

Teo Cha Sau and another (executors of the estate of Tew Che Kiong (alias Thomas Ong,
deceased) v Ong Lay Loon and another suit
[2010] SGHC 273

Case Number : Suit Nos 9 of 2008 and 251 of 2009
Decision Date : 16 September 2010
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : R Chandran (R Chandran & Co) for the plaintiff; Suresh Divyanathan, Lim Wei Shin, Clive Myint Soe and Subir Singh Grewal (Drew & Napier LLC) for the defendants.
Parties : Teo Cha Sau and another (executors of the estate of Tew Che Kiong (alias Thomas Ong, deceased) — Ong Lay Loon

Personal property

Companies

16 September 2010

Judgment reserved.

Lee Seiu Kin J:

Introduction

1 These consolidated actions arose from the vicissitudes in the family circumstances of the late Tew Che Kiong @ Thomas Ong ("Tew"), his widow Chua Moi King ("Chua"), and her sons (who are Tew's stepsons), Ong Lay Ann ("Lay Ann") and Ong Lay Loon ("Lay Loon"). In Suit No 9 of 2008 ("Suit 9") Tew was the plaintiff; after his death the executors of his estate Teo Cha Sau ("Teo") and Ang Poh Poh Karen ("Ang") were substituted as the plaintiffs in his place. Teo is Tew's brother and Ang is Chua's niece. In Suit No 251 of 2009 ("Suit 251") Chua is the plaintiff while Teo and Ang are sued in their capacities as executors of Tew's estate and in their personal capacities. The fourth defendant to this suit is CKT Thomas Pte Ltd ("CKT") and seventh defendant is Teu Bi Ni ("B N Teu"), Tew's sister. In the counterclaim in Suit 251, Teo and Ang, as executors of the estate of Tew, are first plaintiff and CKT is the second plaintiff. Chua, Lay Ann and Lay Loon are respectively the first, second and third defendants in the counterclaim.

2 On 3 January 2008, Tew filed Suit 9 against Lay Loon for repayment of a total of \$415,680 as money lent and money had and received. Tew died on 15 December 2008 and by order of court dated 11 February 2009, Teo and Ang, as the executors of Tew's estate, became the plaintiffs. Lay Loon's defence is that the moneys were given to him as gifts, maintenance and/or advancement for his purchase of a property for his accommodation and for him to attend a pilot training course while he was a student in Australia.

3 After Tew's death, Chua filed Suit 251 on 18 March 2009, in which she made the following claims against the various defendants:

- (a) all of Tew's shares in CKT;

(b) beneficial ownership of the following properties:

(i) 28 Fernwood Terrace, #12-03 Fernwood Towers, ("Fernwood Apartment"),

(ii) 991 Bukit Timah Road, #02-13, Chempaka Court, Maplewoods ("991 Maplewoods Apartment"),

(iii) 77 Farrer Drive, #06-04 Sommerville Park ("Sommerville Apartment");

(c) \$631,772.51 in unpaid director's fees and shareholder dividends from CKT;

(d) \$322,857.00 being the excess payment to Tew for 360,000 shares in CKT issued to Chua in 1993 and 1996;

(e) the entire equitable interest in 53 Kim Keat Road, #04-01 Mun Hean Building, Singapore 328853 ("Mun Hean Office"); alternatively, the sum of \$940,000; and

(f) damages to be assessed for Tew's unauthorised entry into the Fernwood Apartment.

4 The counterclaim in Suit 251 is by Teo and Ang as executors of Tew's estate for the following:

(a) A declaration that they are the beneficial owners of 90% of the Fernwood Apartment and 80% of the 991 Maplewoods Apartment as a resulting trust had arisen on account of CKT paying the balance prices of the properties on Tew's behalf out of his account with CKT.

