

Lim Lie Hoa v Ong Jane Rebecca and Others and Another Appeal (No 2)
[2005] SGCA 24

Case Number : CA 59/2004, 60/2004
Decision Date : 04 May 2005
Tribunal/Court : Court of Appeal
Coram : Lai Kew Chai J; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Khoo Boo Jin and Daniel Tan (Wee Swee Teow and Co) for the appellant in CA 59/2004; Andre Arul (Arul Chew and Partners) for the first and second respondents in CA 59/2004 and CA 60/2004; Vinodh S Coomaraswamy and Chua Sui Tong (Shook Lin and Bok) for the third and fourth respondents in CA 59/2004 and the appellants in CA 60/2004
Parties : Lim Lie Hoa — Ong Jane Rebecca

Civil Procedure – Costs – Principles – Whether factors listed in O 59 r 6A Rules of Court exhaustive – Whether court entitled to consider circumstances over and above factors listed in O 59 r 6A when deciding on appropriate costs order – Order 59 r 2(2), O 59 r 6A Rules of Court (Cap 322, R5, 2004 Rev Ed)

Probate and Administration – Distribution of assets – Appellant administrator and beneficiary of estate and mother of second respondent – Appellant making various payments to second respondent – Whether payments amounting to distributions from estate or gifts from appellant – Applicable principles in determining whether payments distributions or gifts

4 May 2005

Judgment reserved.

Judith Prakash J (delivering the judgment of the court):

Introduction

1 These appeals are two of the three appeals that arose out of an inquiry conducted by Assistant Registrar Phang Hsiao Chung ("AR Phang") into the assets of the estate ("the estate") of Ong Seng King, aliases Ong Seng Keng, Ong Keng Seng, Ong King Seng and Arief Husni ("the deceased"). The parties participating in the inquiry were all beneficiaries of the estate. AR Phang's findings (see [2003] SGHC 126) were appealed against to the High Court. Those appeals were, however, dismissed by Choo Han Teck J (in [2004] SGHC 131) and the parties have now appealed further. The first appeal in this series was Civil Appeal No 58 of 2004 ("CA 58"). We dealt with that appeal in a separate judgment ([2005] SGCA 4). As Civil Appeals Nos 59 and 60 of 2004 ("CA 59" and "CA 60" respectively) raise similar issues, we are considering them together.

2 The background to all three appeals can be found in our judgment in CA 58. We will not repeat it in detail here. However, a brief explanation as to the parties may be helpful. The appellant in CA 59 is Lim Lie Hoa ("Mdm Lim") who is the widow of the deceased. The appellants in CA 60 are Mdm Lim's two younger sons, Ong Siau Ping ("SP Ong") and Ong Keng Tong ("KT Ong"). Mdm Lim's eldest son, Sjamsudin Husni, alias Ong Siau Tjoan ("ST Ong"), was the second defendant in the original proceedings. He is not a party to the appeal. The respondent to both appeals is Jane Rebecca Ong ("Jane Ong") who was once married to ST Ong and who has an interest in the estate arising out of a deed of assignment executed by ST Ong. The direct beneficiaries of the estate are Mdm Lim, who has a half share therein; and her three sons, each of whom has a one-sixth share therein. By virtue of the deed of assignment, Jane Ong is entitled to half of ST Ong's share in the estate as at 29 August 1991.

The appeals

3 These appeals, the first by Mdm Lim, and the second by SP Ong and KT Ong, have their main issue in common. In CA 59, Mdm Lim challenged AR Phang's finding that only S\$717,255 was distributed from the estate to ST Ong as of 29 August 1991. She submitted that, as ST Ong had admitted during the inquiry that he had received further sums of £1,018,000 and US\$150,000 from the estate, these sums should be considered as distributions to him. Alternatively, Mdm Lim submitted that Jane Ong had admitted that ST Ong had received S\$152,849, HK\$10,087,399 and S\$3,007,332 from the estate and therefore these sums should also be considered as distributions from the estate. In CA 60, SP Ong and KT Ong agreed with Mdm Lim that AR Phang had erred in his determination of the amount distributed to ST Ong from the estate. However, their figures did not correspond with Mdm Lim's, as they contended that ST Ong had received S\$3,645,804, in addition to the sum of S\$717,255 found by AR Phang. Mdm Lim also appealed against the costs order that was made by AR Phang in Jane Ong's favour (see [2003] SGHC 143).

When is a payment a distribution?

4 AR Phang's finding that only a sum of \$717,255 had been given to ST Ong as a distribution from the estate was premised on his earlier finding that during the period between 1974 and August 1991, ST Ong had relied exclusively on his mother, Mdm Lim, for all his expenses and was accustomed to being maintained by her in a luxurious lifestyle. Mdm Lim had also admitted that she had advanced some sums to ST Ong that she did not consider to be distributions of his share in the estate. AR Phang considered that, in these circumstances, it was not unreasonable for ST Ong to assume that the payments that he received from Mdm Lim were gifts from her for his maintenance unless she specifically informed him otherwise. AR Phang held that if Mdm Lim wished to treat a particular sum remitted to ST Ong as a distribution of his share in the estate, it was incumbent on her to notify him of her intention. Without such knowledge, ST Ong could not reasonably be expected to give the administrators a valid discharge for the payment received. Thus, for AR Phang, the characterisation of a payment from Mdm Lim to ST Ong was dependent on whether ST Ong was aware that that payment was intended as a distribution.

5 AR Phang's approach was endorsed, on appeal, by Choo J who found (at [27] of his judgment) that:

[T]he AR's decision, to hold that payments by [Mdm Lim] to [ST Ong] would be treated as distributions of the latter's share only if the evidence had been sufficiently clear so as to distinguish between the making of a gift and the discharge of the former's lawful duties as the administratrix of her husband's estate, was correct. That is the only sensible way to approach the matter.

6 The challenges to the above findings have been mounted on two bases: one legal and one factual. We will deal with the legal basis first. The submission made was that where an administrator made a payment out of estate funds without acknowledging the payment to be a distribution and without expressly informing the beneficiary, that did not lead to the conclusion that the payment could not as a matter of law constitute a distribution. In determining whether a particular payment is a distribution or not, the test to be applied could be either:

(a) a purely objective test which looked only at the source of the payment and the fact of the payment; or

(b) a combined objective/subjective test which looked at the source of the payment and the knowledge of the beneficiary.

