IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 31

Civil Appeal No 202 of 2018

Between

(1) Navin Jatia
(2) Samridhi Jatia
(3) Evergreen Global Pte Ltd

… *Appellants*

And

(1) Ram Niranjan
(2) Shakuntala Devi

… *Respondents*

Civil Appeal No 203 of 2018

Between

Shakuntala Devi

… *Appellant*

And

(1) Navin Jatia
(2) Samridhi Jatia

… *Respondents*

Civil Appeal No 205 of 2018

Between

Ram Niranjan

… *Appellant*

And

(1) Navin Jatia
(2) Samridhi Jatia
(3) Evergreen Global Pte Ltd
(4) Shakuntala Devi

… *Respondents*

In the matter of Suit No 911 of 2016

Between

Ram Niranjan

… *Plaintiff*

And

(1) Navin Jatia
(2) Samridhi Jatia
(3) Evergreen Global Pte Ltd
(4) Shakuntala Devi

… *Defendants*

JUDGMENT

[Deeds and other instruments] — [Deeds]

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Navin Jatia and others
v
Ram Niranjan and another and other appeals

[2020] SGCA 31

Court of Appeal — Civil Appeals Nos 202, 203 and 205 of 2018
Steven Chong JA, Woo Bih Li J and Quentin Loh J
29 January 2020

6 April 2020 Judgment reserved.

Woo Bih Li J (delivering the judgment of the court):

Introduction

1 These cross-appeals are brought against the decision of the High Court judge ("the Judge") in *Ram Niranjan v Navin Jatia and others and another suit* [2019] SGHC 138 (the "GD"). Suit No 911 of 2016 ("the Suit") was commenced on 25 August 2016 by Mr Ram Niranjan ("Mr Ram") against his son Mr Navin Jatia ("Mr Navin"), daughter-in-law Mdm Samridhi Jatia ("Mrs Navin"), Evergreen Global Pte Ltd ("Evergreen"), and Mr Ram's wife, Mdm Shakuntala Devi ("Mrs Ram"). Evergreen is a Singapore-incorporated company which was founded by Mr Ram in 1989 and played a nominal role in the Suit.[1] While Mrs Ram was named as the fourth defendant, her case was

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[1] Joint Record of Appeal ("JRA") Vol 2 at page 25 – Statement of Claim (Amendment No 3) ("Statement of Claim") at para 6.

aligned with that of Mr Ram. Mrs Ram also commenced a third party action against the Navins which overlapped substantively with Mr Ram's claims.

2 The cross-appeals concern, in the main, various factual findings made by the Judge in relation to the validity or legal effect of four instruments, namely:

(a) a memorandum of understanding dated 9 December 2006 between the Rams and the Navins ("the 2006 MOU");

(b) a sale and purchase agreement dated 2 January 2015 between Mrs Ram and Mr Navin ("the January 2015 SPA"); and

(c) a deed dated 6 August 2015 ("August 2015 Deed"), along with an agreement dated 1 September 2015 ("the September 2015 Agreement") between the Rams and the Navins.[2]

In these cross-appeals, the Rams' right to live in a property at Poole Road owned by Mr Navin ("the Poole Road Property") is also in issue. We note that Mrs Ram did not sign the 2006 MOU although she was named as a party to it. Nonetheless, nothing in this judgment turns on that fact.

3 In our judgment, the core issue in these cross-appeals is the validity of the August 2015 Deed. This is because the August 2015 Deed was a settlement agreement that was intended to resolve the disputes which had arisen between the Rams and the Navins. Consequently, it follows that some of the claims

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[2] Joint Core Bundle ("JCB") Vol 2 at pages 24-26 (2006 MOU) and 54-58 (August 2015 Deed); JRA Vol 5(B) at pages 296-299 (January 2015 SPA); JRA Vol 5(B) at page 430 (September 2015 Agreement).

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brought by the Rams in the Suit, which were premised on these disputes, cannot be sustained *if* the August 2015 Deed is found to be valid. The Judge, however, set aside the August 2015 Deed on the basis that Mr Navin had failed to disclose a material fact. In brief terms, the Judge held that since the August 2015 Deed was a family arrangement, the parties were subject to a duty to disclose material facts. In the present case, Mr Navin had invested Mr Ram's moneys in bonds ("the Bonds") from 2010,[3] although the actual amount invested for Mr Ram was in dispute. According to the Judge, the material fact which had not been disclosed by Mr Navin was Mr Ram's share of the sale proceeds from the Bonds ("the sale proceeds"): GD at [79]. The Judge found that Mr Ram had contributed 89.55% of the funds used to purchase the Bonds and that his entitlement was US$3,442,378.29: GD at [197]. This fact was not disclosed by Mr Navin to Mr Ram. The August 2015 Deed was set aside under those circumstances.

4 Having carefully considered the parties' submissions, we find that Mr Navin did *not* breach any duty of disclosure owed to the Rams. Accordingly, we reverse the Judge's decision to set aside the August 2015 Deed. In our view, it is also questionable whether the parties owed a duty of disclosure to one another, notwithstanding that the August 2015 Deed was a family arrangement. Nevertheless, we leave that issue for determination on a future occasion as it need not be determined in the present case given our finding that there is no breach of any such duty.

5 In relation to the remaining findings of the Judge, we are satisfied that the threshold for appellate intervention is not met in the present case. The

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[3] JRA Vol 3(B) at page 332 – Mr Navin's AEIC at para 74.

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findings of fact were not clearly against the weight of the evidence. We explain our reasons and the consequential orders that follow below.

Background facts

6 In this judgment, we set out only the facts which are relevant to our decision.

The Poole Road Property

7 The Rams are Singapore permanent residents. Mr Navin, on the other hand, is a Singapore citizen and therefore capable of purchasing residential property without regulatory approval. Mr Navin started working in Evergreen from the middle of 1991 after completing his full-time National Service. On 13 March 1993, Mr Navin, then 23 years old, exercised an option to purchase the Poole Road Property for S$2.88m: GD ([1] *supra*) at [9] and [11]–[13].

8 Two days after he did so, Mr Navin applied to the Land Dealings (Approval) Unit ("LDU") for Mr Ram and him to hold title to the Poole Road Property as tenants in common having a 65% (Mr Ram) and 35% interest (Mr Navin) respectively.[4] This application, which also stated that the Poole Road Property was intended to be used as a family residence, was rejected by the Controller of Residential Property. Mr Navin appealed to the Minister of Law against the rejection of the application. On appeal, he sought permission to register the Poole Road Property in his and his parents' joint names, to be held as a joint tenancy, stating that:[5]

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4 JRA Vol 5(A) at page 66.

5 JRA Vol 5(A) at page 71.

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> An additional obvious advantage in having joint names in the title is that of security of the parents, or the feeling of security generated in them, and (correspondingly) the knowledge re-affirmed in the mind of Navin that legally the property is not entirely his to do with as he pleases and that he would have to have his parents' welfare in mind during the course of their natural lives.

9 The appeal was rejected by the Minister of Law.[6] Subsequently, the Poole Road Property was registered in Mr Navin's sole name: GD at [13]. S$2.3m of the S$2.88m was paid using a mortgage loan from Overseas Union Bank Limited.[7] In turn, the mortgage included a S$1.8m overdraft facility in both Mr Ram's and Mr Navin's names. The parties disputed whether it was Mr Ram or Mr Navin who had paid for the Poole Road Property: GD at [13]. Both Mr Navin and Mr Ram claimed to have paid for the Poole Road Property in full.[8] According to Mr Navin, he repaid the mortgage loan within six years.[9] Mr Ram pleaded that he had paid for the Poole Road Property in reliance on the common understanding and intent between the Rams and Mr Navin that the Rams would have a "life interest" in the Poole Road Property.[10]

10 While the Poole Road Property was registered in Mr Navin's name, it effectively functioned as the family home for the next 23 years. However, the Rams alleged that in February 2016, the Navins had given the family's driver and domestic helpers instructions not to serve or help the Rams or to allow them to use the family's cars. It was also alleged that the Navins had installed locks

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6 JRA Vol 5(A) at page 72.

7 JRA Vol 3(F) at page 554 – NEs, 7 August 2018, page 117, line 14 to page 118, line 7.

8 JRA Vol 3(B) at pages 323 and 324 – Mr Navin's AEIC at paras 56-58.

9 JRA Vol 3(B) at page 324 – Mr Navin's AEIC at para 58.

10 JRA Vol 2 at page 55 – Statement of Claim at para 66.

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on common areas of the home, such as the television room, store room and fridge, to prevent access by the Rams, who were effectively confined to their bedroom.[11] On the part of the Navins, closed-circuit television footage was shown at the trial in an attempt to demonstrate Mr Ram's allegedly unreasonable behaviour while living at the Poole Road Property. On 12 July 2016, Mrs Navin obtained an expedited protection order against Mr Ram on the basis that there was imminent danger of family violence being committed against her children. This order was later discharged since, *inter alia*, Mrs Navin had only proven one incident of family violence committed against her, which did not include physical violence, and Mr Ram had confirmed that he would not return to the Poole Road Property while the Navins lived there: GD at [37].

