

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHC 280**

Suit No 1179/2015

Between

**(1) Moh Tai Siang**

*... Plaintiff*

And

**(1) Moh Tai Tong**

**(2) Royston Moh Tai Suan**

*... Defendants*

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**GROUND OF DECISION**

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[Equity] — [Family Trusts] — [Resulting Trust] — [Constructive Trust] —  
[Undue Influence]

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**Moh Tai Siang**  
**v**  
**Moh Tai Tong and another**

**[2018] SGHC 280**

High Court — Suit No 1179 of 2015

Aedit Abdullah J

18–21 April, 16–19 May, 11–14, 24–31 July 2017, 11 January 2018

31 December 2018

**Aedit Abdullah J:**

**Introduction**

1 This case involves a dispute between the brothers of the Moh family over their respective interests in the family home; a landed property located along Branksome Road (“the Property”). The root of the dispute dates back to an indenture executed in 1985 where one brother, the plaintiff, transferred his interest to the other two, the defendants. The plaintiff, however, claimed that the indenture did not divest him of his interest in the property and that the defendants held the property on trust for him.

2 In December 2015, the Property was sold for \$16.3m.<sup>1</sup> Before me, the plaintiff sought recognition of his interest in the Property and his share of the proceeds from the sale (amounting to \$4.075m). Having heard the parties, I

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<sup>1</sup> Plaintiff’s Opening Statement, para 3.

refused the plaintiff the reliefs sought.

### **Background**

3 The Moh family is a large family. It suffices for present purposes to introduce the following members:<sup>2</sup>

- (a) the father, Moh Lee Twee (“the Father”);
- (b) the mother, Wong Ah Heng (“the Mother”);
- (c) the first son, Moh Tai Sing;
- (d) the second son, who is the 1st defendant, Moh Tai Tong (also known as Freddy);
- (e) the third son, who is the plaintiff, Moh Tai Siang; and
- (f) the fourth son, who is the 2nd defendant, Moh Tai Suan (also known as Royston).

4 The Moh family was in the food business. The Father, of Swee Kee Chicken Rice & Restaurant fame, was one of the pioneers to introduce chicken rice in Singapore; the precise provenance of the dish was not an issue before me. The business prospered. There was enough surplus for the family to enter into property investments.

5 The Property was purchased by the Father in 1957 and functioned as the family home. In 1974, the Father conveyed the Property in the following manner:<sup>3</sup>

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<sup>2</sup> Plaintiff’s Opening Statement, para 4.

- (a) One-quarter share to Tai Sing absolutely.
- (b) The remaining three-quarter share to himself, the Mother and Tai Sing to hold on trust for the plaintiff and two defendants (referred to collectively as the “three brothers”); each beneficiary receiving an equal share of the trust property (“1974 Trust”).

The reason for the trust was because the three brothers had not attained the age of 21 at the material time.

6 The Father passed away in 1977. The Mother and Tai Sing continued as trustees of the 1974 Trust. Eventually, the three brothers attained the age of 21; with the youngest of the three brothers, the 2nd defendant, turning 21 in 1980.<sup>4</sup>

7 Sometime in April 1985, after all three brothers reached the age of 21, an indenture of conveyance (referred to also as a deed of conveyance by the parties) was executed by the Mother and Tai Sing. The indenture of conveyance conveyed the trust property to the plaintiff and two defendants in equal shares. Each brother (Tai Sing, the plaintiff and two defendants) therefore had a one-quarter share in the Property.

8 On the same day the plaintiff received his interest under the 1974 Trust, the plaintiff executed an indenture of conveyance, transferring his one-quarter share in the Property to the two defendants in equal shares (each defendant thus receiving an additional one-eighth share in the Property) (the “Indenture”). By that conveyance, the final holding of the Property was as follows:

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<sup>3</sup> Amended SOC No 2, para 5.

<sup>4</sup> Amended SOC No 2, paras 6–7.

- (a) Two-eighth share in the Property held by Tai Sing (he previously received from the Father's conveyance in 1974).
- (b) Three-eighth share in the Property held by the 1st defendant (comprising the one-quarter share in the Property previously held on trust for the 1st defendant and half of the plaintiff's share in the Property).
- (c) Three-eighth share in the Property held by the 2nd defendant (comprising the one-quarter share in the Property previously held on trust for the 2nd defendant and half of the plaintiff's share in the Property).

The conveyance from the plaintiff to the two defendants was the central focus of this action.

9 In the Indenture, it was stated that a consideration of \$200,000 was given by the defendants for the plaintiff's interest in the Property. The plaintiff disputed having received such consideration and claimed that he was told by the Mother that the defendants would hold onto his share in the Property on trust for him.<sup>5</sup> The defendants, on the other hand, claimed that the Indenture was an outright sale of the plaintiff's interest in the Property to provide the plaintiff with funds to pay off his debts. The plaintiff had hitherto been experiencing financial trouble and family members had been contributing funds to assist the plaintiff.<sup>6</sup>

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<sup>5</sup> Amended SOC No 2, para 8.

<sup>6</sup> Freddy's AEIC, para 27; Royston's AEIC, paras 19–25; 1DCS, paras 72–74.

10 Tai Sing subsequently died in a car accident in 1987. Tai Sing’s wife and his son, Andy Moh, were the beneficiaries of Tai Sing’s estate. Both Tai Sing’s wife and the 2nd defendant were co-administrators of the estate.

11 Separately, the plaintiff later ran into further financial difficulties and in 1988, was made a bankrupt. He was discharged subsequently in October 1996.

12 In 2014, the Mother fell in ill health and a dispute arose between the defendants on the disposition of the family home (*ie*, whether the Property should be sold). In August 2014, the defendants were each asked to sign a document titled “Deed of Confirmation”, which purported to transfer the plaintiff’s share in the Property held by each defendant back to the plaintiff. I set out the contents of the Deed of Confirmation signed by the 1st defendant:<sup>7</sup>

I, [the 1st defendant] ..., ... hereby agree and confirm that the above property currently registered in the names of [Moh Tai Sing] (Deceased) holding 2/8 shares, [the 1st defendant] holding 3/8 shares and [the 2nd defendant] holding 3/8 shares as tenants in common in unequal shares.

I undertake to transfer back to you your 1/8 share held by me in trust for you without any further consideration.

13 The circumstances behind the Deed of Confirmation were disputed. This Deed of Confirmation was signed by the 1st defendant but not the 2nd defendant. The 1st defendant claimed that he was not properly advised as to the contents of the Deed of Confirmation and that the Deed of Confirmation was put forward by the plaintiff to have the defendants each transfer one-eighth share in the Property to him to be held neutrally for the purposes of preventing any sale of the Property while the Mother remained alive.<sup>8</sup> The plaintiff claimed

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<sup>7</sup> AB1, p 22.