7 SP Ong and KT Ong submitted that the purely objective test was the correct approach and that as long as a particular payment had come from estate assets and the estate retained no interest in it thereafter, it should be classified as a distribution to a beneficiary. In support of this submission, they relied on the following authorities:

(a) the definition of the term "distribution" as "the passing of personal property to an intestate decedent's heirs" and the definition of "distributive share" as "[t]he share that an heir or beneficiary receives from the legal distribution of an estate" given by *Black's Law Dictionary* (West Group, 7th Ed, 1999);

(b) Porter MR's statement in *O'Brien v Condon* [1905] 1 IR 51 at 55 that he could not "see any solid distinction in law or fact between "distribute" and "dispose of"";

(c) the view of Swinfen Eady J in *Re Mackinlay* (1911) 56 SJ 142 at 142 that "[t]o distribute means to pay over"; and

(d) the reiteration by Lander J, when delivering the judgment of the South Australian Supreme Court in *Dawson v Fitch* [2002] SASC 12 at [62] of his statement in *Young v IOOF Australia Trustee Ltd* (1995) 180 LSJS 302 that:

It seems to me that whether distribution has or has not occurred is simply a matter of fact ... and the facts that have to be determined are whether there has been a removal from the hands of the personal representatives and a placement in the hands of the beneficiary.

Similar arguments were made on behalf of Mdm Lim.

8 It was further submitted that not only was this approach well founded on legal principle but, on the facts of the present case, it was the most equitable one to adopt. The issue here concerned payments from one co-administrator to another co-administrator from funds referable to the assets of the estate. If these funds were not treated as distributions and did not reduce ST Ong's share in the estate, he would effectively receive sums from the estate far in excess of his actual entitlement (regardless of how these sums were ultimately characterised) to the detriment of his brothers, SP Ong and KT Ong. Given the relationship of the co-administrators, it would be unrealistic to expect them to adopt the standards a professional trustee would follow when making payments to a beneficiary. Mdm Lim's failure to inform ST Ong on each and every occasion that she paid money to him that such money was to be treated as a distribution of his share could not be determinative of the issue, particularly, when that failure caused prejudice to other beneficiaries.

9 In our view, the authorities cited are only helpful to an extent. The definition of distribution given by the legal dictionary relied on is a description of what happens when a distribution is effected. It does not state that as long as a payment is made by a trustee to a beneficiary, that alone is sufficient to constitute that payment a distribution. As far as the cases cited are concerned, they too do not really deal with this point. In each of *Re Mackinlay* and *O'Brien v Condon*, the court was concerned with construing the meaning of "distribute" as that term was used in the particular testamentary instrument before it. The judges who gave their views as to the meaning of the term did not intend to propound any definitive test for determining when a payment should be characterised as a distribution in a situation where the relationship between the payer and the payee was not only a relationship of trustee and beneficiary.

10 The relevance of subjective intent or knowledge was also not in issue in those cases. In the Australian cases cited in *Dawson v Fitch* and in that case itself, the question before the court was whether there had been "final distribution" of an estate for the purposes of a statute that allowed family members who had not been provided for in a deceased's will to apply for provision from the estate as long as they made the application before the estate had been finally distributed. The issue was whether a change in the status of an executor or a transfer to new trustees to hold on behalf of the beneficiaries was sufficient to constitute a distribution or whether an actual transfer to the beneficiaries themselves was required. The courts there did not have to consider whether the payment made by the trustee was a distribution or a gift and, therefore, observations like those of Lander J, that to ascertain whether there has been distribution all that has to be determined is whether the funds have been removed from the hands of the trustee and placed in those of the beneficiary, were not intended to be and cannot be a complete answer to the issue that confronts us here.

11 As the authorities are not on point, we must go back to basics to determine the correct answer. The law generally does not presume a gift when one person voluntarily transfers property to another. Whilst an adult of sound mind has the legal capacity to make a gift to another person, where one person voluntarily transfers pure personalty hitherto belonging to himself into the name of another who is not his child or wife, *prima facie*, there is no gift but a resulting trust in favour of the person who made the transfer. A gift will only be made if the evidence establishes that it was the intention of the transferor to give the personalty to the donee. See *Halsbury's Laws of England* vol 20, (Butterworths, 4th Ed Reissue, 1993) at paras 40 and 41. Bearing this rule in mind, in the usual case where a trustee takes money from a trust fund and pays it to a person who is a beneficiary of that trust, that payment must be construed as a distribution under the trust even if the trustee does not expressly say so at the time of paying the beneficiary. If the law will not presume that a gift has been made (but rather the opposite) when the funds come from the payer's own resources, *a fortiori* it cannot do so when the funds emanate from a trust fund in which the payee has an interest and to which the payer has legal title but no beneficial interest. In this respect, it appears to us that the knowledge of the recipient would be irrelevant. It is the source of funds and the fact of receipt of them by a person who has the right to receive them that are the important points. The statements of law in the Australian cases were, obviously, founded on this principle. Thus, as they pointed out, in a situation where a payment of trust moneys has been made by a trustee to an unrelated beneficiary of the trust, once the facts of removal of the money from the fund and the placement of the same in the hands of the beneficiary have been established, with the trust retaining no interest in the property, a distribution would have taken place. The question for us is whether the additional fact that the trustee is the parent of the beneficiary would make a difference to this analysis.

12 When a father transfers his own money to his child, the law presumes that the transfer is intended as a gift unless there is evidence of a contrary intention to rebut the presumption (see *Halsbury's* at para 43). If, however, the father is the trustee of a trust fund and the child is a beneficiary of such fund, the presumption cannot apply to the father's transfer of trust funds to the child as such funds would not be the father's to give away. In such a case, the position would be the same as if the trustee and the beneficiary were unrelated and the payment would have to be characterised as a distribution regardless of whether the father had informed the child that it was such a payment. How does the situation change if the father-trustee is also a beneficiary of the trust? Would the presumption of advancement apply when the money is paid out of a trust fund to which both are entitled and the father-trustee has not made any specific appropriation of those funds to himself but sends the money directly from the estate's account to the child's account? In our view, bearing in mind the general inclination of the law not to find that a gift has been made unless positive intention to do so is shown, a payment from a trust fund to an adult beneficiary should be presumed to be a distribution, notwithstanding that the payer trustee is not only the father of the beneficiary

but also himself entitled to a share in that fund, unless the beneficiary can show that it was the intention of the trustee to take money out of the fund as a distribution to himself and then make a gift of such money to the beneficiary rather than to make a direct distribution of the beneficiary's entitlement. The presumption of advancement should have no place in this situation. We see no need at this point to decide whether the position would be different if the payment were made at a time when the beneficiary was still an infant and legally entitled to be supported by his father.

