IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 146

Suit No 106 of 2018

Between

Lavrentios Lavrentiadis

… *Plaintiff*

And

(1) Dextra Partners Pte Ltd
(2) Bernhard Wilhelm Rudolf Weber

… *Defendants*

JUDGMENT

[Equity] — [Fiduciary relationships] — [When arising]
[Trusts] — [Breach of trust]
[Trusts] — [Accessory liability] — [Acts amounting to assistance]

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v
Dextra Partners Pte Ltd and another

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23 July 2020 Judgment reserved.

Chua Lee Ming J:

Introduction

1 The plaintiff, Mr Lavrentios Lavrentiadis, was at all material times a client of the first defendant, Dextra Partners Pte Ltd ("Dextra"), a licensed foreign law practice in Singapore. The second defendant, Mr Bernhard Wilhelm Rudolf Weber ("Weber"), managed Dextra at all material times.

2 It is not disputed that Dextra held the plaintiff's monies amounting to €39,735,362.82 and US$13,300,160.39 in its clients' account. The disputes in this action revolve primarily around two broad questions: (a) whether the plaintiff had authorised certain transactions that Dextra claims it had entered into for the plaintiff's account, and (b) whether Weber is personally liable for any loss suffered by the plaintiff.

Background

Weber and ILC Singapore/Dextra

3 Weber is a Swiss-qualified lawyer and a Singapore-registered foreign lawyer. He set up ILC International Legal Consultants (Singapore) Pte Ltd ("ILC Singapore") in 2003 after he left UBS Singapore where he was the head of private banking.

4 Weber set up ILC Singapore to provide legal services to private clients at the suggestion of Mr Richard Cedric Harry Ritter ("Ritter"), who is a fellow Swiss-qualified lawyer. Ritter ran a law firm in the United Arab Emirates called International Legal Consultants Dubai ("ILC Dubai") as well as a law firm in Switzerland called Ritter Attorneys-at-Law Ltd ("Ritter Attorneys"). ILC Dubai was a sole proprietorship owned by Ritter. Asia was seen as an upcoming market and Weber set up ILC Singapore as an expansion of ILC Dubai to Asia. According to Weber, ILC Dubai (representing its own clients) would engage ILC Singapore to act for it in respect of transactions in Asia. Ritter became a shareholder of ILC Singapore shortly after it was set up.

5 At all material times, Ritter and Weber were the directors and shareholders of ILC Singapore until September 2013 when ILC Singapore's association with ILC Dubai came to an end. Thereafter, ILC Singapore was renamed as Dextra and Weber became its sole director and shareholder. In this judgment, I use both "ILC Singapore" and "Dextra" interchangeably.

6 ILC Singapore provides legal advice on matters including legal aspects of structuring investments. Weber also set up various companies which render various services to ILC Singapore's clients. The following are the main companies that are relevant to the present proceedings:

(a) Carnelia Pte Ltd ("Carnelia") – Weber and one Ms Tracey Casari ("Casari") set up Carnelia as a multi-family office for ILC Singapore's high net worth individual clients.[1] Weber and Casari initially each held 42.5% of Carnelia's shares and became equal shareholders after 23 April 2014.[2] At all material times, Weber, Casari and Ritter (until 12 September 2013) were directors of Carnelia. According to Weber, Carnelia acts as a "concierge" and takes care of clients' needs for multiple services (for example, legal, tax accounting and asset management) by engaging the necessary service providers.[3] Carnelia outsources all the services that the clients need.[4] The service providers invoice Carnelia, and in turn, Carnelia invoices Dextra.[5]

(b) Straits Invest Pte Ltd ("Straits Invest") – Straits Invest, formerly known as W&M Wealth Managers (Asia) Pte Ltd ("W&M"), acts as an investment advisor. Weber held 40.2% of its shares until 2014 when his shareholding was reduced to 36%.[6] At all material times, Weber was a director of Straits Invest. Straits Invest was set up to provide private wealth management services and it takes care of all matters relating to asset management.[7] Clients may give Straits Invest a discretionary mandate to make investments, or an advisory mandate under which it merely advises the clients who then make the investments themselves if they accept the advice.[8] "Straits Invest" and "W&M" will be used interchangeably in this judgment.

(c) Pearl Investment Management Ltd ("Pearl Investment") – Pearl Investment is a fund management company set up in Brunei. It was wholly owned by Dextra until 30 March 2012, after which it became wholly owned by Hadley Global Corporation ("Hadley"). At all material

times, Hadley was wholly owned by Weber.[9] At all material times, Weber was a director of Pearl Investment.

(d) Orex Holding Ltd ("Orex") – Weber and Ritter indirectly owned Orex in equal shares until 11 September 2013, after which Weber became the indirect sole owner.[10] Orex was set up for the purposes of providing financing to a company called Far West Entertainment HK Ltd ("Far West").[11] ILC Singapore made loans on behalf of its clients through Orex so that Orex appeared as the lender to Far West.

(e) Ruby International Ltd ("Ruby") – Ruby was controlled by Weber and Ritter until 11 September 2013, after which it was effectively controlled by Weber.[12] ILC Singapore made loans on behalf of its clients through Ruby.

The plaintiff as a client of Dextra/ILC Singapore

7 The plaintiff is a Greek national. Sometime in 2005, the plaintiff wanted to set up a trust in Singapore and he was referred to Weber. This led to the setting up of a trust called the Calmness Trust pursuant to a Deed of Settlement dated 31 December 2005 ("the 2005 Deed of Settlement").[13] The plaintiff was the settlor and the primary beneficiary of the Calmness Trust and ILC Singapore was the first trustee. The cash under the Calmness Trust was held in an account with Deutsche Bank Singapore ("DB Singapore") in the name of Cruise Intertrade Ltd ("Cruise"), a company incorporated in the British Virgin Islands. ILC Singapore controlled Cruise on behalf of the Calmness Trust.

8 On 1 January 2008, ILC Singapore retired as trustee and appointed WinTrust Asia Pacific Pte Ltd ("WinTrust") as the trustee of the Calmness Trust.[14] WinTrust was a company set up by Casari. Weber had known Casari

for a few years as a trust professional. Casari incorporated WinTrust in 2005 or 2006 but could not act as trustee for the Calmness Trust until after WinTrust obtained licensing approval from the Monetary Authority of Singapore in 2007.

9 The 2005 Deed of Settlement envisaged a protector being appointed for the Calmness Trust. Under the 2005 Deed of Settlement, the trustee required the protector's consent for certain limited purposes. However, the 2005 Deed of Settlement omitted to name the protector. On 12 September 2011, ILC Singapore and WinTrust entered into a Deed of Variation to the 2005 Deed of Settlement.[15] Under the Deed of Variation, ILC Singapore confirmed, among other things, that it was the protector of the Calmness Trust with effect from 2 January 2008.

10 In October 2011, Proton Bank in Greece was nationalised.[16] The plaintiff, who was the controlling shareholder of Proton Bank, was investigated in connection with certain loans made by Proton Bank to the plaintiff's group of companies. A freezing order was made against the plaintiff's assets in Greece. The plaintiff testified during the trial that he had been found innocent of most of the charges against him but that there were some charges still going through the legal process in Greece.[17]

11 Between 30 November 2011 and 4 January 2012, the remaining funds in Cruise's account with DB Singapore, amounting to €39,735,362.82 and US$12.67m, were transferred to ILC Singapore's clients' account as follows:

(a) on 30 November 2011 – €35m;

(b) on 21 December 2011 – €4m and US$12.67m; and

(c) on 4 January 2012 – €735,362.82.

ILC Singapore held the monies on trust for the plaintiff. These monies form the bulk of the subject matter of this action. The Calmness Trust was terminated thereafter.

12 In April 2012, Weber met the plaintiff in Athens ("the April 2012 meeting"). According to Weber, the plaintiff signed a General Advisory Mandate dated 20 April 2012 ("the 2012 Mandate") at the April 2012 meeting.[18] In these proceedings, the defendants rely on the 2012 Mandate as the source of Dextra's authority to enter into a number of transactions on the plaintiff's behalf. The plaintiff testified that he did not recall signing the 2012 Mandate.[19] The plaintiff also asserts that the 2012 Mandate did not authorise the defendants to enter into the disputed transactions.

13 In November 2012, Ritter and Weber met the plaintiff in Athens ("the November 2012 meeting"). The subject matter of the discussions at this meeting is disputed. The defendants allege that the plaintiff needed help to unfreeze his funds in Switzerland and that he also had problems with blocked assets and his bank in Liechtenstein. The defendants also allege that they discussed how ILC Singapore could protect the plaintiff's assets in Singapore and that the plaintiff "specifically authori[s]ed the use of asset protection structures".[20] The plaintiff denies these allegations and claims that he met Ritter and Weber to discuss the sale of Lamda Privatbank AG, a Liechtenstein-based private bank that he owned.

14 On 13 December 2012, the plaintiff was arrested and remanded in custody.[21]

15 In December 2013, a senior associate at Dextra, Mr Alexander Ressos ("Ressos"), met the plaintiff's Greek lawyer, Mr Vasilios Athanasiou ("Athanasiou") in Munich to provide an update of the plaintiff's affairs.

16 In June 2014, the plaintiff was released from remand.

Statements of account given to the plaintiff

17 In August 2014, Athanasiou requested an update on the funds held by Dextra. On 26 August 2014, Weber sent a statement of the plaintiff's EUR account to the plaintiff[22] ("August 2014 EUR Statement").[23] Weber did not send any statement of the plaintiff's USD account. The August 2014 EUR Statement showed that as at 12 August 2014, the balance amount due to the plaintiff was €23,622,524.09. This amount remained unchanged as at 20 August 2014.

18 In October 2014, the plaintiff and Athanasiou met Ressos in Athens. Ressos gave the plaintiff statements of the plaintiff's EUR and USD accounts with Dextra ("the September 2014 EUR and USD Statements") which he had obtained from Dextra's accountant, Ms Song Wai Mun:[24]

(a) The September 2014 EUR Statement showed that as at 12 September 2014, the balance was €2,812,773.47. The statement also showed that as at 12 August 2014, the balance due to the plaintiff in EUR was €4,510,611.79, which was far less than the €23,622,524.09 shown in the August 2014 EUR Statement.

(b) The September 2014 USD Statement showed that as at 8 July 2014, the balance due to the plaintiff in USD was US$177,935.43 and this amount remained the same as at 12 September 2014.

19 According to Athanasiou, the September 2014 EUR and USD Statements included 115 transactions that were not reflected in the August 2014 EUR Statement and which involved a net outflow of about €12,354,936.17 and a credit of US$379,030.87.[25]

20 On 5 November 2014, Athanasiou met Weber in Singapore and queried about the discrepancies between the August 2014 EUR Statement and the September 2014 EUR Statement. Weber gave Athanasiou a handwritten note[26] setting out the major deposits, withdrawals and investments that Dextra had undertaken on the plaintiff's behalf ("the November 2014 Note").[27] According to Athanasiou's unchallenged testimony, the note showed that:[28]

(a) Dextra received about €50.5m;

(b) the total amount of transactions authorised by the plaintiff was €18.15m; and

(c) the total amount paid based on the plaintiff's written instructions was €7.29m.

21 Shortly thereafter, Weber asked Athanasiou for proof of his authority to act for the plaintiff. Athanasiou provided the proof of his authority on 8 November 2014.

22 In an e-mail on 10 November 2014,[29] Weber sent Athanasiou a third statement of the plaintiff's EUR account with Dextra ("the November 2014 EUR Statement 1").[30] This statement showed a balance of €5,132,042.89 due to the plaintiff as at 5 November 2014. In an e-mail sent later that same day, Weber sent yet another statement of the plaintiff's EUR account ("the November 2014 EUR Statement 2") which showed a balance of €18,207,796.52 due to the

plaintiff as at 5 November 2014.[31] In this e-mail, Weber said that the cash balance had changed due to "some reconciliation".[32]

23 On 31 January 2018, the plaintiff commenced this action.

24 In the course of these proceedings, Weber produced the following further statements of account:

(a) A statement of the plaintiff's EUR account showing a balance of €40,013.02 due to the plaintiff as at 22 May 2018 and remaining unchanged as at 24 May 2018 ("the May 2018 EUR Statement").[33]

(b) A statement of the plaintiff's USD account showing a balance of US$128,699.67 due to the plaintiff as at 30 April 2018 and remaining unchanged as at 24 May 2018 ("the May 2018 USD Statement").[34]

(c) A statement of the plaintiff's EUR account showing a balance of €111,864.28 due to the plaintiff as at 22 May 2018 and remaining unchanged as at 6 July 2018 ("the July 2018 EUR Statement").[35]

(d) A statement of the plaintiff's USD account showing a balance of US$142,557.36 due to the plaintiff as at 31 August 2018 ("the August 2018 USD Statement").[36] The last line in this statement refers to the date "06/07/2018" but that appears to be a mistake as the statement includes payments made up to 31 August 2018.

25 In addition, pursuant to directions given at a pre-trial conference, the defendants' solicitors confirmed by way of a letter dated 30 May 2018 that the plaintiff's cash balances in Dextra's clients' account as of 30 May 2018 were

€40,013.02 and US$128,699.67.[37] These amounts are the same as those found in the May 2018 EUR and USD Statements.

The parties' positions

Plaintiff's claim against Dextra

26 The plaintiff's claim against Dextra is that as a trustee and fiduciary, Dextra has to account for the use of his monies. In his Statement of Claim, the plaintiff claims that the investments and payments made purportedly on his behalf were not authorised and that Dextra breached its duty (a) to act in his best interests, (b) to avoid any conflict of interests ("the no-conflict rule") and (c) not to profit from its position as a fiduciary ("the no-profit rule").

27 Dextra does not dispute that it held the plaintiff's monies on trust for the plaintiff.[38] Dextra accepts that it has to account for the same. Dextra claims that it has discharged its duty to furnish accounts and that the monies were properly applied, with the plaintiff's authorisation, towards investments on the plaintiff's behalf and payments to third parties in respect of fees or expenses incurred on behalf of the plaintiff. Dextra denies any breach of its duties as a trustee or fiduciary.

Plaintiff's claim against Weber

28 As for Weber, the plaintiff claims that Weber:

(a) is liable for the losses caused by Dextra because Dextra was his alter ego; and/or

(b) dishonestly assisted Dextra in its breaches of its duties as trustee and fiduciary; and

(c) owed fiduciary duties to the plaintiff and breached (i) his duty to act in the interest of the plaintiff, (ii) the no-conflict rule and (iii) the no-profit rule.

Taking of accounts

29 One of the reliefs sought in the Statement of Claim is for Dextra to give an account of the plaintiff's monies.[39] Dextra accepts that it has to give an account and asserts that it has discharged its duty to furnish accounts. Dextra engaged Mr Abuthahir Abdul Gafoor ("Gafoor") as its expert to "provide for an account of how [the plaintiff's] funds received were utilised by [Dextra]".[40] Gafoor's report was based on the July 2018 EUR Statement and the August 2018 USD Statement,[41] and was filed with his affidavit of evidence-in-chief ("AEIC") dated 13 August 2019.[42]

30 At my direction given during a pre-trial conference on 16 September 2019, the parties prepared a table setting out how the plaintiff's monies had been applied according to Gafoor's report, and their respective positions on each item ("the Table of Parties' Positions"). The table was provided to me on 11 October 2019 and was subsequently updated in December 2019 as appended to the parties' respective written closing submissions. The plaintiff objected to several items in the table, largely for being unauthorised payments.

31 It seemed to me that the parties were already prepared for the taking of accounts. As stated earlier, Dextra did not dispute its liability to give an account; in fact, its position was that it had given an account to the plaintiff.[43] The only thing left to be done was the taking of accounts, and this the parties were ready to do. Gafoor's report provided a detailed account of how the plaintiff's funds had been utilised by Dextra and the plaintiff had falsified several items in the

Table of Parties' Positions (which was prepared based on Gafoor's report). In addition, the AEICs that had been filed also dealt with issues that were relevant to a taking of accounts. In the circumstances, I was of the view that it would be more efficient for the taking of accounts to be dealt with during the trial. I indicated accordingly to the parties during a subsequent pre-trial conference. None of the parties objected to this course of action and they proceeded with the trial on this basis.

32 In his opening statement, the plaintiff described the broad issues as including the following:[44]

(a) whether the monies were in fact applied in the manner as alleged by the defendants; and

(b) whether such application of the trust assets was authorised.

In the last paragraph of his opening statement, the plaintiff asked for the disputed items to be falsified and for all sums found to be due at the end of the trial to be returned to him.[45]

33 During their opening statement, the defendants did not object to the two issues framed by the plaintiff as set out above, or to the last paragraph of the plaintiff's opening statement. In fact, the defendants described the issue of whether the various investments entered into by Dextra on behalf of the plaintiff were authorised, as the key issue.[46] They also dealt with the issue of whether Dextra was justified in charging fees and expenses from the plaintiff's account.[47] In addition, the defendants stated that Dextra relied on the July 2018 EUR Statement and the August 2018 USD Statement "in these proceedings in accounting for the [p]laintiff's funds" and that they "will show … that the [defendants'] account of the [p]laintiff's funds is not false".[48]

34 The taking of accounts was dealt with during the trial. The witnesses, including Weber, were cross-examined extensively on issues arising from the plaintiff's falsification of items in the account provided by Dextra (which items were dealt with in Gafoor's report). The defendants did not object to the fact that the taking of accounts was being dealt with during the trial.

35 However, in their closing submissions, the defendants have made an about-turn and submitted that the plaintiff's request to falsify certain entries (in the account given by Dextra) at this stage of the proceedings is premature and that the taking of accounts should take place after an order to do so has been made.[49]

36 In my view, the defendants' objection has been made far too late in the day. The position that they now seek to take is clearly inconsistent with the position that they have taken in these proceedings and they cannot be permitted to have a second bite of the cherry.

Dextra's account – amount received by Dextra

37 The parties have agreed that Dextra received a total of €39,735,362.82 and US$13,300,160.39 for the plaintiff's account as follows:[50]

(a) €39,735,362.82 and US$12.67m between 30 November 2011 and 4 January 2012 (see [11] above); and

(b) US$630,160.39 on 10 October 2014.[51]

38 The defendants further state that on 30 September 2013, Dextra received US$115,574.44 for the plaintiff's account.[52] According to Weber, this was the amount that the plaintiff had overpaid for one of the investments in an

investment swap that allegedly took place on 30 September 2013 ("the Investment Swap"). The Investment Swap is described in greater detail at [46] below. Weber was not able to explain how the overpayment came about.[53] Be that as it may, the plaintiff does not agree with the defendants regarding the receipt of the amount of US$115,574.44 because he denies that the Investment Swap was authorised.

