IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA37/2020
[2020] NZCA 614

BETWEEN	LU ZHENG First Appellant
	ORIENT CONSTRUCTION LIMITED Second Appellant
AND	DONGLIN DENG First Respondent
	ORIENT HOMES LIMITED Second Respondent

CA303/2020

BETWEEN	LU ZHENG Appellant
AND	DONGLIN DENG Respondent

Hearing:	3 November 2020
Court:	Goddard, Duffy and Nation JJ
Counsel:	D Zhang and E Tie for Appellants J D Turner and L X Huang for Respondents
Judgment:	3 December 2020 at 3.00 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

B The judgment of the High Court is set aside insofar as it relates to Mr Zheng's claim for a declaration that there was a partnership and the consequential taking of an account (Mr Zheng's second cause of action

against Mr Deng) and Mr Zheng's claim in relation to the payments to Mr Deng of $290,000 (Mr Zheng's first cause of action against Mr Deng).

C We make an order that an account be taken of the dealings of the partnership. The proceeding is remitted to the High Court for the taking of that account.

D We make an order that such amount as may be due by one party to the other on that account be paid accordingly. Any question of interest on the net amount due is to be dealt with in the High Court, having regard to the findings made in the course of taking the account between the parties.

E Mr Deng must pay costs to Mr Zheng for a standard appeal on a band B basis. We do not certify for second counsel.

F We set aside the order for costs made in the High Court. Costs in that Court should be determined by that Court in light of the outcome of this appeal.

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REASONS OF THE COURT

(Given by Goddard J)

[1] The first appellant, Mr Lu Zheng, and the first respondent, Mr Donglin Deng, had a longstanding business association. They carried out a number of property development and construction projects. Those projects were conducted through various companies, including the second appellant Orient Construction Ltd (OCL) and the second respondent Orient Homes Ltd (OHL). The two men agreed to separate their affairs with effect from 31 May 2015. The central issues in this appeal are the nature of their business association and what, if anything, remains to be done to effect that separation.

[2] Mr Zheng says that by March 2010 he and Mr Deng were equal partners in a partnership known as the "Orient Group". The partnership conducted property development and construction projects using a number of corporate vehicles. Mr Deng denies this. He says there was no overarching partnership: simply a number of companies collectively referred to as the "Orient Group" in which the two men had interests that were reflected in their shareholdings and current account balances in relation to each of the companies.

[3] The parties' records and correspondence are largely in Mandarin Chinese. The terminology and business structures they adopted reflect linguistic and cultural frameworks that do not always align neatly with English language terminology, or with New Zealand legal concepts and accounting conventions. The High Court was confronted with a case in which the familiar language and trappings of partnership — for example, a written partnership agreement, partnership financial statements prepared in accordance with relevant accounting standards and conventions, and a partnership bank account — were absent. That absence, coupled with the existence

of a number of corporate vehicles through which their projects were carried out, led the Judge to the conclusion that there was no partnership.[1]

[4] However, despite those factors, we are firmly of the view that in this case there was an overarching business carried on by the two men in common with a view to profit: that is, a partnership. They were equal partners in that partnership. The assets of that partnership included shares held by one or both of them in a number of the companies that undertook particular projects. The projects were, as Downs J found, carried out through those companies. Relevant assets were held by those companies, by one or other of the partners, and (at times) by friends and relatives acting as nominees. But notwithstanding the disparate shareholdings in the relevant companies, and the other asset-holding arrangements, we consider that it is clear from the parties' dealings that they carried on a joint business in relation to which they had agreed to share equal responsibility for providing capital, and to share profits and losses equally.

[5] It follows that the appeal should be allowed. A declaration should be made that there was a partnership. An account should be taken of the partners' mutual dealings. Any balance payable by one partner to the other should be ascertained and paid. We remit the proceedings to the High Court to enable this to take place.

Background

[6] Mr Zheng has for many years carried on business as a property developer. Mr Deng's background is as a project manager. They met in 1998. Mr Deng was initially employed by Mr Zheng to work on his property development and construction projects. It appears that in 2004 Mr Deng ceased to be an employee, and acquired an ownership interest in some of the projects that Mr Zheng was involved in. In 2004 OHL was incorporated. The initial shareholders were Mr Deng (40 per cent), Mr Zheng (40 per cent) and Mr Jingli Zhu, Mr Zheng's brother-in-law (20 per cent). All three men were appointed as directors of OHL. OHL carried on business as a property developer. The business grew. Mr Zheng, Mr Deng and others formed a number of companies to carry on additional projects. These companies, which

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1 *Zheng v Deng* [2019] NZHC 3236 [High Court judgment].

were collectively described as the "Orient Group" or "Orient Construction Group", included OCL, OHL and:

(a) Orient Construction Group Ltd (OCGL);

(b) Albany Apartments Ltd (AAL); and

(c) Rosedale Apartments Ltd (RAL).

[7] The shareholdings and directorships in these companies changed over time. In some (but not, it seems, all) cases these changes reflected changes in the participants in particular projects. A table showing the relevant companies, and their directors and shareholders over the relevant period, is attached as Appendix A. We refer to the companies and the participants collectively using the neutral term "the Group".

[8] Family members of Mr Zheng and Mr Deng were involved in the business of the Group in a number of capacities. As noted above, Mr Zheng's brother-in-law was a director and shareholder of OHL. Mr Zheng's two sisters helped with the Group's administration and accounting at various times. From 2013 onwards Mr Deng's wife, Judy Lin, was involved in keeping accounting records for the Group. The Group shared tools, equipment and an office. Cash was moved around the various companies and projects as required. Materials required for a project under the auspices of one company would not infrequently be purchased by a different company. On occasion, the companies also entered into formal contractual arrangements. For example, RAL was established to carry out a property development at 40 Rosedale Road. OCL was a major sub-contractor on this project.

[9] In 2007 the Group decided to buy and develop 11 lots of land in Bella Vista Drive, Gulf Harbour. This was referred to as the "Bella Vista Project". Initially AAL purchased four lots and OCGL purchased the remaining seven.

[10] The Group came under financial pressure during the 2008 Global Financial Crisis. A number of participants in the Group withdrew between 2008 and 2010.

[11] The Group needed funding to complete the Bella Vista Project. Mr Bin Jiang was introduced to the Group and agreed to contribute capital to this specific project. A short agreement dated 27 April 2008 (the "Bella Vista Agreement") was entered into. Its title was variously translated into English from the original Mandarin as "partnership agreement" or "cooperation agreement".[2] It was expressed to be entered into between Mr Jiang and "Orient Construction Group". Mr Zheng and Mr Jiang both signed the Bella Vista Agreement. Mr Deng did not. He says he did not know about it, at least at the time. Mr Zheng says he signed the Bella Vista Agreement on behalf of himself and Mr Deng. The Bella Vista Agreement provided that "Orient Construction Group (Orient Homes Limited & Albany Apartment Limited) owns [or occupies] 60%" and "Bin Jiang owns [or occupies] 40%".

[12] The Bella Vista Agreement went on to provide, among other matters, that:

(a) "Oriental Company" was to select six of the 11 sections "to be settled under its designated companies", and "Jiang Bin is to select 5 sections to be settled under his designated companies or (overseas or local) natural persons' names".

(b) Each party was "responsible for trustworthiness and risk of their respective designation persons, in event of unexpected losses that party shall be solely responsible".

(c) Various fees and costs, including loan interest "under whoever's name" would be "paid out of project joint expenses". The parties are "jointly responsible for direct costs" and "jointly responsible for preliminary costs, building plans, consents, etc".

(d) Upon sale of each property "there is to be immediate accounting of proceeds (paid out or re-invest)". Oriental Company is responsible for, among other matters, "after sale produce accounts for costs and profit, report to Bin Jiang … every two months".

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[2] In the original Mandarin: 合作协议; or in Romanised script: hézuò xiéyì.

(e) Oriental Group would be responsible for the development work. There would be joint decision-making on certain specified matters.

[13] The references to "Oriental Company" (or in some places, "Oriental Group") in the translated version appear as "东方公司" in the original Mandarin.[3] As discussed in more detail below at [87], this term can also be translated into English as "Oriental Firm" or "Oriental Enterprise".

[14] D & R Homes Ltd (DRHL) was incorporated on 13 May 2008. Mr Jiang was its sole shareholder and director. It appears he used that company as a vehicle for holding some of the Bella Vista sections, as contemplated by the reference in the Bella Vista Agreement to "designated companies" that would hold the sections.

[15] In 2011, Mr Deng introduced Mr Tong Zhu to Mr Zheng. Mr Deng and Mr Zhu knew each other from university. Mr Zhu injected $500,000 into the Group, in part to a newly formed company, Eversolid Construction Ltd (ECL). Mr Zhu was the sole shareholder and director of ECL. However it appears that the day-to-day management of ECL and the projects carried out through that company was conducted by Mr Zheng, and (as discussed below) the benefits and risks of those projects were jointly shared by Mr Zheng and Mr Deng. It appears this structure for Mr Zhu's investment was adopted to facilitate Mr Zhu's immigration application.

[16] The Bella Vista Project progressed over time. There were various transfers of particular sections, in some cases to third party buyers, but in a number of cases to relations and friends. These transactions typically involved financial support in connection with the purchase being provided by one or more of the Group companies to the purchaser. Mr Zheng says that these related purchasers held the sections as nominees for the Group (in a manner consistent with the approach contemplated by the Bella Vista Agreement references to holding sections through designated persons). The principal reason for the transactions with related parties appears to have been to enable additional funding to be accessed for the Bella Vista Project, in the form of mortgage advances obtained by the related party purchasers and used to settle the

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3 In Romanised script: dōngfāng gōngsī.

"purchases". Although Mr Deng denied that the transfers were anything other than outright sales, there is clear evidence that the properties continued to be developed by the Group after these transfers, and continued to be dealt with for the benefit of Mr Zheng, Mr Deng and Mr Jiang: we return to this below at [123].

[17] By 2015, the business relationship between Mr Zheng and Mr Deng was under strain. Accounts differ as to what went wrong. The project at 40 Rosedale Road did not go well. OCL poured the concrete without adequate reinforcing. The mistake was not found for some time. It cost more than $100,000 to fix. Mr Zheng says the mistake was Mr Deng's as he did not put the steel in. Mr Deng says it was Mr Zheng's because Mr Zheng did not order the steel. There were related cashflow problems. Ms Lin thought Mr Zheng was exposing the Group to undue risk. And there were disagreements about other matters. Ultimately Mr Deng decided, with his wife's encouragement, that he and Mr Zheng should separate their business interests. Mr Deng told Mr Zheng he wished to do so in May 2015. It is common ground they agreed to separate with effect from 31 May 2015.

[18] Negotiations followed about the financial consequences of this separation, and how it should be implemented. The parties had a number of discussions and exchanged correspondence. In June 2015 Mr Zheng sent a document headed "Principles in Separation" to Mr Deng. Mr Deng annotated the document point by point in red type, and returned it. Mr Zheng added further annotations in green type responding to Mr Deng's comments. Mr Deng then provided a further set of comments (again in red). This document is in our view an important guide to the nature of the parties' relationship. It is set out in full in Appendix B, in the original Mandarin and in English translation.

[19] Mr Deng says the parties reached agreement on these principles, as a result of further email exchanges and discussions, and the agreed approach to separation was largely implemented. Mr Zheng says they were not able to reach a final agreement. A number of points of difference could not be bridged. Mr Zheng says that the agreed approach has been implemented in part, but it remains necessary to carry out a final reconciliation of the parties' mutual dealings. Mr Zheng says that this will

reveal that Mr Deng owes him a substantial sum. Mr Deng says that under the agreed approach to separation, there are in fact amounts due to him that have never been paid.

The proceedings

[20] Mr Zheng and OCL, a company of which Mr Zheng is now the sole director and shareholder, commenced proceedings in the High Court against Mr Deng and eight other defendants in connection with the affairs of the Group. The claim was amended on a number of occasions. The case went to trial on the basis of a second amended statement of claim (2ASC). The 2ASC pleads that in 2004 Mr Zheng and Mr Deng entered into a partnership arrangement, which it refers to as the "Orient Partnership". The 2ASC also pleads the establishment of the Bella Vista Project, which it says was owned as to 60 per cent by the Orient Partnership and as to 40 per cent by Mr Jiang (the second defendant). The formation of other companies, to carry out other projects, is also pleaded. The third defendant (OHL) and the fourth defendant (ECL) are alleged to be companies used as vehicles to advance the partnership's business objectives. The eighth defendant, Mr Tong Zhu, was (as noted above) the sole director and shareholder of ECL. Mr Zheng pleads that Mr Zhu was appointed as director and shareholder of ECL in order to exercise his powers, obligations and rights as director and/or shareholder of ECL for the benefit of the Orient Partnership.

