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

[2022] SGHC 234

Suit No 56 of 2021

Between

Medica Singapore Pte Ltd

… Plaintiff

And

Chabtini Elias Georges

… Defendant

GROUNDS OF DECISION

[Trusts — Express trusts — Certainties — Intention to create trust]

Medica Singapore Pte Ltd
v
Chabtini Elias Georges

[2022] SGHC 234

General Division of the High Court — Suit No 56 of 2021
Valerie Thean J
4–7 April, 9 May 2022, 18 July 2022.

28 September 2022

Valerie Thean J:

Introduction

1 The plaintiff, Medica Singapore Pte Ltd ("Medica SG"), is a company incorporated in Singapore. The defendant, Mr Chabtini Elias Georges ("Mr Chabtini"), holds 48% of the shares in Medica SG and was formerly one of its directors. Its majority shareholder, Ms Virginia Seow ("Ms Seow") holds 52% of the shares and is at present Medica SG's sole director.[1] Medica SG brought an action against Mr Chabtini in this suit regarding his transfer of trade marks registered in its name to EMA Aesthetics Limited ("EMA"), a company incorporated in Ireland.[2]

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1 Ms Virginia Seow's AEIC ("VS AEIC") at paras 1–3.

2 Mr Chabtini Elias Georges' AEIC ("CEG AEIC") at para 36; VS AEIC at para 6.

Background

2 Medica Group was a group of companies first founded in the United Arab Emirates by Mr Chabtini and one Ms Tania Akl ("Ms Akl") between 1998 or 1999 and the early 2000s. It was not disputed that Mr Chabtini was the person driving the business. Medica SG was incorporated in 2002 as part of a plan to expand the Medica Group internationally. It was in the business of wholesale medical equipment for aesthetic and plastic surgery, as well as wholesale cosmetic and toiletry products. The initial shareholders of Medica SG were Mr Chabtini and Mr Namir Robert Akl ("Mr Akl"), Ms Akl's husband. Mr Chabtini held 60% of the shares and Mr Akl held the remaining 40%. Sometime after Medica SG's incorporation, Mr Akl transferred all his shares in Medica SG to Ms Akl.[3]

3 Ms Seow, who presently holds 52% of Medica SG, has been employed by Medica SG since shortly after its incorporation, initially as an administrative/executive assistant. She was promoted to manager, then general manager, before being appointed director in 2015, replacing Ms Akl.[4] Mr Chabtini and Ms Seow were the only directors at the time this dispute arose. In 2015, Ms Seow first became a shareholder of Medica SG when Ms Akl and Mr Chabtini gifted her 8% and 12% shareholding respectively to recognise her contributions to Medica SG.[5] Thereafter, Mr Chabtini held 48% of the shares, while Ms Akl held 32% and Ms Seow held 20%. After the dispute arose, Ms Akl sold her shares to Ms Seow.[6]

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3 CEG AEIC at paras 4–6; Transcript (6 April 2022), p 5 lines 13–17.

4 VS AEIC at para 3; CEG AEIC at paras 9–10.

5 VS AEIC at p 17; CEG AEIC at para 9,

6 VS AEIC at para 3.

4 As part of Mr Chabtini's and Ms Akl's expansion plans for the group of companies, SRS International S.P.R.L ("SRSI") was incorporated in Belgium and SRS-Solution Pte Ltd ("SRSPL") was incorporated in Singapore in 2008.[7] Both SRSI and SRSPL were owned by Mr Chabtini and Ms Akl in proportions of 60% and 40% respectively.[8] In October 2018, Ms Akl transferred her shares in both companies to Mr Chabtini.[9]