13 In the case of a mother and a child, there is usually no presumption of advancement and the situation of a mother-trustee *vis-à-vis* a child beneficiary should thus be the same as if they were not related. *Halsbury's* adds, however, (at para 44) "in the case of a widowed mother very little evidence to prove the intention of a gift is required, and the mother, if she places herself in *loco parentis* will be presumed to have intended a gift". In a later edition of *Halsbury's* (Butterworths, 4th Ed Reissue, 2004), citing the case of *Re Cameron, Philips v Cameron* [1999] Ch 386, the editors state (at vol 20(1) para 45) that it had recently been held, in relation to the rule against double portions, that both parents should nowadays be taken to be *in loco parentis* unless the contrary is proved, and they thought that this view would also be taken in relation to the presumption of advancement. Since Mdm Lim was widowed and had been supporting ST Ong all along, we would treat her as having placed herself *in loco parentis* in the same way as a father is. In any case, in Singapore, under the Women's Charter (Cap 353, 1997 Rev Ed), a woman has the same obligation to maintain her dependant child as a man has (see s 68). Thus, the general proposition that we have set out in [12] above should apply to the present case as well. Our conclusion thus is that any payment to ST Ong by Mdm Lim that emanated from the funds of the estate must be considered as a distribution to him unless it is proved on the balance of probabilities that her intention in making that payment to him was to make him a gift out of her share in the assets of the estate. Mdm Lim is the person who had the onus of proving that particular payments came from the estate since she wanted to establish that they were distributions. Once she had established the source of the funds, that would not be the end of the matter as, if Jane Ong or ST Ong was able to show that Mdm Lim's intention in making any of the payments was to make a gift to her son or was to put money in his hands as co-administrator for investment on behalf of the estate, then such payment would not be regarded as a distribution.

14 This brings us to the factual arguments regarding the payments in question. AR Phang found that ST Ong had received numerous payments of money from Mdm Lim between 1974 and 1991 and that many of these came from estate funds. He agreed that ST Ong had received a total of at least £1,018,000 and US\$150,000 from his mother because when ST Ong was cross-examined on an undated written confirmation that he had signed, ST Ong confirmed that he had received payments from his mother as set out in this document. AR Phang, however, did not go on to determine which of those payments were in fact traceable to funds belonging to the estate or for what purposes the funds were remitted since he took the view that unless ST Ong had been told that a payment made to him was a distribution that payment could not be considered a distribution. It was argued for Mdm Lim that these amounts should be taken as distributions since ST Ong had admitted receiving them from his mother.

15 Our view on the law, as expressed above, is different from that of AR Phang and is also different from that of Mdm Lim. As the view that we have taken was not adopted at first instance, the findings of fact necessary to determine this issue of the source of funds and the intention behind each payment were not made at the hearing of the appeal on 23 November 2004. Nor did the parties make submissions on:

- (a) which payments can be traced, on the evidence before the court, to the estate's funds only; and

(b) the purposes for which those payments were made and Mdm Lim's intentions in making such payments.

In order to dispose of this appeal, such submissions were necessary. We therefore directed the parties to deliver further submissions on the point accompanied by further core bundles of the documents supporting their submissions if necessary. These submissions were received by the end of March 2005 and we therefore now turn to consider the additional issues.

Which payments by Mdm Lim to ST Ong can be traced as having come only from the estate's funds?

16 In her further submissions, Mdm Lim used two different methods to establish the amounts received by ST Ong and that these amounts came from the estate. Her overall position was that Jane Ong's stand, that the only cash distribution received by ST Ong from the estate was a distribution of \$717,255 received in 1989, was indefensible from the standpoint of logic and common sense. This was because, ST Ong had admitted receiving much larger sums. Alternatively, Jane Ong herself had admitted that ST Ong had received much more than \$717,255.

17 In relation to the first argument, Mdm Lim stated that the undated document signed by ST Ong sometime in or after October 1987 confirming that he had received a total of £1,018,000 and US\$150,000 from Mdm Lim as a distribution from the estate constituted *prima facie* evidence that he had in fact received such sums from the estate. She noted that ST Ong had during the assessment hearing admitted receiving the sums stated therein from the estate. Mdm Lim submitted that this document (which we shall call "the confirmation") had not been rebutted by any proof of involuntariness or lack of understanding. In the circumstances, it was submitted that on the basis of the confirmation and ST Ong's admission, the said payments of £1,018,000 and US\$150,000 could be traced to the estate's funds only.

18 Mdm Lim also submitted that the said payments were not gifts or investments on behalf of the estate as:

(a) Jane Ong had been unable to identify a single instance during the inquiry when either Mdm Lim or ST Ong had stated that any particular payment was intended as a gift; and

(b) the confirmation had not been rebutted by evidence that any particular payment to ST Ong was put in his hands as co-administrator for investment on behalf of the estate.

19 The alternative argument was that, based on Jane Ong's admission and adoption of a list ("the PWC List") prepared by her accountants, M/s PricewaterhouseCoopers ("PWC"), and attached as Annexure 10 to the written submissions for the inquiry made on behalf of Jane Ong and filed on 16 December 2002, the payments of S\$152,849, HK\$10,087,399 and S\$457,144.50 referred to in the PWC List could be traced as deriving only from the estate's funds.

ST Ong's admission by virtue of the confirmation

20 Dealing with the first main point, it is useful to look at the contents of the confirmation. This read:

I, [ST Ong] hereby confirmed [*sic*] that I had received from my mother, [Mdm Lim] the distribution of the Estate of Mr. Ong Seng King, Deceased from overseas.

The distribution is as follows:-

1979	£125,000/-	(Purchase Aeroplane)
1981	£248,000/-	(Set-Up Construction Firm)
1983	£85,000 -	(Loan – signed by [Jane Ong] & [ST Ong])
1984	US\$50,000/-	(GOLD TRADING)
1984	US\$100,000/-	(GOLD TRADING)
1985	£30,000 -	(Repair Flat 6 Audley Court, Mayfair)
1986	£100,000 -	(Final Distribution)
1986	£200,000 -	(Final Distribution)
1987	£200,000 -	(Sale of Flat 6 Audley Court, Mayfair)
1985	£30,000 -	(Loan)

TOTAL: £1,081,000| - & US\$150,000/-

Mdm Lim stressed that ST Ong had admitted on cross-examination that he understood and signed the confirmation, and that AR Phang had appeared to accept these figures when he stated at [360] of his judgment that “[ST Ong] received a total of at least £1,018,000 and US\$150,000, for when he was cross-examined ... he confirmed that he had received payments from his mother as set out in [the confirmation]”.