Dextra's account – disputed transactions

39 The Table of Parties' Positions shows that the plaintiff has accepted Dextra's account of the use of his monies in respect of several items.[54] The items in dispute relate to the following:[55]

(a) investments made by Dextra purportedly on the plaintiff's behalf, comprising:

(i) the Investment Swap in September 2013 at the cost of €13,315,749.42;

(ii) loans to Far West amounting to €2,768,085.59 and US$824,542 ("the Far West Loans"); and

(iii) a loan to a company called Windris International Ltd ("Windris") amounting to €1,025,931.58 ("the Windris Loan");

(b) the sale of assets in the Jade Asia Pacific One Fund ("Jade AP1"). Jade AP1 was a cell under Jade Fund DCC Ltd ("Jade DCC"), which was managed and controlled by Weber;

(c) payment of expenses allegedly incurred on behalf of the plaintiff:

(i) payments to Carnelia;

(ii) payments to Dextra;

(iii) payments to Weber;

(iv) custody fees paid to DBS Bank Ltd ("DBS");

(v) payments related to Jade DCC (including payments to Pearl Investment);

(vi) payments to Ritter Attorneys;

(vii) payments to Wintrust;

(viii) payments to Straits Invest; and

(ix) payments to Harry Elias Partnership ("HEP");

(d) payments allegedly made to other third parties:

(i) payment to one Georges M de Bartha ("Bartha") amounting to €187,303;

(ii) payment of €100,000 as fiduciary fees to a nominee known as Lam, plus €922.50 in bank charges (amounting to a total of €100,922.50); and

(iii) payments to a company known as New Anchor Ltd ("New Anchor").

The issues

40 The plaintiff's case in his closing submissions is narrower in some respects than what he had pleaded. The parties' closing submissions raise the following issues:

(a) whether the Investment Swap was in fact entered into;

(b) whether the investments, the sale of assets in Jade AP1 and the payments (set out in [39] above) were authorised;

(c) whether Dextra breached its duties as trustee;

(d) whether Weber owed fiduciary duties to the plaintiff, and if so, whether he breached the same; and

(e) whether Weber:

(i) is liable for any losses caused by Dextra because Dextra was his alter ego; and/or

(ii) had dishonestly assisted Dextra in any of its breaches of its duties.

Principles relevant to taking of accounts

41 It is trite law that trustees are under a duty to keep account of the trusts and to allow the beneficiaries to inspect them as requested: *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 at [86]. In that case, the Court of Appeal also cited *Pearse v Green* (1819) 1 Jac & W 135; 37 ER 327 in which it was held that a trustee has "to be constantly ready with his accounts".

42 Accounts may be taken on two bases. The first is that of a common account, which does not require any misconduct on the trustee's part. The second is an account on a wilful basis, which requires the beneficiary to allege and prove at least one instance of default on the trustee's part: *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 ("*Cheong Soh Chin*") at [80]. Wilful default does not require the trustee to be conscious of his

misconduct and it is sufficient that the trustee has been guilty of a want of ordinary prudence: *Cheong Soh Chin* at [81].

43 The key differences between an account on a wilful default basis and an account on a common account basis pertain to the scope of the account and the trustee's liability. As neatly set out in *Cheong Soh Chin* (at [82]–[83]):

> 82 The scope of an account on a wilful default basis is wider than that of an account on the common account basis. As the Court of Appeal observed in [*Ong Jane Rebecca v Lim Lie Hoa and others* [2005] SGCA 4] at [55], on a common account, the trustee need only account for what was actually received and for its disbursement and distribution. Conversely, on an account on a wilful default basis, the trustee has to account not only for what was actually received, but also for what he *might have* received had it not been for the default. The trustee's potential liability on the common account is therefore limited to what has *actually* been received and paid out; while on the wilful default basis, the trustee's exposure to liability is far greater, as he is liable not only for what he has *actually* received, but is also additionally liable for what he *might have* received.
>
> 83 The trustee's exposure to liability is also broadened on the wilful default basis because the trustee is subject to what has been called a 'roving commission' by the master taking the accounts … What this means is that the judge or registrar taking the account is entitled to look into all aspects of the trustee's management of the trust property and the trustee will be required to explain any suspect transactions, even if the particular transaction has not been complained of by the beneficiary.
>
> [emphasis in original]

44 Where the beneficiary falsifies an entry in the account, he challenges or disputes the alleged use of his funds. The burden then falls on the trustee to prove that the disbursement was authorised: *Cheong Soh Chin* at [78]. Implicit in this is that the trustee also has to properly account for the use of the trust funds by showing that the funds were in fact used for the purpose stated in the account.

45 The plaintiff submits that the account in the present case should be taken on a wilful default basis. As will be seen later in this judgment, there are several instances of default on Dextra's part. However, I do not think that whether the account is taken on a common basis or on a wilful default basis makes a difference in this case. There is no dispute as to the amount received by Dextra which has to be accounted for. The plaintiff has falsified several of the entries in the account provided by Dextra. The main dispute is whether the defendant has proved that the application of the plaintiff's monies, in respect of each of the falsified entries, was authorised. I address the disputed transactions in turn.

The Investment Swap

46 The defendants claim that on 30 September 2013, a total amount of €13,315,749.42 of the plaintiff's funds was applied towards the Investment Swap. The description of an "investment swap" used by the defendants is a misnomer. There was no swap of investments involved; the plaintiff was simply buying the investments from the previous investors. Pursuant to the Investment Swap, the plaintiff purportedly bought the following investments:[56]

(a) Loans amounting to €7,428,413.40 from Orex to Far West and entities associated with or providing services to Far West ("the ILC Dubai-Far West Loans").[57] These loans were made by ILC Dubai's clients but structured as loans to Orex which, in turn, loaned the monies to Far West and the various related entities. It should be noted that these loans are different from the Far West Loans referred to in [39(a)(ii)] above.

(b) A loan amounting to €2,500,316.12 from Gulf Oriental Investment Co ("Gulf Oriental") to Ruby.[58] The loan was for the

construction of a property in Bali, Indonesia, known as Villa K3 ("the Villa K3 Loan"). Gulf Oriental belonged to ILC Dubai.[59]

(c) A loan amounting to €1,054,242.32 from ILC Dubai's clients to the owners of another property in Bali, Indonesia, known as Villa K6 ("the Villa K6 Loan").[60]

(d) A loan amounting to €1,332,638.79 from ILC Dubai's client to a company known as Belle Vue Property 1 Ltd ("Belle Vue 1") ("the Belle Vue 1 Loan").[61] Belle Vue 1 was the owner of a piece of property at Belle Vue Residences, Singapore.[62]

(e) An investment of €1,000,138.79 in Jade Monega by ILC Dubai's clients.[63] Jade Monega was another cell under Jade DCC (see [39(b)] above). It held investments in a fund known as Monega Short Track T.[64]

47 These investments formed part of what Weber and Ritter referred to as ILC Dubai's "Mandate C" investments. According to them, Mandate C referred to a group of clients of ILC Dubai who had interests in Asia.[65] These clients had other investments and assets which had nothing to do with the plaintiff or this present case.[66] Weber and Ritter were involved in picking the investments that went into the Investment Swap.[67] Although the investments were originally made by ILC Dubai's clients, they appear in Dextra's records as investments by ILC Dubai because Dextra regarded ILC Dubai as its client.

48 Weber testified that the plaintiff took over the loan investments pursuant to the Investment Swap at cost.[68] In other words, the plaintiff paid ILC Dubai's clients (the original lenders) the full amounts of the loans, instead of the value of these loans as of the date of the swap. As for the investment in Jade Monega, Weber testified that the plaintiff took over the investment at its net asset value.[69]

The payments by the plaintiff to ILC Dubai's clients (through ILC Dubai) were made by way of ledger adjustments: the amount of €13,315,749.42 was debited from the plaintiff's account with ILC Singapore and ILC Dubai's account with ILC Singapore was credited with the same amount.

49 The plaintiff falsified Dextra's account with respect to the Investment Swap. The defendants' case is that the Investment Swap was authorised under the 2012 Mandate. The plaintiff submits that the Investment Swap was not in fact entered into as claimed, and that in any event, it was not authorised under the 2012 Mandate.

Whether the Investment Swap was in fact entered into

50 Dextra's case is that the Investment Swap was entered into on 30 September 2013. The plaintiff disputes this and submits that the Investment Swap was simply a convenient accounting fiction created *ex post facto* to provide a plausible explanation for the misappropriated assets. I agree with the plaintiff. The evidence supports his submission.

51 First, the various statements provided by Dextra show that the Investment Swap did not take place on 30 September 2013. The entries that allegedly reflect the Investment Swap (see [46] and [48] above) did not appear in the August 2014 EUR Statement, the September 2014 EUR Statement and both of the November 2014 EUR Statements (together, "the 2014 EUR Statements"). These entries first appeared in the May 2018 EUR Statement and subsequently in the July 2018 EUR Statement (together, "the 2018 EUR Statements"). I find it incredulous that the 2014 EUR Statements did not reflect the Investment Swap, if indeed it did take place as alleged. As for the 2018 EUR Statements, I do not accept these statements as credible evidence of the

Investment Swap; both these statements were prepared for the purposes of these proceedings.[70] In particular, the July 2018 EUR Statement was prepared for the defendants' expert to prepare his report.[71]

52 Weber explained that each client's statement of account kept by Dextra comprises three different types of statements:

(a) An "overall statement" that shows monies coming into the account and payments for anything "non-investment" or for investments that were not managed by Dextra. The balance amount in this statement represents the cash balance and the value of the portfolio but without showing the detailed positions.[72]

(b) A "cash statement" that shows the movement of monies in and out of the client's account. The balance amount in this statement represents the amount of cash left, *ie*, the balance amount did not include the value of the investments.[73] Subsequently, Weber said that there are two types of cash statements, one including investments (which shows the "total position") and one excluding investments (which shows the "cash position only").[74] Later still, Weber described the cash statement that includes investments as a "net cash statement", which he then said was also the overall statement.[75] He also then claimed that the cash statement would include investments that were not managed by Dextra but would not include "protective loans" (which were managed by Dextra).[76]

(c) An "investment statement" that shows all the investments. This statement would not show the cash balance.[77] Subsequently, he said that the investment statement shows only "protective loans".[78]

53 Weber's descriptions of the three types of statements vacillated during the course of his testimony. As will be evident from discussions about Weber's evidence elsewhere in this judgment, Weber was not a credible witness. Returning to the issue at hand, the more important question is whether Weber's evidence about the three different types of statements can explain why the Investment Swap was not included in the 2014 EUR Statements. In this regard, Weber again vacillated in his classification of each of the EUR Statements provided by Dextra:

(a) In his oral testimony on 20 November 2019, Weber said that:

(i) the August 2014 EUR Statement and the November 2014 EUR Statement 2 were overall statements;[79] and

(ii) the September 2014 EUR Statement, November 2014 EUR Statement 1, the May 2018 EUR Statement and the July 2018 EUR Statement were cash statements.[80]

(b) Subsequently, on 26 November 2019, Weber maintained his previous evidence that the November 2014 EUR Statement 2 was an overall statement[81] and that the May 2018 EUR Statement was a cash statement.[82] However, he changed his evidence regarding the other EUR Statements and said that:

(i) The August 2014 EUR Statement was a cash statement.[83]

(ii) The September 2014 EUR Statement, November 2014 EUR Statement 1 and the July 2018 EUR Statements were overall statements.[84]

(c) During his re-examination on 27 November 2019, Weber again changed his evidence. This time, he did not classify each of the

statements. Instead, he gave evidence as to which statements were similar in nature. According to Weber:

(i) the August 2014 EUR Statement and November 2014 EUR Statement 2 were essentially the same type of statements;[85]

(ii) the September 2014 EUR Statement and the November 2014 EUR Statement 1 were essentially the same type of statements;[86] and

(iii) the May 2018 EUR Statement was similar to the September 2014 EUR Statement and November 2014 EUR Statement 1, and the July 2018 EUR Statement was an "update" of these three Statements.[87]

54 The table below shows Weber's changing classifications of the EUR Statements.

	20 November 2019	26 November 2019	27 November 2019[88]
August 2014 EUR Statement	Overall statement	*Cash statement*	
September 2014 EUR Statement	*Cash statement*	Overall statement	
November 2014 EUR Statement 1	*Cash statement*	Overall statement	
November 2014 EUR Statement 2	Overall statement	Overall statement	
May 2018 EUR Statement	*Cash statement*	*Cash statement*	
July 2018 EUR Statement	*Cash statement*	Overall statement	

55 Weber's vacillating evidence about the statements lacks credibility. More importantly, his evidence does not explain why the Investment Swap was not reflected in the 2014 EUR Statements. Whichever version of Weber's classification of the statements that one takes, the fact remains that in each of the three versions, one or more of the 2014 EUR Statements belong to the same classification as one/both of the 2018 EUR Statements. Yet, the Investment Swap was reflected only in the 2018 EUR Statements.

56 The defendants point to a handwritten note on the August 2014 EUR Statement that states that "[c]urrently all funds are kept in cash and loans (protection)"[89] and submit that this meant that the balance stated in the August 2014 EUR Statement comprised cash and protective loans.[90] In my view, this submission is neither here nor there. It does not explain Weber's vacillating evidence regarding the various statements. Nor does it explain why the Investment Swap was reflected in the 2018 EUR Statements but not in any of the 2014 EUR Statements when, on Weber's own evidence, one or more of the 2014 EUR Statements belonged to the same classification as one/both of the 2018 EUR Statements.

57 Second, accompanying the November 2014 EUR Statement 1 was a note which showed that €3,831,581.31 was paid to ILC Dubai.[91] The November 2014 EUR Statement 1 shows that €2,500,316.12 was paid to ILC Dubai in two separate sums on 3 May 2012.[92] A revised note accompanied the November 2014 EUR Statement 2. In the revised note, the figure of €3,831,581.31 was reduced to €2,500,316.12 and was shown as a payment for "Bali" instead of ILC Dubai.[93] In the November 2014 EUR Statement 2, the two payments to ILC Dubai on 3 May 2012 have been removed but it is not clear how the payment of €2,500,316.12 is reflected (if at all).[94] I agree with the plaintiff that if the

Investment Swap did in fact take place, the two notes would not have reflected the above discrepancies.

58 Third, the November 2014 Note that Weber gave to Athanasiou during their meeting on 5 November 2014 (see [20] above) does not reflect the Investment Swap. The Investment Swap cost the plaintiff €13,315,749.42. Clearly, it was a significant transaction. Weber claimed that he was shocked by Athanasiou's accusation during the meeting that he was stealing the plaintiff's money and trying to cover it up.[95] Even if that were true, the Investment Swap could not have slipped Weber's mind.

59 Fourth, there is no document whatsoever evidencing the agreement to enter into the swap even though many different parties were involved. Again, I find it incredulous that there is no objective contemporaneous record of the Investment Swap, if indeed it took place as claimed.

60 Fifth, the plaintiff allegedly took over the Villa K3 Loan pursuant to the Investment Swap on 30 September 2013. However, under cross-examination, Weber admitted that the total amount of the loan (€2,500,316.12) was in fact paid from the plaintiff's monies to ILC Dubai in two payments on *3 May 2012*.[96] There is no evidence that these loans were authorised by the plaintiff. Weber claimed that the monies were wrongly paid out of the plaintiff's account with Dextra and that the payments were subsequently reversed.[97]

61 The payments were not actually reversed. The September 2014 EUR Statement (about a year after the alleged Investment Swap) continued to reflect the two payments to ILC Dubai on 3 May 2012. It was only in the May 2018 EUR Statement that these two payments were replaced by an entry that referred to the Investment Swap. Under re-examination, Weber claimed that the

accountant had erroneously "ported over" the payments into the September 2014 EUR Statement and the November 2014 EUR Statement 1.[98] According to Weber, the payments should have been "consolidated in one position in the swap statements of 30 September 2013".[99] Clearly, Weber's testimony did not explain why the payments were recorded as payments from the plaintiff's account in the first place or how the alleged error in recording them as payments from the plaintiff's account arose. The defendants did not call the accountant to testify. The fact that the accountant had ported the figures over merely confirmed that the payments continued to be reflected in Dextra's account as payments from the plaintiff's account until May 2018. In my view, the evidence shows that the defendants had wrongfully made use of the plaintiff's monies on 3 May 2012 for the Villa K3 Loan, and the Investment Swap was concocted later in 2018 to explain, among other things, the use of the plaintiff's monies for the Villa K3 Loan.

62 Sixth, the plaintiff allegedly took over the Villa K6 Loan pursuant to the Investment Swap on 30 September 2013. Yet in an e-mail to Athanasiou dated 10 November 2014, Weber offered two villas in Bali as security, describing only one of them as being "already with the [plaintiff's] loan".[100] On the stand, Weber confirmed that the villa "with the [plaintiff's] loan" was Villa K3.[101] The alleged Investment Swap is inconsistent with Weber's e-mail. In addition, the Villa K6 Loan was reflected in the September 2014 EUR Statement and November 2014 EUR Statement 1 as being made using monies from the plaintiff's account on 22 December 2009.[102] Again, Weber claimed that it was a "wrong entry" and it was "corrected … later".[103] I do not believe Weber. It is too much of a coincidence that both the Villa K3 and Villa K6 Loans were erroneously recorded as having been paid using monies from the plaintiff's account.

63 Seventh, the plaintiff allegedly took over the Belle Vue 1 Loan pursuant to the Investment Swap on 30 September 2013. However, a balance sheet for Belle Vue 1 as at *31 December 2013* reflects the creditor as ILC Dubai and not the plaintiff.[104] Weber conceded that he had no explanation as to why ILC Dubai was reflected as the creditor in the balance sheet.[105] Further, the September 2014 EUR Statement and both the November 2014 EUR Statements show that, in fact, payments were again made from the plaintiff's account between 18 April 2012 and 3 September 2013 towards the Belle Vue 1 Loan.[106] This time, Weber did not offer any explanation as to why the monies for the Belle Vue 1 Loan came from the plaintiff's account instead of ILC Dubai's account.[107] The fact that all three loans (Villa K3 Loan, Villa K6 Loan and Belle Vue 1 Loan) were made using the plaintiff's monies speaks volumes. It is not disputed that the use of the plaintiff's monies for these loans was not specifically or expressly authorised. The only conclusion that makes sense is that the Investment Swap was concocted by the defendants to create *ex post* authorisation for the use of the plaintiff's monies for these loans.

64 Eighth, based on the May 2018 EUR Statement, the cash balance just before the entries for the Investment Swap, was €6,982,476.97. When first cross-examined on this, Weber could not explain how the Investment Swap (which cost €13,315,749.42) could have been effected on 30 September 2013.[108] Subsequently, Weber produced a bank statement for a USD fixed deposit of US$22m held in Dextra's name.[109] Weber alleged that these were clients' monies and that the fixed deposit included the plaintiff's money.[110] However, Weber's allegation is contradicted by the fact that, during the discovery process, the defendants had disclosed the same statement with the amount of the USD fixed deposit redacted on the ground that it related to monies for *other clients*.[111] Weber was unable to explain the redaction.[112] In any event, Weber's allegation

does not explain why the plaintiff's monies in the USD fixed deposit were not reflected in the May 2018 USD Statement. Nor did the defendants produce any evidence to show the flow of the plaintiff's funds from the USD fixed deposit towards payment for the Investment Swap.

65 Weber then explained that if a client (A) had USD but needed to pay in euros, Dextra could first borrow the euros from another client (B) to make payment on behalf of A because a foreign exchange conversion would take two days. Dextra would subsequently convert A's USD into euros and repay B.[113] However, this still did not explain where the balance amount required for the Investment Swap came from. The May 2018 EUR and USD Statements shed no light on this.