5 The mark in contention between parties, which I shall refer to as the "SRS Mark", was registered in Singapore in Medica SG's name on 9 June 2006. It was renewed on 18 December 2015 and is registered until June 2026 in class 3 for cosmetics, skin moisturisers, skin lotions, protective and anti-ageing creams for the face and body, face masks and oils. "SRS" is an abbreviation of "Skin Rejuvenation Solution", the name for a line of cosmetic products conceived sometime between the incorporation of Medica SG in 2002 and the registration of the SRS Mark in 2006. This mark was also registered in various countries including Indonesia, Thailand, Malaysia, Hong Kong and Taiwan and registered globally through the Madrid Protocol. The SRS Mark bears the letters "srs" (with the last "s" in reverse) and the words "Skin Rejuvenation Solution".[10]

6 On 30 November 2015, a second trade mark was registered in Singapore in Medica SG's name (the "Second Mark"), also in class 3. Like the SRS Mark, it bears the letters "srs" (with the last "s" in reverse) and the words "Skin Rejuvenation Solution". The design, however, is different. The Second Mark

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7 CEG AEIC at paras 5–7; Transcript (6 April 2022), p 2 lines 28–30.

8 CEG AEIC at para 7.

9 CEG AEIC at para 32.

10 VS AEIC at para 18 and pp 14 and 16; Plaintiff's Closing Submissions at para 2.

expires on 30 November 2025.[11] I will refer to the SRS Mark and the Second Mark collectively as "the Marks".

7 In 2019, the sales revenue for products which bore the Marks amounted to $281,209.22.[12]

8 In early 2019, EMA was incorporated in Ireland[13] to merge various brands, including SRSI but not including Medica SG.[14] Mr Chabtini is one of five directors of EMA.[15]

9 In June 2020, Mr Chabtini applied to the Intellectual Property Office of Singapore ("IPOS") to register in Singapore a transfer of ownership of the Second Mark to EMA. He also transferred the SRS Mark registered in Medica SG's name in Hong Kong, Indonesia, Thailand and Taiwan to EMA.[16]

10 As a result of Mr Chabtini's actions in Singapore, Medica SG received a letter from IPOS stating that a request for transfer of the Second Mark had been made and asking if Medica SG had any objection to this. On 26 June 2020 at 1.31pm, Ms Seow sent an e-mail to IPOS informing them that the transfer was unauthorised. On the same day at 2.43pm, Mr Chabtini sent an e-mail to IPOS stating that any previous e-mail received should be ignored because he was owner and director of Medica SG, and instructing IPOS to authorise any transfer. The Second Mark remains registered in Medica SG's name in

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11 VS AEIC at p 15.

12 VS AEIC at para 18.

13 CEG AEIC at para 36.

14 CEG AEIC at para 36.

15 Transcript (6 April 2022), p 24 lines 21–24.

16 Statement of Claim (Amendment No 1) ("SOC") at para 7; VS AEIC at para 6.

Singapore.[17] Ms Seow subsequently discovered that registration transfers had been effected in Indonesia, Thailand, Malaysia, Hong Kong and Taiwan for the SRS Mark. Medica SG was able to reverse these transfers save for those in Indonesia and Taiwan.[18]

11 Ms Seow and Ms Akl decided to remove Mr Chabtini as director of Medica SG, and did so at an extraordinary general meeting on 19 October 2020. Mr Chabtini did not attend, and a resolution was passed removing him as director with immediate effect. Mr Chabtini initially disputed the validity of this extraordinary general meeting. Five days later, however, on 24 October 2020, he resigned as a director of Medica SG.[19]

12 On 15 January 2021, Medica SG commenced this suit, seeking:[20]

(a) a declaration that Medica SG was the rightful owner of the Marks ("Prayer (a)");

(b) an order that Mr Chabtini take immediate steps to transfer the SRS Mark in Hong Kong, Indonesia, Taiwan and Thailand to Medica SG;

(c) damages for the wrongful transfer;

(d) damages for loss of profits; and

(e) interest, costs and further and/or other relief.

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17 VS AEIC at paras 11–13 and pp 25–28.

