

Ma Ong Kee v Cham Poh Meng and another suit  
[2013] SGHC 144

**Case Number** : Suit No 478 of 2010 consolidated with Suit No 654 of 2010  
**Decision Date** : 30 July 2013  
**Tribunal/Court** : High Court  
**Coram** : Vinodh Coomaraswamy JC (as he then was)  
**Counsel Name(s)** : Subramaniam Pillai, Jasmin Yek and Melanie Tien (Colin Ng & Partners LLP) for the plaintiff in S478/for the defendant in S654; Nicholas Jeyaraj s/o Narayanan (Nicholas & Tan Partnership LLP) for the defendant in S478/for the plaintiff in S654.  
**Parties** : Ma Ong Kee — Cham Poh Meng

*Debt and Recovery – Counterclaim*

*Agency – Duties of Agent – Duty to account*

30 July 2013

**Vinodh Coomaraswamy J:**

1 Before me are two consolidated actions. Suit No. 478 of 2010/F (“S478”) is an action by Mr Ma Ong Kee (“Mr Ma”) against Mr Cham Poh Meng (“Mr Cham”). Suit No. 654 of 2010/Q (“S654”) is an action by Mr Cham against Mr Ma.

2 In or about October 2004, Mr Ma and Mr Cham began a business collaboration. That collaboration included investing in shares in publicly-quoted companies offered in Singapore and Hong Kong through initial public offerings (“IPOs”) and secondary listings (collectively “Placements”). These investments were transacted through a specific trading account opened by Mr Cham with Malayan Banking Berhad (“Maybank”). These investments ceased in March 2007. Mr Cham then sold the shares remaining in the trading account, closed it and paid the cash balance over to a representative of Mr Ma. [\[note: 1\]](#) Having achieved at least apparent closure, Mr Ma and Mr Cham then parted ways.

**The claims and defences in the two suits**

3 On 1 July 2010, more than 3 years later, Mr Ma commenced S478 against Mr Cham. In that suit, Mr Ma sought to recover money which he had advanced to Mr Cham between June 2004 and March 2006 to enable Mr Cham to set up a food and beverage (“F&B”) business. By his re-amended Statement of Claim dated 12 January 2011, Mr Ma settled on \$398,000 as the quantum of his claim. Mr Cham admits that he borrowed money from Mr Ma for his F&B business. But in his pleadings, Mr Cham puts his debt at \$384,000 and not \$398,000. [\[note: 2\]](#) Mr Cham claims, further, that he discharged this debt on 30 October 2006 by paying \$384,000.50 [\[note: 3\]](#) to UOB Kay Hian Pte Ltd (“Kay Hian”) on Mr Ma’s behalf and on his instructions. [\[note: 4\]](#)

4 Mr Cham commenced S654 against Mr Ma on 27 August 2010. In that suit, Mr Cham seeks to recover from Mr Ma the sum of \$1,121,655 [\[note: 5\]](#) which Mr Cham says he paid to Kay Hian at Mr

Ma's request on 25 October 2006. [\[note: 6\]](#) Mr Ma filed a counterclaim in S654. In it, he seeks against Mr Cham the equitable remedy of an account of Mr Cham's trading in Placements through Maybank (see [2] above). Mr Ma avers that Mr Cham carried out this trading as Mr Ma's agent and fiduciary.

5 Both suits were consolidated by an order of court dated 25 July 2011. The consolidated suits were tried before me.

6 After hearing the evidence and the parties' submissions, I decided substantially in favour of Mr Ma and entirely against Mr Cham. I entered judgment in the following terms:

- (a) I entered judgment for Mr Ma in S478 for \$398,000 plus interest at 5.33% per annum from the date of commencement of S478 to the date of judgment;
- (b) I dismissed Mr Cham's claim in S654;
- (c) I dismissed Mr Ma's counterclaim in S654; and
- (d) I ordered Mr Cham to pay Mr Ma half the costs of the consolidated action on the standard basis.

7 Mr Cham has appealed against my decision. I now set out the grounds of my decision.

## **Mr Ma and Mr Cham meet**

### ***Their background***

8 Mr Cham has a degree in business administration from the Royal Melbourne Institute of Technology. [\[note: 7\]](#) He started his career as a Territory Manager with World of Sports Pte Ltd [\[note: 8\]](#) before moving on to Trans-Island Bus Services as an Operations Manager. [\[note: 9\]](#) There is no evidence before me – despite Mr Cham having been asked to disclose and adduce it – that Mr Cham was a man of means, at least in the period from 2004 to 2007.

9 Mr Ma is, and was at all material times, a man of substantial means and a prominent and sophisticated businessman. He has a background in corporate finance and in the capital markets. He has been involved in several multi-million dollar transactions involving public listed companies in both Singapore and Malaysia. [\[note: 10\]](#)

### ***Mr Ma employs Mr Cham in a series of positions***

10 Mr Ma came to know of Mr Cham through Mr Cham's wife, who then worked in one of Mr Ma's companies. [\[note: 11\]](#) At her suggestion, Mr Cham was appointed as Operations Manager at MSM Holdings Pte Ltd ("MSM"), a company linked to Mr Ma, at some time in late 1999 or early 2000. [\[note: 12\]](#) Mr Cham held that position until 2002, when Mr Ma secured a job for him as the General Manager of Snoopy Restaurants Singapore Pte Ltd ("Snoopy Restaurants"). [\[note: 13\]](#) Snoopy Restaurants ceased operations [\[note: 14\]](#) in 2004 and Mr Cham's employment there came to an end in June of that year. [\[note: 15\]](#)

## **Mr Ma and Mr Cham start their collaboration**

### ***Mr Cham's F&B business***

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11 Soon after his employment at Snoopy Restaurants ceased, Mr Cham decided to set up an F&B business for his own account. Mr Ma agreed to finance it. [\[note: 16\]](#) The vehicle for Mr Cham's F&B business was a company linked to Mr Ma through his wife and known as Triwell Marketing Pte Ltd ("Triwell"). [\[note: 17\]](#) Mr Cham became a director and shareholder of Triwell. Mr Ma made 11 loans to Mr Cham for his F&B business between 12 June 2004 and 10 March 2006 totalling \$518,000 as follows: [\[note: 18\]](#)

No.	Date	Amount
1.	12 Jun 2004	\$120,000
2.	2 Aug 2004	\$10,000
3.	26 Aug 2004	\$10,000
4.	30 Sep 2004	\$60,000
5.	1 Oct 2004	\$95,000
6.	10 Oct 2004	\$70,000
7.	12 Jan 2005	\$35,000
8.	3 Mar 2005	\$70,000
9.	28 Mar 2005	\$12,000
10.	11 Dec 2005	\$8,000
11.	10 Mar 2006	\$28,000
	<b>Total</b>	<b>\$518,000</b>

12 Mr Cham admits, though not without initially prevaricating (see [49] below), that Mr Ma lent him as a matter of historical fact the sum of \$518,000 for his F&B business. [\[note: 19\]](#) It is common ground, however, that by the time Mr Ma commenced S478 on 1 July 2010, his claim to recover the initial loan of \$120,000 extended on 12 June 2004 had become time-barred (see [33] below), leaving only \$398,000 out of the \$518,000 recoverable by action.

### ***InvestCapital Limited***

13 At around the same time as the first of Mr Ma's advances to Mr Cham in June 2004, Mr Ma gave Mr Cham yet another job in a company known as InvestCapital Limited ("InvestCapital"). [\[note: 20\]](#) InvestCapital is a company incorporated in the British Virgin Islands. [\[note: 21\]](#) Mr Ma is, and was at all material times, the sole beneficial owner of InvestCapital. [\[note: 22\]](#) It is and was Mr Ma's personal vehicle for investing in Placements. Investments of this nature were within the scope of Mr Ma's training, experience and competence. Investments of this nature were not, at least not in 2004, within the scope of Mr Cham's training, experience and competence. Mr Cham claims to have had personal experience in investing in equities since the age of 21 and claims to have assisted his mother in her investments in the commodities market when he was 18. [\[note: 23\]](#) All that may be true. But Mr Cham does not suggest, let alone attempt to prove, that he had any experience before 2004 in

investing in Placements on the scale of what was to come.

14 Mr Ma gave Mr Cham the title of "Settlement Head" at InvestCapital. It is common ground that Mr Cham was in charge of InvestCapital's day-to-day operations. [\[note: 24\]](#) To this end, Mr Ma appointed Mr Cham as an authorised signatory for all of InvestCapital's business-related documentation from 2004 until early 2005. [\[note: 25\]](#) Mr Ma also introduced Mr Cham to his stockbrokers' representatives and instructed them to deal directly with Mr Cham on Mr Ma's Placement investments. [\[note: 26\]](#) Mr Cham therefore handled on his own all the administrative aspects of InvestCapital as a company [\[note: 27\]](#) and also of InvestCapital's transactions in Placements. [\[note: 28\]](#) This included liaising with and coordinating with stockbrokers and placement agents, making administrative arrangements for payments, delivering and receiving settlement documents, [\[note: 29\]](#) dealing with InvestCapital's company secretary [\[note: 30\]](#) and monitoring [\[note: 31\]](#) and reporting InvestCapital's business. [\[note: 32\]](#)

15 Concurrently with his employment at InvestCapital, Mr Cham also assisted Mr Ma in the administrative aspects of Mr Ma's personal investments transacted in his own name. [\[note: 33\]](#)

### ***Mr Cham opens a margin trading account at Maybank***

16 On 7 October 2004, shortly after Mr Cham began his employment with InvestCapital, Mr Cham opened an account (the "Margin Account") in his personal name with Maybank under its Enhanced Share Financing Scheme. [\[note: 34\]](#) The Margin Account permitted Mr Cham to borrow between \$300,000 and \$500,000 from Maybank by way of an overdraft facility as part-financing to purchase publicly-quoted shares and related securities, including Placements. The portion of the Placement investment that Maybank did not lend money to finance would have to be financed independently. [\[note: 35\]](#) In exchange for its lending, Maybank required the shares acquired through the Margin Account to be custodised with its nominee custodian and took a security interest over those shares. Investments in Placements through the Margin Account were subject to a loan-to-value requirement at the time of purchase and to ongoing margin requirements. [\[note: 36\]](#)

17 I accept that Mr Cham opened the Margin Account at the direction of Mr Ma and as part of his collaboration with Mr Ma. I accept further that Mr Ma made prior arrangements with Maybank for the margin trading facility and introduced Mr Cham to Maybank. It is not in dispute that Mr Ma had a longstanding banking relationship with Maybank. [\[note: 37\]](#) Indeed, on the same day that Mr Cham opened the Margin Account, Mr Ma opened a current account in his sole name at Maybank. [\[note: 38\]](#) And Mr Cham does not suggest that he had any sort of prior relationship with Maybank that would lead Maybank to extend credit to him personally, even on a secured basis.

18 I therefore reject Mr Cham's evidence that he opened the Margin Account of his own accord. [\[note: 39\]](#) He opened it as Mr Ma's agent. Further, for the reasons set out at [67] to [104] below, I find that it was Mr Ma and not Mr Cham who *funded* the Margin Account while it was active.

### ***Fullerton Ventures Pte Ltd***

19 On 29 April 2005, Fullerton Ventures Pte Ltd ("Fullerton") was incorporated to undertake private investments and to provide management consultancy services. [\[note: 40\]](#) Its three protagonists were Mr Cham, Mr Teo Kian Huat ("Mr Teo") and Mr Loh Peng Chai ("Mr Loh"). Mr Ma's evidence is that Mr

Teo and Mr Loh, both of whom were known to him, approached him in late 2004 or early 2005 seeking his assistance in setting up a corporate vehicle to invest in Placements. Mr Cham was present with Mr Ma when he met Mr Teo and Mr Loh. Mr Ma commended Mr Cham to Mr Teo and Mr Loh and suggested that the three of them incorporate a company to invest in Placements. That is how Fullerton came to be incorporated. Mr Cham eventually held 99,999 [\[note: 41\]](#) shares out of 100,000 shares in Fullerton. Mr Ma says that he provided the initial capital for Fullerton. [\[note: 42\]](#) On the other hand, Mr Cham claims to have paid \$100,000 [\[note: 43\]](#) for his shares from his own resources. But Mr Cham is entirely unable to explain or furnish documentary evidence to show from where he got this \$100,000. His evidence under cross-examination on this point was disingenuous and verged on occasion on the farcical. [\[note: 44\]](#) Mr Cham could do no more than assert that he used a "personal source of fund[s]" [\[note: 45\]](#) from doing "investment[s]". [\[note: 46\]](#) And when Mr Cham exited Fullerton, he transferred his 99,999 shares to Mr Teo for nominal consideration of \$1. [\[note: 47\]](#) Mr Cham testified as follows: "...when my daughter was about to be born I told Teo Kian Huat, [I] say I am not going to work with Ma anymore, then I say take these shares, take it, I can't be [bothered] with it, I just want to go away." [\[note: 48\]](#)

20 I do not believe that Mr Cham would have transferred his shares to Mr Teo for \$1 if Mr Cham had indeed paid \$100,000 from his own funds for those shares. This could not have been a small amount of money for Mr Cham: he had by that time drawn only modest monthly salaries and had a newborn daughter on the way. All of this indicates to me that it was not Mr Cham who financed Fullerton. I therefore accept Mr Ma's evidence that it was *he* who provided the initial capital for Fullerton.

