Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) *v* Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others [2015] SGCA 27

Case Number	: Civil Appeal No 63 of 2014
Decision Date	: 22 May 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Steven Chong J
Counsel Name(s)	: Edwin Lee Peng Khoon, Fu Xianglin Lesley and Jin Shan (Eldan Law LLP) for the appellant; Moey Chin Woon Michael (Moey & Yuen) for the first and second respondents; Wee Chow Sing Patrick (Patrick Wee & Partners) for the third respondent; Prem Kumar Gurbani (Gurbani & Co LLC) for the fourth respondent.
Parties	: Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) — Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others

Partnership—Partners Inter Se—Admission of New Partner

Partnership—Partners Inter Se—Partnership Property and Property of Separate Partners

22 May 2015 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

1 This is an appeal against the decision of the High Court judge ("the Judge") dismissing the Appellant's claim in Suit No 1 of 2012 ("the Suit"). The Appellant had sought a declaration that the Respondents were *not* partners of Mitre Hotel Proprietors ("MHP") and thus had no interest in or entitlement to any part of the one-tenth share of the proceeds from the sale of the Mitre Hotel at No 145 Killiney Road, Singapore ("the Property"). The share in question amounted to $11,500,000 ("the Sale Proceeds"). The Property had been sold on 1 March 2010 pursuant to an Order of Court made in Originating Summons No 830 of 2006 ("OS 830/2006").

2 The Judge dismissed the Appellant's claim and held that the Respondents were partners of MHP (see *Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) v Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others* [2014] SGHC 119 ("the GD")). The Appellant appealed against the Judge's finding that the Respondents were partners of MHP.

The background facts

The parties to the dispute

3 The Appellant was admitted as a partner of MHP on 19 November 1974 in respect of a 21/88 share of the partnership by those who at that time were the partners of MHP and who signed the relevant Form B as stipulated in the Business Registration Act 1973 (Act 36 of 1973). [note: 1]

4 The Respondents defend the action in their capacity as the respective personal representatives of three of the original partners of MHP :

(a) the 1st and 2nd Respondents are the executors of the estate of Chiam Toh Say ("Toh Say");

(b) the 3rd Respondent is the executrix of the estate of Chiam Toh Tong ("Toh Tong"); and

(c) the 4th Respondent is the executor of the estate of Chiam Toh Kai ("Toh Kai").

Background to the dispute

The formation of MHP

5 Prior to the formation of MHP, another partnership (comprising the five original partners of MHP and five others) had run a hotel business on the Property. On 28 November 1951, it was decided that the earlier partnership be dissolved and the hotel business be sold as a going concern to Toh Say for the sum of $260,000. This was subsequently documented in a deed of dissolution dated 26 February 1952, pursuant to which, among other things, the earlier partnership was deemed dissolved as from 30 November 1951 and the outgoing partners assigned to Toh Say absolutely their respective shares, title and interest in the hotel business which included a one-tenth undivided share in the Property. [note: 2]

6 MHP was then constituted to take over the running of the hotel business. The original partners of MHP entered into a partnership deed on 28 February 1952 ("the Partnership Deed") setting out their respective shares in MHP as follows: [note: 3]

Name of Partner	Share in MHP
Chiam Toh Moo ("Toh Moo")	21/88
Toh Say	25/88
Toh Tong	21/88
Toh Kai	19/88
Chiam Toh Lew ("Toh Lew")	2/88

7 The one-tenth undivided share in the Property was only conveyed to Toh Say on 29 September 1952. The parties do not dispute that this was partnership property of MHP. Subsequently, on 21 October 1952, Toh Say executed a declaration of trust ("the Trust Deed") in these terms: [note: 4]

> … the said one undivided tenth part or share of and in the property now belongs in equity to the partnership business of Mitre Hotel Proprietors carried on at No. 145 Killiney Road, Singapore (hereinafter called "the firm") as I hereby acknowledge… that I Chiam Toh Say … HEREBY DECLARE that I hold and stand possessed of the said one undivided tenth part or share of and in the property in trust for the Firm and the partners for the time being thereof…

Toh Moo's death and the Appellant's admission into the partnership

8 Toh Moo passed away in February 1961 and was survived by his widow and the Appellant, who was his only child. They were also the only beneficiaries of his estate. On 22 July 1968, Toh Moo's

widow executed a Deed of Gift and transferred the 21/88 share in MHP that she had inherited from the late Toh Moo to the Appellant. Subsequently, the Appellant was admitted into the partnership of MHP in respect of that 21/88 share (see [3] above).

Toh Tong's death and the alleged Loan Agreement

9 Toh Tong passed away on 17 May 1969. As provided in his will, Toh Kai was appointed the executor of his estate.

10 The Appellant alleged that sometime in 1974, Toh Tong's widow, purporting to act on behalf of all the beneficiaries of Toh Tong's estate, requested that Toh Kai take over the estate's share in MHP in Toh Kai's personal capacity as the beneficiaries were not prepared to bear responsibility for the substantial accumulated losses of MHP. According to the Appellant, Toh Kai acceded to her request and this arrangement was reflected in the omission of Toh Tong's estate from the list of partners of MHP that was submitted to the Registry of Companies and Businesses in 1974 and further in the minutes of a partners' meeting dated 6 April 1975.

11 Subsequently in the mid-1980s, Chiam Heng Pout ("Heng Pout"), Toh Tong's son and a beneficiary of his estate, encountered some financial difficulties and requested a loan of $50,000 from the Appellant. The Appellant claims that he agreed with Toh Kai (as the personal representative of Toh Tong's estate (see above at [9])) to extend such a loan to Heng Pout on the basis that the entirety of Toh Tong's original 21/88 share in MHP to the Appellant, save for a nominal interest (the amount of which would be determined by the Appellant) that Toh Kai would hold on trust for the estate of Toh Tong, would be transferred to the Appellant with effect from the date of the loan, if:

(a) Heng Pout failed to repay the $50,000 loan to the Appellant within six months of the date of the loan; or

(b) Heng Pout was declared a bankrupt.

("the alleged Loan Agreement")

12 According to the Appellant, Heng Pout knew of this arrangement and had signed a note stating that he was fully aware of the terms of the alleged Loan Agreement ("the alleged Loan Agreement Note"). Heng Pout did not dispute that he had obtained a $50,000 loan from the Appellant but claimed that it was an unconditional loan and that there was no such thing as the alleged Loan Agreement. He also denied ever having signed the alleged Loan Agreement Note.

13 Heng Pout did not repay the $50,000 loan to the Appellant within six months and was later adjudged a bankrupt in 1988. The Appellant claimed that he became aware of Heng Pout's bankruptcy in the early 1990s, and he then asked Toh Kai to transfer Toh Tong's 21/88 share in MHP to him, save for a nominal share which Toh Kai would hold for Toh Tong's estate. The Appellant alleged that a letter evidencing this transfer was prepared ("the alleged Transfer Letter"). However, the Appellant was unable to produce either the alleged Transfer Letter or the alleged Loan Agreement Note. According to him, Toh Kai's daughter, Chiam Siew Juat, and a relative had broken into the Property sometime in September or October 2008 and stolen these documents.

14 By way of a deed of appointment dated 27 February 1986 ("the First Deed of Appointment"), Toh Kai relinquished his position as the sole trustee of Toh Tong's estate and appointed the 3rd Respondent and Heng Pout in his place. Subsequently, by another deed of appointment dated 23 October 1996 ("the Second Deed of Appointment"), Heng Pout discharged himself as executor and

appointed the 3rd Respondent the sole executrix of Toh Tong's estate.

The consent judgment with Toh Lew's estate

15 Toh Lew passed away in 1975. In District Court Summons No 6648 of 1984 ("DC 6648/1984"), a consent judgment was entered in which his estate agreed to withdraw his name as a partner of MHP and relinquish all claims that it had in respect of any share in MHP in consideration for Toh Kai, Toh Say and the Appellant paying the estate $7,000 and reimbursing the estate for "all payments made by [Toh Lew's estate] to the Inland Revenue Department for the years 1983–1988".

Toh Say's death and the proceedings brought by his estate

16 Toh Say's status as a partner was the subject of court proceedings that took place more than two decades ago and which culminated in Civil Appeal No 150 of 1991 ("CA 150/1991"). It began in 1968 when the Appellant, having received Toh Moo's share of the partnership, began to take an interest in the running of the hotel business. Toh Say had been running the hotel business with Toh Moo, but had become the sole managing partner upon Toh Moo's death. The Appellant questioned Toh Say over the accounts for 1973 and was alleged to have physically assaulted Toh Say. Their relationship soured. On 20 March 1975, Toh Say, through his solicitors, wrote to the Appellant, Toh Kai and Toh Lew proposing that MHP be dissolved on 31 March 1975 or that he retire from MHP on that date. The proposals were not accepted. A few days later, on 31 March 1975, Toh Say issued a notice of dissolution to the Appellant, Toh Kai and Toh Lew. Again, the notice of dissolution was not accepted.

17 In 1984, Toh Say commenced an action against the MHP among other things, for his share of the profits of the partnership from 1976 to 1983. Toh Say passed away on 16 February 1990 in the midst of those proceedings and the 1st and 2nd Respondents, being the executors of Toh Say's estate, took over the conduct of the proceedings. The statement of claim was then amended to reflect the claim for Toh Say's share of the profits of the partnership from 1976 to 1986 (instead of 1983). It appears that this amendment was triggered by the decision of the Income Tax Department (the predecessor of the Inland Revenue Authority of Singapore) in 1986 to adjust Toh Say's previous tax liabilities upwards.

18 Lai Siu Chiu JC (as she then was) held that Toh Say ceased to be a partner of MHP as at 31 March 1975 and was therefore not entitled to any share of the profits thereafter. The Court of Appeal disagreed and held that, while Toh Say had given notice to dissolve MHP on 31 March 1975, this was ineffective because not all the partners had given effect to it and he therefore remained a partner of MHP and was entitled to a share of the profits for the period between 1976 and 1986 (see *Chiam Heng Chow and another (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and others* [1993] 2 SLR(R) 894).

19 On 30 December 1993, the 1st and 2nd Respondents commenced Suit No 2439 of 1993 ("S 2439/1993") against MHP and the Appellant seeking, among other things, an account of the value of Toh Say's share at the date of his death and the payment of such sum found to be due on the taking of this account.

20 On 5 October 1994, the Appellant was ordered to produce all the accounts of MHP and to file an affidavit verifying the said accounts within 21 days from the date of the order ("the 5 October Order"). The Appellant produced some documents alleging that these were MHP's accounts, but did not verify this by affidavit. On 24 November 1994, the Appellant was ordered to make an affidavit in compliance with the 5 October Order within 28 days, failing which parts of his defence in S 2439/1993

would be struck out without further order; and in that event, the Appellant's entire defence would be struck out and the 1st and 2nd Respondents would be at liberty to enter judgment against him ("the Unless Order"). The Unless Order was appealed against unsuccessfully and in the event it was upheld by Kan Ting Chiu J in *Chiam Heng Chow and another (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and another* [1996] 1 SLR(R) 899.

21 At the trial below, the parties did not place before the Judge any documents evidencing what happened after the appeal against the Unless Order was dismissed by Kan J. However, it is evident from court records that the Appellant did not comply with the Unless Order and as a result, his defence in S 2439/1993 was struck out and judgment was entered against the Appellant with costs on 22 March 1996. The judgment was extracted on the same day. Counsel for the 1st and 2nd Respondents, Mr Michael Moey ("Mr Moey") accepted at the hearing before us that there is no evidence that his clients took any further action or steps to enforce that judgment.

Toh Kai's death and the proceedings brought against his estate

22 Toh Kai passed away on 20 June 1993.

23 According to the Appellant, Toh Kai's estate was not admitted to the partnership. He further alleged that even if it were, Toh Kai's estate had served a notice to withdraw from MHP sometime after 8 September 1993 following the delivery of judgment in CA 150/1991 as it did not want to be liable for any portion of the sum of approximately $400,000 (including interests and costs) which MHP was ordered to pay Toh Say's estate in CA 150/1991. It therefore only remained a partner in respect of the nominal share belonging to Toh Tong's estate (see [10]–[13] above). The Appellant also claimed that sometime in or about 2006, the 4th Respondent and Chiam Siew Juat had approached him to discuss their re-admission to MHP on behalf of Toh Kai's estate. However, the terms of such re-admission could not be agreed upon and therefore the intended re-admission did not take place.