18 Transcript (4 April 2022), p 27 lines 5–13.

19 VS AEIC at pp 41–51.

20 Statement of Claim dated 15 January 2021 at p 6.

13 Mr Chabtini responded with a counterclaim for outstanding salary and other debt from Medica SG.[21] Shortly before trial, Medica SG admitted to the counterclaim and paid the full sum of $49,000 into court.[22]

14 Mr Chabtini's defence was based on his allegation that SRSI was the beneficial owner of the Marks. But neither SRSI, nor EMA, who presently held some of the SRS Marks, were joined as parties. Prayer (a) was therefore abandoned on the first day of trial. Further, Medica SG only sought the return of the SRS Mark in Indonesia and Taiwan because it had successfully reversed the transfers of the SRS Mark in Hong Kong and Thailand by the time of trial.[23] Various contentions relating to Mr Chabtini's actions as a director and related prayers seeking other damages were also withdrawn in the course of trial.[24] That which remained was a claim premised on Medica SG's ownership of the Marks and for $5,850.90 for the costs incurred in reversing the transfers that Medica SG was able to reverse. No remedy was sought in respect of the Second Mark (as IPOS had not effected the transfer in the light of Medica SG's protest). In the result, the prayers for remedies relevant were the following:[25]

(a) damages in the sum of $5,850.90; and

(b) an order that Mr Chabtini take steps to transfer the SRS Mark in Indonesia and Taiwan to Medica SG.

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21 Defence and Counterclaim dated 21 June 2021 at p 10.

22 Transcript (4 April 2022), p 20 lines 19–22.

23 Plaintiff's Opening Statement at para 16.

24 Transcript (4 April 2022), p 10 line 16 to p 11 line 14.

25 Transcript (4 April 2022), p 26 line 25 to p 27 line 13.

15 These two prayers were granted on 9 May 2022, together with interest at 5.33% from the date of the writ.[26] Mr Chabtini has appealed, and I furnish my reasons for the decision.

Issue in dispute

16 Medica SG's case rested on the fact that the Marks were registered in its name. When Mr Chabtini arranged for a change of registered owner in various countries, he did so in breach of his fiduciary duties as director of Medica SG. As such, he was liable to take steps to return the SRS Marks that he had wrongly transferred, and to compensate Medica SG for its expenses incurred in recovering them.[27]

17 Mr Chabtini's defence was that the Marks were at all material times beneficially owned by SRSI, which he stated in his affidavit of evidence in chief as having been incorporated in 2004. The "Skin Rejuvenation Solution" brand and trade mark was created by Mr Chabtini and his team in the 2000s. As there were challenges registering the SRS Mark in SRSI's name at the time of its registration in 2006, it was understood and agreed between Mr Chabtini and Ms Akl that the SRS Mark was to be registered in Medica SG's name instead, and held by Medica SG on behalf of SRSI.[28] In 2019, EMA acquired SRSI's rights in the SRS Mark. Therefore, when Mr Chabtini transferred the SRS Mark to EMA, he was entitled to do so as it belonged to EMA. Mr Chabtini accepted

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26 HC/JUD 230/2022.

27 PS paras 1–7.

28 Defence and Counterclaim (Amendment No. 1) at para 5; CEG AEIC at para 17.

that if it was found that no trust existed over the SRS Mark in favour of SRSI, his transfer of the SRS Mark to EMA was a breach of his fiduciary duties.[29]

18 The sole issue for my determination was therefore whether the SRS Mark was held on trust by Medica SG for SRSI. The principles governing whether an express trust had arisen were undisputed. In *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*"), the Court of Appeal held at [50] that an express trust is created by the actual intention of the settlor, as expressed by his use of the word "trust" in a relevant instrument, or inferred from his words or conduct. Three certainties must be present for the creation of an express trust: certainty of intention, certainty of subject matter, and certainty of the objects of the trust: *Guy Neale* at [51]. This dispute centred on the requirement of certainty of intention. The subject matter of the purported trust was the SRS Mark, and the alleged object was SRSI.

Was the SRS Mark held on trust for SRSI?