11 The police were also called on a number of occasions. On 14 July 2016, the police were called, allegedly because Mr Navin's sister had arranged for a masseuse to visit the Poole Road Property to give Mrs Ram a massage but Mr Navin did not want illegal helpers working at the Poole Road Property. On 31 July 2016, the police were called again after Mr Ram reacted to something Mr Navin had said by pulling down his pants and exposing himself in front of Mrs Navin and her son. Mr Ram returned the next day, and Mr Navin called the police again. Subsequently, the Rams were arrested and charged with criminal trespass. Allegedly, the Rams have not been able to access the Poole Road Property to retrieve their belongings since then.[12] Mr Navin engaged professional movers to pack and send their belongings to them, but the Rams alleged that many items were missing. This formed the basis for their claims of conversion and/or detinue: GD ([1] *supra*) at [38]–[40].

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11 JRA Vol 2 at page 57 – Statement of Claim at para 71B.

12 JRA Vol 2 at page 62 – Statement of Claim at para 71B(11).

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The 2006 MOU

12 It was not disputed that by 2006, Mr Ram and Mr Navin were at loggerheads for various reasons which we need not go into. At the trial, some emphasis was placed by Mr Navin on the fact that the family is part of the Marwari community, which he described as a "tightly knit ethnolinguistic group with origins in India and Nepal".[13] It was common ground that the tradition within the Marwari community is to have disputes between family members resolved by having elders within the community conduct mediation.[14] Consistent with this tradition, Mr Ram's youngest daughter, Ms Kalpana Binani ("Kalpana"), and her husband, Mr Braj Binani ("Braj"), stepped in to mediate. This led to the 2006 MOU which was signed by Mr Ram, Mrs Ram and Mr Navin. Under the 2006 MOU, Evergreen would have a "revised" capital structure under which Mr Navin would hold 50% of the shares and the Rams would hold 25% of the shares each. Mr Navin was also formally appointed as the managing director of Evergreen with effective control of its day-to-day operations: GD at [19] and [20].

13 For present purposes, the relevant clauses of the 2006 MOU are:[15]

> 1) that [Evergreen] will have the revised [c]apital structure as under:
>
> [Mr Ram] –25%
>
> [Mrs Ram] – 25%
>
> [Mr Navin] – 50%

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13 Appellants' Case in CA 202/2018 at para 21a.

14 JRA Vol 3(F) at pages 183 and 184 – NEs, 20 July 2018, page 40, line 19 to page 41, line 1.

15 JCB Vol 2 at pages 24-26.

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> 2) [Mr Navin] will ensure that the personal guarantees given by [the Rams] and [Mrs Navin] to the bankers will be revoked at the earliest possible convenience in view of the restructured shareholding pattern.
>
> …
>
> 5) A Power of Attorney from the Board of Directors for running the day to day operations of [Evergreen] would be given to [Mr Navin], and [Mr Navin's] terms of appointment would be as under:
>
> > …
> >
> > ix) It will be the obligation of [Mr Navin] to arrange to provide SGD360,000 in three prior instalments in favour of [the Rams] effective 1/10/2006 till further advice towards meeting expenses in Nepal and Mumbai and out of pocket expenses. This amount may be reviewed from time to time depending upon inflationary effect.
> >
> > …
> >
> > xiii) [Mr Navin] shall be under obligation to acquire a residential property for [Mrs Ram] to the extent of USD1 million anywhere as she desired in the event she has a desire for such a house at any time. However, such a desired [*sic*] of [Mrs Ram] will be intimated to [Mr Navin] in writing as and when she so desires.
> >
> > …
> >
> > xvii): [The Rams] have absolute discretion of right of stay with full comforts in the [Property] for their entire lives.

14 In this judgment, we refer to the obligation under cl 5ix) of the 2006 MOU as the obligation to pay the "Annual Allowance". The parties disputed whether the 2006 MOU was intended to be legally binding.

Events in 2013 and 2014

15 The 2006 MOU did not end the disputes between Mr Ram and Mr Navin. In particular, two matters are of primary importance to our decision. The first concerned Mr Navin's refusal to pay the Rams the Annual Allowance after October 2013: GD ([1] *supra*) at [24].

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16 The second concerned investments in the Bonds. In May 2007, Mr Ram opened an account with UBS AG ("UBS") in his and Mrs Ram's names to make investments. Mr Navin managed the money in this account and invested Mr Ram's moneys in the Bonds, which were paid for in part using loans from UBS: GD at [21].

17 In July 2014, Mr Ram had asked Mr Navin to transfer the Bonds to him. Mr Ram asserted that the Bonds should have been held by Mandalay Global Assets Ltd ("Mandalay"), a company in which Mr Ram was one of the beneficial owners: GD at [21]. The Bonds were instead held in the name of La Brasserie Corporation Ltd, an entity controlled by the Navins. While Mr Navin had instructed UBS to transfer the Bonds to Mandalay on 24 July 2014, he subsequently changed his mind. According to Mr Navin, this was because Mr Ram had started demanding that Mr Navin transfer his shares in Evergreen, the Poole Road Property and US$5m to Mr Ram: GD at [25]. The existence of Mr Ram's demands was corroborated to an extent by an e-mail sent by Mr Navin on 5 October 2014 to their relatives, including Kalpana and Braj ("the 5 October 2014 E-mail"):[16]

> … Firstly, on the 19th September, [Mr Ram] asked for about 2cr as annual entitlement. I had received a call from him in June 2014 and many times in the past, that he could not agree with the current agreement and wanted to dissolve the company. He also wrote emails to third statutory parties demanding the same. I am not able to understand, that how can respected [Mr Ram] not agree with an agreement, constantly continue to complain about the agreement to the whole world, and give numerous instructions to liquidate the company to me & [Evergreen's] Auditor (I got almost 15 calls in 10 days to immediately liquidate the company in June 2014), but at the same time continue enforcing the agreement.

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16 JRA Vol 5(B) at pages 142-144.

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> Secondly, on the 16th of September he met [Evergreen's] Auditor while he was in Singapore and set 3 demands which he should convey to me;
>
> aa) Navin should transfer his shares in [Evergreen] to [Mr Ram].
>
> bb) Navin should transfer [the Poole Road Property] to [Mr Ram].
>
> cc) Navin should transfer the bonds worth usd5million (this anyway I was doing till then, however he mentioned an incorrect & inflated amount).
>
> On the 24th September he called the Auditor again from Mumbai and instructed him that he should get an agreement from me on the above 3 demands.
>
> …
>
> It is my humble request to you, for the peace of my Parents & our peace to kindly step in and mediate to arrive at a final & fair solution to all issues. Settlement in parts will only prolong the pain for the entire family indefinitely, which I would beg to avoid.
>
> …

18 In November 2014, Mr Navin instructed UBS to liquidate the Bonds and the sale proceeds amounted to US$4,270,058.83. Mr Navin explained that he held onto the entire sale proceeds as he wanted to discuss a global settlement with Mr Ram arising from their various disputes.[17] Mr Ram claimed that Mr Navin held the sale proceeds on constructive trust for him, and that Mr Navin had breached his fiduciary duties in failing to transfer the sale proceeds to him.[18] At the trial below, the key dispute concerning the Bonds was whether the Bonds (and the sale proceeds) were wholly owned by Mr Ram or whether they were a joint investment by Mr Navin and Mr Ram in "about equal shares": GD at [21].

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17 JRA Vol 3(B) at pages 333 to 334 – Mr Navin's AEIC at para 76.

18 JRA Vol 2 at page 71 – Statement of Claim at para 91.

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The January 2015 SPA

19 On or about 21 November 2014, Mrs Ram left Mr Ram. The reasons for this were disputed, but Mrs Ram's account was that she left Mr Ram after quarrelling with him over his threats to close down Evergreen.[19] On 2 January 2015, Mrs Ram and Mr Navin entered into the January 2015 SPA, which was an agreement for the sale of Mrs Ram's 25% shareholding in Evergreen to Mr Navin for US$1.962m. The January 2015 SPA was signed in the presence of a solicitor who interpreted it to Mrs Ram in Hindi, although Mrs Ram claimed that this was done very briefly, and that she did not understand what she signed.[20] The terms of the January 2015 SPA provided that the transfer of the shares to Mr Navin was to take place upon Mrs Ram's demise. Pending that transfer, Mrs Ram was to grant, and she indeed granted, an irrevocable power of attorney ("POA") to Mr Navin to deal with all the rights and interests with respect to the shares including voting rights. In the event that Mrs Ram breached the terms of the January 2015 SPA, Mr Navin would be entitled to transfer the shares to himself: GD ([1] *supra*) at [27].