24 The Appellant's account was disputed by the 4th Respondent, who claimed that he had been admitted into the partnership shortly after his father's death and remained a partner since then.

25 On 25 January 2002, the 3rd Respondent commenced Originating Summons No 136 of 2002 ("OS 136/2002"), in her capacity as trustee of Toh Tong's estate, against the 4th Respondent (in his capacity as trustee of Toh Kai's estate) seeking a transfer of the share of MHP belonging to Toh Tong's estate from the estate of Toh Kai, who it will be recalled had been the executor of Toh Tong's estate after his death (see [9] above); and for the 4th Respondent to render an account of and pay over all business profits due to Toh Tong's estate. Neither MHP nor the Appellant were joined as a party to the action. It was eventually decided in that case that the estate of Toh Kai held a 19/88 share of MHP on its own behalf and a 21/88 share of MHP on trust for the estate of Toh Tong and the 4th Respondent was ordered to rectify the particulars of the partnership business that were maintained with the Registry of Companies and Businesses (now known as the Accounting and Corporate Regulatory Authority ("ACRA")) to reflect this.

Sale of the Property and subsequent events

26 On 25 April 2006, the co-owners of the Property commenced OS 830/2006 seeking, among other things, an order that the Property be sold with vacant possession. The judge who heard that matter ordered that the Property be sold with the proceeds of sale to be paid into court pending the final disposal of all issues in the action. That decision was affirmed by the Court of Appeal.

27 The Property was sold on 1 March 2010 and the sum of $115,000,000 was paid into court to be

distributed to the owners of the Property.

28 According to a search with ACRA conducted by Mr Moey on 15 October 2012, MHP's registration with ACRA was cancelled on or about 3 May 2011. In the same search, the partners of the MHP were listed as being: [note: 5]

(a) the Appellant;

(b) Toh Kai's estate;

(c) Toh Tong's estate; and

(d) Toh Say's estate.

29 On 29 October 2010, the 1st and 2nd Respondents (in their capacity as the executors of Toh Say's estate) applied in Originating Summons No 1123 of 2010 ("OS 1123/2010") for a declaration that MHP be dissolved and an order that the Sale Proceeds be paid out to the Appellant and the other Respondents (as the representatives of the respective estates) in their respective shares. On 30 November 2011, Philip Pillai J adjourned the application *sine die* as he considered that there were numerous issues in dispute.

30 The Appellant then commenced the Suit, from which the present appeal arises, on 3 January 2012.

The parties' pleadings

The claim below

31 The Appellant claimed that he was the sole remaining partner of MHP at the time the Property was sold and sought a declaration that the Respondents had no interest in the Sale Proceeds and consequently no right to claim any interest accruing from this. He therefore sought an order for the Sale Proceeds to be paid to him, save for a nominal sum (as determined by the Appellant) to be paid to the 3rd Respondent (as to which see [10] to [13] above).

32 The Appellant pleaded that the 1st and 2nd Respondents, as personal representatives of Toh Say's estate, were not entitled to a share of the Sale Proceeds because:

(a) Neither Toh Say's estate nor the 1st and 2nd Respondents had been admitted as partners of MHP.

(b) Any amount due to Toh Say's estate in respect of his share was a debt that accrued at the time of Toh Say's death and any claim that the 1st and 2nd Respondents might have in this regard had become time-barred by operation of s 6 of the Limitation Act (Cap 163, 1985 Rev Ed) ("the Limitation Act") and/or defeated by laches.

33 The Appellant pleaded that except for a nominal share to be determined by him, he had taken over the 21/88 share in MHP belonging to Toh Tong's estate from the date of the alleged Loan Agreement. As such, neither the 3rd Respondent nor Toh Tong's estate was entitled to the Sale Proceeds, save for the nominal share which had not yet been determined by the Appellant.

34 The Appellant pleaded that the 4th Respondent, as the personal representative of Toh Kai's

estate, was not entitled to a share of the Sale Proceeds because:

(a) Neither Toh Kai's estate nor the 4th Respondent had been admitted as a partner of MHP. Alternatively, and in any event, Toh Kai's estate and/or the 4th Respondent had served a purported notice of its withdrawal from MHP after 8 September 1993. However, Toh Kai's estate remained a partner holding a nominal share (to be determined by the Appellant) on behalf of Toh Tong's estate.

(b) Any amount due to Toh Kai's estate in respect of his share was a debt that accrued at the time of Toh Kai's death, or at the time the 4th Respondent served notice of his/the estate's withdrawal from MHP. Any such claim would now be time-barred and/or defeated by laches.

The defences below

35 In response, the 1st and 2nd Respondents said as follows:

(a) That by agreement, Toh Say's estate continued to be a partner of MHP until its registration was cancelled.

(b) Further or in the alternative, Toh Say's share of the partnership assets became payable to his estate as a debt once a final account had been rendered to his estate. As no final account was ever provided, the surviving partners of MHP held and continue to hold Toh Say's share of the Sale Proceeds as trustees for his estate.

(c) Further or in the alternative, s 6 of the Limitation Act does not apply as MHP was in possession of the Property at all material times; instead, s 22 of the Limitation Act applies and there is no applicable time bar as the claim is against a trustee holding trust property. Nor does the doctrine of laches apply as the Appellant had not come to court with clean hands.

36 The 3rd Respondent's case was that on Toh Tong's death, his estate was admitted as a partner of MHP in respect of a 21/88 share in the partnership and it remained a partner and owner of the said share until the date of the action. In this regard, she denied that:

(a) Toh Kai had personally ever taken over the share of MHP belonging to Toh Tong's estate; and

(b) the Appellant in turn had acquired the said share from Toh Kai in the mid-1980s.

37 The 4th Respondent's case was as follows:

(a) Shortly after Toh Kai's death, he had been admitted into MHP to represent Toh Kai's estate in respect of a 19/88 share in MHP. Toh Kai's estate never served a notice of withdrawal from MHP; and

(b) He further denied that any claim by Toh Kai's estate to the Sale Proceeds was time barred by s 6 of the Limitation Act and/or defeated by laches. Instead, s 22 of the Limitation Act was applicable and therefore no time bar could be raised against the 4th Respondent as his claim to the share of the partnership assets was against the Appellant as a trustee holding trust property (or the proceeds thereof).

The decision of the court below

38 The Judge held that the Trust Deed did not confer a beneficial interest in the Property on the original partners; and therefore no such interest devolved to the respective estates upon the deaths of the original partners. The Judge also held that on a true construction of the Trust Deed, the Property was held on trust for whoever was a partner of MHP at the "relevant future period" and therefore only those who were partners of MHP when the Property was sold would be entitled to a share of the Sale Proceeds: [70]–[73] of the GD.

39 The Judge also held that pursuant to cl 3 of the Partnership Deed, there was a technical dissolution of MHP upon the death of a partner; and that there was no agreement that the personal representatives of the estate of the deceased partners would be automatically admitted as partners: [74]–[76] of the GD.

40 The Judge also found that in the absence of an express provision in the partnership agreement, the surviving partners did not hold a deceased partner's share in partnership land on trust for his estate. Rather, the estate's entitlement was to the proportionate share of the net proceeds from the liquidation of the partnership assets. Pursuant to s 43 of the Partnership Act (Cap 391, 1994 Rev Ed) ("Partnership Act"), this accrues as a debt owed to the personal representatives of a deceased partner on the date of the death of the partner and this in turn was subject to the six-year limitation period prescribed by s 6(1)(*a*) of the Limitation Act: [78]–[88] of the GD.

41 However, the Judge found that all the Respondents were nevertheless entitled to a share of the Sale Proceeds because they had each in fact been admitted to the partnership.

42 For the 1st and 2nd Respondents, the Judge found that they had been impliedly accepted as partners. He based this on the Appellant's failure to rectify the ACRA records despite being repeatedly advised to do so, as well as his failure to object to the payment by the 1st and 2nd Respondents of a 25/88 share of the property tax assessed on the one-tenth share of the Property, in their capacity as partners of MHP: [98]–[99] of the GD.

43 As regards the 3rd Respondent, the Judge held that Toh Tong's 21/88 share in MHP was not extinguished upon his death but was held on trust by Toh Kai for Toh Tong's estate. He found that Toh Kai did not subsequently acquire the estate's share in MHP in his personal capacity and further that there was no alleged Loan Agreement; hence, the entire 21/88 share in MHP vested in the 3rd Respondent and Heng Pout upon the execution of the First Deed of Appointment: [104]–[122] of the GD. Relying on certain statements made by the Appellant in affidavits filed in different proceedings as admissions, the Judge found that following their appointment as trustees of Toh Tong's estate, the 3rd Respondent and Heng Pout were admitted as partners holding a 21/88 share in MHP. The 3rd Respondent became the sole executrix of the estate and the entirety of the 21/88 share vested in her following the Second Deed of Appointment: [124]–[129] of the GD.

44 The Judge also relied on certain statements made by the Appellant in various affidavits filed in other proceedings, which he found amounted to admissions, and on this basis found that the 4th Respondent had been admitted as a partner of MHP representing Toh Kai's estate in respect of its 19/88 share in MHP. On the evidence, the Judge also rejected the Appellant's contention that Toh Kai's estate had given notice to withdraw from the partnership subsequent to the decision in CA 150/1991: [130]–[136] of the GD.

45 The Judge therefore dismissed the Appellant's claim with costs.

The parties' cases on appeal

The Appellant's case

The Appellant's case

46 The Appellant submits that the Judge was wrong to find that he had consented to the admission of the Respondents as partners. In this regard, he argues that:

(a) the 1st and 2nd Respondents did not plead implied consent and further that any inaction on his part was not sufficiently unequivocal to constitute consent by him to the admission of the 1st and 2nd Respondents as partners; and

(b) the Appellant's statements in affidavits filed in previous proceedings could not be relied upon as admissions that he had consented to the 3rd and 4th Respondents being admitted as partners.

47 The Appellant further contends that the Judge erred in finding that the Respondents had been admitted as partners into MHP as he failed to consider whether the others who were then partners at the various material times, had consented to the Respondents' admission as partners.

The Respondents' respective cases

48 The 1st and 2nd Respondents submit that the Judge was correct to find that the Appellant had consented to their admission as partners. In the alternative, they contend that the Judge's decision to dismiss the claim should be affirmed on the following grounds:

(a) They continued to be partners of MHP following the death of Toh Say either because there had been no technical dissolution of the partnership or because they were automatically admitted into the partnership.

(b) The Judge erred in finding that the original partners' beneficial interest in the Property did not devolve to their respective estates upon their deaths.

(c) Section 6 of the Limitation Act does not apply because the 1st and 2nd Respondents were not trying to enforce a contract or bring an action for an account against the Appellant. Moreover, the Appellant has not come to court with clean hands and their claim would therefore not be defeated by laches.

49 The 3rd and 4th Respondents submit that the Judge was correct in finding that the Appellant's statements in other proceedings amounted to admissions that he had consented to their being admitted as partners of MHP. They also contend that the allegation that the others who were partners at the relevant times did not give their consent was not pleaded below and that the Appellant should not be allowed to raise the argument now. In any event, they argue that there is ample evidence that those who were partners at the relevant times did consent to their admission as partners of MHP.

50 The 4th Respondent also submitted in the alternative that the decision of the Judge should be affirmed on the basis that the 4th Respondent does have a beneficial interest in the trust of the sale proceeds of the Property regardless of his status as a partner. In this regard, he argues (in some respects, in common with the 1st and 2nd Respondents) that:

(a) The Judge erred in interpreting the relevant term of the Trust Deed; and that in fact on a true construction of the Trust Deed, the partners at the time the trust was created were also beneficiaries of the said trust.

(b) Irrespective of the Trust Deed, the beneficial interest of a partner in partnership land devolves to his estate on his death. As such, no limitation period was applicable pursuant to s 22(1) of the Limitation Act.

(c) Alternatively, the Limitation Act has no application because no account was ever rendered to Toh Kai's estate by the surviving partners and the new partnership was carried on after his death.