19 Certainty of intention requires proof that the settlor intended to create a trust. Express trusts may be created by an informal declaration or inferred from the acts of the settlor or the circumstances of the case: *Guy Neale* at [53]. Nevertheless, there must be clear evidence of a specific intention *to create a trust*: *Guy Neale* at [52]. To prove only an intention that property be used for another's benefit, or be subject to some obligations, would be insufficient. This was explained in *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [55]:

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[29] Transcript (9 May 2022), pp 1–2; Defendant's Closing Submissions ("DS") at paras 100–101.

> … certainty of intention … requires clear evidence of an intention on the part of the alleged settlor to create a trust and to subject the trust property to trust obligations, as opposed to creating any other form of binding legal relationship (for example, a contractual relationship). The intention of the alleged settlor must be *to dispose of the property so that somebody else to the exclusion of the disponent acquires the beneficial interest in the property*…
>
> [emphasis added]

20 Mr Chabtini advanced two broad contentions in support of this first certainty. The first was that an express trust had been created by an agreement between Ms Akl and himself. He gave evidence of a conversation with Ms Akl, and also advanced facts from which it was contended a trust could be inferred. His alternative argument was that, even if there was no agreement between him and Ms Akl to create a trust, his intention *alone* was sufficient because it could be attributed to Medica SG.

Attribution

21 I deal with the argument on attribution first because it was wholly inapplicable. In support of his submission that his intention alone was sufficient to create a trust on behalf of Medica SG, Mr Chabtini relied on *Ong Bee Chew v Ong Shu Lin* [2019] 3 SLR 132, where the court held at [140] that:[30]

> The principles by which the acts of a natural person will be attributed to a company are well settled. They are derived from Lord Hoffmann's analysis in the decision of the Privy Council in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 ("*Meridian*"). Lord Hoffmann grouped the rules of attribution into three sets. The first set comprises the primary rules of attribution which are found in the company's constitution or implied by company law which deem certain acts by certain natural persons to be the acts of the company (at 506D). The second set comprises the general rules of attribution by which a natural person may have the

[30] DS at para 28.

> acts of another attributed to him, *ie*, the principles of agency; and by which a natural person may be held liable for the acts of another, such as estoppel, ostensible authority and vicarious liability (at 506F). The third and final set comprises special rules of attribution which the court must fashion in exceptional cases where applying the first or second set of principles would defeat the policy underlying a particular provision of the substantive law as it was intended to apply to a company (at 507D–F). Lord Hoffmann's analysis was endorsed by the Court of Appeal in *Ho Kang Peng* ([78] supra) at [47]–[48].

Mr Chabtini argued that "under the general rules of attribution by which a natural person may have the acts of another attributed to him … [Mr Chabtini] in his capacity as a director and agent of the company can create the trust arrangement over the [SRS Mark]."[31]

22 There were two fundamental issues that his arguments did not address. First, an express trust is created by an expression of an intention, not an intention alone. Second, Mr Chabtini had not identified any basis for his intention to be attributed to Medica SG. Article 110 of Medica SG's articles of association provides that the management of its business vested in the directors. Article 103 provides that unless otherwise specified, the quorum necessary for the transaction of the business of the directors would be two, and that a meeting of the directors at which a quorum is present would be competent to exercise all the powers and discretions exercisable by the directors.[32] In the absence of any other evidence on the point, it was clear that the authority to enter into business transactions such as the purported trust arrangement lay with both directors jointly. To establish the existence of the trust, Mr Chabtini therefore had to show that the collective intention of Medica SG's directors at the time (himself and

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31 DS at para 47.

32 CEG AEIC at pp 72–73.

Ms Akl) was to create a trust over the SRS Mark in favour of SRSI. His personal intention to create a trust was not sufficient.