20 However, Mrs Ram signed a Revocation of Power of Attorney on 26 March 2015, purporting to revoke the POA. Consequently, by way of a letter dated 6 April 2015, Mr Navin informed Mrs Ram's then-solicitors that he had exercised his right pursuant to the January 2015 SPA to transfer the shares to himself: GD at [28] and [29].

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19 JRA Vol 3(E) at page 512 – Mrs Ram's AEIC at para 29.

20 JRA Vol 3(E) at page 514 – Mrs Ram's AEIC at para 36; JRA Vol 3(B) at pages 318 and 319 – Mr Navin's AEIC at para 48.

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21 As we elaborate below, Mrs Ram alleged that the January 2015 SPA was not binding on her. Alternatively, she alleged that the shares held in her name belonged beneficially to Mr Ram even though under the 2006 MOU, she was to have 25% of the shares in Evergreen.

The August 2015 Deed and the September 2015 Agreement

22 Braj and Mr Navin's father-in-law were asked to mediate the disputes between Mr Ram and Mr Navin. A meeting was scheduled for 11 August 2015. However, before the mediation took place, the Navins and the Rams signed the August 2015 Deed on 6 August 2015: GD at [31].

23 Clause 1 of the August 2015 Deed reads:[21]

> At [Mr Ram's] request, [Mr Navin] has agreed to pay [Mr Ram] the sum of United States Dollars Two Million (USD 2,000,000.00) forthwith upon the execution of this *Deed in full and final settlement of all or any Issues (including any claim(s) thereto) arising between them.* For the avoidance of any doubt, the consideration of USD 2,000,000.00 is the amount proposed by [Mr Ram] to [Mr Navin] as a full settlement sum for all the Issues (without the possibility of [Mr Ram] providing a breakdown thereof) and [Mr Navin] acknowledges and agrees that the said sum is fair and reasonable, especially considering that [Mr Ram] is his father and that his ultimate wish is to have family harmony and unity. [emphasis added]

24 The "Issues" referred to in cl 1 were defined in the recitals as follows:[22]

> *[D]isagreements* over matters concerning personal business styles, work aptitudes, monies and other personal matters/concerns [emphasis added]

25 At the time when Mr Ram signed the August 2015 Deed, he was aware

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21 JCB Vol 2 at page 55.

22 JCB Vol 2 at page 55.

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of the approximate amount for which the Bonds had been sold. Indeed, he averred in his Statement of Claim that:[23]

> On a date after 30 September 2014 which the Plaintiff [Mr Ram] cannot now recall, the 1st Defendant [Mr Navin] *orally told the Plaintiff that he had sold the Trust Bonds for approximately US$4,000,000.00.* [emphasis added]

26 Mr Ram's position throughout the hearing below was that he was entitled to *all* of the sale proceeds. Nevertheless, it is undisputed that he signed the August 2015 Deed which provided that he would be paid US$2m in full and final settlement of the issues between the parties, although the scope of the issues determined thereunder was and remains disputed.

27 The August 2015 Deed was followed by the September 2015 Agreement which was signed by the same parties as the August 2015 Deed (*ie*, the Rams and the Navins): GD ([1] *supra*) at [33]. Under the September 2015 Agreement:[24]

> (a) Mr Navin agreed to the Rams' request to transfer to Mrs Ram 7,300 shares in an Indian company called Janson Engineering Company Pte Ltd; and
>
> (b) the parties agreed that "from now on, [they would] each retain the assets held in [their] respective names and [would] be free to deal with the same in any manner".

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23 JCB Vol 2 at page 59 – Statement of Claim at para 89.

24 JRA Vol 5(B) at page 430.

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Decision below

The August 2015 Deed and the September 2015 Agreement

28 The Rams challenged the validity of the August 2015 Deed on various grounds but succeeded only on the ground of material non-disclosure by Mr Navin. The August 2015 Deed was therefore set aside by the Judge on that basis. The Judge also set aside the September 2015 Agreement as it merely confirmed that a full and final settlement had been reached under the August 2015 Deed, and it thus stood or fell with the August 2015 Deed: GD at [80]. As this forms the core issue in this judgment, we will examine the Judge's reasoning in greater detail below.

The 2006 MOU

29 As the Judge set aside the August 2015 Deed, the next issue before the Judge was whether the 2006 MOU was binding on the parties. In gist, the Judge found that the 2006 MOU was binding, and that the parties had the intention to create legal relations: GD at [83]. The presumption that parties have no intention to create legal relations in social and domestic arrangements was rebutted on the facts of the present case: GD at [85]–[90].

30 As a result, the Judge ordered that Mr Navin comply with his various obligations under the 2006 MOU, including the payment of the Annual Allowance. Another consequence of the Judge's upholding of the 2006 MOU was that the Rams had a contractual licence to stay at the Poole Road Property with full comforts for the rest of their lives. However, the Judge held that this was subject to an implied term that they did not misbehave in such a way as would make it unreasonable for them to insist on staying at the Poole Road Property ("the Implied Term"). Mr Ram was found to have breached the Implied

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Term, and the Judge held that Mr Navin was entitled to revoke Mr Ram's contractual licence to stay at the Poole Road Property. On the other hand, the Judge found that Mrs Ram had decided on her own not to continue residing at the Poole Road Property, and accordingly, that Mr Navin had not breached the contractual licence in respect of Mrs Ram either: GD at [117] and [118].

The Poole Road Property

31 Turning to the Rams' claims relating to the Poole Road Property, the Judge found that while it was Mr Ram who had paid for the Poole Road Property (GD ([1] *supra*) at [98]), there was no evidence of the alleged common understanding for the Rams to have an irrevocable right to live in the Poole Road Property: GD at [109]. Mr Ram's proprietary estoppel plea was therefore dismissed: GD at [119]. Finally, the Judge dismissed the claims for a declaration that Mr Navin held the Poole Road Property on remedial constructive trust for the Rams as the basis for this claim had not been established: GD at [120]. The Judge also dismissed the claim that the Navins conspired to remove or constructively evict the Rams from the Poole Road Property as the evidence in totality fell short of establishing any conspiracy: GD at [127].

32 With regard to the claims for conversion or detinue, the Judge found that the Rams had not produced any evidence that Mr Navin had converted or failed to return certain items which had been left at the Poole Road Property to them, and accordingly dismissed these claims: GD at [129].

The January 2015 SPA

33 In relation to the January 2015 SPA, the Judge dismissed Mrs Ram's attempts to rely on undue influence, economic duress, unconscionability, *non est factum* and misrepresentation to set it aside. Mrs Ram had also contended

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that there was a lack of consideration under the January 2015 SPA. The Judge held that the January 2015 SPA was a valid sale of Mrs Ram's shares to Mr Navin and that Mrs Ram had received valid consideration from Mr Navin amounting to US$1.962m: GD at [209]. The Judge also held that Mrs Ram's shares were not held on trust for Mr Ram: GD at [208].

Conclusions reached by the Judge

34 Accordingly, for the reasons above, the Judge reached the following conclusions (GD at [215]):

(a) The August 2015 Deed was set aside on the ground of material non-disclosure. The September 2015 Agreement was also set aside as it was to be read in conjunction with the August 2015 Deed. Consequently, Mr Ram was ordered to return the sum of US$2m under the August 2015 Deed to Mr Navin, subject to a set-off against amounts that Mr Navin had been ordered to pay Mr Ram;

(b) The 2006 MOU was found to be legally binding and thus:

(i) Mr Navin was ordered to pay the Rams the arrears of the Annual Allowance and to continue paying the Rams the Annual Allowance as stipulated in the 2006 MOU;

(ii) Mr Navin was ordered to pay Mrs Ram to the extent of US$1m upon receipt of notice in writing that she desired to acquire a residential property;

(iii) The Rams had a contractual licence to live in the Poole Road Property with full comforts for the rest of their lives subject to the Implied Term. However, Mr Ram had breached the Implied Term and was not entitled to live in the Poole Road

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Property. Mrs Ram had chosen not to stay at the Poole Road Property voluntarily.

(c) Mr Navin was found to hold the sum of US$3,442,378.29 being Mr Ram's share of the sale proceeds on trust for Mr Ram, and was ordered to pay this sum to Mr Ram.

35 For completeness, we note that Mr Ram also succeeded on his claim against the Navins for minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) in relation to Evergreen and the Navins were ordered to buy out his shares in Evergreen at fair value, with no discount: GD ([1] *supra*) at [215(d)]. There is no appeal in respect of this decision and hence Mr Ram's minority oppression claim is not in issue in the present appeal.