[21] The fifth to ninth defendants are alleged to be parties who held assets of the Bella Vista Project on trust for the Orient Partnership.

[22] Mr Zheng says the RAL venture did not form part of their partnership or joint venture: he and Mr Deng were not equal partners in this particular venture. Rather, as at May 2015, he held 35 per cent, Mr Deng held 5 per cent, and Mr Chenggang Zhang held 60 per cent of the shares in RAL.

[23] The 2ASC then pleads that there was an agreement to separate their business interests with effect from 31 May 2015 and refers to various dealings after that date in connection with that separation. The 2ASC goes on to plead a number of causes of

action against the various defendants. The two causes of action that remain relevant on appeal are as follows:

(a) A claim by Mr Zheng against Mr Deng for failure to repay an alleged debt of $290,000. In the alternative, that sum is claimed on the basis of unjust enrichment.

(b) A claim by Mr Zheng against Mr Deng for a declaration that the Orient Partnership exists, and for an order for inquiries and the taking of accounts in connection with the business of the partnership and the various corporate vehicles through which that business was pursued. Alternatively, Mr Zheng pleads that if there was no partnership, there was a joint venture which attracts essentially the same fiduciary duties, and their separation requires an account to be taken.

[24] There were a number of other causes of action. But they were dismissed in the High Court, and those aspects of the High Court judgment were not challenged on appeal.[4]

[25] Mr Deng disputes all of the claims made against him and against associated companies and individuals. He says his relationship with Mr Zheng was based on various corporate and contractual structures, with no fiduciary elements. There is nothing to account for, land or otherwise. Mr Deng acknowledges the Group kept internal accounts. However he says he does not understand those accounts, and did not sign any of them. He denies borrowing money from Mr Zheng, or taking money from the Group companies' bank accounts without Mr Zheng's consent. He says Mr Zheng owed him money when they separated their business interests, and the money that came to him reflects this. Mr Zheng agreed to these payments and to the transfer of certain other assets, including two cars. Mr Deng says Mr Zheng was a businessman and the dominant personality in their dealings. By contrast, Mr Deng was a "hands on" project manager responsible for work on the various construction

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[4] The notice of appeal appeared to challenge the High Court's findings on a third cause of action: a claim by OCL against Mr Deng for failure to repay a debt of $57,483.29. However, no argument was advanced before us on this issue: see [130] below.

sites. He did what Mr Zheng told him to do. He had no understanding of the commercial and financial aspects of their dealings.

High Court trial

[26] The High Court trial occupied some 10 sitting days. Mr Zheng gave evidence. He called a number of witnesses including his sisters Jenny and Mei Zheng, both of whom worked for the Group at various times. He also called expert evidence from Ms Tina Payne, a forensic accountant. She was asked to provide "an expert opinion to demonstrate, if possible, that a partnership existed between [Mr Zheng] and [Mr Deng]". She examined various documents in the common bundle, including financial records and correspondence. She expressed the opinion that the totality of evidence demonstrated "an equal partnership between [Mr Zheng] and [Mr Deng], with the pooling of their company assets". The Judge considered much of her evidence was inadmissible, for reasons set out below at [37].

[27] For the defendants Mr Deng gave evidence, as did his wife Xiaofeng (Judy) Lin. Mr Deng also called expert evidence from Mr Andrew McKay, a chartered accountant with expertise in forensic accounting. Mr McKay gave evidence about the nature of the arrangements between Mr Zheng, Mr Deng and the Group.

[28] Mr McKay said that "[it] will be a question of legal interpretation as to the type of arrangement that actually existed … it is my opinion that there are some characteristics of a partnership … and some characteristics of an unincorporated/ informal joint venture". Mr McKay said he considered the "more likely" business arrangement was an informal joint venture because:

> 119.1 The lack of a GST number and registration with the IRD as a Partnership does not help/support the argument that a business partnership existed;
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> 119.2 The lack of a separate bank account in the partnership name does not help/support the argument that a business partnership existed;
>
> 119.3 Some of the companies within the Orient Group were set up specifically for a particular property development and some intercompany agreements exist;

> 119.4 The nature of some of the agreements in evidence, Bella Vista development and 40 Rosedale Road development (i.e. a project) suggests the business arrangements were a series of [joint ventures]; and
>
> 119.5 Mr Deng did not appear to have an active role in the main decision making of the business (Orient Group), rather he acted on instruction from Mr Zheng …

The High Court judgment

[29] As the Judge noted, the most important questions before the High Court were whether a partnership existed between Mr Zheng and Mr Deng; and whether a further partnership existed between Mr Zheng, Mr Deng and Mr Jiang in relation to the Bella Vista Project. An equally important and closely related question was whether an analogous fiduciary relationship existed between these men.[5]

[30] In order to answer these questions, the Judge began by setting out the definition of a partnership in s 4(1) of the Partnership Act 1908:

> **Partnership** is the relation which subsists between persons carrying on a business in common with a view to profit.

[31] In his analysis of the relationship between the parties the Judge put considerable emphasis on s 4(2) of the Partnership Act, which provides that "the relation between members of any company … under the Companies Act 1993 … is not a partnership within the meaning of this Act".

[32] The Judge recorded that s 5 of the Partnership Act identifies a number of non-exhaustive rules for the identification of a partnership. For example, s 5(c) provides that receipt of a share in the profits of a business is prima facie evidence of a partnership, but is not determinative.[6]

[33] The Judge noted that the inquiry into the nature of a relationship between two or more persons, and whether it is a partnership, is a mixed question of fact and law.[7] He referred to the decision of this Court in *Clark v Libra Developments Ltd*, where the

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5 High Court judgment, above n 1, at [26].
6 At [29].
7 At [30].

Court emphasised that the question must be "determined by the Court on the basis of what the parties said and did".[8] A written agreement is not required; a partnership can be implied from circumstance.[9]

[34] The Judge went on to identify the key characteristics of a joint venture attracting fiduciary obligations. The Judge noted that it is now clear that a joint venture can attract fiduciary obligations when X is entitled to place trust and confidence in Y, and X is entitled to rely on Y not to act contrary to X's interests.[10]

Findings in relation to partnership/joint venture causes of action

[35] The Judge then reviewed the evidence in order to determine whether it supported the existence of a partnership or joint venture. The Judge considered that Mr Zheng's evidence contained little to support the existence of a partnership beginning in 2004. Rather, the Judge said, Mr Zheng was really alleging a partnership with Mr Deng beginning in 2010.[11] The Judge considered that this focus on the period from 2010 onwards was confirmed by Mr Zheng's evidence-in-chief:

> 29. This means by March 2010 Mr Deng and I were basically partnering exclusively. We agreed that from now we would be 50/50 partners. For the purpose of this proceeding I call it the Orient Partnership. Between ourselves we in fact never used a proper name for this partnership, but to the world we continued to use the brand name of Orient Construction Group.
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> 30. The old group maintained partnership accounts, its tenth partnership account dated 31 March 2010 reflects the above assets position. This document was made by Mr Deng and myself. We both signed this document. This document … can also be taken as the starting partnership accounts for the partnership between Mr Deng and me. …

[36] The Judge set out the key passages from Mr Zheng's evidence about the alleged partnership, and about the Bella Vista Project. He considered that Mr Zheng said nothing about the characteristics of his relationship with Mr Deng and Mr Jiang that might support the existence of partnerships or joint ventures; most obviously, mutual

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8 At [31], quoting *Clark v Libra Developments Ltd* [2007] 2 NZLR 709 (CA) at [51].
9 High Court judgment, above n 1, at [33].
10 At [36], referring to *Chirnside v Fay* [2006] NZSC 68, [2007] 1 NZLR 433 at [80] per Blanchard and Tipping JJ.
11 At [48].

loyalty, reliance and trust. Rather, the Judge said, Mr Zheng relied heavily on the internal accounts prepared by his sisters and by Judy Lin, Mr Deng's wife.[12]

[37] The Judge identified significant problems with the admissibility of the evidence of Ms Payne. He considered that although Ms Payne was a forensic accountant with considerable experience, she had no relevant expertise in identifying a partnership. It is doubtful whether there is a body of experts in relation to this specific subject, which is a legal conclusion reserved for the Judge.[13] However some of Ms Payne's testimony could be reconceived as admissible evidence about the nature of the accounts and what they revealed about the parties' relationship. The Judge noted that the bi-monthly accounts prepared from 14 June 2010 onwards showed Mr Zheng and Mr Deng made equal contributions to the Group and provided evidence of intent to maintain symmetry of profit. The accounts contained narrations "to the effect that at the end of each financial year, the profits will be either 'split' or reinvested".[14]

[38] The Judge saw the external accounts prepared in relation to each of the relevant companies as a significant factor. Ms Payne acknowledged that she had not considered the external accounts of these companies in determining whether a partnership existed. So, the Judge observed:[15]

> … Ms Payne had no regard to published financial information about the companies, how the rest of the world would view them given this information, or whether the internal and external accounts betrayed inconsistency about the nature of the enterprise.

[39] The Judge noted that the internal accounts occupied much trial time. They were not in a standard accounting format. They captured information beyond a typical balance sheet or other financial statement. They did not use conventional double entry book-keeping.[16]

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12 At [51].
13 At [53]–[54].
14 At [56].
15 At [58].
16 At [60].

[40] The Judge went on to record what he saw as the material aspects of the extensive evidence given by Mr Deng. Mr Deng denied the existence of a partnership or partnerships. He said Mr Zheng was responsible for all financial arrangements, while he only managed projects. Mr Deng said he took directions from Mr Zheng in relation to the Group, even though he was a director of some of the companies. He had little understanding of the internal accounts; he relied on his wife to explain these. He denied signing the accounts.[17]

[41] The Judge then summarised the evidence given by Mr McKay. The Judge considered that although Mr McKay was more mindful of the distinction between his role and the court's role than Ms Payne, his evidence also was not substantially helpful on the question whether a partnership existed. However the Judge considered that Mr McKay's evidence in relation to the internal accounts was well within his expertise and substantially helpful.[18] Because the Judge placed significant weight on the answers that Mr McKay gave to questions put to him by the Judge, we set out the relevant passage from the notes of evidence in full:

> Q. Again I just want to pick-up some sentiments that you've expressed and I assure you there are no trick questions on my part. You don't see how you could run a business like this on these accounts?
>
> A. I don't, not the volumes and values that they're, that are flowing, the contributions that you see; 50s, hundred thousands, 30 thousands and then the size of the contracts that need to be run.
>
> …
>
> Q. And you said that you didn't like them? The accounts and you thought that they were unreliable?
>
> A. I – yes, because you don't have the full double-entry system. You can't see – there's a reason that double-entry bookkeeping exists.
>
> Q. Yes and when we talk about the accounts we're talking about the internal reconciliations?
>
> A. Yes, Your Honour.
>
> Q. Yes. You said that these contained a running tally of something and you emphasised the word, something?
>
> A. Yes.

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17 At [62].
18 At [65].

Q. It's not clear to what that something actually is?

A. Only it's trying to run something as Mr Zheng suggested a contribution and that sort of thing but it's – you try and then say well that should – because you don't – we won't, we don't have their indi – like their individual, you need their individual personal balance sheets as well and personal bank statements and personal tax returns to tie this whole thing together.

Q. Yes?

A. And it's not that – we don't have it. Neither I nor Ms Payne had all of that.

Q. Yes. You also said that the numbers are a moving feast?

A. They are a moving feast, particularly that table 10 when we spent more time looking at it after Ms Payne's evidence last week when we suddenly went hold on, these are all –

Q. Circular?

A. Very circular.

Q. Yes. You said that this is a bizarre way of accounting?

A. It is a bizarre way, Your Honour.

Q. Yes. The internal accounts contain no obvious linkage to figures in the external published financial statements?

A. I couldn't see it. I mean I only – and to qualify that I only looked at two years, two year end ones mostly and I can't follow this so I'm not putting…

Q. Yes?

A. The time we'd spent on this file is a lot already and then trying to follow that through and that was through one of my team who can read Mandarin.

Q. Yes?

A. I cannot.

Q. Yes. So forgive me for being blunt. You thought you'd be throwing good money after bad by trying to make sense of these internal accounts?

A. I did.

Q. Tell me whether you disagree with these expressions in relation to the internal accounts, idiosyncratic at best?

A. At best.

Q. Enigmatic?

A. Definitely enigmatic.

Q. Unreliable?

A. I would say they're probably unreliable. ...

Q. Forgive me for being so direct. Can I have any confidence in these numbers?

A. I don't have confidence in the numbers and I am sorry, I don't want to say that but I don't have confidence that all the evidence is here and I'll refer it to myself or Ms Payne to make the correct assessments, especially when we both sort of went oh, there's a whole pile of circular transactions here so that means let alone the tax consequences.