23 Mr Chabtini's assumption was that because he was the founding shareholder and director of Medica SG and its early driving force, his intention was Medica SG's intention. It is a fundamental principle of company law that a company possesses a legal personality distinct from its shareholders. Mr Chabtini's assumption ignored this principle. In *Jhaveri Darsan Jitendra and others v Salgaocar Anil Vassudeva and others* [2018] 5 SLR 689 ("*Jhaveri Darsan Jitendra*"), Kannan Ramesh J considered such a case of insider reverse piercing of the corporate veil, which is where a shareholder or corporate insider asks the court to disregard the separate legal personality of the company. Ramesh J held that insider reverse piercing had no basis in authority as a matter of Singapore law. For reasons that I agree with, Ramesh J held that insider reverse piercing was contrary to principle. It would, amongst other things, allow a shareholder or corporate insider to enjoy the benefits that flowed from the legal personality of a company without any of its disadvantages: *Jhaveri Darsan Jitendra* at [50] and [71]–[75].

Was a trust created?

24 I come then to the evidence regarding Mr Chabtini's contention that Medica SG created a trust. It was not disputed that there was no documentary evidence or correspondence which referred to an agreement that the SRS Mark was to be held on trust by Medica SG for SRSI. Mr Chabtini's case was that the express trust arose out of an oral agreement with Ms Akl. He also contended that surrounding circumstances raised an inference that Medica SG intended to create a trust.

Was there an oral agreement?

25 Mr Chabtini's testimony about the oral agreement was vague. He explained that because he and Ms Akl were the only shareholders of Medica SG and SRSI at the material time, and given the way in which they had conducted the business, he was "unable to recall the entire specifics" of the agreement.[33] At trial, he was unable to elaborate how, as claimed, "[i]t was understood and agreed" between Ms Akl and himself that this trust arrangement would arise.[34] The most he could point to was that "there were multiple conversations with [Ms Akl] in Dubai, Lebanon and/or Paris".[35] He also explained that the agreement was reached because of the challenges faced with registering the SRS Mark in SRSI's name. Out of convenience, it was agreed that the SRS Mark would be registered in Medica SG's name but held on trust for SRSI.[36]

26 Ms Akl was clear there had been no agreement. She testified that there had been no conversation at any point in time about the creation of the SRS Mark or that it was to be registered in Medica SG's name only for convenience.[37] Ms Akl was not cross-examined on her denial that any agreement between herself and Mr Chabtini was reached. In fact, Ms Akl testified that she had only heard about the SRS Mark in 2020.[38] This was also unchallenged.

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33 CEG AEIC at para 18.

34 CEG AEIC at para 17.

35 CEG AEIC at para 18.

36 CEG AEIC at para 17.

37 Tania Akl's AEIC ("TA AEIC") at para 3.

38 Transcript (5 April 2022), p 55 lines 5–11 and p 59 lines 14–18.

27 Ms Akl's evidence that there was no conversation concerning the SRS Mark was credible and I accepted her version of events. Ms Akl's evidence was consistent with Mr Chabtini's own evidence that she was not involved in the business matters of the Medica Group companies generally and was akin to a sleeping partner.[39]

28 Further, Mr Chabtini's evidence was completely undermined by his acceptance of the fact that SRSI was only incorporated in 2008,[40] *after* the SRS Mark was registered. Mr Chabtini initially maintained in his affidavit of evidence in chief that SRSI was incorporated in 2004, and this was key to his explanation that the agreement arose out of the difficulties with registering the SRS Mark in SRSI's name prior to its registration in Medica SG's name. SRSI's incorporation in 2008 meant that his foundational explanation could not have been true. *SRSI did not exist at the time*.

29 When clarifying his error regarding SRSI's incorporation date, Mr Chabtini gave the following evidence:[41]

> … But at all times, the trademark that was initially said to be---to be---to---to have been registered in 2006 under Medica Singapore was *for it to be transferred to [SRSI]*. [emphasis added]

This explanation only served to emphasise his confusion. SRSI was not yet incorporated in 2006 and therefore there could not have been any intention to transfer the SRS Mark to it. Nor did Mr Chabtini give any evidence that his intention at the time of the registration in 2006 was to create another vehicle in the future. The intention to transfer the SRS Mark to SRSI was in fact *his own*,

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39 CEG AEIC at para 6.