<sup>8</sup> Freddy’s AEIC, paras 51–73.



that the Deed of Confirmation was an acknowledgement by the 1st defendant that his one-eighth share in the Property had been held on trust by the 1st defendant.<sup>9</sup> The 2nd defendant highlighted that he refused to sign the Deed of Confirmation and thus the document has no legal effect on him.<sup>10</sup>

14 The Mother later passed away in 2015. Subsequently, when the Property was sold after the Mother's death, the plaintiff sought to assert his interest in the Property by lodging caveats. The first caveat was withdrawn; the second caveat was challenged and thereafter cancelled in December 2015 under s 127(2) of the Land Titles Act (Cap 157, Rev Ed 2004) ("LTA"). Around the time the second caveat was challenged, the plaintiff applied for interim relief under ss 127(1) and 127(4) of the LTA. The plaintiff's application was dismissed.<sup>11</sup> On 23 December 2015, the sale of the Property was successfully completed.<sup>12</sup> In this action, the plaintiff sought his share of the proceeds from the sale of the Property based on what he viewed was his rightful interest in the Property.

### **Plaintiff's case**

#### ***Causes of action***

15 The plaintiff's primary argument was that the Indenture did not fully reflect the true purpose for the transfer of his interest. While on the face of the Indenture, his interest in the Property was transferred to the two defendants for consideration, the true purpose of the transfer was to have the defendants hold the transferred interest on trust for him. The plaintiff's interest would then be

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<sup>9</sup> Amended SOC No 2, para 26A.

<sup>10</sup> 2nd Defendant's Closing Submissions, para 30.

<sup>11</sup> Amended SOC No 2, paras 35–42;

<sup>12</sup> Amended SOC No 2, para 40; 2DCS, para 45.

transferred back to him when he was older or when the property was sold. This arrangement was at the Mother and Tai Sing's behest. Further, the consideration of \$200,000 stated in the Indenture was a sham; there was no intention for actual funds to be passed nor were such funds actually paid. Against this backdrop, the plaintiff argued that the interest conveyed to the defendants was held on a resulting trust for him.<sup>13</sup>

16 The plaintiff made several further arguments. One of which was that the defendants had received the plaintiff's share in the Property knowing that the transaction was made pursuant to breaches of fiduciary duty. The plaintiff argued that the Mother and Tai Sing's instructions to have the plaintiff's share in the Property transferred to the defendants were breaches of their fiduciary duty as trustees under the 1974 Trust. This is because the Mother, Tai Sing and the defendants exerted undue influence on him, among other things. The particulars pleaded in relation to the allegation of undue influence is that the defendants' words and conduct were directed at having the plaintiff enter into the Indenture.<sup>14</sup> As there was knowing receipt in the acquisition of the plaintiff's interest in the Property, a constructive trust ought to be imposed against the defendants.<sup>15</sup>

17 There was some reliance on an express trust.<sup>16</sup> Notably, it was hinted that the Deed of Confirmation is proof of an express trust at the outset when the Indenture was signed by the parties. Further, the 1st defendant himself is bound by an express trust as is evidenced in the signed Deed of Confirmation.<sup>17</sup>

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<sup>13</sup> Amended SOC No 2, paras 4–9.

<sup>14</sup> Amended SOC No 2, para 16.

<sup>15</sup> Amended SOC No 2, paras 10–12.

<sup>16</sup> Plaintiff's Reply Submissions to Defendants' Supplementary Submissions, para 7.

18 Additionally, the defendants would be unjustly enriched if they were allowed to retain the plaintiff's rightful share of the proceeds from the sale of the Property.<sup>18</sup>

19 In response to the defendants' arguments, the plaintiff argued that issues of illegality, which arose because of the plaintiff's intervening bankruptcy and failure to disclose all interests to the Official Assignee, would not prevent him from relying on the principles of resulting or constructive trust.<sup>19</sup> He also addressed the defendants' arguments on the operation of the doctrine of laches, given the long historical background of the case, and issues pertaining to limitation.<sup>20</sup>

***Factual allegations***

20 On the back of the above legal claims, the plaintiff made the following factual assertions. He relied on what he claimed were the practices of the family; which he described as closely-knit, and under the thumb of the Mother and Tai Sing, following the Father's death. A particular point made was that the family had the practice of transferring assets among its members to protect its assets from creditors. The conveyance by the Father to himself, the Mother and Tai Sing, as well as the setting up of the trust in 1974 was one such attempt at shielding the family's assets from creditors. At the material time, a business interest of the Father, Chenta Rayon (S) Pte Ltd was facing liquidation and the Father was personally liable to the business' creditor, Bangkok Bank, under a

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<sup>17</sup> Amended SOC No 2, para 41.

<sup>18</sup> Amended SOC No 2, para 44.

<sup>19</sup> PCS, para 83.

<sup>20</sup> PCS, para 166.

guarantee. This prompted the Father to transfer various assets, including the Property, to different members of the family.

21 When it came to the plaintiff's financial woes, the Mother and Tai Sing instructed that the plaintiff transfer his interest in the Property to the defendants so as to shield the family's assets from the plaintiff's creditors. The plaintiff, however, would be able to have his interest in the Property back when his dues were paid off or when he was older. This position, however, evolved during the course of the proceedings. At one point, it appeared that the plaintiff was asserting that he was set up to go into bankruptcy as the family sought to protect its interests against Bangkok Bank pursuing claims relating to the guarantee given by the Father.<sup>21</sup> I will address the shifts in the plaintiff's case below.

### **1st defendant's case**

22 The 1st defendant sought to demonstrate that there was no evidence of any common practice within the family for a member to hold assets in his name on behalf of another.<sup>22</sup> There was also no evidence of any arrangement made whereby the plaintiff's interests in the Property would be transferred to the other members of the family for the interim to shield the family assets from creditors. In making the point, the 1st defendant highlighted that the plaintiff's position shifted and evolved throughout the proceedings which raised issues with what was pleaded.<sup>23</sup>

23 Contrary to the plaintiff's assertions, the Indenture was a genuine conveyance and consideration was paid; it was an outright sale. The plaintiff

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<sup>21</sup> PCS, para 43.

<sup>22</sup> 1DCS, para 108.

<sup>23</sup> 1DCS, paras 148–159.

was in financial trouble around the time of the execution of the Indenture. He proposed to relinquish his share in the Property to the family for urgent financial assistance. The Mother agreed to the plaintiff's proposal and saw it fit to have the plaintiff's share in the Property transferred to the defendants for consideration of \$200,000. The plaintiff understood the purpose of the Indenture as such.<sup>24</sup> No undue influence was exercised in having the plaintiff execute the Indenture.<sup>25</sup> Further, there was no knowledge of any supposed breach of fiduciary duty on the part of the Mother or Tai Sing. For these reasons, none of the trust claims stand. Similarly, the plaintiff's claim for unjust enrichment was unfounded.

