the present Suit (see [291] above).

331 With regard to the 2013 Choo Settlement Agreement, the defendants have proven on a balance of probabilities that the full sum of S$200,000 was paid to Mr Choo in 2013. Prior to his opening statement, Mr Choo had not once disputed receiving this sum in full. The defendants' account is further supported by the contemporaneous correspondence between the parties, in particular the 10 June 2013 E-mail and the 9 July 2014 E-mail sent by Mr Ding to Mr Choo (see [306]–[308] above). In contrast, Mr Choo's argument that he did not

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receive S$50,000 of this sum in cash is inconsistent with his own pleaded case and affidavit of evidence-in-chief (see [308] above), and is also premised, somewhat flimsily, on his recollection that he did not meet Mr Ding on 3 June 2013. Thus, Mr Choo *assumes* that Mr Ding could not have paid him the S$50,000 in cash. In view of Mr Ding's testimony that he had a separate meeting with Mr Choo on 4 June 2013 where he passed Mr Choo the S$50,000 in cash, which I have no reason to doubt, the basis of Mr Choo's argument falls away (see [309] above).

332 The defendants have also proven on a balance of probabilities that this sum of S$200,000 was paid to Mr Choo in full and final settlement of all fees payable by both defendants. The existence of the 2013 Choo Settlement Agreement alleged by the defendants and the fact that the S$200,000 was intended as a settlement of Mr Choo's claim are corroborated by the correspondence between the parties, in particular, the 10 June 2013 E-mail, the 10 June 2013 Reply, the 9 July 2014 E-mail and the 9 July 2014 Reply (see [319]–[321] above).

333 On the other hand, Mr Choo's assertion that this sum was merely a part-payment of his fees is unsupported by any corroborative evidence. On the contrary, at the time the S$200,000 was paid in 2013, the total outstanding amount of fees that had allegedly accrued to Mr Choo would not yet have been clear to him, since the Invoices were only prepared in August 2016. Mr Choo was also unable to produce any evidence to support his assertion that the original 2012 DATBI existed and that it contained a clause requiring Mr Ding to pay him a sum of S$200,000 as part-payment of the fees owed to him by Mr Phua in respect of work done for the OS 601 Interpleader Proceedings (see [312]–[318] above).

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Effect of the DATBI

334 I turn now to consider the legal effect of the DATBI.

335 It is axiomatic that novation is the process by which both the benefits and the burdens under a contract are transferred from the original contracting parties to new contracting parties. This requires the consent of both the original and the new contracting parties (*Kam Thai Leong Dennis v Asian Infrastructure Ltd* [2020] SGCA 87 at [31]). To determine whether there has in fact been a novation, the court will apply the ordinary principles of contractual interpretation. In giving effect to the objective intentions of the contracting parties, the court will consider the relevant contractual, contextual and commercial background against which the document purporting to effect the novation came about (see *Fairview Developments Pte Ltd v Ong & Ong Pte Ltd and another appeal* [2014] 2 SLR 318 at [47]).

336 It is undisputed that the DATBI was drafted by Mr Choo, save that Mr Choo contends that the version of the DATBI before this court is not the original version of the DATBI, which Mr Choo claims was the alleged 2012 DATBI (see [32] above). The relevant clauses of the DATBI state:[619]

> 2. Whereas :- ... (d) Phua has employed the services of one Mr Wilfred Choo ("Choo") as his legal consultant since the year 2001 for work related to and leading to legal proceedings in the High Court of Singapore, Melbourne Federal Court and others. There are consultancy and legal fees owing to Choo by Phua for services rendered.
>
> 3. In consideration of Ding assuming Phua's consultancy and legal fees owing to Choo, Phua hereby irrevocably agrees to transfer all his beneficial interest in the Gracedale's [*sic*] account to Ding without any conditions attached.
>
> …

619 CBOD at Tab 6.

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> 5. For purposes of clarification, this Agreement does not absolve Phua [*sic*] liability owing to any other person or company.

337 During his cross-examination by Mr Phua's counsel, Mr Choo confirmed that cl 2(d) should refer to his employment by Mr Phua since the year 2000, and not 2001.[620]

338 Mr Phua's position is that, pursuant to cl 2(d) read with cl 3 of the DATBI, the defendants agreed that Mr Ding would take over Mr Phua's share of all legal fees owing by Mr Phua to Mr Choo in respect of *all* of the services rendered by Mr Choo to Mr Phua from 2000, such that Mr Phua no longer owed any alleged legal fees to Mr Choo, and Mr Choo could not bring any further claims against Mr Phua.[621] Further, during the trial, Mr Phua's counsel argued that the reference to "any *other* person or company" [emphasis added] in cl 5 of the DATBI must necessarily exclude Mr Choo, since Mr Choo was the drafter of the document and was mentioned by name in cl 3.[622] Mr Phua submits that this understanding is borne out by the correspondence between Mr Ding and Mr Choo in 2014. In Mr Ding's 9 July 2014 E-mail to Mr Choo, Mr Ding stated that Mr Phua "has declared that he is NOT pursuing the legal battle n so Not going to pay any expenses n declared that he is Not entitled to any claims Irrespective of the outcome of the case" [*sic*].[623] In his 9 July 2014 Reply, Mr Choo stated that Mr Ding was "correct that [Mr Phua's] portion was taken over by [Mr Ding]", apologised for his "mistake" with regard to this, and clarified that he was to be reimbursed from M/s Mei Leong's portion of the

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620 Transcript (23 February 2021), p 153 at lines 2–11.

621 1DDC at para 6(5); 1DCS at paras 8(4) and 103.

622 Transcript (23 February 2021), p 6 at lines 1–8 and 11–14.

623 ABOD, Vol 1 at p 339.

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ACU Account Moneys instead.[624] Mr Phua submits that this is clear and unequivocal contemporaneous evidence that Mr Choo intended to be bound by, and consented and/or acquiesced to, the terms of the DATBI and Mr Phua's novation of his obligation to pay Mr Choo's fees to Mr Ding.[625]

339 Mr Phua also relies on his reply to the TKQP Letter of Demand dated 26 March 2018,[626] in which he stated at para 2:

> Clearly your client must have forgotten that he has agreed irrevocably that I would be no longer obligated to him when I ceded my interest of the deposit at ANZ bank to both Dato Peter Ding and himself – the sharing arrangement was left entirely for them to decide.

340 Neither Mr Choo nor his solicitors responded to Mr Phua's reply.[627] Mr Phua argues that the fact that neither Mr Choo nor his solicitors responded to Mr Phua's reply is consistent with Mr Phua's position that any claims which Mr Choo might have had against Mr Phua were novated to Mr Ding under the DATBI. Mr Choo consented to or acquiesced in this when Mr Choo drafted the DATBI, witnessed it being signed by the defendants, and subsequently confirmed Mr Ding's understanding of its legal effect.[628]

341 Finally, Mr Phua relies on a text message sent by Mr Choo to Mr Phua on 10 November 2014 (the "10 November 2014 SMS"), in which Mr Choo asked for some of Mr Phua's shares in Atech as a "gesture of goodwill" because Mr Choo had "helped [him] in [his] darkest time".[629] Mr Phua submits that the

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624 ABOD, Vol 4 at p 2005.

625 1DCS at para 105.