40 Transcript (6 April 2022), p 2 lines 28–30.

41 Transcript (6 April 2022), p 4 lines 5–7.

and it arose *after* SRSI's incorporation in 2008. This made his trust contention wholly unsustainable.

30 Indeed, two later events emphasise the absence of intention to create a trust in favour of SRSI, *even after* SRSI's incorporation. First, the registration of the Second Mark on 30 November 2015 in Singapore was in Medica SG's name, seven years after SRSI's incorporation. There was, similarly, no trust documentation in favour of SRSI for this similar mark. Secondly, Ms Seow was asked by Ms Eline Nehme to renew the SRS Mark on 28 June 2016 with the instruction, "(f)urther to the latest information received from [Mr Chabtini] last week, he confirmed that for the time being he wants Singapore to remain the owner of the SRS Brand Trademark".[42]

Did surrounding events suggest that Medica SG intended to create a trust?

31 The focus of Mr Chabtini's case was that the events preceding and following the registration of the SRS Mark showed that SRSI must have been the beneficial owner of it. Broadly, these arguments can be categorised into three main heads:

(a) Mr Chabtini constantly expressed an intention to transfer the SRS Mark to SRSI.

(b) Mr Chabtini was responsible for creating the SRS Mark.

(c) The external communications by SRSI showed that it was the beneficial owner of the SRS Mark.

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42 AB 134.

I deal with each head in turn.

(1) Mr Chabtini's intention to transfer the SRS Mark

32 Mr Chabtini argued that it was his and Ms Akl's clear and consistent intention to transfer the SRS Mark from Medica SG to SRSI. However, this intended transfer ultimately never happened. This was because it was a cumbersome process and Mr Chabtini faced various challenges in effecting the transfer, such as problems with manpower, problems with resources and the incompetence of the personnel with whom he had tasked the transfer.[43] Ms Maya El Sokhn testified that she recalled at least one occasion in 2017 that it was mentioned that the Marks were to be transferred to SRSI.[44] Mr Chabtini also cited some internal correspondence in which Medica SG employees discussed the intended transfer of the Marks to SRSI.[45]

33 Nevertheless, an intention to transfer the SRS Mark, without more, did not suggest that the SRS Mark was held on trust for SRSI. Quite to the contrary. If the SRS Mark was already beneficially owned by SRSI, there would be no need to transfer it to SRSI unless SRSI needed to be its *legal* or *registered* owner as well. However, the evidence did not suggest that there was such a need nor did it disclose any expression of that intention. Mr Chabtini testified that he incorporated SRSPL in Singapore because he considered that it might be more convenient for the transfer to be made to a Singapore entity instead of SRSI (a Belgian entity). He instructed employees of Medica SG to make the transfers of

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43 DS at para 40; CEG AEIC at para 22.

44 Maya Sokhn's AEIC ("MS AEIC") at para 15; DS at para 40.2.

45 CEG AEIC at para 27.

the Marks to SRSPL, but again this did not materialise.[46] If the true motivation for the transfers was to end any trust arrangement or to make SRSI the legal and registered owner of the SRS Mark, such a transfer to SRSPL would not solve the problem. The fact that Mr Chabtini considered a transfer to SRSPL to be a viable alternative showed that the intended transfers were really to make SRSI or SRSPL *acquire* the ownership of the SRS Mark. This accorded with Mr Chabtini's evidence that the transfer of the SRS Mark to SRSI in the future was always intended (see [29] above). This meant that the beneficial interest in the SRS Mark could not have been SRSI's to begin with.