24 In addressing the 1st defendant's signing of the Deed of Confirmation, the point made was that the Deed of Confirmation was null and void. The subsequent conduct of the plaintiff showed that he knew the Deed of Confirmation to have had no legal effect: no steps were taken to obtain an actual transfer pursuant to the Deed of Confirmation. Further, the Deed of Confirmation was a compromise the parties were negotiating in relation to the sale of the Property and not a recognition that the plaintiff's share in the Property had been held on trust by the defendants the whole time.<sup>26</sup>

25 There were also other peripheral contentions raised; namely, that: the plaintiff is barred from his claims as the claims were tainted with illegality, the plaintiff came with unclean hands, and the doctrine of laches operated against the plaintiff.<sup>27</sup> The plaintiff's claim for relief under ss 127(1) and (2) of the LTA has no basis as the caveat had been cancelled.<sup>28</sup>

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<sup>24</sup> 1DCS, paras 70–74; 174, 194–195.

<sup>25</sup> 1DCS, para 352.

<sup>26</sup> 1DCS, para 216.

## **2nd defendant's case**

26 The factual contentions and legal arguments were largely similar to the 1st defendant's. In short, the 2nd defendant took issue with the plaintiff's characterisation of the events within the family, contending that the plaintiff was the author of his own misfortune through his unwholesome and unsavoury lifestyle. Having fallen into heavy debt, the plaintiff had to sell his interest in the Property to the family for funds. The Indenture was a genuine conveyance. The plaintiff only took issue with the conveyance some 18 years after the event.

27 Like the 1st defendant, the 2nd defendant raised issues with the plaintiff's pleadings; highlighting that the plaintiff's case shifted in emphasis as the proceedings progressed and strayed beyond the original pleaded case.<sup>29</sup>

28 The central contentions raised by the 2nd defendant were focused on issues of law. In summary, the 2nd defendant explained that the plaintiff had to couch his case on either a resulting or constructive trust. This is given that the plaintiff's factual allegations essentially suggest that there was an oral express trust which is invalid under the requirements of the Civil Law Act (Cap 43, Rev Ed 1999).<sup>30</sup> The point advanced was that the Indenture was a genuine conveyance and that the plaintiff's factual assertions, in parts, support the 2nd defendant's case (*ie*, that the plaintiff was in financial doldrums and needed the family's help to bail him out).<sup>31</sup>

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<sup>27</sup> 1DCS, paras 363, 354.

<sup>28</sup> 1DCS, para 377.

<sup>29</sup> 2DCS, paras 46–48.

<sup>30</sup> 2DCS, paras 67–68.

<sup>31</sup> 2DCS, paras 139–140, 153.

29 An absence of consideration only gives rise to a presumed resulting trust (see below at [70] on the use of the word “presumed” in this context), which may be rebutted by an intention to benefit the recipient. The defendants here were entitled to rely on the presumption of indefeasibility of title and thus the onus lay on the plaintiff to demonstrate that the Indenture was a sham.<sup>32</sup> This the plaintiff failed to do; he had to show that all the parties had the common intention to mislead and that the document was a pretence. To support this point, the 2nd defendant cited *Chng Bee Kheng and another (executrixes and trustees of the estate of Fock Poh Kum, deceased) v Chng Eng Chye* [2013] 2 SLR 715.<sup>33</sup> It was contended that the plaintiff was unable to adequately support and particularise his alleged arrangement as regards the holding of his interest and could not show that the defendants knew of such arrangement.<sup>34</sup> Further, the fact that the Indenture was prepared and signed by a lawyer supported the conclusion that the document was not a sham. While there was some contention over the consideration being at an undervalue, the plaintiff did not in fact know the market value of the property at the time of the transaction. In any event, the law does not require the court to consider the adequacy of the consideration.<sup>35</sup> Additionally there was no undue influence practiced on the plaintiff.<sup>36</sup>

30 Like the 1st defendant, peripheral issues were also raised: namely, that the plaintiff was barred from his claims as the claims were tainted with illegality, the plaintiff came with unclean hands, and the doctrine of laches.<sup>37</sup>

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<sup>32</sup> 2DCS, para 78.

<sup>33</sup> 2DCS, paras 108–109.

<sup>34</sup> 2DCS, paras 116–117.

<sup>35</sup> 2DCS, para 145.

<sup>36</sup> 2DCS, para 60.

<sup>37</sup> 2DCS, para 60.

### **The decision**

31 The principal event and transaction dates back to the 1980s, close to half a century ago. With the passage of time, the recollection of witnesses may be strained. To compound matters, the Mother and Tai Sing, two witnesses who had direct knowledge of the principal event, had since passed away. Given these difficulties, I found it better to base findings on probable events and documentary evidence.

32 I emphasise here that I came my conclusions primarily on the Indenture itself. The Plaintiff made assertions about the circumstances of the Indenture, including why he was asked to transfer his interest in the Property, who initiated it, and what the defendants knew or ought to have known. But in making these assertions, he had to convince the court to disregard the force of the written document, which was really the only objective evidence available. The burden lay on the plaintiff to introduce evidence that rebutted what was recorded in the Indenture. In this connection, the evidence adduced did not advance the plaintiff's case far. Much of the plaintiff's evidence were tangential to the central issues in this case.

33 Additionally, the plaintiff raised a plethora of legal arguments in his closing submissions. In the final analysis, the issues tended to overlap and converge on several key factual points. Indeed, the entire basis of the plaintiff's case was that the Mother and Tai Sing had arranged for the plaintiff to transfer his interest in the Property to the defendants under the Indenture to protect the family home from creditors. It was agreed that the defendants would hold the plaintiff's share in the Property on trust for him and return his interest at a later point in time. A number of the plaintiff's contentions could be disposed of on



findings in this regard.

34 Ultimately, while it is understandable that the plaintiff faced evidential hurdles in making out his case, I was, in the end, not satisfied that there was sufficient evidence to cross the requisite threshold. Various allegations were based on speculations as to the events that occurred and there was a dearth of objective evidence to support the plaintiff's contentions. On balance, the plaintiff's case failed.

### **Analysis**

35 The plaintiff raised a wide number of issues. In terms of the analysis, I found it best to first examine the central factual issues necessary to resolve the matter, before turning to consider the legal issues. In this relation, I propose to discuss the issues in the following order:

- (a) The relevance and materiality of the various allegations made by the plaintiff.
- (b) The effect of the 1985 transfer (*ie*, Indenture).
- (c) And flowing from the above, the causes of action as well as other peripheral matters: the plaintiff's claims regarding a resulting trust or constructive trust, and the issue of undue influence, *etc*.

### **Pleadings**

36 Before I delve into the issues proper, it is apt at this juncture to address certain issues relating to the plaintiff's pleaded case.