626 ABOD, Vol 4 at p 1607.

627 Transcript (25 February 2021), p 9 at lines 7–13.

628 Transcript (25 February 2021), p 9 at lines 14–18; 1DCS at para 103.

629 ABOD, Vol 4 at p 1677.

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tone and language used by Mr Choo in this text message clearly reveals Mr Choo's own belief that nothing further was owed by Mr Phua to him. This is consistent with Mr Phua's position that, by this time, he no longer owed anything to Mr Choo. If, as Mr Choo claims, Mr Phua still owed moneys to Mr Choo, one would expect to see Mr Choo demanding for payment from Mr Phua in this text message.[630]

342 On the other hand, Mr Choo's position is that he can still claim his unpaid fees from Mr Phua notwithstanding the DATBI,[631] because the DATBI is only applicable as between Mr Phua and Mr Ding (the parties to the DATBI).[632] Mr Choo submits that he is entitled to claim his fees from both Mr Phua and Mr Ding because he did work for both of them,[633] and argues that Mr Phua could have filed an interlocutory application for Mr Ding to be the sole defendant in this Suit if he felt that Mr Ding had assumed responsibility for Mr Choo's claims against Mr Phua pursuant to the DATBI. According to Mr Choo, this is a matter of apportionment between Mr Phua and Mr Ding and Mr Choo should still be entitled to his full claim, regardless of which defendant it would flow from. Thus, Mr Phua cannot rely on the DATBI as a defence to Mr Choo's claims, and the DATBI at best allows Mr Phua to compel Mr Ding to meet Mr Choo's claims instead.[634]

343 However, during his cross-examination by Mr Phua's counsel, Mr Choo agreed that he had confirmed Mr Phua's interpretation of the DATBI by stating,

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630 Transcript (25 February 2021), p 13 at line 25 and p 14 at lines 1–3; 1DCS at para 107.

631 Transcript (23 February 2021), p 147 at line 14.

632 Transcript (23 February 2021), p 153 at lines 21–22; PCS at para 140.

633 PCS at para 141.

634 PCS at paras 141(b)–141(c) and 142.

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in the 9 July 2014 Reply to Mr Ding, that Mr Ding was "correct that [Mr Phua's] portion was taken over by [Mr Ding]".[635] With regard to the 10 November 2014 SMS, Mr Choo explained that he asked Mr Phua for a favour instead of asking him for payment because they were "all on friendly terms then".[636]

344 I am not convinced by Mr Choo's explanation and I agree with Mr Phua's position that, pursuant to the DATBI, any claims that Mr Choo might have against Mr Phua were novated to Mr Ding. Given that Mr Choo was specifically referred to by name in cll 2(d) and 3 of the DATBI, I find that the reference in cl 5 to "any other person or company" does not include Mr Choo himself. This interpretation of the DATBI is also supported by the correspondence between the parties, as discussed above.

345 Further, I accept Mr Phua's submission that Mr Choo impliedly consented to the novation by drafting the DATBI. As explained at [314]–[318] above, Mr Choo's assertions regarding the 2012 DATBI are entirely unsubstantiated. Having regard to the relevant contextual background against which the DATBI came about, I find that the requirement of mutual consent for the novation of Mr Phua's liabilities to pay Mr Choo's fees to Mr Ding was satisfied. Hence, there was a valid novation.

346 Therefore, even if (contrary to my findings above on other grounds) Mr Phua owed Mr Choo any outstanding fees, Mr Choo cannot claim these fees from Mr Phua in this Suit.

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635 Transcript (23 February 2021), p 152 at lines 11–13.

636 Transcript (25 February 2021), p 13 at lines 14–19; Transcript (26 February 2021), p 99 at line 1.

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347 For completeness, I shall also briefly address Mr Choo's argument that because cl 7 of the DATBI states that it is "subject to the laws and jurisdiction of Australia", it has no legal force in Singapore until parties have submitted to Singapore's jurisdiction.[637] This argument was not pleaded or raised during the trial and was made for the first time in Mr Choo's written submissions.[638] In any case, this argument is a non-starter since the parties have plainly submitted to the jurisdiction of the Singapore courts by commencing and defending the present proceedings. There is no conduct or action by Mr Choo to suggest that he had objected to the jurisdiction of the Singapore courts (see *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [33] and [45]).

Summary on Mr Choo's claim for unpaid fees

348 Before I summarise my overall findings in relation to Mr Choo's claim for unpaid fees, I wish to reiterate two preliminary points:

(a) First, I have already mentioned that Mr Choo is an extremely unreliable witness. He had no compulsion to speak the truth. His testimony in court was like a chameleon constantly changing to suit the various scenarios to establish his claims in a dishonest manner. His testimony was beset with numerous inconsistencies and vacillations, including departures from positions he had previously affirmed in his affidavits. He also lied that his case was supported by various documents which did not in fact assist him, or which he was ultimately unwilling or unable to produce in court for inspection. On many occasions while on the stand, he also sought to correct alleged errors in the documentary

637 PCS at para 141(a).

638 1DRS at para 38.

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evidence he himself had placed before the court. I am, therefore, of the view that Mr Choo's evidence must be treated with extreme caution and that I must exercise vigilance before I accept his evidence at face value without corroborative evidence (see [58]–[67] above).

(b) Secondly, the authenticity and reliability of the Invoices relied on by Mr Choo in support of his claim are questionable. There is no evidence to support Mr Choo's assertion that these Invoices were prepared and sent to the defendants by Mr Choo in late 2016, and Mr Choo's version of events is riddled with internal inconsistencies. Further, the metadata evidence adduced by the defendants suggests that these Invoices were only created by Mr Choo around the time the present Suit was commenced, *ie*, in 2018 and not 2016 as he alleged. I, therefore, treat them as having limited probative value unless they are supported by some other corroborative evidence (see [145]–[156] above).

349 With these preliminary points in mind, I now summarise my findings in relation to Mr Choo's claim.

350 First, Mr Choo was engaged by the defendants to act as an advocate and solicitor and did in fact act as an advocate and solicitor. He was an unauthorised person within the definition in s 32(2)(*b*) of the LPA from 1 April 2000 to 31 March 2006 and from 1 April 2014 onwards, as he did not have a valid practising certificate in force during these periods. He is, therefore, barred by s 36(1) (read with s 2(1)) of the LPA from recovering any fees from the defendants for work done during these periods (see [90]–[136] above).

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351 Second, the oral agreements as alleged by Mr Choo, namely the oral Melbourne Capital Agreement, the oral Melbourne Profits Agreement (Phua), the oral Interpleader Agreement, the oral Melbourne Profits Agreement (Joint) and the oral Lee Claim Agreement did not exist. There was no agreement by the defendants to pay Mr Choo hourly rates of S$800 *per* hour for ordinary work and S$1,200 *per* hour for work on foreign issues and/or urgent matters. On the contrary, for work done in relation to the recovery of the profits from the investments in the Melbourne Properties and the Yip Atech Shares Transaction, Mr Choo asked to be paid based on the 20% Remuneration Arrangement, which was reduced to writing in the Consultancy Agreement (see [158]–[263] above).

352 However, the 20% Remuneration Arrangement is a champertous contract because it was an agreement that Mr Choo would be paid 20% of any sums recovered for the defendants from the profits of the investments in the Melbourne Properties. Under s 107(3) of the LPA, Mr Choo is subject to the ordinary law of maintenance and champerty, which prohibits champertous arrangements. Therefore, the 20% Remuneration Arrangement is void as it is contrary to public policy. Consequently, even in respect of the period when Mr Choo did have a practising certificate in force (*ie*, from 1 April 2006 to 31 March 2014), he is not entitled to claim his unpaid fees pursuant to the 20% Remuneration Arrangement (see [264]–[277] above).

353 Third, Mr Choo has no outstanding claim for unpaid fees under the Mei Leong Indemnity Agreement as he has already been paid the full fixed fee of A$50,000 by the defendants (see [283]–[290] above). Further, Mr Choo's claim for fees was fully and finally settled by Mr Ding's payment of S$200,000 to him in 2013 pursuant to the 2013 Choo Settlement Agreement. Therefore, no further fees are due from the defendants to Mr Choo (see [308]–[310] and [312]–[327] above).