Q. One final question. Imagine you're asked to make an important decision based on these numbers. Would you feel comfortable doing that?

A. I don't think you're able. I can't, I don't think you're able, will be able to Your Honour.

[42] The Judge considered that the claim that partnerships existed relied on the evidence of Mr Zheng and on the internal accounts.[19] The Judge gave five reasons for not accepting Mr Zheng's evidence:

(a) His evidence struck the Judge as "revisionist history". Contemporaneous records, the Judge said, did not refer to partnerships, use that term, or any term like it. The post-separation correspondence was "strangely silent on the topic of partnerships". Mr Zheng said in his evidence that the "Orient Group" referred to the partnerships. But, the Judge said, most would think it referred to the Orient Group of companies. The Judge referred to an email sent by Mei Zheng to Mr Deng in which she complained about Mr Deng's use of "*company* property".[20] Mr Zheng and Mr Deng typically signed correspondence as "director".[21]

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19 At [68].
20 Emphasis in original.
21 At [69]–[70].

(b) Second, Mr Zheng signed many of the external accounts for the relevant companies as true. The Judge considered that the internal accounts could not be reconciled with the external accounts. For example, some of the internal accounts identify off-book assets, in the form of company assets held under personal names. The internal accounts appeared to reveal different holdings to those in the external accounts. Current account contributions in the external accounts did not correspond with those in the internal accounts. "Central to Mr Zheng's case is the proposition the world was told one thing by the external accounts, when the correct position was another. This is unattractive."[22]

(c) Third, Mr Zheng's evidence referred to a number of incidents which the Judge characterised as involving "probable illegality". That included references to movement of money to avoid "problematic tax implications". The Judge noted that ECL had purchased materials used by OCL. This, the Judge said, would be unremarkable if ECL invoiced OCL for the materials. It did not. The companies transferred and used funds between themselves as needed. These transfers were not treated as loans or recorded in the external accounts. It appears that at one point "fictitious" invoices were issued by OHL and ECL to reduce their liabilities to other Group companies to zero. The important point given the burden of proof, the Judge said, was "Mr Zheng's acknowledgement of likely impropriety in connection with a claim that has at its heart dissonance between external and internal accounting".[23]

(d) Fourth, Mr Zheng said Rosedale Apartments was not within either alleged partnership. The Judge considered that Mr Zheng had not explained why he drew this distinction. Nothing about Rosedale Apartments' business or operation, the Judge said, stood out as

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22 At [71]–[73].
23 At [74]–[75].

different. "Distinguishing this company from others in the alleged partnerships appears capricious."[24]

(e) Fifth, Mr Zheng failed to discover the Principles in Separation document even though he created it, then relied heavily on it during post-separation negotiations. He said nothing about it in his brief of evidence.[25]

[43] The Judge then turned to consider the internal accounts. The Judge noted that some of the internal accounts contained entries in relation to Rosedale Apartments. The Judge considered this significant because RAL was not within the alleged partnerships, which the Judge saw as "wounding the proposition the internal accounts disclose them".[26] (However as we explain below at [98] it is necessary to draw a distinction between the parties' investment in the Rosedale Avenue property through RAL, and the construction work at Rosedale Apartments carried out by OCL.)

[44] The Judge considered that even if Ms Payne was correct that the accounts revealed an intent to split profits and maintain equal investments, it did not necessarily follow that a partnership existed.[27] It was necessary to consider the possibility that the relationship was confined to the various corporate structures, without any fiduciary elements over and above the corporate framework. The Judge saw the corporate structures as inconsistent with the existence of a partnership, because third parties would have assumed they were dealing with companies and not a partnership.[28] The Judge also considered that Mr Zheng and Mr Deng could not have been partners while each was a shareholder in the same company because "s 4(2) of the Partnership Act precludes this".[29] Because of the importance of these two related points to the Judge's ultimate conclusion, we set out the relevant passages in full:

> [80] I begin with the obvious. Mr Zheng conducted his business through a series of companies. He relied—as he was entitled—on the limitation of liability and corporate veil. If the companies had become insolvent, it is difficult to imagine Mr Zheng would have accepted creditors' contentions of

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24 At [76].
25 At [77].
26 At [78].
27 At [79].
28 At [80].
29 At [84].

personal liability. Mr Zheng now wants to have it every which way. As observed, Mr Zheng contends the world was told one thing by the external accounts, when the true position was another. Public policy tells against this argument. Company accounts must be published for good reason. People are entitled to rely on them. Similarly, people are entitled to know whether they are dealing with a company or a partnership. The distinctions between the two are not subtle. Mr Zheng told the world he was in business through a group of companies. Absent cogent evidence of partnership or an analogous fiduciary relationship, he should be held to that.

[81] No such evidence exists. As foreshadowed at the beginning of this judgment, there is a paucity of evidence about features typically associated with fiduciary relationships: mutual loyalty, reliance and trust. Mr Zheng said nothing about these. Unsurprisingly, Mr Deng said nothing either. I do not overlook the cooperation between Mr Zheng and Mr Deng across the group, or within a company forming part of the group. Nor do I overlook the cooperation between the companies. Each, however, is explicable by the men's roles as directors and shareholders, and the companies' common projects.

[82] Nothing tangible emerges to imply the existence of relationships beyond those required by the corporate structure, still less relationships attracting heightened, fiduciary obligations. Indeed, Mr Zheng's and Mr Deng's dealings appear arms-length. Again, even if one assumes an agreement existed between the men to split profits and invest equally—aspects the internal accounts arguably reveal—the preponderance of evidence discloses a purely contractual arrangement between an experienced businessman and project manager.

[83] Moreover, as directors, Mr Zheng and Mr Deng owed duties to their companies. Putting each other first as partners sits awkwardly with the men's corporate responsibilities.

[84] I mentioned statutory landscape. Mr Zheng and Mr Deng cannot have been partners while each was a shareholder in the same company because s 4(2) of the Partnership Act precludes this; see [28]. No partnership could encompass Orient Construction between 23 July 2013 and 2 April 2016; Orient Construction Group for a nine-day period in October 2008; Albany Apartments for the same period; and Rosedale Apartments between 14 January 2014 and 8 September 2015 (albeit, as observed, Mr Zheng said Rosedale Apartments was not within any partnership). In each period, Mr Zheng and Mr Deng were members of the same company.

[85] This is no mere technicality because Orient Construction conducted much of the group's business, and it must be removed from the calculus for the 22-month period immediately preceding the separation. Moreover, by the end of December 2013, Orient Homes and Albany Apartments were inactive, and Orient Construction Group had been deregistered. This combination leaves a sizable hole in the alleged five-year partnership between Mr Zheng and Mr Deng.

(Footnotes omitted.)

[45] The Judge went on to say, for completeness, that he accepted the key aspects of Mr Deng's evidence in relation to the primary role of Mr Zheng, Mr Zheng's responsibility for financial arrangements, and Mr Deng's own lack of sophistication and understanding of the business side of the arrangements. The Judge found that Mr Zheng was "in charge" and "[this] conclusion also tells against the existence of partnerships".[30]

[46] The Judge concluded that there were no partnerships. The reasons for finding there were no partnerships also excluded the prospect of joint ventures: no additional analysis was required.[31]

Other causes of action in relation to the Bella Vista Project

[47] The Judge then dealt with Mr Zheng's claims that various defendants held Bella Vista lots on constructive trust for Mr Zheng, and that contracts in relation to the Bella Vista Project were breached by Mr Deng. These allegations were based on the evidence given by Mr Zheng about transfers of Bella Vista sections to various related persons in order to access additional funding for the project.

[48] The Judge noted that these causes of action were variants on, or extensions of, the Bella Vista partnership and joint venture causes of action. They presupposed that Mr Zheng had an interest in the Bella Vista land arising from an agreement with Mr Deng and Mr Jiang. The Judge considered that his earlier conclusions that there were no partnerships precluded such a finding.[32]

[49] The Judge referred to Mr Zheng's argument that the post-separation correspondence, including the Principles in Separation document, provided evidence that he had a personal interest in the land. The Judge accepted that this document

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30 At [86].
31 At [89].
32 At [92].

and others provided some evidence that Mr Zheng believed he had such an interest. However none of that, the Judge said, constitutes evidence he had such an interest:[33]

(a) Mr Zheng did not buy any of the lots. Companies did — AAL bought four and OCGL bought seven.

(b) Mr Zheng adduced no evidence he funded or partially funded any of the purchases independently of the Group's companies and independently of the alleged Bella Vista partnership, the existence of which the Judge had rejected.

(c) Mr Zheng adduced no tracing evidence in relation to the purchases.

(d) Mr Zheng was a director of both AAL and OCGL when these companies transferred the land.

[50] The Judge identified two other problems for these causes of action. First, the 2ASC did not identify how the alleged constructive trust arose, or what contract was breached. A defendant should not be left to guess what a plaintiff's case is. Second, the 2ASC alleged each transfer of land to an individual "constitutes termination of the Bella Vista Project partnership". The Judge noted that the first such transfer occurred on 14 July 2008, when DRHL transferred one of the lots to Mr Jiang's wife. So, the Judge said, the 2ASC effectively alleged a partnership from 27 April 2008 until only 14 July 2008, and one repeatedly terminated thereafter with each transfer of land.[34]

[51] The Judge referred to the description of these aspects of the statement of claim by Mr Turner, counsel for Mr Deng, as "nonsense". The Judge said he would not use this term but did not disagree. These causes of action failed.[35]

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33 At [93]–[94].
34 At [95]–[96].
35 At [97]–[98].

Loan/Unjust enrichment claim in relation to $290,000

[52] The Judge then dealt with the cause of action alleging that Mr Deng owed Mr Zheng $290,000 as a result of advances and/or unauthorised drawings on the bank accounts of the Group's companies.

[53] The Judge considered that the evidence on what was advanced and how the rest of the money was obtained was inconsistent with the pleading and was also internally inconsistent. The transactions involved were difficult to follow, with movements of money between various company bank accounts and the personal accounts of Mr Zheng and Mr Deng in both directions. But, the Judge noted, Mr Zheng did not directly transfer any money to Mr Deng.[36]

[54] It was ultimately common ground between Ms Payne and Mr McKay that Mr Deng had withdrawn $290,000 from the Group in April and May 2015. Mr Zheng characterised this as a mix of authorised and unauthorised advances that Mr Deng was required to repay. Mr Deng said these were payments made to him as part consideration for the separation of their business interests.[37]

[55] The Judge considered that Mr Deng's evidence found more support in the contemporaneous evidence than Mr Zheng's. In short, the figure for the alleged loan had changed repeatedly. Mr Zheng did not refer to the existence of a loan or complain about the additional taking of funds in contemporaneous correspondence. The men were actively negotiating terms of their disengagement. Mr Deng accused Mr Zheng of impropriety in July 2015. If Mr Deng had wrongly taken money, one might have thought that Mr Zheng would respond then. He did not. Indeed he did not ventilate the allegation of a loan until September 2016. The real reason that Mr Deng was provided with funds was, the Judge considered, that Mr Zheng owed Mr Deng large amounts of money at this time.[38]

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36 At [104].
37 At [107]–[109].
38 At [110] and [122]–[123].

[56] In summary, the Judge:[39]

(a) Did not accept Mr Zheng's evidence he loaned money to Mr Deng, or his evidence that Mr Deng took an additional sum. He found that Mr Zheng authorised the transfers in recognition of Mr Deng's interests.

(b) Found that if this had been a loan from Mr Zheng to Mr Deng, one would expect Mr Zheng to have put funds into Mr Deng's personal bank account. That was not what happened. Instead, Mr Zheng and Mr Deng engaged in a series of bank transfers involving Group companies. This, the Judge said, was consistent with the men disentangling their business interests and making related payments.

(c) Noted that the claim was brought by Mr Zheng, not by OCL. But there was no transfer from Mr Zheng to Mr Deng. OCL, the source of the funds, was not itself making a claim for the money.

[57] The Judge therefore dismissed this cause of action.

Claim by OCL to recover miscellaneous payments

[58] Finally, the Judge dealt with the cause of action in which OCL claimed $57,423.29 from Mr Deng on the basis of various payments made out of the OCL bank account, and various dealings involving the use of two cars and certain expenses incurred by Mr Deng.

[59] The Judge considered the evidence did not reveal a debt: it disclosed no agreement Mr Deng would pay or repay any money. Mr Zhang, counsel for Mr Zheng, acknowledged the pleading was problematic and relied on an alternative contention of unjust enrichment. But, the Judge said, the statement of claim did not identify how Mr Deng unjustly enriched himself at OCL's expense.[40]

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39 At [124]–[126].
40 At [131].