(b) An order against Lay Ann and Lay Loon:

(i) to produce the company and group audited accounts of Weststar from 2001 to date;

(ii) for an account or inquiry to be taken of CKT's investment of US\$2,700,00 in Weststar and CKT's loans to Weststar's related corporations totalling S\$1,404,569, and upon the taking of the accounts or inquiry for an order for payment or damages to be assessed of any of CKT's investments or loans which have not been accounted for and found to be due to CKT or the executors; and

(iii) to take all necessary actions to facilitate and effect the registration of the transfer of CKT's shares in Weststar to the executors and to appoint a nominee of the executors as a director of Weststar.

5 The complicated array of claims and counterclaims is a harbinger of the complex family story that unfolded in the course of the trial. There are considerable disputes of facts and I will first set out the undisputed facts, then the versions of Chua, Lay Ann and Lay Loon, and thereafter that of the other side, ie Tew and the defendants in Suit 251.

Undisputed Facts

6 Chua's first marriage was in 1972, to one Ong Siong Thaij. From this union, Lay Ann and Lay Loon were born, in 1973 and 1976. Unfortunately that marriage did not last and they divorced in 1981 or 1982. Ong Siong Thaij's father was a wealthy man and after the divorce, Chua and her sons were settled with considerable assets. These were principally the matrimonial home located at East Coast Avenue and almost \$1.6m in cash. Chua first met Tew in 1985 when she was looking for a renovation

contractor for her apartment at Clementi Park Condominium ("Clementi Apartment"). Tew was the principal shareholder and director of CKT, a company he incorporated in 1980. Chua was introduced to Tew by a friend, but in the event he did not land the job. However he wooed Chua from 1986 and they eventually married in June 1992. According to Chua, she was persuaded to marry Tew only after he had shown his sincerity and love not only for her but for her sons. One of the things Tew did to prove this was to change his surname by deed poll from Tew to Ong before the marriage. It was Tew's first marriage.

Property purchases and mortgages

7 In 1987, when Tew was in the midst of courting Chua, CKT was a small renovation company with a turnover of about \$530,000. At Tew's request, Chua mortgaged her Clementi Apartment, in order for CKT to obtain an overdraft facility of \$120,000. From that time CKT's business grew and by 1991 it had a turnover of over \$6,800,000. CKT's business continued to grow and peaked in 1995 and 1996 with turnover in excess of \$22,000,000 for those years. However, from 2003 to 2008 CKT's turnover fell to below \$10,000,000 per year.

8 After Tew and Chua were married in 1992, a number of properties were purchased by them in their joint names, as well as by Chua in her sole name. In September 1992, Tew and Chua purchased the Fernwood Apartment in a sub-sale as joint tenants. The price was \$720,000 and Chua paid the \$72,000 deposit as well as the legal fees and stamp duty. The property was uncompleted and the balance 90% of the price comprising a lump sum of \$350,000 to the vendor and progress payments were paid between 1992 and 1996 totalling \$369,000. These payments were made out of CKT's funds. In December 1992, the Fernwood Apartment was mortgaged to OUB as security for overdraft facilities to CKT up to \$510,000 and the limit was increased to \$1,255,000 in July 1995.

9 In December 1993, Chua purchased, in her sole name, the 991 Maplewoods Apartment, which was uncompleted at the time. The price was \$649,800 and she paid 20% of it to the developer. The balance 80% price was payable by progress payments and these were made from CKT's funds from about 1995 to 1997. By 1995 the 991 Maplewoods Apartment was mortgaged as security for banking facilities to CKT, for an amount that was disclosed in the evidence.

10 Chua had purchased the Sommerville Apartment in 1988, soon after her first marriage. In or around 1994, Chua mortgaged it as security for a loan of \$400,000 to CKT. The parties are in dispute as to whether this was for the purchase of the Mun Hean Office or simply for banking facilities for CKT.

11 Joint and several guarantees of all the directors of CKT were also given as additional security in respect of the said mortgages of the Fernwood Apartment, the 991 Maplewoods Apartment and the Sommerville Apartment ("the 3 Properties") as a standard requirement of the bank. CKT had serviced all the credit facilities taken in respect of the said mortgages. However Chua kept the rental income from the 3 Properties. In June 2001, CKT's overdraft on the mortgage of the 3 Properties was refinanced by personal loans taken by Tew and Chua on the mortgage of the 3 Properties to reduce the high interest payable by CKT on its overdraft. Thereafter, Tew personally serviced all the monthly mortgage repayments.