Issues before this Court

51 Two main issues arise for our decision. The first is whether the evidence bears out the finding that each of the Respondents had been admitted as partners of MHP. The second is whether, in the event the evidence does not bear this out, the original partners each had a beneficial interest in the partnership land, namely the one-tenth undivided share in the Property, which devolved upon their deaths to their respective estates. Related to the second issue is the sub-issue of whether the Limitation Act applies to whatever rights or interests the Respondents might have and if so, what the applicable limitation period is.

Our decision

52 Before turning to these issues, we touch on one point which was not raised by the parties. The Judge's finding at [89] of the GD was expressed in terms that the Respondents had been admitted into the partnership "in their personal capacities". This was never pleaded by any of the Respondents who were defending the Suit in their capacities as personal representatives of the respective deceased partners.

53 We raised this at the hearing before us. Counsel for the Appellant, Mr Edwin Lee ("Mr Lee"), in all fairness did not feel able to pursue the point, observing that the Judge's finding had to be read in the context of the rest of the GD; it was apparent from the rest of his grounds that the Judge had found that the respective Respondents had been admitted not in their personal capacity but rather as personal representatives of the respective deceased partners. We agree. Indeed, all the evidence that was adduced to support the 3rd and 4th Respondents' pleaded cases had been directed towards showing that they had been admitted in their capacity as the personal representatives of Toh Tong and Toh Kai respectively.

54 Before proceeding further, we should clarify one point. As Toh Say passed away in 1990, it should have been the Partnership Act 1890 (53 & 54 Vict, c 39) (UK) ("the 1890 Act"), made applicable in Singapore by virtue of s 5 of the Civil Law Act (Cap 43, 1988 Rev Ed), that would apply. However, the parties have proceeded by reference to the Partnership Act, and given that the 1890 Act and the Partnership Act are identical save for a number of provisions which are not relevant for the present proceedings, we refer to the provisions in the Partnership Act instead of the 1890 Act.

Did the Judge err in finding that the Respondents are partners of MHP?

The 1st and 2nd Respondents

55 We first deal with the 1st and 2nd Respondents' contention that they continue to be partners of MHP because (a) there has allegedly been no technical dissolution of MHP given that no proper accounts have been rendered to Toh Say's estate, and alternatively (b) the partners had agreed that the legal representatives of the deceased partner's estate would step into the shoes of the deceased partner in the partnership and be automatically admitted into the partnership. We deal with these two

points in turn.

(1) Did a technical dissolution of MHP occur?

56 Unlike a company, which is a distinct legal entity with its own legal personality, a partnership, in essence, is a contractual relationship between two or more persons carrying on a business with a view to profit. It has thus been observed that the essence of a partnership contract is that each partner must be alive in order to contribute his individual personal qualities; therefore, the death of any partner and the ensuing loss of his personal attributes will, in and of itself, extinguish the very spirit of the contract and terminate not only the relationship between the deceased and the surviving partners but also as between the surviving partners: see Yeo Hwee Ying, *Partnership Law in Singapore* (Butterworths Asia, 2000) ("*Yeo*") at p 243 and Roderick I'Anson Banks, *Lindley & Banks on Partnership* (Sweet & Maxwell, 19th Ed, 2010) ("*Lindley*") at para 3-04.

57 Reflecting this principle, s 33(1) of the Partnership Act provides that a partnership is dissolved by the death of a partner, subject to any agreement to the contrary. In the present case, cl 3 of the Partnership Deed provides that "[t]he death or retirement of any partner shall not dissolve the partnership as to the other partners". We note first that cl 3 in effect provides for the continuance of the partnership "as to the *other* partners" [emphasis added]. It does not in terms contemplate that the estate of a deceased partner remains a partner. But does this mean that in a setting where a contrary arrangement has been agreed to that no technical dissolution occurs? In our judgment that does not follow. A *technical* dissolution of the original partnership occurs, *as a matter of law*, due to the change in the composition of the firm. It is therefore observed in *Lindley* as follows (at para 24-02):

> …It has already been seen that, as a matter of law, a change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm; in such a case, the new firm will usually take on the assets and liabilities of the old, without any break in the continuity of the business. This is often referred to as a "technical" dissolution and is usually, but not always, the result of agreement.

58 This basic proposition was reiterated in *Hadlee v Commissioner of Inland Revenue* [1989] 2 NZLR 447 at 455 (*per* Eichelbaum CJ): see also *Inland Revenue v Graham's Trustees* [1971] SC (HL) 1 at 5 and *Khoo Yoke Wah v Lee Choo Yam Holdings* [1991] 1 MLJ 414 at 416 (*per* Gunn Chit Tuan SCJ, in *obiter*) where the courts found that the surviving partners who continue to run the business of the partnership, carry on as a "different and distinct legal persona". Put simply, therefore, a technical dissolution occurs because the composition of the partnership has changed. The rendering of accounts is *not* a *pre-requisite* for the technical dissolution of a partnership to occur; rather it would be a *consequence* of it.

59 Mr Moey, counsel for the 1st and 2nd Respondents, sought to rely on s 27(2) of the Partnership Act to support his proposition that there will not be a technical dissolution of the partnership until the accounts have been rendered. That section provides as follows:

> **Where partnership for term is continued over, continuance on old terms presumed**
>
> 27.—(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

60 With respect to Mr Moey, his reliance on this provision is misplaced. Section 27 of the Partnership Act is concerned with the continuation of a partnership for a term (that is a partnership that has been entered into for a fixed term and that will automatically be dissolved upon the expiration of that term). Such a partnership continues as a partnership at the will of the partners after the expiration of the stipulated term. In other words, s 27(2) of the Partnership Act essentially creates a presumption that a partnership for a term continues as a partnership at will where the partners or such of them have continued the business, "without any settlement or liquidation of the partnership affairs". The provision has no application in the present case which was not a partnership for a term and which had been technically dissolved not by the effluxion of time but by the death of one of the partners.

61 In light of the foregoing, we find that there was a technical dissolution of MHP upon the death of Toh Say.

(2) Were the 1st and 2nd Respondents automatically admitted as partners?

62 We turn to the second point. It is clear that unless the parties to the partnership contract have agreed to the contrary, the personal representatives of a deceased partner have no automatic right to become a partner. This is so even if the business of the partnership continues with the remaining partners: see *Lindley* at para 26-02 and *Yeo* at p 244. In this regard, the 1st and 2nd Respondents repeat their arguments raised in the trial below that it can be inferred from the practice of the partners and from cll 23 and 25 of the Partnership Deed that the intention was that the personal representatives of a deceased partner's estate would automatically be admitted to the partnership.

63 We first consider the clauses of the Partnership Deed. Clause 23 provides that the "[i]f any partner should die during the continuance of the partnership[,] his share of the nett [sic] profits shall be paid to his legal personal representatives." The Judge observed that nothing in the wording of cl 23 suggests that the personal representatives of the deceased's estate are to be admitted as partners and we agree. Notably, cl 23 expressly provides that the payments would be received by the personal representatives of the deceased's estate in that capacity *and not as partners*. Moreover, the clause will clearly cease to operate once the deceased partner's share in the partnership has been extinguished.

64 As regards cl 25 of the Partnership Deed, which is the dispute resolution clause, Mr Moey sought to contend that the fact that it contemplates disputes between the personal representatives of a partner and any other partner suggests that the personal representatives were themselves to be admitted as partners. We disagree and instead concur with the Judge that nothing in its wording limits the operation of cl 25 to *partners* of MHP. Indeed, the clause expressly states that:

> All disputes and questions whatsoever which shall either during the partnership *or afterwards* arise between the partners *or their respective representatives* or between any partners or partner *and the representative of any other partner* touching this deed or the construction or application thereof… shall be referred to a single arbitrator … [emphasis added]

Clause 25 thus contemplates that even disputes arising *after the partnership ceases to exist* shall be referred to arbitration, where these are between the partners or their personal representatives in the

case of a deceased partner. This does not assist Mr Moey's argument or support his contention that it was contemplated that the personal representatives would automatically become partners. Indeed, the fact that cl 25 refers to "partners *or* their respective representatives" would suggest that the personal representatives of the partners are *not* automatically admitted into the partnership. If Mr Moey was right, then the words "or their respective representatives" would have been redundant. In this regard, it appears to us that cl 25 actually contradicts Mr Moey's contention.

65 As to the alleged practice of admitting the personal representatives of a deceased partner to the partnership, we are satisfied that there was no such consistent practice. Indeed, the true position was quite to the contrary. First, the Appellant had been admitted into MHP with the *express consent* of the other surviving partners and this was done *in his own right* (*ie*, not in his capacity as personal representative of Toh Moo's estate). That this is so is reflected in the fact that although Toh Moo passed away in February 1961, the Appellant was only admitted as a partner on 19 November 1974. Second, the 1st and 2nd Respondents' reliance on the consent judgment in DC 6648/1984 as evidence that Toh Lew's estate had been admitted as a partner of MHP is tenuous. Disputes are settled for an infinite variety of reasons and the entry of a consent judgment generally says nothing about the merits of either side's case. Moreover, the consent judgment in that case entailed the estate giving up its claims in return for certain payments. This says nothing about the nature of those claims. Finally, and most importantly, the 1st and 2nd Respondents did not take the position in S 2439/1993 (see above at [19]–[21]) that they had been automatically admitted as partners in their capacity as personal representatives of Toh Say following Toh Say's demise. On the contrary, the 1st and 2nd Respondents claimed that the Appellant was the sole surviving partner of MHP and sought various reliefs *in their capacity as personal representatives of Toh Say*, which was consistent with an intention to liquidate and extract the value of Toh Say's share from the partnership (see below at [136]–[137] and [153]).

66 In the premises, we find that there was no agreement that the personal representatives of the deceased partners' estates would be automatically admitted as partners. Therefore, s 24(7) of the Partnership Act applies and the consent of all remaining partners had to be obtained for a person to be admitted into the partnership. It is to this question of consent that we now turn.

(3) Did the Appellant consent to the admission of the 1st and 2nd Respondents as partners?

67 The Judge primarily relied on the Appellant's failure to rectify the particulars in ACRA and his failure to object to the 1st and 2nd Respondents' payment of property tax in respect of the property to find that the Appellant had impliedly consented to the admission of the 1st and 2nd Respondents as partners of MHP. The Appellant submits that the Judge erred and makes three contentions in respect of his submission. First, he contends that his alleged "silent inactivity" was not sufficiently unequivocal to signify his implied consent to the admission of the 1st and 2nd Respondents into MHP. Second, and in any event, he submits that there was no "silent inactivity" on his part. Finally, he contends that implied consent was not even pleaded by the 1st and 2nd Respondents.

68 In our judgment, the last contention can be dismissed quickly. The 1st and 2nd Respondents had pleaded the facts on which they intended to rely to make good their contention that the Appellant considered them to be partners. Further and in any event, there has been no prejudice to the Appellant as this issue had been fully ventilated and the necessary evidence was adduced at the court below. Mr Lee quite properly did not pursue this point at the hearing before us.

69 In relation to the first two contentions, before we turn to the relevant facts, we think it useful to briefly set out the relevant legal principles. In accordance with contract law principles, the fact of consent must be ascertained objectively and it may be express, implied or inferred from the

surrounding circumstances including the conduct of the parties at the time the agreement was reached: *Lindley* at para 10-256 and *Yeo* at pp 29 and 79. The Judge relied on the decision in *Giuffrida Luigi v Julius Baer (Singapore) Ltd (in members' voluntary liquidation) and another* [2010] SGHC 96 ("*Julius Baer*") (at [20]) for the proposition that silent inactivity may be sufficient to signify a party's implied consent to an arrangement *if the circumstances are such that the silent party ought to have spoken up or objected*. It is important to emphasise that this inquiry is invariably fact-sensitive. As observed by V K Rajah JC (as he then was) in *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 at [52]:

> … In the final analysis, the touchstone is whether, *in the established matrix of circumstances*, the conduct of the parties, objectively ascertained, supports the existence of a contract… Legal intentions, whether articulated or unarticulated, should not be viewed in isolation but should be filtered through their factual prism. Silence, depending on whether it is conscious or unconscious, may also from time to time entail altogether disparate legal consequences. [emphasis added]

In *Julius Baer* for example, the circumstances which were thought to warrant finding a duty on the silent party to object included the fact that the complainant customer was deemed to have received a letter which specifically stated that bank customers were to respond if they did not agree to the transfer of their accounts.