66 Weber then changed his explanation and claimed that the plaintiff's account was in a negative position after the Investment Swap had taken place, and that he subsequently redeemed the plaintiff's investments in Jade AP1 and used part of the proceeds to pay for the shortfall.[114] This claim is inconsistent with his own evidence in his AEIC where he said that the investments in Jade AP1 were redeemed because of a concern that there was a risk of the assets in Jade AP1 being seized.[115] In any event, the objective evidence contradicts Weber's claim that he redeemed the investments in Jade AP1 to pay for the shortfall. According to the defendants' expert, the sale of the assets in Jade AP1 took place only in 2014 and funds in Jade AP1 were transferred to Dextra only in October 2014.[116] It is inconceivable that ILC Dubai's clients would have financed the plaintiff's acquisition of the investments pursuant to the Investment Swap for more than a year. Weber did not claim that there was any such agreement with ILC Dubai either.

67 I reject Weber's explanations as to how the Investment Swap was allegedly funded. I find no credibility in his changing evidence. Absent any credible explanation, the fact that the plaintiff's account with Dextra did not have sufficient funds to pay for the Investment Swap on 30 September 2013 further supports the plaintiff's case that the Investment Swap did not take place as claimed.

68 Ninth, the defendants claim that the Investment Swap was entered into in order to reduce the plaintiff's cash balance held with Dextra. However, this claim is inconsistent with Weber's own e-mail on 2 September 2013 (less than a month before the alleged swap) to Dextra's accountant in which he said that he had informed the plaintiff's lawyer that the funds in the plaintiff's account were running low.[117] Under cross-examination, Weber gave incoherent explanations before settling on saying that he could not recall the details of the e-mail.[118] The defendants' claim is also inconsistent with the fact that, as stated earlier, based on the May 2018 EUR Statement, the plaintiff's account did not have sufficient funds to pay for the Investment Swap.

69 In their closing submissions, the defendants refer to Weber's e-mail to Ressos on 13 December 2013 in which Weber said that the plaintiff's "other assets are 95% in PE investments and loan investments".[119] The defendants submit that the phrase "PE investments and loan investments" refers to the ILC Dubai-Far West Loans and the loans in respect of Villa K3, Villa K6 and Belle Vue 1, and that the e-mail therefore shows that the Investment Swap did occur.[120] However, there is no evidence from Weber that the phrase "PE investments and loan investments" refers to the ILC Dubai-Far West Loans and the loans in respect of Villa K3, Villa K6 and Belle Vue 1. Even if it does, it does not necessarily mean that the Investment Swap took place. It was factually

correct that as of December 2013, the plaintiff's monies had been used for these loans:

(a) The defendants had made the Far West Loans on the plaintiff's behalf (see [93] below). Six loans had been made to Far West as of 13 December 2013.[121] In fact, the September 2014 EUR Statement and November 2014 EUR Statement 1 show that even the ILC Dubai-Far West Loans were paid from the plaintiff's account from February 2010 to November 2012.[122]

(b) The plaintiff's monies were used for the Villa K3 Loan, Villa K6 Loan and Belle Vue 1 Loan (see [60]–[63] above).

The fact that Weber's e-mail referred to these loans merely means that the loans existed. However, the mere existence of the loans does not mean that the Investment Swap must have taken place.

70 In my judgment, the defendants have failed to prove that Dextra did in fact enter into the Investment Swap on 30 September 2013 on behalf of the plaintiff. The evidence shows that the defendants concocted the idea of the Investment Swap for the purposes of the present proceedings. Dextra has to make good the amount of €13,315,749.42 that was deducted from the plaintiff's account for the Investment Swap.

Whether the Investment Swap was authorised

71 Even if the Investment Swap was entered into on 30 September 2013 as the defendants claimed, the defendants still have to show that it was authorised by the plaintiff. The defendants did not obtain any express authorisation from the plaintiff for the Investment Swap. The defendants rely on the 2012 Mandate

as the requisite authorisation. As stated earlier, the plaintiff denies having signed the 2012 Mandate. The plaintiff also asserts that, in any event, the 2012 Mandate did not authorise the defendants to enter into the Investment Swap.

Whether the plaintiff signed the 2012 Mandate

72 The 2012 Mandate purports to have been entered into among ILC Singapore, W&M (subsequently renamed as Straits Invest) and the plaintiff.[123] Weber testified that the plaintiff signed the 2012 Mandate during their meeting in Athens in April 2012, and that he signed it on behalf of ILC Singapore and W&M on 3 May 2012 after he had returned to Singapore.

73 The burden is on the defendants to prove that the 2012 Mandate was signed by the plaintiff. The defendants did not adduce any evidence from handwriting experts. Instead, they referred me to s 75(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"), which provides as follows:

> **75.**—(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the court to have been written or made by that person, may be compared by a witness or *by the court* with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. [*emphasis added*]

74 In the present case, it is fair to say that the plaintiff's purported signature on the 2012 Mandate looks similar to his other specimen signatures. The plaintiff himself admits that the signature on the 2012 Mandate looked similar to his signature.[124] The defendants invite me to compare the plaintiff's signature on the 2012 Mandate against other specimens of the plaintiff's signature in documents that have been admitted into evidence.[125]

75 It may be that, in an appropriate case, a judge might examine a questioned signature against specimen signatures pursuant to s 75(1) of the EA and conclude that the questioned signature is *not* genuine because the questioned signature looks very different from the specimen signatures. However, in my view, it would be rare indeed for a judge to conclude that a questioned signature is genuine based solely on his own examination of the questioned signature and the specimen signatures. Visual similarity between two signatures to a non-expert's eyes does not mean that the questioned signature is therefore genuine. Expert evidence should be adduced for this purpose.

76 I am not prepared to make a finding that the plaintiff's signature in the 2012 Mandate is genuine, based solely on my own examination of that signature and other specimen signatures of the plaintiff. However, there is other evidence to consider.

77 An electronic copy of the 2012 Mandate shows that it was created on 17 April 2012 and last modified on 19 April 2012,[126] just one day before the April 2012 meeting on 20 April 2012 (see [12] above). This supports the defendants' case that Weber had prepared the 2012 Mandate and brought it with him to the April 2012 meeting. In my view, it is more likely than not that Weber did obtain the plaintiff's signature to the 2012 Mandate at that meeting. There is no reason why Weber would have prepared the draft shortly before the April 2012 meeting otherwise.

78 The plaintiff's pleaded case is that the 2012 Mandate was not executed by him.[127] However, the plaintiff's evidence did not go as far: he testified that he did not recall signing the 2012 Mandate.[128] The plaintiff neither adduced any evidence from handwriting experts, nor offered any reason as to why the

defendants needed to forge his signature on the 2012 Mandate. As will be seen later, the defendants' reliance on the 2012 Mandate is in fact fraught with difficulties.

79 The 2012 Mandate also shows that a flat fee of 1% is to be paid to ILC Singapore. The "1%" is handwritten; there are two initials against it. Weber testified that the initials are the plaintiff's and his.[129] The plaintiff denied having initialled against the handwritten "1%".

80 I find that the evidence establishes, on a balance of probabilities, that the plaintiff did sign the 2012 Mandate. I also find that the plaintiff did initial against the handwritten "1%". It is not likely that the plaintiff would have signed the 2012 Mandate if the fee to be paid to ILC Singapore had been left blank.

Whether the Investment Swap was authorised under the 2012 Mandate

81 Even if the Investment Swap did take place as the defendants claim, they have to prove that it was authorised. The defendants' pleaded case is that:

(a) pursuant to the fourth paragraph of the 2012 Mandate, the plaintiff had authorised *Dextra* to apply a portion of the assets to be structured into asset protection structures;[130] and

(b) pursuant to the plaintiff's instructions and/or the fourth paragraph of the 2012 Mandate, *Dextra* proceeded to invest some of the plaintiff's assets into asset protection structures.[131]

82 As stated earlier, the 2012 Mandate was entered into between ILC Singapore, W&M and the plaintiff.[132] Under the 2012 Mandate, ILC Singapore is to advise the plaintiff on the "international structuring of legal and tax

optimized investment vehicles including structures for charitable causes". W&M is to advise the plaintiff "in general global investment strategies including an ongoing comparison in the performance and fee/commission structure of the various service providers of [the plaintiff]".

83 The fourth paragraph of the 2012 Mandate reads as follows:

> Advice by W&M includes advisory portfolios with regards to single investments but also discretionary portfolios. [The plaintiff] however has no obligation to exercise any of this advice but has full power to implement W&M's investment strategy and exercise any advice given at its own discretion and judgement. Once approval is given to a strategy, W&M will execute the investments within the agreed framework on a discretionary basis.

84 The defendants allege that during the November 2012 meeting (see [13] above), the plaintiff authorised Dextra "to take necessary measures to structure a portion of his [a]ssets into asset protection structures but to leave some of his [a]ssets in cash for his family's use".[133] The defendants submit that as the plaintiff had approved asset protection structures as a strategy, Dextra could execute the investments within the agreed framework on a discretionary basis.[134]

85 Clearly, the 2012 Mandate does not support the defendants' pleaded case. The 2012 Mandate does not authorise *Dextra* to make investments on the plaintiff's behalf. Under the fourth paragraph of the 2012 Mandate, the approval of a strategy (if any) is given to Straits Invest and it is Straits Invest that will make the investments in accordance with the approved strategy.

86 In his oral testimony, Weber claimed that the investment decisions were made by Straits Invest[135] but this is not the defendants' pleaded case. In any event, I find that the decisions were made by Dextra rather than Straits Invest.

In his AEIC, Weber said *Dextra* "decided, on behalf of [the plaintiff]" to take over the ILC Dubai-Far West Loans and that "Ritter and [he] had deliberately sought to invest in some projects and companies, such as Far West and the K3 and K6 developments …".[136] Although Weber was a director of Straits Invest, his AEIC was not made on behalf of Straits Invest but on behalf of Dextra and himself. Ritter's evidence was also that Weber and he decided which investments would go into the Investment Swap.[137] Even in their closing submissions, in relation to the selection of the loans constituting the Investment Swap, the defendants referred to "[*Weber's*] *and Ritter's* general strategy of selecting loans".[138] Ritter had no role in Straits Invest. The decisions by Weber and Ritter could not have been made on behalf of Straits Invest.

87 In any event, I find that the defendants' reliance on the 2012 Mandate was an afterthought for the following reasons:

(a) Dextra and Weber amended their Defences to plead reliance on the 2012 Mandate only at the close of the plaintiff's case. If the plaintiff's approval had been given as alleged, the Defences would surely have pleaded the 2012 Mandate right from the beginning.

(b) On 5 November 2014, Athanasiou confronted Weber about the discrepancies between the August 2014 EUR Statement and the September 2014 EUR Statement. According to Weber, Athanasiou accused him of stealing the plaintiff's money and trying to cover it up.[139] Yet, in the e-mails that followed this meeting, Weber did not once mention the 2012 Mandate, much less assert that the investments were authorised under the 2012 Mandate.

(c) As stated at [58] above, the November 2014 Note that Weber gave to Athanasiou does not refer to the Investment Swap that Dextra

now claims was made pursuant to the 2012 Mandate. If the Investment Swap had been authorised, there is no reason why Weber would not have included the Investment Swap in the November 2014 Note.

(d) I find Athanasiou to be an independent and truthful witness. I accept his evidence that during his meeting with Weber on 5 November 2014 (see [20] above), Weber was unable to explain why it was necessary to put the plaintiff's assets in loans, contrary to the plaintiff's express instructions to hold his assets in cash.[140] Instead, Weber agreed at the meeting to return all of the plaintiff's assets by finding other investors to take over the loans; Weber repeated this in his subsequent e-mails.[141] If the Investment Swap had been authorised, Weber (with his experience) would surely have said so instead of agreeing to return the plaintiff's assets. Weber explained that his e-mails were "conciliatory" because he just wanted to resolve matters with the plaintiff and move on.[142] I do not believe Weber's explanation. Even if he wanted to resolve matters, there was no reason why he could not have mentioned that the Investment Swap was authorised.

(e) Weber testified that he took minutes of the November 2012 meeting with the plaintiff.[143] Yet, these minutes do not include the plaintiff's alleged instruction to invest in asset protection structures or any reference to the 2012 Mandate. On the stand, Weber claimed that the plaintiff gave his instruction ten minutes before the meeting ended.[144] Even so, Weber could have easily added the alleged instruction then or on the way back to his hotel or soon after he had reached his hotel.

(f) The 2012 Mandate also provides as follows:

> Instructions of [the plaintiff] to [ILC Singapore]/W&M shall be given in writing, whereas telex, fax and e-mail transmissions shall be considered as written instructions. …

It is not disputed that the alleged instruction to invest in asset protection structures was not given in writing. Weber's explanation was that the plaintiff had given his instruction at the end of the meeting. However, this does not explain why Weber did not confirm the instruction in writing after the meeting. Weber also claimed that he could not, and it was not feasible to, obtain the plaintiff's instruction in writing after the plaintiff was arrested.[145] However, the plaintiff was arrested only a month later. Weber had a full month to write to the plaintiff and confirm his instruction in writing. When asked several times as to why he did not do so, Weber said that there was no need to because he did not consider the plaintiff's remark about a potential arrest to be serious.[146] I infer from Weber's non-responsive answer that he had no credible explanation to give.

(g) Weber testified that he started discussing protective structures with the plaintiff in 2010 and that such protective structures were primarily meant to protect the plaintiff's identity.[147] According to Weber, these involve the use of companies and trusts to hold investments so that anyone (including authorities) looking at the investments would not know that the investments belong to the plaintiff.[148] However, there is no evidence that the Villa K6 Loan and the Belle Vue 1 Loan involved any structures to protect the plaintiff's identity. This is clearly inconsistent with Weber's testimony that the plaintiff authorised the use of asset protection structures to protect his identity.

(h) The defendants were not consistent in explaining what asset protection structures meant. In his AEIC, Weber stated that the ILC Dubai-Far West Loans, the Villa K3 Loan and the Villa K6 Loan had been "selected for their illiquidity".[149] Further, in their closing submissions, the defendants submit that the ILC Dubai-Far West Loans were uniquely protective because Far West was a start-up company and it is "common for start-up companies to require a substantial number of years to become profitable and, until then, there would be very little or no cash assets".[150] Therefore, until Far West started turning a profit, there would not be any money to seize. However, investing in investments that are illiquid or with low cash balances as a means of asset protection is very different from investing by using structures that protect the plaintiff's identity. In any event, selecting investments for their illiquidity or their lack of cash is also inconsistent with Ritter's evidence that the plaintiff was "very concerned that a prolonged lack of liquidity due to seizure of his assets would stymie his defence against the allegations, as well as his business interests".[151] Such investments would run contrary to the plaintiff's concerns about liquidity.

(i) The use of asset protection structures to hide the plaintiff's identity as the investor has to do with how investments are to be held rather than, for example, the types of investments that may be entered into or an investment mix. It seems to me to be a stretch to describe the use of asset protection structures that would mask the plaintiff's identity as an "investment strategy" as envisaged under the 2012 Mandate.

88 Ritter testified that the plaintiff wanted to protect his assets from illegitimate seizure and that he and Weber were of the view that the investments were within the authority given by the 2012 Mandate.[152] The defendants submit

that Ritter's evidence in his AEIC as to the November 2012 meeting must be taken as accepted because the plaintiff did not cross-examine Ritter on it. The relevant paragraphs in Ritter's AEIC are as follows:

> 14. Due to what had happened in Switzerland, [the plaintiff] was very concerned that a prolonged lack of liquidity due to seizure of his assets would stymie his defence against the allegations, as well as his business interests. In relation to his funds (including those in Singapore), [the plaintiff] made it clear that protection from illegitimate seizure was foremost in his mind.
>
> 15. [The plaintiff] therefore discussed a few protective strategies and ideas for his assets (including those in Singapore) with us. The purpose of asset protection is to protect the client's assets from illegitimate seizure, within the ambit of the law.
>
> 16. We left our one-day meeting in Athens with some matters to follow-up on. [Weber's] minutes of the meeting are exhibited hereto and marked 'RR-1'.
>
> [emphasis in original omitted]

Ritter's AEIC also referred to a statutory declaration signed by him prior to the commencement of this suit "to confirm the basis on which [Dextra] had acted", in which he stated the following:[153]

> In November 2012 I joined [Weber] … in visiting [the plaintiff] in Athens. … One of the topics discussed was how the Singapore firm could protect the assets held in Singapore on [the plaintiff's] behalf. The following morning we left the city.
>
> [The plaintiff] was very concerned that the criminal investigations in his country would last for years and that he would be made a scape goat. Hence, he wanted to make sure that the funds which he had entrusted to our Singapore operations were kept and managed safely and were protected from undue seizure[.] He therefore specifically authorised the use of asset protection structures.
>
> He stated that the prime task was to keep the funds safely and out of reach of any attachments should the wave created in Greece swap over internationally. …

89 In my view, Ritter's evidence falls short of saying that at the November 2012 meeting, the plaintiff gave his approval to *invest in asset protection structures as a strategy pursuant to the 2012 Mandate*. Authorising the use of asset protection structures for investments approved by the plaintiff is not the same thing as authorising the use of asset protection structures as a strategy pursuant to the 2012 Mandate under which Straits Invest would have the discretion to decide on the investments to be made so long as asset protection structures were used.

90 In fact, Ritter also testified in his AEIC as follows:

> 19. [Weber] was concerned about discussing asset protection strategies over the telephone in case the telephone was being tapped. …
>
> 20. As such, [Dextra] did not take major steps to implement asset protection strategies in relation to the plaintiff's funds for several months. …
>
> …
>
> 24. Based on the [2012 Mandate] … and all the discussions that took place in November 2012, [Dextra] proceeded on the basis that [the plaintiff] would have expected steps to be taken to protect his assets. …
>
> …
>
> 28. To reiterate, it was impossible at this juncture to confirm any proposed asset protection strategies with [the plaintiff] …

91 In my view, Ritter's evidence shows that there was no approval given at the November 2012 meeting to invest in asset protection structures as a strategy pursuant to the 2012 Mandate. If such approval had been given and Straits Invest had the discretion to implement the strategy, there would have been no need to further discuss asset protection strategies with the plaintiff, to delay taking steps to implement the strategy, to proceed on the basis that the plaintiff

would have expected steps to be taken, or to confirm any proposed asset protection strategies with the plaintiff.

92 In my view, the plaintiff probably did discuss structuring his investments to mask the fact that the investments belonged to him. He may even have instructed the defendants to do so. However, that is different from authorising asset protection structures as an investment strategy under the 2012 Mandate, pursuant to which Straits Invest would then have full discretion as to what to invest in. I find that the evidence does not establish any such authorisation and that the Investment Swap was not authorised. In any event, as stated at [85] above, the 2012 Mandate does not support the defendants' pleaded case.

Far West Loans

93 These loans amount to €2,768,085.59 and US$824,542 and are separate from the ILC Dubai-Far West Loans. The ILC Dubai-Far West Loans were loans that were allegedly made by ILC Dubai's clients and thereafter taken over by the plaintiff pursuant to the Investment Swap. The Far West Loans were allegedly made on behalf of the plaintiff to Far West, through Orex, between January 2013 and November 2014.[154]

94 The defendants claim that the Far West Loans were also authorised pursuant to the fourth paragraph of the 2012 Mandate (see [83] above) based on their allegation that the plaintiff had authorised ILC Singapore to apply a portion of the assets to be structured into asset protection structures. The reasons stated earlier, for the conclusion that the 2012 Mandate did not authorise the Investment Swap, apply *mutatis mutandis* to these loans. I find that the 2012 Mandate did not authorise the making of the Far West Loans.