12 In June 1994, CKT purchased the Mun Hean Office for \$926,780. The Mun Hean Office was mortgaged as security for banking facilities to CKT with the additional security of the joint and several guarantees of CKT's directors. CKT is registered as the sole owner of Mun Hean Office and was used by CKT as its office. In July 1994, Chua sold the Clementi Apartment for \$630,000 of which \$188,000 was disbursed to redeem the mortgage for CKT's banking facilities upon the sale completion in October

1994.

13 In March 1999, Tew purchased an office unit at 43 Genting Lane, Singapore ("Genting Lane Office") for \$3,500,000. CKT had paid for the purchase of Genting Lane Office on behalf of Tew as a loan to its director. Tew was registered as the sole owner of Genting Lane Office which was also mortgaged as security for banking facilities to CKT with the additional security of the joint and several guarantee of CKT's directors.

14 Chua purchased the following properties, which Tew was not aware of at the time. In January 1994, Chua purchased an apartment at 993 Bukit Timah Road #12-03, Maplewoods ("993 Maplewoods Apartment"). In September 1994 Chua purchased a property at 19 Shelford Road #05-07 Singapore ("Shelford Apartment"). In August 2000, Chua and her sons bought an apartment at 22 Wilby Road #05-06 Tesserina Singapore ("Wilby Apartment").

CKT shares issued to Chua

15 The records show the following share transactions in CKT. In September 1993, 270,000 CKT shares (inclusive of 142,857 bonus shares credited as fully paid) were issued to Chua and she was appointed a director of CKT. Chua's 270,000 shares then constituted about 21% of the issued share of CKT of 1,270,000 shares. In April 1996, 500,000 CKT bonus shares, credited as fully paid up, were issued to Tew, Chua and Bi Ni. They received, respectively, 389,166, 90,000 and 20,834 of those shares. This resulted in Chua holding a total of 18% of the issued shares in CKT as at April 1996.

Family support by Tew

16 From the time of their marriage in June 1992, Tew had maintained Chua, Lay Ann and Lay Loon from his income, all of which was derived from CKT. At all material times, Chua kept for herself the rental income from letting out the 3 Properties. Between 1995 and 2000, Lay Ann attended a university in England. Chua did not dispute that Tew paid for his expenses, which comprised fees, living and travel expenses as well as the purchase of an apartment for his accommodation; however Chua said that she contributed £10,000 towards its purchase. Upon completion of his studies in England, Lay Ann sold that apartment and kept the proceeds of sale. Lay Loon pursued tertiary studies in Melbourne, Australia from 1999 to 2004. Again it was not disputed that Tew paid for his living and educational expenses during that period, including paying half the purchase price for a studio apartment ("Studio Apartment") for his accommodation in Melbourne. Chua stated that she gave Lay Loon cash of some \$10,000 to \$15,000 each time he returned home for the holidays, presumably as mothers are wont to do. In February 2002, Tew remitted A\$380,000 to Lay Loon to purchase a second property in Melbourne, this time a larger apartment ("Melbourne Apartment"). In February 2003, Tew sent \$60,000 to Lay Loon in Australia for him to attend a course. In or about 2003 Tew asked Lay Loon to sell the Melbourne Apartment. Lay Loon did not sell the property and instead remitted \$90,000 to Tew.

Weststar

17 In March and April 2001, CKT invested US\$2,700,000 in Weststar Ventures Inc ("Weststar"), a British Virgin Islands ("BVI") corporation, pursuant to an agreement contained in a Term Sheet dated 31 January 2001 ("the Term Sheet") made between CKT, Lay Ann and Lay Loon, and Weststar. This investment resulted in one-third of the shares of Weststar being issued to CKT, one third to Lay Ann and one third to Lay Loon. In 2003 and 2004 CKT lent about US\$1,000,000 to Weststar's related corporations to support CKT's investment in Weststar. Weststar was managed by Lay Ann, with Lay Loon joining him at a later stage. Unfortunately the venture did not take off. Around March 2007 Tew

sold the Genting Lane Office, despite incurring a loss of \$250,000, for the purpose of using the proceeds to purchase CKT's shares in Weststar at the price of around \$4.8m.