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354 Fourth, even if Mr Choo was owed any outstanding fees by Mr Phua, he cannot claim them from Mr Phua in this Suit as the effect of the DATBI was to novate Mr Phua's liabilities to pay Mr Choo's fees to Mr Ding. This interpretation of the DATBI is supported both by the wording of the DATBI itself and the correspondence between the parties (in particular, the 9 July 2014 E-mail from Mr Ding to Mr Choo and the 9 July 2014 Reply from Mr Choo, as well as the 10 November 2014 SMS from Mr Choo to Mr Phua). Further, Mr Choo impliedly consented to the novation as he drafted the DATBI (see [334]–[346] above).

Mr Phua's counterclaim for an account and inquiry

355 As explained at [33] above, Mr Phua and his nominees transferred the 3.53 million Choo Atech Shares to Mr Choo in 2002 under two separate written agreements, namely the LOAU 1 and the Trust Agreement. Under these agreements, Mr Choo held the 3.53 million Choo Atech Shares on trust for Mr Phua.

356 It is undisputed that the 3.53 million Choo Atech Shares have since been sold by Mr Choo.[639] However, it is not clear when the sale of these shares took place. Mr Choo's own evidence at the trial differs from his evidence in his Further and Better Particulars, his affidavit of evidence-in-chief, and his affidavit filed in relation to the Atech shares. The differences in Mr Choo's evidence are as follows:

(a) In his Further and Better Particulars, Mr Choo stated that 600,000 Atech shares were sold in 2014.[640]

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639 ASOF-2 at para 34.

640 FBP-1 for First Defendant at para 13(2)(a).

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(b) In his affidavit of evidence-in-chief, Mr Choo stated that sometime around July 2004, he sold all 3.53 million Choo Atech Shares to a buyer in Melbourne, and that the sale was completed in 2005.[641]

(c) In his affidavit filed in relation to the 3.53 million Choo Atech Shares, Mr Choo stated that he accepted a conditional offer to sell 2.45 million Atech shares in July 2004, and that he sold the remaining 1.08 million shares around July 2012.[642]

(d) Based on his testimony at the trial, the 3.53 million Choo Atech Shares appear to have been sold in two tranches: 3 million were sold in or around 2005,[643] and the remaining 530,000 were sold in or around 2014 or 2015.[644]

357 Mr Choo was unable to produce documentary evidence of the sale price and total sale proceeds of the 3.53 million Choo Atech Shares he sold. Based on his written submissions, Mr Choo claims that he sold these shares for a total sum of approximately A$214,524.[645]

358 Mr Phua contends that Mr Choo was not entitled to sell the 3.53 million Choo Atech Shares. Mr Choo held these shares on trust for Mr Phua and, as a trustee, he was obliged to: (a) seek Mr Phua's consent before selling the shares; (b) consult Mr Phua on the price at which he was comfortable to sell the shares; (c) consult Mr Phua on the number of shares he wanted to sell; and (d) keep

641 CCTW at para 118.

642 CCTW (Atech Shares) at paras 9 and 13–14.

643 Transcript (26 February 2021), p 98 at lines 24–25 and p 99 at lines 1–3.

644 Transcript (25 February 2021), p 87 at lines 12–14.

645 PCS at para 80(b).

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Mr Phua updated at all times regarding the sale of the shares, including informing Mr Phua how much Mr Choo had received from the sale and how much of Mr Choo's alleged fees were still outstanding after the sale proceeds from the shares had been used to set off these fees. These are all reasonable obligations of a trustee. However, Mr Choo failed to obtain any consent from Mr Phua regarding the sale of any part of the 3.53 million Choo Atech Shares, and Mr Choo has not accounted to Mr Phua for these shares to date.[646]

359 Further, Mr Phua submits that Mr Choo failed to produce any documentary evidence relating to the sale of the 3.53 million Choo Atech Shares, including key information regarding who the buyer was, when the shares were sold,[647] the sale price, and the total sale proceeds received. Accordingly, Mr Choo's assertion that the 3.53 million Choo Atech Shares were sold at an average price of A$0.06 *per* share is unsupported and cannot be believed, and an account and inquiry is necessary.[648]

360 Consequently, Mr Phua counterclaims against Mr Choo for an account and inquiry into all sums, interests, profits, and assets arising from or traceable to the sale proceeds of the 3.53 million Choo Atech Shares. In the alternative, Mr Phua seeks damages in respect of the loss and/or damage caused by Mr Choo's failure to account for the sale proceeds of these shares, but this is secondary to Mr Phua's primary counterclaim for an account and inquiry.[649] Mr Phua did not adduce any evidence or make any arguments in relation to this

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646 1DCS at paras 119–120.

647 1DRS at para 20.

648 1DCS at para 121.

649 Transcript (27 May 2021), p 175 at line 25, p 176 at lines 1–2 and 7–21, and p 177 at lines 15–18.

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alternative counterclaim for damages.[650] Mr Phua relies instead on Mr Choo's position that the 3.53 million Choo Atech Shares were sold for a total sum of A$214,524. Mr Phua submits that any claims that Mr Choo might have against him and any sums he is found to owe Mr Choo should be set off against these 3.53 million Choo Atech Shares.[651]

361 Two issues are in dispute: (a) whether Mr Choo was entitled to sell the 3.53 million Choo Atech Shares; and (b) whether he could use part of the sale proceeds from the 3.53 million Choo Atech Shares to offset the payment due to him for the purported work he did for Mr Phua under the PS Consultancy Agreement.

Whether Mr Choo was entitled to sell the 3.53 million Choo Atech Shares

362 Pursuant to the LOAU 1, Mr Choo received a total of 1.08 million Atech shares from Mr Phua's nominees (Mr Tan Boh Liang and Ms Alice Phua Mui Kiang). The relevant clauses of the LOAU 1 state as follows:[652]

> *In the event that I am paid by Phua Swee Khiang for the legal fee of not less than A$60,000 upon the completion of the said matter*, then I shall transfer the total of said shares mentioned above back to the said Tan Boh Liang and Alice Phua Mui Kiang in their respective amount or alternatively, if the said shares have been sold due to liquidation or delisting of the company or for any reason, then *I am to refund to the said Tan Boh Liang and Phua Mui Kiang the liquidated sum.*
>
> *In the event that Phua Swee Khiang fails to pay my legal fee due to me upon completion of the said matter*, then *I am entitled to liquidate the shares for my own benefit* or if the shares have been liquidated, then I am entitled to the proceeds of sale.
>
> [emphasis added]

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650 Transcript (27 May 2021), p 88 at lines 10–17 and p 177 at lines 11–18.

651 1DCS at paras 8(7) and 121–122.