[60] The Judge preferred Mr Deng's evidence that these were consensual arrangements reflecting ongoing work done by Mr Deng for OCL. The various payments and benefits received by Mr Deng from OCL were elements of that arrangement, which did not give rise to any debt or any claim in unjust enrichment.[41]

Costs judgment

[61] The Judge held that costs should follow the event in the ordinary way. Certain aspects of the costs claimed by Mr Deng were disputed. Those issues were determined by the Judge in a separate costs judgment.[42]

Mr Zheng's submissions on appeal

[62] Before us, Mr Zhang submitted that the Judge was wrong to reject Mr Zheng's evidence, and to prefer that of Mr Deng. As a result, the Judge erred in finding that there was no partnership or joint venture. The Judge also erred in finding that Mr Deng was not indebted to Mr Zheng.

[63] Mr Zhang challenged each of the five reasons given by the Judge for rejecting Mr Zheng's evidence.

[64] First, Mr Zhang submitted that the Judge was wrong to put any weight on his understanding that the contemporaneous documentation did not use the terminology of partnership or the like. As the courts have observed on a number of occasions, the language used by participants in a business venture is not decisive in relation to its character.[43] Mr Zheng was not a legal expert. References to the Orient partnership in internal documents in Mandarin used the term "公司" which can be translated as either "firm", "company" or "enterprise" (as we noted above at [13]). The use of this term is equally consistent with the existence of a partnership. In any event, clearly the Group was not a single company. This was a simple case of lay people using particular words in an ordinary, imprecise manner. Critically, Mr Zhang submitted, a significant body of documentary evidence demonstrated that the way in which the

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41 At [136].
42 *Zheng v Deng* [2020] NZHC 959 [High Court costs judgment].
43 *Clark v Libra Developments Ltd*, above n 8, at [62] and [149].

two participants operated "fits how partnership works, rather than people working for a company".

[65] Second, the inconsistencies between the external and internal accounts did not have the significance ascribed to them by the Judge. The discrepancies had been explained. More importantly, the discrepancies were in fact evidence that the two men operated internally as partners, while to the outside world they carried out particular projects through particular companies. That is, the existence and content of the internal accounts confirmed that there was an additional relationship between the two men that operated as an overlay for the various corporate vehicles used by them.

[66] Third, the Judge's reference to evidence about "probable illegality" referred to conduct to which both men were parties. In any event, it was uncertain that the conduct referred to by the Judge was illegal. Its legality was not the subject of the proceeding, nor were the parties given the opportunity to be heard on whether it was illegal. Mr Zheng was simply being honest in giving evidence about historical events. Mr Deng had not provided an alternative explanation for any of these events. That should not be used against Mr Zheng in relation to credibility.

[67] Fourth, so far as Rosedale Apartments was concerned, the reason RAL was excluded from the partnership was that it was an investment holding company in which Mr Zheng and Mr Deng had uneven shares: 35 per cent and 5 per cent respectively. The investment in this land was operated under a company structure, due to the difference in their interests and the fact that Mr Jiang was the majority shareholder with 60 per cent of the shares. It was the unequal nature of their interests in RAL that meant that it sat outside their equal partnership. The references in some partnership documents to Rosedale Apartments reflected the fact that the Rosedale Apartments construction project undertaken by OCL was a partnership project: OCL was one of the companies that carried out partnership projects for their joint (equal) benefit.

[68] Mr Zhang submitted that the Judge's fifth reason for not accepting Mr Zheng's evidence proceeded on the incorrect premise that Mr Zheng had failed to discover the

Principles in Separation document. In cross-examination Mr Zheng had said that he did not recall whether he had discovered it or not. This, Mr Zhang submitted, was hardly surprising given the volume of discovery and did not provide a proper basis for a finding that the document had not been discovered. We note that it is now common ground that the document was in fact discovered by Mr Zheng. On appeal Mr Zheng had sought to adduce further evidence to establish that he had discovered the document. That was opposed by Mr Deng. We asked counsel to resolve this issue between them, and file a memorandum confirming the position. Counsel for Mr Deng now accept that the document was indeed discovered electronically. It follows that this limb of the Judge's reasoning drops away.

[69] By contrast, Mr Zhang submitted, there were numerous inconsistencies in Mr Deng's evidence. It was evasive in significant respects. Mr Deng was unable to explain a number of events and a number of documents.

[70] Mr Zhang submitted that the Judge had erred in law as treating s 4(2) of the Partnership Act as precluding the two parties from being partners while they were shareholders in the same company. Although s 4(2) of the Partnership Act confirms that parties do not become partners merely by virtue of being fellow shareholders in the same company, that is not to say that fellow shareholders can never be partners in respect of the company's business. Rather, whether parties who are fellow shareholders are also partners depends on the facts of each case.

[71] Mr Zhang submitted that if the Court had focused, as it ought to have, on what was actually said and done by the parties, it would have been apparent that they did not conduct business in a manner which can be explained solely by the Companies Act regime. Their internal dealings did not reflect the various different shareholdings in relevant companies. Indeed there were several projects on which the parties worked together that were operated by companies where the parties were not fellow shareholders and directors. The most notable examples of this were the projects carried out by ECL, a company which was run by Mr Zheng and Mr Deng as part of their joint business, but where the sole shareholder and director was Mr Deng's acquaintance, Mr Zhu. Mr Zhu's formal approval as director was required for certain matters; but it was clear from the evidence that the company was under the de facto

control of the two parties. The expenses and profits of these projects were shared equally, as reflected in the internal accounts and the Principles in Separation document.

[72] Mr Zhang also submitted that being fellow shareholders in the same company does not operate as a bar to the existence of a joint venture attracting fiduciary duties.

[73] In relation to the Judge's finding that there was a "paucity of evidence" demonstrating mutual loyalty, trust and confidence, Mr Zhang submitted that:

(a) The Judge erred in focussing on whether there was evidence to demonstrate mutual loyalty, trust and confidence. Those are consequences that follow from the existence of a partnership. The Judge should have focused on the test for partnership set out in s 4(1) of the Partnership Act. That test is met. The focus should have been on whether the parties were in business together with a common view to profit, based on what the parties said and did.

(b) The Judge erred in his assessment of the evidence in relation to the nature of the parties' dealings. In particular, the Judge erred in giving no weight to the internal accounts because of his finding that they were "Byzantine" and "impenetrable", based on the evidence of Mr McKay. Mr McKay's view was based on an incorrect and incomplete understanding of the relevant documents. Mr McKay confirmed that he had not seen all relevant material and had not taken into account certain matters. And even if the figures recorded in the internal accounts were inaccurate, the accounts should not have been discounted altogether. They shed important light on the true nature of the relationship. Their existence showed that the parties never saw the business relationship as one of being fellow shareholders of a series of companies. They saw themselves as directly being in business with each other, notwithstanding the corporate vehicles through which they carried out the work. The internal accounts did not record dealings between companies: rather they showed the amalgamated asset position

of the two men, including a running account of their contributions and drawings, and an allocation of expenses and revenue for all current projects. The accounts clearly disclosed an intention that the parties would split the overall profit generated by all projects 50/50, regardless of which company actually generated that profit. This was strong prima facie evidence of a partnership sitting behind the companies.

(c) Consistent with the 50/50 division of the profits from joint projects, the evidence showed that each was to receive 30 per cent of the profits from the Bella Vista Project, that is, half of the 60 per cent held by them jointly.

(d) Importantly, when the parties decided to separate, the negotiation was not about who was to take which company. Rather, the negotiations treated the companies' projects, equipment and staff as collective assets to be divided between the two men.

(e) If, contrary to the submissions set out above, evidence demonstrating mutual trust and loyalty is necessary for a finding that there is a partnership, the Judge erred in finding that such evidence was lacking. The arrangement between the parties could not function unless they were entitled to repose, and did repose, mutual loyalty, trust and confidence in each other. In particular, that was necessarily an ingredient of the conduct of projects in which one or other was not a shareholder or director of the relevant company, for example ECL. The compiling of the internal accounts required mutual trust and confidence. Indeed Mr Deng's evidence confirmed that he placed trust in Mr Zheng to carry out the administration and internal accounting work. There was sufficient evidence to demonstrate mutual loyalty, trust and confidence consistent with either a partnership or a joint venture attracting fiduciary duties.

(f) Finally, and very importantly, the two men expressly agreed that upon separation they would do a final accounting. The recognition that this

needed to occur was consistent with the existence of a partnership, with the two participants' interests in that partnership needing to be separated.

[74] Turning to the $290,000 debt claim, Mr Zhang submitted that the Judge's reasons for dismissing this claim were wrong in a number of respects. It was not correct that the contemporaneous documentation never mentioned a debt. An email sent by Mr Zheng to Mr Deng on 9 July 2015 referred to giving Mr Deng $200,000 because of "[Judy Lin's] poor health". That is more consistent with Mr Zheng's position that it was a loan to help Mr Deng out for personal reasons, not part of the process to disentangle business interests. Second, the Judge's finding that there was a debt owed by Mr Zheng to Mr Deng, which the payments to Mr Deng were intended to reduce, was incorrect, having regard to the email correspondence and the internal figures. Third, the absence of a demand for repayment did not mean there was no loan. The money was provided in April/May 2015. The reason for the loan was to help alleviate financial pressure on Mr Deng. It would have been unrealistic for Mr Zheng to demand repayment just a few months later. That is reflected in an email from Mr Zheng sent in September 2016, where he said "[c]onsidering that your cashflow is tight, I am hesitated to push you too hard". Fourth, there is no reason why a loan cannot be made by way of an intermediary.

[75] Mr Zhang submitted that it is uncontroversial that following a dissolution of a partnership, an accounting is required. Analogous steps are required where a joint venture comes to an end.[44] Mr Zhang submitted that orders along the following lines should be made for an accounting in respect of the partnership at Mr Deng's expense:

> a. A Chinese speaking chartered accountant should be appointed to undertake the partnership accounting. This accountant must be able to read and understand Chinese to understand of the [internal accounts].
>
> b. 31/03/2015 [internal account] is to be deemed an accurate reflection of the partnership position as of 31 March 2015.
>
> c. No more adjustments for RAL contribution difference are to be made (since it has been subsumed into the 31/03.2015 [internal account]).

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44 *Chirnside v Fay*, above n 10, at [92]–[93].

d. The accountant is to review, verify and confirm (and to the extent necessary, recalculate):

i. The unfinished projects' expenses and incomes as set out by [Mr Zheng] in his brief of evidence para 57 and 58;

ii. The compensation that should be due to [Mr Zheng] for his investment in the [Bella Vista] Project; and

iii. The partnership debts owed to Ms Xiaohui Li and May Zheng and the amount of that [Mr Deng] should pay towards those debts.

[76] Mr Zheng also sought an account of any profits obtained by Mr Deng as a result of his taking of funds from the partnership, and a finding that Mr Deng owes him a debt of $290,000 together with an order for repayment of that debt.

[77] Mr Zheng also appealed from certain aspects of the costs decision in the High Court, in particular the award of a disbursement in excess of $100,000 for the costs of the expert evidence of Mr McKay.[45] However as the costs appeal is overtaken by the outcome of the appeal, we will not set out the submissions made on that appeal.

Mr Deng's submissions on appeal

[78] Mr Turner, counsel for Mr Deng, submitted that there was no reason to depart from the Judge's factual findings or legal analysis. The Judge's factual findings in relation to the parties' dealings were not challenged on appeal. An appellate court should be slow to differ from a trial judge on findings in relation to the credibility of witnesses.

[79] Mr Turner submitted the focus of the appeal was on whether a partnership was formed in 2010 between Mr Zheng and Mr Deng, which lasted through to 2015. The allegation of earlier partnerships formed in 2004 and/or 2008 no longer appeared to be pursued.

[80] The Judge had correctly approached the question of whether a partnership existed as a mixed question of fact and law. There was no evidential foundation upon

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45 High Court costs judgment, above n 42, at [10]–[11].

which a court could properly conclude a partnership had come into existence. Rather, there was a group of companies which was known as the "Orient Group". Mr Zheng controlled all the projects and made decisions about them. There was no partnership agreement. There were no annual financial statements prepared by anyone for any partnership. There was no application for a GST number for a partnership between the two men. There were separate records for the various companies. The keeping of internal accounts by Mr Zheng, separate from the external accounts for the companies, was not in itself a factor pointing to a partnership as opposed to some other profit-sharing arrangement.

[81] Nor, Mr Turner submitted, was there any evidence to support the existence of a joint venture or some other fiduciary relationship. There is no written document establishing the alleged partnership. There are no pleaded terms of agreement between the two men personally. There is no certainty of terms. There was no cogent evidence as to exactly the terms they have agreed upon. As the Judge held, there is a paucity of evidence on mutual loyalty, reliance and trust.