34 It was also argued that Ms Akl and later Ms Seow were silent in the face of his oft-expressed intention to transfer the SRS Mark, and therefore they had acquiesced to the trust arrangement. There were two problems with this argument. First, mere silence in these circumstances did not amount to acquiescence. At no point did either of them indicate concurrence with any trust arrangement. Nor was there an occasion prior to the transfer of the SRS Mark where either of them was silent in response to an explicit suggestion that the SRS Mark was, or was to be, held on trust. Secondly, this argument did not address the fundamental deficiency in Mr Chabtini's case. The evidence did not suggest any intention to create a trust at the point of the SRS Mark's registration, even on his part alone. There was nothing for Ms Akl or Ms Seow to acquiesce to. The internal documents exhibited showed instead confusion on the part of Mr Chabtini and his EMA staff regarding ownership of the mark. An internal email chain around 2 December 2019, for example, revealed that Mr Chabtini

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46 CEG AEIC at paras 25–26.

was under the mistaken impression that the SRS Mark had been transferred to SRSI previously.[47]

(2) Creation of trade mark

35 According to Mr Chabtini, he created and developed the "Skin Rejuvenation Solution" brand and trade mark with his team. He chose the name, incorporated the companies bearing the SRS name, and developed the brand.[48] Medica SG's case was that, to the contrary, it was their team of employees that had come up with the words "Skin Rejuvenation Solution" and the logo contained in the SRS Mark.[49]

36 Mr Chabtini's closing written submissions conceded that the issue of who created the SRS Mark was a red herring (albeit on the footing that what was important was his sole decision to create a trust, which argument I have dealt with and rejected at [21]–[23]).[50] The issue was a red herring because, regardless of who created the SRS Mark, all that mattered was Medica SG's intention regarding its ownership at the time of registration. On the evidence, it was clear that the SRS Mark was created as a corporate asset of Medica SG and registered as such.

(3) Communications with external parties

37 Mr Chabtini produced three documents which he argued showed that third parties were dealt with on the basis that a trust existed over the SRS Mark.

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47 AB 214-7.

48 CEG AEIC at para 13.

49 Transcript (4 April 2022), p 46 line 30 to p 47 line 14.

50 DS at para 87.

However, these documents did not help his case. First, these were documents of SRSI, rather than Medica SG. Second, for reasons below, their content did not suggest that SRSI was the beneficial owner of the SRS Mark.

(A) LETTER OF APPROVAL

38 Mr Chabtini produced a letter from SRSI, signed and stamped by them, dated 1 January 2009, which said the following:[51]

> This is to certify that Medica Singapore Pte Ltd … is our sole exclusive agent for countries stated below and is authorized to sell our range of products: SRS & Estelan
>
> - Middle East
> - GCC
> - Asia
>
> This Agreement is commenced from 1st January 2009 and will be renewed automatically every year unless either party gives at least two (2) months prior written notice before the end of each period to terminate this sole exclusive agency for unsuccessful reasons.

39 I did not find that this letter assisted Mr Chabtini. First, there was no specific reference to the SRS Mark. Rather, the letter was concerned with who was "authorised to sell [SRSI's] range of products". This was a separate issue from the issue of the ownership of the SRS Mark. Mr Chabtini submitted that this letter represented that it was SRSI who was the principal and the ultimate owner of the SRS range of products and that it was "only logical" that SRSI was therefore the rightful owner of the Marks.[52] In my view, the logical premise was incorrect. Medica SG's ownership of the SRS Mark could exist and complement SRSI's positioning of itself as responsible for the SRS brand.

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51 AB 68.

52 DS at para 63.

40 More fundamentally, because this letter did not even refer to the SRS Mark, it was silent on the issue of the SRS Mark's beneficial ownership.

(B) SRS BRAND CATALOGUE

41 Second, Mr Chabtini relied on a brand catalogue which bore the Second Mark.[53] Immediately below the Second Mark was SRSI's name. Mr Chabtini argued that it was thus communicated to the viewer of the catalogue that the listed products sold under the Second Mark belonged to SRSI. This, in turn, communicated to external parties that SRSI was the true owner of the Second Mark.