### ***OneEquity SG Pte Ltd***

21 In July 2006, Mr Ma appointed Mr Cham to be an "Investment Director" of OneEquity SG Pte Ltd ("OneEquity"). [\[note: 49\]](#) As with InvestCapital, Mr Ma is and was at all material times the sole beneficial owner of OneEquity. It was another of Mr Ma's personal investment vehicles. [\[note: 50\]](#) It appears, however, that the business focus of OneEquity was more on private equity investments and related transactions than on Placements. [\[note: 51\]](#) Mr Cham's duties at OneEquity were similar to his duties at InvestCapital. [\[note: 52\]](#) However, Mr Ma was by now prepared to give Mr Cham a free hand in opening accounts and even in selecting investments for OneEquity. [\[note: 53\]](#) Mr Cham continued to manage InvestCapital concurrently with OneEquity. [\[note: 54\]](#)

22 It is Mr Cham's evidence that Mr Ma indicated to Mr Cham when Mr Cham started working at OneEquity that if OneEquity succeeded financially, Mr Ma would give Mr Cham a 20% ownership stake in it. [\[note: 55\]](#) I need not make a finding on this. But I think it more likely than not that Mr Cham did have an expectation – whether self-engendered or otherwise – that he would be given a 20% ownership stake in OneEquity if he made a success of it. I accept that OneEquity was indeed a success, that OneEquity achieved its success in a very short space of time [\[note: 56\]](#) and that that success was due to in no small measure to Mr Cham. However, when Mr Cham asked for a 20% ownership stake in OneEquity in early 2007, Mr Ma equivocated and Mr Cham's expectation was left unfulfilled. [\[note: 57\]](#)

### ***The nature of the collaboration between Mr Ma and Mr Cham***

23 The evidence shows that Mr Ma was an active equity investor, particularly in Placements and

particularly in the period from 2004 to 2007. He made these investments in several ways: in his own name, through the Margin Account in Mr Cham's name and through one of his corporate investment vehicles. In whatever way Mr Ma chose to invest during the period in question – from June 2004 to March 2007 – Mr Cham assisted Mr Ma in all aspects of transacting the investment. Where a transaction was in Mr Ma's personal name or was put through InvestCapital or OneEquity, Mr Cham would arrange to meet Mr Ma and have him sign the necessary transactional documents either in his own capacity or as director of the relevant company. [\[note: 58\]](#) Where a transaction was put through the Margin Account, Mr Cham as the accountholder executed the transactional documents in his own name. [\[note: 59\]](#)

24 By early 2007, Mr Ma and Mr Cham were collaborating in at least the following seven ways: (a) Mr Cham was in day-to-day charge of InvestCapital for Mr Ma; (b) Mr Cham was in day-to-day charge of OneEquity for Mr Ma; (c) Mr Cham was trading in Placements through the Margin Account; (d) Mr Cham was assisting Mr Ma with Mr Ma's personal investments in Mr Ma's own name; (e) Mr Ma had financed Mr Cham's venture with Mr Teo and Mr Loh in Fullerton; and (f) Mr Ma had financed Mr Cham's F&B business by lending him a total of \$518,000.

### ***Mr Cham was more than a "runner"***

25 In his evidence in chief and in his cross-examination, Mr Ma repeatedly and dismissively refers to Mr Cham as being merely Mr Ma's "runner". [\[note: 60\]](#) Mr Cham took objection to this characterisation. When cross-examined about what he did for Mr Ma, though, Mr Cham admitted that he filled out the forms for placement shares, collected Mr Ma's signature on the subscription forms for these investments, went back to the broker and returned the forms to the broker together with any cheque payments that needed to be made for the transaction. [\[note: 61\]](#) Mr Cham later averred that he disagreed "with the *term* 'runner'" [emphasis added] rather than the description of the nature of the services that he rendered to Mr Ma. [\[note: 62\]](#) I agree that the term "runner" does not encompass all that Mr Cham did for Mr Ma during the entire period in question.

26 It is true that in their collaboration, Mr Ma was very much the master and Mr Cham the apprentice. But it is also true that Mr Ma reposed a significant degree of trust in Mr Cham even at the outset of the collaboration. [\[note: 63\]](#) Thus, a resolution of InvestCapital dated 14 June 2004 – at the very start of Mr Cham's employment with InvestCapital – describes Mr Cham as its "Manager" and not merely as "Settlement Head". [\[note: 64\]](#) The evidence also shows that Mr Ma's trust and confidence in Mr Cham grew over time such that when Mr Cham started work at OneEquity, Mr Ma gave Mr Cham "a free hand in opening accounts and buying IPOs." [\[note: 65\]](#)

27 While I accept that Mr Cham assisted Mr Ma in his investments as a runner would, I do not accept that that was the full extent of Mr Cham's assistance to Mr Ma. Instead, I find that Mr Cham was in truth a general factotum to Mr Ma during the period in question. He performed the whole range of duties necessary to assist Mr Ma in his investments, from the menial to the managerial.

### ***Mr Cham and Mr Ma part ways***

28 By early 2007, it appears that the apprentice felt that he had learned all that he could from his master. And, as is complementary in the usual case, the master felt that the apprentice was getting too big for his boots: Mr Ma accused Mr Cham of failing to focus on Mr Ma's business and instead spending too much time on his personal business. [\[note: 66\]](#) This inevitable tension, coupled with Mr Cham's unfulfilled expectation of a 20% ownership interest in OneEquity, led to Mr Cham and Mr Ma

parting ways.

29 As a result, by March 2007, Mr Ma's and Mr Cham's collaboration had come to a complete end. Mr Cham's employment with InvestCapital came to an end in March 2007. So did Mr Cham's employment with OneEquity. [\[note: 67\]](#) Mr Cham stopped trading through the Margin Account. Mr Cham stopped assisting Mr Ma with his personal investments. Mr Cham exited Fullerton and transferred his 99,999 shares in Fullerton to Mr Teo.

30 In June 2007, Mr Cham sold the remaining shares in the Margin Account. [\[note: 68\]](#) In July 2007, Mr Cham withdrew virtually all the remaining cash from the Margin Account, including the proceeds of the final sale of shares, [\[note: 69\]](#) handed it over to Mr Ma's representative and closed the account. [\[note: 70\]](#)

31 The only remaining loose end from their collaboration was the \$518,000 that Mr Cham borrowed from Mr Ma for his F&B business.

## **Mr Ma and Mr Cham sue each other**

### ***Mr Ma commences S478 against Mr Cham***

32 On 1 July 2010, three years later, Mr Ma pulled on this loose end by commencing S478. By that time, the 6-year limitation period to recover the loan of \$120,000 extended on 12 June 2004 (see item 1 in the table at [11] above) had expired. That reduced by \$120,000 the amount of money that Mr Ma could *recover* from Mr Cham in S478. But it did not change the historical fact that Mr Ma had *lent* \$518,000 to Mr Cham.

33 It took Mr Ma and Mr Cham some time to crystallise their final positions in S478. In his letter before action [\[note: 71\]](#) and in his original statement of claim filed on 1 July 2010, [\[note: 72\]](#) Mr Ma claimed that he had lent Mr Cham a total of \$471,000 for his F&B business. Mr Ma arrived at this figure by taking into account the time-barred item 1 in the table at [11] above but leaving out of account items 7 and 9 in that table. In response, Mr Cham admitted in his original defence filed on 4 August 2010 that Mr Ma had lent him various sums of money over time and that the loans were for Mr Cham's F&B business. But Mr Cham said that the total amount lent was \$351,000. [\[note: 73\]](#) As for Mr Ma's claim for \$120,000 lent to Mr Cham on 12 June 2004, Mr Cham described it as a "purported" claim – thereby implying that no such advance had been received – and averred that, in any event, it was time-barred. [\[note: 74\]](#)

34 Then, on 6 October 2010, Mr Ma amended his statement of claim. [\[note: 75\]](#) This time, he quantified his loans to Mr Cham at \$525,000. Mr Ma arrived at this figure by inserting (by amendment) items 7 and 9 in the table at [11] above and by alleging another loan to Mr Cham of \$7,000 on 16 November 2004. In response, Mr Cham's amended defence filed on 26 October 2010 amended Mr Cham's admission to admit instead that Mr Ma had lent him \$384,000 (instead of \$351,000 as originally pleaded). Mr Cham also deleted by amendment his plea of limitation under s 6 of the Limitation Act (Cap 163 1996 Rev Ed). [\[note: 76\]](#) This was a somewhat surprising amendment. As at the date of this amendment, 26 October 2010, Mr Ma had not yet abandoned his claim to recover the \$120,000 which he had lent to Mr Cham on 12 June 2004. Limitation Acts on the English model (as ours is) "bar the remedy and not the right; and furthermore they do not even have this effect unless and until pleaded" (see *Ronex Properties Ltd v John Laing Construction Ltd & Ors* [1983] QB 398 at 404, approved by Quentin Loh J in *Hong Alvin v Chia Quee Khee* [2011] SGHC 249 at [25]). But Mr Cham



deleted that plea, thereby rendering recoverable – at least for the time-being – Mr Ma’s claim for \$120,000 advanced on 12 June 2004.

35 That quirk in the pleadings was resolved on 12 January 2011, when Mr Ma amended his statement of claim again. [\[note: 77\]](#) In his final set of amendments, Mr Ma voluntarily abandoned his claim for the \$120,000 lent on 12 June 2004. He also withdrew his claim to recover his alleged loan to Mr Cham of \$7,000 on 16 November 2004. Mr Ma therefore now asserted a claim for \$398,000. Mr Cham did not amend his defence in response to Mr Ma’s final set of amendments.

36 So Mr Ma’s case, at the end of the day, is that he lent \$518,000 to Mr Cham of which only \$398,000 remains recoverable. Mr Cham’s primary defence to this claim remains unchanged from his original pleading. His primary defence, as I have foreshadowed at [3] above, is that he owed Mr Ma only \$384,000 and that he discharged this admitted debt to Mr Ma by paying \$384,000.50 to Kay Hian on 30 October 2006 as instructed and agreed by Mr Ma [\[note: 78\]](#) to take up shares in the IPO of Ouhua Energy Holdings Ltd. [\[note: 79\]](#) I will refer to this sum as the “Ouhua Payment”. I note in passing that the withdrawal for the Ouhua Payment was recorded in the Maybank statement for the Margin Account for October 2006 as \$384,005.50 and not \$384,000.50. This additional \$5 could have been a bank charge for a cashier’s order. But it is unnecessary to speculate on this. The parties treated the \$5 variance as immaterial and so do I.

37 It is significant that Mr Cham does not, in his pleadings or in his affidavit of evidence in chief, accept that he had as a matter of historical fact borrowed \$518,000 or even \$398,000 from Mr Ma as at 30 October 2006, the date of the alleged discharge. His case up to trial was clear: he borrowed *only \$384,000* from Mr Ma as at 30 October 2006 and that on that date, he repaid that debt in full. [\[note: 80\]](#) Plus, it seems, an extra \$0.50 for no particular reason.

### ***Mr Cham commences S654 against Mr Ma***

38 Mr Cham then went on the counterattack, but not through a counterclaim in S478. Instead, he commenced S654 against Mr Ma. In S654, Mr Cham seeks to recover from Mr Ma the sum of \$1,121,655 being monies he claims to have lent Mr Ma on 25 October 2006 to purchase shares in Enviro-Hub Holdings Ltd. [\[note: 81\]](#) I will call this the “Enviro-Hub Payment”.

39 Both the Ouhua Payment and the Enviro-Hub Payment were put through the Margin Account. Therefore, both Mr Cham’s defence in S478 and his claim in S654 require me to examine in detail the operation of the Margin Account. More specifically, I have to ascertain who funded the Margin Account. If it was *Mr Cham* who funded the Margin Account as principal, then obviously a payment which Mr Cham drew from the Margin Account and paid directly to Mr Ma or to a third party at Mr Ma’s direction would suffice to discharge a debt owed to Mr Ma. If instead it was *not Mr Cham* – either Mr Ma or a third party – who funded the Margin Account as principal, then the result is quite the opposite. Mr Cham cannot discharge an admitted debt to Mr Ma by paying – whether to Mr Ma or to a third party at Mr Ma’s direction – what is in truth money which Mr Cham holds as another’s agent.