37 It is trite that, generally, only material facts have to be pleaded. To this

end, the key portions of the plaintiff's pleaded case are as follows:

- (a) It was common practice for property in the family to be held by one member for the benefit of others to avoid creditor claims.
- (b) The plaintiff had poor control over his finances. By 1985, the Mother and Tai Sing were concerned that the plaintiff would squander his share of the Property and if the plaintiff ran into financial difficulties, the family home would be at risk. Hence, the Mother, Tai Sing and the defendants procured the plaintiff to remove any reference to his interest in the Property from the title.<sup>38</sup>
- (c) It was therefore arranged that the plaintiff would transfer his interest in the Property to the defendants to be held on trust for him. Notwithstanding that the Indenture provided that the transfer was for a consideration of \$200,00, no such consideration was given.<sup>39</sup>
- (d) In having the plaintiff transfer his interest to the defendants, the Mother and Tai Sing were in breach of the fiduciary obligations, *qua* trustees under the 1974 Trust.<sup>40</sup>
- (e) Furthermore, the Mother, Tai Sing and the defendants exerted undue influence on the plaintiff in having him execute the Indenture without the plaintiff having actually received consideration.<sup>41</sup>

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<sup>38</sup> Amended SOC No 2, paras 8.

<sup>39</sup> Amended SOC No 2, paras 8.

<sup>40</sup> Amended SOC No 2, paras 10–11.

<sup>41</sup> Amended SOC No 2, paras 11(a), 16.

(f) The Property therefore is subject to the plaintiff's interest arising out of a resulting or constructive trust.<sup>42</sup>

(g) Separately, in 2013, the plaintiff told the 1st defendant that it was about time the defendants transferred his interest in the Property back to him. The 1st defendant agreed. The 1st defendant, by way of signing the Deed of Confirmation, confirmed that he would transfer the plaintiff's interest in the Property back to the plaintiff. Subsequently, the plaintiff was informed that the 2nd defendant had also agreed to transfer his interest in the Property back to him.<sup>43</sup>

(h) As the defendants are bound by the trust, they were in breach of the trust when they sought to dispose of the Property. By reason of the plaintiff's interest in the Property, the defendants are liable to account for the sale proceeds of the Property and are also liable for unjust enrichment.<sup>44</sup>

The plaintiff claimed various reliefs, including: relief under ss 127(1) or 127(4) of the LTA in respect of the plaintiff's 2nd caveat; a declaration that the defendants held the plaintiff's interest on trust for the plaintiff; a declaration that the defendants were in breach of the trust; damages for the breach of trust; account of the plaintiff's interest held on trust by the defendants; and order that the defendants pay or transfer to the plaintiff the proceeds or traceable assets from the sale of the Property.

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<sup>42</sup> Amended SOC No 2, para 18.

<sup>43</sup> Amended SOC No 2, paras 25–26.

<sup>44</sup> Amended SOC No 2, para 43.

38 The defendants both argued that the plaintiff's submissions (his conduct of the proceedings) went beyond the pleaded case.<sup>45</sup> The plaintiff, however, simply responded with the assertion that the allegations within the submissions were sufficiently pleaded.

39 I found that there was indeed a material change in the position adopted in the plaintiff's submissions from the pleaded case. In particular, the motivations of the Mother and Tai Sing to arrange the transfer of the plaintiff's interest to the defendants. In his submissions, the plaintiff contended that the Mother decided to prepare ones of the sons for bankruptcy. As the plaintiff was already exposed to debts, he was chosen as the sacrificial lamb.<sup>46</sup> I state at the outset that this position was quite different from the pleaded case as mentioned above.

40 Let me set out the changed position in some detail. In the plaintiff's closing submissions and supplementary submissions, reference was made to an expanded case theory which consisted of the following assertions:<sup>47</sup>

(a) The Father was facing claims from Bangkok Bank sometime in 1974. The transfer of the Property in 1974 to Tai Sing absolutely, and the Father, Mother and Tai Sing to be held on trust for the three brothers, was not supported by consideration and thus, would have been exposed to creditor claims.

(b) The family later learnt that documenting transfers as being for consideration would address the issue of creditor claims. Sometime

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<sup>45</sup> 1DCS, para 148; 2DCS, para, 46–47.

<sup>46</sup> PCS, para 43.

<sup>47</sup> Plaintiff's Supplementary Submissions, para 25.

around April 1985, the Mother and Tai Sing told the plaintiff to transfer his share in all the family assets (including the Property) to other family members. The inference to be drawn is that the Mother and Tai Sing wanted to use the plaintiff as the vehicle to escape claims from Bangkok Bank.

(c) Sometime between 1987 to 2002, the family's assets were consolidated in the 1st defendant's name.

(d) The dispute over the disposition of the Property arose sometime in 2013 or 2014, with the 2nd defendant being keen on selling the Property. The plaintiff came to play the role of an intermediary in the dispute. He was able to convince the 1st defendant that if both the 1st defendant and 2nd defendant transferred the plaintiff's interest in the Property back to him, the plaintiff would be in a position to block any attempts by the 2nd defendant to sell the property.<sup>48</sup>

41 This expanded case theory was derived from matters that came out at trial. The plaintiff explained that he was handicapped in the development of his case theory because of the difficulties in evidence such as the passage of time, the absence of the Mother and Tai Sing, and matters not being known to him.<sup>49</sup> While the plaintiff may have had difficulties with the evidence, that was not a reason to justify a departure from the pleadings. Pleadings serve to crystallise matters so that the actual issues and dispute can be focused; in terms of the adducing of evidence and arguments. Any change in case theory has to be reflected in amendments to pleadings. Without amendments to the pleadings,

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<sup>48</sup> PCS, para 113.

<sup>49</sup> Plaintiff's Supplementary Submissions, para 22.

such changes were only in the air, and had no operative effect. Be that as it may, this court examined both the pleaded case and the changes, with any repercussions in costs.

### **Evidence about the family's practices**

42 A significant part of the trial was spent on evidence relating to the family's arrangements and practices on their financial affairs, particularly on how properties were transferred from member to member in an attempt to circumvent creditors. The plaintiff's case in essence is as follows.

43 The Moh family was a traditional Hainanese family. Following the Father's death, the Mother and Tai Sing became the head of the household and great deference was shown to them. The family had a long-held practice, starting with the Father, to circumvent creditors by moving the holding of properties between family members. An example of this is the very circumstances that gave rise to the 1974 Trust: the Father arranged for the sons to effectively hold interest to the Property so as to circumvent claims from Bangkok Bank. This practice of circumventing creditors continued after the Father's death.<sup>50</sup>

44 As pleaded, sometime in 1985, it became apparent to the Mother and Tai Sing that the plaintiff would face financial woes and that this would jeopardise the family home. The Mother and Tai Sing thus sought to have the plaintiff transfer his interest in the Property to the defendants. There was a separate contention in the submissions. The plaintiff asserted that he was used as a sacrifice to protect the family's assets from his Father's creditors, who were still

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<sup>50</sup> PCS, para 7–13.

pursuing claims against the Father's estate at the material time.

45 As a result of the plaintiff seeking to prove the existence of the family's practice of circumventing creditors, reference was made to various other unrelated assets owned by the Father for the benefit of the family or owned by the family itself. This included a property located on Emerald Hill and business interests in Malaysia.<sup>51</sup>

46 The plaintiff's resort to evidence of family practices is understandable as there was little evidence supporting the plaintiff's case on the motivations behind the Indenture (*ie*, the attempt to shield the family home from creditors be it those of the Father or the plaintiff). Apart from the Indenture (which was against the plaintiff's case), there was little relevant objective evidence which the plaintiff could rely on to shore up his position. The Mother and Tai Sing were obviously not able to provide evidence as to the reasons for the Indenture. The defendants, unsurprisingly, denied any knowledge of the plaintiff's alleged motivations behind the Indenture. Hence, a considerable amount of time was spent on the issue of family practices.