The Windris Loan

95 Windris is a trading company owned by one of Dextra's clients.[155] The defendants' pleaded case is that Dextra made a loan on the plaintiff's behalf in the sum of €1,025,931.58, without interest, to Windris pursuant to an oral agreement in or around May 2014.[156] It appears that the loan was for US$1.35m but was disbursed to Windris on 28 August 2014 from the plaintiff's EUR account in the sum of €1,025,931.58.[157] On 12 November 2014, Windris repaid US$832,500, which was credited into the plaintiff's EUR account as €666,533.23. Windris made two further payments of US$390,000 and US$98,000 on 13 November 2014 and 12 January 2015 respectively. These two payments were credited into the plaintiff's USD account.

96 The total amount repaid by Windris was US$1,320,500. This meant that there was a balance of US$29,500 still outstanding. According to Gafoor, the defendants' expert, this balance amount was recorded as a loss.[158] The defendants' pleaded case is that this loss was due to "the fall in the USD relative to the Euro between August 2014 and January 2015". However, Weber's evidence was that the loss was due to the "aggressive and premature recall of the loan".[159] Neither explanation made sense. The loss was clearly not due to any foreign exchange loss or "premature recall"; it was simply the shortfall between the loan amount and the amount repaid *in USD*. Weber himself eventually agreed that the exchange rate had nothing to do with the shortfall.[160] In any event, the loss of US$29,500 is ultimately not relevant because the plaintiff's submission is that the Windris Loan was not authorised and should thus be falsified. However, neither explanation as to the loss helps Weber's credibility as a witness.

97 The defendants claim that the Windris Loan was authorised pursuant to the fourth paragraph of the 2012 Mandate (see [83] above) and their allegation that the plaintiff authorised ILC Singapore to apply a portion of the assets to be structured into asset protection structures. The reasons stated earlier, for the conclusion that the 2012 Mandate did not authorise the Investment Swap, apply *mutatis mutandis* to the Windris Loan. I find that the 2012 Mandate did not authorise the making of the Windris Loan.

The sale of assets in Jade AP1

98 The plaintiff invested in the following through Jade AP1, a cell under Jade DCC:

(a) 4,000 units of JB Physical Gold Fund Class A ("the JB Gold Fund units");

(b) 4,100 units of Anteile ZKB Gold ETF Klasse A ("the ZKB ETF units");

(c) Geldbuchungem A951 securities; and

(d) 33,018,750 shares in Hellenic Bank (subsequently consolidated to 660,375 shares).

99 The dispute is over the sale of (a) the JB Gold Fund units and the ZKB ETF units, which resulted in a loss of €2,219,480,[161] and (b) the Geldbuchungem A951 securities.[162] The proceeds from the sale of the JB Gold Fund units and ZKB ETF units were received in March 2014 and June 2014 respectively.[163]

JB Gold Fund and ZKB ETF

100 The plaintiff says that the sales of the units were not authorised. The defendants claim that the decision to sell was taken in good faith pursuant to the 2012 Mandate.[164] According to Weber, following a discussion with Casari in early 2013, both of them decided that there was a risk of the assets in Jade AP1 being seized and that it was therefore preferable to move the assets to Dextra and to lock them up in protective investments in line with the alleged strategy to invest in asset protection structures.[165]

101 The reasons stated earlier, for the conclusion that the 2012 Mandate did not authorise the Investment Swap, apply *mutatis mutandis* to the sale of the JB Gold Fund units and the ZKB ETF units. I find that the 2012 Mandate did not authorise the sale of the JB Gold Fund units and the ZKB ETF units.

102 Further, Weber's explanation for the decision to sell the assets in Jade AP1 is suspect. The decision to move the assets in Jade AP1 to Dextra was allegedly made in early 2013. Yet the JB Gold Fund units and the ZKB ETF units were only sold more than a year later and the monies in Jade AP1 were transferred to Dextra only in October 2014.[166] The delay in selling the units and in transferring the funds to Dextra is inconsistent with Weber's claim that there was concern in early 2013 about the assets in Jade AP1 being seized.

103 In addition, as stated earlier, Weber gave inconsistent evidence as to the reason for selling the investments in Jade AP1 (see [66] above). The reason given in his AEIC was the risk of seizure of the assets in Jade AP1; in his oral testimony, he claimed that he sold the investments in Jade AP1 because the plaintiff's account did not have sufficient funds to pay for the Investment Swap.

104 In the defendants' closing submissions, the defendants also suggested that another reason was that the units in Jade AP1 were held by Bridgeport Ltd ("Bridgeport") and Fitzroy Networks Ltd ("Fitzroy") and the investment could be traced to the plaintiff because he was the ultimate beneficial owner.[167] However, this submission is not supported by Weber's evidence; Weber did not give this as a reason for redeeming the assets under Jade AP1. This submission also contradicts Weber's notion of asset protection structures. Weber testified that asset protection structures were meant to make it more difficult and time-consuming to trace the investment back to the plaintiff, even if such tracing would still be ultimately possible.[168] The plaintiff was not the shareholder of Bridgeport or Fitzroy. The fact that Bridgeport and Fitzroy held the units in Jade AP1 appears to satisfy Weber's notion of asset protection structures and thus militates against his explanation for redeeming the assets under Jade AP1.

105 The defendants' inconsistent explanations for the sale of the JB Gold Fund units and the ZKB ETF units are evidence that their reliance on the 2012 Mandate is an afterthought.

106 In conclusion, I find that Dextra is liable to the plaintiff for the value of 4,000 units of the JB Gold Fund and 4,100 units of the ZKB ETF at their respective prices as at the date of this judgment (less the amounts for which they were sold, and which have been accounted for).

Geldbuchungem A951 securities

107 Weber stated in his AEIC that Jade AP1 received €16,839.39 from the sale of Geldbuchungem A951 securities.[169] No explanation was given as to why they were sold. The defendants submit that the plaintiff bears the burden of proving that there was no authorisation for the sale.[170] This cannot be right.

Dextra, as the accounting party, bears the burden of proving that there was authorisation. Given the defendants' lack of any explanation, they have not discharged this burden.

108 The plaintiff submits that the defendants therefore have to account for this asset. I agree. Dextra is therefore liable to the plaintiff for the value of the Geldbuchungem A951 securities as at the date of this judgment (less the amount for which they were sold, and which has been accounted for).

Payments to Carnelia

109 These payments total €664,835.31 and US$194,746.72 and were made between 16 April 2012 and 7 November 2014 against invoices issued by Carnelia.[171] The plaintiff accepts that payments totalling €20,386.43 were authorised. The amounts left in dispute are therefore €644,448.88 and US$194,746.72.

110 The disputed payments are for:[172]

(a) annual service fees for 2013 and 2014 and related bank charges invoiced to the plaintiff; and

(b) set-up fees, annual fees, trustee fees, disbursements, security deposits, and other charges and expenses invoiced to various entities.

111 Under the 2012 Mandate, Dextra (whose role was to provide legal advice) "might employ the services of specialists such as lawyers and tax advisors where deemed necessary without prior consultation and approval of [the plaintiff]". The 2012 Mandate also envisages that expenses might be incurred in connection with the plaintiff's investments. It provides for these

expenses to be "charged at cost" and requires such expenses to be "pre-approved" by the plaintiff. In my view, the specialists that Dextra could employ without prior consultation or approval pursuant to the 2012 Mandate were specialists whose services were necessary for Dextra to perform its role as legal advisor. The expenses incurred in connection with the plaintiff's investments, however, would require pre-approval.

Annual service fees for 2013 and 2014

112 Carnelia invoiced the plaintiff, and was paid, €298,973.84 and US$192,641.75 as annual service fees for 2013 and 2014, and €22.01 as related bank charges.[173] The annual service fees were calculated at 0.5% of the assets under management ("AUM").[174] Separately, Dextra also invoiced the plaintiff, and received payment, for fiduciary fees for 2013 and 2014.[175]

113 I agree with the plaintiff that the payments to Carnelia for annual service fees (and the bank charges incurred in the course of such payment) were not authorised. Under cross-examination, Weber confirmed that the fees that Dextra charged the plaintiff included the fees of other entities such as Carnelia and that there would be no "double charging".[176] Weber also agreed that there should not be any double billing, *ie*, Carnelia and Dextra should not bill for annual fees and fiduciary fees respectively for the same period.[177] As Weber testified, the plaintiff never gave any instructions to Carnelia directly and "[the plaintiff] didn't want Carnelia to do anything".[178]

114 The defendants, in closing submissions, do not dispute that Dextra invoiced the plaintiff over the same period for fiduciary fees. The defendants instead submit that Dextra and Carnelia were each entitled to charge fees in the sum of 0.5% of the AUM because they each performed different services.[179] I

disagree. This submission is inconsistent with Weber's testimony that Dextra and Carnelia should not double charge. It also does not make sense that Carnelia should have been entitled to charge 0.5% of the AUM. Carnelia did not itself provide services; all its services were outsourced.[180] By Weber's own evidence, Carnelia's role was essentially that of an invoicing entity (see [6(a)] above).[181] The roles played by Carnelia (outsourcing and invoicing) appear substantially to benefit Dextra and Weber, rather than Dextra's clients.

115 In any event, Carnelia was set up to provide services to Dextra's clients; it was not set up at the plaintiff's instruction. There is no evidence that the plaintiff had any contractual relationship with Carnelia. Weber says that Casari told him that the plaintiff had agreed to become a client of Carnelia.[182] As the plaintiff submits, this is hearsay evidence. Casari did not give evidence at the trial.

116 The defendants seek to rely on the exceptions in ss 32(1)(*j*)(iii) and 32(1)(*j*)(iv) of the EA on the grounds that Casari is outside Singapore and it is not practicable to secure her attendance, or that being competent but not compellable to give evidence, she refuses to do so.[183] Weber testified that Casari is based in Zurich and has refused to testify in these proceedings because of a pending claim by the plaintiff against her in New Zealand.[184] It is not clear why the pending claim in New Zealand should stop her from testifying in these proceedings. Be that as it may, there is no documentary evidence in support of Weber's assertion, *eg*, correspondence between Weber or his lawyers and Casari. The burden is on the person seeking to rely on s 32(1)(*j*) to prove the ground of unavailability and a mere allegation of unavailability is not acceptable: *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [97]. I agree with the plaintiff that Weber's mere

assertion of Casari's unavailability is insufficient and that the defendants are not entitled to rely on s 32(1)(*j*) of the EA.

117 Further, and in any event, under the 2012 Mandate, the annual service fees charged by Carnelia would require the plaintiff's pre-approval (see [111] above).[185] There is no evidence of any such pre-approval.

118 There is also no evidence in support of the AUM based upon which Carnelia sought to charge its annual service fees.

Set-up fees, etc.

119 Carnelia was paid on its invoices to the following entities for various expenses:

(a) the Sea Diamonds Trust, the Amadeus Trust and Mercury Capital Ltd ("Mercury");

(b) the Chengdu Foundation and its entities, *ie*, Jacobson Investment Inc ("Jacobson") and Maponos Ltd ("Maponos");

(c) the Escalda Foundation and its entities, *ie*, Sinam Investment Holdings ("Sinam"), Surataya Trading Inc ("Surataya") and Fanaul Holdings Ltd ("Fanaul");

(d) CTI Commodities; and

(e) Bridgeport and Fitzroy.

Sea Diamonds Trust, Amadeus Trust and Mercury

120 Payments were made to Carnelia for fees and expenses incurred in connection with the Sea Diamonds Trust, the Amadeus Trust and Mercury. I agree with the plaintiff that these payments were not authorised.[186]

(a) These are structures managed by WinTrust and are not related to the plaintiff's monies held by Dextra. The plaintiff did not authorise Weber to make the payments.[187]

(b) Weber's evidence, that Casari told him that the plaintiff had agreed to these payments being made from his account with Dextra, is hearsay. As discussed earlier, the defendants are not entitled to rely on s 32(1)(*j*) of the EA.

(c) Further, the plaintiff did not authorise Weber to take instructions from Casari.[188]

Chengdu Foundation, Jacobson and Maponos

121 Payments were made to Carnelia for fees and expenses incurred in connection with Chengdu Foundation (June 2012 to December 2014) and its entities, Jacobson (June 2012 to May 2015) and Maponos (May 2012 to December 2014).[189] The plaintiff claims that he agreed to pay €4,000 as set-up fees per entity and €2,000 as annual fees per entity. The total amount of €20,386.43 that the plaintiff has accepted as having been authorised (see [109] above) includes set-up fees at €4,000 per entity and annual fees at €2,000 per entity. The plaintiff disputes the remaining fees on the ground that they have not been authorised. In addition, there is double billing of:

(a) the acquisition fee in respect of Maponos: S$6,750 was billed to Jacobson as the acquisition fee for Maponos on 13 March 2013 and another S$5,300 was billed to Maponos on 17 April 2013 for the same purpose;[190] and

(b) the annual fees for year 2014 in respect of Chengdu Foundation: US$721.00 was billed to Chengdu Foundation on 17 March 2014 as the annual fees for 2014, and another S$5,000 billed to Chengdu Foundation on 6 May 2014 (paid in the sum of €2,932.71) for the same purpose.[191]

122 The defendants submit that the plaintiff's oral testimony as to his agreement to pay €4,000 and €2,000 as set-up fees and annual fees respectively was an afterthought.[192] However, the burden is on Dextra to prove that the payments were authorised. Dextra has produced only the invoices issued by Carnelia in respect of these payments. There are no documents supporting the amounts billed by Carnelia. There is also no evidence that the plaintiff agreed to pay the amounts billed by Carnelia. In the circumstances, I find that Dextra has not properly accounted for the disputed payments, and that these payments were not authorised.

Escalda Foundation, Sinam, Surataya and Fanaul

123 Payments were made to Carnelia for expenses relating to the Escalda Foundation (June 2012 to December 2014) and its entities, Sinam (September 2013 to December 2015), Surataya (September 2013 to December 2015) and Fanaul (November 2012 to November 2014).[193] I find that the payments were not authorised. The plaintiff was considering the purchase of a fertiliser company in Greece. Weber admitted that the plaintiff did not give any instructions to set up the Escalda Foundation structure for the purposes of the acquisition and that he had proceeded to do so on his own assumption that the

plaintiff would have wanted to have the structure ready.[194] Weber testified that it would have been "suicide" if he had to tell the plaintiff that the structure had not been set up in the event that the plaintiff gave instructions to proceed with the acquisition. Clearly, this was a decision taken by Weber in managing Dextra's business and relationship with the plaintiff; this could not be justification for charging the abortive expenses to the plaintiff. I find that these payments were not authorised.

CTI Commodities

124 There was no justification for the payment to Carnelia for expenses relating to CTI Commodities.[195] Weber's own evidence is that the company was used for the purposes of Far West's business.[196] Weber did not explain why these expenses should be charged to the plaintiff's account with Dextra. I find that the payment was not authorised.

Bridgeport and Fitzroy

125 There was no justification for the payment to Carnelia for annual service fees in respect of both Bridgeport and Fitzroy.[197] These two entities were the subscribers to Jade AP1. Weber explained that there were two subscribers so that the reporting requirements of the Cyprus stock exchange (which, according to Weber, the plaintiff wished to avoid) would not be triggered.[198] I agree with the plaintiff that the defendants have adduced no evidence in support of this explanation, save for Weber's bare assertion that this was what Casari told him. The plaintiff has accepted payment of annual service fees for one subscriber.[199] I find that payment in respect of only one subscriber was authorised.

Payments to Dextra

126 Between 30 November 2011 and 26 July 2018, payments amounting to €944,660.89 and US$12,720.11 were made to Dextra from the plaintiff's EUR and USD accounts respectively.[200] The plaintiff has agreed to payments amounting to €109,739.72 plus S$3,309.60[201] but disputes the following:

(a) €503,621.66 less S$3,709.90 paid on Dextra's invoices to Cruise;[202]

(b) €48,077.51 paid on Dextra's invoices to Carnelia;[203]

(c) €49,673.07 paid on Dextra's invoices to Orex;[204]

(d) €63,245.72 and US$12,720.11 paid on Dextra's invoices to Women Magazine Pte Ltd ("Women Magazine");[205]

(e) €13,782.23 paid on Dextra's invoices to Chengdu Foundation;[206]

(f) €18,434.16 paid on Dextra's invoices to Jacobson;[207]

(g) €20,889.47 paid on Dextra's invoices to Maponos;[208]

(h) €19,474.85 paid on Dextra's invoices to Escalda Foundation; [209]

(i) €19,439.05 paid on Dextra's invoices to Sinam;[210]

(j) €19,439.05 paid on Dextra's invoices to Surataya;[211]

(k) €39,404.16 paid on Dextra's invoices to Fanaul;[212] and

(l) €19,440.35 paid on Dextra's invoices to Mercury.[213]

Invoices to Cruise

127 €503,621.66 was paid on Dextra's invoices to Cruise.[214] These invoices were meant for the plaintiff; the defendants continued to refer to the plaintiff as "Cruise" in their books.[215] The invoices were for (a) "fiduciary fees" for the period from 21 December 2011 to 31 December 2016, (b) management fees for 2017; and (c) various disbursements. It is not disputed that "fiduciary fees" refer to the fees chargeable pursuant to the 2012 Mandate. The plaintiff accepts that S$3,709.90, being a reimbursement for the cost of an air ticket,[216] was properly paid; the amount in dispute is €503,621.66 less S$3,709.90. I first address the fiduciary and management fees.

128 The 2012 Mandate provides as follows:

> …
>
> [ILC Singapore]/W&M shall be entitled to a wealth management advisory fee. The fee shall be negotiated at the beginning of each business year and shall be charged quarterly.
>
> All investment and legal advise [*sic*] by [ILC Singapore]/W&M are included in this fee. Cost and expenses for running and newly set up structures, i.e. offshore companies, foundations, trusts etc., and external fees, i.e. tax advise [*sic*] etc., are charged at cost. However, such cost and fees have to be pre-approved by [the plaintiff].
>
> Fee Table
>
> Duration: 1.1.2012–open
>
> Flat fee: 1%
>
> This Mandate shall take effect on 1.1.2012 and shall be renewed automatically for another year but can be terminated at any time by both parties in writing but not inopportunely.
>
> …

129 I have found at [80] above that the plaintiff did initial against the handwritten "1%" and that he did sign the 2012 Mandate. Dextra is therefore

entitled to rely on the same to justify the fees charged by it. Although the amounts in dispute are described as "fiduciary fee" and "management fee", it is not disputed that they are part of the fee charged pursuant to the 2012 Mandate.