21 That observation, however, was not an indication that AR Phang himself considered that ST Ong had actually received all those moneys as distributions or that all those moneys had come exclusively from the estate’s funds. In the very next paragraph of his judgment, AR Phang observed that Mdm Lim had given conflicting versions as to how these sums were arrived at, as the breakdown of the figures in the confirmation did not correspond with those provided by Mdm Lim in her affidavit of evidence-in-chief. AR Phang tabulated the discrepancies between the confirmation and the figures in the affidavit as follows:

Year of payment	Amount paid according to table at page 860 of [Mdm Lim]’s affidavit of evidence in chief	Amount paid according to [the confirmation]	Reason for payment according to [the confirmation]
1979		£125,000	“Purchase Aeroplane”
1980	£11,152 (converted from S\$56,875)		

1981	£385,161	£248,000	"Set-up Construction Firm"
1982	£85,000		
1983	£51,056 (£31,056 of this sum was converted from S\$100,000)	£85,000	"Loan – signed by [Jane Ong] and [ST Ong]"
1984	US\$150,000	US\$150,000	"GOLD TRADING"
1984	£82,477 (converted from S\$45,000 and S\$173,080)		
1985	£18,760 (converted from S\$45,400)	£30,000	"Repair Flat 6 Audley Court, Mayfair"
1985		£30,000	"Loan"
1986		£300,000	"Final Distribution"
1987		£200,000	"Sale of Flat 6 Audley Court, Mayfair"
1987	£385,032 (converted from S\$475,000, S\$242,255, NZ\$350,000 and NZ\$97,000)		
Total	£1,018,000 and US\$150,000	£1,018,000 and US\$150,000	

22 These discrepancies not only reinforced AR Phang's conclusion that the parties had never applied their minds as to which payments should be treated as distributions, but also created a doubt as to the veracity of the items listed in the confirmation, especially since they were not corroborated by any documentary evidence. Given the desperate financial situation in which ST Ong and Jane Ong were in, AR Phang found it reasonable to infer that the confirmation was probably prepared at Mdm Lim's instigation, to thwart any claims that Jane Ong might subsequently make that could threaten ST Ong's inheritance. It was significant that the sums of £1,018,000 and US\$150,000 were the very same amounts that ST Ong acknowledged having received as his share of the estate in the deed of release that was set aside as being procured by the exercise of undue influence by Mdm Lim.

23 Whilst AR Phang stated at [360] of his judgment that ST Ong had received at least £1,018,000 and US\$150,000 from Mdm Lim, he did not state that all this money came from the estate

and it is clear from his later findings that he had doubts about the veracity of the figures stated in the confirmation. As the table reproduced demonstrates, there were many discrepancies between the confirmation and Mdm Lim's documentary evidence as exhibited in her affidavit of evidence-in-chief. Instead of attempting to explain or clarify these discrepancies in her appeal, Mdm Lim has chosen to simply ignore them. Even after Jane Ong highlighted the irregularities in her further submissions, Mdm Lim remained silent on the issue in her rebuttal submissions.

24 While the figures in Mdm Lim's affidavit are supported by bank letters and statements, the confirmation is undated and unsubstantiated by any other documentary evidence. Although it is generally accepted that acknowledgements of receipts carry substantial weight (see *Fook Gee Finance Co Ltd v Liu Cho Chit* [1998] 2 SLR 121 and *Sinnathamby Rajespathy v Lim Chong Seng* [2002] 4 SLR 375, both cases cited on behalf of Mdm Lim), in this case, the discrepancies between the figures, which remained unexplained, and the lack of supporting documentation, have rebutted the *prima facie* evidence of receipt.

25 Mdm Lim is relying on the confirmation to prove two things: first, the amounts actually received by ST Ong and, second, that those amounts came from the estate's funds. In our opinion, the confirmation does not prove either of those matters. The evidentiary value of the confirmation as a receipt was undermined as to quantum because it was not supported by documents, and the documents that she did produce supported other figures. The evidentiary value of the confirmation as to the source of the moneys paid was undermined by ST Ong's evidence in the inquiry when he made it clear that he received moneys from his mother and that as far as he was concerned, his mother and the estate were one and the same so that he did not really know where funds sent to him had come from. In any case it was not for ST Ong to establish the source of the funds, but for Mdm Lim herself to do so since she, in effect, was the sole administrator of the estate. Further, although ST Ong did not assert at the inquiry that undue influence had been exerted on him to sign the confirmation, the fact that the contents of the deed of release reflected the same amounts and the same acknowledgement that the amounts were paid from the estate, serves as another basis for doubting the reliability of the confirmation. It is, in our view, odd that Mdm Lim did not seek to point to documents that substantiated the source of the amounts set out in the confirmation. She was the person in full control of the estate and its funds throughout the period in question and if she was able to produce documents to substantiate the figures in her affidavit, an adverse inference must be drawn regarding her inability to produce any such documents to substantiate the figures in the confirmation in so far as they differed from the figures tabulated in her affidavit. In the event, we hold that Mdm Lim has not proved that ST Ong received the sums of £1,018,000 and US\$150,000 from the estate's funds.

Jane Ong's admission through the PWC report and the PWC List

26 Mdm Lim's alternative submission that, by Jane Ong's own admission, ST Ong had received at least S\$152,849, HK\$10,087,399 and S\$457,144.50, was based on the PWC List. In their further submissions, SP Ong and KT Ong also relied on the PWC report to show what ST Ong had received. They also submitted that her reliance on the PWC report and the PWC List showed that Jane Ong's own case at the inquiry was that all of these payments originated from the estate.