The cross-appeals

36 In this section, we briefly outline the appeals brought by the parties. We elaborate on the parties' respective cases in greater detail in the course of our decision below.

CA 202/2018

37 Civil Appeal No 202 of 2018 ("CA 202/2018") is the appeal by Mr Navin, Mrs Navin and Evergreen against the Judge's decision in respect of the August 2015 Deed and the 2006 MOU. We refer to their case as the Navins' case for convenience.[25]

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[25] Appellants' Case in CA 202/2018 at para 10.

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38 First, the Navins contended that the Judge erred in setting aside the August 2015 Deed on the ground of material non-disclosure. There were only two material facts that the Judge ought to have been concerned with: the quantum of the sale proceeds and Mr Ram's share of those proceeds.[26] As regards the former, Mr Ram had pleaded that Mr Navin had apprised him of the approximate amount of the sale proceeds.[27] For the latter, it was necessary for Mr Ram to show that Mr Navin knew that Mr Ram's share of the sale proceeds was greater than US$2m (*ie*, the sum received by Mr Ram under the August 2015 Deed).[28] However, the Navins' position both then and at the time of the trial was that Mr Ram was only entitled to 43.46% of the sale proceeds (*ie*, US$1,855,631.70).[29]

39 Second, the Navins contended that the Judge erred in finding that there was an intention to create legal relations in respect of the 2006 MOU. According to the Navins, the 2006 MOU was merely an arrangement, understanding or guideline which the parties would "try to follow". It was not intended to be a legally binding contract.[30] In addition, the Navins also claimed that there was no consideration moving from the Rams to Mr Navin in return for the benefits they were supposed to receive under the 2006 MOU.[31] This constituted a ground for setting aside the 2006 MOU.

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26 Appellants' Case in CA 202/2018 at para 53.

27 Appellants' Case in CA 202/2018 at para 54.

28 Appellants' Case in CA 202/2018 at para 56.

29 Appellants' Case in CA 202/2018 at para 79.

30 Appellants' Case in CA 202/2018 at para 17.

31 Appellants' Case in CA 202/2018 at para 45.

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CA 205/2018

40 Civil Appeal No 205 of 2018 ("CA 205/2018") is Mr Ram's appeal against the Judge's decision on the following issues.

41 In relation to the Poole Road Property, Mr Ram submitted that there was a common understanding between the Rams and Mr Navin that the former would have an irrevocable right to reside rent-free at the Poole Road Property for life. This gave rise to a proprietary estoppel claim as well as a finding that Mr Navin held the Poole Road Property on a remedial constructive trust for them.[32] While the Judge rightly found that the Rams had a right to live in the Poole Road Property pursuant to the contractual licence in the 2006 MOU, he erred in finding that this licence was subject to the Implied Term. In any event, Mr Ram did not breach the Implied Term and Mr Navin was not entitled to revoke the licence *vis-à-vis* Mr Ram.[33] Mr Ram further contended that it was instead Mr Navin who had breached the common understanding as well as the contractual licence, giving rise to a claim in damages.[34] His claim against the Navins based on a conspiracy to remove or constructively evict the Rams from the Poole Road Property should also have been allowed.[35]

42 In addition, Mr Ram submitted that the Judge erred in dismissing his claim that Mrs Ram's shares in Evergreen were held on trust for him.[36] This would have meant that the sale of her shares to Mr Navin under the January

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32 Appellant's Case in CA 205/2018 at paras 9(a) and 9(b).

33 Appellant's Case in CA 205/2018 at paras 9(c) and 9(d).

34 Appellant's Case in CA 205/2018 at para 9(e).

35 Appellant's Case in CA 205/2018 at para 9(f).

36 Appellant's Case in CA 205/2018 at para 70.

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2015 SPA was not a valid one. In any event, Mr Navin had breached the articles of association of Evergreen. Specifically, Article 31, which provides for a right of first refusal to existing shareholders (including Mr Ram), was not complied with and the January 2015 SPA ought to have been set aside.[37]

CA 203/2018

43 Civil Appeal No 203 of 2018 ("CA 203/2018") is Mrs Ram's appeal against the Judge's decision. As her case was essentially aligned with that of Mr Ram, it is not necessary to outline it separately save for the following aspects.

44 Mrs Ram contended that the Judge erred in respect of his findings in relation to the Poole Road Property. First, Mrs Ram did not waive her right to live in the Poole Road Property.[38] There was no unequivocal representation that she was giving up that right.[39] It could not be said that it was Mrs Ram who had *chosen* not to continue staying at the Poole Road Property when the reality was that she had no other alternative.[40] Second, Mrs Ram claimed that Mr Navin's cumulative acts of ill-treatment were a breach of the contractual licence in the 2006 MOU.[41] The conspiracy to evict the Rams also constituted a breach of that licence.[42]

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37 JCB Vol 2 at page 174; Appellant's Case in CA 205/2018 at para 75.

38 Appellant's Case in CA 203/2018 at para 49.

39 Appellant's Case in CA 203/2018 at para 48.

40 Appellant's Case in CA 203/2018 at para 51.

41 Appellant's Case in CA 203/2018 at para 45.

42 Appellant's Case in CA 203/2018 at para 50.

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45 Mrs Ram also claimed that she was tricked by Mr Navin into signing the January 2015 SPA. Consequently, the January 2015 SPA ought to be set aside on the grounds of a lack of consideration, undue influence, duress, unconscionability, *non est factum* and misrepresentation.[43] We note that at the hearing before us, Mrs Ram's counsel specifically emphasised the allegation that she was unduly influenced by Mr Navin into signing the January 2015 SPA, which resulted in her selling her shares at an undervalue.

46 Finally, Mrs Ram submitted that her claim against Mr Navin for conversion and/or detinue should be allowed.[44]

Issues to be determined

47 The issues which arise in these appeals are:

(a) whether the Judge was correct in setting aside the August 2015 Deed on the basis of material non-disclosure;

(b) if the August 2015 Deed is upheld,

(i) what issues were settled thereunder, and what previous agreements were superseded;

(ii) whether the Judge erred in relation to the remaining issues not settled by the August 2015 Deed; and

(c) whether the 2006 MOU was legally binding on the parties thereto.

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43 Appellant's Case in CA 203/2018 at para 55.

44 Appellant's Case in CA 203/2018 at para 92.

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The August 2015 Deed

48 In the present case, all the parties accepted that the August 2015 Deed was a family arrangement. In *Kuek Siang Wei and another v Kuek Siew Chew* [2015] 5 SLR 357 ("*Kuek Siang Wei*"),[45] we observed that there does not appear to be a precise definition of the term "family arrangement". Nonetheless, stated broadly, it refers to an agreement between members of the same family which is intended to be generally and reasonably for the benefit of the family: at [45]. This description of a family arrangement is consistent with that in *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1997] 2 SLR(R) 296[46] ("*Rajabali*") at [204], which the Judge cited at [76] of the GD ([1] *supra*).

49 The Judge proceeded on the premise that a duty of disclosure would inevitably arise in *any* family arrangement. Relying on *Halsbury's Laws of England* vol 18 (Butterworths, 4th Ed, 1977) ("*Halsbury*") at para 315, the Judge stated as follows at [76]:

> … In *any family arrangement* there must be honest disclosure by each party to the other of all such material facts known to him, relative to the rights and title of either, as are calculated to influence the other's judgment in the adoption of the arrangement, and any advantage taken by either of the parties of the other's known ignorance of such facts will render the agreement liable to be set aside[.] [emphasis added]

50 On the facts, the Judge held that Mr Navin had breached his duty of disclosure. Mr Navin had failed to disclose Mr Ram's share of the sale proceeds, which amounted to US$3,442,378.29. According to the Judge, Mr Ram's share of the sale proceeds was a material fact since the August 2015 Deed purported

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45 Joint Supplementary Bundle of Authorities Vol 2 at Tab 16.

46 Joint Appellants' Bundle of Authorities Vol 3 at Tab 23.

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to settle all the existing disputes for a sum of US$2m. Consequently, the August 2015 Deed was set aside on the ground of material non-disclosure: GD at [78]–[79].

51 In our judgment, there are two distinct questions which arise in these appeals:

(a) First, does a duty of disclosure arise in all family arrangements?

(b) Second, if there was a duty of disclosure between the parties, did Mr Navin breach that duty?