### ***The burden of proof***

40 Before I examine and analyse the evidence relating to the operation of the Margin Account, I address the burden of proof. Because the parties are reversed in S478 and S654, the incidence of the burden of proof in each suit *prima facie* falls on a different party: on Mr Ma as the plaintiff in S478 and on Mr Cham as the plaintiff in S654.



41 In an action to recover a debt, the burden of proving the indebtedness falls on the plaintiff. But Mr Cham was driven to *admit* in cross-examination that he indeed borrowed \$518,000 in total from Mr Ma. [\[note: 82\]](#) That admission means that Mr Ma's claim against Mr Cham is no longer in dispute in S478 both as to liability and as to quantum. The result of Mr Cham's admission is to place the focus of the dispute in S478 exclusively on the defence.

42 Mr Cham's defence in S478 is a positive defence: he asserts as a positive fact that he discharged his debt to Mr Ma by paying Mr Ma back \$384,000.50 from *Mr Cham's own money* in the Margin Account. Counsel for Mr Cham cross-examined Mr Ma and his witnesses on the unstated assumption that Mr Ma bore the burden in S478 of proving not only his debt but also of disproving Mr Cham's defence. But that is not the position in law. It is *Mr Cham* who, having asserted discharge, bears the burden of proving it. In *Wee Yue Chew v Su Sh-Hsyu* [2008] 3 SLR(R) 212, the defendant admitted the debt but alleged it had been discharged. Commenting on the burden of proof, Belinda Ang J said (at [4]-[6]):

4 Specifically and by way of illustration, I turn to the decision of *Young v Queensland Trustees Limited* (1956) 99 CLR 560 on the application of the rule on the legal burden of proof. That case was not about the characterisation of the arrangement between the parties because it was conceded that the original payment to the defendant was by way of loan. The issue was who bore the onus of proving, as the defendant alleged, that the money had been repaid. The Australian High Court at 569-570 said:

The law was and is that, speaking generally, the defendant must allege and prove payment by way of discharge as a defence to an action for indebtedness in respect of an executed consideration.

5 In Singapore, the statutory formulation of the burden of proof under ss 103-106 of the Evidence Act (Cap 97, 1997 Rev Ed) is basically the same as or similar to the propositions gathered from the Australian authorities outlined above. To illustrate, the commentaries on s 104 of the Indian Evidence Act (Act No 1 of 1872) (our s 106 of the Evidence Act) in *Sir John Woodroffe & Syed Amir Ali's Law of Evidence* (Sripada Venkata Joga Rao ed) (LexisNexis Butterworths, 17th Ed, 2002) vol 3 at p 4041 state as follows:

When a defendant admits the cause of action and pleads payment, he must prove that the claim which is admitted has been discharged by payment.

6 So, if the defendant does not deny the tenancy in an action for rent but pleads payment, the *onus probandi* is on him (see *Sir John Woodroffe & Syed Amir Ali's Law of Evidence* vol 3 at p 4040). Likewise, in the present case, the legal burden is on the defendant as her defence is concerned specifically with discharge by payment.

43 Mr Cham's admission of indebtedness meant that there was only one issue in dispute in S478: did the Ouhua Payment discharge Mr Cham's admitted debt to Mr Ma? Mr Cham bore *both* the legal and the evidential burden on this issue.

44 The analysis of the burden of proof in S654 is much simpler. Mr Cham was the plaintiff seeking to recover a loan. So he undoubtedly bore both the legal and evidential burden of establishing that the Enviro-Hub Payment on 25 October 2006 was a loan to Mr Ma.

### ***The parties as witnesses***

45 I should at this point say something about the parties as witnesses. Mr Ma and Mr Cham are the central – and virtually the sole – witnesses in their own cause. There are many unsatisfactory aspects about the evidence of both of them. Neither has been entirely forthright with the court and therefore neither is worthy of full credit. Each relished seizing opportunities to embellish the facts either to bolster his own case or his own abilities or to attack the other's case or abilities. They quibbled even over minor and irrelevant aspects of the factual narrative.

46 Some examples of their pettifogging will suffice. They differ on who approached whom for Mr Cham's first job at MSM. According to Mr Ma, it was Mr Cham's wife who pleaded with him to give Mr Cham a job. [\[note: 83\]](#) According to Mr Cham, he worked at MSM merely to help Mr Ma out. [\[note: 84\]](#) They differ on why Snoopy Restaurants closed down. Mr Ma says it was due to poor management and therefore due – at least in part – to Mr Cham's failings as General Manager. [\[note: 85\]](#) Mr Cham says it was because the food and beverage industry at the time was challenging. [\[note: 86\]](#) They differ as to why Mr Cham came to be employed by InvestCapital. Mr Ma says it was because Mr Cham was jobless and Mr Ma felt sorry for him. [\[note: 87\]](#) Mr Cham says he had already independently decided to invest in the capital markets on his own account [\[note: 88\]](#) and acceded to Mr Ma's request to help him manage InvestCapital out of goodwill, as a friend. [\[note: 89\]](#) They differ as to whether Mr Cham and Mr Ma parted ways because Mr Ma asked Mr Cham for his resignation from OneEquity because he was failing to focus on the company's business [\[note: 90\]](#) or because Mr Cham resigned in protest at Mr Ma's failure to honour his word to give Mr Cham an equity stake in OneEquity. [\[note: 91\]](#)

47 Compounding these difficulties are the additional difficulties of memory caused by the time elapsed between the events in question and trial.

48 On the central facts, however, Mr Ma's evidence is supported by documents and by the natural inferences to be drawn from them. His embellishments occurred on facts which were marginal to the central issues. On the other hand, Mr Cham's evidence on the central facts was utterly confused and confusing. At times his evidence was disingenuous and risible. He produced no documentary evidence to support the central aspects of his case.

49 Further, it is only Mr Cham who was caught in outright lies on the central issues. One example will suffice. In his pleading [\[note: 92\]](#) and on affirmation in his affidavit of evidence in chief, [\[note: 93\]](#) Mr Cham insisted that he borrowed *only* \$384,000 from Mr Ma – not \$398,000 and not \$518,000. Under cross-examination, Mr Cham eventually admitted that he had indeed borrowed \$518,000 from Mr Ma as a matter of historical fact (see [12] above). He even admitted in cross-examination that he received the time-barred advance of \$120,000 on 12 June 2004 which appears at item 1 in that table. This, despite having described it as a "purported" claim in his initial pleading (see [33] above).

50 More importantly for Mr Cham's credibility, however, he specifically insists in his affidavit [\[note: 94\]](#) that he did not receive and could not have received the advance of \$70,000 from Mr Ma, his wife or anyone else on 3 March 2005. [\[note: 95\]](#) This advance is item 8 in the table at [11] above. This is no passing denial. Mr Cham's denial occupies 6 detailed paragraphs of his affidavit of evidence in chief. In it Mr Cham explains at length why he is so adamant in his denial and gives two reasons why his denial is the truth. But in cross-examination, Mr Cham admitted that he had received every advance set out in the table at paragraph 2 of the statement of claim endorsed on Mr Ma's Writ of Summons (Amendment No. 2) and reproduced (without the deletions) in paragraph 30 of Mr Cham's affidavit of evidence in chief. This table is reproduced in substance at [11] above. He specifically

admitted receiving Mr Ma's advance of \$70,000 on 3 March 2005 [\[note: 96\]](#) which appears as item 8 in that table and which he had taken such lengths to deny in his affidavit.

51 Mr Cham's evidence on the source of his fund also fails to impress me. Mr Cham produced no evidence to support his assertion that he funded the Margin Account entirely by himself. When pressed on why he did not produce any such documents, Mr Cham merely asserted that he did not think this was necessary. [\[note: 97\]](#) On multiple occasions during the cross-examination, Mr Cham fell back on the bald assertion that he had "got cash with [him]" [\[note: 98\]](#) or that he had "[his] own funds". [\[note: 99\]](#)

52 For these reasons as well as others (see for example [105] – [108] below), I am wholly unimpressed with Mr Cham as a witness. I am therefore far more inclined to accept Mr Ma's evidence over Mr Cham's on every contested issue of material fact, particularly where there is no documentary evidence to check either man's evidence against.

### ***Summary of findings***

53 Bearing the incidence of the burden of proof in mind, having analysed the oral and documentary evidence before me, having regard to the natural inferences to be drawn from that evidence and having regard to the credibility of the witnesses, I find on the balance of probabilities that Mr Cham did not fund the Margin Account as principal. I make this finding for two reasons: (a) Mr Ma established by reference to documentary evidence that the deposits of fresh funds into the Margin Account originated from his own funds (see [54] – [66] below); and (b) Mr Cham conspicuously failed to produce any evidence that he had the means to fund the Margin Account in the manner in which it was funded (see, for example, [75], [85] – [87] and [115] – [123] below).

### **Mr Ma's claim in S478**

#### ***The documentary evidence before me***

54 Mr Cham opened the Margin Account on 7 October 2004 in his own name. I have already found (at [17] above) that Mr Cham did so at the direction of Mr Ma and as his agent, as part of a wider collaboration with Mr Ma. Counsel for Mr Cham argued that the fact that the Margin Account was in Mr Cham's name raises the presumption that the money in the Margin Account belonged to Mr Cham. That may be so. But Mr Ma was more than able to rebut any such presumption.

55 Mr Ma was able to do this by matching withdrawals from his own account to deposits and subsequent withdrawals from Mr Cham's account and finally to deposits into the Margin Account. In evidence before me are the following key primary documents: (a) Mr Ma's bank account statements; (b) Mr Cham's bank and credit card statements; [\[note: 100\]](#) and (c) the Margin Account statements dated 31 October 2004, [\[note: 101\]](#) 30 November 2004, [\[note: 102\]](#) 31 May 2005, [\[note: 103\]](#) 30 June 2005, [\[note: 104\]](#) 31 August 2005, [\[note: 105\]](#) 30 September 2005, [\[note: 106\]](#) 31 October 2005, [\[note: 107\]](#) 30 November 2005, [\[note: 108\]](#) 31 December 2005, [\[note: 109\]](#) 31 January 2006, [\[note: 110\]](#) 28 February 2006, [\[note: 111\]](#) 31 March 2006, [\[note: 112\]](#) 30 April 2006, [\[note: 113\]](#) 30 September 2006, [\[note: 114\]](#) 31 October 2006, [\[note: 115\]](#) 30 November 2006, [\[note: 116\]](#) 31 December 2006, [\[note: 117\]](#) 31 January 2007, [\[note: 118\]](#) 28 February 2007, [\[note: 119\]](#) 30 April 2007 [\[note: 120\]](#) and 31 May 2007. [\[note: 121\]](#)

#### ***Poh Meng Margin Account cash flow***

56 In evidence before me also is a spreadsheet headed "Poh Meng Margin Account Cash Flow" ("the Spreadsheet"). When Mr Cham parted ways with Mr Ma in March 2007, Mr Cham left the Spreadsheet behind at their shared office premises together with other documents relating to his employment with OneEquity. That is where Mr Ma found the Spreadsheet. Mr Cham asserts that the Spreadsheet is his "personal record of [his] shares trading and has no connection to Ma's account of events." [\[note: 122\]](#) Insofar as Mr Cham suggests by this that the Spreadsheet is unrelated to the Margin Account, I reject his evidence. A comparison between each entry in the Spreadsheet and each entry in Maybank's formal statements for the Margin Account for that period shows an exact match down to the last cent. Insofar as Mr Cham suggests that the Spreadsheet is unrelated to Mr Ma or to Mr Cham's employment in Mr Ma's personal investment vehicles, the fact that Mr Cham left the Spreadsheet behind at Mr Ma's office premises indicates to me otherwise. If it had been a record of Mr Cham's personal trading, there would have been no reason for Mr Cham to leave it behind as he did.

57 I gave great weight to the Spreadsheet. Mr Cham prepared it contemporaneously with the transactions in question. He prepared it long before any dispute with Mr Ma was even on the horizon. It is therefore untainted by any self-serving litigation bias. It is Mr Cham's record of all deposits and withdrawals from the Margin Account with his personal narrative for each entry. This narrative is more informative than that which appeared on Maybank's statements for the Margin Account. The Spreadsheet corroborates the other documentary evidence before me and is corroborated by that other evidence. It is a key piece of evidence in unravelling the flow of funds. The flow of funds is the determinative aspect of these consolidated suits.