70 Returning to the case at hand, it is true that the present proceedings are the first commenced by the Appellant to clarify just who the partners of MHP are. Furthermore, although the Appellant had claimed under cross-examination that he had requested that the 1st and 2nd Respondents sign and file the prescribed Form D to rectify ACRA's records and reflect that they were no longer partners, he was unable to produce any documentary evidence in support of this claim.

71 Nonetheless, we consider that the Appellant's failure to rectify the register must be seen in context. Such a failure can only be held against the Appellant if he owed a duty to the 1st and 2nd Respondents to take steps to rectify the register. As was recognised by the Judge, the registration of a deceased partner's estate as a partner of MHP cannot affect the rights and status of the partners *inter se*. Indeed, ACRA had consistently accepted that the inclusion of the deceased partners' estates on its register was merely for administrative purposes and did not mean that the estates in question had in fact been admitted into the partnership. In its letter dated 30 March 2000, [note: 6] the Registry of Companies and Businesses (ACRA's predecessor) explained that the addition of the words "Estate of" in respect of Toh Kai and Toh Say had been done only "to denote that these two persons…have passed away. *It does not denote that the estate has been admitted into the partnership*" [emphasis added]. Similar statements to the Appellant were made in ACRA's letter dated 27 November 2006 [note: 7] and ACRA's email dated 18 January 2011. [note: 8]

72 This is entirely consistent with the fact that the Business Registration Act (Cap 32, 2004 Rev Ed) imposes a statutory duty on persons carrying on a business to ensure the accuracy of the particulars of the business registered with ACRA (see ss 5 and 14), for a particular purpose, which is to protect *third parties* dealing with these persons from fraud (see *Singapore Parliamentary Debates, Official Report* (26 July 1973) vol 32 at col 1229 (Hon Sui Sen, Minister for Finance)). In our judgment, the 1st and 2nd Respondents can hardly be said to be in the same position as a third party dealing with MHP. On the contrary, there is ample evidence that the 1st and 2nd Respondents were put on notice of the Appellant's consistent and vehement objection to their claim to be partners of MHP. The Appellant had denied that they were partners in his 5 March 1998 affidavit filed in Originating Summons No 31 of 1998 [note: 9] and subsequently also in his affidavit dated 31 August 2006 filed in OS 830/2006 ("the OS 830 affidavit"). [note: 10] The 1st and 2nd Respondents were parties to both of

these proceedings and would therefore have known of the Appellant's objections. Further, on 2 October 2006, subsequent to the filing of the OS 830 affidavit, the 1st and 2nd Respondents' solicitor had sent a letter, purporting to give notice of a partnership meeting of MHP, to the Appellant as well as the 3rd and 4th Respondents. In his reply, the Appellant objected to the purported notice on the basis that the 1st and 2nd Respondents had not been admitted as partners into MHP.

73 In the circumstances, we are satisfied that the Judge erred in finding that the circumstances were such as to justify imposing a duty on the Appellant, as against *the 1st and 2nd Respondents*, to take steps to rectify ACRA's records by removing Toh Say's estate from the register. Moreover, in our judgment, the Appellant's consistent objections to the 1st and 2nd Respondents and/or Toh Say's estate being named as partners of MHP ran counter to a finding of implied consent on his part to their admission as partners.

74 We next consider the Judge's finding in relation to the payment of property tax. It is important to emphasise from the outset that as Toh Say's estate was the legal owner of the one-tenth share of the Property, the 1st and 2nd Respondents (being the executors of his estate) were *legally obliged* to pay the property tax assessed on it, although they would then have been entitled to be reimbursed out of the trust funds for this expense. Indeed, this was the Appellant's understanding as he testified under cross-examination: [note: 11]

> Q: Yes. So far as you know, as trustee for the whole one-tenth of the property, who should pay the property tax?
>
> A: Er, the trustee is considered as---as the property owner and should pay the property tax.

75 The 1st and 2nd Respondents relied on the letter from their counsel dated 9 March 2009 to the other parties in relation to the property tax payable to suggest that this indicated that the Appellant accepted that they were partners. We do not agree. First, the letter has to be read in light of the legal position stated above at [69] which is that it must be construed objectively in the light of all the circumstances. Paragraph 2 of the letter states as follows: [note: 12]

> Our clients instruct that *in the light of the current situation*, *it is preferable* that all the partners of Mitre Hotel Proprietors pay the property tax due for their 1/10th share of the captioned property directly to the Comptroller of Property Tax in proportion to their shares. [emphasis added]

76 In our judgment, the language of this extract, read in light of the 1st and 2nd Respondents' legal obligation (as the registered legal owners) to pay property tax, suggests that the payment of property tax in accordance with the parties' claimed partnership shares was merely a *suggestion*. Unlike in *Julius Baer*, where the letter from the bank expressly stated that the bank customers were obliged to respond if they disagreed to the transfer, there was no duty on the Appellant to respond, such that his silence would constitute acquiescence. On the contrary, it was the 1st and 2nd Respondents who requested the Appellant to respond precisely because he was not obliged to do so. Thus paragraph 4 of the letter stated:

> As for the estate of Chiam Toh Lew, *our clients shall appreciate if [the Appellant] will confirm* if he will be making payment of S$2,363.64 over and above his own share, being the amount of property tax due for the 2/88 share owned by the estate of Chiam Toh Lew, which he claims. [emphasis added]

77 In the circumstances, we do not agree that the Appellant's failure to respond to the letter from the 1st and 2nd Respondents could be deemed sufficiently unequivocal to connote consent.

78 It is also irrelevant whether the Appellant offered to reimburse the 1st and 2nd Respondents for the property tax that they had paid because as trustees, the 1st and 2nd Respondents would in any event be entitled to be reimbursed from the proceeds of sale of the trust property for any expenses they had incurred.

79 We therefore find that the Judge erred in relying on the Appellant's failure to object to the 1st and 2nd Respondents' payment of property tax as constituting implied consent to their admission as partners.

80 Finally, for completeness, we address two further points raised by Mr Moey at the hearing before us. First, he sought to rely on a letter dated 29 April 2006 [note: 13] from the Appellant to the 1st and 2nd Respondents in respect of OS 830/2006 as evidence that the Appellant had consented to the admission of the 1st and 2nd Respondents as partners. Second, he argued that the implied consent of the Appellant could also be inferred from his failure to take action to displace the 1st and 2nd Respondents as trustees of the one-tenth undivided share in the Property.

81 As to the first point, we begin by setting out the contents of the letter dated 29 April 2006 in full: [note: 14]

> We refer to [OS 830/2006] in which you are the 6th and 7th Defendants. As you are fully aware, you are holding the 1/10th share of the property as a trustee for [MHP] who is the beneficial owner. WE [sic] have written to you a few years back asking you to transfer the property to the precedent partner as trustee but there was no response. AS [sic] we are the 8th defendant, we shall engage a lawyer to act for us on this matter to protect our interest. *I believe that you will have no objection for the same lawyer to act for you on this matter to protect our interest and we also do not want to incur unnecessary costs*. [emphasis added]

Mr Moey argued that it was clear from the Appellant's reference to "our interest" that he thought that the 1st and 2nd Respondents were also partners of MHP. We disagree. As we observed at the hearing, the reference to "our interest" was consistent with the 1st and 2nd Respondents being trustees of the one-tenth share of the Property for MHP because as trustee their interest in relation to the trust property would have been aligned with the interest of the beneficiary. This reading of the words "our interest" is further supported when read in the context of the rest of the letter as it is clear that the Appellant was addressing the 1st and 2nd Respondents *in their capacity as trustees*. The question of whether the 1st and 2nd Respondents were also partners is a separate one that was neither raised nor put in issue by this letter.

82 As for Mr Moey's second contention that the Appellant should have removed the 1st and 2nd Respondents as trustees, we do not see any force in this. First, as noted in the letter that Mr Moey referred to and which is set out in the preceding paragraph, the Appellant had sought a transfer of legal title to him as precedent partner (for him to hold on trust for MHP). Second, the fact that no action was taken to remove the 1st and 2nd Respondents as trustees sheds no light at all on whether they had in fact been admitted to the partnership in the first place.

(4) Conclusion on Issue 1 in relation to the 1st and 2nd Respondents

83 For these reasons, we find that the Appellant did not consent to the 1st and 2nd Respondents

being admitted as partners of MHP following the demise of Toh Say. In the premises, it is unnecessary for us to consider whether the others who were partners of MHP at the time had consented to their admission.

The 3rd and 4th Respondents

84 The Judge primarily relied on statements made by the Appellant both in these and in other legal proceedings (primarily in OS 830/2006) as admissions (in the evidentiary sense) that the 3rd and 4th Respondents had been admitted as partners of MHP. In this regard, the case advanced by the Appellant has two main prongs. First, he submitted that the Judge had erred in finding that the statements made by the Appellant were admissions that the 3rd and 4th Respondents had become partners of MHP. Second, he submitted that even if these were admissions, the Appellant could not have acted unilaterally; consent also had to be obtained from the others who were partners of MHP at the time and this, allegedly, was never done.

85 We begin by stating that we affirm the Judge's finding that neither Toh Kai nor the Appellant had acquired Toh Tong's 21/88 share in the partnership, as set out at [10]–[13] above. We agree with the Judge's finding on this and his reasons as set out at [107]–[122] of the GD.

(1) The Appellant's statements

86 The Appellant makes two arguments in respect of the Judge's reliance on the statements made in the OS 830 affidavit. First, he argues that the OS 830 affidavit essentially dealt with the issue of whether MHP continued to be in existence and not whether the 3rd or 4th Respondents were substantive partners of MHP at the relevant time and that his statements should be read in that context. Second, he argues that his statements were not inconsistent with the position that the 4th Respondent had been admitted as a partner only in respect of the nominal share that he says belongs to Toh Tong's estate.

87 We set out the relevant extract of the OS 830 affidavit: [note: 15]

> 15. [Heng Pout] and [the 3rd Respondent] (legal personal representatives of Chiam Toh Tong, deceased) have been admitted as partners into [MHP]. Their contributions to [MHP's] business (and their corresponding rewards for their services) are reflected in the profits and loss accounts of [MHP] for the years 1987 to 1990… The accounts show that payments were made to "*Chiam Toh Kai & Estate of Chiam Toh Tong Dec'd for services*".
>
> …
>
> 17. … The accounts from 1987 to 1990 reflect the partners during those years as myself, [Toh Kai] and the legal representatives of Chiam Toh Tong ([the 3rd Respondent and Heng Pout]). As decided by the Court of Appeal in Civil Appeal No. 150 of 1991, Chiam Toh Say was also a partner in that period.
>
> 18. Chiam Toh Say passed away on 16 February 1990. After he passed away, the remaining partners of [MHP] were myself, Chiam Toh Kai, [Heng Pout] and [the 3rd Respondent] (legal personal representatives of Chiam Toh Tong deceased). Chiam Toh Say's legal personal representatives [the 1st and 2nd Respondents] have not been admitted as partners into [MHP] by the remaining partners. To date, this remains the case.
>
> 19. Chiam Toh Kai passed away on 20 June 1993. At the time of his death, the partners in [MHP]

> were myself and [Heng Pout] and [the 3rd Respondent] (legal personal representatives of Chiam Toh Tong, deceased). The legal personal representative of Chiam Toh Kai, deceased, [the 4th Respondent] was thereafter admitted as a partner into [MHP] by the remaining partners. …

88 It is clear from this that the Appellant had stated in definite terms and *on oath* that the 3rd and 4th Respondents as the personal representatives of the estates of the deceased partners (namely, Toh Tong and Toh Kai) had been admitted as partners. In our judgment, these statements were clearly admissions that could be and were properly relied on against the Appellant as they were statements that he had made and were contrary to the position he was taking in the present proceedings. We are also satisfied that the context in which the statements were made does nothing to alter their clear and unequivocal meaning. In fact, the statements had been made in the context of the Appellant giving an account of the changes in the composition of MHP and its partners as at the date of the affidavit *in order to show* that the partnership still existed. We note that the Appellant appeared to reserve his position on who the partners of MHP were and what their respective shares were at paragraph 27 of the said affidavit. In our judgment, however, this does not displace the weight of the assertions that he was making. Significantly, the Appellant had himself relied on these statements in the later parts of his affidavit to support his claim that he did have standing to represent MHP in those proceedings (see paras 32 and 33 of the OS 830 affidavit).