47 In the end, I was of the view that the alleged family practices did not assist the plaintiff.

48 First and foremost, given the passage of time and the passing of key witnesses, such as the Mother, Tai Sing and for that matter, the Father, it was difficult to place significant weight on the evidence of the witnesses on the existence or non-existence of family practices. Furthermore, the plaintiff and the defendants' views on the family practices would be affected, to some degree,

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<sup>51</sup> PCS, para 9(e).

by their interest in the outcome of the present case and were the parties' own interpretation of the family's affairs. As such, witness testimonies may not be the most reliable evidence.

49 There is also the further task of persuading the court of the inferences to be drawn from family customs and practices, as well as the relevance of and weight to be placed on those inferences to the immediate issue at hand. The strength that can be attributed to evidence of custom or practice as part of a chain of inferences about the facts in issue is likely, in most cases, to be weak: alternative explanations come readily to mind. To illustrate in the context of testamentary dispositions, the mere fact that a family is patriarchal, and one that generally favours males over females, does not *ipso facto* mean that in relation to a particular disposition, there was an intention to favour the male members of the family over the females. What matters more is the direct evidence of the intention of the testator or person disposing of the property at the time of the legacy or gift. If there exists a document, evidence of custom or practices have to be particularly cogent to overcome the documentary evidence; even on the standard of a balance of probabilities.

50 The critical question before me concerns a specific transaction that took place in 1985 (the Indenture). None of the background matters raised by the plaintiff touched directly on the transaction in question, and in fact predate the 1985 transaction by about a decade. The inferences that could be drawn from the Father's attempts at shielding assets from creditors would at most be speculative; especially since it was the Mother and Tai Sing, not the Father, who orchestrated the various transfers in 1985.

51 The crucial aspect of the plaintiff's case is not the fact that he divested



himself of interest in the Property but the fact that there was an arrangement that the interest be returned to him eventually. Even if the plaintiff's evidence on the existence of a family practice were accepted, there needs to be evidence of the Mother, Tai Sing and the defendants arranging to have the interest held on trust and an understanding that the interest would be transferred back the plaintiff. The weight to be given to the plaintiff's asserted family practices, if I should find it to be true, is therefore negligible.

### **Whether the Indenture was a genuine conveyance**

52 Both parties were in agreement in so far as the plaintiff was facing financial woes leading up to the execution of the Indenture. However, both sides parted ways when it came to the effect of the Indenture:

(a) As regards the plaintiff, there was an arrangement to have his interest held on trust for him and for this interest to be returned to him at a later date. This was to circumvent creditor claims. The Indenture therefore did not capture the full arrangement of the family *vis-à-vis* the plaintiff's interest in the Property.

(b) As regards the defendants, the plaintiff had to sell his interest in the Property to raise funds to pay off his dues. The Indenture was therefore evidence of an outright sale by the plaintiff to the defendants.

53 I begin by setting out the details contained within the Indenture.<sup>52</sup> The Indenture was made on 10 April 1985 between the plaintiff as “vendor” and the two defendants as “purchasers”. On its face, the document stated that the vendor had agreed to sell the Property to the purchasers at the price of \$200,000. Upon

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<sup>52</sup> AB 1, p 13.

conveyance, the purchasers held the vendor's interest in fee simple as tenants-in-common in equal shares. The Indenture was signed by the plaintiff. The Indenture was signed, sealed and delivered in the presence of the solicitor acting in the matter. It was thereafter duly registered at the Registry of Deeds. No issue was taken with the formalities of the document.

54 As there was a properly signed, sealed and delivered document that was witnessed by a solicitor, cogent evidence would be needed for this court to disregard the clear contents of the Indenture. The burden lay on the plaintiff to introduce evidence that would rebut what was recorded in the Indenture. As noted above, I was not persuaded that there was cogent evidence to find that the plaintiff's interest was conveyed pursuant to a particular arrangement where he would have his interest returned. The Indenture was an outright sale of the plaintiff's interest.

***Alleged arrangement***

55 The plaintiff's pleaded case was that the Property would be retransferred at a later point in time. The plaintiff was facing financial woes at the material time, and the Mother and Tai Sing decided that it would be best if the plaintiff divested himself of his interest in the interim to protect the family home from creditors. Following the Mother and Tai Sing's decision, the defendants (as well as the Mother and Tai Sing) exerted undue influence on the plaintiff to have him execute the Indenture.

56 In his affidavit of evidence-in-chief, the plaintiff added that he agreed to the transfer as he was loyal and obedient. The arrangement that the Mother and Tai Sing came to was mentioned in the presence of the two defendants.<sup>53</sup>

57 The plaintiff highlighted that he was asked to transfer his interest in the Property to the defendants to protect the family's assets from creditor claims (putting aside the question of whether the creditors were his own, the family's or the Father's). He was promised that there would be a retransfer when he was older or when the Property was sold. The plaintiff further explained that Tai Sing was particularly close to him. Tai Sing was able to persuade the plaintiff to transfer his interest in the Property to the defendants as the plaintiff believed that Tai Sing would be alive for long enough to protect his interest should the defendants try to keep the plaintiff's share for themselves.<sup>54</sup>

58 I could not accept the plaintiff's evidence for several reasons.

59 First, the changes in the plaintiff's position on the motivations behind the Indenture cannot be overlooked. The plaintiff's pleaded case was that the purpose of the transfer was to shield the family home from his own creditors. In the submissions, the plaintiff's case took on a different shade; suggesting that he was a scapegoat for the family to defraud the family's (or the Father's) creditor. There was reason to believe that the position eventually reached in the plaintiff's submissions was an afterthought. Further, the changes in the plaintiff's position leave doubt in the reliability of his evidence. This is in contrast to the defendant's consistent position that there was no arrangement (see below at [61]).

60 The second difficulty lies in the plaintiff's evidence during cross-examination. It was critical to the plaintiff's case that the arrangement for retransfer of his interest was communicated to the defendants, as this was the

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<sup>53</sup> Tai Siang's AEIC, paras 34, 43.