130 The plaintiff submits that Dextra is not entitled to any fees after 2012 because the 2012 Mandate provides that the fee shall be negotiated at the beginning of each business year. It is not disputed that there has been no such negotiation. I disagree with the plaintiff. Dextra clearly did not continue providing its services for free and the plaintiff undoubtedly did not expect Dextra to do so. The 2012 Mandate provides for automatic renewal at the end of each year. In my view, the logical conclusion is that the parties intended the 1% flat fee to continue if the 2012 Mandate was simply automatically renewed. In any event, I would infer from the parties' conduct in continuing with their relationship that they did so on the same terms. Weber testified that Dextra only charged 0.5% "at all times" because the asset management involved was not complicated and the AUM was large.[217] According to Weber, Dextra would charge less if less work was involved; the 1% fee was the maximum fee.[218]

131 The plaintiff next submits that it is unclear how the fee is to be computed. I disagree. In the context of the 2012 Mandate, I agree with the defendants that the fee payable to Dextra is to be calculated based on the value of the AUM. The 2012 Mandate clearly states that the fee covers all *investment* and legal advice by ILC Singapore *and* W&M/Straits Invest. The reference to a fee of 1% cannot reasonably be understood in any other manner.

132 Dextra invoiced the plaintiff for the fee for itself and Straits Invest.[219] So far as the plaintiff was concerned, how the fee was to be split between Dextra and Straits Invest was a matter between them.

133 In my view, the fee under the 2012 Mandate was intended to be computed based on the market value of the AUM. It is commonplace that the valuation of AUM is based on the market value of the assets. It does not make sense for the fee to continue to be based on the book value where the market value of the investment has dropped to below book value. However, Weber testified that he had used the book value instead of the market value of the assets in computing the fee.[220] I agree with the plaintiff that Dextra was wrong to compute the fee based on the book value of the AUM; the fee should have been based on the market value of the AUM. However, there is no evidence of the market values of the AUM at the end of each of the quarters for which the fee was charged. It is also unclear whether it is still possible to obtain such information. It would be unfair to deprive Dextra of its fee completely. In my view, given the circumstances, leaving the fees as computed by Dextra based on book value would achieve an equitable result since Dextra is only charging at half the rate that it could have charged under the 2012 Mandate.

134 Finally, the plaintiff submits that, in any event, Dextra should forfeit its fees because it has acted dishonestly as a fiduciary. If a fiduciary acts dishonestly, he will forfeit his right to fees paid or payable by the principal; however, a fiduciary's fees may not be forfeited if the betrayal of trust has not been in respect of the entire subject matter of the fiduciary relationship and where forfeiture would be disproportionate and inequitable: *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 33rd Ed, 2014) at para 7-062.

135 Under the 2012 Mandate, Dextra and Straits Invest were entitled to a fee computed based on the market value of the AUM, which would include cash. Even if none of the plaintiff's monies had been misapplied, Dextra was still entitled to its fee computed based on the amount of cash in the plaintiff's account. In so far as the investments were concerned, Dextra had used the book

value of the AUM to compute its fees. This means that Dextra did not earn more fees as a result of these investments than it would have if the investments had not been made. As for the payments for expenses and payments to third parties that were made without authorisation, these payments would have resulted in a reduction of the AUM and hence, Dextra's fees.

136 In the circumstances, I am of the view that Dextra should not forfeit its fees because it would be disproportionate and inequitable to require it to do so.

137 As for the invoices for the disbursements, these comprise of various fees that appear to relate to perusing a Deed of Settlement and preparation of a Deed of Variation, amounting to a total of S$4,548.29 billed on 25 January 2012.[221] Weber was, however, not cross-examined on these expenses. I therefore reject the plaintiff's objections in this regard.

Invoices to Carnelia

138 €96,121.59 was paid on Dextra's invoices to Carnelia.[222] The plaintiff has accepted that a total amount of €48,044.08 was authorised. The disputed amounts are as follows:

(a) €14,516.65 being set-up fees and annual fees for two years in relation to the Amadeus Trust;[223]

(b) €16,426.19[224] being Ressos' professional fees for September 2012 and a 5% secretarial fee for services rendered in April, September and November 2012;[225]

(c) €4,110.93 (S$6,717.67) for services rendered and disbursements incurred in relation to Women Magazine;[226] and

(d) €13,023.74 being annual fees for three years and disbursements incurred in relation to the Golden Galaxy Trust ("the GG Trust").[227]

139 I agree with the plaintiff that the fees in relation to the Amadeus Trust cannot be charged to the plaintiff's account with Dextra. As stated at [120] above, the Amadeus Trust was managed by WinTrust and the plaintiff had not authorised payment of its expenses from his account with Dextra. Payment of these fees was therefore unauthorised.

140 Ressos' fees were in respect of meetings with the plaintiff in September 2012 in Athens. The plaintiff's objection to paying these fees is that Ressos was then in Europe on vacation to see his family. Be that as it may, the plaintiff did meet with Ressos and they did discuss matters relating to the plaintiff's assets. I disagree with the plaintiff and find that payment of these fees was justified.

141 As for the secretarial fees, Dextra charged a secretarial fee at 5% of the amount invoiced for professional fees and disbursements.[228] The plaintiff's objection is that he did not approve of this secretarial fee.[229] I reject the plaintiff's objection. Weber was not cross-examined on this.

142 The payments to Dextra in relation to Women Magazine are for phone charges and services rendered.

(a) The plaintiff objects to the phone charges for the period of January to March 2013, in the sum of S$1,367.67,[230] because the defendants have not produced any supporting documents for the charges. During his oral testimony, the plaintiff agreed to pay the charges in connection with the Subscriber Identity Module ("SIM") cards that were acquired for his use, although the plaintiff stated that he

did not in fact use the SIM cards.[231] In closing submissions, the plaintiff's position was that he would accept disbursements (*if proven*) for two phone numbers and not six.[232] Under the 2012 Mandate, such expenses are to be charged to the plaintiff at cost. Nevertheless, it is incumbent on Dextra, as the accounting party, to properly justify payments made with the plaintiff's monies. All that Dextra has produced is its own invoice for phone charges from January to March 2013 with no details and no supporting invoices from the actual billing entity.[233] In my view, that is insufficient. I find that Dextra has not properly accounted for the payments for the phone charges. The payments were therefore not justified.

(b) The plaintiff objects to the payments for services rendered because he claims that he did not approve the set up or use of Women Magazine to apply for SIM cards for his use. Women Magazine was used to apply for the SIM cards to protect the plaintiff's identity.[234] I find that it is more probable that the plaintiff was told that the applications for the SIM cards would be made through a company. I therefore find that the payments for services rendered in respect of Women Magazine were authorised.

143 As for the fees and disbursements in relation to the GG Trust, I agree with the plaintiff that they cannot be charged to the plaintiff's account with Dextra. The GG Trust was another WinTrust structure that had nothing to do with the plaintiff's monies held by Dextra. The plaintiff did not authorise payment of these fees from his account. Weber admitted that fees incurred by the GG Trust should have been paid out of monies from the GG Trust.[235] I find that payment of these fees was unauthorised.

Invoices to Orex

144 €49,673.07 was paid on Dextra's invoices to Orex.[236] The invoices were for set-up fees, a one-off charge for a security deposit, annual fees and other fees in relation to Orex. Orex was used for the ILC Dubai-Far West Loans (which was part of the Investment Swap) and the Far West Loans (see [6(d)] and [93] above). I have found that the Investment Swap was not in fact entered into as claimed and that, in any event, it was not authorised (see [70], [85] and [92] above). I have also found that the Far West Loans were not authorised (see [94] above). Consequently, the payments in relation to Orex were also not authorised.

Invoices to Women Magazine

145 €63,245.72 and US$12,720.11 were paid on Dextra's invoices to Women Magazine.[237] The invoices were for annual fees, phone charges and other fees. I have found that the use of Women Magazine to apply for the SIM cards for the plaintiff's use was authorised. Therefore, the annual fees and other fees relating to the maintenance or administration of Women Magazine were also authorised.

146 As for the phone charges, as stated earlier, the burden is on Dextra to properly justify payments made with the plaintiff's monies. Dextra has produced only its own invoices for the phone charges, without any supporting documents. I therefore find that Dextra has not properly accounted for the payments in respect of phone charges. These payments were therefore not authorised.

Invoices to Chengdu Foundation, Jacobson and Maponos

147 €15,989.04 was paid on Dextra's invoices to Chengdu Foundation.[238] The invoices covered the period from 1 January 2015 to 31 December 2017, and were for annual fees, a one-off charge for a security deposit, a termination fee and a fee in connection with the change of a council member. The plaintiff accepts that €2,206.81 was properly paid; the amount in dispute is €13,782.23.

148 €18,434.16 was paid on Dextra's invoices to Jacobson.[239] The invoices covered the period from 1 June 2015 to 31 May 2018, and were for annual fees, a one-off charge for a security deposit and other fees.

149 €20,889.47 was paid on Dextra's invoices to Maponos.[240] The invoices covered the period from 1 January 2015 to 31 December 2016 and were for annual fees and disbursements.

150 It is not disputed that the plaintiff had authorised the setting up of the Chengdu Foundation structure. Jacobson and Maponos were entities within the structure.[241]

151 The plaintiff claims that the defendants were instructed in or around the end of 2014 to liquidate all structures. The plaintiff therefore disputes the payments to Chengdu Foundation, Jacobson and Maponos save for the termination fee of €2,206.81 in respect of the Chengdu Foundation.

152 During cross-examination, Athanasiou was referred to e-mail correspondence between Weber and him.[242] Weber had asked Athanasiou if he wanted to keep the Chengdu Foundation structure, and Athanasiou asked for "graphs of all existing structures for which [Weber] act[ed] either alone or

together with [Casari]". Weber then sent Athanasiou diagrams showing the structures for Jade AP1, the Escalda Foundation and the Chengdu Foundation.

153 The plaintiff relies on the following testimony of Athanasiou as evidence that instructions had been given to liquidate the Chengdu Foundation structure around the end of 2014:[243]

> Q. Do you see that? And below that, Mr Weber had written to you on 15 December asking you whether you want to keep the ultimate investment or do you want to liquidate the whole investment. And also informing you about the holding companies involved.
>
> Now, after this email that Mr Weber sent you on 23 December 2014 setting out all the graphs and so on, did you respond to him?
>
> A. I do not recall if I have responded to him via this chain of email, because I have lost quite a number of mails from the other chain I was using. So I don't recall responding specifically on that.
>
> But what we had agreed is that he would unwind all the loans, the relationship was stopping in all respects, and I think the unwinding of the structure as well was a must.
>
> COURT: These are the loans to FarWest?
>
> A. Yes, he had also granted, as it appears, other loans to other companies as well.
>
> COURT: So unwind all loans?
>
> A. Yes.
>
> MR FONG: Okay.
>
> A. That was in writing I think a month later on.
>
> COURT: Yes.
>
> MR FONG: And yes. So Mr Weber had already told you that it may take some time to unwind the loans, correct?
>
> A. Yes. And he had the audit that he would like to hold funds for the unwinding, and I replied to him that all these structures have been set up by him without authority, and he was -- he had to bear the cost for unwinding

> because it was himself who initiated the establishment of the structures.

154 I agree with the defendants that the evidence is not sufficiently clear to support the plaintiff's contention. The instruction in writing that Athanasiou referred to in his testimony is not in evidence. Besides, it is not clear whether the purported instruction in writing was only in respect of unwinding all loans or whether it extended to unwinding the Chengdu Foundation structure as well. Further, as the defendants submit, Weber was not cross-examined on this issue. I find that the charges relating to Chengdu Foundation, Jacobson and Maponos were authorised.

Invoices to Escalda Foundation, Sinam, Surataya and Fanaul

155 €20,001.74 was paid on Dextra's invoices to Escalda Foundation.[244] The invoices were for:

(a) annual fees, a one-off charge for a security deposit, a termination fee and a fee for changes of council member, for the period from 1 January 2015 to 31 December 2017; and

(b) the provision of mobile phone services for the period from October 2014 to December 2015.

The plaintiff has accepted that €526.89 was properly paid; the amount in dispute is €19,474.85.

156 €19,439.05 was paid on Dextra's invoices to Sinam.[245] Another €19,439.05 was paid on Dextra's invoices to Surataya.[246] The invoices covered the period from 1 January 2015 to 31 December 2018, and were for annual fees and other fees and disbursements.

157 €39,404.16 was paid on Dextra's invoices to Fanaul.[247] The invoices covered the period from 24 November 2014 to 23 November 2018, and were for annual fees, a one-off charge for a security deposit, audit and accounting fees, and other fees, expenses and disbursements.

158 Sinam, Surataya and Fanaul are all entities within the Escalda Foundation structure.[248] I have found that the plaintiff did not give any instructions to set up the structure and that Weber had proceeded to do so on his own assumption that the plaintiff would have wanted to have the structure ready (see [123] above). I therefore find that the payments on the invoices to Escalda Foundation, Sinam, Surataya and Fanaul were unauthorised, save to the extent that invoices to Escalda Foundation for the provision of mobile phone services are found to be authorised in [159(b)] below.

159 With respect to the invoices to Escalda Foundation for the provision of mobile phone services, it is not clear why the invoices were issued to Escalda Foundation instead of Women Magazine, which had been set up for this purpose. The supporting invoices from the service providers (where Dextra did provide them) were addressed to Women's Magazine.[249] In any event, I find that:

(a) Dextra has failed to properly account for the payment for the periods from October to December 2014 (€811.03)[250] and from July to December 2015 (€1,620.90)[251] because there are no supporting documents for the expenses incurred; and

(b) the payments for the periods from January to March 2015 (€797.34)[252] and April to June 2015 (€783.33)[253] were justified. I reject the plaintiff's submission that he had agreed to pay the charges for only

two phones instead of six. During his oral testimony, the plaintiff agreed to pay the charges for the phones including those that he did not use.[254]

Invoices to Mercury

160 €19,440.35 was paid on Dextra's invoices to Mercury.[255] The invoices were for annual fees and disbursements from 1 January 2015 to 31 December 2018. As stated at [120] above, Mercury was another WinTrust structure that was unrelated to the plaintiff's account with Dextra, and the plaintiff did not authorise Weber to make the payments. I find that the payments in relation to Mercury were unauthorised.

Payment to Weber

161 Weber was a director of Jade DCC. €12,537.22 was paid to him as director's fees for 2012.[256] The plaintiff submits that he should not have to pay Jade DCC's expenses including its directors' fees. The defendants submit that the plaintiff should pay Jade DCC's expenses because he was the beneficial owner of the Jade DCC structure and Jade DCC did not charge any fees.[257]

162 The Jade DCC structure was set up by the defendants. The structure initially comprised Jade DCC and three empty cells under it.[258] Two of the cells became Jade Monega and Jade AP1; a third reserve cell remained unused.[259] Pearl Investment was the fund manager for the entire Jade DCC structure and charged each of Jade Monega and Jade AP1 a fee of 1.5% of their respective AUMs.[260] Straits Invest acted as an investment advisor to Pearl Investment.[261] Jade DCC was the master cell; it did not charge any fees.[262]

163 Weber confirmed that Jade DCC was not set up for the plaintiff and had existed before the plaintiff invested in Jade AP1.[263] However, Jade AP1 was set up for the plaintiff.[264]

164 It seems to me that the Jade DCC structure was a fund-holding structure set up for Dextra's clients to invest for their own respective purposes through the cells. Thus, one of the cells was used for the plaintiff and became Jade AP1.

165 In my view, Jade AP1 is responsible for its share of Jade DCC's directors' fees. Jade AP1's share of these fees (if not charged to Jade AP1) may therefore be charged to the plaintiff's account with Dextra. As I have found that the Investment Swap did not take place (and was, in any event, not authorised), Jade Monega is responsible for its share of Jade DCC's directors' fees. Jade AP1's and Jade Monega's respective shares of the fees will be in proportion to the value of their respective AUMs.

166 I note as well that the plaintiff has accepted that he should pay for expenses incurred by Jade DCC in connection with one of the subscribers to Jade AP1, which was a cell under Jade DCC (see [125] above). Jade DCC's directors fees were necessary expenses incurred for the benefit of the cells under it. Payment of Jade AP1's share of Jade DCC's directors' fees would be consistent with the plaintiff's position in accepting that he has to pay Jade DCC's expenses in connection with one of the subscribers to Jade AP1.

Custody fees paid to DBS

167 €20,891.22 and US$29,042.57 were paid, from the plaintiff's EUR and USD accounts respectively, to DBS as custody fees for the period from May 2012 to August 2018, except for April 2014 and April–September 2016.[265]

168 The custody fees are in respect of the custody of Hellenic Bank shares with DBS under an account known as "ILC D". Before 8 September 2014, the ILC D account held Hellenic Bank shares that belonged to the GG Trust of which WinTrust New Zealand Ltd was the trustee and the plaintiff was the beneficial owner. As stated in [98] above, the plaintiff also held Hellenic Bank shares through Jade AP1 ("the Jade AP1 Hellenic Bank shares"). The Jade AP1 Hellenic Bank shares were initially in the custody of Credit Suisse AG. It is not disputed that these shares were transferred to the ILC D account on 8 September 2014.[266]

169 The defendants agree with the plaintiff that custody fees for the period before 8 September 2014 should not be charged to the plaintiff's account with Dextra. Nevertheless, this is yet another example of the defendants charging the plaintiff's account for expenses that had nothing to do with that account. The plaintiff did not instruct the defendants to charge the GG Trust's expenses to his account. Dextra held funds from Golden Moon Group Ltd ("Golden Moon"), which is the trust company of the GG Trust,[267] and should have paid the GG Trust's expenses from those funds.

170 In his AEIC, Weber claimed that he did not segregate funds from the GG Trust from the funds in the plaintiff's account, or provide separate reporting, because banking rules did not allow Dextra to hold segregated cash accounts.[268] However, this did not make sense. Dextra did not need to have segregated accounts with the bank. It just needed to account for the monies separately in its own books. Weber then said that he did not want to maintain separate ledgers because both the plaintiff and his account were "very complicated".[269] This was inconsistent with his earlier evidence that the management of the plaintiff's account was not complicated (see [130] above). Dextra started maintaining separate ledgers for the GG Trust's monies and the plaintiff's monies after

discussions with Athanasiou at the end of 2014.[270] Yet, in accounting to the plaintiff in these proceedings, the defendants still charged the custody fees for the period before 8 September 2014 to the plaintiff. Clearly, the defendants did not take Dextra's duty to account seriously.

171 As for the period after 8 September 2014, the plaintiff accepts that the custody fees attributable to the Jade AP1 Hellenic Bank shares may be charged to his account, up to December 2014.

172 The plaintiff claims that he should not have to pay custody fees after December 2014 because Athanasiou had given bank account details on 12 December 2014 for the defendants to transfer the Hellenic Bank shares out of the ILC D account but the defendants failed to do so. The plaintiff relies on e-mail correspondence between Athanasiou and Weber.[271] By 12 December 2014, Athanasiou had given all the necessary details to effect the transfer of the shares. However, Weber informed Athanasiou on 15 December 2014 that because WinTrust had full authority over all the Hellenic Bank shares, DBS was unable to execute the transfer of the shares, and that the plaintiff had to discuss the transfer of the Hellenic Bank shares directly with WinTrust. It is not clear why WinTrust would have had full authority over the Jade AP1 Hellenic Bank shares. In any event, the plaintiff did not follow up with the defendants on this issue thereafter.[272]

173 In my view, the evidence does not establish that unequivocal instructions had been given to transfer the plaintiff's Hellenic Bank shares out of the ILC D account. I agree with the defendants that the charging of custody fees attributable to the Jade AP1 Hellenic Bank shares after December 2014 to the plaintiff's account was authorised.