652 CBOD at Tab 1.

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363 Pursuant to the Trust Agreement, 2.45 million Atech shares were transferred by Mr Phua to Mr Choo. It is not disputed that these shares were to be held on trust by Mr Choo for Mr Phua.[653] The relevant clauses of the Trust Agreement state as follows:

> 2. The Beneficiary [Mr Phua] agrees irrevocably that the proceeds of the liquidation of the said shares shall be held in trust for the following:-
>
> a) A$80,000.00 for payment to Messrs. Mei Leong Lam & Co
>
> b) A$150,000.00 for payment of Choo Cheng Tong Wilfred for his consultancy services.
>
> c) The remaining balance is to be returned to the Beneficiary.
>
> d) *Payment shall only be made if there is no claim for the trust money by Lee Wan Hoi.* If any such claim is made by Lee Wan Hoi then the matter must be resolved before any payment is made.
>
> IN CONSIDERATION of the above stated terms and conditions the Trustee [Mr Choo] agrees to accept the transfer of the said shares and agrees to the appointment as trustee to the shares and their proceeds on the terms stipulated above and the Beneficiary agrees to transfer the said shares to the trustee on terms as stated above.
>
> [emphasis added]

364 Under the LOAU 2, Mr Choo was entitled to 50% of the 1.08 million Atech shares which had been transferred to him under the LOAU 1 (*ie*, 540,000 Atech shares) in consideration of Mr Choo "taking care of" Mr Phua's legal costs due to JCHK up to S$76,000. The relevant clauses of the LOAU 2 state as follows:

> Whereas:-
>
> 1. Phua is liable to pay Mssrs JCHO & Kang for legal fee of S$95,000 in rerspect [*sic*] of the Gracedale's Case

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653 Transcript (25 February 2021), p 54 at line 25.

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> 2. *Choo agrees to assist Phua up to $76,000 in the payment of legal fee.*
>
> 3. Phua agrees that any party to party costs receive [*sic*] by Mssrs. JCHO & Kang shall be used to be return Choo to off set whatever payment or credit note he receives from Mssrs JCHO & Kang
>
> 4. Phua shall reimburse Choo the balance of the legal fee paid by Choo from his share of moneys in the Gracedale's [*sic*] account
>
> Now it is herby [*sic*] Agreed as follows:-
>
> *In consideration of Choo taking care of $76,000 of Phua's legal costs of $95,000 due to JCHO & Kang*, Phua agreed to the following:-
>
> > 1. That Choo shall be entitled to 50 percent of Atech shares held by Choo totalling 1,080,000 on behalf of Tan Boh Liang and Alice Phua Mui Kiang …
>
> [emphasis added]

365 Mr Phua submits that Mr Choo was only entitled to sell the 3.53 million Choo Atech Shares after the 2016 Lee Settlement Agreement was concluded, when the defendants recovered US$1.04m from the ACU Account. According to Mr Phua, the phrase "upon completion of the said matter" in the LOAU 1 refers to the recovery of the moneys from the ACU Account for the two Trusts,[654] and "trust money" in cl 2(d) of the Trust Agreement refers to the ACU Account Moneys.[655] Further, Mr Phua argues that Mr Choo was not entitled to 540,000 Atech shares under the LOAU 2 because JCHK had waived their legal fees of S$95,000 sometime in 2003.[656] Therefore, Mr Choo never had to pay S$76,000 of Mr Phua's legal fees owed to JCHK which was the consideration for the Atech shares.

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654 Transcript (2 March 2021), p 15 at lines 23–25 and p 16 at lines 1–3.

655 Transcript (2 March 2021), p 32 at lines 18–21 and 24–25, and p 33 at line 1.

656 CCTW at paras 66 and 67(c).

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366 On the other hand, Mr Choo submits that he was entitled to sell the 3.53 million Choo Atech Shares because all of the conditions required for Mr Choo to liquidate these shares were fulfilled. Therefore, Mr Choo did not legally require Mr Phua's consent to liquidate these shares. Nevertheless, Mr Choo asked for Mr Phua's consent out of courtesy.[657] Further, Mr Choo submits that the LOAU 1 and the Trust Agreement did not contain any clauses requiring Mr Choo to sell the Atech shares at a stipulated minimum price.[658]

367 With regard to the LOAU 1, Mr Choo agrees that the phrase "upon completion of the said matter" refers to the recovery of the ACU Account Moneys after the conclusion of the 2016 Lee Settlement Agreement.[659] However, Mr Choo claims that he asked Mr Phua for payment orally[660] and that the LOAU 2 provides evidence of Mr Phua's consent to Mr Choo selling these shares before the ACU Account Moneys were recovered.[661] In any event, Mr Phua agreed during his cross-examination that if he failed to pay Mr Choo's fees upon the recovery of the ACU Account Moneys, Mr Choo did not require his consent to liquidate the 1.08 million Atech Shares transferred to him under the LOAU 1 and Mr Choo could keep all of the sale proceeds. Mr Choo argues that this condition was fulfilled since Mr Phua never paid him his fees even after the conclusion of the 2016 Lee Settlement Agreement.[662]

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657 PCS at para 144–145; PRS at para 26.

658 PCS at para 147(e).

659 Transcript (25 February 2021), p 52 at lines 18–21 and p 53 at lines 1–12; PCS at para 143(a)(ii).

660 Transcript (25 February 2021), p 53 at lines 24–25.

661 Transcript (25 February 2021), p 93 at lines 15–20.

662 PCS at para 143(a)(iii).

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368 With regard to the Trust Agreement, Mr Choo contends that "trust money" in cl 2(d) refers to the 2.45 million Atech shares that he received pursuant to the Trust Agreement, because Mr Phua was worried that some of those shares might be owned by Mr Lee and wanted to ensure that Mr Lee would not lay a claim to any of those shares.[663] If Mr Lee did not make any claim to the 2.45 million Atech shares, Mr Choo did not require Mr Phua's consent to liquidate these Atech shares. This condition was fulfilled as Mr Lee did not sue for the 2.45 million Atech shares. Even if Mr Phua's interpretation of "trust money" as the ACU Account Moneys is accepted, Mr Lee's claim to these moneys was eventually resolved with the 2016 Lee Settlement Agreement.[664]

369 Further, Mr Choo argues that he was fully entitled to the 540,000 Atech shares under the LOAU 2 because he had fulfilled the condition of "taking care of" Mr Phua's legal fees due to JCHK by obtaining a full waiver of JCHK's legal fees. Since this condition had been fulfilled, Mr Choo did not require Mr Phua's consent to liquidate these 540,000 Atech shares.[665]

370 I agree with Mr Phua's submission that Mr Choo was not entitled to sell the 3.53 million Choo Atech Shares.

371 It is not disputed that, under the LOAU 1, Mr Choo was only entitled to liquidate the 1.08 million Atech shares transferred to him thereunder upon the defendants' recovery of the ACU Account Moneys. Furthermore, Mr Choo could only sell these Atech shares if Mr Phua was unable to pay Mr Choo his "legal fee of not less than A$60,000". The issue of the recovery of the ACU

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663 Transcript (25 February 2021), p 56 at lines 2–5, p 57 at lines 9–15, p 63 at lines 18–24 and p 64 at lines 3–6; PCS at para 143(b)(vii).

664 PCS at para 143(b)(vii).

665 PCS at para 143(c).

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Account Moneys was only resolved in or around August 2016 when the defendants were given US$1.04m by Mr Lee under the 2016 Lee Settlement Agreement. Mr Choo has not adduced any evidence to show that Mr Phua consented to any departure from the terms of the LOAU 1.

372 The LOAU 2 does not assist Mr Choo in this regard either. Upon further questioning by Mr Phua's counsel and by the court at the trial, Mr Choo eventually conceded that nowhere in the LOAU 2 was it stated that Mr Choo had sought Mr Phua's permission to sell the shares,[666] or that Mr Choo was entitled to sell the 3.53 million shares.[667] When read in the context of the rest of the LOAU 2, the phrase "Choo taking care of $76,000 of Phua's legal costs of $95,000 due to JCHO & Kang" refers to Mr Choo *paying* Mr Phua's legal fees, and not simply negotiating a waiver of those fees. This is clear from cll 2–4 of the preamble to the LOAU 2, which contain various references to Mr Choo *paying* JCHK's legal fees:

> 2. Choo agrees to assist Phua up to $76,000 in the *payment of legal fee*.
>
> 3. Phua agrees that any party to party costs receive [*sic*] by Mssrs. JCHO & Kang shall be used to return Choo to off set *whatever payment or credit note he receives from Mssrs JCHO & Kang*
>
> 4. Phua shall reimburse Choo the balance of the legal fee *paid by Choo* from his share of moneys in the Gracedale's [*sic*] account
>
> [emphasis added]

373 Since JCHK's legal fees of S$95,000 were eventually waived, and therefore not paid by Mr Choo, his beneficial entitlement to the 540,000 Atech shares under the LOAU 2 never crystallised. Indeed, Mr Choo agreed with

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666 Transcript (25 February 2021), p 74 at lines 19–23.