58 The Spreadsheet records the cash flow through the Margin Account from 7 October 2004 to 5 March 2007. It comprises 122 entries, recording and describing faithfully each deposit and each withdrawal from the Margin Account during this period. The first entry in the Spreadsheet is for 7 October 2004 – the day Mr Cham opened the Margin Account (see [16] above). The last entry in the Spreadsheet is for 5 March 2007. That is not the date on which Mr Cham closed the Margin Account (see [30] above). But by March 2007, Mr Cham's employment with InvestCapital and OneEquity had come to an end and the wider collaboration between Mr Ma and Mr Cham had broken down. Save for the purpose of closing the account, there was no trading through the Margin Account after 5 March 2007. Presumably, therefore, Mr Cham saw no need and had no inclination to update the Spreadsheet after 5 March 2007 or had no further opportunity to do so.

59 Of the 122 entries in the Spreadsheet, 45 entries record deposits into the Margin Account and 77 entries record withdrawals from the Margin Account. I leave the withdrawals out of account for present purposes. Only the deposits are relevant to identify the ultimate origin of the money in the Margin Account.

60 Of the 45 deposits recorded in the Spreadsheet, 36 deposits were generated internally on existing money. These 36 deposits therefore do not represent an inflow of fresh funds. I leave these 36 deposits out of account also. They comprise 31 deposits of the proceeds of sale of shares acquired through the Margin Account, 2 deposits of dividends paid on shares acquired through the Margin Account and 3 deposits of interest paid by Maybank on the balance in the Margin Account. I have classified the deposit of \$12,845.86 on 26 November 2004 [\[note: 123\]](#) as one of the 31 deposits of the proceeds of sale. That deposit is accompanied by the narrative "Deposit of YC & using proceed to purchase S Music (proceed from YC \$33,055.86 - \$20,210 = \$12,845.86)". Mr Cham's own narrative for this entry classified it as net proceeds after deducting a sum used for a further purchase. This deposit too was also internally-generated and not fresh funds.

61 That leaves only 9 deposits out the 45 deposits which were deposits of fresh funds. Mr Ma claimed that 7 of these 9 deposits originated ultimately from him. The particulars of these 7 deposits are as follows:

No.	Date	Narrative in Spreadsheet	Amount
1.	7 Oct 2004	"Account Opening (BK)"	\$115,560
2.	26 Oct 2004	"Deposit for Med A"	\$150,000
3.	2 Nov 2004	"Deposit for M"	\$95,000
4.	20 May 2005	"Deposit for AS"	\$122,000
5.	6 Oct 2005	"Cash to cover margin"	\$6,500
6.	8 Nov 2005	"Cash to cover margin (from petrol)"	\$10,000
7.	22 Apr 2006	"Cash for S"	\$531,772
	<b>Total</b>		<b>\$1,030,832</b>

62 Counsel for Mr Ma submits that the natural inference from the combined effect of his oral evidence, the documentary evidence and the adverse inference to be drawn against Mr Cham for his failure to produce evidence of his means is that Mr Ma was, on the balance of probabilities, the ultimate origin of each of these 7 deposits. For the reasons that follow, I accept Mr Ma's submissions.

63 Mr Ma did not claim the remaining two of the 9 deposits of fresh funds. These are: (1) a deposit of \$44,743.14 made on 20 May 2005 with the narrative "Deposit for AS (from L)"; and (2) a deposit of \$50,000 made on 6 December 2006 with the narrative "Fund from FV to buy First Reit".

64 As regards both these unclaimed deposits, I note again that the burden of proof to establish the ultimate origin of these deposits lay on Mr Cham, not Mr Ma. Mr Cham produced no evidence – other than bare assertions – to show that he was the ultimate origin of either of these deposits. Mr Cham did not even produce evidence from which I could draw an inference to *suggest* that Mr Cham was the ultimate origin of these two deposits.

65 Further, as regards the first unclaimed deposit, I note that Mr Cham's own narrative describes the deposit as being "from L". There was no evidence as to who "L" – but there was also no evidence to suggest that "L" was Mr Cham.

66 I find the second unclaimed deposit of \$50,000 on 6 December 2006 is not material to the current analysis for two further reasons. First, it was paid in *after* October 2006: that is, *after* the Enviro-Hub Payment on 25 October 2006 which constitutes Mr Cham's claim in S654 and *after* the Ouhua Payment on 30 October 2006 which constitutes Mr Cham's defence in S478. Whoever was the ultimate origin of this \$50,000, therefore, it cannot have any bearing on the two material withdrawals which occurred over a month earlier. Second, this sum of \$50,000 was merely in transit. It was paid in on 6 December 2006 with the narrative "Fund from FV to buy First Reit". The exact amount of \$50,000 was withdrawn on 28 December 2006 with the narrative "Return to FV". This sum of \$50,000 therefore did not represent a net inflow of fresh funds into the Margin Account.

### **Overview of payments**

67 The documentary evidence establishes indisputably that the following transactions took place in Mr Ma's various accounts and in Mr Cham's various accounts, including the Margin Account, from 30 September 2004 to 21 April 2006. I have set out chronologically in a table all of these transactions, regardless of the account involved, to make the sequence of transactions manifest. This in turn makes the underlying facts easier to follow and analyse. In the table, I have shaded the 7 deposits into the Margin Account which Mr Ma claims originated from his funds (see [61] above).

No.	Date	Description	Amount deposited (withdrawn)
1.	1 Oct 2004	Mr Ma withdraws \$60,000 cash from his Maybank account <a href="#">[note: 124]</a>	(\$60,000)
2.	7 Oct 2004	Mr Ma withdraws \$80,000 cash from his Maybank account <a href="#">[note: 125]</a>	(\$80,000)
3.	7 Oct 2004	Mr Cham deposits \$80,000 cash into his DBS account	\$80,000
4.	7 Oct 2004	Mr Cham draws cheque for \$115,560 on his DBS account	(\$115,560)
5.	7 Oct 2004	Mr Cham deposits cheque for \$115,560 into Margin Account	\$115,560
6.	26 Oct 2004	Mr Ma withdraws \$150,000 in cash from his Maybank account	(\$150,000)
7.	26 Oct 2004	Mr Cham deposits \$150,000 cash into the Margin Account	\$150,000
8.	2 Nov 2004	Mr Ma withdraws \$60,000 cash from his Maybank account	(\$60,000)
9.	2 Nov 2004	Mr Ma withdraws \$140,000 cash from his Maybank account	(\$140,000)
10.	2 Nov 2004	Mr Cham deposits \$95,000 cash into the Margin Account	\$95,000
11.	20 May 2005	Mr Ma withdraws \$100,000 cash from his Standard Chartered bank account	(\$100,000)
12.	20 May 2005	Mr Cham deposits \$122,000 cash into the Margin Account	\$122,000
13.	6 Oct 2005	Mr Cham deposits \$6,500 cash into the Margin Account	\$6,500
14.	8 Nov 2005	Mr Cham deposits \$10,000 cash into the Margin Account	\$10,000
15.	18 Apr 2006	Mr Ma withdraws \$50,000 cash from his Maybank account	(\$50,000)
16.	19 Apr 2006	Mr Ma withdraws \$30,000 cash from his Maybank account	(\$30,000)
17.	19 Apr 2006	Mr Ma withdraws \$50,000 cash from his Maybank account	(\$50,000)

18.	20 Apr 2006	Mr Ma withdraws \$70,000 cash from his Maybank account	(\$70,000)
19.	21 Apr 2006	Mr Ma withdraws \$300,000 cash from his Maybank account	(\$300,000)
20.	21 Apr 2006	Mr Cham deposits \$80,000 cash into his DBS account	\$80,000
21.	21 Apr 2006	Mr Cham deposits \$150,000 cash into his DBS account	\$150,000
22.	21 Apr 2006	Mr Cham draws cheque for \$265,000 on his DBS account	(\$265,000)
23.	22 Apr 2006	Mr Cham deposits his cheque for \$265,000 plus a cheque for \$266,772 from Mr Quek Yiang Hang into the Margin Account	\$531,772

68 I now deal in turn with each of these 7 shaded deposits.

***First deposit: opening deposit of \$115,560 on 7 Oct 2004***

69 The first of the seven deposits into the Margin Account which Mr Ma claims to originate ultimately from his own money is the deposit of \$115,560 made when Mr Cham opened the Margin Account on 7 October 2004. Mr Cham made this deposit by way of his DBS cheque number 299920 issued on the same date in the sum of \$115,560 and drawn on his DBS account. [\[note: 126\]](#) Mr Cham relies on this fact to submit that the source of this initial deposit of \$115,560 was his own funds.

70 The evidence before me shows, however, that the ultimate source of these funds was not Mr Cham but Mr Ma. First, on 1 October 2004, Mr Ma withdrew \$60,000 cash from his Maybank account. Mr Ma testified that he did so at Mr Cham's request. [\[note: 127\]](#) Mr Ma handed the cash to Mr Cham in person at Mr Ma's office. [\[note: 128\]](#) Mr Cham admits this. [\[note: 129\]](#) It is common ground that the initial deposit into the Margin Account was for a Placement of shares in Beng Kuang Marine Limited. In one contemporaneous document before me, [\[note: 130\]](#) Mr Cham himself accounts for this \$60,000 cash by notionally apportioning \$35,600 from it as follows: "Cash received \$60,000 less \$35,560 for Beng Kuang and \$492.25 for Atlantac". In another contemporaneous document, [\[note: 131\]](#) Mr Cham records the following entry for 7 October 2004: "Top up cash for Beng Kuang \$35,560". So I am satisfied that \$35,560 came from Mr Ma, and that it came out of the \$60,000 in cash which Mr Ma handed to Mr Cham on 7 October 2004.

71 Second, on 7 October 2004, \$80,000 was withdrawn in cash from Mr Ma's Maybank account. On exactly the same day, Mr Cham deposited exactly the same amount in cash into his DBS account. Mr Ma's evidence is that it was his \$80,000 which went into Mr Cham's account. Mr Cham denies this. But Mr Cham cannot explain where else the \$80,000 could have come from. Instead, he embellished his evidence with unsupported detail:

Q: Where did you get these monies from?

A: It was not cash.

Q: Don't tell me "it's from my investments". Be specific, where did you get your monies from?



A: Essentially from a bank account -- from another bank account.

Q: From another bank account?

A: Yes. This is a margin account.

Q: I understand. But where did you get the monies from? My question is very simple. Where did you get the monies from?

A: From my bank account, I told you.

Q: Which bank account?

A: DBS. [\[note: 132\]](#)

...

Q: And where did the money come from before it was deposited into the DBS cash line account?

A: I hold cash with me. [\[note: 133\]](#)

72 So I am left with nothing more than a bare denial to set against Mr Ma's evidence and the documentary evidence. Mr Ma's explanation is the more convincing one, supported as it is not only by the documentary evidence but by the natural inferences from the wider collaboration between the two men. I therefore find on the balance of probabilities that Mr Ma has established that the initial deposit into the Margin Account originated from his money.

73 Mr Cham makes the point [\[note: 134\]](#) that the payment of \$60,000 (see [70] above) is also part of Mr Ma's claim in S478. So it is – see item 4 in the table at [11] above. Mr Cham then makes the point that because Mr Ma is claiming this sum of \$60,000 in S478 and because Mr Ma is also claiming that \$35,560 out of this \$60,000 found its way into the Margin Account, that amounts to double-claiming. I reject this argument. Mr Ma is indeed making a claim for \$60,000 in S478. Mr Cham admits that claim. That \$60,000 is therefore due to Mr Ma, subject only to defences. Mr Cham's defence is one of discharge. Mr Ma seeks to show that he is the ultimate source of this \$35,560 which found its way into the Margin Account. But he does so to defeat Mr Cham's defence and to break the claimed link between Mr Cham and the funds in the Margin Account. He is not going further in S478 to claim separately the \$35,560 against Mr Cham. This is clear from Mr Ma's pleaded claim. And he made this clear again in cross-examination. [\[note: 135\]](#) So there is no double-claim in S478. Further, for the reasons set out in [124] – [127] below, I dismiss Mr Cham's counterclaim in S654. So even if there was a double-claim in S654, it fails.

74 Putting the \$35,560 which Mr Ma gave to Mr Cham on 1 October 2004 together with the \$80,000 which Mr Ma gave to him on 7 October 2004 results in \$115,560 in Mr Cham's hands and in his personal DBS account. That was the initial funding for the Margin Account which Mr Cham then drew out by cheque from his personal DBS account and paid into the Margin Account.

75 Mr Cham cannot explain, even in general terms, how he came by the total sum of \$115,560 paid into his DBS account in October 2004 if not from Mr Ma. Mr Cham was deliberately vague when asked about this. He asserted again – without any supporting documents or specifics – that "[i]t's my own fund" [\[note: 136\]](#) derived "from my income as well as from investment, profits and all this". [\[note: 137\]](#) I

reject this evidence.