Tew's last years

18 In January 2007 Tew was diagnosed with leukemia and was admitted to hospital for chemotherapy and underwent a bone marrow transplant in July 2007. On 20 January 2007, Tew made his last will in which he gave his shares in CKT to Steven, Bi Ni and Ang in equal shares and gave to Chua, Lay Loon and Lay Ann 10%, 2% and 1% respectively of the residue of his estate. The rest of his estate was distributed among his family members.

19 On 26 June 2007 the relationship between Chua and Tew broke down. Chua and her sons, Lay Ann and Lay Loon, stopped visiting him at the hospital. On his discharge from hospital, Tew stayed with a friend at first and then moved to Teo's house. In August 2007, Tew stopped making the monthly repayments on the mortgage of the 3 Properties. In November 2007 Chua wrote to UOB to give notice of her intention to cease to be a guarantor for CKT's credit facilities and her intention to resign as director. In December 2007 or January 2008 Tew moved into the Fernwood Apartment with his father and his maid and lived there until his admission to hospital where he died on 15 December 2008. During his stay, Tew made all mortgage repayments on the Fernwood Apartment. While staying at the Fernwood Apartment, Tew discovered Chua's purchase of the 993 Maplewoods Apartment, the Shelford Apartment and the Wilby Apartment. He also discovered that Chua and her sons were involved in a BVI corporation, Financial Capital Ventures Inc.

20 On 24 May 2008, CKT wrote to Weststar regarding Weststar's failure to submit the financial information as required in the Term Sheet and that such information was necessary for the closing of CKT's accounts. And as a result of such failure, Tew had to purchase all the Weststar shares of CKT. CKT requested Weststar to assist in the completion of the sale and transfer of the shares from CKT to Tew.

21 On 24 June 2008, Tew executed a statutory declaration to sever the joint tenancy of the Fernwood Apartment and his solicitors sent a letter dated 25 June 2008 enclosing the statutory declaration to Chua and her solicitors. On 27 June 2008 Tew lodged a caveat over the 991 Maplewoods Apartment to claim a beneficial interest to the extent of his payment for the purchase of the property.

22 Including the two suits in this trial, there was a total of four suits filed by the parties. The first was Suit 9 filed by Tew on 3 January 2008 against Lay Loon. Then followed by two originating summonses filed by Chua as plaintiff on 12 August 2008: (a) OS1052/2008 ("OS1052"), with Tew as the defendant; and (b) OS1056/2008 ("OS1056"), with CKT as the defendant. Tew died on 15 December 2008. On 18 March 2009, Chua filed Suit 251, the fourth and last action.

Version of Chua, Lay Ann and Lay Loon

Chua's evidence

23 Chua recounted in her affidavit evidence-in-chief ("AEIC") in Suit 251 that several months into her courtship by Tew, he told her that if she were to provide finance for CKT enabling it to "prosper", he would give her an equal share of the profit. Tew assured her that he could succeed in the construction business and only needed financing to expand. Tew told Chua that he would give her a half share in the profits of CKT in return for the loans. On this basis, Chua acceded to his request and started providing cash loans to CKT from 1986 to 1992. Chua was unable to recall the exact amounts

of the loans but she believed that they totalled \$700,000 to \$800,000. Chua added that during this period, Tew would give her \$5,000 to \$10,000 at a time. He told her that such payments were her half share of the profits of CKT. Chua was also unable to recall the exact amounts of such payments and estimated the total to be in the region of \$100,000. She said that after their marriage in 1992, Tew stopped making such payments of her share in the profits of CKT. Chua also said that Tew and CKT never repaid her the loan principal, which would be some \$700,000 to \$800,000. Chua then described how she mortgaged her Clementi Apartment in 1987 at Tew's request to provide the \$120,000 overdraft facility to CKT mentioned in [7] above. Chua said that after this, Tew asked her to mortgage her other properties as security for further bank loans, but she was reluctant to do so although she "continued providing cash loans to [Tew] from time to time when [he] asked for them". Presumably this would be the balance of the loans that totalled \$700,000 to \$800,000 by 1992.