667 Transcript (26 February 2021), p 102 at lines 16–18.

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Mr Phua's counsel in court that he was not entitled to the 540,000 Atech shares as JCHK had waived the legal fees of S$95,000:[668]

> Q. … So, Mr Choo, once JC Ho & Kang has waived their legal fee of $95,000, would you agree with me that my client [Mr Phua] does not have to pay you that 540 million Atech shares?
>
> A. Yes.
>
> Q. Agree?
>
> A. Agree.

374 With regard to the Trust Agreement, I agree with Mr Phua's submission that "trust money" in cl 2(d) refers to the ACU Account Moneys, and not to the sale proceeds of the 2.45 million Atech shares transferred to Mr Choo under the Trust Agreement. On Mr Choo's own case, the defendants were trustees of the ACU Account (see [247(b)]–[247(c)] above). Moreover, at the time of the signing of the Trust Agreement in November 2002, Mr Phua was the full owner of the 2.45 million Atech shares, and Mr Choo knew this.[669] There would, therefore, have been no basis for Mr Lee to lay any claim to the sale proceeds of the 2.45 million shares. On the other hand, the defendants' dispute with Mr Lee over the ACU Account had undoubtedly arisen by November 2002 since the OS 902 Interpleader Proceedings (which concerned the issue of whether the defendants had the authority to act for and on behalf of Gracedale in operating the ACU Account) had commenced on 1 July 2002. This directly contradicts Mr Choo's testimony that, at the time the Trust Agreement was signed, there was no dispute concerning the ACU Account.[670] Therefore, under the Trust Agreement, Mr Choo was only entitled to be paid A$150,000 from the

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668 Transcript (25 February 2021), p 104 at lines 20–25 and p 105 at line 1.

669 Transcript (25 February 2021), p 57 at lines 17–22.

670 Transcript (25 February 2021), p 65 at lines 15–17.

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sale proceeds of the 2.45 million Atech shares if Mr Lee did not make any claim for the ACU Account Moneys.

375 Furthermore, Mr Choo held on to the Atech shares as security for the payment of his legal fees. As discussed above, the evidence shows that Mr Choo was paid his legal fees. In particular, the 10 June 2013 E-mail and the 10 June 2013 Reply provide evidence of the 2013 Choo Settlement Agreement which Mr Choo entered into with Mr Ding, in which Mr Choo was paid S$200,000 as full and final settlement of the remuneration owed to him by the defendants (see [292]–[327] above). Hence, he had no basis to sell the 3.53 million Choo Atech Shares.

376 Since Mr Choo held these shares on trust for Mr Phua, he was not entitled to liquidate them without Mr Phua's consent. Mr Phua's position is that he never gave Mr Choo permission to sell any of the Atech shares, or to use the sale proceeds to pay for any fees allegedly owing to him.[671] Mr Choo was unable to produce any evidence to show that Mr Phua consented to the sale of these Atech shares,[672] apart from the fact that Mr Phua "never complained" about the sale of these shares even though he must have known (since Mr Phua had his own Atech shares) that Mr Choo had sold these Atech shares.[673] In support of his argument that Mr Phua was aware that Mr Choo had rightfully sold the Atech shares, Mr Choo relies on the fact that Mr Phua exhibited the financial statements for Atech for the years 2007, 2008, 2011, 2012 and 2014; the 10 November 2014 SMS sent by Mr Choo to Mr Phua stating that the 610,000 Atech shares under Mr Tan Boh Liang had been "sold long ago to finance the

671 PSK at paras 103–104.

672 Transcript (25 February 2021), p 84 at lines 15–25 and p 85 at lines 1–18.

673 Transcript (26 February 2021), p 103 at lines 3–15.

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Australian case"; and an e-mail dated 29 September 2014.[674] However, these documents do not assist Mr Choo in showing that Mr Phua consented to Mr Choo's sale of the shares at the time that they were sold. Further, no e-mail dated 29 September 2014 was placed before the court in these proceedings. Although Mr Choo's counsel was given an opportunity during the oral submissions to refer the court to this e-mail and correct the reference if necessary,[675] he did not do so.

377 Further, although Mr Choo testified that he had orally accounted to Mr Phua for the first tranche of 3 million shares in 2006 and the second tranche of 530,000 shares sometime in 2014 or 2015,[676] this was not stated anywhere in the affidavit filed by Mr Choo to contest the defendants' striking out application.[677] On the contrary, in that affidavit, Mr Choo stated that he had "accounted to [Mr Phua] by disclosing to him *in this suit* that the 3.53 [million] Atech shares were sold for A$214,524" [emphasis added].[678] If it was only *in the present proceedings* (which were commenced on 5 July 2018) that Mr Choo disclosed to Mr Phua that he had sold the 3.53 million Choo Atech Shares, he cannot possibly have orally accounted for them in 2006 and 2014 or 2015.

378 During the parties' oral submissions, Mr Choo's counsel argued that Mr Phua's counterclaim in respect of the 3.53 million Choo Atech Shares is not a genuine claim as Mr Phua did not ask Mr Choo what had happened to these shares or ask for their return after the DATBI was signed in 2013 or after the

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674 PRS at para 3, table of Oral Agreements at s/n 1(2)(c) and para 26.

675 Transcript (27 May 2021), p 187 at lines 1–4 and 22–24.

676 Transcript (25 February 2021), p 87 at lines 11–14.

677 Transcript (25 February 2021), p 91 at lines 2–8.

678 Bundle of Cause Papers, Tab 2, Response Affidavit of Choo Cheng Tong Wilfred in HC/SUM 5484/2018, p 40 at para 92(g).

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2013 Choo Settlement Agreement.[679] Under the DATBI, Mr Ding agreed to assume Mr Phua's liability to pay Mr Choo's fees for services rendered since 2000 (see [32] above). The 3.53 million Choo Atech Shares were transferred from Mr Phua to Mr Choo as security for the payment of his fees (see [33] above). Hence, Mr Choo's counsel contended that it would have been logical for Mr Phua to seek the return of the 3.53 million Choo Atech Shares after Mr Ding took over Mr Phua's liability to pay Mr Choo's fees.[680] However, Mr Phua's counsel rightly pointed out, and Mr Choo's counsel admitted,[681] that Mr Phua was not asked any questions on this point during the trial, nor was he given any opportunity to respond to this allegation.[682] It is well-established that the rule in *Browne v Dunn* (1893) 6 R 67 requires parties to put to a witness important points of contention in order to give the witness a fair opportunity to meet that contention, and that failure to do so may preclude the party concerned from making that submission (see *Daniel Fernandez v Edith Woi and another* [2021] SGHC 117 at [68] and the authorities cited therein). Though the rule may not always be strictly applied, the implications of this allegation are sufficiently significant that they ought to have been put to Mr Phua during the trial. In these circumstances, it is not open to Mr Choo to now rely on Mr Phua's inaction in relation to the 3.53 million Choo Atech Shares after the DATBI was signed in 2013 and the 2013 Choo Settlement Agreement to argue that Mr Phua's counterclaim in respect of these shares is not genuine.