76 My finding that this \$115,600 originated – more probably than not – from Mr Ma is significant for another reason. Mr Cham's evidence in cross-examination was that *all* money in the Margin Account originated *solely* from the \$115,560 initial capital outlay and the proceeds of the investments purchased with it. [\[note: 138\]](#)

Q: ...So you placed the initial account opening deposit of 115,560, used that to purchase shares and all other transactions were rolled over from the proceeds of shares -- sale of shares from previous cases. That is your evidence now, correct? Yes, Mr Cham?

A: Yes.

77 On Mr Cham's own case, if the initial capital outlay of \$115,560 was Mr Ma's money, and if all the further deposits were internally generated, then all the money in the account at any given point in time is likewise attributable to Mr Ma. That in itself is enough to dispose of Mr Cham's defence. But Mr Cham's assertion is contradicted by Mr Ma, because Mr Ma claims that six other deposits originated from him and therefore from outside the Margin Account. It is also inconsistent with Mr Cham's own story on the last of the seven deposits (see [96] below). I therefore continue my analysis of the remaining six deposits.

#### ***Second deposit: \$150,000 on 26 Oct 2004***

78 The second of the seven deposits which Mr Ma claims originates ultimately from him is the deposit of \$150,000 on 26 Oct 2004. Mr Cham's narrative in the Spreadsheet recorded this as being "for Med A". On the same day, Mr Ma withdrew \$150,000 in cash from his Maybank account. [\[note: 139\]](#) The date and time of withdrawal was 26 October 2004 at 11:01:27, as digitally printed on the back of the cheque. This withdrawal was recorded on the monthly statement for Mr Ma's Maybank Account. [\[note: 140\]](#) Mr Ma testified that he gave this sum in cash to Mr Cham as "part payment for the place[ment] margin", i.e. for subscription of IPO shares in Media Asia Group Holdings Ltd. [\[note: 141\]](#)

79 Mr Cham's evidence on this sum of \$150,000 is again wholly unconvincing. Mr Cham pointed to a cash withdrawal of \$170,000 from the Margin Account on 21 October 2004 [\[note: 142\]](#) and claimed that the \$150,000 he deposited on 26 October 2004 originated from that withdrawal 5 days earlier. When asked why he would withdraw \$170,000 in cash on 21 October 2004 only to redeposit \$150,000 out of that sum 5 days later, Mr Cham said that he withdrew that sum to lend the money "...to somebody. But halfway through I don't need, the person didn't need, so I put it back." [\[note: 143\]](#) Again, Mr Cham was unable to provide any specifics about the person to whom he intended to lend the money withdrawn on 21 October 2006 or why that person did not eventually require the money. I therefore do not accept Mr Cham's evidence. It is too much of a coincidence that Mr Ma withdrew exactly the same sum of \$150,000 from his Maybank account *in cash* on exactly the same day as Mr Cham made a deposit of exactly the same amount *in cash* into the Margin Account.

#### ***Third deposit: \$95,000 on 2 Nov 2004***

80 The third of the seven deposits which Mr Ma claims originates ultimately from his money is the deposit of \$95,000 on 2 November 2004. Mr Cham described this in the Spreadsheet as "deposit for M".

81 On 2 November 2004, the same day as the deposit, Mr Ma withdrew \$200,000 in cash by way of two cash cheques drawn on his Maybank Account. He first drew a cash cheque for the sum of \$60,000 and cashed it at Maybank's Marine Parade branch at 12:32:02 on 2 November 2004. [\[note: 144\]](#) Later that same day, he drew a second cash cheque for the sum of \$140,000 and cashed it at Maybank's main branch at 15:03:31. [\[note: 145\]](#) Maybank recorded the proceeds of both cash cheques as having been collected by Mr Ma. Mr Ma testified that he gave Mr Cham \$95,000 on 2 November 2004 out of the cash that he had withdrawn that same day. The payment was to be "the minimum requirement" for the Placement which Mr Cham intended to take up. [\[note: 146\]](#)

82 Again, Mr Cham denies that this \$95,000 came from Mr Ma. Again, he cannot give a credible explanation of where the money came from, if not from Mr Ma. Again, Mr Cham is unable to go further than a bare denial. The following extract provides yet more flavour of Mr Cham's lack of credibility on this deposit of \$95,000:

Q: At page 266 on the same day, 2 November 2004, there is a deposit of \$95,000. Correct?

A: Yes.

Q: Where did this monies [sic] come from?

A: If I just refer to my affidavit. It was a cash deposit.

Q: I know it was a cash deposit. My question to you --

A: It's my own cash.

Q: Your own cash?

A: Yes.

Q: From where? From which account did you withdraw it?

A: Should be from my DBS Account.

Q: Where is this evidence?

A: Let me go through my...

Q: Is your evidence that you cannot recall again?

A: No, it was cash from my bank account -- cash from somewhere.

Q: It must be from Mr Ma?

A: Definitely not.

Q: Then show us from where?

A: It is cash I am holding myself.

Q: That is the best evidence you can give?

Ct: Sorry, what was the evidence? Cash he was holding himself?

A: Cash I am holding on. [\[note: 147\]](#)

***Fourth deposit: \$122,000 on 20 May 2005***

83 The fourth of the seven deposits which Mr Ma claims originates ultimately from him is the deposit of \$122,000 into the Margin Account on 20 May 2005. Mr Cham describes this deposit in the Spreadsheet as "Deposit for AS".

84 The documentary evidence shows that Mr Ma drew a cash cheque in the sum of \$100,000 on his Standard Chartered account on 20 May 2005. [\[note: 148\]](#) Mr Ma testified that he added \$22,000 in cash from his previous withdrawals on 2 November 2004 (see [81] above) and paid \$122,000 in cash to Mr Cham to subscribe for a Placement through the Margin Account.

85 Once again, Mr Cham cannot offer an explanation of where the deposit of \$122,000 into the Margin Account came from if not from Mr Ma. His evidence kept changing. He began by saying that this sum came from money that he had on hand "in cash form". [\[note: 149\]](#) He then said that he had withdrawn the money from a "bank account". However, he could not say which bank account [\[note: 150\]](#) and he could not remember "totally" where the money originated from. [\[note: 151\]](#) Less than a minute later, Mr Cham claimed that the money came from a withdrawal of \$150,000 which he had made from the Margin Account on 17 November 2004, 6 months before the deposit in question on 20 May 2005 [\[note: 152\]](#) Beyond asserting that this withdrawal of \$150,000 was "for my own personal record the tracking of my funds", [\[note: 153\]](#) Mr Cham could not explain why he would withdraw the sum of \$150,000 from the Margin Account in November 2004 and redeposit \$122,000 from that cash 6 months later. A few moments later, Mr Cham again changed his position to say that the *bulk* of the \$122,000 deposit came from that withdrawal of \$150,000 from the Margin Account and that he had topped it up with other funds, [\[note: 154\]](#) again without specifics or supporting documentary evidence. All he could say was: "I am quite clearly (*sic*) I withdraw it from the bank and I had cash with me at that point in time, yes." [\[note: 155\]](#)

86 I again found Mr Cham's evidence thoroughly unconvincing. When I attempted to clarify for myself whether Mr Cham was merely speculating in the stand as to the source of this money whether he was testifying as to where the money came from as a matter of certainty from actual knowledge, Mr Cham's evidence became even more confused and confusing, as the following extract shows:

Ct: Where did the cash come from?

A: Besides this 150, I should be holding some other cash with me at the moment, at that material time.

Ct: Again it sounds like you are guessing when you say "should be".

A: I had other cash at that moment.

Ct: So now it is a fact?

A: It is a fact.

Ct: So where did that cash come from?

A: Once I got cash with me.

Ct: I know. Where did it come from?

A: My other source of income.

Ct: I mean, which bank account did it come from?

A: *Possibly* my DBS account. [\[note: 156\]](#)

...

Ct: My question was; you say the bulk of the 122 came from the 150 from the Maybank account. So the rest must have come from the DBS account?

A: The cash *should be* from there.

Ct: Should be or was?

A: Was from there.

Ct: It is a fact? You are not guessing?

...

A: I can't really remember where the cash came from. I was a bit confused. ... [\[note: 157\]](#)

[emphasis added]

87 Mr Cham's evidence was wholly unreliable. I again found that it was more likely than not that the \$122,000 had come from Mr Ma's Maybank account, where a closely corresponding sum was withdrawn on the same date.

#### ***Fifth and sixth deposits: \$16,500 on 6 Oct 2005 and 8 Nov 2005***

88 The fifth and sixth of the seven deposits into the Margin Account which Mr Ma claims originates ultimately from him are the cash deposits of \$6,500 on 6 October 2005 and \$10,000 on 8 November 2005. Mr Cham described the \$6,500 deposit in the Spreadsheet as "Cash to cover margin". He described the \$10,000 deposit in the Spreadsheet as "Cash to cover margin (from petrol)".

89 Unlike the previous deposits, Mr Ma is unable to establish a compelling circumstantial connection between his bank accounts and these two deposits. When pressed on this issue, Mr Ma responded that it was "a small amount", [\[note: 158\]](#) implying that there was no need for him to make a specific withdrawal in order have sufficient cash to give Mr Cham a total of \$6,500 in cash on one occasion and \$10,000 in cash on another. Mr Ma's bank statements for 2004 and 2005 were before me as evidence. Mr Ma was obviously a man of means. It was clear from these statements that Mr Ma frequently dealt in cash and therefore often made cash withdrawals, particularly from his Maybank account. Many of these cash withdrawals were of five-figure sums. Accordingly, I found to be entirely plausible Mr Ma's explanation that he had cash on hand of \$6,500 on 6 October 2005 and of \$10,000

on 8 November 2005.

90 Further, Mr Ma established, by his oral evidence supported by the documentary evidence, a pattern of funding the Margin Account, mostly in cash payments handed to Mr Cham, up to the date of these two payments. There was clear links which established that it was he who funded the initial deposit and the largest cash deposits into the Margin Account. Mr Cham produced no documentary evidence that any of the money in the Margin Account up to this time originated from Mr Cham. Indeed, Mr Cham produced no documentary evidence even to show that he had *any* source of funds able to fund the Margin Account as it had been funded up to this time. The fact that Mr Ma was unable to prove by documentary evidence that these two relatively small deposits originated ultimately from his funds was not, in my view, sufficient to displace an inference on the balance of probabilities that they did. I was therefore prepared to draw the inference that the \$16,500 comprised in the fifth and sixth deposits also originated from Mr Ma.

91 Even if I am wrong in drawing this inference, it remains the case that the burden of proving discharge lay on Mr Cham (see [40] – [43] above), not Mr Ma. Therefore, even if Mr Ma was unable to prove that the total sum of \$16,500 credited into the Margin Account on 6 October and 8 November 2005 originated from him, that would not, in itself, suffice to discharge Mr Cham's burden. Mr Cham still bore the burden of establishing his defence that the money he paid to Mr Ma on 30 October 2006 originated from funds which Mr Cham held as principal. Mr Cham failed to discharge this burden for these two payments as he did for all the others.

#### ***Seventh deposit: \$531,772 on 22 Apr 2006***

92 The seventh and last deposit into the Margin Account which Mr Ma claims originates ultimately from him is a total deposit of \$531,772 on 22 April 2006. It is common ground that the purpose of this deposit was for a Placement of shares in Sino-Environment Technology Group Limited ("Sino"). This total deposit of \$531,772 comprised the deposit of two cheques, both dated 22 April 2006. One of these two cheques was Mr Cham's cheque drawn in his own favour in the sum of \$265,000. [\[note: 159\]](#) The other was a cheque drawn by one Mr Quek Yiang Hang ("Mr Quek") in favour of Mr Cham in the sum of \$266,772. [\[note: 160\]](#) There were three versions of how Mr Quek came to hand a cheque for \$266,772 to Mr Cham. I set out each of the three versions before concluding that whichever version is true, on my findings, Mr Cham's defence fails as regards this sum.