[82] If there was a partnership or fiduciary relationship of some kind as at 31 May 2015, then it is necessary to look at any agreement the parties made to separate their interests, including the Principles in Separation document. In response to questions from the Bench, Mr Turner accepted that the Principles in Separation document did not itself reflect a concluded agreement. He submitted that subsequent email correspondence had addressed a number of the issues that were unresolved on the face of the document. But he was constrained to accept that a number of the steps contemplated by the Principles in Separation document had not been implemented in the manner proposed. Ultimately, Mr Turner accepted that if there was a partnership, he could not point to a concluded agreement determining the parties' mutual rights and obligations arising out of that partnership following its termination.

[83] The submissions for Mr Deng in relation to the $290,000 debt/unjust enrichment claim essentially reflected the findings of the Judge.

[84] Finally, Mr Turner noted that in the High Court Mr Deng had pleaded a number of affirmative set-off defences. Because the Judge found that the claims were not

made out, those set-off claims were not considered. If the appeal were to succeed, it would be necessary to consider those set-off claims.

[85] Mr Deng also opposed the costs appeal.

Discussion

A note of caution

[86] One important feature of the case is that almost all the primary records, and the parties' correspondence, are in Mandarin. Mr Deng and a number of other witnesses gave their evidence in Mandarin, with the assistance of an interpreter. We are conscious that when referring to relevant documents, it is necessary to bear in mind that the Court is referring to English translations prepared by different people at different times, who may or may not have understood and taken into account the legal nuances of particular words and phrases that they have used. In some cases — for example, the Bella Vista Agreement referred to above — different translators used different terms in their English translations of the same Mandarin terms. None of the translators gave evidence about why they used certain terms rather than others in particular documents. In these circumstances, a high degree of caution is required before attributing any significance to the precise terms that appear in the various English translations. There is a real risk of nuances in expression and context being lost in translation.

[87] For example, as noted above at [11], the title of the Bella Vista Agreement can be translated as either a "partnership" agreement or a "cooperation" agreement. And, critically, the Collins Chinese-English dictionary confirms that the term frequently used to refer to the parties' overall business association in documents and email correspondence — 公司 — can be variously translated as "company", "firm" or "enterprise". It would be wrong to attribute any legal significance to translations of this term without evidence specifically addressed to whether the term has, in its original language and original context, a corresponding significance.

[88] We are also conscious that language is used in a broader linguistic and cultural setting, by reference to background assumptions about personal and business

relationships and the ways in which dealings are normally structured, that the parties will have shared but that the Court may not be aware of or understand. For example, as the author of a recent report explains:[46]

> 307 *Guanxi* often governs the Chinese way of doing business, and is in part the reason why Chinese people are less likely to conduct business by using a formal contract and more likely to do so via a "handshake." As Dr Ruiping Ye notes:
>
> > As written contracts are perceived as evidence for transactions, and requiring evidence for agreements with one's family or friends would appear to be distrusting, many harmony-loving Chinese will find it difficult to ask for a written contract with family, friends or close acquaintances. In cases of close relationship, it is honour that binds the parties, rather than the written contract. Nevertheless, each party would believe that a binding contract exists between them if the terms of the agreement have been discussed and words of confirmation have been spoken unequivocally.
>
> 308 Dr Ye notes that where contracts are drafted, they are generally brief. Dr Ye says that this was "sufficient when the society operated on the basis of mutual trust and was governed by social pressure" but that it is "increasingly becoming insufficient as modern life becomes more complicated" and that "parties who are not assisted by competent lawyers do not necessarily turn their minds towards complex or ambiguous matters." This concern, and the challenge that this creates in ensuring the courts are adequately equipped to provide Chinese parties with equal access to justice, is reflected in some of the cases in our case review, and also in our interviews with judges and lawyers.

[89] In this case there was no expert evidence about relevant cultural factors to assist the Court. We have done the best we can to be sensitive to the importance of social and cultural context and, in particular, to be cautious about drawing inferences based on our preconceptions about "normal" or "appropriate" ways of structuring and recording business dealings. Rather, we focus on the substance of the parties' arrangements as revealed by their conduct over time.

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[46] Mai Chen *Culturally and Linguistically Diverse Parties in the Courts: A Chinese Case Study* (Superdiversity Institute for Law, Policy and Business, November 2019) (footnotes omitted). See also the article from which this report quotes: Ruiping Ye "Chinese in New Zealand: Contract, Property and Litigation" (2019) 25 CLJP/JDCP 141 at 157–158. See also the report at [700]–[727] for a discussion on the reasons why there may be a lack of contemporaneous documentary evidence in such cases.

The test for a partnership

[90] It was common ground before us that the question whether the parties had entered into a partnership was a mixed question of fact and law. The starting point is s 4 of the Partnership Act, which provides:

> **4 Definition of partnership**
>
> (1) **Partnership** is the relation which subsists between persons carrying on a business in common with a view to profit.
>
> (2) But the relation between members of any company or association registered as a company under the Companies Act 1993 … is not a partnership within the meaning of this Act.

[91] Some factors that may be relevant to determining whether or not a partnership exists are set out in s 5:

> **5 Rules for determining existence of partnership**
>
> In determining whether a partnership does or does not exist regard shall be had to the following rules:
>
> (a) joint tenancy, tenancy in common, joint property, or part ownership does not itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof:
>
> (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived:
>
> (c) the receipt by a person of a share of the profits of a business is prima facie evidence that he or she is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not of itself make him or her a partner in the business; and, in particular,—
>
> (i) the receipt by a person of a debt or other liquidated amount, by instalments or otherwise, out of the accruing profits of a business does not of itself make him or her a partner in the business or liable as such:
>
> (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:
>
> (iii) a person being the widow, widower, surviving civil union partner, surviving de facto partner, or child of a deceased

> partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:
>
> (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business, or liable as such:
> provided that the contract is in writing, and signed by or on behalf of all the parties thereto:
>
> (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him or her of the goodwill of the business is not, by reason only of such receipt, a partner in the business or liable as such.

[92] There is limited assistance to be had from the authorities, because the analysis is inevitably highly fact-specific. The warning given by Cooper J in *Aldridge v Paterson* more than 100 years ago remains apposite:[47]

> Very little assistance can be obtained from the numerous cases reported in which the question of partnership or no partnership has been decided. In all such cases the particular facts — what were in effect the respective contracts — were intimately connected with the questions of law.

[93] As this Court said more recently, the question "is a legal question to be determined by the Court on the basis of what the parties said and did".[48]

[94] It is important to bear in mind the infinite variation in partnership structures and avoid the assumption that a partnership must have certain characteristics or incidents other than those actually required by s 4(1) of the Partnership Act. As the learned authors of *Lindley & Banks on Partnership* say:[49]

> There is … a danger that what are, in truth, normal incidents or characteristics of partnership are wrongly perceived as *pre-requisites* to the existence of that relationship, thus distorting the application of [the United Kingdom equivalent of s 4(1) of the Partnership Act].

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47 *Aldridge v Paterson* (1914) 33 NZLR 997 (SC) at 1006.
48 *Clark v Libra Developments Ltd*, above n 8, at [51].
49 Roderick I'Anson Banks *Lindley & Banks on Partnership* (20th ed, Sweet & Maxwell, London, 2017) at [2-15].

[95] As we explain below, that danger appears to have materialised in the High Court in this case. For example, the Judge considered that his finding that Mr Zheng was "in charge" pointed against the existence of a partnership.[50] But the partners in a partnership can have very different roles — or for that matter, as in the case of "sleeping partners", no role — in the management of the business of the partnership. The fact that one of the parties took sole or primary responsibility for the financial and commercial aspects of the business activities in which they were engaged sheds no light on whether they were partners in those business activities.

[96] The Judge also appears to have proceeded on the basis of a misapprehension about the effect of s 4(2) of the Partnership Act. That provision does no more than establish that persons who are shareholders in a company are not by reason of that relationship alone partners for the purposes of the Partnership Act. But, importantly, it does not provide that two individuals who are shareholders in the same company cannot also be partners, whether generally or in respect of the ownership of that company. It is not uncommon for a partnership to own shares in one or more companies, in connection with the partnership business. Sometimes those shares are held in the same proportions as the partners' stake in the partnership itself. But that alignment is not necessary. Shares may be held by one partner, or by a subset of the partners, on trust for the firm as a whole. And even if they are held by all partners, the shares may be held by each partner on trust for the firm as a whole.

Our assessment of the evidence

[97] We consider that the evidence, taken as a whole, establishes that Mr Zheng and Mr Deng were carrying on a property development and construction business in common with a view to profit. The business comprised a number of projects, in relation to which they were equal contributors, with an entitlement to an equal share of any profits and a responsibility to bear an equal share of any losses. Those projects were carried out through a number of corporate vehicles including OCGL, AAL, OCL and ECL. Although shareholdings in these entities differed, from March 2010 at the latest the parties proceeded on the basis that they were equal stakeholders in the projects regardless of the company through which they were carried out.

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50 High Court judgment, above n 1, at [86].

[98] RAL was an exception. The stakes of Mr Zheng and Mr Deng in this particular investment vehicle were not equal. Rather, their respective interests were aligned with their shareholding in RAL as set out at [22] above. We accept the submission summarised above at [67] that this explains why Mr Zheng rightly described RAL as sitting outside the parties' equal partnership.

[99] The internal accounts, which sought to ensure equal contributions to the capital of the overall venture, and an equal sharing of benefits and burdens from the venture and the various projects it undertook, provide strong evidence of this relationship. As Ms Payne said in her evidence, and as Mr McKay accepted, the internal accounts maintained by Mr Zheng reveal an intention to split profits and maintain equal investments as between the two men, effectively looking through the corporate structure for the purpose of determining their mutual entitlements and obligations. The time-consuming exercise of creating and maintaining these accounts would not have been necessary if the parties' relationship had been confined to their respective shareholdings and current accounts with the various companies, as Mr Deng contended.

[100] The Judge was right to say that it does not necessarily follow from these features of the internal accounts that partnerships existed.[51] But those internal accounts provide strong evidence in support of the existence of an underlying relationship between the two men embracing the various corporate vehicles, and the projects conducted through them, which was not confined to their respective shareholdings and current accounts with the companies.

[101] The unorthodox nature of the internal accounts does not tell against the existence of a partnership. Nor does the contest about their accuracy. A partnership can exist even though the partners fail to keep any accounts for the business carried on by the partnership. It can exist even though any accounts that are kept are idiosyncratic and difficult to understand. A dispute about the accuracy of any accounts that are kept, whether in orthodox or idiosyncratic form, also does not tell against the existence of a partnership (though it will undoubtedly make it more

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[51] High Court judgment, above n 1, at [79]; citing the Partnership Act 1908, s 5(c).

difficult to carry out an accounting following the dissolution of the partnership). The same is true where there are admitted inaccuracies and omissions: that does not tell against the existence of a partnership. Well-kept partnership accounts in an orthodox double-entry format will of course tell in favour of the existence of a partnership. But the converse is not true.

[102] As we indicated earlier, quite apart from the internal accounts, it seems to us that conclusive evidence that there was a partnership in this case is provided by the Principles in Separation document to which both men contributed at the time they agreed to separate their affairs in mid-2015. In particular:

(a) The principles that they are discussing look through the relevant corporate vehicles to allocate the benefits and burdens of each of the projects and of the relevant underlying assets and liabilities.

(b) An equal sharing approach is adopted in relation to projects carried out by the companies, identified by Mr Zheng as falling within the scope of the partnership, including companies in which one or other was the sole shareholder, and ECL (in respect of which neither was a shareholder). In relation to ECL, for example, it was agreed as follows:

> [Mr Zheng's proposal]
>
> ECL shall belong to Deng. The taxes in the 2014-2015 financial year shall be jointly covered by both parties. Those in the 2015-2016 financial year and afterwards shall be covered by Deng personally.
>
> [Mr Deng's response]
>
> As the 103 and 50 projects are not finished, they should be jointly covered. ECL shall not be closed until the projects are finished.
>
> [Mr Zheng's response]
>
> Agree.

(c) The parties agreed that certain unfinished projects would be "jointly owned by both parties".[52] This only makes sense against a backdrop of prior joint ownership of all projects, with these nearly completed projects to remain jointly owned until completion, after which the profit would be "split up".

(d) The sharing of liabilities is reflected in the proposal made by Mr Zheng that OHL (100 per cent of the shares in which were held in Mr Deng's name) would close immediately, with all of its taxes and responsibilities (including repairs to properties) jointly covered by both parties. This confirms a "common business" overlay on top of the corporate structure.

(e) Item 9 contemplates a "last reconciliation of accounts" with money owed to each other by the two parties being cleared by the end of 2015. Mr Zheng made reference to clearance in cash as soon as possible "[no] matter who owes whom as a result of the division".