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679 Transcript (27 May 2021), p 98 at lines 5–21; Transcript (28 May 2021), p 87 at lines 20–25.

680 Transcript (27 May 2021), p 94 at lines 5–25 and p 95 at lines 1–5.

681 Transcript (28 May 2021), p 88 at lines 18–23.

682 Transcript (27 May 2021), p 173 at lines 8–15 and p 175 at lines 5–12.

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379 Therefore, Mr Choo was not entitled to sell the 3.53 million Choo Atech Shares. He continues to hold the sale proceeds of these shares on trust for Mr Phua.

The PS Consultancy Agreement

380 I turn now to consider Mr Choo's argument that he is, nevertheless, entitled to at least part of the sale proceeds from the 3.53 million Choo Atech Shares as payment due to him for work done under the PS Consultancy Agreement.

381 Mr Choo claims that the PS Consultancy Agreement was made in August 2000, and that pursuant to this agreement, Mr Phua agreed to pay Mr Choo a fixed fee of S$200,000 for his services in resolving the dispute between Mr Phua and Phillip Securities in relation to contra losses incurred by Mr Phua. In the relevant Invoice, Mr Choo claims the S$200,000 as the "[c]onsultancy fee (agreed)" for work done from August to November 2000 for this matter.[683] In his further breakdown of this invoice, Mr Choo explains that the work done involved, among other things, attending meetings with the chairman and executive director of Phillip Securities to negotiate the settlement of Mr Phua's contra losses.[684] Consequently, Mr Choo submits that the sale proceeds of the 3.53 million Choo Atech Shares should be used to offset his claim for fees under the PS Consultancy Agreement, such that no clawback, account or inquiry in respect of the 3.53 million Choo Atech Shares should be allowed.[685] In the alternative, the sale proceeds of the 3.53 million Choo Atech

683 PRDC, Annex A at p 93.

684 FBP-2 for First Defendant at p 7.

685 PCS at para 150(a).

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Shares should at least be considered part-payment for all the other outstanding fees payable by the defendants to Mr Choo.[686]

382 On the other hand, Mr Phua contends that the PS Consultancy Agreement never existed. Although he had incurred contra losses of S$2.5m, Mr Phua was not involved in any dispute with Phillip Securities at this time.[687] Mr Choo's involvement in these matters was only as a confidant to Mr Phua, who was "very depressed" because of these losses.[688] According to Mr Phua, Mr Choo helped "by way of listening to [him]" and Mr Phua "confided in him" as a colleague.[689] Mr Phua had never engaged or agreed to pay Mr Choo to negotiate the settlement with Phillip Securities on his behalf.[690] Phillip Securities ultimately agreed to reduce Mr Phua's contra losses from S$2.5m to S$2.3m in view of Mr Phua's long service with Phillip Securities. The latter also allowed Mr Phua to repay this sum in instalments over a period of seven years after Mr Phua spoke to its executive director.[691]

383 I agree with Mr Phua. Mr Choo has failed to prove, on a balance of probabilities, that the PS Consultancy Agreement existed. Apart from the Invoice (which, even by Mr Choo's account, was only created in August 2016), Mr Choo has not adduced any corroborative evidence to support the existence of the PS Consultancy Agreement. For the reasons explained at [145]–[156] above, the authenticity and reliability of the Invoices are generally suspect.

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686 PCS at para 150(b).

687 Transcript (1 March 2021), p 22 at lines 18–24.

688 Transcript (1 March 2021), p 22 at line 24.

689 Transcript (1 March 2021), p 23 at lines 10–11; Transcript (2 March 2021), p 97 at lines 21–25.

690 Transcript (2 March 2021), p 97 at lines 12–13.

691 Transcript (2 March 2012), p 98 at lines 1–7.

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Mr Choo himself admits that the first time this oral PS Consultancy Agreement was raised was when the writ of summons in this Suit was filed on 5 July 2018, 18 years after this alleged agreement was made.[692] In my view, if the PS Consultancy Agreement had indeed existed, it would have been mentioned in the LOAU 1 and the Trust Agreement, the express purpose of which was for Mr Phua to transfer some of his Atech shares to Mr Choo as security for the payment of his fees. These agreements mentioned other lesser fees owed to Mr Choo but not the purported PS Consultancy Agreement, under which Mr Choo charged a high fixed fee of S$200,000.

384 Further, the terms of the alleged PS Consultancy Agreement are implausible in the circumstances. Mr Phua's contra losses were reduced by S$200,000, from S$2.5m to S$2.3m. As Mr Phua's counsel pointed out during the trial, [693] it would have been illogical for Mr Phua to have agreed to pay the same amount of S$200,000 to Mr Choo to negotiate this reduction in his contra losses, since this would achieve nothing in terms of reducing Mr Phua's absolute liability. Given the significant losses that Mr Phua had suffered and the financial difficulties he was facing, I find it improbable that Mr Phua would have agreed to pay Mr Choo a fixed fee of S$200,000 merely to negotiate a settlement with Phillip Securities, which Mr Phua was capable of doing on his own. I agree with Mr Phua's submission that it is bizarre that Mr Phua would have agreed to pay Mr Choo to negotiate for him when he was "broke", or that he would have agreed to pay Mr Choo S$200,000 for effectively nothing in return.[694]

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692 Transcript (24 February 2021), p 95 at lines 15–18.

693 Transcript (24 February 2021), p 97 at lines 10–14 and 17–20.

694 1DRS at para 20.

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385 Since I have found that the PS Consultancy Agreement did not exist, Mr Choo is not entitled to be paid S$200,000 for his work allegedly done pursuant to this agreement. Incidentally, as noted at [50] above, Mr Choo's claim for S$200,000 arising from the PS Consultancy Agreement was struck out on the ground that it was time-barred under the Limitation Act. I agree with the defendants' submission that Mr Choo should not be allowed to revive his claim under this alleged PS Consultancy Agreement *via* the back door of a set-off.[695]

The appropriate remedy

386 For the reasons I have outlined above, Mr Choo was not entitled to sell the 3.53 million Choo Atech Shares, and is not entitled to keep the sale proceeds thereof. For completeness, I note that Mr Choo did not plead any defences to Mr Phua's counterclaim based on the Limitation Act.[696] During his oral submissions, Mr Choo's counsel agreed that it would be inappropriate to raise such a defence at that stage.[697]

387 However, despite having been invited several times to produce documentary evidence of the sale price and total sale proceeds of the 3.53 million Choo Atech Shares sold, Mr Choo had not done so. In these circumstances, I am of the view that ordering an account and inquiry before an assistant registrar would be an exercise in futility. This was recognised by Mr Phua's counsel during his oral submissions.[698] I, therefore, allow Mr Phua's alternative counterclaim for A$214,524 as representing the sale proceeds of the 3.53 million Choo Atech Shares. I further order Mr Choo to pay Mr Phua

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695 2DRS at para 27.

696 Transcript (27 May 2021), p 95 at lines 22–25.

697 Transcript (27 May 2021), p 96 at lines 2–7.

698 Transcript (27 May 2021), p 177 at lines 22–25 and p 178 at lines 1–15.

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interest on the sum of A$214,524 at the default rate of 5.33% *per annum* (as prescribed by para 77 of the Supreme Court Practice Directions) from the date on which the writ of summons in the present Suit was filed (*ie*, 5 July 2018).

Summary on Mr Phua's counterclaim for an account and inquiry

388 In summary, Mr Phua has proved his case on a balance of probabilities in relation to his counterclaim for A$214,524 as representing the sale proceeds of the 3.53 million Choo Atech Shares.