#### ***Mr Ma's version***

93 Mr Ma proved that he had, true to form, withdrawn the total sum of \$500,000 in cash from his Maybank account in 5 withdrawals between 18 April 2006 and 21 April 2006 [\[note: 161\]](#) (see items 15 to 19 in the table at [67] above). He testified that he had \$31,772 in cash on hand and that he gave the total sum of \$531,772 in cash to Mr Cham. [\[note: 162\]](#)

94 Mr Ma testified further that *after* he had given \$531,772 in cash to Mr Cham, he agreed to let Mr Quek take 800,000 shares out of Mr Ma's placement of approximately 3.95m shares in Sino. [\[note: 163\]](#) The cost of these 800,000 shares at \$0.33 each (totalling \$264,000) plus 1% placement agent's commission (\$2,640) and 5% goods and services tax on the commission (\$132) came to precisely \$266,772. [\[note: 164\]](#) According to Mr Ma, Mr Quek should have paid *Mr Ma* this sum of \$266,772 for the 800,000 Sino shares, since Mr Quek's shares were coming out of Mr Ma's allocation and Mr Ma had already put Mr Cham in funds for the full amount. Instead, because Mr Quek was used to dealing directly with Mr Cham, Mr Quek paid *Mr Cham* that sum by the cheque already mentioned. [\[note: 165\]](#)

That is why, said Mr Ma, the Margin Account shows two deposits on 22 April 2006 of Mr Cham's cheque for \$265,000 and Mr Quek's cheque for \$266,772 rather than a single deposit of \$531,772 either in cash or by a single cheque drawn by Mr Cham in his own favour, originating ultimately from the funds handed over by Mr Ma.

#### *Mr Cham's version*

95 Mr Cham's overarching case on the Margin Account in cross-examination was that he alone funded the \$115,560 initial capital outlay and that all of the other money in the Margin Account was internally-generated by buying and selling Placement shares at a profit. He testified that he had "paid in the initial amount, bought the shares, ... sold it and took out the cash, then ... put in" [\[note: 166\]](#) (see also [76] above).

96 But it was also Mr Cham's case that Mr Quek contributed \$266,772 out of the deposit of \$531,772 into the Margin Account on 22 April 2006. So for this deposit, for Mr Cham's case to be internally consistent, it must be his case that it was only \$265,000 which came from internally-generated funds.

#### *Mr Quek's version*

97 Mr Cham called Mr Quek to give evidence at trial. Mr Quek testified that he had been acquainted with Mr Ma for about 8 years. [\[note: 167\]](#) He testified also that he was a client of Mr Cham's and subscribed for IPOs through him. [\[note: 168\]](#) Mr Quek therefore knew both Mr Cham and Mr Ma well. [\[note: 169\]](#) He was obviously reluctant to get involved in a dispute between them. [\[note: 170\]](#)

98 Mr Quek could not recall the circumstances that led him to dealing with Mr Cham in respect of the Sino shares or the circumstances in which he handed his cheque to Mr Cham. [\[note: 171\]](#) This is not surprising considering that Mr Quek was testifying over 6 years after these events took place and bearing in mind that there would have been no reason for Mr Quek to attach any importance to these events at the time.

99 But Mr Quek was very clear on two points which he repeated throughout his testimony. The first point is that he had issued his cheque for \$266,772 as short-term *funding* of the Sino subscription. [\[note: 172\]](#) Significantly, Mr Quek said in cross-examination that he followed up on this short-term funding with Mr Ma, [\[note: 173\]](#) and not with Mr Cham. In other words, Mr Quek's clear evidence was that he paid the money to Mr Cham as a short-term loan and not to acquire Sino shares for himself. The second point is that Mr Quek never received any shares in Sino – 800,000 or otherwise – as a result of this loan. [\[note: 174\]](#) Mr Quek further testified that he must have been repaid this short-term loan, because otherwise he would have pursued legal action to recover it.

#### *My findings*

100 I am inclined to accept Mr Quek's evidence – as a disinterested witness – that what he paid was short-term funding for the Sino subscription rather than to acquire the shares. I find also on the balance of probabilities that Mr Quek extended this short-term funding to Mr Ma and not to Mr Cham. It was obvious from the tenor of Mr Quek's evidence that Mr Quek saw Mr Ma (and not Mr Cham) as the principal and the true accounting party for his transaction. That is why he followed up on this funding with Mr Ma and not Mr Cham. [\[note: 175\]](#) Further, I accept Mr Quek's evidence that this sum of \$266,772 must have been repaid to Mr Quek and I find on the balance of probabilities that it must



have been repaid by Mr Ma. On that basis, Mr Quek's contribution to the Margin Account was consistent with the fact that Mr Cham was trading as agent for Mr Ma when he traded through the Margin Account.

101 On these findings, whichever of the three versions is correct, Mr Ma succeeds and Mr Cham fails. If Mr Ma's version is correct, then he funded this payment in entirely in cash. He had a side-deal with Mr Quek, but that side deal was no concern of Mr Cham and did not alter the nature of Mr Ma's payment to Mr Cham. The deposit of \$531,772 into the Margin Account originates ultimately from Mr Ma, not Mr Cham. Accepting Mr Ma's version means that Mr Cham was overpaid and failed to account to Mr Ma for the double payment of \$266,772. But that is not the subject-matter of either S478 of S654 and so is not something I need concern myself with.

102 If Mr Quek's version is correct, then the sum of \$266,772 was short-term funding which he put into the Margin Account and which he was repaid, as I have found, by Mr Ma. This inflow of \$266,772 was squared off, albeit outside the Margin Account, and is therefore attributable to Mr Ma. The \$265,000 from Mr Cham's cheque paid is also attributable to Mr Ma.

103 If Mr Cham's version is correct, then the cheque for \$265,000 which he wrote to himself originated from funds generated internally, within the Margin Account, withdrawn and re-deposited. It is ultimately attributable to the initial capital outlay which, as I have found, is in turn attributable to Mr Ma. And the \$266,772 is Mr Quek's, not Mr Cham's. That is sufficient to defeat Mr Cham's claim to have discharged his debt to Mr Ma with his own funds through the Ouhua Payment on 30 October 2006.

104 The result of all this is that on any view, Mr Cham failed to establish on the balance of probabilities that his payment of \$384,000.50 to Mr Cham was made to discharge the debt of \$398,000 owed to Mr Ma or had that effect.

### ***Mr Cham improvises on the stand***

105 I also found a feature of Mr Cham's defence curious. Mr Cham admitted under cross-examination that the amount he borrowed from Mr Ma was \$518,000 (see [11] above). This sum was reduced to \$398,000 only because of the limitation defence. But when considering historical events, the figure \$398,000 is irrelevant: there was no way that Mr Cham could have foretold – whether on 30 October 2006 at the time of the Ouhua Payment or later – that Mr Ma would delay commencing action to recover his debt such that \$120,000 of his \$518,000 debt would eventually be time-barred.

106 Despite Mr Cham's admission in cross-examination that he borrowed \$518,000 from Mr Ma – and not \$384,000 – his defence on the pleadings remained that his debt to Mr Ma had been entirely discharged on 30 October 2006 by the Ouhua Payment. His defence therefore amounted to an assertion that a repayment of \$384,000.50 had – at the time of the repayment – discharged a recoverable debt of \$518,000.

107 Mr Cham dealt with this gap by saying that his final payment to Mr Ma's representative in July 2007 was for \$180,000 (not \$191,000) and was the final part-payment to discharge Mr Cham's indebtedness to Mr Ma. [\[note: 1761\]](#) This account of events is not foreshadowed by anything found in his affidavit of evidence in chief or in his pleadings. It was quite clearly an improvisation in the stand. Quite apart from that, Mr Cham's new version of events would mean that he paid Mr Ma \$564,000.50 to discharge a debt of \$518,000. Mr Cham's explanation for this overpayment was that it was Mr Ma who told him that the final repayment was \$180,000 and Mr Cham had no way of checking the figure. I had no hesitation in rejecting this feeble explanation.

108 The question remains why – before his cross-examination – was Mr Cham so insistent in his affidavit that he owed Mr Cham only \$384,000 and not (as he later accepted) \$518,000? I am driven to the conclusion that Mr Cham chose to ascribe the figure \$384,000 to his debt to Mr Ma in his pleadings and affidavit in a misconceived attempt to match the Ouhua Payment of \$384,000.50. He was emboldened in this choice of defence by the fact that \$384,000 was fairly close to Mr Ma's recoverable claim – by the time he got around to commencing proceedings – of \$398,000.

***Mr Ma's claim in S478 is allowed with interest***

109 I accordingly allowed Mr Ma's claim in S478 for the sum of \$398,000, with interest at the rate of 5.33% per annum from the date of the Writ of Summons, 1 July 2010, to the date of judgment, 15 April 2013.

***Double-counting not an issue***

110 I do not count against Mr Ma the fact that he made a basic double-counting error in his evidence in chief. His case against Mr Cham was that on 10 October 2004, he advanced Mr Cham \$70,000 (see [11] above), comprising part of the total advances of \$518,000. But Mr Ma included this payment of \$70,000 also in his narrative of how he had funded the Margin Account. This was an obvious and basic error. It amounted to double-counting but not double-claiming: Mr Ma was not asserting a *claim* to recover the \$70,000 from Mr Cham in S654.

111 In any event, when counsel for Mr Cham pointed out the double-counting during cross-examination, [\[note: 177\]](#) Mr Ma conceded that that was indeed the case. I find that this double-counting does not in any way affect Mr Ma's overall credibility or his claim in S478.

***Mr Cham's claim and Mr Ma's counterclaim in S654***

112 Mr Cham's claim in S654 centres on a banker's cheque from the Margin Account dated 25 October 2006 [\[note: 178\]](#) in the sum of \$1,121,660. Mr Cham claimed that this was his loan to Mr Ma to purchase shares in Enviro-Hub.

113 Mr Ma's counterclaim in S654 was for an account of the trading done through the Margin Account. This was on the basis that Mr Cham was acting, at all material times, as the agent of Mr Ma and therefore as his fiduciary.

114 I do not accept Mr Cham's case on the facts: Mr Ma had no need to borrow money from Mr Cham and Mr Cham had no means to lend Mr Ma the Enviro-Hub Payment. As for the counterclaim, I decline to exercise my discretion to grant Mr Ma the equitable remedy of an account.

***Margin Account belonged to Mr Ma***

115 I have found in the preceding analysis that Mr Cham held the money in the Margin Account as agent for Mr Ma. I have also found that the bulk of the money originated ultimately from Mr Ma or – at the very least – not from Mr Cham. As Mr Ma's agent, Mr Cham acted, at all material times, as a fiduciary of Mr Ma. Further, Mr Cham acted with Mr Ma's knowledge, consent and authority when he subscribed for various Placements through the Margin Account.

116 Where an agent simply holds for his principal without any breach of fiduciary obligation, P G Watts, *Bowstead & Reynolds on Agency* (Sweet & Maxwell 2010, 19th Ed) states (at para 6-041) that it is possible that proprietary rights can pass to the agent who receives money from the principal:

... The analogy with trust might be taken to suggest first, that when an agent holds title to money or other property for his principal, he always does so (in situations where the principal does not himself own it) as trustee. This would often be impractical and has never been the rule. It is perfectly possible for property so held, especially money, to be the agent's own, and mixed with his own assets subject only to a duty to transfer or account for it to his principal. Equally however he may certainly hold as trustee.

Sometimes the answer turns on the contract between principal and agent. It is clear in this context and in general that the existence of a contractual relationship of debtor and creditor between the parties does not prevent the existence of a simultaneous trust relationship, or a fiduciary relationship of a less onerous nature, involving nevertheless that certain money or property is held on trust. Thus it may be provided expressly between principal and agent that money received is so held. At other times, the intention to create a trust may be inferred; the matter turns on the objective interpretation, according to general principles, of the intentions of the parties. Equally, it is possible that a person may be appointed agent to collect moneys owed a principal, such as rent, but then have the express right to have recourse to those funds for discharge of obligations owed by the principal to the agent (whether or not those obligations relate to the agency relationship).

117 There are therefore two possible ways to analyse the money in the Margin Account: either (1) Mr Cham had a duty *in personam* to account for that money and to return it to Mr Ma together with any profits derived on it; or (2) Mr Cham held the money on trust for Mr Ma and it therefore remained Mr Ma's property in equity.

118 Mr Cham claims, in his closing submissions, that in the absence of a trust agreement between the parties, Mr Ma cannot claim that the money in the Margin Account belonged to him in equity. [\[note: 179\]](#) Mr Ma countered by submitting that the parties clearly intended that the money was to be held on trust. [\[note: 180\]](#) But whether the money was held on trust is beside the point. The claims in both S478 and in S654 do not turn on whether Mr Ma was the owner in equity of the money in the Margin Account. Both claims were claims in debt. Both claims involved a payment by Mr Cham from the Margin Account to a third party on Mr Ma's behalf. But if Mr Cham made these payments as an agent accounting to Mr Ma as his principal, these payments cannot at the same time be an advance of money to Mr Ma or the discharge of a debt owed by Mr Cham to Mr Ma outside the agency relationship. A finding to that effect suffices to dispose entirely of Mr Cham's claim in S654.