24 Chua said that after their marriage in 1992, she further supported Tew in the form of mortgages on her properties to secure loans for CKT. Chua described how she agreed to mortgage the Fernwood Apartment in 1992, the 991 Maplewoods Apartment in 1993, the Sommerville Apartment in 1994 and to their refinancing in 2001. Chua said that she had many quarrels with Tew over money. This was due to her reluctance or refusal to mortgage her properties for the benefit of CKT. Tew would lose his temper with her and react violently by shouting or breaking furniture and other household items, bringing her to tears. Tew even threatened to kill her in her sleep by suffocating her with a pillow. She was so fearful that she made it a point to sleep only after he had fallen asleep, or went to sleep in her son's bedroom. Chua also added that she agreed to mortgage the 991 Maplewoods Apartment only after Tew promised her that, upon his death, his shares in CKT would be given to her and her sons. Tew had also told her that CKT would pay for the remaining 80% of the purchase price of the 991 Maplewoods Apartment out of the dividends, directors' fees and the 50% profit share due to her. Chua also described how Tew pressured her into selling the Clementi Apartment in 1994 to raise money to purchase the Mun Hean Office. They had a big quarrel over this and it was only because Tew promised her that his shares in CKT would be given to her and her sons that she agreed to it. Chua said that she did not disclose to Tew her purchases of the 993 Maplewoods Apartment, the Shelford Apartment and the Wilby Apartment to avoid Tew asking for them to be mortgaged for loans to CKT.

25 Chua deposed that in 2001, Tew had asked her to sign documents that would render the two of them liable for the bank loans of CKT. Tew explained that this would benefit CKT as the interest rates would be reduced. When Chua refused to do it, Tew threatened to kill her and Lay Ann. It was out of fear that she signed the documents. Chua also said that over the years she had signed many personal guarantees for CKT's banking facilities.

26 Chua said that after Tew was admitted to hospital for acute myeloid leukaemia in January 2007, she had visited him every day and brought him food she had prepared for his lunches and dinners. Occasionally she would spend the night on a chair at his bedside to keep him company. However on 26 June 2007, she had walked into his room and was shocked by the sight of Tew in a "passionate and severely inappropriate embrace with a female friend of his". Tew was not the least bit remorseful and shouted at her. This was the last straw for Chua and she stormed out, never to return to visit him in hospital again.

27 Chua said that CKT stopped servicing the monthly mortgage payments for the 991 Maplewoods Apartment and Sommerville Park, which were both in her sole name. She had to take over the payments as a result. Chua said that sometime between 26 December 2007 and 3 January 2008, Tew broke into the Fernwood Apartment without her consent and occupied it. She exhibited a two-year tenancy agreement that commenced from 22 December 2007. Chua said that Tew ignored entreaties from her and Lay Loon not to move in as it had been tenanted out. Chua said that this resulted in the

loss of \$48,000 in rent. She also had to pay \$12,000 to the tenant as compensation.

28 Chua discovered in the course of the litigation that a total of \$654,722.51 was reflected in the books of CKT as director's fees and dividends paid to her from 1997 to 2003. She deposed that she did not receive a single cent. She denied the assertion in the defence and counterclaim in Suit 251 that she had an arrangement with Tew that all sums due to her in director's fees and dividends would be used by Tew in his discretion.

Lay Loon's evidence

29 The material evidence from Lay Loon pertains to the issues in Suit 9. Essentially he said in his AEIC for Suit 9 that he was surprised that Tew had brought the action against him as he was his favourite stepson. Indeed Lay Loon described the relationship between them as an extremely close one, and they would speak on the telephone three or more times a week when he was in Melbourne. Tew had indulged him not only with overseas studies and purchase of apartments, he had also bought him a car and paid for flying lessons. Lay Loon maintained that whatever money Tew had spent on him in Australia, including the moneys the subject of the claims, was given to him out of the love and affection that Tew had for him.