389 Mr Choo held the 3.53 million Choo Atech Shares on trust for Mr Phua. Mr Choo was only entitled to sell the 1.08 million Atech shares transferred to him under the LOAU 1 after the defendants had recovered the ACU Account Moneys and Mr Phua had failed to pay his legal fee. Similarly, Mr Choo was only entitled to sell the additional 2.45 million Atech shares transferred to him under the Trust Agreement if Mr Lee made no claim to the ACU Account Moneys. The defendants' dispute with Mr Lee over the ACU Account, and their recovery of the ACU Account Moneys, only took place in or around August 2016. Therefore, at the time Mr Choo sold the shares (which, on Mr Choo's own account, was 2015 at the latest), neither of these conditions had been satisfied. Furthermore, the 3.53 million Choo Atech Shares were held as security for the payment of Mr Choo's legal fees. If Mr Choo's legal fees were paid, he could not sell the Atech shares (see [370]–[375] above).

390 Further, under the LOAU 2, Mr Choo would only become beneficially entitled to 50% of the 1.08 million Atech shares transferred to him under the LOAU 1 if he paid the legal costs due from Mr Phua to JCHK. This condition was not satisfied as JCHK eventually waived their legal fees, such that Mr Choo was not required to make any payments to JCHK (see [372]–[373] above).

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391 Mr Choo was, therefore, not entitled to sell the 3.53 million Choo Atech Shares under any of these written agreements. Further, Mr Choo was unable to produce any evidence to show that Mr Phua consented to the sale of the Atech shares, or to the use of the sale proceeds to pay for any fees allegedly owing to him. Mr Choo was also unable to produce any evidence to support his assertion that he had already orally accounted in 2006 for the first tranche of 3 million shares that he sold, and sometime in 2014 or 2015 for the second tranche of 530,000 shares that he sold (see [376]–[377] above).

392 Mr Choo argues that he is, nevertheless, entitled to at least part of the sale proceeds from the 3.53 million Choo Atech Shares as payment due to him for work done under the PS Consultancy Agreement, under which he claims Mr Phua agreed to pay him a fixed fee of S$200,000 for his services in resolving the dispute between Mr Phua and Phillip Securities in relation to Mr Phua's contra losses. However, I find this argument to be devoid of merit as Mr Choo has failed to prove, on a balance of probabilities, that the PS Consultancy Agreement existed. It is improbable that Mr Phua would have agreed to pay Mr Choo a fixed fee of S$200,000 merely to negotiate a settlement which ultimately did nothing to reduce Mr Phua's absolute liability (see [383]–[384] above).

393 However, as an account and inquiry would be an exercise in futility in the circumstances, I allow Mr Phua's alternative counterclaim for A$214,524 as representing the sale proceeds of the 3.53 million Choo Atech Shares. I further order Mr Choo to pay Mr Phua interest on the sum of A$214,524 at the default rate of 5.33% *per annum* from the date of the writ (*ie*, 5 July 2018) (see [387] above).

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Mr Ding's counterclaim for repayment of the alleged loans

394 Two issues arise with respect to Mr Ding's counterclaim for Mr Choo to repay alleged loans amounting to S$24,000: (a) the amount of moneys transferred by Mr Ding to Mr Choo in 2015; and (b) the purpose of these transfers of moneys.

Amount of moneys transferred by Mr Ding to Mr Choo in 2015

395 Mr Ding claims that he transferred a total of S$24,000 to Mr Choo in 2015: S$9,000 on 30 April 2015 and a further S$15,000 on 15 December 2015.[699] According to Mr Ding, in 2014 and 2015, Mr Choo made multiple requests for loans from him and he eventually relented and agreed to loan him these sums.[700] These transfers are evidenced by two deposit slips issued by DBS Bank Ltd in favour of Mr Choo, dated 30 April 2015 and 15 December 2015 respectively (collectively, the "DBS Deposit Slips").[701] On the other hand, Mr Choo claims that he did not receive the first sum of S$9,000 from Mr Ding on 30 April 2015.[702]

396 The DBS Deposit Slips indicate that the sums of S$9,000 and S$15,000 were both deposited in the same bank account held by Mr Choo, on the dates stated by Mr Ding. The fact that this was indeed Mr Choo's bank account is confirmed by Mr Choo's admission that he received the second sum of S$15,000 deposited on 15 December 2015. Logically, having received the second sum of S$15,000, Mr Choo would also have received the first sum of

699 2DDC at paras 18–19; 2DCS at para 150.

700 DPC at para 58.

701 DPC, Exhibit DPC-14 at pp 513–514.

702 PCS at para 152.

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S$9,000.[703] Further, Mr Choo does not deny the authenticity of these documents and has not filed any notice of non-admission challenging their authenticity.[704] On the other hand, Mr Choo's claim that he did not receive the S$9,000 from Mr Ding is a bare denial unsupported by any corroborative evidence.

397 I, therefore, find that Mr Ding has proved on a balance of probabilities that a total of S$24,000 was transferred to Mr Choo.

Purpose of these transfers of moneys

398 Mr Choo submits that Mr Ding has adduced scant evidence to show that the sum of S$15,000 was intended to be a loan, because Mr Ding has not provided any documentary evidence to prove this and Mr Choo was not cross-examined by Mr Ding's counsel regarding this alleged loan.[705] Instead, Mr Choo contends that this sum was intended to be an *advance* of consultancy fees for future work to be done by Mr Choo for the defendants.[706] Mr Choo relies on an e-mail from Mr Ding dated 12 December 2015 in which Mr Ding stated that he would "advance" the moneys to Mr Choo (the "12 December 2015 E-mail"), and his reply to Mr Ding on 15 December 2015 (the "15 December 2015 E-mail") stating that he had "yet to receive the *advance*" [emphasis added].[707] According to Mr Choo, the use of the word "advance" twice in these e-mails shows that the S$15,000 was meant as an advance for work that was ongoing or

703 2DRS at para 46.

704 2DCS at para 150(2).

705 PCS at para 156.

706 PCS at para 152.

707 ABOD at p 349; PRDC, p 34 at para 72.

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work to be done by Mr Choo in the future, *ie*, after 15 December 2015, and not as a loan.[708]

399 On the other hand, Mr Ding maintains that the moneys amounting to S$24,000 were loans to Mr Choo which Mr Choo is liable to repay.[709] According to Mr Ding, between 2014 and 2016, Mr Choo requested moneys from Mr Ding on several occasions. Mr Ding acquiesced and handed Mr Choo sums of cash ranging from S$3,000 to S$5,000 out of goodwill on at least five occasions as Mr Choo was unemployed at this time and Mr Ding took pity on him. He did not ask Mr Choo to sign any documents to acknowledge receipt of these sums as these were not big sums of moneys.[710] Furthermore, Mr Ding testified that from 2014 onwards, he had engaged R&T to handle S 420 and, therefore, did not require Mr Choo's services in relation to this case. He had already entered into a full and final settlement of Mr Choo's fees by paying him the settlement sum of S$200,000 in June 2013 pursuant to the 2013 Choo Settlement Agreement.[711] Thus, at this point in time there was very little work that Mr Choo was doing for Mr Ding[712] and Mr Choo was to be paid only a token sum for this work (see [322] above). Mr Ding also claims that Mr Choo often used the terms "loan" and "advance" interchangeably, and that the use of the word "advance" in the 12 December 2015 E-mail, therefore, does not show that this amount was not a loan.[713] For example, Mr Ding points out that cl 2.5(I) of the Tripartite Agreement (which was drafted by Mr Choo) referred to "[a]n

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708 Transcript (4 March 2021), p 71 at lines 10–13; PCS at paras 153–154.

709 2DCS at para 150.