119 There was no evidence of an express agency agreement defining the scope of Mr Cham's obligations to Mr Ma. It was thus not possible for me to infer the necessary intention to constitute Mr Cham a trustee for Mr Ma. But as an agent, Mr Cham owed a personal fiduciary duty to Mr Ma to account to Mr Ma for the money that he had received and invested through the Margin Account. Ultimately, Mr Cham had at least an *in personam* obligation to return the money and the profits derived on it to Mr Ma. That is all Mr Cham did when he made the Ouhua Payment and the Enviro-Hub Payment. Neither payment had the effect of discharging Mr Cham's debt to Mr Ma or rendering Mr Ma indebted to Mr Cham.

120 There is no need for me to go further and consider any express trust relationship between the parties. There is also no need for me to consider whether the Mr Cham held the money in the Margin Account and the income derived on it on a resulting trust for Mr Ma.

121 Given my finding that Mr Cham *did not* make a loan of over \$1.1m to Mr Ma, it is not strictly necessary to consider whether Mr Ma *would have* borrowed from Mr Cham or whether Mr Cham *could*

have made such a large loan to Mr Ma. However, I am fortified in my finding against Mr Cham in S654 by additional findings that Mr Ma did not need to borrow money from Mr Cham and that Mr Cham did not have the resources to lend \$1.1m to Mr Ma in October 2006.

### ***Mr Ma did not need to borrow from Mr Cham***

122 Mr Ma established that he had no need to borrow money from Mr Cham. I have already observed that Mr Ma was a man of means. Mr Ma established through documentary evidence that in and around October 2006 – at the time of the Enviro-Hub Payment – he had \$3.5m on 7-day deposit at Maybank [\[note: 181\]](#) and \$1.2m in a current account with Standard Chartered Bank. [\[note: 182\]](#)

123 It is true that even on Mr Ma's case, he borrowed money to purchase the Ouhua shares and the Enviro-Hub shares. The only difference in substance between Mr Ma's case and Mr Cham's case was that Mr Ma asserted that he was borrowing from Maybank rather than from Mr Cham. When pressed on why Mr Ma felt the need to borrow from Maybank, Mr Ma explained that leveraging investments in this manner was a common financial and investment practice. [\[note: 183\]](#) I accept Mr Ma's explanation. There is nothing unusual about a person who has substantial cash deposits entering into short-term borrowing arrangements with a bank or other financial institution to make a leveraged investment with the intention of using the eventual capital gains from that investment to repay the debt, the accrued interest and the carrying costs of the investment. There is, however, something very unusual about a person who has substantial cash deposits borrowing money from a subordinate.

### ***Mr Cham did not have the means to lend this sum of money***

124 I also find that Mr Cham did not have the means at the time of the Enviro-Hub Payment to lend Mr Ma a sum of over \$1.1m. Mr Cham earned \$1,800 to \$2,300 a month at World of Sports Pte Ltd. [\[note: 184\]](#) He earned \$2,300 to \$2,400 a month at Trans Island Bus Services. [\[note: 185\]](#) He earned a salary of \$2,800 a month at MSM Holdings Pte Ltd. [\[note: 186\]](#) He earned a salary of \$3,200 per month at Snoopy Restaurants. [\[note: 187\]](#) When pressed on how much he made from his F&B business in 2004 and 2005, Mr Cham testified that he paid himself around \$3,300 per month. [\[note: 188\]](#) Mr Cham testified that he did not receive any director's fees from Fullerton. [\[note: 189\]](#) Mr Cham claimed that he drew a salary from Fullerton but he was unable to give even a rough figure of what that salary was. [\[note: 190\]](#) When it was pointed out to him that the October 2006 Accounts for Fullerton did not reflect the payment of a salary to him, Mr Cham conveniently changed his position to say that he drew his salary from Fullerton before October 2006. [\[note: 191\]](#) When pressed on the issue, Mr Cham came back the next day to say that he earned about \$6,000 a month with Fullerton. [\[note: 192\]](#) Fullerton did not issue dividends. [\[note: 193\]](#) Mr Cham earned no salary at InvestCapital, although Mr Ma gave Mr Cham *ex gratia* payments in cash from time to time when InvestCapital's investments made a profit. [\[note: 194\]](#) At OneEquity, Mr Cham earned a gross salary of \$63,000 for the 9-month period from July 2006 to March 2007, [\[note: 195\]](#) averaging \$7,000 per month. Mr Cham could not have saved up over \$1.1m from his income by the time of the Enviro-Hub Payment.

125 There was also no evidence that Mr Cham's pre-existing asset base could have put him in a position to lend over \$1.1m to Mr Ma in October 2006. Mr Cham said that he was doing well in the financial markets conducting transactions with Fullerton. Mr Cham did not, however, provide any evidence of his net worth at the material time. It did Mr Cham no favours that he failed to disclose evidence to support his claim of having played financier to a wealthy businessman.

126 I also find it inconceivable that Mr Cham would leave a genuine debt of over \$1.1m unclaimed from 25 October 2006 until 27 August 2010, which is when Mr Cham was finally stirred into commencing S654. I do not accept that the Enviro-Hub Payment was such an insignificant sum that Mr Cham could, as he claimed, afford to write it off as a "bad debt". [\[note: 196\]](#) Mr Cham's inactivity for almost 4 years up to 27 August 2010 coupled with his haste in commencing S654 after 1 July 2010, when Mr Ma commenced S478, made clear to me that S654 was nothing more than an afterthought and a groundless retaliatory strike against Mr Ma for having commenced S478.

127 That disposes of Mr Cham's claim in S654.

#### **Mr Ma's counterclaim in S654**

128 Although there was a fiduciary relationship between Mr Cham (as agent) and Mr Ma (as principal) in relation to the Margin Account, I decline to exercise my discretion in favour of granting Mr Ma the equitable remedy of an account against Mr Cham of his dealings in the Margin Account.

129 Mr Cham's Spreadsheet [\[note: 197\]](#) provides details of all the transactions put through the Margin Account. Mr Ma does not dispute the truth or accuracy of the Spreadsheet as an account of these transactions. Quite the contrary: Mr Ma bases virtually his entire case in S478 on the Spreadsheet being true and accurate. Mr Ma also relies on the Spreadsheet to establish his defence to Mr Cham's claim in S654. He therefore must be taken to accept the truth and accuracy of the Spreadsheet for the purposes of his counterclaim in S654 also.

130 The Margin Account was closed in 2007. This was three years before Mr Ma commenced S478 and 6 years before trial. When Mr Cham ceased his collaboration with Mr Ma, he left the Spreadsheet behind at Mr Ma's office premises. That is where Mr Ma found it. The remaining money in the Margin Account was returned to Mr Ma. Miss Mi Win Win Maw, who handled Mr Ma's finances at the time, testified that Mr Cham gave her, as Mr Ma's representative, \$191,000 in cash being the remaining money in the Margin Account together with his original withdrawal slip. She then deposited \$190,000 in cash into Mr Ma's Maybank account and gave the remaining \$1,000 to Mr Ma as cash in hand. [\[note: 198\]](#) This was sometime in July 2007. The parties' conduct shows that as far as they were concerned, all issues relating to the Margin Account had been tied up and resolved with its closure and the handing over of the account balance to Mr Ma by his representative, Ms Mi Win Win Maw.

131 Mr Ma admitted as much when he was cross-examined on the matter. When asked about the alleged loan from Mr Cham to Mr Ma, Mr Ma testified:

But this Maybank margin account, since July 07, more or less has been closed or – although I shouldn't use the word "closed" – has been – because I already instructed him to sell all the remaining share [*sic*] in this Maybank margin account as of July 07 and he did pass me the cash, 191,000, to my staff with – to show the balance 700-over dollars. [\[note: 199\]](#)

132 When pressed further on the matter, Mr Ma's evidence was that he had considered the matter resolved until it was re-opened in S654:

Q: Your counterclaim, your counterclaim in 654, you would have started at the [*sic*] at the same time as suit 478?

A: To me in July 2007, your Honour, once he pass the final balance, 191,000, I told my people enough is enough. So to do this to me is consider -- I consider more or less this matter

resolved.

Q: I see. So now you come to this court to say that you thought that the matter is resolved --

A: No, no, no, it is not.

Q: -- when the payment of 190,000 was done?

A: No, no, no, no at that time, at that time. Until he countersue me for 654. [\[note: 200\]](#)

133 In the circumstances, I am not satisfied that Mr Ma requires an account or that it was just to order Mr Cham to render one, particularly in light of Mr Ma's delay in pursuing his claim for this equitable remedy. I accordingly dismissed Mr Ma's counterclaim in S654.

134 Since I decline to exercise my discretion to award Mr Ma the equitable remedy of an account, I need not consider Mr Cham's submissions on laches or on Mr Ma's alleged lack of clean hands.

## **Conclusion**

135 For the reasons given above, I allowed Mr Ma's claim in S478 and dismissed both Mr Cham's claim and Mr Ma's counterclaim in S654.

136 I note finally that the parties have incorrectly drawn up my order as to costs in the judgment entered in this case. [\[note: 201\]](#) In the judgment which they have drawn up and extracted, they have recorded me as awarding Mr Ma half the costs of S478 and ordering each party to bear his own costs in S654. That is not what I ordered. S478 and S654 were consolidated and were inextricably bound up together. All of the documents and evidence in S478 were relevant to the matters in question in S654 and vice versa. I therefore did not consider it possible accurately to separate and to apportion the costs of the two suits. That is why I took as my starting point the total costs of the entire consolidated actions and awarded half of those total costs to Mr Ma, bearing in mind that he succeeded in his claim in S478 and succeeded in his defence in S654 but failed in his counterclaim in S654. At the parties' request, I fixed the costs which Mr Cham was to pay Mr Ma at \$65,000 plus half the disbursements of the consolidated suit.

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[\[note: 1\]](#) Ma Ong Kee's affidavit of evidence in chief, [20] and page 159 and 161.

[\[note: 2\]](#) Bundle of Pleadings, p 23, [2].

[\[note: 3\]](#) Agreed Bundle ("AB") p 283 – 284.

[\[note: 4\]](#) Bundle of Pleadings, p 23, [4].

[\[note: 5\]](#) AB p 274 – 275.

[\[note: 6\]](#) Bundle of Pleadings, p55, [1] – [3]. ,

[\[note: 7\]](#) Cham Poh Meng's affidavit of evidence in chief, [11].

[\[note: 8\]](#) *Ibid.*, [12].

[\[note: 9\]](#) *Ibid.*, [12].

[\[note: 10\]](#) *Ibid.*, [5] – [10].

[\[note: 11\]](#) Ma Ong Kee's affidavit of evidence in chief, [3].

[\[note: 12\]](#) *Ibid.*

[\[note: 13\]](#) *Ibid.*, [4].

[\[note: 14\]](#) *Ibid.*, [4].

[\[note: 15\]](#) *Ibid.*, page 34.

[\[note: 16\]](#) Cham Poh Meng's affidavit of evidence in chief, [31].

[\[note: 17\]](#) *Ibid.*, [14].

[\[note: 18\]](#) Ma Ong Kee's affidavit of evidence in chief, [31].

[\[note: 19\]](#) Transcript, 30 January 2013 at 15:51 pm.

[\[note: 20\]](#) Ma Ong Kee's affidavit of evidence in chief, [6] .

[\[note: 21\]](#) *Ibid.*, [5] – [6].

[\[note: 22\]](#) *Ibid.*, [5]; AB p 171 – 175.

[\[note: 23\]](#) Cham Poh Meng's affidavit of evidence in chief, [23].

[\[note: 24\]](#) Ma Ong Kee's affidavit of evidence in chief, [7]; [24].

[\[note: 25\]](#) *Ibid.*, [6].

[\[note: 26\]](#) *Ibid.*, [24] – [25].

[\[note: 27\]](#) AB p 223 – 227; AB p 253 – 254.

[\[note: 28\]](#) *Ibid.*, [8].

[\[note: 29\]](#) *Ibid.*, [25] – [28].

[\[note: 30\]](#) *Ibid.*, p 105.

[\[note: 31\]](#) *Ibid.*, [29].



[\[note: 32\]](#) *Ibid.*, [7].

[\[note: 33\]](#) *Ibid.*

[\[note: 34\]](#) *Ibid.*, p 163 and 167.

[\[note: 35\]](#) *Ibid.*, [22].

[\[note: 36\]](#) *Ibid.*, [21], [22], p 163 –183.

[\[note: 37\]](#) *Ibid.*, [21].

[\[note: 38\]](#) *Ibid.*, [21].

[\[note: 39\]](#) Cham Poh Meng's affidavit of evidence in chief, [20].

[\[note: 40\]](#) *Ibid.*, [22].