(f) One exception to equal sharing is reflected in item 10, which provides for independent calculation of the RAL investment and sale of Mr Deng's shares as soon as possible. That is consistent with this entity sitting outside the partnership, but the parties needing to deal with that unequally owned joint investment in order to separate all their interests. Other references to the Rosedale Apartments Project in this document (at item 4) relate to construction work carried on at that site by OCL, not the underlying property investment. The parties did have an equal interest in the construction work.

[103] The practice of agreeing on underlying equity shares in the business regardless of where title to particular assets may sit is consistent with the approach contemplated in relation to the Bella Vista Project in the Bella Vista Agreement. The Project as a whole was owned as to 60 per cent by the parties and as to 40 per cent by Mr Jiang. They agreed to share profits and losses in those proportions. The individual sections

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[52] See Appendix B, item 6, referring to three properties described as "LG, 54, 103 and 50"

were to be held by nominees designated by each interest, but regardless of where title might sit, those proportions would apply. This was also in our view a partnership, with Mr Jiang as one partner and the Orient Partnership as the other partner. (We note that signature of the Bella Vista Agreement by Mr Zheng alone on behalf of the Orient Partnership is consistent with our analysis of the parties' relationship. One partner can bind the firm.[53]) The way in which this model was deployed in relation to the Bella Vista Project sheds light on the parties' approach to the structure and operation of the Orient Partnership.

Our response to the Judge's reasons for not accepting Mr Zheng's evidence

[104] The Judge gave five reasons for rejecting the evidence of Mr Zheng. We have reached a conclusion that differs from that reached in the High Court judgment for a number of reasons.

Terminology used and omitted

[105] First, it seems to us that the Judge gave too much weight to the use of particular language — or the absence of particular language — in the dealings between the parties. As noted above, the pervasive references to "公司" can be read as references to a firm/partnership rather than to a company with separate legal personality established under the Companies Act. Likewise, the Bella Vista Agreement uses language and concepts that appear to be equally consistent with the existence of a partnership. Even putting to one side the linguistic and cultural issues discussed above, it is well established that the labels used by participants in a business venture are not determinative as to the nature of that venture.[54] Rather, it is necessary to examine what the parties said and did in order to ascertain the true nature of their relationship.

[106] Against that backdrop, we consider that the Judge erred in putting some weight on the email from Mei Zheng to Mr Deng in which she complained about Mr Deng's use of "*company* property". Her original email was written in Mandarin. The term

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53 Partnership Act, ss 8 and 9.

54 Banks, above n 49, at [2-01]. See also *Horne v Pollard and Anderson* [1935] NZLR 125 (SC).

used in the email was "公司". As we explained above, this can be translated as "company", "firm" or "enterprise". It is not possible to attribute any legal significance to the term used by the interpreter in these circumstances, at least in the absence of detailed contextual evidence confirming that the term used had a particular connotation in that context. There was no such evidence.

[107] For essentially the same reasons, the absence of particular terminology carries little weight where the parties are dealing with each other in another language. The absence of the familiar (English) language of partnership in the translations of the parties' documents and communications tells us little or nothing about the nature of their dealings.

[108] Likewise, the absence of a formal written partnership agreement, which may well have been seen as unnecessary or inappropriate as between these two men who were friends and close business associates, having regard to the cultural context described at [88] above, sheds no light on the nature of their relationship in these circumstances.

[109] The absence of a separate partnership bank account is also a neutral factor. So too is the absence of separate GST registration for the partnership. If the partnership was an investment partnership that did not itself engage in the supply of goods or services, it may not have needed to register for GST. And even if it was required to register for GST, but failed to do so, that would be a compliance issue for the Inland Revenue Department, not evidence that there was no partnership.

The relevance of the various companies

[110] Second, as explained above, it seems to us that the Judge misunderstood the effect of s 4(2) of the Partnership Act. The two men's common shareholding in a number of companies, in particular OCL, does not require the projects carried out by those companies to be "removed from the calculus", or leave "a sizable hole in the alleged five-year partnership".[55] This error appears to have significantly influenced the Judge's analysis.

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[55] High Court judgment, above n 1, at [85].

[111] The Judge was also wrong to proceed on the basis that there is an inconsistency, or any element of impropriety, in a partnership owning one or more companies that deal with the outside world. For example, it is very common for a legal partnership to hold certain assets used in connection with the partnership's practice (such as a lease, office equipment, furniture) through a company the shareholders of which are all or some of the partners. The company deals with third parties — for example, a lessor or suppliers of office equipment — as a company, and those third parties have rights and obligations vis-à-vis the company rather than vis-à-vis the individual partners. But the shares in the company are, in many if not most cases, held as a partnership asset. We respectfully disagree with the Judge that there is anything unattractive about the world being told one thing in relation to particular companies by the way in which dealings are conducted, and by the external accounts of those companies, merely because there is a partnership sitting behind those companies. An arrangement of this kind is not especially unusual. Nor is it unattractive, provided that the external accounts for each company provide a true reflection of the financial position of that particular company.

[112] Similarly, once one appreciates that the internal accounts were intended to keep track of the underlying joint interests of the two participants in the various projects, regardless of shareholding in particular companies, the fact that the two sets of accounts cannot readily be reconciled loses the significance attached to that factor by the Judge.

[113] We also respectfully disagree with the Judge's suggestion that in contending for a partnership, Mr Zheng "now wants to have it every which way".[56] As explained above, there is no inconsistency between dealing with third parties through corporate vehicles — which so far as the third parties are concerned is the "true position" — and there being a partnership between the two men sitting behind those vehicles. Third parties dealing with the companies were indeed entitled to rely on the existence of the companies, and financial statements or other information about those companies that was available to them. If any of the companies had failed to meet its obligations, the informal way in which the Group was managed could have exposed the participants

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[56] At [80].

to liability in their capacity as directors (actual or shadow). But there is no suggestion of default by any of the companies. This aspect of the Judge's analysis also appears to be affected by the false dichotomy the Judge drew between the existence of corporate vehicles for carrying out projects, and an overarching partnership. There is no such dichotomy, as explained above.

"Likely impropriety"

[114] Nor do we consider that the evidence Mr Zheng gave about the way in which the companies operated, which the Judge described as involving "likely impropriety", was a reason not to accept the evidence of Mr Zheng. The account given by Mr Zheng of the way in which funds were transferred and used by the various companies was consistent with the evidence of Mr McKay about the manner in which the finances of the projects operated. We accept Mr Zhang's submission that frank acknowledgement of the informal manner in which the Group operated does not affect the credibility of Mr Zheng's evidence. Nor was it suggested that any possible illegality rose to a level where Mr Zheng's claim should not be entertained by the Courts. This is in our view something of a red herring, in the context of these proceedings. It seems likely that there were breaches of the two men's duties as directors of the various companies. Some of the dealings disclosed by the evidence may have had tax consequences: but that is a matter for the Inland Revenue Department to address. This does not mean that Mr Zheng is disentitled from seeking relief in respect of the partnership. Still less does it cast doubt on his credibility.

Excluding RAL from the partnership

[115] The Judge's fourth reason for not accepting Mr Zheng's evidence — what he saw as the "capricious" distinction drawn between RAL and other companies that were included in the partnership's business — also falls away in light of the rationale for treating RAL differently described at [98] above.

Discovery of the Principles in Separation document

[116] The Judge's fifth reason for not accepting Mr Zheng's evidence was based on the incorrect finding addressed at [68] above that Mr Zheng had not discovered the Principles in Separation document. And in circumstances where that document provides strong support for Mr Zheng's case, we do not consider that any adverse inference could be drawn from the fact that he did not refer to it in his brief.

Conclusion

[117] We do not consider that the five reasons given by the Judge, whether taken separately or together, cast material doubt on the credibility or reliability of Mr Zheng's evidence. We accept Mr Zhang's submission that the Judge erred in rejecting the evidence of Mr Zheng, the central elements of which are in our view supported by contemporaneous documents.

[118] Mr Zhang was anxious that the credibility finding in relation to his client be addressed by this Court, because it affects Mr Zheng's reputation. There were respects in which the evidence of each of Mr Zheng and Mr Deng sought to paint the relevant events in the light most favourable to them, with some element of reconstruction with the benefit of hindsight. But we expressly record that we have accepted the central elements of Mr Zheng's evidence about the existence of the partnership, and the manner in which it operated.

[119] We add that there is nothing unusual about the absence of express evidence from one or other party about matters such as mutual loyalty, reliance and trust, or the absence of references to these concepts in contemporaneous documents. These matters are often tacitly assumed in the context of a relationship between two or more partners. They follow from the existence of that relationship and are incidents of it. It is an error to treat express references to these concepts as prerequisites for the existence of a partnership.

[120] And in any event, we accept Mr Zhang's submission that there was evidence in this case of mutual reliance and trust. Mr Deng relied on Mr Zheng to manage their business affairs and prepare their internal accounts and trusted him to do so.

He said so repeatedly. Similarly, it is clear that Mr Zheng trusted Mr Deng to manage site operations. It was when that trust broke down that the parties decided to separate their interests.

[121] Nor, as explained above, is Mr Zheng's primary (or perhaps, sole) responsibility for business matters an indication that there was no partnership. Mr Zheng may well have been "in charge" so far as business matters were concerned, with Mr Deng taking lead responsibility for operational matters. The Judge was wrong to say that his finding that Mr Zheng was in charge told against the existence of partnerships.[57]

[122] The conclusion reached by the Judge about the existence of a partnership was founded on a number of errors of law in relation to the indicia of partnership, and the perceived incompatibility of corporate and partnership relationships between these men. It was also founded on inferences drawn from the language used by the parties and their business practices, which lacked a robust foundation. If those misconceptions are put to one side, the evidence that there was a partnership is in our view compelling.

The Bella Vista sections

[123] It is in our view clear from the Bella Vista Agreement, the Principles of Separation document, and other evidence before the Court, that the transfers of Bella Vista sections to family members were not arm's length absolute sales of those sections. In particular, the Principles of Separation document proceeds on the basis that eight sections are still owned by the Bella Vista Partnership, with Mr Zheng and Mr Deng each having an equal share in their 60 per cent interest in that venture. Hence item 2 of the Principles in Separation document referring to "eight pieces of land left" and Mr Deng's observation that the Project has a loss of over $90,000 on the books, "of which Zheng should cover nearly 30,000". Thirty per cent of $90,000 is $27,000 — that is, "nearly $30,000". The discussions about sharing of losses on the sections, and sharing any appreciation on the land, only make sense on the basis of a common understanding that beneficial ownership of the eight sections remained with

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57 High Court judgment, above n 1, at [86].

the Bella Vista Partnership, subject to the need to pay off the borrowings by the individuals holding title to those sections. Mr Deng's evidence that these were outright sales is impossible to reconcile with his contributions to the Principles in Separation document. In light of his evidence that he did not understand the business side of the parties' dealings, we refrain from making any credibility finding in respect of Mr Deng. But we are firmly of the view that his evidence on this issue was wrong and was not consistent either with the pattern of dealings involving the families of the two participants or the specific evidence in relation to these transactions.

The dispute about the $290,000 transferred to Mr Deng

[124] It was ultimately common ground between the parties' experts that a net amount of $290,000 was transferred from the Group companies' bank accounts to Mr Deng in May/June 2015. It seems to us that the separate claim in relation to these transfers is misconceived. If this was a "loan", it took the form of drawings out of assets beneficially owned by the partnership, for which Mr Deng would ultimately be required to account to Mr Zheng. (It is irrelevant for this purpose whether these drawings were authorised or unauthorised.) If it was a payment on account of sums owed to Mr Zheng, that will become apparent when an account is taken and the balances owing between the parties at the relevant time are ascertained. Plainly these sums were not a gift: so they must be factored into the accounting process.

[125] We will allow the appeal on this issue to the extent of setting aside the dismissal of the claim for this sum. We do so in order to ensure that the High Court judgment does not preclude the relevant payments being taken into account in the course of taking an account as between the partners. They will either increase the amount payable to Mr Zheng, or reduce the amount payable by him, depending on where the ultimate balance lies.

Mr Deng's set-off defences

[126] The same applies to the three matters relied on by Mr Deng by way of set-off. These can be addressed in the context of the taking of an account. They go to the amount payable as between the two men, not to whether or not a partnership existed.

The implications of our findings

[127] It follows from these findings that a declaration should be granted that there was a partnership between Mr Zheng and Mr Deng from no later than March 2010 until 31 May 2015, which encompassed all the joint business ventures between these two men other than RAL. They had equal shares in that partnership.