Whether a duty of disclosure arises in all family arrangements

52 The duty of disclosure in family arrangements is an exception to the general rule in contract law that the non-disclosure of a material fact does not give the counterparty the right to avoid the contract: *Bell and another v Lever Brothers Limited and others* [1932] AC 161 at 227. In considering the *scope* of this exception, it is crucial to understand the underlying rationale for imposing a duty of disclosure on parties to a family arrangement. In *Kuek Siang Wei* ([48] *supra*),[47] we stated as follows at [63]:

> Both the tendency to uphold family arrangements if they have been entered into fairly, as well as the readiness to invalidate them in the stated circumstances stem from the fact that family arrangements are agreements between members of the same family, and *very often, the parties do not deal with each other on a commercial basis or at arm's length.* As Prakash J stated in [*Pek Nam Kee v Peh Lam Kong* [1994] 2 SLR(R) 750], *such arrangements are often "founded on sentiment rather than commerce"* (at [108]). The parties to a family arrangement *may repose a certain degree of trust* in the counterparties to the agreement. Additionally, since family arrangements are

47 Joint Supplementary Bundle of Authorities Vol 2 at Tab 16.

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> ostensibly for the greater good of the family, *the parties may be more willing not to insist on their strict legal rights so that the family benefits as a whole*. Given these circumstances, there is a duty on all the parties to a family arrangement to make full disclosure, before the arrangement is entered into, of all material facts known to them so that no party's ignorance of the true state of affairs is taken advantage of. [emphasis added]

53 In essence, the law presumes that parties to a family arrangement repose a certain degree of trust and confidence in one another, such that there is an obligation to make full and frank disclosure of all material facts. In such domestic arrangements the contracting parties may be led to believe, simply by virtue of their relationship, that the counterparty can be trusted not to take advantage of their ignorance, and to similarly negotiate on the basis of sentiment and the greater good of the family.

54 The question then arises whether a duty of disclosure ought to be imposed on parties to a family arrangement even where there is a lack of trust and confidence between them. We note that the proposition expressed in *Halsbury* which the Judge relied on, was expressed with a qualification in William Williamson Kerr, *A Treatise on the Law of Fraud and Mistake as administered in Courts of Equity* (William Maxwell & Son, 1st ed, 1868) ("*Kerr*"), where it was stated at pp 79–80:

> A party to a compromise who has knowledge of a fact, must not take upon himself to decide that the suppressed fact is immaterial, if it could by any possibility have had any influence on the decision of the other party … If the compromise is a transaction in the nature of a family arrangement, or if, under the circumstances of the case, it was the duty of the one party to see that the nature of the transaction was fully explained to the other, these principles apply with peculiar force … *But if the parties to a family arrangement are not on good terms, and are really at arms' length, the ordinary rules as to disclosure in family arrangements have no place* … [emphasis added]

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55 As authority for the qualification above, the author cited the decision of the House of Lords in *Irvine v Kirkpatrick* (1850) 7 Bell 186. *Irvine* concerned a dispute between siblings. One brother, Charles, had died and was survived by two brothers, Walter and Christopher Irvine, and four sisters. Walter purchased his sisters' interests in Charles's estate through two deeds. The House of Lords acknowledged at 208 that these consisted of a family arrangement between Walter and his four sisters. However, it was stated that there was no issue of non-disclosure given that the parties were negotiating "at arm's length" and were "not [on] good terms with one another". In our view, *Irvine* was an example of a case where there was an absence of trust and confidence between the counterparties. The relevant passage at 209 reads:

> The object of this arrangement was, on the part of Walter, to obtain from his sisters the surrender of all right to their share of the personalty of Charles their deceased brother; and the question, and the only question raised by the action was, whether, in order to obtain this benefit for himself, he fraudulently misrepresented or fraudulently concealed matters to induce his sisters to enter into that arrangement, and whether such misrepresentation or concealment, or both, operating upon them, induced them to execute the deeds in question? *And here I must stop to remove out of the cause that which has not been dwelt upon except as a topic in argument occasionally, but I which I consider in the circumstances of the case to have little or no place, namely, that this is in the nature of a family arrangement,* ***for I conceive that a family arrangement between parties who were treating really at arm's length, who were not upon good terms with each other (at least two of the sisters, as they state, were not upon good terms with their brother Walter), has little or no place, and above all where fraud is alleged. That matter, therefore, I at once throw out of the cause.*** [emphasis added in italics and bold italics]

56 For completeness, we note that in S E Williams, *Kerr on Fraud and Mistake* (Sweet & Maxwell, 6th Ed, 1929), a later edition of *Kerr*, the italicised sentence at [54] was removed. It is unclear to us why this was done. In our view,

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nothing turns on this and we are unaware of any decision that has overruled the principle in *Irvine*.

57 The thrust of the foregoing analysis appears to be that where the underlying rationale for the duty of disclosure in family arrangements is not engaged, the duty may not apply. While we did not have the benefit of full arguments from counsel on this point, it would seem, *prima facie*, that the duty is not engaged where there is no relationship of trust and confidence between the counterparties to the contract. We should, however, stress that the mere fact of family disharmony and disagreement over certain issues does not necessarily mean that a relationship of trust and confidence is absent. While this was not necessary to determine in the present case, we make a number of observations.

58 In the present case, the Judge noted that the relationship between the Rams and Mr Navin at the time the August 2015 Deed was signed was "anything but one of trust and confidence". He explained as follows at [65] ([1] *supra*):

> … The MOU, signed in 2006, did not end the disputes between Ram and Navin. Instead, by the time the [August 2015 Deed] was signed, there was *palpable distrust* between Ram and Navin as a result of, among other things, the disputes over the non-payment of the Annual Allowance after 2013, the Bonds and the [January 2015 SPA]. As for Mrs Ram, there *could not have been any relationship of trust and confidence between her and Navin either*. By then, there were the disputes over the Annual Allowance and the [January 2015 SPA] (in connection with which she had revoked the [POA]). Braj and Navin's father-in-law had also been roped in to mediate the disputes. Even the [August 2015 Deed] itself was stated to be a settlement of disagreements which "have created certain disharmony within the family or amongst the individual members". [emphasis added]

59 We see no reason to disturb this finding of fact. To be clear, this finding was *not* inconsistent with the Judge's characterisation of the August 2015 Deed as a family arrangement. Put in another way, while our preliminary view is that

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a level of trust and confidence is necessary for the duty of disclosure to be engaged, this trust and confidence is not necessary to answer the preceding question, namely, whether a particular agreement is a family arrangement. In this regard, we note that the preamble to the August 2015 Deed expressly states that the parties entered into the August 2015 Deed for the purpose of resolving the issues which had arisen between them, with a view to living together harmoniously:

> The Parties hereto, on account of resolving their past and current Issues (including any claim(s) arising thereto) once and for all, and with a view of living together harmoniously and regulating their future affairs and conduct with respect to one another (and also with respect to the affairs/matters of [Evergreen]), have agreed to enter into this Deed on the terms and conditions hereinafter appearing.

60 The Judge quite rightly determined that the August 2015 Deed fell within the definition of a family arrangement outlined in *Kuek Siang Wei* ([48] *supra*) and *Rajabali* ([48] *supra*). However, it may be important to distinguish between family arrangements which were negotiated on the *basis* of existing trust and those which are negotiated with a view to *regaining* or *achieving* that trust. It would seem that the August 2015 Deed was of the latter but not the former sort.

61 As we have indicated above, we did not have the benefit of full submissions either on whether the duty of disclosure ought to apply to all family arrangements, and more specifically on whether the duty of disclosure applied in this case. The Judge did not consider this issue. In fairness to the Judge, it appears that none of the parties had alerted him to the possibility that the proposition of disclosure in a family arrangement may be qualified where there is no longer any trust and confidence between the parties. Indeed, before us, the Navins initially proceeded on the basis that there was a duty of disclosure by

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Mr Navin as the August 2015 Deed was a family arrangement. It was only when we questioned this premise at the hearing that their counsel seemed to think that perhaps it was not correct. Indeed, Mr Ram's counsel candidly accepted that if there was no trust and confidence between the parties, the duty of disclosure on Mr Navin would not seem to apply. On the facts before us, it is not necessary to reach a conclusion as to whether there was a duty of disclosure on Mr Navin because the answer to the next question is in his favour, *ie*, *even if* there was a duty of disclosure on Mr Navin, he did not breach this duty. We therefore do not come to a firm view on this question and leave this issue for a future occasion where parties may make their submissions with the benefit of the observations we have made.

Whether Mr Navin breached his duty of disclosure

62 We now explain why we are satisfied that even if there was a duty on Mr Navin to disclose material facts, this duty would not have been breached on the evidence.

63 At the outset, we note that it was not part of Mr Ram's pleaded case that Mr Navin had to disclose the *extent* of Mr Ram's entitlement to the sale proceeds. Mr Ram's pleaded case was specifically that Mr Navin had to disclose "the value of the Trust Bonds and any profits made from the use of the Trust Bonds and/or proceeds from the sale of the same".[48] This was echoed in Mr Ram's closing submissions before the Judge, where his counsel submitted that the material facts were the value of the Bonds, details of profits and

[48] JRA Vol 2 at page 73 – Statement of Claim at para 97(a).