Lay Ann's evidence

30 Lay Ann gave evidence that Tew paid his expenses for the five years he was studying in the UK. He said that Tew even paid about \$79,800 for the purchase of a house in Manchester for him to live in. Lay Ann said that he sold the house upon completion of his studies there and kept the proceeds. Tew never asked for it. Lay Ann said that as far as he was concerned, Tew had done the same with Lay Loon in Australia. He was also surprised that Tew had made the claims against Lay Loon in Suit 9.

Version of Tew, Teo, Ang and CKT

Tew's AEIC

31 Tew had filed his AEIC in Suit 9 in October 2008, some two months before he died. I am fully cognisant of the fact that it has not been tested in cross-examination and therefore little weight may have to be given on the disputed areas. Nevertheless, the AEIC is instructive in many areas where it confirms the evidence of the opposing parties, and also where there are admissions against Tew.

32 Tew's version of how he met Chua does not substantially diverge from her version, save that his position was that prior to their marriage, he had asked for financial assistance only once. That was the mortgage of the Clementi Apartment for the bank loan of \$120,000 in 1987. Tew said that after they married in 1992, he moved to live with Chua and her sons at her house in East Coast Avenue which became their matrimonial home. In Tew's words, "I took it upon myself to provide for [Chua] and her 2 sons and our household and family expenses. I did so until drastic changes in circumstances took place in 2007." Tew said that he remitted the A\$380,000 to Lay Loon in 2002 to purchase the Melbourne Apartment because his stepson had persuaded him that it was a good investment. Tew maintained that it was a loan which was repayable by Lay Loon. In 2003, when Tew requested for repayment, Lay Loon assured him that he would sell the Melbourne Apartment in order to repay the loan. However this did not materialise and instead, in February 2005, Lay Loon remitted \$90,000 to Tew which he said was the proceeds from the sale of the Studio Apartment. Tew said that he remitted \$60,000 to Lay Loon in Melbourne in February 2003 in response to the latter's request for funds to pursue a Master's degree. However he discovered that Lay Loon did not pursue

the course and claimed in Suit 9 for the return of the money.

33 Tew related how CKT became financially stretched by 2004 or 2005. Its bank overdraft was in excess of \$3.6m. He pressed Lay Ann about the returns of the Weststar investment but did not get a satisfactory answer. Tew said that he injected his personal funds into CKT and went to the extent of getting his sister, the seventh defendant in Suit 251, B N Teu, to mortgage her apartment to raise \$460,000 for CKT.

34 Tew said that he was diagnosed with leukemia in January 2007 and was hospitalised for chemotherapy. He said that in April 2007, Chua confronted him about his will and CPF nomination. He did not show her his will, but told her that he had nominated B N Teu as the beneficiary of his CPF because she had mortgaged her apartment to raise funds for CKT. This provoked a quarrel between them. Tew said the following in a particularly poignant passage of his AEIC:

46. In July 2007 I had the bone marrow transplant. During the course of the procedure and after it was completed, [Chua] and her sons did not pay me a single visit. [Chua] even telephoned her niece who works for me at the office to say that she will take over the operations of [CKT] if I did not survive the transplant. She asked my niece to convey to my sister that that my corpse should be my sister's responsibility as my sister was to receive my CPF monies. That was when I realised the true nature of my wife and her sons, and that I could no longer be or afford to be her husband and a step-father to her sons and that I have to look after myself and protect my own interests and assets.

The truth of Tew's assertions in this passage have not been tested in cross-examination and I make no finding one way or another. However this passage is indicative of the emotions of Tew at the time; these were the thoughts of a man who knew that his life was heading for a premature end.

35 Tew said that after he was discharged from hospital, he stayed with a friend for a while, then went to live in his brother's house. Chua and her sons did not contact him at all. CKT remained heavily in debt and he now faced the further burden of his high medical bills. He said that he had to stop making the mortgage repayments for the Fernwood Apartment, the Sommerville Apartment and the 991 Maplewoods Apartment. He said that Chua continued to collect and keep for herself the rent from these properties. Therefore when he discovered in January 2008 that the Fernwood Apartment was vacant, he moved into it with his aged father and their maid.