[128] Although the two men made some progress towards reaching agreement on the separation of their interests, Mr Zheng says no final agreement was reached. Mr Turner accepted in the course of oral argument, as indeed he had to having regard to the contemporaneous correspondence, that if there was a partnership then no final contractual agreement had been arrived at in relation to the necessary accounting between the partners following its termination. It is therefore necessary for an account to be taken, with any balance due to one or other partner being paid to the other partner. We will direct that an account be taken under the supervision of the High Court.

[129] We consider that the appropriate machinery for the taking of that account is best left to the High Court to determine. Some of the issues are accounting issues best determined by an expert accountant. We consider that fluency in Mandarin would be a significant advantage for that person. Some issues may need to be determined by a Judge, after hearing evidence: for example, it appears there is a dispute about the value of the half share in OCL transferred to Mr Zheng by Mr Deng. The Judge will need to decide how best to determine any disputes of that kind, to inform the taking of the account.

[130] To avoid any confusion, we note that:

(a) No argument was advanced before us in relation to the miscellaneous payments (totalling $57,423.29 from OCL to Mr Deng), cars and other matters referred to at [58] above. The High Court judgment dismissing the claims in respect of those matters stands, and it follows that those matters should be disregarded in taking the account.

(b) There was no appeal to this Court in relation to the constructive trust claims against the defendants other than Mr Deng and OHL. Those defendants were not named as respondents to this appeal. The claims against those defendants were dismissed in the High Court, and this judgment cannot and does not revive the claims for relief against them. But for the reasons given above, as between Mr Zheng and Mr Deng an account should be taken on the basis that as at 31 May 2015 the two men beneficially owned 60 per cent of the remaining eight Bella Vista sections in equal shares.

[131] The appropriate treatment of the alleged loan and/or unauthorised drawing of a total of $290,000 by Mr Deng can most appropriately be resolved in the context of that taking of accounts. We add that against the backdrop of a partnership between the two men, and a practice of one or other of them drawing on the funds of the partnership for their own personal benefit with a subsequent adjustment in the internal accounting between them, there would be nothing unorthodox in an advance by Mr Zheng to Mr Deng being provided through a similar mechanism. We do not see the fact that the funds were drawn from the account of OCL as either confirming or disproving the allegation that these sums were in effect drawings for which Mr Deng would be subsequently liable to account, rather than consideration for transfer of other assets. If that issue continues to be disputed between the parties, it may need to be resolved by the High Court in order to enable the mutual accounting to take place.

[132] Similarly, the three claims that Mr Deng relies on by way of set-off are in our view matters that should be determined in the context of the taking of an account, and if established, reflected in the balance struck between the two men or (in relation to the RAL shares, which were not a partnership asset) set-off against any balance owing by Mr Deng to Mr Zheng.

[133] We add that in light of the declaration we have granted, and the substantial progress towards an agreed resolution made by the parties in 2015, it would be sensible for Mr Zheng and Mr Deng to seek to reach an agreed resolution rather than incur the further expense of a formal taking of accounts, in light of the time and cost that such

a process will inevitably involve. We strongly encourage the parties to attempt this, either through direct discussions or with the assistance of a mediator.

The costs appeal

[134] The conclusions we have reached in relation to the substantive appeal mean that the costs appeal is superseded. We will set aside the costs order made in the High Court, with costs issues to be determined by that Court in light of the outcome before this Court.

Result

[135] The appeal is allowed.

[136] The judgment of the High Court is set aside insofar as it relates to Mr Zheng's claims for a declaration that there was a partnership and the consequential taking of an account (Mr Zheng's second cause of action against Mr Deng) and in relation to the payments to Mr Deng of $290,000 (Mr Zheng's first cause of action against Mr Deng).

[137] We make an order that an account be taken of the dealings of the partnership. The proceeding is remitted to the High Court for the taking of that account.

[138] We make an order that such amount as may be due by one party to the other on that account be paid accordingly. Any question of interest on the net amount due is to be dealt with in the High Court, having regard to the findings made in the course of taking the account between the parties.

[139] Mr Zheng is entitled to costs in this Court. Mr Deng must pay costs to Mr Zheng for a standard appeal on a band B basis. Counsel agreed that this was not an appropriate case in which to certify for second counsel.

[140] We set aside the order for costs made in the High Court. Costs in that Court should be determined by the Judge in light of the outcome of this appeal.

Solicitors:
Advent Ark Lawyers, Auckland for Appellants
McVeagh Fleming Lawyers, Auckland for Respondents

Appendix A

INFORMATION ON RELEVANT COMPANIES

ORIENT CONSTRUCTION LIMITED – current

Incorporation date	23/07/2013	
Current director	Lu Zheng	Since 2/04/2016
Former director	Donglin Deng	Between 23/07/2013 and 27/11/2013
Current shareholder	Lu Zheng (100%)	Since 2/04/2016
Former shareholders	Donglin Deng (50%)	Between 23/07/2013 and 2/04/2016
	Lu Zheng (50%	Between 23/07/2013 and 2/04/2016

ORIENT HOMES LIMITED – removed

Incorporation date			11/06/2004		
Removed			15/12/2017		
Director history					
Lu Zheng	11/06/2004 appointed		30/09/2008 removed		
Donglin Deng	11/06/2004 appointed		20/09/2008 removed	1/04/2009 appointed	15/12/2017 removed
Jingli Zhu	11/06/2004 appointed		30/09/2008 removed		
Zuoqi Li		30/09/2004 appointed		1/04/2009 removed	
Shareholder history					
	11/06/2004	24/10/2007	1/10/2008	10/10/2008	12/08/2009
Donglin Deng	40%	23%	30.6%	0%	100%
Lu Zheng	40%	26%	34.6%	0%	-
Jingli Zhu	20%	21%	28%	0%	-
Hong Lin	-	12%	0%	-	-
Yaping Yao	-	10%	0%	-	-
Zuoqi Li	-	5%	6.6%	100%	0%
Lei Yu	-	3%	0%	-	-

EVERSOLID CONSTRUCTION LIMITED – removed

Incorporation date	21/03/2011	
Removed	15/12/2017	
Former director	Tong Zhu	Between 21/03/2011 and 15/12/2017
Former shareholder(s)	Tong Zhu (100%)	Between 21/03/2011 and 15/12/2017

ORIENT CONSTRUCTION GROUP LIMITED (OCGL) – removed

Incorporation date	29/06/2006	
Removed	18/08/2014	
Former director	Donglin Deng	Between 29/06/2006 and 18/08/2014
Former director	Jingli Zhu	Between 29/06/2006 and 10/10/2008

Shareholder history						
	29/06/06	10/04/07	13/06/07	25/06/07	1/10/08	10/10/08
Meng Zhao & Feng Lu	9% jointly	0%	-	-	-	-
Donglin Deng	20.6%	23%	23%	23%	30.6%	74%
Ying Zheng	18.4%	21%	0%	-	-	-
Shouju Zheng	23%	26%	26%	26%	26%	26%
Lei Yu	3%	3%	3%	3%	0%	-
Zuoqi Li	4%	5%	5%	5%	6.7%	0%
Hong Lin & Xinchun Lin & Xincheng Lin	12% jointly	12% jointly	12% jointly	12% jointly	0%	-
Yaping Yao & Yang Wang & Xiaomei Liu	10% jointly	10% jointly	10% Yang Wang	10% Yang Wang & Yaping Yao	0%	-
Jingli Zhu	-	-	21%	21%	28%	0%
Lu Zheng	-	-	-		8.7%	0%

ALBANY APARTMENTS LIMITED (AAL) – removed

Incorporation date	22/09/2006	
Removed	8/07/2016	
Former director	Lu Zheng	Between 22/09/2006 and 8/07/2016

Shareholder history						
	22/09/06	10/04/07	13/06/07	18/07/07	1/10/08	10/10/08
Wen Lu & Lu Zheng & Yang Wang	23% jointly	26% jointly	26% jointly	26% jointly	0%	-
Lu Zheng	-	-	-	-	34.6%	100%
Yaping Yao & Xiaomei Liu & Yang Wang	10% jointly	10% jointly	10% Yang Wang alone	10% Yaping Yao alone	0%	0%
Donglin Deng	20.6%	23%	23%	23%	30.7%	0%
Ying Zheng	18.4%	21%	0%	-	-	0%
Jingli Zhu	-	-	21%	21%	28%	0%
Xincheng Lin & Xinchun Lin & Hong Lin	12% jointly	12% jointly	12% Hong Lin alone	12% Hong Lin alone	0%	0%
Lei Yu	3%	3%	3%	3%	0%	0%
Zuoqi Li	4%	5%	5%	5%	6.7%	0%
Meng Zhao & Feng Lu	9%	0%	-	-	-	0%

ROSEDALE APARTMENTS LIMITED – current

Incorporation date	10/03/2010				
Current directors	Lu Zheng			Since 19/12/2013	
	Chenggang Zhang			Since 12/04/2010	
Former director(s)					
Donglin Deng		6/07/2011 appointed			8/09/2015 removed
Lu Zheng	10/03/2010 appointed		11/07/2011 removed	19/12/2013 appointed	
Chenggang Zhang	12/04/2010 appointed				

Shareholder history					
	10/03/10	10/04/10	11/07/11	14/01/14	8/09/15
Lu Zheng	100%	60%	0%	35%	35%
Chenggang Zhang	-	40%	70%	60%	65%
Donglin Deng	-	-	30%	5%	0%

D & R HOMES LIMITED (DRH) - current

Incorporation date	13/05/2008	
Current director	Bin Jiang	Since 13/05/2008
Current shareholder	Bin Jiang (100%)	Since 13/05/2008

Appendix B

Principles in Separation

	郑邓分家原则
1)	双方决定自 2015 年 5 月 31 日正式分家。
2)	郑将 BELLA VISTA 八块地的 30%股份按实际投资值交给邓，朱桐的借款 50 万及今后产生的利息由邓个人负责。BV 项目目前账面还亏 9 万多，郑应承担近 3 万，以今后 OCL 向 D&R 开票 20 万+GST 形式补偿。但是剩下的八块地还有增值，暂且忽略不计。只算现在我们三个人的投入加银行贷款，除以八块地，折合每块地 33 万左右，这个数字相当于把前 3 栋的亏损计入后的结果，而且以前 3 栋的东方的管理费也就不要了，相当于郑应得的部分给了邓和蒋。**截止 31/5/2015，8 快地均价是 35 万 6（见附表 2），不含本金的利息，现在市场价也只在 35 万左右，何谈增值？并且 Lot20 卖给朱彤还得先垫付 50 万给 D&R。**
3)	借郑梅的 14 万（加截至 5 月 31 日的利息）徐嘉辰 3 万，马斌 3 万仍然双方承担，可以用双方共同项目的应收款优先偿还，若现在不用全部偿还的，他们跟谁干，钱就放在谁的公司（需经他们本人同意）。因徐，马今后还是为 OCL 工作，3 万就作为之前公司收入，按原先已定的规定办，与邓无关。徐，马的钱与聂的不同，不能算公司收入，因为早晚还要还给他们，现在不可以拿出来分掉。**徐，马的 3 万可以理解为工作 3 年的押金，先作为公司收入，每工作满一年，郑 .邓各还 5000 给每人。**
4)	40 Rosedale Rd 的项目归郑。5 月 31 日之前郑邓共同为该项目投入的材料及人工费，若多于同期的 NCCL 的付款，算郑欠公司（郑邓），反之亦然。该项目 5 月 31 日之后归郑，之前双方共有。**建议算到六月底，届时 BASEMENT 部分可以基本做完，挡土墙也能修好，那我们可以把前六项的利润全分掉（多做的梁和 rib 与没做的内外楼梯调整一下细账）。只是 P&G 到目前的亏损能否计算出来（P&G 是按月平均开发票的，收款额与真实支出无关）。同意算到 6 月底，P&G 如何结算到时分析结算表大家达成共识即可。**