<sup>54</sup> PCS, paras 43, 50.

very basis for the plaintiff's claim in trust. Thus, it was the plaintiff's position in his affidavit of evidence-in-chief that the arrangement to have his interest retransferred to him was discussed in the presence of the two defendants. During cross-examination, however, the plaintiff appeared to retract from this position. He appeared not to have had personal knowledge of whether the defendants were aware of the alleged arrangement. When asked by counsel for the 1st defendant whether he was uncertain or had no knowledge of the Mother and Tai Sing mentioning the alleged arrangement to retransfer the shares to the 1st defendant, the plaintiff replied: "Yes".<sup>55</sup> The plaintiff was also asked by counsel for the 2nd defendant about his personal knowledge as to whether the alleged arrangement was told to the 2nd defendant. The plaintiff's responses skirted around the issue. Eventually the position the plaintiff came to was that the 2nd defendant must have known of the alleged arrangement because it was the 2nd defendant who brought him to the solicitors to effect the Indenture.<sup>56</sup> This answer did not advance the plaintiff's case at all. As the trial progressed, the plaintiff came to the position that he did not discuss with the two defendants the decision taken by the Mother and Tai Sing regarding the alleged arrangement.<sup>57</sup> In the end, I found, on a balance of probabilities, that the plaintiff was unaware of whether the defendants had actually been told of the alleged arrangement. This finding is crucial as it goes against the plaintiff's assertion that the document the family had him execute was a sham, and the assertion that there was collusion between members of the family to apply undue influence on the plaintiff.

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<sup>55</sup> NE Day 2, p 11.

<sup>56</sup> NE Day 2, pp 75–77.

<sup>57</sup> NE Day 4, pp 50–51.

61 Give the above weaknesses of the plaintiff's case, I found the defendants' respective positions to be the more probable explanation of what transpired. While there were slight variations in the accounts, the factual commonality was that the plaintiff needed funds to pay off his dues and thus an arrangement was made to have the plaintiff sell his interest in the Property to the two defendants. The Indenture was the embodiment of this sale. To my mind, it was significant that the plaintiff did not dispute the fact that he was facing financial woes at the material time. There was therefore reason to believe that the plaintiff himself sought the family to purchase his share in the Property so that he could pay off his creditors.

***Evidence of the solicitor who drafted and witnessed the Indenture***

62 The solicitor who drafted and witnessed the Indenture was called to the stand. I did not place much weight on the solicitor's testimony as the solicitor generally gave evidence about what he would have done rather than what actually transpired at the material time. This is unsurprising as the events took place close to half a century ago.

63 The plaintiff, during the trial, sought to suggest that there was a possible collusion between the solicitors of the firm that oversaw the Indenture and Tai Sing. This is a strong allegation and particularly cogent evidence would be required. Again, the plaintiff only had his word to rely on.

64 On a whole, what was before me was the Indenture. On its face, there was nothing untoward about the Indenture. As noted, it was duly signed, sealed, delivered and witnessed (by a solicitor no less). It had all the trappings of a genuine conveyance. The plaintiff had to therefore adduce cogent evidence to suggest otherwise. The plaintiff was unable to do so.

***Whether consideration was given***

65 The plaintiff asserted that no consideration was received. The defendants, on the other hand, each maintained that consideration was paid, although they gave differing evidence of how payment was made. It is clear that both sides faced evidential difficulties in demonstrating whether consideration was paid or not. However, the Indenture indicated that payment was made on or before execution. Bearing in mind that the plaintiff had to adduce cogent evidence to the contrary, the assertion that payment was not received, without more, would not advance the plaintiff's case very far. The fact of non-payment could well be a breach of the terms of the Indenture as opposed to evidence of a sham transaction. What is more pertinent are circumstances prior to the drafting of the Indenture suggesting that the document was intended to be a façade. For these reasons, the probable inference is that the \$200,000 had indeed been paid. I therefore was unpersuaded by the plaintiff that consideration was not paid.

66 Seeing that there was difficulty demonstrating that consideration was not paid, the plaintiff made certain arguments to bolster his position. One of which was that consideration did not move from the defendants.<sup>58</sup> Again, apart from the assertions of the parties, there was little evidence on this point.

67 The plaintiff also argued that the consideration of \$200,000 was at an undervalue given the prevailing market price of properties then.<sup>59</sup> The simple point is that consideration need only be sufficient but not adequate. In any event,

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<sup>58</sup> PCS, para 23.

<sup>59</sup> PCS, para 23.

it was clear at the trial that there was insufficient evidence to show what the market value was at the material time.<sup>60</sup>

68 The plaintiff further argued that if consideration had been paid, the sum was used to pay off loan shark debts and thus a sham. The point being that the sum would have been advanced to the loan sharks or to a third party other than the plaintiff.<sup>61</sup> This is a non-starter. If it were accepted that consideration had been paid (regardless of the recipient), then it would be moot to suggest that the transaction was a sham. The parties would have acted in a manner consistent with there being a genuine conveyance.

69 Ultimately, even if consideration were not paid, this does not *ipso facto* lead to the conclusion that the Indenture was a sham. The conveyance was done by way of an indenture, whether consideration flowed from the defendants or was given at all is strictly speaking irrelevant. This is because an indenture, being a deed, may be enforced without proof of consideration: *Gay Choon Ing v Loh Szi Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [65]. As stated, the more pertinent issue is whether there are circumstances prior to the drafting of the Indenture to suggest that the document was intended to be a façade. To this end, my findings were that there was no arrangement to have the defendants hold the plaintiff's interest in the Property in the interim.

### **Whether a resulting trust arose**

70 I come now to the plaintiff's arguments on the existence of a resulting trust.

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<sup>60</sup> NE Day 2, p 47.

<sup>61</sup> PCS, para 31.

71 There are generally two ways in which a resulting trust is presumed to arise. The first is where there has been no exhaustion or transfer of the beneficial interest because of some failure or omission (typically, in cases where the express trust fails), and the second is where there has been unequal contribution towards the acquisition of property or the transfer of property as a gift: *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [34]. Pausing here, the term “presumed” here is used in a broad sense to denote a trust that arises by operation of law as a response to a set of presumed factual incidents, and not in the distinction between presumed and automatic resulting trusts.

72 A resulting trust may also arise independent of the presumption of resulting trust so long as it can be shown that the transfer was not intended to benefit the recipient. In the same vein, a resulting trust may not necessarily arise even if there were no consideration, if it can be shown that the transfer was indeed intended to benefit the recipient: *Lau Siew Kim* at [35]; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [43]. While the doctrinal basis of the resulting trust has not been fully settled, there appears to be agreement coalescing around the idea that a resulting trust arises from a lack of intention to benefit the recipient of the property: *Chan Yuen Lan* at [44]–[48].

73 Given the findings above, *ie*, that the conveyance was genuine, there was no family arrangement to have the plaintiff’s interest in the Property transferred back to him, and consideration was duly paid, no resulting trust arose (whether presumed or otherwise). There was no oral express trust among the family members that failed, and the transfer was not a gift. The plaintiff’s conveyance was not one where there was no intention to benefit the defendants.



74 I should, however, address a point raised by the 2nd defendant. It was submitted that the plaintiff's intention or lack thereof can clearly be discerned from the plaintiff's subsequent conduct. The plaintiff's conduct showed that he did not consider himself to have had any interest in the Property; making particular reference to the plaintiff's declaration of his assets in relation to bankruptcy proceedings against the plaintiff sometime between 1985 to 1988.<sup>62</sup> I could not accept this argument. The plaintiff's conduct was equivocal at best – his conduct may suggest that he did not regard himself as having any beneficial interest in the Property but it may also well be that the plaintiff chose not to make full disclosure during the bankruptcy proceedings. The point being that the plaintiff could have acted the way he did for a number of reasons and not necessarily because he believed that he did not have an interest in the Property.