Issues

36 The issues in Suit 9 are whether (a) the A\$380,000 for Lay Loon to purchase the Melbourne Apartment was a loan repayable on Tew's request and (b) the \$60,000 sent by Tew to Lay Loon was repayable if Lay Loon did not attend any masters degree course.

37 In respect of Chua's claims in Suit 251, the issues are as follows:

(a) Did Tew promise Chua, reaffirmed though the years, that she would be entitled to half the shares and profits of CKT?

(b) Was there a family arrangement between Tew and Chua in relation to the financial transactions that Chua entered into for the benefit of Tew and CKT?

38 In respect of the counterclaim in Suit 251, the issues are as follows:

(a) Whether CKT had paid the balance purchase price of 90% of the Fernwood Apartment and 80% of the 991 Maplewoods Apartment on behalf of Tew and whether Tew had repaid CKT for the said payments.

(b) Whether Lay Ann and Lay Loon were under a duty to account to CKT for its investments and loans to Weststar and its related corporations. If so, whether (a) Lay Ann and Lay Loon had accounted to CKT as required by the Term Sheet; (b) CKT had waived the requirement for CKT to be provided with the accounts; and (c) CKT and/or the executors are entitled to the company and group audited accounts of Weststar from 2001 to-date and/or an account or inquiry to be taken of CKT's investments in and loans to Weststar and its related corporations.

Findings of fact

39 There are several findings of fact that may be neatly disposed of before proceeding to the substantial findings of the trial. These pertain to whether:

(a) Chua gave Tew the sum of \$700,000 to \$800,000 between 1986 and 1992;

(b) Tew had promised Chua that she would receive a half share in the profits of CKT and that Chua and her sons would get all his shares in CKT; and

(c) Chua had paid \$300,000 for the 270,000 CKT shares issued to her in 1993 and \$150,000 for the 90,000 CKT shares issued to her in 1996.

Demeanour

40 First of all, I make my observations regarding the credibility of the witnesses. The primary protagonists in this family drama are Chua and Tew. Although Tew died before the trial commenced – indeed he died before Suit 251 was filed – he had filed the AEIC for Suit 9, as well as a number of affidavits in OS1052 and OS1056. His evidence did not pass through the crucible of cross-examination and I have borne this in mind. It is nevertheless useful in testing the veracity of the evidence of the other side. Also the availability of various affidavits filed by Tew over a period of almost a year enables them to be examined for inconsistencies. Finally the credibility of what Tew had deposed to in his affidavits can be tested against the circumstances and events.

41 Chua had the advantage, or disadvantage, of being tested in the witness box. I should at the outset state that her command of English was not good and she had often misunderstood questions and given answers that were off the mark. But even giving her a wide berth on account of this factor, it was apparent at an early stage that she was concocting answers as and when she felt it was necessary to do so. Chua changed her solicitors in 2009 and took advantage of this to blame her previous solicitors for omitting to put in her affidavits matters that she claimed she had told them. These concerned contradictions in those affidavits to her evidence in court or in later affidavits. The problem with this explanation was that on some occasions she made the same claim in relation to affidavits or pleadings drafted by her present solicitors. Chua did not impress me as a person who stuck to the truth in the witness box.

42 The same, unfortunately obtained for Lay Loon. Although he was much kinder in his description of Tew than his mother was, he took her position whenever he had to make a choice between the two of them. Furthermore, he had also blown hot and cold in the two suits. In his AEIC in Suit 9, in which he claimed that Tew had given to him as a gift the monies remitted to him in Australia, his description of Tew was that of an all-loving, all-providing stepfather. When it came to Suit 251, in

which his mother was claiming an interest in CKT and various properties, Tew became a cash-grubbing opportunist taking advantage of his mother's money.