27 The figures of S\$152,849 and HK\$10,087,399 in the PWC List correspond to those figures which PWC listed as "advances" from the estate's Singapore and Hong Kong assets respectively. The third sum, that of S\$457,144.50, did not appear on the PWC List. Instead, in a box entitled "Other Assets" PWC put a figure of \$3,007,332 which they described as "Advances" made to ST Ong from such other assets. To get the third figure of S\$457,144.50, Mdm Lim subtracted the sum of \$2,550,187.50 from PWC's figure of \$3,007,332. This was because PWC had taken the view that the

sum of £837,000 used by Mdm Lim to purchase a property in England known as 39 Sheldon Avenue was an advance to ST Ong and had added the Singapore dollar equivalent of that sum (*ie*, \$2,550,187.50) to the amounts advanced to ST Ong from other assets of the estate. In this appeal that amount had to be subtracted because AR Phang's finding at the inquiry that Mdm Lim had used her own funds to purchase 39 Sheldon Avenue and had not made an advance of that amount to ST Ong had been upheld by this court in CA 58. Accordingly, Mdm Lim could not claim that the full amount of \$3,007,332 put forward as an advance to ST Ong by PWC was in fact advanced to him.

28 The first issue here is whether the PWC List should be regarded as an admission by Jane Ong that ST Ong did receive the amounts stated on the list from the estate. Jane Ong made lengthy submissions as to why this should not be the case. Her reasons were as follows.

29 First, after the trial of Originating Summons No 939 of 1991 ("OS 939/1991"), in complying with an order that she file the accounts of the estate, Mdm Lim filed various documents including a report dated 5 March 1999 prepared by the accountants Arthur Andersen ("AA"), which report set out the distributions allegedly received by ST Ong from the estate. Mdm Lim's affidavit of evidence-in-chief thereafter adopted the figures set out in AA's report as the distributions made to ST Ong. Jane Ong then instructed PWC to review the AA report. PWC studied the payments alleged to be distributions set out in that report and gave their comments in the PWC report. PWC were not tasked to nor did they determine independently whether such payments had in fact been made.

30 Second, PWC had stated that their report was a draft and was incomplete. It was prepared on 21 March 2000 and did not take into account numerous documents disclosed as evidence after that date. It was also prepared without the benefit of any information from ST Ong, in particular his affidavit of 10 September 2002 in which he provided evidence regarding various distributions. PWC themselves stated that they had not been able to establish a complete account of the estate's assets due to the lack of information available to them. As a result they had had to make certain assumptions in their computation.

31 Third, PWC adopted the position that the payments, which Mdm Lim claimed were distributions to ST Ong, were "advances" instead. PWC never said these moneys were distributions to ST Ong and therefore no admissions of this nature can be inferred from PWC's report or the PWC List. Further, PWC did not conduct a tracing exercise to see whether those alleged distributions could be traced to the estate funds only.

32 Fourth, PWC's report was prepared on the basis that some of the assets that Mdm Lim claimed as her own were estate assets and some of the payments classified as advances came from these funds. Clearly the PWC report could not be used as proof that these advances originated from the estate funds. If the PWC List setting out the advances were relied on and all the payments set out therein were regarded as distributions to ST Ong, it must follow that all assets and funds from which these payments originated must be assets of the estate. This would mean that all the assets which PWC claimed to belong to the estate in their report must be accepted as being such.

33 Mdm Lim strongly refuted these arguments. She pointed out that the hearing of the inquiry before AR Phang concluded on 28 November 2002. On 10 December 2002, PWC sent the PWC List to Jane Ong. Jane Ong then adopted and admitted PWC's position as stated in the List by attaching it as Annexure 10 to the Written Submissions of the Plaintiff for the Inquiry filed on 16 December 2002, "for the court's easy reference". If the PWC List was unreliable, it would not have been incorporated in the written submissions. The allegations that the PWC List was prepared on information available only at the time of the PWC report of 21 March 2000 and that the report was a draft and incomplete did not have substance. The PWC List was sent out more than two and a half years after the date of the

PWC report and after all the evidence had been made available at the hearing of the inquiry. The PWC List must have taken into account the evidence made available after the PWC report because at the bottom of the PWC List, Note 1 stated that PWC had revised the value of the Singapore assets (as stated in the PWC report) after taking into account amendments to the rental income of certain property.

34 In any event, Jane Ong's position that the PWC report "was a draft and was incomplete" was completely inconsistent with her previous position. She had strongly relied on the same report when she applied to court to obtain interim payments from Mdm Lim. In an affidavit filed on 22 March 2000, Jane Ong had stated on oath that PWC had made an interim report which showed that a sum in excess of S\$20m was due to her under the deed of assignment. She asked the court to take the PWC report into account when making that application. She also stated that the PWC report contained PWC's conclusions to the date of the report on the quantum available for distribution from the estate "based on documents [PWC] have fully examined over the past ten (10) months". At that stage, Jane Ong did not state that the PWC report was a draft and incomplete. The court relied on that affidavit and ordered Mdm Lim to make two interim payments, the first of S\$350,000 and the second of S\$600,000, to Jane Ong. Subsequently, in March 2001, Jane Ong made another affidavit in which she relied on the findings in the PWC report to establish that ST Ong's share in the estate was in excess of S\$36m. On the basis of this second affidavit, Mdm Lim was ordered to pay Jane Ong a further S\$1,170,297.75 towards settlement of her share in the estate.

35 We accept the arguments put forward on behalf of Mdm Lim. Jane Ong employed accountants to check all the figures put forward by Mdm Lim and to study the papers that Mdm Lim was relying on. These accountants did not accept AA's figures blindly. Apart from the example given by Mdm Lim of the matters set out in note 1 to the PWC List, there was other evidence that when PWC took the view that the figures in the AA report were unsubstantiated by documentary evidence, they had chosen to disregard these figures in favour of their own evaluation. For instance, AA had indicated that Mdm Lim made various payments on behalf of the Hong Kong estate totalling HK\$405,555. PWC, however, deducted HK\$197,434 from AA's figure as, in PWC's view, these payments were not substantiated by supporting documentation and therefore had to be excluded from the computation.

36 Jane Ong's conduct is also relevant. Having obtained the PWC report, she adopted it by relying on it to support her applications for interim distributions from the estate. After the inquiry, she asked PWC to do further work and then made use of the PWC List to support her submissions. The PWC List and the report were useful to her case in so far as they supported her stand as to the value of the estate. Having promoted these documents to the court as being reliable documents and able to assist the court in its deliberations, Jane Ong cannot now resile from them because Mdm Lim is relying on certain other information therein to support her own case. Jane Ong cannot blow hot and cold. The findings of PWC as to what moneys were sent from the estate to ST Ong were part of the report and were part of what Jane Ong adopted. When it suited her, she relied on the report without qualification. At that stage, since she thought the value of the estate was much more than it was later found out to be, she did not cavil at PWC's findings as to the amounts sent to ST Ong. Now that the value of the estate has been found to be much less than PWC's estimates, she seeks to cast doubt on its conclusions as to the payments to ST Ong. She cannot be allowed to do so.