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computation of profits.[49] Thus, it was not Mr Ram's case that Mr Navin was obliged to disclose to him the extent of his entitlement to or share of the sale proceeds. The Judge's conclusion was outside the scope of Mr Ram's case.

64 In our judgment, it was clear why Mr Ram did not plead that Mr Navin had to disclose the extent of his entitlement to the sale proceeds. This was because Mr Ram's position, even *at the time the August 2015 Deed was entered into*, was that he was entitled to 100% of the sale proceeds. Accordingly, on Mr Ram's case, what Mr Navin claimed to be Mr Ram's entitlement to the sale proceeds was never a *fact* that had to be disclosed to begin with, let alone a *material* fact. Indeed, while the Judge found that Mr Ram was entitled to 89.55% of the sale proceeds, Mr Ram does not accept that "fact" and continued to maintain before us that he was entitled to 100% of the sale proceeds. *Even if* it was open to Mr Ram to argue that Mr Navin was expected to disclose a "fact" which was in direct contradiction to his primary case, we note that Mr Ram did not plead in the alternative that *if* his entitlement was less than 100%, Mr Navin was bound to tell him of the extent of his entitlement.

65 In the circumstances, it was unnecessary for the Judge to establish what Mr Ram's true entitlement was (a conclusion which *both* Mr Navin and Mr Ram do not accept and continue to dispute). Indeed, the *entire purpose* of the August 2015 Deed was to settle all the disagreements which had arisen between the parties, which, notably, included Mr Navin's omission to pay Mr Ram the sale proceeds. Before entering into the August 2015 Deed, both Mr Ram and Mr Navin had vastly different positions as to what each other's entitlement to

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[49] JRA Vol 3(H) at page 28 – NEs, 7 September 2018, page 23, line 13 to page 24, line 1.

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the sale proceeds were. In our view, it is possible that Mr Ram knew his entitlement to the sale proceeds was disputed. Mr Navin gave evidence that before the August 2015 Deed was entered into, he had informed Mr Ram of their respective entitlements to the sale proceeds based on their contributions. On that basis, Mr Navin had said that he was prepared to return $1,474,172.31.[50] This allegation was disputed by Mr Ram whose position was that Mr Navin did not dispute his entitlement to all the sale proceeds. In any event, it is clear that the non-payment of the sale proceeds by Mr Navin remained an issue before the August 2015 Deed was signed.

66 For completeness, we note that Mr Ram had contended that Mr Navin also owed a duty of disclosure towards him *qua* trustee. Nonetheless, it is significant that Mr Ram's pleaded case on the material facts which should have been disclosed was the same as that set out at [63] above. That is to say, whether or not the duty of disclosure arises from the August 2015 Deed being a family arrangement *or* Mr Navin's position as a trustee, the material facts that had to be disclosed on Mr Ram's case remained the same.

67 It is clear that Mr Navin did not breach his duty of disclosure *on Mr Ram's pleaded cas*e. Mr Navin disclosed the approximate value of the Bonds to Mr Ram – even on Mr Ram's own evidence, Mr Navin had informed him that the sale proceeds of the Bonds were "approximately [S]$4m". Although Mr Ram's counsel mentioned to us that the actual amount was more than S$4m, he did not quarrel with the point that the actual amount was *about* S$4m. Mr Ram was thus not misled or unaware of the *overall* quantum of the sale proceeds.

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50 JCB Vol 2 at page 81 – NEs, 17 August 2018, page 75, lines 6 to 19.

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68 Next, turning to Mr Ram's pleading which alleged that Mr Navin was also obliged to disclose the *profits* from the sale of the bonds, this was not mentioned in the appeal before us. It would have been a non-starter in any event. Mr Ram had been informed of the approximate amount of the sale proceeds and he had claimed 100% regardless of the profits made. That is to say, the actual profits made on the Bonds had no effect on Mr Ram's claim for the sale proceeds. That claim was compromised by the August 2015 Deed.

69 In the circumstances, the scope of any duty of disclosure on Mr Navin did not include the extent of Mr Ram's actual entitlement to the sale proceeds. There was thus no breach of any such duty of disclosure in the present case.

70 Therefore, the Judge erred in setting aside the August 2015 Deed on the basis of material non-disclosure. The Rams also sought to set aside the August 2015 Deed on the basis of uncertainty, misrepresentation, duress, undue influence, unconscionability and material non-disclosure. Mrs Ram added to this list a plea of *non est factum*. Notwithstanding the fact that the Judge held that the August 2015 Deed ought to be set aside on the basis of material non-disclosure, he considered at length these other submissions. Nothing the parties have raised on appeal cast any doubt on the Judge's findings in that regard, and accordingly we hold that the August 2015 Deed was valid and ought to be upheld.

Consequences of upholding the August 2015 Deed

71 Having decided that the August 2015 Deed is valid, we turn to the question as to what issues were settled under the August 2015 Deed and what previous agreements were superseded. This has a bearing on the extent to which the 2006 MOU remains relevant, if at all. As the August 2015 Deed was a later

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document than the 2006 MOU, it would supersede the 2006 MOU unless there were matters in the 2006 MOU which were not covered by the August 2015 Deed.

72 To the extent that the August 2015 Deed superseded the 2006 MOU, it was immaterial whether the 2006 MOU was legally binding. However, as we elaborate below, there were aspects of the 2006 MOU which were not covered by the August 2015 Deed. To that extent, the question of the binding effect of the 2006 MOU was still relevant.

73 The Judge gave detailed reasons why he considered the 2006 MOU to be binding on the parties. On appeal, the Navins reiterated their arguments to the contrary. Specifically, it was contended that the 2006 MOU was not legally binding because (a) it was not supported by consideration; and (b) the parties did not intend to create legal relations.

74 Having considered the evidence and arguments, we are of the view that the Judge's conclusion was not contrary to the weight of the evidence. As regards the contention that the 2006 MOU was not supported by consideration, we stress that the 2006 MOU formalised Mr Navin's role in Evergreen and gave him rights as against the Rams to expect managerial control of the company.[51] It also stated that Mr Ram was to refrain from undertaking trading activities that would affect Evergreen's interest in any way. As a shareholder of Evergreen, this would have benefited Mr Navin. We therefore see no reason to set aside the 2006 MOU on the basis of an absence of consideration.

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51 1st Respondent's Case in CA 202/2018 at para 12.

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75 On the intention to create legal relations, the weight of the evidence shows that the parties had not intended for the first recourse upon breach to be to the law, and that they would instead have attempted mediation as the first port of call. However, this does not mean that the agreement itself was never intended to be legally binding. Indeed, it would have been difficult to believe that Mr Ram and Mr Navin took the trouble to enter into a written agreement in the light of their disagreement but did not intend it to be legally binding. In any event, the Judge's finding that the 2006 MOU was legally binding is not against the weight of the evidence.

76 For the foregoing reasons, we uphold the Judge's decision that the 2006 MOU was binding on the parties thereto.

77 On appeal, the Navins contended that the August 2015 Deed had the effect of revoking and superseding the 2006 MOU in its *entirety*, such that all the parties' rights and obligations under the 2006 MOU ceased to exist.[52] Read literally, cl 8 of the August 2015 Deed would appear to suggest that this was the case:[53]

> The parties hereto agree and confirm that this Deed revokes and supersedes all previous agreements, arrangements and/or understandings made between them (including those made individually between certain parties to this Deed, without the involvement of all four parties herein), and hereby agree that the terms of this Deed shall be final and be binding and effective against the parties as if each party entered into this Deed individually and separately with each of the other parties to this Deed.

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52 Appellant's Case in CA 202/2018 at paras 87 and 88.

53 JCB Vol 2 at page 57.

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78 However, cl 8 must be read in context of the issues sought to be determined by the August 2015 Deed. The August 2015 Deed was a "full and final settlement" of the "Issues", which were defined as disagreements which had created disharmony within the family or amongst the individual members. Therefore, reading cl 8 in context, only those parts of the parties' previous agreements, including the 2006 MOU, which pertained to the issues that had arisen by the time the August 2015 Deed was entered into, have been superseded.

79 Our interpretation of the August 2015 Deed is consistent with the Judge's observations at [82] of the GD ([1] *supra*):

> I should add that even if the [August 2015 Deed] were not set aside, it *settled only disputes which had arisen at the time that it was signed*. This was because the [August 2015 Deed] settled only the "Issues" as defined in that document, and as defined, the term "Issues" was limited to disagreements which had created disharmony within the family or amongst the individual members. At the time the [August 2015 Deed] was signed, there were no disputes over (a) Ram's and Mrs Ram's right under the [2006 MOU] to stay at the Poole Road property, and (b) Mrs Ram's claim under the [2006 MOU] to payment of US$1m from Navin for the acquisition of a residential property. The [August 2015 Deed] would not have caused Ram and Mrs Ram to lose these rights in any event. [emphasis added]

80 We have already referred to the 5 October 2014 E-mail above at [17]. In our view, this email sets out an instructive list of issues that were disputed between Mr Navin and Mr Ram at that time. Mr Ram essentially agreed in his oral testimony that these were issues over which he had "complaints" at the time the August 2015 Deed was entered into:[54]

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54 JRA Vol 3(F) at pages 293 and 294 – NEs, 24 July 2018, page 136, line 22 to page 137, line 21.