Payments relating to Jade DCC (including payments to Pearl Investment)

174 As stated earlier, Pearl Investment was the fund manager of Jade DCC (including its cells) and it charged a 1.5% fee to each of the Jade Monega and Jade AP1 cells.

Jade Monega

175 The payments in connection with Jade Monega total €79,898.96.[273] The plaintiff purportedly took over the investment in Jade Monega pursuant to the Investment Swap. In view of my findings with respect to the Investment Swap, the payments in connection with Jade Monega were not authorised.

176 In any event, Dextra has not properly accounted for these payments. There are no supporting documents relating to the payments.[274]

Jade AP1

177 Dextra provided its expert with a statement showing the movement of funds in Jade AP1 (the "Jade AP1 Statement").[275] The disputed payments in connection with Jade AP1 comprise:

(a) €866,642.41 paid to Pearl Investment;[276]

(b) €21,272.83 paid to Kreis International Business Services Ltd ("Kreis");[277]

(c) €9,000 paid to Dextra and €12,516.43 paid to Weber;[278] and

(d) €53,222.33 paid for miscellaneous expenses including bank charges.[279]

Payments to Pearl Investment

178 The sum of €866,642.41 comprises:

(a) €781,058.57 for management fees, including bank charges;[280]

(b) €38,309.88 for management fees;[281] and

(c) €47,273.96 for director's fees (April to December 2014) and expenses (July 2013 to March 2014) in respect of one Mr Chris McGinty ("Chris"), and director's fees (2013 to 2014) and "admin fees" (Q4 2013 and Q1 2014) in respect of Weber.[282]

179 With respect to Pearl Investment's management fees, the plaintiff's objection is that Weber and he had agreed to a "flat cost" of €50,000.[283] The defendants submit that the plaintiff's evidence is incredible and that the plaintiff has possession of a document which would have set out the fees relating to Jade AP1.[284] However, the defendants' case was not put to the plaintiff. I agree with the plaintiff that his evidence as to the fee of €50,000 was not challenged during cross-examination. In addition, the flat fee has to be looked at in context. Pursuant to the 2012 Mandate, Dextra and Straits Invest were entitled to a fee based on the AUM of the plaintiff's assets, including those in Jade AP1. There was no reason for the plaintiff to agree to pay additional management fees to Pearl Investment.

180 Further, the defendants' position is that Pearl Investment and Straits Invest were included in the Jade DCC structure in order to meet regulatory requirements.[285] There is no evidence that Pearl Investment provided any fund management services for Jade AP1. In fact, the investments in the JB Gold Fund

units, the ZKB ETF units and the Hellenic Bank shares were made based on the plaintiff's instructions.[286]

181 In any event, as the plaintiff has pointed out, Weber has not asserted that Pearl Investment's fees were made known to the plaintiff. In these proceedings, the defendants have not even disclosed the fund management agreement between Pearl Investment and Jade DCC. It is incumbent on Dextra, as the accounting party, to show that the plaintiff had agreed to Jade AP1 paying 1.5% of the AUM as a management fee to Pearl Investment. Dextra has failed to do so.

182 I find that the payments for Pearl Investment's management fees were unauthorised, but Dextra is entitled to include the AUM in Jade AP1 in computing its fees under the 2012 Mandate. I pause to note that the defendants had sought to charge the plaintiff a total management fee of 2% on the AUM in Jade AP1 through Carnelia (0.5%) and Pearl Investment (1.5%). This was double what the plaintiff had agreed to pay under the 2012 Mandate.

183 As for the payments in respect of Weber and Chris, I accept the defendants' evidence that under Brunei regulations, the Jade DCC structure was required to have a fund administrator, a fund manager and a fund custodian. Pearl Investment was simply a part of the Jade DCC structure, as required by law. I have found that the plaintiff is liable for the fees of the directors of Jade DCC in proportion to his investment in Jade AP1 (see [165] above). Similarly, I find that the plaintiff is also liable for the fees/expenses in respect of the directors of Pearl Investment, in proportion to his investment in Jade AP1. Jade Monega will have to bear the remaining fees. In my view, the €50,000 fee could not have been intended to cover recurring expenses that would necessarily be incurred by the Jade DCC structure, such as directors' fees and audit fees. It

would not make sense otherwise. Also, this view of the €50,000 fee is supported by the fact that the plaintiff has accepted that he has to pay the annual service fee for one of the subscribers to Jade AP1 (see [125] above).

Payments to Kreis

184 The amount of €21,272.83 paid to Kreis comprises €17,969.34 paid to Kreis[287] and €3,303.49 paid to Kreis Holding.[288] In relation to both Kreis and Kreis Holding, the amounts were paid as directors' fees and expenses, and included bank charges.

185 According to the defendants, the payment of €3,303.49 to Kreis Holding was for Chris' director's fee for Q1 2015.[289] The plaintiff, in closing submissions, does not distinguish between the two payments to Kreis and Kreis Holding.[290] Chris was a director of Pearl Investment. I have found that the plaintiff is liable for the fees of the directors of Pearl Investment, in proportion to his investment in Jade AP1, with Jade Monega paying the remaining fees (see [183] above). Likewise, I find the plaintiff is liable for the total amount of €21,272.83 in proportion to his investment in Jade AP1.

Payments to Dextra and Weber

186 €9,000 was paid to Dextra on 2 February 2015 in respect of payments allegedly made by Dextra on behalf of Jade AP1.[291] There is no supporting document[292] and the defendants have not explained what the payments were for. In the circumstances, I find that this payment was unauthorised.

187 €12,516.43 was paid to Weber in respect of his director's fees for 2012 in relation to Jade AP1 (including bank charges).[293] For reasons given earlier, I

find that the plaintiff is liable to pay these fees in proportion to his investment in Jade AP1.

Payments for miscellaneous expenses

188 €53,222.33 was paid from the plaintiff's account for miscellaneous expenses (including bank charges) relating to Jade AP1.[294] There are no supporting documents for these payments.[295] In the circumstances, I find that the defendants have not properly accounted for these payments and were not entitled to make these payments from the plaintiff's account.

189 In his closing submissions, the plaintiff objects to the payment of €8,380 for the audit fee (2011 to 2014) in respect of Jade AP1.[296] The plaintiff had previously taken the position that this was not in issue.[297] It would not be fair to the defendants to allow the plaintiff to change his position at this stage of the proceedings.

Payments to Ritter Attorneys

190 A total amount of €486,006.05 (which includes bank charges) was paid to Ritter Attorneys based on a number of invoices between April 2012 and April 2014.[298] The invoices were issued for retainers, expenses and professional fees. Of the total amount paid, Ritter Attorneys still holds a sum of CHF130,000 that was paid as retainer fees and has not been applied towards payment of any professional fees or expenses.

191 The plaintiff objects to the payments on the ground that they were not authorised. The plaintiff points out that neither Weber nor Ritter has asserted in their respective AEICs that these payments were authorised by him.[299] The defendants did not bring third party proceedings against Ritter Attorneys.

192 The issue in these proceedings is not whether Ritter Attorneys were entitled to be paid for work done but whether the payments for these invoices should have been made from the plaintiff's account with Dextra. Ritter Attorneys' invoices related largely to services rendered in relation to proceedings against the plaintiff in Switzerland and Liechtenstein, which had nothing to do with the management of the plaintiff's funds held by Dextra. Dextra could not use the plaintiff's funds to pay Ritter Attorneys' invoices without the plaintiff's authorisation. The defendants have not been able to show that the plaintiff had authorised the making of these payments from his account with Dextra. I therefore find that the payments were unauthorised.

193 In any event, Dextra has not properly accounted for the payments. The invoices are lacking in detail. Further, a payment of €165,163.52 (€165,000 plus bank charges of €163.52) was made on 19 February 2014.[300] However, the invoice for this payment was dated *12 April 2014*.[301] Ritter was unable to explain why the invoice was issued only after payment had been received.[302] Stranger still, the payment of €165,163.52 appeared in the September 2014 EUR Statement[303] and the November 2014 EUR Statement 1[304] as "Loan to RCR", RCR being Ritter's initials. However, in the November 2014 EUR Statement 2,[305] the entry simply reflected a payment to "RCR" on 19 February 2014. As the plaintiff submits, it would appear that Dextra had used the plaintiff's monies to make an unauthorised loan to Ritter and subsequently converted the loan into "retainer" and "expenses" to cover up the unauthorised loan.

Payments to Straits Invest

194 A total amount of €104,385.59 was paid to Straits Invest between February 2013 and September 2016.[306] The payments were in respect of the following:

(a) An invoice from Straits Invest to Cruise (*ie*, the plaintiff) for €10,428.59 being portfolio management fees (1 October 2011–4 January 2012).[307] According to the defendants' submissions, these fees were in respect of the ILC D account;[308]

(b) An invoice from Straits Invest to Golden Moon for €15,292.60 being portfolio management fees for "Q3-2012" in respect of an account held with UBS.[309]

(c) Invoices from Straits Invest to Dextra for a total amount of €78,664.40 being portfolio management fees in respect of the ILC D account.[310] These invoices cover the period from 1 October 2012 to 30 September 2016, excluding the period from 1 April 2013 to 30 June 2013. The last invoice relating to the third quarter of 2016, unlike the other invoices, does not refer to "ILC D" or "Account D" but it nevertheless appears to be an invoice in respect of the ILC D account.[311] The plaintiff appears to accept this in his closing submissions.[312]

195 As seen earlier, the ILC D account was a custody account with DBS (see [168] above). The Jade AP1 Hellenic Bank shares were transferred to the ILC D account on 8 September 2014. The ILC D account also held Hellenic Bank shares that belonged to the GG Trust (see [168] above).

196 The plaintiff disputes the payments to Straits Invest and says that he did not ask for portfolio management services from Straits Invest or authorise the payment of the fees. The defendants claim that Straits Invest was entitled to charge these fees pursuant to the 2012 Mandate.[313]

Invoices to Cruise and Dextra

197 I first address the invoices to Cruise and Dextra described at [194(a)] and [194(c)] above. Straits Invest's invoices to Cruise and Dextra cover a period that overlaps with the period for which Dextra had charged fiduciary fees (see [127] above), save for the period from 1 October 2011 to 20 December 2011 (invoiced by Straits Invest but not Dextra). The defendants submit that under the 2012 Mandate, Dextra and Straits Invest were, together, entitled to a 1% fee. Weber claimed that the total fees charged by Dextra and Straits Invest for the period from January 2012 to October 2014 were less than 1% of the AUM.[314]

198 In my judgment, the payments on Straits Invest's invoices to Cruise and Dextra for the period from 21 December 2011 to 30 September 2016 were unauthorised. First, Weber has testified that the fees charged to the plaintiff by Dextra would be split with, among others, W&M (*ie,* Straits Invest).[315] In other words, there should be no double billing by both Dextra and Straits Invest.

199 Second, it is true that both Dextra and Straits Invest could charge a fee under the 2012 Mandate, subject to a combined maximum of 1%. However, the fee charged by Dextra was for both Straits Invest and itself, and Weber has testified that Dextra only charged 0.5% at all times because the work involved was not complicated and the AUM was large.[316]

200 Third, Weber testified that he had computed the fee based on the book value instead of the market value of the assets.[317] As discussed earlier, the fee should have been computed based on the market value of the assets (see [133] above). There is no evidence of the market value of the assets at the end of each of the quarters for which Dextra had charged the fees. However, I have decided that, given the circumstances, it would be fair to leave the fee as charged by

Dextra (*ie*, at 0.5% of the book value of the assets). In the light of all of these considerations, it cannot be open to the defendants to now argue that the total fees charged by Dextra and Straits amount to less than 1% of the AUM.

201 In any event, I also agree with the plaintiff that, even if Straits Invest could charge management fees in respect of the ILC D account:

(a) there was no justification for the payments on Straits Invest's invoices to Cruise and Dextra in respect of the ILC D account for the period before 8 September 2014 because the Jade AP1 Hellenic Bank shares were transferred to the ILC D account only on 8 September 2014 (see [168] above); and

(b) for the period after 8 September 2014, Straits Invest could only charge in respect of the Jade AP1 Hellenic Bank shares.

202 For the sake of completeness, I deal with the plaintiff's submission that, in any event, Straits Invest should not charge the plaintiff any management fees after 12 December 2014 because the defendants failed to comply with instructions to transfer the plaintiff's Hellenic Bank shares back to the plaintiff. I reject this submission, which is the same as those made in respect of the payment of custody fees to DBS and which I have rejected (see [172]–[173] above).

Invoice to Golden Moon

203 I turn next to the invoice to Golden Moon described at [194(b)] above. The invoice was addressed to Golden Moon, which is the trust company of the GG Trust.[318] Weber has admitted that expenses incurred by Golden Moon

should be paid from monies belonging to Golden Moon.[319] The payment on this invoice was therefore unauthorised.

Payment to Wintrust

204 A sum of €9,989.10 was paid to WinTrust on 13 February 2012 for invoices issued in relation to the Ambrosia Trust, Calmness Trust and Sea Diamonds Trust.[320] Wintrust was the trustee of these trusts. The defendants do not rely on any documentary evidence of the plaintiff's authorisation of the defendants to pay these invoices. The defendants' case is that Casari informed Weber that the plaintiff authorised the payment of these invoices to be made from his funds with Dextra.[321] Weber did not confirm the alleged authorisation with the plaintiff himself. Again, this is hearsay evidence and I have found that the defendants are not entitled to rely on the exceptions in s 32(1)(*j*) of the EA (see [116] above). The plaintiff did not authorise Weber to take instructions from Casari.[322] Accordingly, I find that these payments to Wintrust were unauthorised.

Payments to HEP

205 A total amount equivalent to €5,906.66 was paid to HEP between 6 June 2012 and 11 March 2013,[323] arising from three invoices issued to ILC Singapore and one to W&M. According to the defendants, all the invoices were for providing advice to the defendants on their obligations under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA"), filing a suspicious transaction report and corresponding with the Commercial Affairs Department of Singapore.[324]

206 The defendants submit that Dextra's obligation to file a suspicious transaction report under the CDSA arose as a result of receiving the plaintiff's

monies from the Calmness Trust (which were, according to Weber, possible proceeds of crime),[325] and therefore those legal fees were incurred in the course of their office.[326] The defendants rely on *Re Grimthorpe* [1958] Ch 615 ("*Re Grimthorpe*") at 623 for the proposition that trustees are entitled to be indemnified against the costs and expenses which they incur in the course of their office.

207 The proposition in *Re Grimthorpe* is not disputed. However, I agree with the plaintiff that the invoices in question do not fall within the scope of that proposition. *Re Grimthorpe* concerned the taxation of legal fees incurred by the trustees in respect of an application to obtain directions enabling them to widen the range of investments of the trust monies (which was granted). The legal fees were clearly incurred in the course of the trustees' office. In the present case, the legal fees were for advice in respect of Dextra's and W&M's *own obligations* under the CDSA and were incurred in the course of their own respective operations rather than necessarily in the course of their offices as trustees. Dextra and W&M did not have to be trustees in order to attract obligations under the CDSA.

208 I find that the payments on HEP's invoices were not authorised.

Payment to Bartha

209 €187,303 was paid to Bartha on 3 September 2013.[327] The plaintiff denies having authorised this payment. The defendants allege that this sum was used to effect a payment of CHF230,000 to Bartha in accordance with the plaintiff's instructions.

210 The defendants rely on an e-mail sent on Monday, 2 September 2013, by Weber to Dextra's accountant.[328] In that e-mail, Weber instructed the

accountant to pay CHF230,000 from the plaintiff's account to Bartha "per [the plaintiff's] instructions". Weber stated in a postscript to the e-mail that he had told the plaintiff's lawyer that funds were running low. A handwritten note on a printout of the e-mail stated, "Call back Sunday, 1.9.". On the stand, Weber was unable to recall any details about his e-mail.[329]

211 The defendants should have kept better records. However, on balance, I find that the payment was authorised by the plaintiff. This was a payment for a Tiffany lamp to a third party unrelated to the defendants or the management of the plaintiff's assets. The e-mail is a contemporaneous record, and the handwritten note referring to a "call back" the day before is consistent with Weber's claim that the plaintiff had given oral instructions to make the payment. I note that the plaintiff was incarcerated at the time the payment to Bartha was made, but it is not disputed that the plaintiff was also communicating with Weber through Athanasiou while incarcerated.[330]

Payment to Lam

212 A sum of €100,000 was allegedly paid to a third-party nominee, with additional bank charges amounting to €922.50.[331] The sum of €100,000 comprised two separate withdrawals of €38,500 and €61,500 on 18 December 2012.

213 According to Weber, the €100,000 was a fiduciary fee paid to one Lam who was supposed to purchase a property in Greece as the plaintiff's nominee.[332] However, after the plaintiff was arrested, the intended purchase was abandoned and the payment to the nominee was forfeited.[333]

214 There was no written authorisation for the payment to the nominee and no written agreement with the nominee.[334] Weber referred to his notes of his

meeting with the plaintiff in November 2012, which referred to the purchase of "houses in Greece" and had a notation that read "BO Lam: fee €50,000".[335] Weber said that Lam was the nominee. Weber also testified that the nominee doubled his fees when he heard that the purchase price of the properties was €2.2m.[336]

215 I accept that the plaintiff had authorised the payment of €50,000 as a fiduciary fee to the nominee. However, there is no evidence that the defendants had obtained the plaintiff's approval to pay €100,000.[337] Accordingly, I find that only payment of €50,461.25 (*ie*, half of the total amount of €100,922.50) was authorised.

Payments to New Anchor

216 New Anchor was a service provider that the defendants used whenever the plaintiff wanted to withdraw a sum of money in cash. Payment would be made to New Anchor and New Anchor would provide the money in cash. The defendants did not have any interest in New Anchor.

217 The dispute over the payments to New Anchor relates to:

(a) a total amount of €3m paid to New Anchor between May 2012 and January 2014. The defendants say this amount was paid from monies belonging to the GG Trust that was held by Dextra.[338] The plaintiff disputes that the monies were from the GG Trust's funds and takes the position that the sum of €3m was paid from the plaintiff's account; and

(b) €22.22 being bank charges. The plaintiff says there is no documentary evidence of these charges.[339]

218 It is not clear why it is important to the plaintiff that the sum of €3m be charged to the plaintiff's account instead of the GG Trust's account. As stated at [168] above, the plaintiff is also the beneficial owner of the GG Trust. The sum of €3m will have to be accounted for in the relevant accounts either way.

219 Be that as it may, Weber has explained that:[340]

(a) In the second half of 2016, Casari asked Dextra to return the remaining funds belonging to Golden Moon (the trust company of the GG Trust). Weber claimed that Dextra was unable to do so as Dextra had not segregated the funds from Golden Moon from the plaintiff's funds, and all the funds were either locked up in protective loans or had been paid out on the plaintiff's instructions.

(b) It was then agreed that a series of payments which were instructed by the plaintiff and *made from the plaintiff's balance with Dextra* would be designated by Dextra as having come from Golden Moon.

220 In their closing submissions, the defendants did not address the plaintiff's contention. I find that the evidence shows that the sum of €3m in question should properly be charged to the plaintiff's account with Dextra. As for the alleged bank charges (€22.22), I find that the payment was not authorised. There is no supporting evidence and the corresponding bank statement does not indicate that withdrawal of this amount related to bank charges.[341]

Whether Dextra breached its duties

Breaches of the no-conflict rule

221 The plaintiff submits that the following transactions breached the no-conflict rule:[342]

(a) the acquisition of loans of ILC Dubai;

(b) the payments to Straits Invest;

(c) the payments to Carnelia; and

(d) the payments to Pearl Investment.