89 Turning to the Appellant's second contention, we have already stated (at [85] above) that we agree with the Judge's rejection of the Appellant's contentions on the nominal share issue. But there is a further point. In his affidavit filed on 6 June 2011 in OS 1123/2010 ("the OS 1123 affidavit"), which was an application taken out by the 1st and 2nd Respondents as trustees of the one-tenth share of the Property, the Appellant had said as follows: [note: 16]

> [Toh Kai] passed away on 20 June 1993. His administrator, [the 4th Respondent] was admitted to the partnership, *to represent [Toh Kai's] estate*. However, after the Court of Appeal's decision for Civil Appeal No. 150 of 1991, which was issued on 8 September 1993, [Toh Kai's] estate served notice of its withdrawal from MHP through its solicitors, M/s Laycock & Ong. … [emphasis added]

This was an express statement contrary to the Appellant's position before us that the 4th Respondent had been admitted only in respect of the nominal share belonging to *Toh Tong's* estate.

90 For completeness, we also affirm the Judge's finding that the 4th Respondent did not withdraw from the partnership. In addition to the Judge's reasons at [133]–[135] of the GD, which we accept, we also observe that there was no mention of the 4th Respondent's purported withdrawal in the OS 830 affidavit that the Appellant filed in August 2006, long after the alleged withdrawal of the 4th Respondent from the partnership. Moreover the Appellant had confirmed, under cross-examination in those proceedings, that the 4th Respondent was still a partner of MHP as at 17 April 2007. [note: 17]

(2) The consent of the other then-partners

91 The Appellant's alternative position is that the 3rd and 4th Respondents were not effectively admitted as partners because the consent of the others who were partners at the time of their alleged admission had not been obtained. This was a point taken only at the appeal. Is the Appellant entitled to raise this now? The 3rd and 4th Respondents submit that this had not been pleaded by the Appellant and was never put forward as a basis for the Appellant's claim that he was the sole surviving partner of MHP. In response, the Appellant contends that it was incumbent on the 3rd and 4th Respondents (and not on him) to plead and prove the facts that support their claim that the

administrators of the respective estates have been admitted as partners of MHP, and this would include proving the fact that *all the partners at that time* had consented to their admission: see s 24(7) of the Partnership Act.

92 It is trite that every pleading must contain the material facts on which the party relies for his claim or defence and that both the parties and the court are bound by the parties' pleadings. In this regard, the Appellant's claim in respect of the non-admission of the 3rd and 4th Respondents was based on particular factual allegations as summarised at [33]–[34] above and expressly pleaded in his Statement of Claim (Amendment No 4) at paras 32–49 and 50–55. [note: 18] It was never the Appellant's position below that the 3rd and 4th Respondents had not been admitted into the partnership on the basis that no consent had been obtained from the *other* partners at that time. In turn, the 3rd and 4th Respondents *denied* that the Appellant's pleaded factual allegations were true in their respective defences. Having squarely met the Appellant's pleaded case, the lack of consent of the other partners was a matter which, if raised, would have taken the 3rd and 4th Respondents by surprise and should therefore have been specifically pleaded in any subsequent pleadings: O 18 r 8(1) (*b*) Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC"). However, the contention that the consent of the other partners had not been obtained was conspicuously absent from the Appellant's subsequent pleadings. Moreover, the Appellant never contended that the 3rd and 4th Respondents had failed to obtain the consent of the other partners, even in his closing submissions.

93 Aside from the pleadings, the issue of the alleged failure to obtain the consent of the other partners was not a live issue between the parties at the trial. Neither the 3rd nor the 4th Respondent took the position as against one another that they had not been admitted into the partnership. Moreover, at the hearing before us, counsel for the 3rd and 4th Respondents respectively confirmed that the position of their clients was that although there was no express consent, there was implied consent which could be inferred from their conduct *inter se* and from the way in which the partnership was run.

94 We are satisfied that the Appellant's attempt to raise this contention now is plainly an afterthought and to allow him to do so will prejudice the 3rd and 4th Respondents. We therefore disallow the attempt to raise the point at this late stage.

95 In any case, there is no substance in the Appellant's contention having regard to the available evidence. First, as we noted above at [88], his statements, which we regard as admissions (in an evidentiary sense), were in definite terms that the 3rd and 4th Respondents had been admitted as partners in their capacity as the personal representatives of the estates of the deceased partners (namely, Toh Tong and Toh Kai). This was in no way qualified or limited by any suggestion that he alone had consented to their admission or that they were partners only so far as he was concerned. Moreover any such qualification would have rendered untrue the Appellant's assertion (on oath) that they were partners.

96 Finally, as regards the 4th Respondent, the Appellant sought to rely on the 3rd Respondent's evidence under cross-examination to show that she had not consented to the 4th Respondent's admission as a partner. The 3rd Respondent's evidence was as follows:

> Q: Okay? Mr Chiam Toh Kai passed away in 1993. You agree?
>
> A: Yes.
>
> Q: Did you have any meetings with the part --- the rest of the remaining partners to admit his executors as partners to the partnership?

A: No meetings, Your Honour.

Q: Have you ever given any consent to the executors of Chiam Toh Kai to be admitted as a partner?

A: There's no meetings (indistinct)

Q: Yes. So a---the answer is no, right?

A: No, no.

…

Q: You have never given consent---

A: Yah, yah.

Q: ---because there is [sic] no meetings. Correct?

A: No meetings, yes.

97 With respect, this exchange does not support the Appellant's contention. At best, the essence of the 3rd Respondent's evidence was that her formal consent in respect of the 4th Respondent's admission as a partner was never sought in a partnership meeting. Indeed, she had earlier said under cross-examination that no meetings of the partners of MHP were held. [note: 19] In no way does this evidence negate the 3rd Respondent's implied consent to the 4th Respondent's admission as a partner as manifested in their conduct *inter se*. Pertinently, the 3rd Respondent never took the position that the 4th Respondent was not a partner, even when it would clearly have been advantageous for her to do so.

(3) Conclusion on Issue 1 in relation to 3rd and 4th Respondents

98 For these reasons, we find that the Appellant did consent to the admission of the 3rd and 4th Respondents as partners of MHP in their capacity as the personal representatives Toh Tong and Toh Kai respectively. They were therefore partners of MHP at the time of the sale of the Property. We accordingly affirm the Judge's findings in this respect. This is sufficient to dispose of the appeal insofar as the 3rd and 4th Respondents are concerned. However, there remains an issue as far as the 1st and 2nd Respondents are concerned and it is to this that we now turn.

Did the Respondents acquire a beneficial interest in the trust of Sale Proceeds even if they are not partners of MHP?

99 In the alternative, the 1st and 2nd Respondents argue that the Judge's decision to dismiss the Appellant's claim ought to be affirmed on the ground that the original partners had a beneficial interest in the one-tenth share of the Property that was held on trust for MHP and that this devolved to their respective estates upon their death. In response, the Appellant raises first, a technical objection that, not having filed a cross-appeal, the 1st and 2nd Respondents are not entitled to rely on O 57 r 9A(5) of the ROC to canvass this argument in this appeal. The Appellant also argues that the Judge did not err in finding that the original partners had no beneficial interest in the one-tenth share of the Property being held on trust and that, in any event, no such beneficial interest devolved to the estates of the deceased partners.

100 The operation of O 57 r 9A(5) was considered in *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 331 ("*Peter Lim*") at [26]. Order 57 r 9A(5) provides that:

> A respondent who, not having appealed from the decision of the Court below, desires to contend on the appeal that the decision of that Court should be varied in the event of an appeal being allowed in whole or in part, or that the decision of that Court should be affirmed on grounds other than those relied upon by that Court, must state so in his Case, specifying the grounds of that contention.

In *Peter Lim*, the trial judge had dismissed the plaintiff's claim in defamation as he found that – (1) although the relevant extracts were defamatory, (2) they were published on an occasion of qualified privilege, and (3) there was no malice defeating the qualified privilege. The respondents who had not filed a cross-appeal against the first finding that the extracts *were* defamatory, sought to argue that, contrary to the trial judge's decision, the relevant extracts were not defamatory of the appellant. The respondents argued that they could do so by virtue of O 57 r 9A(5) as this was a new or additional ground on which they contended that the trial judge's dismissal of the appellant's claim should be affirmed. The Court of Appeal rejected this, observing that the purpose of O 57 r 9A(5) was to allow a successful respondent to support a decision of the court below that is in his favour by affirming it on a ground that the court had not relied on. The Court of Appeal further held that a "decision of the court" as contemplated by the rule included a "finding of law or fact that can be varied or affirmed". On the facts before it, the Court of Appeal held that the respondents were not entitled to rely on O 57 r 9A(5) because in effect, they were asking the Court of Appeal to *reverse* the trial judge's decision on this point insofar as it had been held that the relevant extracts were defamatory.

101 In the case before us, the Judge held that the deceased partners' estates have no beneficial interest in the one-tenth share of the Property. In this appeal, the 1st and 2nd Respondents are seeking by their alternative argument to reverse this decision. This would seem impermissible based on the approach taken in *Peter Lim*. In such circumstances, they ought to have filed a cross-appeal and not having done so, they are not entitled to pursue this.

102 Nevertheless, as this is a question of law, and as the point was fully argued by both parties both in their written submissions and in oral arguments, we make some observations on this.

The applicable law

103 The parties do not dispute that the one-tenth undivided share in the Property was partnership property as defined in s 20 of the Partnership Act. The arguments revolved mostly around the interpretation of various provisions of that Act.

104 The 1st and 2nd Respondent contend that, based on the proviso to s 20(1) of the Partnership Act, Toh Say had a beneficial interest in the one-tenth undivided share in the Property, which devolved to his estate upon his death.

105 Section 20(1) of the Partnership Act provides as follows:

> **Partnership property**
>
> 20.—(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in

accordance with the partnership agreement:

Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase

106 Particular reliance was place on the following words of the proviso: "but in trust, so far as necessary, for the persons beneficially interested in the land under this section". The 1st and 2nd Respondents contend on this basis that Toh Say (and, for that matter, each of the partners) had a discrete equitable interest in the land which was capable of passing and did pass to Toh Say's estate when he died; they also argue that s 22(1)(*b*) of the Limitation Act applies, since the 1st and 2nd Respondents' claims are for trust property (or the proceeds thereof), and therefore no period of limitation applies in such circumstances.

107 On the other hand, the Appellant submits that no beneficial interest in the one-tenth undivided share in the Property devolved to Toh Say's estate or to the 1st and 2nd Respondents upon Toh Say's death and that the 1st and 2nd Respondents never had any right to an *in specie* division of the land. According to the Appellant, all the 1st and 2nd Respondents had upon Toh Say's death was a right to be paid the value of his share and this was a debt pursuant to s 43 of the Partnership Act, which in turn was subject to a 6-year limitation period under s 6(*a*) of the Limitation Act.

(1) Background to the Partnership Act

108 It is helpful first to set out the legislative background to the Partnership Act, which provides the backdrop against which we consider the meaning and operation of its provisions. As mentioned earlier, our Partnership Act, save for a few minor amendments, is similar to the 1890 Act. The 1890 Act became part of our law through the reception of English law by virtue of s 6 of the Civil Law Ordinance (No IV of 1878), later replaced with s 5 of the Civil Law Act (Cap 24, 1955 Ed), and subsequently confirmed by the enactment of s 4(1)(*a*) of the Application of English Law Act (Act 35 of 1993). The Partnership Act was then updated and re-enacted in its current form in 1994.

109 The 1890 Act was not a complete code of partnership law or a precise legislative enactment of the existing case law that had developed the applicable legal and equitable principles. As Lord Lindley observed, it was "not a perfect measure, nor even so good as Parliament might have made it": see *Lindley* at para 1-05. The 1890 Act itself provided, by s 46, that the existing rules of equity and of common law would continue in force except so far as they were inconsistent with the express provisions of the 1890 Act. This saving provision was retained in our Partnership Act. The English Court of Appeal in *Robert John Hopper and another v June Lilian Hopper* [2008] EWCA Civ 1417 ("*Hopper*") recognised at [45] that much of the statute broadly reflects the pre-existing case law. We note that this is particularly the case for the provisions that deal with partnership property and the interest of each partner in such property: see *Lindley & Banks on Partnership* (Ernest H Scamell and R C I'Anson Banks eds) (Sweet & Maxwell, 15th Ed, 1984) at p 6.