### **Constructive trust and knowing receipt**

75 The plaintiff's case on constructive trust and knowing receipt was unclear:

(a) At points, the plaintiff appeared to take the position that a constructive trust ought to be imposed against the defendants (or that the defendants took property subject to a constructive trust) because they had received trust property knowing that the transfer of the property was the result of a breach of fiduciary duty or undue influence.

(b) At other points, the plaintiff appeared to take the position that the constructive trust arose upon the Mother and Tai Sing having exerted undue influence and having breached of their fiduciary duty. The

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<sup>62</sup> 2DCS, paras 148–149.

defendants as volunteers received the plaintiff's interest in the Property subject to the constructive trust.

(c) There were also hints of a remedial constructive trust; the argument being that in all the circumstances surrounding the Indenture, without having reference to the Mother and Tai Sing's position as trustees under the 1974 Trust, it would be unconscionable for the defendants to retain the plaintiff's interest to the Property.<sup>63</sup>

76 Regardless of the vagueness in the plaintiff's position, the entire basis of the plaintiff's claim in relation to a constructive trust and knowing receipt is the alleged breaches of fiduciary duty on the part of the Mother and Tai Sing, and the undue influence exerted by the Mother, Tai Sing and the defendants. It is only on this basis that the plaintiff could make the further allegation there was knowing receipt on the part of the defendant or that the circumstances were unconscionable. As the primary plank of the plaintiff's case appears to be the exercise of undue influence, I will deal with this first.

### ***Undue Influence***

77 The law recognises that there may be situations where consent or agreement may not be an expression of a person's free will. One such instance is where there has been an exercise of undue influence (where there has been some misuse of a person's influence over another such that consent procured was not the exercise of free will). In this relation, the exercise of undue influence by a trustee would generally amount to a breach of fiduciary duty as it manifests an intention to act against the interests of the affected beneficiary: see *Royal*

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<sup>63</sup> Amended SOC No 2, paras 10–14; PCS, paras 68–73.

*Bank of Scotland plc v Etridge (No 2)* [2002] 2 AC 773 (“*Etridge*”) at [104] and [156] on the interaction between undue influence and fiduciary relationships.

78 Undue influence may be proved in one of two ways: actual undue influence, and presumed undue influence. Actual undue influence is quite self-explanatory – there being proof of actual misuse of ascendancy over another to procure consent. It is presumed undue influence that warrants some discussion.

79 The law splinters presumed undue influence into two further categories, commonly referred to as Class 2A and Class 2B undue influence. The distinction between the two categories lie in the relationship in question between the influencer and the influenced. In the former (Class 2A), the relationship is one where trust and confidence (or influence) is presumed. This includes the relationship between a trustee and a beneficiary. In the latter, (Class 2B), the relationship of trust and confidence (or influence) is not presumed. That said, a relationship of trust and confidence alone (without any impropriety) is not enough to impugn a transaction. It must further be shown that the transaction in question calls for an explanation: see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed), (Academy Publishing, 2012) at para 12.117; see generally *Etridge*.

80 Whether the label Class 2A or Class 2B should be adopted is a matter of some debate. However, what is clear is that in relation to presumed undue influence, the court must be satisfied that the relationship between the parties was one where there would be a likelihood for abuse (hence the term “trust and confidence”) and the transaction in question calls for an explanation. What amounts to a transaction that calls for an explanation is of course a fact-sensitive

inquiry and much would depend on the strength of inferences to be drawn from the circumstances.

81 The plaintiff appeared to take the position that the undue influence was exerted by the Mother, Tai Sing and the defendants. In my view, there was no evidence of actual undue influence. Neither was there anything in the transaction which calls for an explanation.

82 I start with the transaction itself. As I have found above, the Indenture was properly executed and consideration was duly paid. I further accepted as probable, the defendants' evidence that the plaintiff had sought the sale of his interest in the Property to obtain funds for the purposes of paying off his dues. On this basis, there was nothing untoward about the transaction in question.

83 There was also insufficient evidence regarding the circumstances surrounding the execution of the Indenture to raise any suspicion of any exercise of undue influence. The plaintiff's evidence in court was that the defendants did not have much influence over his conduct.<sup>64</sup> Furthermore, as I stated above, the plaintiff did not know if the defendants were aware of the alleged arrangement regarding the transfer and retransfer of the plaintiff's interest in the Property. It stands to reason that the defendants could not have exercised undue influence as the defendants would likely have mentioned of the alleged arrangement if undue influence had been exercised.

84 As for the Mother and Tai Sing, apart from the plaintiff's testimony, the court did not and could not have the benefit of the Mother and Tai Sing's version of events. In such circumstances, the court is left with the documentary evidence

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<sup>64</sup> NE Day 2, p 33.

to size up the plaintiff's testimony and as I have stated, the plaintiff's evidence was insufficiently cogent to rebut the inferences to be drawn from the documents adduced in court.

***Other breach of fiduciary duty***

85 The plaintiff was not entirely clear as to what fiduciary obligations had been breached. However, seeing that the plaintiff's complaint was about the family not having protected his interests, the plaintiff must be referring to the no-conflict and no-profit rule. The simple point is that the plaintiff was ultimately the one who executed the Indenture. As stated, the execution was proper and consideration was paid. I had also not found there to have been undue influence exercised on the plaintiff. In these circumstances, there was no breach of fiduciary duty. The plaintiff had been kept aware of the circumstances and allowed the events to unfurl. In any event, the plaintiff's oral testimony on the alleged breach of fiduciary duty did not advance his case at all. When queried during cross-examination about whether he maintained that the Mother was in breach of her fiduciary duties, the plaintiff stated that she was not and made some vague reference to "reasons" behind the Mother's actions.<sup>65</sup>

86 Perhaps a possible indicator of breach would be the alleged undervalue of the consideration paid. However, as I have earlier stated this would be irrelevant in the present circumstances (see [66] above), as there was little evidence adduced of the insufficiency of consideration.

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<sup>65</sup> NE Day 1, pp 29–33.

***Whether the defendants hold the plaintiff's interest in the Property on a constructive trust***

87 As there was no undue influence practiced and no breach of any other breach of fiduciary duty, the plaintiff's case on the imposition of a constructive trust and the defendants' knowing receipt is not made out.

**The effect of the Deed of Confirmation**

88 The contents of the Deed of Confirmation are set out above at [12]. As stated, only the 1st defendant signed the document. The signed Deed of Confirmation is dated 14 August 2014.

89 The plaintiff sought to rely on the Deed of Confirmation either as evidence that his interest in the Property had been held by the defendants on trust for him, or for its legal effect (*ie*, that the 1st defendant is bound by the document to convey the plaintiff's share in the Property back to the plaintiff). Particular emphasis was placed on the words: "I undertake to transfer back to you your 1/8 share held by me in trust for you without any further consideration." I was unpersuaded by the plaintiff's position.