37 We agree that the PWC List must be regarded as proof of the amounts received by ST Ong. Whether those amounts emanated from the estate's funds only is what we will consider next. We note that SP Ong and KT Ong asserted that it was Jane Ong's own case, as found in the PWC report, that all the payments mentioned there originated from estate funds. Whilst that may have been the opinion of the accountants, we have to decide this point on the basis of the evidence that Mdm Lim produced to the court to show the origin of the funds.

Distribution from Singapore: \$152,849

38 The figure of \$152,849 originated from a report dated 10 June 1999 and produced by AA. At Appendix 8A of this report, AA stated that, based on the estate's cash books and journals, ST Ong had received some \$870,104 as distributions from the Singapore estate, including \$717,255 representing the proceeds of sale of 4 Chatsworth Park, Singapore. In their response to this report, Jane Ong's accountants, PWC, did not deny that ST Ong had received \$870,104 from the estate. PWC agreed that the proceeds of sale of Chatsworth Park should be characterised as a distribution but they treated the remaining \$152,849 as an advance from the estate, as they mistakenly believed that the correct test in law was that "payments to beneficiaries cannot be deemed to be distributions unless each beneficiary is made aware that the payment constitutes a distribution and that they each receive their respective entitlement".

39 We have held above that payments made to ST Ong from the estate's funds would, *prima facie*, be distributions unless proved otherwise by ST Ong or Jane Ong. That being the case, PWC's characterisation of \$152,849 as an advance cannot be accepted. That payment was *prima facie* a distribution to ST Ong. PWC did, however, characterise the payment of \$717,255 as a distribution. Adding up the figures on the PWC List, therefore, it appears that ST Ong received a total of \$870,104 from the Singapore assets of the estate of which \$717,255 came from the proceeds of sale of Chatsworth Park and the balance \$152,849 came from, probably, the proceeds of sale of a property in Robinson Road. That figure of \$870,104 tallies with the figure given by AA in their report as the amount distributed to ST Ong from the estate's Singapore assets. Jane Ong accepted PWC's figures as she considered that PWC had made a critical evaluation of all the evidence disclosed by Mdm Lim. We consider that having done so, Jane Ong did admit that ST Ong received \$870,104 from the estate's Singapore assets.

Distribution from Hong Kong: HK\$10,087,399

40 The figure of HK\$10,087,399 is derived from PWC's report, which claimed that ST Ong had received this amount as advances (excluding interest) from the Hong Kong estate. It is, however, unclear how PWC arrived at this sum, for the contents of the report are sketchy. At para 4.29 of the report, PWC simply state that ST Ong had received from the Hong Kong estate advances and interest totalling £1,623,919, US\$257,306, NZ\$592,109 and HK\$90,471. In making her submissions and having realised from this court's directions that such payments would be treated as distributions rather than as advances, Mdm Lim subtracted the interest element from the figures given by PWC to arrive at her claim that ST Ong received at least HK\$10,087,399.

41 It would, however, not be correct to accept the figure of HK\$10,087,399 as the total amount paid to ST Ong from the Hong Kong estate at face value, for two reasons. First, there were no details showing how PWC arrived at the amounts they gave. Second, AA, Mdm Lim's accountants, had calculated that ST Ong received only HK\$8,600,000 from the Hong Kong estate. This figure was confirmed in a subsequent report by Mdm Lim's second set of accountants, Deloitte & Touche in their report dated 6 September 2002.

42 Unfortunately, we cannot take the figure of HK\$8,600,000 as it stands either, as the bank documents which Mdm Lim produced in support of these various payments did not show whether the payments originated from funds belonging to the estate or from funds that belonged to Mdm Lim beneficially. As Jane Ong submitted, if some of the payments included in the computation originated from assets which Jane Ong had claimed belonged to the estate, but were found to be owned beneficially by Mdm Lim, then they clearly could not be traced to estate funds and should not be considered distributions to ST Ong. We therefore have to examine the payments that made up this

HK\$8,600,000 to establish whether they came from estate funds or from Mdm Lim's funds.

43 Many of the payments which made up the HK\$8,600,000 originated from bank accounts in the Sin Hua Trust Savings & Commercial Bank ("Sin Hua Bank"). Mdm Lim had three accounts with Sin Hua Bank: a current account, a deposit account and a foreign deposit account. As far as the current account was concerned, she admitted that she had intermingled estate funds with her own funds in that account. AR Phang found that she used this account as the "estate's account". The deposit account was found by AR Phang to contain only Mdm Lim's funds and, as for the foreign deposit account, Mdm Lim had asserted that all the money in that account belonged to her but that payments totalling NZ\$447,000 made from this account to ST Ong constituted a distribution to him from the estate. In CA 58, we upheld AR Phang's finding that this sum belonged to the estate but that the other moneys in the foreign deposit account belonged to Mdm Lim.

44 The payment of NZ\$447,000 came from the foreign deposit account. In view of our holding in CA 58, this sum must be conclusively traced to estate funds. ST Ong confirmed he had received that amount although he stated that it was paid as the proceeds of sale of a property in Singapore, 19 Balmoral View. AR Phang took the view that this evidence was "suspect" but it is probable that he simply doubted that the money represented the proceeds of sale of the Singapore property, and that his misgivings did not extend to ST Ong's actual receipt of the sum of NZ\$447,000.

45 The other payments that made up the HK\$8,600,000 comprised £216,161 and £64,000 paid in January 1981, £85,000 paid in April 1981, £20,000 paid in July 1981, £85,000 paid in June 1982, £20,000 paid in May 1983, \$100,000 paid in September 1983, US\$150,000 paid in September 1984 and HK\$79,800 paid in September 1990. The source of each of these payments was not so clear. Mdm Lim appeared to claim during the inquiry that all distributions to ST Ong came from the Sin Hua Bank current account which she used as the "estate account". Her instructions to Sin Hua Bank and the accompanying documents, however, suggest that the sterling payments made between January 1981 and June 1982 came from Matured Deposits Ref: TD K0239 and TD K0254. There is no evidence to suggest that these deposit accounts contained estate moneys. Similarly, there is no evidence that the £20,000 payment to ST Ong's National Westminster account in May 1983 came from an estate account, since Mdm Lim's instructions suggest that the money came from another account.