222 However, the only pleaded breach of the no-conflict rule in the Statement of Claim relates to the loans to Far West.[343] There is therefore no need for me to deal with the other instances of alleged breaches of the no-conflict rule.

223 The loans to Far West clearly involved a conflict of interest. Weber was a director of Far West[344] as well as its legal counsel.[345] Weber also had a 2% shareholding in Far West which was held through Hadley.[346]

224 Whether the plaintiff knew of the conflicting interests was in dispute. However, in my view, even if the plaintiff was aware of Weber's interest in Far West, he did not give his informed consent to the conflicting interests because the loans to Far West were made without his express authorisation. I have rejected the defendants' contention that they could rely on the 2012 Mandate for the requisite authorisation for these loans. I also agree with the plaintiff that even if Dextra could rely on the 2012 Mandate, there is nothing in the 2012

Mandate that authorised Dextra to act in conflict of the plaintiff's and the defendants' interests.

225 In their closing submissions, the defendants pointed to the fact that the Calmness Trust had permitted self-dealing. The defendants argued that therefore, the plaintiff's instruction to Weber and Ritter, at the November 2012 meeting, to do "whatever [they] need to do" to protect his assets from being seized, clearly included entering into structures controlled and managed by the defendants.[347] In my view, this submission is a stretch and is clearly unmeritorious.

226 I find that the loans to Far West breached the no-conflict rule. However, the Statement of Claim seeks no specific relief relating to this breach.

Breaches of duty to act in the plaintiff's best interests

227 The plaintiff submits that the following were in breach of Dextra's duty to act in the plaintiff's best interests:[348]

(a) each of the transactions in the Investment Swap;

(b) the Far West Loans;

(c) the sale of the assets in Jade AP1; and

(d) the Windris Loan.

228 There is no need for me to deal with any of the above. It is not pleaded in the Statement of Claim that any of the above breached Dextra's duty to act in the plaintiff's best interests.

Summary of findings with respect to Dextra

229 In summary, my findings with respect to Dextra are as follows:

(a) The Investment Swap was an afterthought and was not in fact entered into as the defendants have claimed.

(b) The defendants' reliance on the 2012 Mandate was also an afterthought. The plaintiff did sign the 2012 Mandate but:

(i) the 2012 Mandate did not authorise *Dextra* to make any investments on his behalf; and

(ii) in any event, he did not authorise asset protection structures as an investment strategy under the 2012 Mandate, pursuant to which Straits Invest would then have full discretion as to what to invest in.

(c) The Investment Swap, the Far West Loans, the Windris Loan and the sale of the JB Gold Fund units, ZKB ETF units and Geldbuchungem A951 securities were not authorised.

(d) Dextra is to pay the plaintiff the following:

(i) €13,315,749.42 in relation to the Investment Swap;

(ii) €2,768,085.59 and US$824,542 in relation to the Far West Loans;

(iii) US$29,500 in relation to the Windris Loan; and

(iv) the value of the JB Gold Fund units, ZKB ETF units and Geldbuchungem A951 securities at their respective prices as at

the date of this judgment (less the amounts for which they were sold, and which have been accounted for).

(e) The payments to Carnelia for annual service fees were not authorised. The payments to Carnelia for set-up fees and other expenses incurred were also not authorised, save to the extent accepted by the plaintiff. Dextra is to pay the plaintiff the amounts of €644,448.88 and US$194,746.72.

(f) Payments to Dextra in respect of its:

(i) invoices to Cruise for fiduciary and management fees were authorised;

(ii) invoices to Carnelia (in relation to the Amadeus Trust and the GG Trust) and Women Magazine (in relation to the phone charges) were not authorised. The payments in relation to Ressos' fees, secretarial fees and Women Magazine (service fee) were authorised. Dextra is to pay the plaintiff €14,516.65 (in relation to the Amadeus Trust), €13,023.74 (in relation to the GG Trust), and S$1,367.67 (in relation to the phone charges);

(iii) invoices to Orex were not authorised. Dextra is to pay €49,673.07 to the plaintiff;

(iv) invoices to Women Magazine were authorised except for the payments in relation to phone charges. Dextra is to pay the plaintiff the total amount of the phone charges.

(v) invoices to Chengdu Foundation and its entities were authorised;

(vi) invoices to Escalda Foundation and its entities were unauthorised save for the payments in relation to mobile phone services for the period from January to June 2015. Dextra is to pay the plaintiff:

(A) in respect of the invoices to Escalda Foundation, the sum of €17,894.18 (*ie*, the disputed amount of €19,474.85 less the total amount of €1,580.67 paid for mobile phone services for the period from January to June 2015); and

(B) €19,439.05, €19,439.05 and €39,404.16 in respect of the invoices to Sinam, Surataya and Fanaul respectively;

(vii) invoices to Mercury were not authorised. Dextra is to pay €19,440.35 to the plaintiff.

(g) The payment of €12,537.22 to Weber (director's fees for 2012) was authorised to the extent of Jade AP1's share of the fees proportional to its AUM. Dextra is to pay the plaintiff the amount of fees that are attributable to Jade Monega.

(h) The custody fees paid to DBS for the period after 8 September 2014 in proportion to the Jade AP1 Hellenic Bank shares were authorised. Dextra is to pay the plaintiff any custody fees paid by him that are not attributable to the Jade AP1 Hellenic Bank shares.

(i) In relation to Jade DCC:

(i) the payments amounting to €79,898.96 in connection with Jade Monega were not authorised. Dextra is to pay this amount to the plaintiff;

(ii) the payments of €781,058.57 and €38,309.88 to Pearl Investment for management fees in connection with Jade AP1 were authorised only to the extent of €50,000; however, Dextra is entitled to include the AUM in Jade AP1 in computing its fees under the 2012 Mandate. Dextra is to pay the plaintiff the total amount of €819,368.45 less (A) €50,000 and (B) Dextra's fees computed at 0.5% of the book value of the AUM in Jade AP1 (to the extent that such fees have not been invoiced for or paid);

(iii) the payment of €47,273.96 to Pearl Investment in respect of Weber and Chris were authorised to the extent of Jade AP1's share proportional to its AUM. Dextra is to pay the plaintiff the amount that is attributable to Jade Monega;

(iv) the payment of €21,272.83 to Kreis was authorised to the extent of Jade AP1's share proportional to its AUM. Dextra is to pay the plaintiff the amount that is attributable to Jade Monega;

(v) the payment of €9,000 to Dextra was not authorised but the payment of €12,516.43 to Weber was authorised to the extent of Jade AP1's share proportional to its AUM. Dextra is to pay the plaintiff the sum of €9,000 and such portion of €12,516.43 that is attributable to Jade Monega; and

(vi) the payment of €53,222.33 for miscellaneous expenses was not authorised. Dextra is to pay this amount to the plaintiff.

(j) The payments amounting to €486,006.05 to Ritter Attorneys were not authorised. Dextra is to pay this amount to the plaintiff.

(k) The payments to Straits Invest in respect of its invoices for management fees to Cruise (€10,428.59), Golden Moon (€15,292.60) and Dextra (€78,664.40) were not authorised. Dextra is to pay these amounts to the plaintiff.

(l) The payment in the amount of €9,989.10 to Wintrust in relation to Ambrosia Trust, Calmness Trust and Sea Diamonds Trust was not authorised. Dextra is to pay this amount to the plaintiff.

(m) The payments amounting to €5,906.66 to HEP were not authorised. Dextra is to pay this amount to the plaintiff.

(n) The payment of €187,303 to Bartha was authorised.

(o) The payment of €100,000 as a fiduciary fee to a third-party nominee was authorised only to the extent of €50,000. Likewise, only half of the related bank charges of €922.50 was authorised. Dextra is to pay €50,461.25 to the plaintiff.

(p) The payment of €3m to New Anchor should be charged to the plaintiff's account with Dextra. The payment of €22.22 as bank charges was not authorised. Dextra is to pay €22.22 to the plaintiff.

(q) The ILC Dubai-Far West Loans and the Far West Loans breached the no-conflict rule.

Whether Weber owed fiduciary duties to the plaintiff

230 A party may come under personal fiduciary duties to his principal where he voluntarily places himself in a position where the law can objectively impute an intention on his part to undertake obligations of a fiduciary nature; it does not matter that he had no subjective intention to undertake such duties: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [194].

231 The plaintiff submits that Weber had voluntarily placed himself in such a position. The plaintiff had reposed trust and confidence in Weber as shown by the fact that the plaintiff discussed a wide range of his matters – both business and personal – with Weber. The plaintiff further submits that the solicitor-client relationship is of such a nature as to warrant the imposition of fiduciary obligations on the solicitor: *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 at [8].

232 In their closing submissions, the defendants have not challenged the plaintiff's assertion that Weber owed fiduciary duties to the plaintiff. In fact, by making a submission that the "[d]efendants did not dishonestly breach their fiduciary duties",[349] the defendants have implicitly accepted that he does.

233 I agree with the plaintiff that Weber did owe fiduciary duties to him. I find that Weber is personally liable to the plaintiff for breaches of his fiduciary duties relating to the use of the plaintiff's assets to the same extent as Dextra.

Whether Dextra was Weber's alter ego

234 A company will be found to be the alter ego of its controller if the company is carrying on the business of its controller: *Alwie Handoyo v Tjong*

Very Sumito and another and another appeal [2013] 4 SLR 308 at [96]. The corporate veil may be lifted where this is the case.

235 The defendants submit that Dextra was not Weber's alter ego because all major decisions by Dextra were made by Ritter and Weber.[350] In my view, this is not determinative of the question of whether Dextra was Weber's alter ego. The test is whether Dextra was carrying on Weber's business.

236 I agree with the plaintiff that Dextra was carrying on Weber's business because Weber drew no distinction between himself and Dextra.

237 First, Weber was a director of Far West and its legal counsel; he also held (indirectly) a 2% shareholding in Far West.[351] I agree with the plaintiff that Weber used the plaintiff's funds as an interest-free credit facility for Far West's benefit. The evidence supports the plaintiff's contention. Dextra made a payment of US$225,000 to Far West on 6 November 2014, *after* Weber's meeting with Athanasiou during which Athanasiou had expressed the plaintiff's concern about his monies held by Dextra.[352] Weber's explanation was that he could not stop funding immediately because a Far West project was coming to an end and Far West would be "sitting on invoices".[353] The project came to an end because the funding ceased.[354] Further, in the two summaries that accompanied the November 2014 EUR Statements (see [57] above), Weber stated that the investments in Far West amounted to €9,797,169.90.[355] The investments were in the form of loans. On 10 November 2014, Weber provided the details of the loans to Far West ("the Far West Loans Statement").[356] The Far West Loans Statement clearly included loans that the defendants now claim to be part of the ILC Dubai-Far West Loans. Yet, the Far West Loans Statement shows that the monies were paid from the plaintiff's account. The Far West Loans Statement is not only inconsistent with the defendants' claim that the ILC

Dubai-Far West Loans started as loans from ILC Dubai's clients, but also shows that the plaintiff's monies were being used to fund Far West.

238 Second, Weber used funds held by Dextra on trust for the plaintiff, without the plaintiff's authorisation, to fund loans to entities that he had a personal interest in:

(a) Weber claimed that the Villa K3 Loan was originally made by ILC Dubai's clients. In fact, Weber used the plaintiff's funds for the loan (see [60] above). Villa K3 was owned (indirectly) by ILC Dubai but was controlled by Weber and Ritter.

(b) Weber claimed that the Villa K6 Loan was originally made by ILC Dubai's clients. In fact, Weber used the plaintiff's monies for the loan (see [62] above). Villa K6 was beneficially owned by Weber, his wife, Ritter and one Alamsyah Radjak.

239 Third, Weber used funds held on trust by Dextra for the plaintiff to pay management fees and annual service fees to Pearl Investment and Carnelia without authorisation. At the material times, Pearl Investment was indirectly wholly-owned by Weber, and Weber held between 42.5% and 50% of the shares in Carnelia (see [6] above). As discussed earlier, Pearl Investment and Carnelia were not entitled to charge those fees. Weber would have known that. In fact, Weber admitted in his oral testimony that Dextra and Carnelia should not double bill (see [112] above).

240 I find that Dextra was the alter ego of Weber and that therefore, he is personally liable to the same extent as Dextra.

Whether Weber is liable for dishonest assistance

241 The elements of a claim in dishonest assistance are (a) the existence of a trust, (b) a breach of that trust, (c) assistance rendered by the third party towards the breach, and (d) a finding that the assistance rendered by the third party was dishonest: *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*Zage III*") at [20].

242 Weber disputes only the second and fourth elements.[357]

243 The second element is easily satisfied in this case. I have found that:

(a) Dextra applied the plaintiff's funds towards various investments and payments for expenses and to third parties, and did so without authorisation;

(b) some of these investments breached the no-conflict rule; and

(c) the sale of the assets in Jade AP1 was carried out without authorisation.

All of the above constitute breaches of trust by Dextra.

244 As for the fourth element, it is settled law that the requirement for dishonesty is satisfied if the defendant has such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them: *Zage III* at [22]. The analysis involves a subjective determination of the defendant's knowledge of the transaction and an objective determination as to whether his participation in the transaction with this knowledge offends

ordinary standards: *M+W Singapore Pte Ltd v Leow Tet Sin and another* [2015] 2 SLR 271 at [42].

245 In the present case, it cannot be denied that Weber was involved in all the decisions by Dextra. It cannot be disputed that he had the necessary subjective knowledge of the lack of proper authorisation or the breaches of duty. It also cannot be denied that his participation with this knowledge offends ordinary standards. Weber is therefore liable for dishonest assistance in relation to Dextra's breaches of trust.

Summary of findings with respect to Weber

246 Weber is personally liable to the plaintiff to the same extent as Dextra because:

(a) he breached his fiduciary duties relating to the use of the plaintiff's assets; and/or

(b) Dextra was his alter ego; and/or

(c) he dishonestly assisted Dextra in its breaches of trust.

Sale of Villa K3 and Villa K6

247 After the conclusion of the trial, the defendants' lawyers informed me by way of a letter dated 25 June 2020 that Ruby (as the beneficial owner of Villa K3) and Villa K6 were sold in mid-November 2019, and that the defendants had repaid the sum of €3,554,558.44 being the total amount of the Villa K3 and Villa K6 Loans (see [46(b)] and [46(c)] above) to the plaintiff. The appended documents evidencing the sales were dated 15 November 2019, *ie*, during the trial for this case. Curiously, in his oral testimony during the trial, Weber said

on *21 November 2019* that the two properties were "on the market and have interest".[358]

248 By way of a letter dated 7 July 2020 from his lawyers, the plaintiff denied having received any part of the sale proceeds. In their letter dated 25 June 2020, the defendants' lawyers merely attached documents that showed that US$3,985,015.47 (amounting to €3,554,558.44) had been transferred from Dextra's USD client account to Dextra's EUR client account. This is by no means sufficient evidence that €3,554,558.44 has been repaid to the plaintiff.

249 Be that as it may, neither the sale of Villa K3 (through the sale of Ruby) and Villa K6 nor the repayment of the Villa K3 and Villa K6 Loans to the plaintiff (assuming such repayment was in fact made) changes my conclusions that (a) the Investment Swap did not take place and that even if it did take place, it was not authorised, and (b) Dextra and Weber are liable pay the plaintiff €13,315,749.42 in relation to the Investment Swap. To the extent that the defendants have in fact repaid €3,554,558.44 to the plaintiff, the defendants' liability should of course be reduced accordingly.

Conclusion

250 Where I have found that the payments from the plaintiff's account with Dextra were not authorised (see the summary of findings at [229] above), the plaintiff succeeds in falsifying the relevant entries in the account provided by Dextra. Dextra is to pay the plaintiff the amounts due to him as a result thereof.

251 Weber is personally liable to the plaintiff to the same extent as Dextra.

252 I will hear parties on interest and costs.

Chua Lee Ming
Judge

Sim Bock Eng, Tan Kia Hua (Chen Jiahua), Lee Yu Lun Darrell and Celeste Tan Yin (WongPartnership LLP) for the plaintiff;
Philip Fong Yeng Fatt, Kevin Koh Zhi Rong and Koh Xian Wei Jeffrey (Eversheds Harry Elias LLP) for the first and second defendants.

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1 Notes of evidence ("NE"), 20 November 2019, at 26:9–24.
2 Exhibit ("Exh") P1.
3 NE, 20 November 2019, at 27:9–20.
4 NE, 20 November 2019, at 31:10–11.
5 NE, 20 November 2019, at 34:20–25.
6 Exh P1.
7 NE, 20 November 2019, at 17:1–4; 35:16–17.
8 NE, 20 November 2019, at 46:14–21.
9 Exh P2; NE, 21 November 2019, at 53:25–54:2.
10 Exhs P1 and P2; NE, 20 November 2019, at 37:4–22.
11 NE, 21 November 2019, at 76:15–16.
12 Exhs P1 and P2.
13 Agreed Bundle, vol 2 ("2AB"), at pp 915–938.
14 2AB950–952.
15 2AB956–962.
16 3AB2366.
17 Plaintiff's affidavit of evidence-in-chief ("AEIC"), at para 27.
18 Defendants' Bundle of Documents ("DB"), at pp 461–462; Weber's AEIC, at para 82.
19 Plaintiff's AEIC, at para 53.
20 Weber's AEIC, at paras 87–88 and p 319.
21 NE, 12 November 2019, at 114:17–18; NE, 14 November 2019, at 60:15–18.
22 Athanasiou's AEIC, at para 10.
23 Leow Quek Shiong's Supplementary AEIC ("Leow's SAEIC"), at pp 60–63 (Appendix 1).

[24] Leow's SAEIC, at pp 65–70 (Appendix 2) and p 95 (Appendix 7).
[25] Athanasiou's AEIC, at para 13.
[26] 1AB86–87.
[27] Weber's AEIC, at para 128.
[28] Athanasiou's AEIC, at para 18.
[29] 3AB2270.
[30] Leow's SAEIC, at pp 72–76 (Appendix 3).
[31] Leow's SAEIC, at pp 78–80 (Appendix 4).
[32] 3AB2339.
[33] Leow's SAEIC, at pp 82–87 (Appendix 5).
[34] Leow's SAEIC, at p 97 (Appendix 8).
[35] Leow's SAEIC, at pp 89–93 (Appendix 6).
[36] Leow's SAEIC, at pp 99–100 (Appendix 9).
[37] 1AB85.
[38] Dextra's Defence, at para 10.
[39] Statement of Claim at para 15.
[40] Gafoor's AEIC, at p 16, para 4.1.1.
[41] Gafoor's AEIC, at pp 50–57.
[42] Filed on 15 August 2019.
[43] Dextra's Defence, at para 15A.
[44] Plaintiff's Opening Statement ("POS"), at para 21.
[45] POS, at para 63.
[46] Defendants' Opening Statement ("DOS"), at para 20.
[47] DOS, at para 34.
[48] DOS, at para 44.
[49] Defendants' Reply Submissions ("DRS"), at paras 261–265.
[50] Plaintiff's Closing Submissions ("PCS"), Annex A.
[51] PCS, Annex A, s/n 7.
[52] PCS, Annex A, s/n 6.
[53] NE, 21 November 2019, 18:14–20:22.
[54] PCS, Annex A.
[55] PCS, Annex A.
[56] PCS, at para 113(a).
[57] PCS, Annex A, s/n 86; Weber's AEIC, at paras 171–173; Gafoor's AEIC, at p 30, para 6.4.5 and Appendix Q
[58] PCS, Annex A, s/n 105; Defendants' Supplementary Bundle of Documents, at pp 13–16.
[59] NE, 21 November 2019, at 120:6–13.
[60] PCS, Annex A, s/n 106.
[61] PCS, Annex A, s/n 107.
[62] NE, 21 November 2019, at 155:8–18.
[63] PCS, Annex A, s/n 101.
[64] Weber's AEIC, at para 201.
[65] NE, 27 November 2019, at 105:12–17.
[66] NE, 27 November 2019, at 105:25–106:9.
[67] NE, 20 November 2019, at 166:20–21; NE, 27 November 2019, at 104:24–105:11; 106:10–12; 108:23–109:12.
[68] NE, 27 November 2019, at 131:25–132:14.