	分家之后邓在该项目工作报酬由郑按每小时 60+GST（公司对公司）支付，邓的交通费用，通讯费用自理，只计算为 OCL 工作的时间，不计算为 RAL 和 NCCL 工作的时间（例如，修 COMMON DRIVEWAY 等土地分割工作及股东会议等）。邓暂定为 OCL 服务半年，按在 40Rosedale 实际工作时间计时，每小时税后 60，每两周支付（邓，林每两周转账工资税后各 2000，多还少补），PAYE，交通及通讯费由 OCL 支付。2016 年若 Rosedale 项目需要到 2015 年底再商量。税后（现金）60 可以，但 paye 太高，折合近 20 万年薪 39%的税率交给税局意义不大。郑邓之间不是雇用关系，而是分包（管理工作）关系，相当于 21ALPERS AVE 旅馆 ANDY 和小苏的关系。如果邓到年底大部分时间在 ROSEDALE 干，交通费通信费郑可以出。邓.林每两周转帐工资是为了今后盖房做贷款，一般最多需要 3 个月的收入证明，PAYE 不多，等贷到款后工资可以用不同方式灵活支付，邓只认到手每小时 60 的工资。
5)	以前的公司：
	ORH 马上关闭，其全部税务及责任（修理以前的房子）双方共同承担。
	ECL 归邓，2014-2015 财务年度的税务双方共同承担，2015-2016 财务年度及以后的邓个人承担。因 103，50 项目未结束应共同承担直到项目结束再关闭 ECL。同意
	OCL 归郑，2014-2015 财务年度的税务双方共同承担，2015-2016 财务年度及以后的郑个人承担。
6)	以前的未完成的项目：
	LG,54,103,50 双方共有。及 40Rosedale5 月 31 日之前。6 月 30 日才能告一段落。额外工作 LOT1 的挡土墙的利润，两个临时办公室的利润，只要是在 6 月 30 日之前的都可以分掉。同意
	高佬 MIKE,小徐亲戚的项目归邓。归双方共有（这两项目是为解决现金流及充票）同意,望尽快做完，我们实在是没有这个能力。帮 Mike 家干活是为了 Rosedale 项目而做好和他的关系，小徐亲戚家两个月之前已结束。
	106 项目分家之前归双方，之后归郑。51 归郑（给公司管理费已付清）。
7)	车辆，工具，设备及有意义的库存。
	由邓去统计（实际还有多少）做价，按需分配，原则上与水泥施工相关的归郑。
8)	工人，原则上留在 ROSEDALE 工地。邓可以带走 2 名以内的工人，现在先讲好，以便下一步人员安排。不然 BV 一开工马上把人员带走，造成混乱。分家后邓不使用 OCL 现有雇员。BV 项目及 46LG 开工后若因 Rosedale 项目需要而走不开，只使用 Sam Cheng 帮忙，Sam 人工按 30 每小时由邓支付。同意，希望小钟到时能回到 ROSEDALE.小钟何时回 Rosedale 取决于 Omahu 何时完工。

9)	最后一次对账双方相互欠款 2015 年底之前结清。希望尽快分期结清（46LG 材料工程款可以抵扣，但 GST 需返还邓）同意尽快结清（三个月内）。无论分完后的结果谁欠谁，都用现金结算，不可以开票抵账，与税务无关，这样比较容易算清楚。邓若不用 ECL 最好成立新公司并去开户并转走相关车辆（FBT 年年要算，太麻烦了），抵账会有税务风险，而且注明地址的发票不能冲票。**同意**
10)	分家之后郑邓对 RAL 的投资各自独立计算，尽快将邓的股份卖掉。2015 年 5 月 31 日之后邓就不再作为股东参与。林也尽快从 NCCL 撤出。

补充说明	
1)	RAL 之前投资款，郑不应算替邓垫付资金并算利息，因之前向朱彤无息筹款 50 万投入 OCL 使用近 4 年，于情于理都不应在 RAL 投资款中算邓利息。1)我们这几年为 ECL 交的税也有十六万多（不含 OCL 和 ORH 的税，ECL 的 PAYE），朱桐钱 2012 年 6-7 月到公司账（不到 3 年），算下来不比其他借款利息便宜。2)郑为邓垫是在五年以前，经济最困难的时候，郑这些年一直向别人借款，也要付给别人利息。3)邓对 RAL 的实际投资是从一年多以前开始的，郑邓利息相抵后邓欠郑不到九万。郑尽量帮邓把所持股份卖个好价钱，若净利不足十万，可以从欠郑的利息中扣除。**ECL 这几年交的税才 4 万出头，见附件 2.何来 16 万一说？朱彤和白伟借的钱从 2010 年就注入公司，邓当初就是想用这种方式偿还郑替邓垫付的 RAL 的资金。郑邓利息差为 8 万多与朱彤这 50 万 4 年的利息差不多。**
2）	林 7 月 1 日后离开公司，6 月份做好交接工作及算清分家帐目。

	Principles in Separation of Zheng and Deng
1)	Both parties have decided to formally separate on 31 May 2015.
2)	Zheng shall give the 30% shares of the eight pieces of land of Bella Vista to Deng according to the actual amount of investment. Tong Zhu's loan of 500,000 and the interests occurred in future shall be the responsibility of Deng personally. The BV project still has a loss of over 90,000 on the book now, of which Zheng should cover nearly 30,000, and shall be compensated for in the form of OCL invoicing 200,000 + GST to D&R in future. However, the eight pieces of land left still has appreciation and should be left uncounted for the moment. Only our three people's investment plus the bank loan should be counted, which, divided by eight pieces of land, is converted into around 330,000 per piece of land. This figure is equivalent to the result of counting the losses of the previous 3 properties. Furthermore, the management fees of the 3 properties of Orient are also waived, equivalent to giving to Deng and Jiang the part that is due to Zheng. Up until 31/5/2015, the average price of the 3 pieces of land is 356,000 (refer to Schedule 2). Without the interest of the principal, the market price now is only around 350,000. So where does appreciation come from? Furthermore, when Lot 20 was sold to Tong Zhu, 500,000 needed to be paid to D&R temporarily on behalf.
3)	The 140,000 borrowed from Mei Zheng (plus interest up until 31 May), the 30,000 from Jiachen Xu and the 30,000 from Bin Ma are still covered by both parties and can be repaid as first priority with the receivables of the joint projects of both parties. If full repayment is not needed now, the money will be put in the company of whoever they work with (their personal consent is needed). As Xu and Ma will still work for OCL in future, 30,000 will be considered as the income of the company before and be dealt with according to the rules set originally and have nothing to do with Deng. The money of Xu and Ma is different from that of Nie and cannot be counted as company income and, as it will still be repaid to them sooner or later, cannot be brought out and split up now. The 30,000 of Xu and Ma can be understood as the deposit for 3 years' work and first considered as company income. At the end of each full year of work, Zheng and Deng shall each repay 5000 to each person.
4)	The project of 40 Rosedale Road shall belong to Zheng. Before 31 May, if the material and labour costs that Zheng and Deng have jointly invested are more than the NCCL payment during the same period, they should be counted as what Zheng owes to the company (Zheng and Deng) and vice versa. The project shall belong to Zheng after 31 May and shall be jointly owned by both parties before then. It is suggested that they are counted till the end of June, by which time the basement part can be basically completed and the repair of the retaining wall can also be finished. Then we can fully split up the profits of the previous six projects (specific accounts can be adjusted regarding the beams and rib that have been built in excess and the interior and exterior staircases that have not been built). The issue is whether the expenditure). Counting till the end of June is agreed to. As to how P&G makes settlement, all sides have only to reach consensus by analysing the settlement when the time comes.
	After separation, Deng's remuneration for work on the project shall be paid by Zheng at 60+GST per hour (company to company). Deng's transport costs and telecommunication costs shall be dealt with by himself. Only the time spent working for OCL is counted. The time spent working for RAL and NCCL is not counted (e.g. land division work such as the building of the common driveway, shareholders meetings, etc.). It is temporarily decided that Deng will work for OCL for half a year, with time calculated according to the actual work time at 40 Rosedale, 60 after tax each hour, paid fortnightly (Deng and Lin each have wages of 2000 after tax by account transfer fortnightly, with excess amount refunded and deficit made up), and PAYE, transport and telecommunication costs paid by OCL. If the Rosedale project

	is needed in 2016, it will not be discussed until the end of 2015. 60 (cash) after tax is okay but the PAYE is too high. It is not very meaningful to pay tax to IRD at the rate of 39% of the equivalence of the almost 200,000 annual wage. Zheng and Deng are not in a relationship of employment but one of contract (management work), equivalent to the relationship between Andy and Su of the motel at 21 Alpers Ave. If Deng works most of the time at Rosedale by the end of the year, Zheng can cover the transport costs and the telecommunication costs. Deng and Lin being paid wages fortnightly by account transfer is for loan application in property construction in future. Normally proof of income is needed for 3 months at most. The PAYE is not much. The wages can be paid flexibly in various ways after the loan is obtained. Deng only acknowledges the wage of 60 per hour in hands.
5)	The company before:
	ORH shall close immediately, with all of its taxes and responsibilities (repairing properties before) jointly covered by both parties.
	ECL shall belong to Deng. The taxes in the 2014-2015 financial year shall be jointly covered by both parties. Those in the 2015-2016 financial year and afterwards shall be covered by Deng personally. As the 103 and 50 projects are not finished, they should be jointly covered. ECL shall not be closed until the projects are finished. Agree
	OCL shall belong to Zheng. The taxes in the 2014-2015 financial year shall be jointly covered by both parties. Those in the 2015-2016 financial year and afterwards shall be covered by Zheng personally.
6)	Unfinished projects before:
	LG, 54, 103 and 50 shall be jointly owned by both parties. And 40 Rosedale by 31 May. It will not come to an end until 30 June. As to the extra work, the profit from the Lot 1 retaining wall and the profit from the two temporary offices, so long as before 30 June, can both be split up. Agree
	The projects of Tall Man Mike and Xu's relative shall belong to Deng. Jointly owned by both parties (the two projects are in order to resolve cash flow and misappropriate dockets). Agree. Hopefully to be completed as soon as possible. We really do not have the ability. Working for the Mike family is in order to maintain a good relationship with him for the Rosedale project. The home of Xu's relative was finished two months ago.
	The 106 project shall belong to both parties before the separation and belong to Zheng after the separation. 51 shall belong to Zheng (the management fee to the company has been paid off).
7)	Vehicles, tools, equipment and meaningful inventory.
	Deng will do calculation (as to how many are actually left) and pricing. Distribute according to needs. In principle, those relevant to concrete construction shall belong to Zheng.
8)	The workers shall, in principle, remain on the Rosedale construction site. Deng may take away no more than 2 workers. Agreement shall be made now in order to facilitate further personnel arrangement. Otherwise, if BV takes away personnel immediately at the start of work, chaos will be created. After separation, Deng will not use the current employees of OCL. After the work of the BV project and 46LG has started, if the people are unable to walk away due to the needs of the Rosedale project, only Sam Cheng will be used to help out and Sam's salary will be paid by Deng at 30 per hour. Agree. Hopefully Zhong can come back to Rosedale when the time comes. When Zhong comes back to Rosedale depends on when the work at Omahu is completed.
9)	The money owed to each other by the two parties upon the last reconciliation of accounts shall be cleared by the end of 2015. Hopefully it will be cleared by instalments (the money for the materials in the 46LG project can be used in

	deduction but the GST needs to be refunded to Deng). Agree to clear it as soon as possible (within three months). No matter who owes whom as a result of the division, it shall be settled with cash. Invoices must not be issued to offset the accounts. Nothing to do with taxes. In this way, it is easier to be calculated clearly. If not using ECL, Deng had better establish a new company and open an account and transfer relevant vehicles (FBT needs to be calculated every year, too troublesome). Offsetting accounts may have tax risks. Furthermore, invoices with addresses noted cannot be used in misappropriation of dockets. Agree
10)	After separation, Zheng and Deng shall each carry out independent calculation of the RAL investment and sell out Deng's shares as soon as possible. After 31 May 2015, Deng shall not participate as a shareholder, and Lin shall also withdraw from NCCL as soon as possible.

Supplementary Remarks	
1)	Regarding the investment fund of RAL before, Zheng should not be regarded as having paid temporarily on behalf of Deng with interests counted, because the fund of 500,000 was raised from Tong Zhu interest free and invested in OCL and used for nearly 4 years. Either emotionally or logically, interests of Deng in the RAL investment fund should not be counted. 1) We have paid over 160,000 in tax for ECL over these few years (excluding the taxes of OCL and ORH and the PAYE of ECL). Tong Zhu's money arrived in the account of the company in June - July 2012 (less than 3 years) and, through calculation, is no cheaper than the interests of other loans. 2) It was five years ago, the most financially difficult period, that Zheng paid temporarily on behalf of Deng. Zheng has been borrowing money from others over the years and also needs to pay interests to others. 3) Deng's actual investment to RAL started over a year ago. After Zheng and Deng have each other's interests offset, Deng owes Zheng less than 90,000. Zheng shall make utmost effort to sell a good price for the shares held by Deng. If the net profit is less than 100,000, it can be deducted from the interest owed to Zheng. The taxes paid by ECL over these few years were just a little over 40,000. Refer to Schedule 2. Where does the 160,000 come from? The money lent by Tong Zhu and Wei Bai was invested in the company from as early as 2010. At the time, Deng exactly wanted to use this method to repay the fund of RAL that Zheng paid temporarily on behalf of Deng. The difference in interests between Zheng and Deng is over 80,000, similar to the 500,000 interest of Tong Zhu for 4 years.
2)	Lin shall leave the company after 1 July and shall accomplish the handover work and calculate the separation accounts clearly in June.