***Circumstances surrounding the Deed of Confirmation***

90 There are four reasons why the Deed of Confirmation cannot be relied upon the plaintiff for the purposes described above.

91 First, the Deed of Confirmation was prepared on the instructions of the plaintiff alone, without the input of the defendants. The plaintiff called upon the conveyancing solicitor who took conduct of the drafting of the Deed of Confirmation at trial. It was revealed that the solicitor had relied exclusively on

the plaintiff's instructions without the input of any of the defendants.<sup>66</sup> Indeed, the solicitor admitted that he had never had sight of the Indenture prior to preparing the Deed of Confirmation.<sup>67</sup> While the solicitor attempted to water down his answers, the fact of the matter is that as a conveyancing solicitor, it was incumbent on him to trace the root of the title. As it turned out the searches on the Property did not yield the plaintiff as a proprietor and yet the solicitor proceeded to act on the assumption that the plaintiff's instructions were correct (*ie*, that the plaintiff had a beneficial interest to the Property since 1985).

92 Secondly, the Deed of Confirmation was not contemporaneous with the Indenture. It was drafted at least 20 years after the Indenture was executed. This leads me to the point below on the purpose of the Deed of Confirmation.

93 Thirdly, the Deed of Confirmation came about because the defendants were at odds about the sale of the Property sometime in 2014. According to the 1st defendant, he had been in a dispute with the 2nd defendant at the material time. As matters transpired, there were discussions among the proprietors to sell the Property, while the 1st defendant was insistent that the Property not be sold so that the Mother could continue living in the family home. The plaintiff acted as an intermediary between the 1st defendant and the 2nd defendant at the material time and proposed a solution to the matter. This involved the conveyance of the plaintiff's original interest in the Property to him to be held neutrally so that any attempts at a sale of the Property could be stopped. Hence, the 1st defendant was brought to sign the Deed of Confirmation.<sup>68</sup> In other words, the Deed of Confirmation was a compromise between the parties. I

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<sup>66</sup> NE Day 6, pp 52–53.

<sup>67</sup> NE Day 6, pp 31–34.

<sup>68</sup> Freddy's AEIC, paras 51–73.

accepted the 1st defendant's evidence. It is supported by a draft Deed of Confirmation which included the following phrase: "undertake to transfer back to you your 1/8 share held by me in trust for you ... when our mother passes away or when the property is sold".<sup>69</sup> While, the portion concerning the death of the Mother and the sale of the property was pencilled out, the fact remains – the Deed of Confirmation concerned the disposal of the Property while the Mother was still alive. Additionally, the plaintiff's case itself does, to some extent, corroborate the 1st defendant's account of the events in 2014.<sup>70</sup>

94 Fourthly, and related to the point above, the Deed of Confirmation was not made effective as a condition was not met. In general, conditions may be imposed on the disposition of property. It follows that regard may be had to the context surrounding the disposition to discern the intention of the transferor in relation to a condition of the disposition: see *Tan Sook Yee's Principles of Singapore Land Law* (Tan Sook Yee gen ed) (LexisNexis, 3rd Ed, 2009) at paras 5.20–5.24. According to the 1st defendant, he signed the Deed of Confirmation on the basis that the 2nd defendant would sign the same. As the 2nd defendant did not sign the Deed of Confirmation, the document was ineffective.<sup>71</sup> I accepted the 1st defendant's position. While the document did not expressly state that it was to come into effect only if signed by both defendants, it was clear from the context that the parties intended for this to be the case. Indeed, the plaintiff's solicitor explained that the plaintiff had intended to record a compromise where both the defendants had to sign the Deed of Conveyance. The solicitor added that after informing the plaintiff that the Deed of

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<sup>69</sup> AB1, p 23.

<sup>70</sup> PCS, para 113.

<sup>71</sup> 1DCS, para 226.



Conveyance was ineffective for want of the 2nd defendant's endorsement, the plaintiff simply informed him that there was "nothing he can do".<sup>72</sup>

### **Unjust enrichment**

95 The plaintiff's pleaded case in unjust enrichment is on the basis of the defendants' retention of the proceeds from the sale of the Property which in his view was rightfully his.

96 The Court of Appeal had previously clarified that a claimant must be able to point to a specific unjust factor as a foundation to a claim in unjust enrichment: see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [100].

97 Here, there was simply nothing unjust about the defendants retaining the proceeds of the sale of the Property. As I have found, there had been a genuine conveyance. The plaintiff had not been able to point to any other facts that would give rise to an unjust factor apart from his alleged interest in the Property.

### **Peripheral matters**

98 A number of other matters can be dealt with briefly.

99 The defendants both raised the issue of illegality and the doctrine of unclean hands against the plaintiff. The point being that if the plaintiff's position were true, he did not fully disclose his beneficial interest in the Property during the bankruptcy proceedings brought against him some time in or around 1988.

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<sup>72</sup> NE Day 6, pp 47–48.

As I rejected the plaintiff's version of events, it is not necessary for me to determine these issues.

100 There were arguments made on the failure to call other witnesses, such as the beneficiaries of Tai Sing's estate, to the stand.<sup>73</sup> These witnesses, however, were not directly involved in the principal events. Hence, calling these additional witnesses would not have yielded much in the end.

101 The 2nd defendant contended that the plaintiff's claims were barred by laches as the plaintiff's delay in claiming the trust had prejudiced him. The prejudice, as was argued, arose from the passage of time; given that the 2nd defendant would not be able to recall events and the lack of witnesses.<sup>74</sup> While it is true that the passage of time may in some cases cause prejudice, I am doubtful that the passage of time and its effect on the quality of evidence alone would be sufficient prejudice on the facts here. Whether it would be inequitable for the claimant to assert his interest after a delay would be dependent on the circumstances. The primary mischief addressed by the doctrine of laches is the prejudice arising from a claimant seeking to pursue a claim after having sat on it for an inordinate amount of time such that the other potential party would have proceeded on the basis that his interests were not subject to an adverse claim. The court would not readily find laches simply because of the passage of time but would have to assess the matter in the round: see *Nelson v Rye and another* [1996] 1 WLR 1378 at 1392G. Here, the plaintiff's case was that his interest was held on trust since the transfer of his interest by way of the Indenture. I was of the view that it would be inappropriate for laches to operate in this case.

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<sup>73</sup> PCS, paras 135–139.

<sup>74</sup> 2DCS, paras 236, 274–280.

## **Conclusion**

102 Flowing from the findings above, the reliefs sought by the plaintiff are refused. Time was given for submissions on costs, with time for appeal similarly extended.

Aedit Abdullah  
Judge

Rajiv Nair (KSCGP Juris LLP) for the plaintiff;  
Peter Madhavan and Chin Jia Yi (Joseph Tan Jude Benny LLP) for  
the first defendant;  
Adrian Tan, Yeoh Jean Wern and Hari Veluri (Morgan Lewis  
Stamford LLC) for the second defendant.

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