710 DPC at para 50.

711 Transcript (4 March 2021), p 142 at lines 22–25 and p 143 at line 1.

712 Transcript (4 March 2021), p 67 at line 14.

713 Transcript (4 March 2021), p 69 at lines 13–19 and p 70 at lines 20–24; 2DCS at para 150(4).

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advanced [*sic*] of Ringgits of 500,000 to finance the two trusts working capital". This advance of RM500,000 appears to be the same sum described in the 10 June 2013 Further Reply as "the loan [Mr Ding] made to Lee".[714]

400 In my view, the S$24,000 was intended to be a loan from Mr Ding to Mr Choo. When it is proved that a payment was made in the absence of circumstances justifying a presumption of advancement or any other plausible explanation as to why the sum of money was advanced, the court is entitled to infer that the sum of money was a loan that was meant to be repaid (*Power Solar System Co Ltd (in liquidation) v Suntech Power Investment Pte Ltd* [2018] SGHC 233 at [103(d)]).[715] Mr Choo's explanation for Mr Ding's payment of the S$24,000 cannot be believed. Although he was still doing work for Mr Ding in 2014 and 2015,[716] he has not adduced any evidence (apart from the Invoices, which I have already dealt with at [145]–[156] above) to show precisely how he was to be remunerated for this work. Mr Choo himself has denied that Mr Ding agreed to pay him a token sum for the work done by him after the 2013 Choo Settlement Agreement (see [322] above). It is, therefore, not clear how Mr Choo would have calculated the fees that had accrued to him for this work as at 2015. In these circumstances, it is unlikely that Mr Ding intended the S$24,000 to be an advance payment of Mr Choo's fees. I agree with Mr Ding's argument that the use of the word "advance" referred to a loan in the context of the parties' relationship in this case.

401 I, therefore, find that Mr Ding made loans amounting to S$24,000 to Mr Choo in 2015, which Mr Choo is required to repay with interest. I see no

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714 ABOD, Vol 1 at p 148; Transcript (19 February 2021), p 8 at lines 3–5, p 9 at lines 1–5 and p 13 at lines 3–7; 2DRS at para 47.

715 2DRS at para 44.

716 Transcript (4 March 2021), p 67 at lines 11–20.

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reason to depart from the default interest rate of 5.33% *per annum* prescribed by para 77 of the Supreme Court Practice Directions. Accordingly, I award Mr Ding interest at the rate of 5.33% *per annum* on the sums of S$9,000 and S$15,000, from the date of the writ (*ie*, 5 July 2018).

Summary of Mr Ding's counterclaim for repayment of the alleged loans

402 In summary, Mr Ding has proved, on a balance of probabilities, that he transferred a total of S$24,000 to Mr Choo. This is corroborated by the DBS Deposit Slips. In contrast, Mr Choo's assertion that he did not receive the first sum of S$9,000 from Mr Ding is unsupported by any corroborative evidence (see [395]–[397] above).

403 Mr Ding has also proved, on a balance of probabilities, that these transfers were loans and not part-payment for Mr Choo's outstanding consultancy fees or advances for ongoing or future work to be done by Mr Choo. Following the payment of S$200,000 to Mr Choo under the 2013 Choo Settlement Agreement, Mr Ding did not owe any further sums to Mr Choo for work done up to this point. Further, apart from the Invoices, Mr Choo has not adduced any evidence to show how he was to be remunerated for any work done for the defendants after June 2013 (see [400] above).

404 I, therefore, order Mr Choo to repay the loans amounting to S$24,000 to Mr Ding with interest at the default rate of 5.33% *per annum* from the date of the writ (*ie*, 5 July 2018).

Conclusion

405 For the above reasons, I dismiss Mr Choo's claim against the defendants for unpaid fees. I make the following findings:

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(a) Mr Choo was engaged by the defendants to act as an advocate and solicitor and did in fact act as an advocate and solicitor while he was an unauthorised person. Therefore, he is barred from recovering any remuneration for the legal work he did for the defendants under s 36(1) (read with s 2(1)) of the LPA. However, I decline to grant Mr Phua an order for the refund of the various sums of money paid by the defendants to Mr Choo for his legal services under s 36(2) of the LPA.

(b) The oral Melbourne Capital Agreement alleged by Mr Choo did not exist. In any event, his claim for the fixed fee of S$50,000 thereunder is time-barred.

(c) The oral Melbourne Profits Agreement (Phua), the oral Interpleader Agreement and the oral Melbourne Profits Agreement (Joint) alleged by Mr Choo did not exist. Even if they did exist, his claim for fees under the oral Interpleader Agreement is time-barred. Instead, Mr Choo was to be remunerated for the work purportedly done under these agreements based on the 20% Remuneration Arrangement.

(d) However, the 20% Remuneration Arrangement is champertous and, therefore, void and unenforceable on the ground of being contrary to public policy.

(e) Mr Choo is not entitled to claim his alleged overseas fees and expenses as there is no evidence of any agreement by the defendants to pay Mr Choo these fees. Further, Mr Choo has not produced any evidence to support his claim for his alleged expenses.

(f) The alleged annual retainer under the oral Lee Claim Agreement did not exist. Further, Mr Choo cannot rely on the Tripartite Agreement

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to claim this annual retainer for the six years of work allegedly done from 2012 to 2018. In any event, Mr Choo has no basis to claim any unpaid fees for work done under this agreement from the defendants.

(g) The defendants had paid Mr Choo the full fixed fee of A$50,000 under the Mei Leong Indemnity Agreement. In any event, even if the fixed fee of A$50,000 was not paid to Mr Choo in full, Mr Choo's claim for this fee is time-barred.

(h) The defendants had also paid Mr Choo a sum of S$200,000 in 2013. This payment served as full and final settlement of all fees payable by the defendants from the ACU Account Moneys.

(i) In any event, the effect of the DATBI was to novate any liabilities that Mr Phua had to pay Mr Choo's fees to Mr Ding. Consequently, Mr Choo can no longer claim any unpaid fees from Mr Phua.

406 I allow Mr Phua's counterclaim against Mr Choo for the sum of A$214,524 as representing the sale proceeds of the 3.53 million Choo Atech Shares. I find that Mr Choo was not entitled to sell the 3.53 million Choo Atech Shares. Further, the PS Consultancy Agreement did not exist, and Mr Choo is, therefore, not entitled to the proceeds from the sale of the 3.53 million Choo Atech Shares as payment for work done under the PS Consultancy Agreement. As Mr Choo has failed to produce any documentary evidence of the sale price and total sale proceeds of the 3.53 million Choo Atech Shares despite several invitations to do so, an account and inquiry would be futile. As Mr Choo's own position is that the 3.53 million Choo Atech Shares were sold for a total sum of A$214,524, I order Mr Choo to pay Mr Phua this sum together with interest at

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the default rate of 5.33% *per annum* from the date on which the writ of summons in the present Suit was filed (*ie*, 5 July 2018).

407 I also allow Mr Ding's counterclaim against Mr Choo. I find that Mr Ding made loans amounting to S$24,000 to Mr Choo in 2015, and I order Mr Choo to repay these loans with interest at the default rate of 5.33% *per annum* from the date on which the writ of summons in the present Suit was filed (*ie*, 5 July 2018).

408 Mr Choo is to pay costs, to be agreed or taxed, to the defendants on the main action and the defendants' counterclaims.

Tan Siong Thye
Judge of the High Court

Che Wei Chin (Covenant Chambers LLC) for the plaintiff;
Chan Wai Kit Darren Dominic and Ng Yi Ming Daniel (Characterist LLC) for the first defendant;
Chow Chao Wu Jansen and Ang Leong Hao (Rajah & Tann Singapore LLP) for the second defendant.

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