46 The remaining payments are equally hard to classify. The debit memo for the \$100,000 payment in September 1983 does not indicate the account from which the money came, whilst the US\$150,000 payment in September 1984 came from a joint account of ST Ong and SP Ong, with no indication that this account had contained estate funds. No supporting documentation was provided to show the source of the final payment of HK\$79,800 in September 1989. In any case, this payment was made after ST Ong signed the deed of release. At the time of the payment, the court had not made any pronouncement on the validity of the deed, in which ST Ong purportedly admitted that he had already received his full entitlement from the deceased's estate. If the deed was valid, considering this payment to be a payment from the estate to ST Ong would have been to make Mdm Lim guilty of a breach of trust. Therefore, given the circumstances prevailing in September 1989, we agree with AR Phang that this sum must have come to ST Ong from Mdm Lim's funds whether it emanated from her own bank account or from her share of the estate.

47 Further, there is no evidence to suggest that the sources of the payments mentioned in [44] and [45] above were computed as part of the assets of the deceased's Hong Kong estate by AR Phang. The only asset from the Sin Hua Bank account which counted as an asset of the estate was the NZ\$447,000 plus interest. If these other deposits in the accounts were not included as part of the deceased's estate, then they cannot be considered distributions from the estate to ST Ong. Mdm Lim did not challenge AR Phang's finding that moneys in the foreign deposit account (apart from

the NZ\$447,000) and the deposit account belonged to her and not to the estate. In our judgment, in respect of these payments, Mdm Lim has failed to discharge the burden of showing that HK\$10,087,399 was paid from the estate. She has only established the source of NZ\$447,000.

Distribution from other assets: S\$457,144.50

48 The next issue is whether ST Ong did receive S\$457,144.50 from the estate's other assets. It would appear that he received, if not exactly that amount, then something close to it. The amount of S\$457,144.50 is artificial in the sense that it is a figure derived by subtracting the purchase price of 39 Sheldon Avenue from the S\$3,007.332 which the PWC List listed as an advance to ST Ong from other assets of the estate.

49 It would appear that the sum of S\$457,144.50 can be correlated to a sum of £150,000 which formed part of the purchase price of a property in London called 6 Audley Court. This property cost £300,000 and was purchased in the names of ST Ong and SP Ong as joint owners. AA treated this purchase price as a distribution to ST Ong and SP Ong in equal shares. PWC also accepted that ST Ong received £150,000 for the Audley property although they elected to treat this sum as an advance. Whilst at one time Mdm Lim had claimed that 6 Audley Court was purchased with her own personal funds, by the time of this appeal, she agreed with AA's characterisation of the purchase. Further, Mdm Lim's position had been that the funds for the purchase of this property had come from her account with the Midland Bank and that these funds were her personal moneys. AR Phang had held, however, that all the funds in Mdm Lim's Midland Bank account had to be treated as the estate's funds. Mdm Lim did not appeal against this finding.

50 The accountants' reports did not, however, agree on the conversion rate from sterling to Singapore dollars that should be applied to this sum of £150,000. AA calculated that £150,000 was equivalent to S\$787,845 based on the exchange rate that prevailed in 1975 (£1 = S\$5.2523) which was around the time the property was purchased, but PWC appear to have used an exchange rate of £1 = S\$3.0454. They did not, however, give the basis of the rate used. The funds in the Midland Bank account from which the purchase price was taken were not denominated in Singapore dollars. As found by AR Phang, these funds came from a deposit in Deutsche marks which in turn originated from a sum in US dollars. That being the case, there is no reason to apply the exchange rate prevailing at the date of the purchase. Instead, it would be more consistent with the whole exercise of valuing the estate and the distributions made as at August 1991 to use the exchange rate applicable then. According to [373] of AR Phang's judgment, the prevailing exchange rate in the week ending 31 August 1991, according to the Monetary Authority of Singapore, was £1 = S\$2.8939. On that basis, the £150,000 distribution was equivalent to S\$434,085.

51 Mdm Lim also submitted that various other miscellaneous payments made to ST Ong came from the estate. She did not, however, substantiate those claims with further evidence. Indeed, a plain reading of her case before us indicates that she ultimately chose to rely solely on the figures in the PWC report. That being the case, we do not have to consider whether ST Ong had received those other payments from the estate. We find, therefore, that as far as the estate's other assets were concerned, ST Ong received £150,000 or S\$434,085 from them.

Conclusion on sources of payments

52 On the basis of our findings above, Mdm Lim has proved that ST Ong received the sums of \$870,104 from the estate's Singapore assets, \$441,680.70 from the estate's Hong Kong assets (NZ\$447,000 at the exchange rate of NZ\$1 = S\$0.9881 in 1991 as *per* [374] of AR Phang's judgment), and \$434,085 from its other assets. We now turn to consider whether Jane Ong has been able to

prove that Mdm Lim's intention in making any of the foregoing payments was to make a gift to ST Ong or to put money into his hands as co-administrator for investment on behalf of the estate.

Purpose of the payments

53 First, regarding the payments from the Singapore estate, in Appendix 8A of the AA report, a full breakdown of these payments was given. This appendix shows that between December 1975 and 1978, a total sum of \$7,780 was paid towards ST Ong's school fees and allowances. Given the nature of these payments, it would appear that Mdm Lim intended these amounts to be gifts to ST Ong, rather than distributions from the estate. As his mother, it would be natural for Mdm Lim to pay for her son's school fees and to make him allowances out of her own funds. Prior to the deceased's death in 1974, Mdm Lim would have been paying ST Ong's school fees and allowances from the parents' funds and there is no evidence that, after her husband's death, she decided that such expenses had to come out of ST Ong's share of the estate rather than be borne by her. At the time, ST Ong was only 18 to 19 years old and the natural inference in relation to these payments must be that these particular sums were also intended to be gifts. Jane Ong has not, however, adduced any further evidence to suggest that the remaining payments were anything other than distributions from the estate. The final amount distributed to ST Ong from the Singapore estate therefore stands at \$862,324 (\$870,104 less \$7,780).

54 Next, we turn to the payments from the Hong Kong estate. Much of the parties' arguments on this point centred on the use of various payments by ST Ong to finance various business projects which failed. This was logical since the evidence surrounding Mdm Lim's intentions at various times was not clear and therefore the ultimate use to which the payments were made could have been a potent indicator of whether the payments were gifts or distributions. We have found, however, that only NZ\$447,000 can be conclusively traced to estate funds. Thus, we need not go into the nitty gritty to determine whether these business projects were undertaken by ST Ong personally, or on behalf of the family, since the other payments could not be considered distributions in any case.