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Q: At the time, I'm going to the backdrop of – before which the deed was signed. At that time you had complaints about your bond monies, yes? You also had complaints about the Poole Road property, yes? And the company shares. Correct? And you had escalated all these complaints to your family members, am I right?

I want to show you an email -- no, you must say it out. You cannot nod.

A: Sorry?

Q: Am I correct? You had escalated those complaints --

A: Yeah.

Q: -- *bond money, Poole Road property, company shares* --

A: Yeah.

Q: -- to your family members. Yes?

A: Yes.

Q: You also told them about the properties in India**,** *annual allowance.* Correct?

A: Yes.

Q: *All these things were already on the table for a settlement that was going to take place after the shares had been sold.* Correct?

A: After the shares had been sold --

Q: By your wife to Mr Navin.

A: Yes.

[emphasis added]

81 We examine each of these issues, and the relevant claims arising therefrom, in the sections that follow.

The Bonds

82 On appeal, there was no dispute between the parties that the August 2015 Deed settled the dispute relating to the Bonds. As we have concluded that the August 2015 Deed is valid, we overturn the Judge's finding that Mr Navin holds

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the sum of US$3,442,378.29 on trust for Mr Ram as well as the order that this be repaid.

Mrs Ram's shares in Evergreen and the January 2015 SPA

83 It appears that the Rams' entitlement to Mrs Ram's shares, which had been transferred to Mr Navin pursuant to the January 2015 SPA, was a live issue at the time the August 2015 Deed was entered into. Prior to the execution of the August 2015 Deed, Mrs Ram had on 26 March 2015 revoked her POA in respect of her shares given under the January 2015 SPA, which in turn caused Mr Navin to register her shares in his name. Indeed, in his affidavit of evidence-in-chief ("AEIC"), Mr Ram explicitly stated that he had asked Mr Navin for these shares to be returned *before* the August 2015 Deed was entered into.[55] It was therefore surprising that, at the hearing of the appeal, Mr Ram's counsel initially suggested that the only dispute at the time the August 2015 Deed was signed was the Bonds. However, he eventually accepted that Mrs Ram's shares was also an issue before the August 2015 Deed was signed. This concession negated a number of other arguments the Rams made on appeal. For example, Mr Ram contended that the transfer of Mrs Ram's shares to Mr Navin pursuant to the SPA was in breach of Article 31 of Evergreen's articles of association: see [42] above.[56] However, in the circumstances, it was immaterial if in law or in fact Mr Ram did not receive appropriate notice under Evergreen's articles of association about the intended transfer of Mrs Ram's shares to Mr Navin. By the time the August 2015 Deed was signed, Mr Ram was already claiming the shares previously held by Mrs Ram and this was one of the issues settled by the August 2015 Deed.

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55 JRA Vol 3(A) at page 38 – Mr Ram's AEIC at para 103.

56 Appellant's Case in CA 205/2018 at paras 74 and 75.

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84 The same could be said of the suggestion by Mrs Ram's counsel at the hearing before us that she was unduly influenced by Mr Navin because she sold her shares to Mr Navin at an undervalue under the January 2015 SPA: see [45] above. This was irrelevant. Even if the shares were sold at an undervalue due to undue influence, she had already sought to resile from the January 2015 SPA before the August 2015 Deed was signed. Thus, even if she could have set aside the January 2015 SPA, whether on the ground of undue influence or otherwise, this would in any event be immaterial since we have concluded that the August 2015 Deed is valid. To the extent that Mrs Ram was claiming the return of her shares from Mr Navin, whether in her own right or on behalf of Mr Ram, her claim had arisen before the August 2015 Deed was signed. The rightful ownership of her shares was one of the issues settled by that deed, regardless of whether she was claiming the shares on her own behalf or on behalf of Mr Ram.

85 Furthermore, we note that under the September 2015 Agreement, which should be read alongside the August 2015 Deed, the parties agreed that "from now on, [they would] each retain the assets held in [their] respective names and [would] be free to deal with the same in any manner": see [27] above.[57] This agreement must have included the shares which were transferred from Mrs Ram to Mr Navin pursuant to the January 2015 SPA.

Annual Allowance

86 Mr Navin contended that the Annual Allowance was a live issue that was settled under the August 2015 Deed. On appeal, the Rams took the position that the Annual Allowance was not a live issue.

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57 JRA Vol 5(B) at page 430.

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87 Mrs Ram's counsel, Mr Sarbjit Singh Chopra, contended that the Annual Allowance was not a live issue because Mr Navin had merely stopped paying it. According to him, Mr Navin did not explicitly deny his obligation to pay the Annual Allowance. We do not agree with this distinction as it is clear that the Annual Allowance was a source of disagreement which had created disharmony within the family. This is evidenced by Mr Navin's 5 October 2014 E-mail,[58] Mr Ram's AEIC,[59] and Mr Ram's testimony on the stand that the Annual Allowance was "on the table for a settlement" at the time the August 2015 Deed was signed: [80] above. The Annual Allowance was thus an issue settled under the August 2015 Deed.

88 Furthermore, as we highlighted to Mr Singh, his contention was contrary to the position taken by Mrs Ram's counsel, Ms Ho May Kim, before the Judge. Ms Ho had accepted that the Annual Allowance was a live issue at the material time:[60]

> MS HO: Yes, your Honour, because they were not live issues. And she also has her claim for annual allowance, but of course my learned friend says that that was a live issue.
>
> COURT: Which you agree/don't agree? It was an issue then, right?
>
> MS HO: Your Honour, we say that the whole [August 2015 Deed] had issues with it in terms of material non-disclosure, misrep --
>
> COURT: Yes, but those are technically --
>
> MS HO: Yes, the actual enforceability of the [August 2015 Deed], yes, indeed. *But in terms of the scope, yes,*

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58 JRA Vol 5(B) at page 143.

59 JRA Vol 3(A) at page 38 – Mr Ram's AEIC at para 103.

60 JRA Vol 3(H) at page 66 – NEs, 7 September 2018, page 50, line 16 to page 51, line 4.

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> *your Honour, we understand that the allowance was one of the issues that Mr Ram raised with the 1st defendant, because it was not being paid.*
>
> [emphasis added]

89 This was consistent with Mrs Ram's pleading to the effect that she had asked Mr Navin for the Annual Allowance several times around October 2014, and that around the time the January 2015 SPA was signed on 2 January 2015, Mr Navin represented to her that he would resume payment of the Annual Allowance to her if she signed the January 2015 SPA but Mr Navin failed to do so.[61]

90 For the same reasons, we reject Mr Ram's contention that the August 2015 Deed did not cover the Annual Allowance. Moreover, Mr Ram's own case that he had signed the August 2015 Deed on the understanding that Mr Navin would thereafter pay him the Annual Allowance shows that it must have been a live issue at the material time.[62]

The Poole Road Property

91 The ownership of the Poole Road Property, but not the Rams' right to live there, was a live issue at the time the August 2015 Deed was entered into. It was not disputed that there had been requests by Mr Ram for Mr Navin to *transfer* the Poole Road Property to him prior to the August 2015 Deed. Mr Navin's 5 October 2014 E-mail indicated that Mr Ram had demanded that, *inter alia*, Mr Navin transfer the Poole Road Property to him (see [17] above).[63] This is distinguishable from the dispute over whether the Rams had a right to

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61 JRA Vol 2 at pages 257, 263 and 265.

62 JRA Vol 3(A) at pages 38 and 39 – Mr Ram's AEIC at paras 103 and 106.

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live in the Poole Road Property, which was the focus of the Suit: GD ([1] *supra*) at [120]. Mr Navin's counsel rightly accepted that there was no dispute as to the Rams' right to stay in the Poole Road Property at the time the parties entered into the August 2015 Deed.[64] Therefore, the decision to uphold the August 2015 Deed does not obviate the need to consider the parties' submissions on the Rams' right to live in the Poole Road Property.

(1) Proprietary estoppel and remedial constructive trust

92 As we have already alluded to above, Mr Ram made three main claims in relation to his alleged right to live in the Poole Road Property. These were proprietary estoppel, remedial constructive trust and a contractual licence under the 2006 MOU. Mrs Ram relied on similar arguments with the exception of proprietary estoppel. They further alleged that the Navins had engaged in a conspiracy by lawful or unlawful means to remove or constructively evict them from the Poole Road Property (see [41] above).