[\[note: 41\]](#) AB p 346.

[\[note: 42\]](#) Transcript, 28 January 2013, p 56 line 23 to p 64 line 23.

[\[note: 43\]](#) Transcript, 30 January 2013, p 99, line 25 to p 100, line 11.

[\[note: 44\]](#) Transcript, 30 January 2013 at 3.08 pm.

[\[note: 45\]](#) *Ibid.*, p 100, line 15.

[\[note: 46\]](#) *Ibid.*, p 103, line 16.

[\[note: 47\]](#) Cham Poh Meng's affidavit of evidence in chief, [28] and Transcript, 30 January 2013, p 120, lines 6 – 21.

[\[note: 48\]](#) Transcript, 30 January 2013, p 121, lines 15-18.

[\[note: 49\]](#) Ma Ong Kee's affidavit of evidence in chief, [9].

[\[note: 50\]](#) *Ibid.*, [10].

[\[note: 51\]](#) Cham Poh Meng's affidavit of evidence in chief, [23].

[\[note: 52\]](#) Ma Ong Kee's affidavit of evidence in chief, [10].

[\[note: 53\]](#) *Ibid.*, [10].

[\[note: 54\]](#) *Ibid.*, [11].

[\[note: 55\]](#) Cham Poh Meng's affidavit of evidence in chief, [23].

[\[note: 56\]](#) *Ibid.*, [26].

[\[note: 57\]](#) *Ibid.*, [27].

[\[note: 58\]](#) Ma Ong Kee's affidavit of evidence in chief, [25]; [26]; [28].

[\[note: 59\]](#) *Ibid.*, [27].

[\[note: 60\]](#) *Ibid.*, [6], [8], [9], [22]. [29].

[\[note: 61\]](#) Transcript, 31 January 2013, p 104, lines 7 – 20.

[\[note: 62\]](#) *Ibid.*, p 105, line 2.

[\[note: 63\]](#) Ma Ong Kee's affidavit of evidence in chief, [6], [10] and [22].

[\[note: 64\]](#) *Ibid.*, p 37.

[\[note: 65\]](#) *Ibid.*, [10].

[\[note: 66\]](#) *Ibid.*, [9].

[\[note: 67\]](#) Transcript, 30 January 2013, p 120, line 6.

[\[note: 68\]](#) *Ibid.*, [19].

[\[note: 69\]](#) *Ibid.*, [20].

[\[note: 70\]](#) *Ibid.*, p 159; 161.

[\[note: 71\]](#) AB, p 379.

[\[note: 72\]](#) Bundle of Pleadings, p 4.

[\[note: 73\]](#) *Ibid.*, p 9.

[\[note: 74\]](#) *Ibid.*

[\[note: 75\]](#) *Ibid.*, p 18.

[\[note: 76\]](#) *Ibid.*, p 23.

[\[note: 77\]](#) *Ibid.*, p 34.

[\[note: 78\]](#) *Ibid.*, p 34, [4].

[\[note: 79\]](#) Cham Poh Meng's affidavit of evidence in chief, [33].

[\[note: 80\]](#) *Ibid.*, [31] – [32].

[\[note: 81\]](#) *Ibid.*, [43]; p 153 – 154.

[\[note: 82\]](#) Transcript, 30 January 2013 at 3:51-3:52pm.

[\[note: 83\]](#) Ma Ong Kee's affidavit of evidence in chief, [3].

[\[note: 84\]](#) Transcript, 30 January 2013, p 111 line 24 – p 112 line 1.

[\[note: 85\]](#) Ma Ong Kee's affidavit of evidence in chief, [3].

[\[note: 86\]](#) Cham Poh Meng's affidavit of evidence in chief, [17] – [18].

[\[note: 87\]](#) Ma Ong Kee's affidavit of evidence in chief, [6].

[\[note: 88\]](#) *Ibid.*, [19].

[\[note: 89\]](#) Cham Poh Meng's affidavit of evidence in chief, [21].

[\[note: 90\]](#) Ma Ong Kee's affidavit of evidence in chief, [9].

[\[note: 91\]](#) Cham Poh Meng's affidavit of evidence in chief, [27] – [28].

[\[note: 92\]](#) Bundle of Pleadings, p 23, [2].

[\[note: 93\]](#) Cham Poh Meng's affidavit of evidence in chief, [31].

[\[note: 94\]](#) *Ibid.*, [34] – [40].

[\[note: 95\]](#) *Ibid.*, [38].

[\[note: 96\]](#) AB p 141.

[\[note: 97\]](#) Transcript, 31 January 2013, p 65 lines 20 – 22; p 108, lines 4 – 18.

[\[note: 98\]](#) *Ibid.*, p 106, line 8.

[\[note: 99\]](#) *Ibid.*, p 106, line 21.

[\[note: 100\]](#) AB p 29 – 30; AB p 32 – 43; AB p 61 – 65; AB p 69 – 76; AB p 79 – 82; AB p 123 – 126; AB p 135 – 138.

[\[note: 101\]](#) AB p 135.

[\[note: 102\]](#) AB p 137.

[\[note: 103\]](#) AB p 147.

[\[note: 104\]](#) AB p 177.

[\[note: 105\]](#) AB p 179.

[\[note: 106\]](#) AB p 181.

[\[note: 107\]](#) AB p 183.

[\[note: 108\]](#) AB p 185.

[\[note: 109\]](#) AB p 187.

[\[note: 110\]](#) AB p 189.

[\[note: 111\]](#) AB p 192.

[\[note: 112\]](#) AB p 202.

[\[note: 113\]](#) AB p 214; AB p 216.

[\[note: 114\]](#) AB p 255.

[\[note: 115\]](#) AB p 288.

[\[note: 116\]](#) AB p 294.

[\[note: 117\]](#) AB p 318.

[\[note: 118\]](#) AB p 325.

[\[note: 119\]](#) AB p 330.

[\[note: 120\]](#) AB p 336.

[\[note: 121\]](#) AB p 338.

[\[note: 122\]](#) Cham Poh Meng's affidavit of evidence in chief, [58].

[\[note: 123\]](#) AB p 1.

[\[note: 124\]](#) Ma Ong Kee's affidavit of evidence in chief, p 233.

[\[note: 125\]](#) *Ibid.*

[\[note: 126\]](#) Cham Poh Meng's affidavit of evidence in chief, p 185.

[\[note: 127\]](#) Transcript, 29 January 2013, p 16, lines 3 – 5 and p 17, lines 1 – 5.

[\[note: 128\]](#) Transcript, 29 January 2013, p 13, lines 12 – 14.

[\[note: 129\]](#) Transcript, 1 February 2013, p 67, lines 1 – 7.

[\[note: 130\]](#) AB p 3.

[\[note: 131\]](#) P1-W.

[\[note: 132\]](#) Transcript, 30 January 2013, p 107, lines 3 – 16.

[\[note: 133\]](#) *Ibid.*, lines 22 – 24.

[\[note: 134\]](#) Cham Poh Meng's Closing Submissions, [114].

[\[note: 135\]](#) Transcript, 29 Jan 2013, p 31, lines 3 – 10.

[\[note: 136\]](#) Transcript, 1 February 2013, p 55, line 23.

[\[note: 137\]](#) Transcript, 1 February 2013, p 56, lines 6 – 10.

[\[note: 138\]](#) Transcript, 31 January 2013, p 135 line 25 – p 136 line 6.

[\[note: 139\]](#) AB p 128.

[\[note: 140\]](#) AB p 130.

[\[note: 141\]](#) Transcript 29 January 2013, p 40, lines 7 – 9.

[\[note: 142\]](#) AB p 1.

[\[note: 143\]](#) Transcript 1 February 2013, p 73, lines 2-5.

[\[note: 144\]](#) AB p 132.

[\[note: 145\]](#) AB p 133.

[\[note: 146\]](#) Transcript 29 January 2012, p 48, lines 14 – 21 and p 49 lines 2 – 7.

[\[note: 147\]](#) Transcript, 1 February 2013, p 75 line 6 – p 76 line 4.

[\[note: 148\]](#) AB p 176.

[\[note: 149\]](#) Transcript, 1 February 2013, p 80, line 2.

[\[note: 150\]](#) *Ibid.*, p 80, lines 4 – 22.

[\[note: 151\]](#) *Ibid.*, p 82, lines 1 – 4.

[\[note: 152\]](#) *Ibid.*, p 82, lines 9 – 10.

[\[note: 153\]](#) *Ibid.*, p 83, lines 19 – 20.

[\[note: 154\]](#) *Ibid.*, p 85, lines 11 – 16.

[\[note: 155\]](#) *Ibid.*, p 85, lines 21 – 22.

[\[note: 156\]](#) *Ibid.*, p 86, lines 8 – 23.

[\[note: 157\]](#) *Ibid.*, p 87, lines 6 – 16.

[\[note: 158\]](#) Transcript, 29 January 2013, p 55, line 19.

[\[note: 159\]](#) AB p 207.

[\[note: 160\]](#) Quek Yiang Hang's affidavit of evidence in chief, QYH-1.

[\[note: 161\]](#) AB p 218.

[\[note: 162\]](#) Ma Ong Kee's affidavit of evidence in chief, [37.7].

[\[note: 163\]](#) *Ibid.*, [38].

[\[note: 164\]](#) *Ibid.*, [39].

[\[note: 165\]](#) *Ibid.*, [38]-[39].

[\[note: 166\]](#) Transcript 31 January 2013, p 138, line 16 – p 139 line 4.

[\[note: 167\]](#) Transcript 31 January 2013, p 80, lines 5 – 11.

[\[note: 168\]](#) Transcript 31 January 2013, p 79, lines 10 – 20.

[\[note: 169\]](#) Transcript 31 January 2013, p 87, lines 5 – 8.

[\[note: 170\]](#) Transcript 31 January 2013, p 87, lines 2 – 4.

[\[note: 171\]](#) Transcript 31 January 2013, p 83 line 11 – 15.

[\[note: 172\]](#) Transcript 31 January 2013, p 82 lines 12 – 14; p 83 line 9 – 10; p 84, lines 4 – 6; p 85 line 4 – 5; p 85 lines 8 – 9; p 91 lines 19 – 20; p 93, lines 20 – 23.

[\[note: 173\]](#) Transcript 31 January 2013, p 90, lines 11– 18.

[\[note: 174\]](#) Transcript 31 January 2013, p 84 lines 13 -- 15; p 84 lines 21 – p 85 line 2;p 85 lines 18 – 21; p 86 lines 12 – 13; p89 lines 6 – 8; p 91 lines 16 – 17.

[\[note: 175\]](#) Transcript 31 January 2013, p 90, lines 11 – 18.

[\[note: 176\]](#) Transcript, 31 January 2013, p 27 line 1 – p 28 line 6.

[\[note: 177\]](#) Transcript 29 January 2013, p 33 line 13 to p 39 line 24.

[\[note: 178\]](#) AB p 274.

[\[note: 179\]](#) Cham Poh Meng's Closing Submissions, [61].

[\[note: 180\]](#) Ma Ong Kee's Reply Submissions, [26].

[\[note: 181\]](#) AB p 240; AB p 277.

[\[note: 182\]](#) AB273; AB293.

[\[note: 183\]](#) Transcript, 30 January 2013, p 18– 20.

[\[note: 184\]](#) Cham Poh Meng's affidavit of evidence in chief, [12]; Transcript, 30 January 2013 at 3.16 pm.

[\[note: 185\]](#) Transcript, 30 January 2013 at 3.20 pm.

[\[note: 186\]](#) *Ibid.*

[\[note: 187\]](#) AB p 66.

[\[note: 188\]](#) Transcript, 31 January 2013, p 116, lines 16 –17.

[\[note: 189\]](#) *Ibid.*, p 118, lines 22 – 25.

[\[note: 190\]](#) *Ibid.*, p 120 – 121.

[\[note: 191\]](#) *Ibid.*, p 122, lines 20 – 23.



[\[note: 192\]](#) Transcript, 1 February 2013, p 42.

[\[note: 193\]](#) Transcript, 31 January 2013, p 119, lines 1-7.

[\[note: 194\]](#) Transcript, 28 January 2013, p 50, lines 13 to 23.

[\[note: 195\]](#) AB p 333; AB p 362.

[\[note: 196\]](#) Transcript, 31 January 2013, p 33, lines 24 – 25.

[\[note: 197\]](#) AB p 1 – 2.

[\[note: 198\]](#) Transcript, 30 January 2013, p 65, lines 11 – 25.

[\[note: 199\]](#) *Ibid.*, p 9, lines 13 – 19.

[\[note: 200\]](#) *Ibid.*, p 10, lines 9-20.

[\[note: 201\]](#) JUD 217/2013.

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