110 It follows that in construing the provisions of the Partnership Act, it may be relevant to have regard to the principles articulated in cases that predate the 1890 Act.

(2) The nature of a partner's interest in partnership property

111 The nature of a partner's interest in partnership property has been elucidated in various decisions. Prior to the enactment of the 1890 Act, Kindersley VC made several key observations in relation to the nature of a partner's interest in partnership property in *Darby v Darby* (1856) 3 Drewry 495 ("*Darby*"), and we reproduce the relevant parts below (at 503–506):

> Now it appears to me that, irrespective of authority, and looking at the matter with reference to principles well established in this Court, if partners purchase land merely for the purpose of their trade, and pay for it out of the partnership property, that transaction makes the property personalty, and effects a conversion out and out.
>
> What is the clear principle of this Court as to the law of partnership? *It is that, on the dissolution of the partnership*, ***all the property belonging to the partnership shall be sold*** *, and the proceeds of the sale, after discharging all the partnership debts and liabilities, shall be divided among the partners according to their respective shares in the capital.* ***That is the general rule; it requires no special stipulation; it is inherent in the very contract of partnership*** . That the rule applies to all ordinary partnership property is beyond all question, and no one partner has a right to insist that any particular part or item of the partnership property shall remain unsold, and that he shall retain his own share of it in specie. …
>
> ...
>
> I should therefore feel no hesitation in coming to this conclusion, that ***the mere contract of partnership, without any express stipulation, involves in it an implied contract*** , quite as stringent as if it were expressed, *that, at the dissolution of the partnership, all the property then belonging to the partnership*, whether it be ordinary stock-in-trade, or a leasehold interest, or a fee-simple estate in land, ***shall be sold*** , *and the net proceeds, after satisfying all the partnership debts and liabilities, be divided among the partners;* and that each partner, and the representatives of any deceased partner, have a right to insist on this being done.
>
> Next, what is the doctrine of this Court as to conversion? ...
>
> Now *if it be established that, by the contract of partnership, all the partnership property is to be sold at the dissolution of the partnership, then any real property which has become the property of the partnership becomes, by force of the partnership contract, converted into personalty*; and that, ***not merely as between the partners*** , to the extent of discharging the partnership debts, ***but as between the real and personal representatives of any deceased partner*** .
>
> That this is so, I should, in the absence of all authority, have decided upon principle; and when I find, notwithstanding the decision of Lord Thurlow, followed by Sir W. Grant, that Lord Eldon was clearly of opinion that real property purchased by a partnership for the partnership purposes, and with the partnership funds, becomes personalty; that Sir J. Leach repeatedly so decided without any doubt; and that Sir L. Shadwell also decided the last case in the same way, *I can have no difficulty in coming to the conclusion that, whenever a partnership purchase real estate for the partnership purposes, and with the partnership funds*, ***it is as between the real and personal representatives of the partners personal estate*** *.*

[emphasis in italics and bold italics]

112 Two salient points can be discerned from the above passage. First, it is implied in all partnership agreements that, upon dissolution, partnership property will be sold and the net proceeds, after having satisfied the debts and liabilities of the partnership, will be divided amongst the partners in their proportionate share. Second, as a result of the equitable doctrine of conversion (which is based on the maxim that equity looks upon that as done which ought to be done), partnership property which was supposed to be sold at the dissolution of the partnership will be deemed as sold (see *Snell's Equity* (John McGhee QC gen ed) (Sweet & Maxwell Asia, 31st Ed, 2005) at paras 6-01, 6-02 and 6-03). The effect is that a partner's interest (as well as persons claiming through him in respect of his interest as a partner) in the partnership property as against the other partners is no more than a proportionate share of the net proceeds.

113 Kindersley VC's observations in *Darby* were made with regard to the nature of the partner's interest in partnership property as against the other partners. There is a subtle distinction in the position among the partners on the one hand and between the partnership and the outside world on the other hand. This was noted for instance by Hoffmann LJ (as he then was) in *Inland Revenue Commissioners v Gray* [1994] STC 360 at 377 where he said:

> ... *As between themselves*, partners are not entitled individually to exercise proprietary rights over any of the partnership assets. This is because they have subjected their proprietary interests to the terms of the partnership deed which provides that the assets shall be employed in the partnership business, and on dissolution realised for the purposes of paying debts and distributing any surplus. *As regards the outside world*, however, the partnership deed is irrelevant. The partners are collectively entitled to each and every asset of the partnership, in which each of them therefore has an undivided share. ... [emphasis added]

114 The same distinction was drawn by Luxmoore J in the earlier case of *In re Fuller's Contract* [1933] 1 Ch 652 at 656, where he explained as follows:

> My attention has been called to a statement by Romer L.J. in *In re Bourne* [[1906] 2 Ch 427 at 432–433] on which reliance is placed by Mr. Lightwood in support of his argument. The passage he relies upon is: "It is to be borne in mind that the real interest of the partnership in real estate is of a personal character, because wherever the legal estate may be, whether it is in the partners jointly or in one partner or in a stranger it does not matter, the beneficial interest in the real estate belongs to the partnership, with an implied trust for sale for the purpose of realizing the assets and for the purpose of giving to the two partners their interests when the partnership is wound up and an account taken. So that no real distinction can be drawn, it appears to me, between real estate held for partnership purposes and personal estate." It is said that this statement is equivalent to a decision that a partner has no beneficial interest in the partnership real estate that he can point to and say: "I have an interest in that particular property." I am unable to accept that view. I think Romer L.J. was only pointing out that the beneficial interest in the real estate belonged to the partnership, that is, to those persons who constituted the partnership, and that those persons were together entitled to the partnership property. Of course, *as between the partners*, the partnership property must be dealt with in a particular way, *but so far as all the rest of the world is concerned*, there is no limitation on the interests of the partners; the partners have the beneficial interest in the partnership assets, which are held together as an undivided whole, but they respectively have undivided interests in them. [emphasis added]

115 In the same vein, Nourse LJ in *Popat v Shonchhatra* [1997] 1 WLR 1367 at 1372 considered

that:

> … Although it is both customary and convenient to speak of a partner's "share" of the partnership assets, that is not a truly accurate description of his interest in them, at all events so long as the partnership is a going concern. While each partner has a proprietary interest in each and every asset, he has no entitlement to any specific asset and, in consequence, no right, without the consent of the other partners or partner, to require the whole or even a share of any particular asset to be vested in him. On dissolution the position is in substance not much different, … each partner in a solvent partnership is presumptively entitled to payment of what is due from the firm to him in respect of capital before division of the ultimate residue in the shares in which profits are divisible… It is only at that stage that a partner can accurately be said to be entitled to a share of anything, which, in the absence of agreement to the contrary, will be a share of cash.

116 It is apparent from these cases that there are two periods in the life of the partnership – first, while it is continuing, and second, after a general dissolution; and there is both an internal and an external perspective of the nature of a partner's interest in partnership property. During the continuation of the partnership, and as against the outside world, the partners are *collectively* entitled to each and every asset of the partnership in which each of them has an undivided share. However, as between themselves, none of the partners are entitled *individually* to assert proprietary rights over any specific part of the partnership property to the exclusion of the other partners. This follows from their having subjected their proprietary interests to the terms of the partnership agreement. Therefore, each partner's interest in the partnership property is in the nature of an interest in their use and application for the benefit of the partnership until the time of its determination. At such time, each partner's beneficial interest in the partnership property will, unless the partners have agreed otherwise, take effect by the division of any surplus (after the settlement of the debts and liabilities) amongst the partners in their proportionate share.

117 The nature of the partner's interest in the partnership property in relation to the other partners is the result of the implied agreement between the partners that all partnership property (including land) will be sold upon the dissolution of the partnership and which equity deems to have been performed. Hence, in the absence of any agreement to the contrary, the default position is that a partner's share in the partnership property as against the other partners is a proportionate share in the net proceeds of sale of the partnership property after all the firm's debts and liabilities have been paid or provided for upon dissolution.

118 Because of this, the traditional view in the common law has been to treat the partner's interest in the partnership property as an equitable chose in action (*ie*, a right enforceable by action or the right of action itself): *In re Bainbridge, ex parte Fletcher* (1878) 8 Ch D 218 at 223 and 225. This, however, has been the subject of conflicting judicial authority in Australia. At least two Australian cases, including one from the High Court of Australia, have accepted that a partner has a beneficial interest in every asset of the partnership during the continuation of the partnership: see *Canny Gabriel Castle Jackson Advertising Pty Limited and another v Volume Sales (Finance) Pty Limited* (1974) 131 CLR 321 ("*Canny*"); *Connell and another v Bond Corporation Pty Ltd and others* (1992) 8 WAR 352 ("*Connell*"). Subsequent cases, however, appear to have taken a different position. Shortly after *Connell* was decided, the same issue arose in *Chettle v Brown* [1993] 2 Qd R 604. No reference was made to *Connell*. Interestingly, despite considering the same authorities (albeit in far briefer fashion), White J held that the partners only had an interest in the distribution of the proceeds of sale, and in doing so, took a different approach than was taken in *Connell*. Moreover, the High Court of Australia had held on several occasions after *Canny* that a partner's interest in the partnership property is an equitable chose in action: see *Federal Commissioner of Taxation v Everett* (1980) 143

CLR 440 at [7]–[8], [15], [21]; *United Builders Pty Ltd and another v Mutual Acceptance Ltd* (1980) 144 CLR 673 at 687–688; *Commissioner of State Taxation of the State of South Australia v Cyril Henschke Pty Ltd and others* (2010) 242 CLR 508 at [25], [27]–[28]. It seems to us that neither *Connell* nor *Canny* concerns the nature of the partner's interest in the partnership property as against other partners. Indeed, Malcolm CJ accepted in *Connell* at 374 that, even though a partner may have a proprietary interest which constitutes a "caveatable interest in the land", he has no specific title to any individual asset and has no right to require that any particular asset be transferred to him. For present purposes, we do not need to decide if the position in *Connell* and *Canny*, on their particular facts, is correct. What is pertinent, however, is that they do not support the conclusion that a partner (or his personal representatives) can demand as against the other partners that any particular partnership asset (or a share thereof) be transferred to him (or his personal representatives). This of course cuts against the position of the 1st and 2nd Respondents.

119 Mr Moey further submitted that the doctrine of non-survivorship between partners applies in respect of the partners' beneficial interests in the partnership property and that there is therefore a strong presumption against partnership property accruing to the surviving partner(s) beneficially (see generally *John Frederick Bathurst (as Administrator of the estate of Michael David Bathurst deceased) v Philip Charles Scarborow* [2004] EWCA Civ 411). In the absence of an agreement to the contrary, we agree that the doctrine of non-survivorship applies. However, we do not think this can change the *nature* of the partners' beneficial interest in the partnership property as against the other partners which, as we have already explained above, is not an entitlement to specific property or any part thereof that is capable of devolving upon the deceased partner's estate or his personal representatives upon his death, unless by way of special agreement. Rather, it is a right to a share of the surplus after the partnership property has been realised and the liabilities met.

(3) The proviso to s 20(1) of the Partnership Act

120 In the light of this discussion, we turn to consider the meaning and operation of s 20(1) of the Partnership Act. Section 20(1) is generally concerned with the definition of partnership property as any property that is bought into the partnership or acquired by it and it goes on to provide that such property must be held and applied exclusively for the purposes of the partnership.

121 A partnership, not being a separate legal entity, cannot hold in its name the legal title to partnership land, and such legal title would therefore have to vest in the names of one or more of the partners (or any other person(s) as the partners deem fit). In keeping with this, the proviso to s 20(1) of the Partnership Act (which, but for the absence of a reference to Scots Law, is *in pari materia* with s 20(2) of the 1890 Act) provides:

> Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, *but in trust, so far as necessary, for the persons beneficially interested in the land under this section*. [emphasis added]

122 One of the effects of the proviso is that the *legal* title to partnership land devolves according to the normal law affecting real property (statutory or otherwise): see Keith L Fletcher, *The Law of Partnership in Australia* (Lawbook Co, 9th Ed, 2007) at para 5.25 and Geoffrey Morse, *Partnership Law* (Oxford University Press, 7th Ed, 2010) ("*Morse*") at para 6.11.