69 NE 27 November 2019, 136:7–137:5.
70 NE, 27 November 2019, at 18:4–16.
71 NE, 27 November 2019, at 13:19–20; 14:1.
72 NE, 20 November 2019, at 132:6–7; 138:16–139:22; 143:20–144:14.
73 NE, 20 November 2019, at 137:5–6; 140:5–13.
74 NE, 21 November 2019, at 25:4–26:11.
75 NE, 26 November 2019, at 90:13–20; 91:2–10: 91:24–92:2; 93:16–19.
76 NE, 26 November 2019, at 89:5–19.
77 NE, 20 November 2019, at 141:17–20.
78 NE, 26 November 2019, at 92:12–19.
79 NE, 20 November 2019, at 131:20–132:5; 146:19–25.
80 NE, 20 November 2019, at 135:14–20; 146:14–18; 160:25–162:7; 163:2–18.
81 NE, 26 November 2019, at 93:22–24; 94:6–9.
82 NE, 26 November 2019, at 93:25–94:1; 96:22–97:2.
83 NE, 26 November 2019, at 88:25–89:4.
84 NE, 26 November 2019, at 90:3–91:10; 93:13–24; 94:2–5.
85 NE, 27 November 2019, at 12:18–13:2.
86 NE, 27 November 2019, at 12:3–6; 13:7–8.
87 NE, 27 November 2019, at 16:5–13; 17:15–23.
88 The shadings show which statements were purportedly similar in nature.
89 Leow's SAEIC, at p 63.
90 DRS, at para 256.
91 Athanasiou's AEIC, at p 58; NE, 21 November 2019, at 136:11–20.
92 Athanasiou's AEIC, at p 59.
93 Athanasiou's AEIC, at p 118; NE, 21 November 2019, at 136:22–24.
94 Athanasiou's AEIC, at pp 115–117.
95 Weber's AEIC, at paras 125–126.
96 NE, 21 November 2019, at 130:4–13.
97 NE, 21 November 2019, at 130:16–18; 131:9–18.
98 NE, 27 November 2019, at 44:14–45:25.
99 NE, 27 November 2019, at 19:13–18.
100 Athanasiou's AEIC, at p 121.
101 NE, 21 November 2019, at 144:6–10.
102 Leow's SAEIC, at pp 47–48, para 7.107(g); NE, 21 November 2019, at 141:6–10; 142:1–143:1.
103 NE, 21 November 2019, at 142:14–16.
104 Gafoor's SAEIC, at p 890.
105 NE, 21 November 2019, at 164:1–3.
106 Leow's SAEIC, at p 48, para 7.107(h).
107 NE, 21 November 2019, at 168:12–170:1.
108 NE, 20 November 2019, at 176:19–179:11.
109 Exh D5.
110 NE, 21 November 2019, at 29:1–14, 30:25–31:2.
111 NE, 21 November 2019, at 28:9–25.
112 NE, 21 November 2019, at 29:15–18.
113 NE, 21 November 2019, at 30:11–21; 32:4–6.
114 NE, 21 November 2019, at 39:25–42:4.
115 Weber's AEIC, at para 213.

116 Gafoor's AEIC, at p 38, paras 6.4.86–6.4.90.
117 Weber's AEIC, at p 588.
118 NE, 20 November 2019, at 171:21–174:11.
119 Weber's AEIC, at p 330.
120 DRS, at paras 155–156.
121 Gafoor's AEIC, at p 263.
122 Leow's SAEIC, at p 37, para 7.77(d).
123 DB461–462.
124 Plaintiff's AEIC, at para 53.
125 DRS, at para 60.
126 DB464–466.
127 Reply to Dextra's Defence, at para 5A(a); Reply to Weber's Defence, at para 5A(a).
128 Plaintiff's AEIC, at para 53.
129 NE, 20 November 2019, at 91:1–8.
130 Dextra's Defence, at para 14; Weber's Defence, at para 14.
131 Dextra's Defence, at para 14(v); Weber's Defence, at para 14(v).
132 DB461–462.
133 Dextra's Defence, at para 14(iii); Weber's Defence, at para 14(iii).
134 DRS, at para 77.
135 NE, 20 November 2019, at 166:20 – 167:4.
136 Weber's AEIC, at paras 171 and 191.
137 NE, 27 November 2019, at 104:24–105:11, 106:10–12, 108:23–109:12.
138 DRS, at p 72.
139 Weber's AEIC, at para 125.
140 Athanasiou's AEIC, at para 20.
141 Athanasiou's AEIC, at para 21 and pp 42, 119.
142 Weber's AEIC, at paras 132–134.
143 Weber's AEIC, at para 89 and pp 290–301.
144 NE, 20 November 2019, at 76:7–77:18; 85:13–24.
145 NE, 20 November 2019, at 79:12–19.
146 NE, 20 November 2019, at 81:8–82:8.
147 NE, 20 November 2019, at 60:4–12, 64:4–8, 74:24–75:3.
148 NE, 20 November 2019, at 60:13–62:18, 63:11–20.
149 Weber's AEIC, at para 136.
150 DRS, at para 168.
151 Ritter's AEIC, at para 14.
152 Ritter's AEIC, at paras 14, 15 and 31.
153 Ritter's AEIC, at para 48 and p 28.
154 Dextra's Defence, at para 14(v)(f); Weber's Defence, at para 14(v)(f).
155 NE, 26 November 2019, at 59:7–19.
156 Dextra's Defence, at para 14(v)(a); Weber's Defence, at para 14(v)(a).
157 Gafoor's AEIC, at p 282; 3AB1906.
158 Gafoor's AEIC, at p 35, para 6.4.62.
159 Weber's AEIC, at para 256.
160 NE, 26 November 2019, 66:9–13.
161 PCS, Annex A, s/n 93–94; Weber's AEIC, at para 215.
162 PCS, Annex A, s/n 97.
163 Gafoor's AEIC, at p 38, paras 6.4.86–6.4.89.

164 Weber's AEIC, at para 214.
165 Weber's AEIC, at para 213.
166 Gafoor's AEIC, at p 38, paras 6.4.86–6.4.90.
167 DRS, at para 202.
168 NE, 20 November 2019, at 60:4–62:18.
169 Weber's AEIC, at para 221.
170 DRS, at para 209.
171 PCS, Annex A, s/n 73; PCS, Annex H.
172 PCS, at para 201; PCS, Annex H.
173 PCS, Annex H at s/n 14 and 15; Gafoor's AEIC, at p 54 (s/n 165) and p 71 (s/n 9).
174 2AB1361 and 2AB1375; NE, 26 November 2019, 137:1–21, 138:14–19.
175 Gafoor's AEIC, at p 25, para 6.3.30, and pp 163, 168 – 170, 172, 181, 185 and 187.
176 NE, 20 November 2019, at 52:18–53:2.
177 NE, 26 November 2019, at 138:20–25.
178 NE, 20 November 2019, at 33:11–18.
179 DRS, at paras 274–275.
180 NE, 20 November 2019, at 31:8–11; NE, 26 November 2019, at 138:5–12.
181 NE, 20 November 2019, at 35:7–10.
182 NE, 20 November 2019, at 32:21–33:10.
183 DRS, at para 326.
184 Weber's AEIC, at para 15.
185 DB462.
186 PCS, Annex H, s/n 1, 2 and 10.
187 NE, 26 November 2019, at 68:24–69:13, 69:19–70:18.
188 NE, 26 November 2019, at 71:20–23.
189 PCS, Annex H, s/n 3–5 and 17.
190 2AB1350 and 2AB1352.
191 2AB1369 and 2AB1378; Gafoor 's AEIC, at p 74, s/n 171.
192 DRS at paras 298–301.
193 PCS, Annex H, s/n 6–9 and 16.
194 NE, 20 November 2019, at 127:14–25.
195 PCS, Annex H, s/n 11.
196 Weber's AEIC, at para 286, s/n 3.
197 PCS, Annex H, s/n 12–13.
198 NE, 26 November 2019, at 165:25–166:16.
199 PCS at para 210(b).
200 PCS, Annex A, s/n 77; Gafoor's AEIC, at p 25, para 6.3.28; pp 141–146, Appendix L; p 27, para 6.3.52(b); p 71, Appendix G (s/n 67).
201 In Annex A (s/n 77), the plaintiff states that he accepts that a total of €109,739.72 was authorised. However, the total amount accepted by the plaintiff based on Annex L is €109,739.72 plus S$3,709.90. The plaintiff's figure of €109,739.72 appears to have omitted a sum of S$3,709.90 (PCS, Annex L, s/n 3) which he has also accepted.
202 PCS, Annex L, s/n 3.
203 €96,121.59 - €48,044.08; PCS, Annex L, s/n 4.
204 PCS, Annex L, s/n 5.
205 PCS, Annex L, s/n 6 and 15.
206 €15,989.04 - €2,206.81; PCS, Annex L, s/n 7.
207 PCS, Annex L, s/n 8.

208 PCS, Annex L, s/n 9.
209 €20,001.74 - €526.89; PCS, Annex L, s/n 10.
210 PCS, Annex L, s/n 11.
211 PCS, Annex L, s/n 12.
212 PCS, Annex L, s/n 13.
213 PCS, Annex L, s/n 14.
214 PCS, Annex L, s/n 3.
215 NE, 21 November 2019, at 169:22–24.
216 2AB1421.
217 NE, 20 November 2019, at 54:20–22; 55:12–17.
218 NE, 20 November 2019, at 55:7–10.
219 NE, 20 November 2019, at 52:18–21.
220 NE, 27 November 2019, at 59:1–9.
221 2AB1419.
222 PCS, Annex L, s/n 4.
223 2AB1426–1427.
224 €64,470.27 - €48,044.08.
225 2AB1428–1430.
226 Gafoor's AEIC, at p 53, Appendix C, s/n 103; 2AB1433–1435.
227 2AB1454–1455.
228 2AB1429–1430.
229 PCS, Annex L, s/n 4.
230 2AB1434.
231 NE, 13 November 2019, at 41:7–15.
232 PCS, Annex L, s/n 4.
233 2AB1434.
234 NE, 15 November 2019, at 34:4–10; NE, 26 November 2019, at 132:25–133:4.
235 NE, 26 November 2019, at 68:10–13.
236 PCS, Annex L, s/n 5.
237 PCS, Annex L, s/n 6 and 15.
238 PCS, Annex L, s/n 7.
239 PCS, Annex L, s/n 8.
240 PCS, Annex L, s/n 9.
241 Athanasiou's AEIC, at p 131.
242 NE, 15 November 2019, at 25:4–5; Athanasiou's AEIC, at pp 128–131.
243 NE, 15 November 2019, at 25:15–26:21.
244 PCS, Annex L, s/n 10.
245 PCS, Annex L, s/n 11.
246 PCS, Annex L, s/n 12.
247 PCS, Annex L, s/n 13.
248 Athanasiou's AEIC, at p 130.
249 2AB1466–1481 and 1483–1497.
250 Gafoor's AEIC, at p 143, s/n 229; 2AB1458.
251 Gafoor's AEIC, at p 144, s/n 268; 2AB1518–1519.
252 Gafoor's AEIC, at p 143, s/n 242; 2AB1466–1481.
253 Gafoor's AEIC, at p 143, s/n 243: 2AB 1483–1497.
254 NE, 13 November 2019, at 41:7–15.
255 PCS, Annex L, s/n 14.

256 PCS, Annex A, s/n 81; Gafoor's AEIC, at p 26, paras 6.3.42–6.3.44. Gafoor's AEIC describes the payment as being for directors' fees for 2013 (at p 26, para 6.3.44). That appears to be an error; the directors' fees are for 2012 – see, NE, 21 November 2019, at 67:2–7; Weber's AEIC, at p 1539.
257 DRS, at para 346; NE, 21 November 2019, at 67:8–12.
258 NE, 21 November 2019, at 62:19–63:1.
259 NE, 21 November 2019, at 57:17–58:2, 58:11–13, 58:25–59:15.
260 NE, 21 November 2019, at 59:22–60:3; NE, 26 November 2019, at 50:20–25; Gafoor's SAEIC, at pp 777–778.
261 NE, 21 November 2019, at 60:7–12.
262 NE, 21 November 2019, at 67:11–13.
263 NE, 21 November 2019, at 35:22–36:1.
264 NE, 21 November 2019, at 36:11–37:10, 62:23–63:1; Weber's AEIC, at pp 235–237.
265 PCS, Annex A, s/n 70; Gafoor's AEIC, at pp 21–22, paras 6.3.2 and 6.3.9–6.3.11; pp 64–66, Appendix F.
266 Gafoor's AEIC, at p 21, para 6.3.6.
267 Weber's AEIC, at para 144.
268 Weber's AEIC, at paras 145 and 147.
269 NE, 26 November 2019, at 73:14–21; 75:23–24.
270 NE, 26 November 2019, at 72:22–73:5, 74:18–25.
271 3AB2348.
272 NE, 13 November 2019, at 23:22–24:19.
273 PCS, Annex A, s/n 102–104.
274 Gafoor's AEIC, at p 41, paras 6.4.108–6.4.110.
275 Gafoor's AEIC, at p 36, para 6.4.73.
276 PCS, Annex A, s/n 96.
277 PCS, Annex A, s/n 96.
278 PCS, Annex A, s/n 96 states the amount as €12,516.42 but the correct amount should be €12,516.43 (see Gafoor's AEIC, at p 38, para 6.4.91(c)).
279 PCS, Annex A, s/n 99.
280 Gafoor's AEIC, at p 38, para 6.4.91(a).
281 Gafoor's AEIC, at p 39, paras 6.4.94–6.4.95.
282 Gafoor's AEIC, at p 39, para 6.4.96(b).
283 NE, 14 November 2019, at 47:18–48:11.
284 DRS, at para 341.
285 NE, 14 November 2019, at 47:18–23.
286 Weber's AEIC, at paras 212 and 217.
287 Gafoor's AEIC, at p 38, para 6.4.91(b); pp 285–289, Appendix AA (18/01/2012, 19/04/2012, 08/05/2013 and 28/06/2013).
288 Gafoor's AEIC, at p 39, para 6.4.97(a); p 284, Appendix Z (s/n 210).
289 DRS, at p 105.
290 PCS, Annex A, s/n 96.
291 Gafoor's AEIC, at p 39, para 6.4.97(b); p 284, Appendix Z (s/n 217).
292 Gafoor's AEIC, at p 39, para 6.4.98.
293 Gafoor's AEIC, at p 38, para 6.4.91(c); p 286, Appendix AA (19/01/2012).
294 PCS, Annex A, s/n 99.
295 NE, 28 November 2019, at 86:8–13.
296 PCS, Annex A, s/n 100.

297 Table of Parties' Positions (11 October 2019), s/n 100.
298 PCS, Annex A, s/n 79; Annex N.
299 Weber's AEIC, at paras 309–311; Ritter's AEIC, at paras 46–47.
300 Gafoor's SAEIC, at p 475.
301 Gafoor's SAEIC, at p 476.
302 NE, 26 November 2019, at 154:11–155:20; NE, 27 November 2019, at 93:21–94:25.
303 Leow's SAEIC, at p 69, Appendix 2.
304 Leow's SAEIC, at p 75, Appendix 3.
305 Leow's SAEIC, at p 80, Appendix 4.
306 PCS, Annex A, s/n 80; Annex O.
307 2AB1654.
308 DRS, at para 347.
309 2AB1656.
310 2AB1657–1678.
311 2AB1678.
312 PCS, Annex O at s/n 12.
313 Weber's AEIC, at para 299.
314 Weber's AEIC, at paras 300–301.
315 NE, 20 November 2019, at 52:18–21.
316 NE, 20 November 2019, at 54:20–22; 55:12–17.
317 NE, 27 November 2019, at 59:1–9.
318 Weber's AEIC, at para 144; NE, 21 November 2019, at 146:12–13.
319 NE, 26 November 2019, at 68:10–19.
320 PCS, Annex A, s/n 82; Gafoor's AEIC, at p 27 para 6.3.45; Weber's AEIC at pp 1119–1123.
321 DRS at paras 365–367; NE, 26 November 2019, at 72:1–12.
322 NE, 26 November 2019, at 71:20–23.
323 PCS, Annex A, s/n 76; 2AB1406–1412.
324 DRS, at para 369.
325 DRS at para 370; Weber's AEIC at paras 296–298.
326 DRS, at para 372.
327 PCS, Annex A, s/n 34.
328 Weber's AEIC, at p 588.
329 NE, 20 November 2019, at 172:21–23.
330 NE, 14 November 2019, 17:7–10.
331 PCS, Annex A, s/n 71; Gafoor's AEIC, at p 22, para 6.3.13.
332 NE, 26 November 2019, at 148:2–150:2.
333 Weber's AEIC, at paras 275–278.
334 NE, 26 November 2019, at 149:4–5; 150:5–7.
335 Weber's AEIC, at p 291; NE, 26 November 2019, at 149:12–150:2.
336 NE, 26 November 2019, at 150:10–12.
337 NE, 26 November 2019, at 150:13–16.
338 PCS, Annex A, s/n 45, 53, 55, 56, 58 and 62.
339 PCS, Annex A, s/n 63.
340 Weber's AEIC, at paras 147–148.
341 Leow's SAEIC, at para 7.24.
342 PCS, at para 21.
343 Statement of Claim, at para 9(i)(a).

344 Exh P1.
345 NE, 27 November 2019, at 113:5–20.
346 Weber's AEIC, at para 162.
347 DRS, at paras 195–196.
348 PCS, at pp 54–73.
349 DRS, at para 281.
350 DRS, at para 231.
351 Exh P1; NE, 27 November 2019, at 113:5–20; Weber's AEIC, at para 162.
352 Gafoor's SAEIC, at p 585; NE, 21 November 2019, at 108:16–109:2.
353 NE, 21 November 2019, at 109:3–22.
354 NE, 21 November 2019, at 110:19–25.
355 Athanasiou's AEIC, at pp 58 and 118.
356 Athanasiou's AEIC, at pp 64–66.
357 DRS, at para 220.
358 NE, 21 November 2019, at 144:18–20.