55 As for the sum of NZ\$447,000, ST Ong himself admitted having received the same. It came from the sale of Balmoral View, a Singapore property. Jane Ong made a bare allegation that Mdm Lim had given the money to ST Ong to compensate him for the sale of his home. There is, however, no evidence to support her assertion that this money was intended to be a gift. That being the case, the NZ\$447,000 (S\$441,680.70) should be counted as part of ST Ong's distribution from the estate.

56 PWC took the view that a payment of \$100,000 on 28 September 1983 to ST Ong's Kwangtung Provincial Bank account could not be considered a distribution, as the same amount was transferred from ST Ong's account back to Mdm Lim's overdraft account with Kwangtung Provincial Bank in Singapore just two days later. This view is open to criticism. The relevant debit and credit memoranda did show a credit into ST Ong's account on 26 September 1983, and a further credit of an identical amount to Mdm Lim on 28 September 1983, but there was no indication that the credit to Mdm Lim's account came from ST Ong's account. In the course of the inquiry, AR Phang pointed out to counsel for Jane Ong that there was no evidence that the \$100,000 put into Mdm Lim's account came from ST Ong's account and counsel then conceded that he was simply making a supposition. In the circumstances there is no basis on which we can find that the payment made on 28 September 1983 was not a distribution.

57 In the result, we find that ST Ong received the following amounts as distributions from the deceased's estate:

Origin of assets	Distribution received	S\$ equivalent
Singapore	\$862,324	862,324
Hong Kong	NZ\$447,000	441,680.70
Other Assets	£150,000	434,085
Total distribution as of 29 August 1991		1,738,089.70

58 AR Phang valued ST Ong's interest in the estate as being worth more than S\$4.6m and, accordingly, found the value of the share assigned to Jane Ong to be at least S\$2,321,770.27. In CA 58, we affirmed the valuations made by AR Phang. In view of our findings above, as of 12 August 1991, ST Ong had received only \$1,738,089.70 as distributions from the estate. Thus, more than half his entitlement had not been distributed. On 29 August 1991, therefore, he was fully capable of assigning an entire half share of his interest in the estate to Jane Ong. Accordingly, although we have found that AR Phang was in error when he assessed the distributions to ST Ong as amounting to only \$717,255, there is no change in Jane Ong's position as a result of our findings.

Costs of the inquiry

59 Turning to the issue of costs, Mdm Lim is the only party appealing against AR Phang's costs order. AR Phang had ordered Mdm Lim to pay Jane Ong's costs of the inquiry, subject to a number of exclusions in respect of items that he considered had been unnecessarily or unreasonably incurred. Mdm Lim submitted that she should only be made liable for half of Jane Ong's costs and disbursements for attendance with her solicitor and half the court fees, and Jane Ong's costs for challenging the disputed assets and valuations should not be allowed.

60 The main basis for Mdm Lim's appeal is O 59 r 6A of the Rules of Court (Cap 322, R5, 2004 Rev Ed), which states:

In addition to and not in derogation of any other provision in this Order, where a party has failed to establish any claim or issue which he has raised in any proceedings, and has thereby *unnecessarily or unreasonably protracted, or added to the costs or complexity of those proceedings*, the Court may order that the costs of that party shall not be allowed in whole or in part, or that any costs occasioned by that claim or issue to any other party shall be paid by him to that other party, regardless of the outcome of the cause or matter. [emphasis added]

61 The submission was that, under this rule, the only factors that the court can consider in making a costs order are those set out in O 59 r 6A, and the other circumstances AR Phang had taken into account in making his order were improper and irrelevant. The fatal flaw in this argument is the fact that the factors enumerated in O 59 r 6A are clearly not intended to be exhaustive. It is also apparent from the use of the word "may" that, even if the matters in O 59 r 6A are proved, the court still has a residual discretion to decide on the proper order of costs. This accords with the axiomatic principle that costs are entirely discretionary. As O 59 r 2(2) states:

[T]he costs of and incidental to proceedings in the Supreme Court or the Subordinate Courts,

including the administration of estates and trusts, *shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.* [emphasis added]

62 In exercising his discretion, AR Phang was perfectly entitled to take into account all the relevant circumstances of the case, and not just those set out in O 59 r 6A. While it is true that Jane Ong did not succeed in proving a large number of her claims, this did not necessarily disentitle her from an award for costs. She did ultimately obtain judgment on various issues and was declared to have an interest in various properties. The general rule that costs follow the event does not cease to apply simply because the successful party did not succeed in every issue or allegation: see *Progress Software Corporation (S) Pte Ltd v Central Provident Fund Board* [2003] 2 SLR 156. It must also be remembered that the inquiry was ancillary to the main action (OS 939/1991), where Jane Ong was also awarded costs as the successful party. Following the Court of Appeal's decision in *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 2 SLR 27, the hearing of the inquiry was simply a continuation of the hearing of the main action, so the same order of costs should generally follow at the inquiry.

63 AR Phang exhaustively canvassed all the facts of the case and meticulously examined each of Jane Ong's costs, allowing them when they were justified and disallowing them when they were not. Choo J had also scrutinised AR Phang's order and found that he had addressed his mind to all the relevant matters, including the fact that some of Jane Ong's arguments might have unnecessarily protracted the proceedings. On the findings that AR Phang had made, his costs order was justified. Whilst we have held that ST Ong received substantially more in distributions than the \$717,255 accepted by AR Phang, since our findings will not change the ultimate position, the rationale for AR Phang's costs orders has not been undermined. Accordingly, we will not vary AR Phang's orders on costs.

64 As for AR Phang's order that Mdm Lim also bear the costs of ST Ong, SP Ong and KT Ong, we decline to interfere with his carefully considered decision. As beneficiaries of the deceased's estate, they each had an interest to protect in the inquiry. Although it was not the function of the inquiry to determine if Mdm Lim had breached her duty as an administrator, it was patent on the facts that the inquiry would not have been necessary if she had been more forthcoming in producing accurate accounts of the estate. This is what AR Phang meant when he commented that the inquiry was necessitated by her "defaults in administering the estate". It was therefore completely justified for AR Phang to make her liable for ST Ong's, SP Ong's and KT Ong's costs as well.

Conclusion

65 In the result, although we have differed with the conclusions of the courts below as to the amounts received by ST Ong, at the end of the day, the amount due to Jane Ong from the estate remains unchanged. Accordingly, these appeals must be dismissed, with costs to be paid to Jane Ong.

Appeals dismissed.