93 The claims of remedial constructive trust and proprietary estoppel were premised[65] on the Rams' assertion that there was a common understanding between the two of them and Mr Navin that the Rams would have a life interest in the Poole Road Property. This life interest apparently meant that they would have an irrevocable right to reside rent-free at the Poole Road Property for life: GD at [105]. The Judge observed that neither Mr Ram nor Mrs Ram adduced in their respective AEICs any evidence of this common understanding, or that it had been discussed. Any *expectation* on their part that Mr Navin would not deny them the right to stay did not constitute a common understanding. Further, the

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65 Mr Ram's Skeletal Arguments at paras 5 and 11.

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relief sought (a declaration that the Rams are entitled to a right of occupation of the Poole Road Property for the rest of their lives with full comforts) appeared to relate only to the alleged contractual licence arising out of the 2006 MOU as "full comforts" was not part of the common understanding as pleaded: GD at [105], [107], [109] and [110].

94 We see no reason to overturn the Judge's finding of fact on the common understanding. Furthermore, the parties subsequently provided in the 2006 MOU for the right of the Rams to stay in the Poole Road Property, and any prior common understanding they may have had would have been superseded by this agreement. Counsel for Mr Ram also accepted at the hearing of the appeal that even if there had been a common understanding, it would have morphed into the 2006 MOU which the Judge found to be a contractual licence for the Rams to stay at the Poole Road Property. We are thus satisfied on the evidence that the Judge's finding was not against the weight of the evidence.

95 Mr Ram relied heavily on the documents submitted to the LDU (see [8] above). However, these documents supported an intention to include a legal interest in the Poole Road Property for the Rams and were equivocal about a right to stay *if* the Rams were not allowed to have any legal interest in the Poole Road Property. In any event, as mentioned, any common understanding for the Rams to stay at the Poole Road Property was replaced by the 2006 MOU.

96 Given that the Rams' arguments on proprietary estoppel and remedial constructive trust were *premised* on the common understanding, it would follow that such arguments must similarly fail.

97 For completeness, we note that, in a sense, the Rams' arguments to the effect that Mr Navin held the Poole Road Property on a remedial constructive

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trust for the Rams appeared to go beyond a mere claim that they had the right to live in that property. One of the remedies sought on the basis of this claim was an order that the Poole Road Property be sold and the net proceeds or such amount as the court deemed fit be apportioned and distributed to the Rams. The Rams' claim for a remedial constructive trust therefore appeared to be *in some sense* one for the *ownership* of the Poole Road Property. In any event, Mr Ram had said at the hearing below that the only claim he was making with respect to the Poole Road property was a right to stay and nothing more: GD ([1] *supra*) at [120].

(2) Contractual licence

98 The next question is whether the Judge was correct to find that the contractual licence under the 2006 MOU was subject to the Implied Term that the Rams did not misbehave in such a way as would make it unreasonable for them to insist on staying at the Poole Road Property: GD at [115]. Again, we see no basis for appellate intervention. It would seem impracticable and unrealistic to expect Mr Navin to continue living with his parents in the Poole Road Property despite behaviour that would have made it unreasonable for all of them to do so.

99 The Judge found that Mr Ram had breached the Implied Term by acting in an unreasonable manner. Mr Ram submitted that the Judge was incorrect to have relied on selective video recordings of Mr Ram's conduct in the Poole Road Property. However, it is apparent from the record that the Judge was aware that the recordings were selective.[66] He had rightly considered this fact but

[66] JRA Vol 3(F) at page 128 – NEs, 19 July 2018, page 135, line 17 to page 136, line 9.

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nevertheless concluded that Mr Ram had breached the Implied Term. We see no reason to overturn the Judge's finding.

100 As for Mrs Ram, the Judge found that she had not breached the Implied Term. However, Mr Navin had not prohibited her from returning to the Poole Road Property. Instead, Mrs Ram had voluntarily decided not to do so: GD at [118]. On appeal, Mrs Ram's counsel emphatically argued that there was nothing voluntary when Mrs Ram was brought to a police station with Mr Ram after Mr Navin called the police (see [11] above) and when Mrs Ram was placed in a cell for the night. However, that was not the point. The Judge concluded that she chose to stay with Mr Ram thereafter. We see no reason to disagree with this finding. Indeed, her evidence at trial was that she did not try to return:

Mr Tan:	When you left that night and you were brought by the police to the police station, you were not allowed to return to the house, right?
A:	They're saying they called the police and sent us to the jail, *we didn't have courage to go back to the house.*
Court:	So you didn't want to go back or you tried but couldn't go back?
Interpreter:	*No, they didn't try.*

[emphasis added]

101 It appeared that while Mr Ram subsequently went to the Poole Road Property and was allegedly denied entry, Mrs Ram did not attempt to do so. Furthermore, Mrs Ram's counsel confirmed at the hearing before us that she was not saying that she would still want to live in the Poole Road Property if the Judge's finding that Mr Ram had breached the Implied Term were upheld.

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(3) Conspiracy and conversion/detinue

102 Two remaining claims can be briefly dealt with. First, the claim that the Navins had conspired to remove or constructively evict the Rams from the Poole Road Property by lawful or unlawful means. As the Judge observed, their emphasis was on unlawful means conspiracy: GD ([1] *supra*) at [122]. After considering the law and the evidence, the Judge rejected this claim and we see no reason to overturn his decision. While the agreement or combination necessary to find a conspiracy may in some cases be inferred from unlawful acts committed, the evidence does not present any basis to do so in the present case.

103 Second, the Rams had also brought claims in conversion and/or detinue. This was on the basis that the Navins had converted to their own use chattels that were left in the Poole Road Property at the time of their arrest on 1 August 2016. In the alternative, they claimed that the Navins wrongfully detained the items.[67] Their claims were rejected by the Judge. Only Mrs Ram appealed against this decision. Her arguments on appeal largely mirror those made before the Judge. Critically, she has not pointed to any concrete evidence to support her claim that the Navins had retained some of their personal items. As such, it cannot be said that the Judge's finding was against the weight of the evidence.

Mrs Ram's entitlement to US$1m

104 Although Mrs Ram's entitlement to US$1m under the 2006 MOU was an issue before the Judge, it became a non-issue before us. We were informed by Mr Ram's counsel that Mr Navin had already paid Mrs Ram US$1m which

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67 JRA Vol 2 at pages 133 and 134 – Statement of Claim at para 72; JRA Vol 2 at page 259 – Fourth Defendant's Statement of Claim (Amendment No 2) at paras 12-16.

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was used to purchase another property, and that Mr Navin was not seeking to have this sum returned.

Summary

105 In summary, the live issues settled by the August 2015 Deed were:

(a) the sale proceeds of the Bonds;

(b) Mrs Ram's shares transferred to Mr Navin under the January 2015 SPA;

(c) the Annual Allowance; and

(d) the ownership of the Poole Road Property.

Conclusion

106 First, given that the August 2015 Deed is upheld, we set aside the Judge's order for Mr Ram to return the sum of US$2m to Mr Navin (*ie*, the negotiated sum under the August 2015 Deed).

107 Second, since the August 2015 Deed settled the issues relating to the Annual Allowance and the Bonds:

(a) We set aside the Judge's orders for Mr Navin to pay the Annual Allowance, both as regards the arrears for the years 2014 to 2017, and Mr Navin's continuing obligation to pay the Annual Allowance.

(b) We also set aside the Judge's order for Mr Navin to pay Mr Ram US$3,442,378.29, representing Mr Ram's 89.55% share of the sale proceeds for the Bonds.

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108 The other orders made by the Judge are to remain.

109 Accordingly, except for the question of costs:

(a) CA 202/2018 is allowed in part to the extent we have stated;

(b) CA 203/2018 is dismissed; and

(c) CA 205/2018 is dismissed.

110 We will hear the parties on the costs of these appeals as well as the costs below. The parties are to tender written submissions on costs, limited to eight pages each, within 14 days from the date of this decision.

Steven Chong	Woo Bih Li	Quentin Loh
Judge of Appeal	Judge	Judge

Letchamanan Devadason, Mahtani Bhagwandas and Ivan Lee Tze Chuen (LegalStandard LLC) for the appellants in CA 202/2018; respondents in CA 203/2018 and first to third respondents in CA 205/2018;
Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the first respondent in CA 202/2018 and appellant in CA 205/2018;
Sarbjit Singh Chopra, Gabriel Lee Wen Rong and Thomas Ang Ze Xi (Selvam LLC) for the second respondent in CA 202/2018; appellant in CA 203/2018 and fourth respondent in CA 205/2018.

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