123 But what of the *beneficial* interest? It is clear that the trustees hold partnership land on behalf of the persons who are beneficially interested in it. However, this does not mean that an outgoing partner is entitled to assert a proprietary interest in the partnership land *in specie* or that a

proportionate share of specific partnership land is held on trust for the estate of the deceased partner. We have already noted above that the partners' beneficial interest in the partnership property as against the other partners is not an interest *in specie* but an interest in the net proceeds of sale of the partnership assets upon dissolution (unless, of course, the partners have agreed otherwise). This is equally true of partnership land. The phrase "for persons beneficially interested in the land under this section" must therefore to be understood in the light of the nature of a partner's interest in partnership property as explained at [111]–[117] above. Hence, if a partner holding partnership land on trust for the partnership dies, then the legal interest in that property shall devolve according to the general rules of law, but those to whom the property so devolves shall continue to hold the property on a trust for those beneficially interested in the land *as a partnership asset*. In short, the section does not alter the *nature* of the interest that the partners (including the estate of any deceased partner) have, which is as we have set out above. It follows from this that the proviso does not assist the 1st and 2nd Respondents. The legal interest passes to the 1st and 2nd Respondents but subject to the trust in favour of those beneficially interested in it, namely, the partners, *all* of whom in light of s 22 of the Partnership Act, continue to have a proportionate interest in the surplus of the sale proceeds after accounting for the debts and liabilities of the partnership, but *none* of whom have a specific and exclusive interest in any specific part of the partnership assets.

(4) Section 22 of the Partnership Act

124 The Judge below considered the relationship between the proviso to s 20(1) and s 22 of the Partnership Act. Section 22 of the Partnership Act states:

> Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or movable and not real estate.

125 Section 22 of the Partnership Act is essentially a codification of the equitable doctrine of conversion. As explained earlier, land that belongs to a partnership (in common with the rest of the partnership property) is held upon an implied trust for sale (unless the partners agree otherwise); equity, looking upon that as done which ought to be done, treats the partners' interests as being in the proceeds of sale, *ie*, personalty: see *Attorney-General v Hubbuck and others* (1884) 13 QBD 275 at 289. Thus, as Lord Lindley explained (*Lindley* at para 19-14):

> From the principle that a share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership debts, *it necessarily follows that, in equity, a share in a partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be his personal and not real estate*, unless indeed such conversion is inconsistent with the agreement between the parties. [emphasis added]

126 Sir Frederick Pollock, the draftsman of the 1890 Act commented in his work, *A Digest of the Law of Partnership, incorporating the Partnership Act 1890* (Stevens & Sons Limited, 5th Ed, 1890) ("*Pollock's Digest*") on the meaning and operation of s 22 of the 1890 Act (which is *in pari materia* with s 22 of our Partnership Act) in similar terms (at p 66):

> The share of a partner in the partnership property at any given time may be defined as the proportion of the then existing partnership assets to which he would be entitled if the whole were realized and converted into money, and after all the then existing debts and liabilities of the firm had been discharged.

127 He considered the meaning of the words "unless the contrary intention appears" as follows (at p 65):

> … partners may at any time by agreement between themselves convert partnership property into the several property of any one or more of the partners, or the several property of any partner into partnership property. And such conversion, if made in good faith, is effectual not only as between the partners, but as against the creditors of the firm and of the several partners.

128 Section 22 of the 1890 Act has since largely been overtaken by statutory developments in England. However, similar developments have not occurred in Singapore – the doctrine of conversion survives here (see generally *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 at [29]) and s 22 of the Partnership Act remains in force. Mr Moey drew our attention to s 35(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed), which provides that land shall devolve as "chattels real" upon death; but the position on partnership land is governed by the relevant provisions in the Partnership Act.

129 The Judge held that, because partnership land is deemed the personal rather than real property of the partners pursuant to s 22 of the Partnership Act, a deceased partner's estate cannot be said to have been "beneficially interested in the land" as set out in the proviso to s 20(1) of the Partnership Act. If this were right, it would render the proviso to s 20(1) otiose; but the Judge thought that such a conclusion could be avoided on the basis that the proviso would continue to be relevant in situations where the parties contract out of ss 22 and 43 of the Partnership Act and agree that the surviving partners are to hold the deceased partner's share on trust for his estate.

130 With respect, we disagree. If the deceased partner's estate acquires a specific beneficial interest in land that belongs to the partnership by virtue of an express provision in the partnership agreement, then the surviving partners would hold the deceased partner's share on trust for his estate by virtue of and in order to give effect to the agreement and not because of the proviso to s 20(1) of the Partnership Act. Indeed, on the Judge's reading of the effect of s 22, the proviso to s 20(1) of the Partnership Act would be rendered superfluous.

131 Section 22 provides that where land or any interest in land is partnership property, it is treated *as between the partners* as if it had been converted into money (*ie*, the sale proceeds). As we have observed above, this is a reflection of the equitable doctrine of conversion which operates on the implied trust for sale. This is true as between the partners and s 22 makes it clear that this is also the position with respect to the personal representatives of a deceased partner. Section 20(1), as we have noted above, deals with the meaning of "partnership property" generally; and the proviso deals with the specific matter of interests in any land that belongs to the partnership. Because the partnership lacks legal personality, it cannot hold land in its own name. Hence, the legal title to partnership land will vest in a trustee. Upon the trustee's death, the proviso sets out how the *legal* title will pass without affecting the beneficial interests of the partnership in such land. It therefore follows, as we have already noted above at [123], that those to whom the land devolves continue to be bound by the trust for sale in favour of the partners. Hence, the proviso to s 20(1) is entirely consistent with the substantive position reflected in s 22. Our departure with the position taken by the Judge is that, in our judgment, the proviso to s 20(1) is designed to preserve the beneficial interest of the partnership in the land, but this does not alter the *nature* of the interest, which as we have noted above, as between the partners, is in the net proceeds after sale upon the dissolution of the partnership (unless the partners have agreed otherwise).

(5) Section 43 of the Partnership Act

132 We turn finally to s 43 of the Partnership Act, which provides:

> Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share *is a debt accruing at the date of the dissolution or death*. [emphasis added]

133 In our judgment, this provision must be understood in the light of the nature of a partner's interest in partnership property. In the analysis that follows, we refer to the rights of the deceased partner's personal representative in relation to the surviving partners since these are the facts of the present case, but the same analysis would apply as between an outgoing partner and the other partners.

134 It follows from our analysis at [111]–[117] above, that in the event of a *general* dissolution, the right of deceased partner's personal representative consists in "having an account of the property, of its collection and application, and in receiving that portion of the clear balance that accrues to the deceased's share and interest in the partnership": see *Brownlow William Knox v Frederick Gye* (1871–1872) LR 5 HL 656 ("*Knox v Gye*") at 675. Unless modified by an agreement to the contrary, the deceased partner's personal representative therefore has the power to bring an action against the surviving partners to have the partnership wound up, with a view to realizing the partnership assets by a sale and for final accounts to be taken between the partners: see *Lindley* at para 26-02; *Morse* at paras 7.36 and 7.60. This is reflected in s 39 of the Partnership Act.

135 It follows that where this is the nature of the action being brought by the personal representatives of a deceased partner, it cannot properly be said to be one by a beneficiary under a trust to recover trust property (or the proceeds thereof) from the trustee. This was recognised by Lord Westbury in *Knox v Gye* as follows (at 675–676):

> Another source of error in the matter is the looseness with which the word "trustee" is frequently used. The surviving partner is often called a "trustee" but the term is used inaccurately. He is not a trustee, either expressly or by implication. On the death of a partner the law confers on his representatives certain rights as against the surviving partner, and imposes upon the latter correspondent obligations. *The surviving partner may be called, so far as these obligations extend, a trustee for the deceased partner; but when these obligations have been fulfilled, or are discharged, or terminate by law, the supposed trust is at an end*.
>
> … the surviving partner may be called a trustee for the dead man, *but the trust is limited to the discharge of the obligation, which is liable to be barred by lapse of time*; as between the express trustee and the *cestui que trust* time will not run; but the surviving partner is not a trustee in the full and proper sense of the word. …
>
> [emphasis added]

136 In our judgment, this is consistent with the foregoing analysis which has led us to conclude that partnership property is, by default, subject to a trust for sale to realise the partnership assets and distribute the net proceeds to the partners in their respective shares upon a *general* dissolution of the partnership. Such an obligation, for which an action to enforce is available, would nonetheless be liable to be barred by the lapse of time.

137 Where there is a *technical* dissolution of the partnership, *ie*, where the partnership business remains intact and is carried on by the remaining partners notwithstanding the death or departure of

one partner, while the deceased partner's personal representatives have a right to have the value of the deceased partner's share ascertained and paid out by the surviving partners, just how this is to be brought about will depend on, among other things, whether the agreement between the partners provides for this. If it does, then the deceased partner's share is properly regarded as a debt with effect from the date on which he ceased to be a partner; in other words, his personal representative's rights are only those of an unsecured creditor for the amount: see *Lindley* at para 19-10 and *Sobell v Boston and others* [1975] 1 WLR 1587 at 1590–1591. In the absence of any such express provision, the deceased partner's personal representative could first offer to sell the deceased partner's share to the surviving partner(s), or failing that, the representative may be left with no alternative but to bring an action to wind up the partnership in the usual way: see *Lindley* at para 26-04.

138 It is settled law that s 43 of the Partnership Act will apply where a *technical* dissolution occurs and the amount found to be owing to the deceased partner's personal representatives will then be regarded as a debt to which the normal periods of limitation apply, *ie*, six years pursuant to s 6(1)(*a*) of the Limitation Act. There has, however, been some doubt as to whether the provision applies in a *general* dissolution. The difficulty has been explained as follows (*Lindley* at para 26-03):

> If the share is indeed converted into debt on such a dissolution [*ie*, a general dissolution], it is a debt of a most unusual nature, since the estate is clearly entitled to a full share of any increase in the value of the partnership assets accruing in the period between the date of death and the date of realisation and, conversely, must bear a full share of any diminution in value during that period. …

The point here is pertinent to a general dissolution rather than a technical dissolution because the concern relates to changes in the value of the assets that arise not out of the continuance of the business (indeed there will be no such continuance in a general dissolution) but out of fluctuations in the conditions affecting the realisation of the assets. The current edition of *Lindley* therefore takes the view that s 43 of the Partnership Act does not apply in a *general* dissolution.

139 Nevertheless, this difficulty does not appear to be insurmountable. In *Duncan and another v The MFV Marigold PD145* [2006] SLT 975 ("*Duncan*") the Outer House of the Scottish Court of Session came to a different conclusion following an examination of the backdrop to s 43 of the Partnership Act. Lord Reed first considered (at [52]) the discussion of s 43 in *Pollock's Digest* (at pp 121–122) which states as follows:

> A surviving partner has sometimes been said to be a trustee for the deceased partner's representatives in respect of his interest in the partnership; but this is a metaphorical and inaccurate expression. The claim of the representatives against the surviving partner is in the nature of a contract debt and is subject to the Statute of Limitations, which runs from the deceased partner's death. …

140 Lord Reed observed that s 43 of the Partnership Act was intended to give effect to the decision in *Knox v Gye*, the relevant passages of which we have reproduced and considered at [135] above. He therefore concluded as follows (at [52]):

> The intended significance of the use of the word "debt" in s 43, appears to have been to make it clear that the surviving partners were not trustees for the deceased partner's representatives in respect of his interest in the partnership, and that the claim of the representatives against the surviving partners was therefore subject to the statute of limitations. … *Interpreted as a provision concerned primarily with prescription and limitation, and with the related question*

whether the surviving partners should be regarded as trustees, s 43 can be understood as applicable to all dissolutions. [emphasis added]

141 We agree with and adopt this analysis in *Duncan*. The difficulty expressed in *Lindley* (see [138] above) appears to arise as a result of reading the word "debt" in its *descriptive* sense (namely that the partner's share is a fixed sum of money due and owing upon death or dissolution, and thus, not capable of encompassing any fluctuation in the value of the assets thereafter). On this basis, he argues that it would be a "debt of a most unusual nature" (see [138] above). But in our judgment, the effect of s 43 is that the amount due from the surviving or continuing partners to an outgoing partner or to the representatives of a deceased partner in respect of such partner's share is to be treated as a debt that has accrued on the date of the dissolution or death even though the outgoing or deceased partner's share may not, at that point in time, be a sum of money that has been ascertained. This appears to have been the conclusion reached in *Duncan* at [63] and we see no reason to reach a different conclusion.