42 In my view, this argument was flawed. First, the catalogue did not bear the SRS Mark, which was the mark in respect of which the remedies were sought in this suit. Second, the fact that SRSI's name was below the Second Mark did not suggest to a viewer that SRSI owned the Second Mark. All it suggested was that SRSI was entitled to use the Second Mark. Nor was a brand catalogue a cogent piece of evidence. Rather than a brand catalogue, what would generally be used by an external party to determine ownership of a trade mark would be the IPOS register, which would reveal that the Marks were owned by Medica SG.

(C) THE INDONESIAN LETTER OF APPOINTMENT

43 Finally, Mr Chabtini produced a letter which listed various SRS products. The relevant portions of the letter read as follows:[54]

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53 AB 61.

54 AB 176.

LETTER OF APPOINTMENT AS SOLE DISTRIBUTOR

Date:

To Whom It May Concern:

We, [SRSI], the owner of the following products … hereby appoint **PTLA MEDICA** … as our sole distributor for the following products:

…

Putting aside the fact that this letter was of little use because it was unsigned and undated, it still did not assist Mr Chabtini. Again, it made no reference to the ownership of the SRS Mark. Contrary to what Mr Chabtini suggested, the fact that this letter stated that SRSI was the "owner" of the various listed SRS products was not inconsistent with Medica SG owning the SRS Mark. Medica SG and SRSI were part of the same group of companies. It could well have been the case that Medica SG owned the SRS Mark, while SRSI was regarded by the group as the owner of the products.

Whether an express trust was created

44 The evidence proved the contrary of what Mr Chabtini alleged. There was no oral agreement between Ms Akl and himself; neither could his own personal intention be sufficient to create a trust. In fact, the evidence did not even suggest that he had such a personal intention. The surrounding circumstances did not indicate that SRSI was the beneficial owner of the SRS Mark.

Conclusion

45 The SRS Mark was not held on trust by Medica SG in favour of SRSI. Neither could Mr Chabtini's intention be attributed to the company, which had a separate legal personality. Mr Chabtini was responsible to take steps for the

registration of the SRS Mark to be transferred back to Medica SG's name in Taiwan and Indonesia and to compensate Medica SG in the sum of $5,850.90, being the cost of the transfers that Medica SG was able to reverse on its own.

46 I dealt with costs of the suit on 18 July 2022. Medica SG had sent Mr Chabtini a Calderbank letter. The remedies obtained by Medica SG, however, were not better than those suggested by their Calderbank letter when the letter was construed strictly. This was because the prayer for a declaration that Medica SG was the legal and beneficial owner of the Marks (*ie*, Prayer (a)) had been withdrawn at trial. Thus, I did not take Medica SG's letter into account on the issue of costs. Mr Chabtini, on his part, had issued both an offer to settle pursuant to O 22A r 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("OTS") and a Calderbank letter. Nevertheless, neither was applicable to change the usual basis for costs. The OTS required Ms Seow to withdraw a separate suit in the State Courts, which was still ongoing at the time of the costs hearing. The Calderbank letter required Medica SG to change its name and give up its rights in countries aside from Singapore, Taiwan and Indonesia. Therefore, costs of the claim were awarded to Medica SG on the standard basis.

47 In deciding the issue of quantum, I took into consideration that some claims that were abandoned at trial should have been withdrawn by Medica SG much earlier if the appropriate research had been done and if so, due consideration should have been given as to whether the matter ought to have been transferred to the State Courts. Medica SG was awarded $25,000 for the suit. In addition, $4,000 was awarded for various interlocutory applications for which costs were previously ordered to be in the cause. Costs of obtaining judgment on the counterclaim was awarded to Mr Chabtini at $2,000. These

orders excluded disbursements, which were separately agreed between the parties.

Valerie Thean
Judge of the High Court

Andrew John Hanam (Andrew LLC) for the plaintiff;
Suang Wijaya (Eugene Thuraisingam LLP) for the defendant.