Application to the facts

142 We turn to consider the application of the law to the relevant facts of the present case.

(1) The Trust Deed

143 The 1st and 2nd Respondents argue that the Trust Deed conferred upon the original partners a beneficial interest in the one-tenth share of the Property which devolved to them upon Toh Say's death. The salient terms of the Trust Deed have been set out at [7] above. The dispute below centred on the interpretation of the phrase, "in trust for the firm and the partners for the time being thereof".

144 With respect, we think that the parties' contentions failed to address the logically anterior issue – namely, what is the nature of the interest in the Property that was created by the Trust Deed? In particular, did the Trust Deed confer discrete proprietary rights and interests in respect of specific assets on each of the partners to begin with? In our judgment, the answer to this is no. The recital to the Trust Deed expressly refers to the one-tenth undivided share of the Property as "belonging in equity to the partnership business". The Trust Deed *in effect* makes it clear that although the legal interest was held in Toh Say's name, he held it on a trust for sale for the benefit of the partnership.

145 In our judgment, the beneficial interest that vested in the partners was limited to an entitlement to enforce a sale and division of the proceeds that would take effect upon the dissolution of the partnership. The Trust Deed never purported to vest a specific portion of the land in any of the partners on term that allowed them to use it or to realise it for their own benefit to the exclusion of the other partners.

146 In short, the words "in trust for the firm and the partners for the time being thereof" must be interpreted in a manner that is consistent with the settlor's clear and unambiguous intention that the one-tenth undivided share in the Property would be held by him as partnership property.

(2) The 1st and 2nd Respondents' rights upon the demise of Toh Say

147 The question that then arises is whether there was any agreement or provision in the Partnership Deed that confers upon an outgoing partner or his personal representative (where he has died) a right to an *in specie* division of the partnership assets? In our judgment, no such agreement or

provision in the Partnership Deed exists. On the contrary, cl 21 of the Partnership Deed provides:

> Upon the determination of the partnership by effluxion of time or by any other event not herein otherwise provided for a full and general account shall be taken of the assets credits debts and liabilities of the partnership and of the transactions and dealings thereof and … such assets and credits shall be sold realised and got in and the proceeds applied in paying discharging such debts and liabilities … and the balance (if any) of such proceeds shall be divided between the partners in the shares in which they are entitled to…

This reflects the conventional position that a partner's share is represented by his proportionate share in the net proceeds remaining after all the partnership assets have been sold and the partnership debts and liabilities paid and discharged.

148 It is true cl 3 of the Partnership Deed provides for the continuance of the partnership business upon the death and retirement of any partner. But this is as between the remaining partners. Hence, the net effect of these provisions is that a technical dissolution took place upon Toh Say's demise and his personal representatives (being the 1st and 2nd Respondents) had the right to have the value of Toh Say's share ascertained and paid pursuant to cl 21 of the Partnership Deed as well as s 43 of the Partnership Act. This is insufficient for the 1st and 2nd Respondents because such a claim (*ie*, in debt) would have been time-barred.

149 To overcome this, the 1st and 2nd Respondents' next line of argument is that the Limitation Act has no application because no account was ever rendered to them following the death of Toh Say and the surviving partners instead carried on a new partnership. They rely on the decision in *Betjemann v Betjemann* [1895] 2 Ch 474 ("*Betjemann*") in support of this. There a father and his two sons had carried on the business as partners from 1856 to 1886; the father died in 1886 but the sons continued the business until 1893 when one of the sons died. The deceased son's executor brought an action against the surviving partner for an account of the partnership dealings from 1886. The surviving partner claimed that the accounts of the old partnership should be taken from 1856. The court found that the surviving son was entitled to an order for the accounts to be taken against the deceased son's executor with effect from 1856, on the basis that the accounts of the original firm had been carried on into the new firm without interruption or settlement.

150 In our judgment, the principle enunciated in *Betjemann* is not as broad the 1st and 2nd Respondents contend. Sonia Proudman QC (sitting as a deputy High Court judge) in *Mehra v Shah and others* [2003] All ER (D) 15 (Aug) (decision upheld on appeal; see *Mehra v Shah and others* [2004] EWCA Civ 632) observed at [76] that the principle that continuing the partnership business prevents time running applies only as between the continuing or surviving partners who carry on the partnership business. This is apparent from the very passage in *Betjemann* (at 478) that was cited by the 4th Respondent:

> They continued the partnership account as one account and never wound it up; they brought in all the balances, carried on the balances at the bankers, carried on the ledgers, and carried on the account without a break. *Now as between persons who deal with each other upon that footing, I fail to see that the Statute of Limitations has any application whatever*. Notwithstanding, therefore, that the partnership was determined between the three and that there was a new partnership account between the two, there was no break in the account, and the account was never brought to an end. [emphasis added]

151 *Betjemann* thus stands only for the limited proposition that the event of a technical dissolution following the death of one partner does not start time running as between the surviving partners who

can rather seek an account from the inception of the earlier partnership if there was no break in the partnership account and the earlier partnership account was never settled. Save in that exceptional factual situation, which does not avail here, the settled law is as promulgated in *Knox v Gye*, namely that a limitation defence will be available and effective as between the continuing or surviving partners on the one hand and the outgoing partner or his estate on the other, regardless of whether the accounts are rendered or have been settled.

152 Finally, the 1st and 2nd Respondents contend that s 6 of the Limitation Act does not apply as they were not the ones trying to bring a claim in the present case (being the defendants). In our judgment, this argument wholly misses the point, which is that any claim that the 1st and 2nd Respondents might have had to the share of the Sale Proceeds has now become time-barred.

(3) The effect of S 2439/1993

153 In closing, we make one further observation. The rights of the 1st and 2nd Respondents are foreclosed for another reason as well, which is that they did in fact exercise their rights under cl 21 of the Partnership Deed and s 43 of the Partnership Act as personal representatives of Toh Say when they commenced S 2439/1993. The 1st and 2nd Respondents sought the following relief in those proceedings:

(a) An account of Toh Say's share in the profits of MHP for the years 1987 to 1989 inclusive and for the period 1 January 1990 to 16 February 1990 (the date of Toh Say's death) and payment of the sum found due on the taking of this account.

(b) Payment at their option of the sum found due under either (i) an account of Toh Say's share of the profits of MHP from 17 February 1990; or (ii) an account of interest at 8% per annum on Toh Say's share in the capital of MHP from 17 February 1990.

(c) An account of the value of Toh Say's share in MHP at 16February 1990, *ie*, the date of his death, and payment of the sum found to be due on taking the account.

154 The relief sought by the 1st and 2nd Respondents reflect the position of personal representative(s) seeking to have the partnership property realised and to receive the portion of the assets that accrues to the deceased's share and interest in the partnership. The various orders made in those proceedings have already been set out in some detail above (at [20]–[21]). To summarise, an unless order was made against the Appellant which he did not comply with. As a result, his defence was struck out and judgment was entered against him with costs on 22 March 1996. The solicitor acting for the 1st and 2nd Respondents' at that time extracted the said judgment.

155 The legal consequences that flow from this are significant. Having sought and obtained judgment, the causes of action contained in S 2439/1993 merged in the judgment. As a result, the rights to the relief set out in the statement of claim were extinguished and replaced with the right to enforce the judgment. Such a right is in turn subject to a limitation period of 12 years: see s 6(3) of the Limitation Act. In the present case, this period of 12 years has lapsed and the 1st and 2nd Respondents are therefore barred from bringing an action on the judgment in S 2439/1993.

156 At the hearing before us, Mr Moey conceded that the 1st and 2nd Respondents had not taken any steps to enforce the judgment. However, he also contended that there was nothing the 1st and 2nd Respondents could do if the Appellant was adamant about not producing the accounts. With respect, we disagree. As we mentioned at the hearing, the 1st and 2nd Respondents could have sought an assessment or as a last resort, even committal of the Appellant. We do note however, that

Mr Moey was not the 1st and 2nd Respondents' solicitor then and did not have conduct of the matter; as such, he was not in a position to explain why no further steps were taken.

Conclusion on Issue 2

157 For these reasons, we find that Toh Say (and, for that matter, the other original partners of the partnership) never obtained a beneficial interest in the one-tenth undivided share of the Property that was capable of passing to their estates and/or their personal representatives. Any rights that the 1st and 2nd Respondents had in respect of Toh Say's share as against the other partners of MHP was a claim in debt that is now time-barred; and in any event has been merged into the judgment obtained in S 2439/1993 and their right to enforce that judgment has since become barred because of the passage of time.

The parties' respective shares

158 At the hearing, we asked Mr Lee to address us on the effect that a finding that the 1st and 2nd Respondents were not partners would have on the shares of the other parties. Mr Lee argued that the 3rd and 4th Respondents were bound by the result in OS 136/2002 which clarified their respective shares in the partnership (see [25] above). We understood Mr Lee in effect to contend that as it was held there that the 3rd and 4th Respondents had respectively a 21/88 and 19/88 share, any extinguishment of the 1st and 2nd Respondent's share should enure to the benefit of the Appellant alone. We do not accept this argument. We do not think that the 3rd and 4th Respondents can be bound by proceedings that they commenced nearly 20 years ago based on certain facts which are different to what is known today. Most significantly, they did not know at that time whether Toh Say's estate did or did not have any claim to the assets of the partnership.

159 The Judge found in relation to Toh Lew's share that it was not extinguished by the consent judgment in DC 6648/1984, but was to be proportionately redistributed to the partners of MHP based on their respective shares in MHP. In our judgment, this is incorrect. As analysed above, the nature of the partner's share is an interest in the proportionate share in the net proceeds of sale of the partnership property. If this interest cannot be enforced for some reason, including by the passage of time, the result will be to extinguish the said share, thus reducing the total number of "shares" in the partnership. Hence, Toh Say's share in the partnership as well as Toh Lew's share should be treated as extinguished.

160 On this basis, we hold that the parties' respective shares in MHP is as follows:

(a) The Appellant: 21/61

(b) The 3rd Respondent: 21/61

(c) The 4th Respondent: 19/61

Conclusion

161 In the premises, we allow the appeal in part. The Judge's decision below that the 1st and 2nd Respondents are partners of MHP is reversed. However, we affirm his decision that the 3rd and 4th Respondents are partners of MHP.

162 The 3rd and 4th Respondents are to have their costs of the appeal against the Appellant. The Appellant will have half his costs of the appeal as against the 1st and 2nd Respondents on the basis

that he cannot recover his costs that are attributable to the appeal insofar as these pertain to the position of the 3rd and 4th Respondents. These costs are to be taxed if not agreed with the usual consequential orders.

[note: 1] ROA Vol VA pp 94–95.

[note: 2] See *Chiam Heng Chow and another (executors of the estate of Chiam Toh Say, deceased) v Mitre Hotel (Proprietors) (a firm) and others* [1993] 2 SLR(R) 894.

[note: 3] 4th Respondent's Supplemental Core Bundle ("4RSCB") 615.

[note: 4] 4RSCB 1718.

[note: 5] ROA Vol 5I pp 23272328.

[note: 6] ROA Vol 5B p 172.

[note: 7] ROA Vol 5E pp 109.

[note: 8] 2CB 85.

[note: 9] ROA Vol 5B pp 137140.

[note: 10] 3rd Respondent's Supplemental Core Bundle ("3RSCB") 1726.

[note: 11] 2CB 121123.

[note: 12] 1st and 2nd Respondents' Supplemental Core Bundle ("1RSCB") 82–83.

[note: 13] 1RSCB 85.

[note: 14] 1RSCB 85.

[note: 15] 4RSCB 71–72.

[note: 16] 4RSCB 74–75.

[note: 17] ROA Vol 3E pp 5865.

[note: 18] 2CB 2834.

[note: 19] ROA Vol 3(I) p 226.