43 Another major witness was Lay Ann. Being three years older than Lay Loon, he was not as close to Tew. I also found him to be an unreliable witness. In cross-examination, he was evasive and uncooperative. One particular exchange in his testimony encapsulated his demeanour. Lay Ann was asked in cross-examination if he had given a reply to CKT's letter of 24 May 2008. In his rather extended reply to this simple question, he gave a range of answers. At first he said he did reply. When pressed, he said he could not remember if he had replied. When it was pointed out to him that in his AEIC in Suit 251 he had said that he did not reply, his answers became evasive. It was then pointed out to him that in para 17 of his AEIC in Suit 9, he had said he replied. He then testified that what he had said in para 17 of his AEIC in Suit 9 was "inaccurate". He said that he had made that statement based on a "mistaken belief". I should point out that the purpose of his AEIC in Suit 9 was to show that he and Lay Loon were not aware of the sale of shares but they were nevertheless willing to assist in the transfer. However the purpose of his AEIC in Suit 251 was to show that they had effected the transfer and therefore there was no need for Weststar's accounts to be audited and so avoiding an order to provide the accounts of Weststar. Lay Ann was caught in the horns of a dilemma in the two suits, just as his younger brother was.

Whether Chua gave Tew \$700,000 - \$800,000 between 1986 and 1992

44 A key finding of fact relates to Chua's claim that she had given Tew cash totalling some \$700,000 to \$800,000 in the period 1986 and 1992. I find that she did not give such a sum for the following reasons:

(a) The numbers do not add up. In her affidavit, Chua said that she had received some \$1.6m from shares and cash settlement in her divorce. In her oral testimony, she said that she had another \$1.2m making a total of \$2.8m. She had paid cash totalling some \$1.37m for purchases of the Fernwood Apartment and Maplewoods Apartment. She had paid cash for shares in CKT on two occasions, \$300,000 in 1993 and \$150,000 in 1996. This would bring the total cash payments to about \$1.8m, leaving her with a balance of some \$1m, out of which she gave \$700,000 to \$800,000 to Tew. Even taking the lower end of that sum, and adding \$100,000 which Chua said Tew had repaid her, she would have drawn down some \$600,000 leaving behind about \$400,000. On Chua's own evidence, she purchased, with cash, the following apartments: in 1994, the 993 Maplewoods Apartment and the Shelford Apartment and in 2000, the Wilby Apartment. Even allowing for the fact that she collected rent from the various properties and she had some proceeds from the sale of the Clementi Apartment, it is difficult to see how she could purchase, with cash, another two premium apartments in 1994 and one more in 2000 with the \$400,000.

(b) Chua had described her "initial hesitation" in mortgaging the Clementi Apartment for the \$120,000 bank facility for CKT in 1987. She said that she had done so only because Tew told her that, in return, she would continue to receive half of CTK's profits and that he had kept to his word. It is perfectly understandable that she would be concerned about mortgaging her property. However, on her own account, she had been giving cash to Tew since 1986 and had hundreds of thousands of dollars in her safe at the time, out of which by 1992, she had given some \$700,000 to \$800,000 to Tew. In that context, it is difficult to comprehend the extent that they went to in order to eke out another \$120,000 in 1987.

(c) The alleged \$700,000 to \$800,000 loan was not supported by any document at all. Not only was there no acknowledgement by Tew, there was also no evidence from Chua's own financial records as well as those of CKT. Chua claimed that she kept large sums of cash in her

safe at home and each time she had given tens of thousands of dollars to Tew in cash. This would have meant that she had foregone the income that could have been earned had she not kept the million odd dollars under the proverbial mattress. While this might not raise an eyebrow in today's low interest rate environment, in the context of the much higher interest rate available in the late eighties, it would be rather unusual for a divorcee to forgo such a substantial income.

(d) Chua gave inconsistent versions of how Tew paid her the \$100,000 as her share of CKT's profits. In her AEIC, she said that Tew had given her \$5,000 to \$10,000 each time. However in para 3.1 of the further and better particulars of her claim in Suit 251, she said that Tew gave her this sum on three occasions. She gave a third version from the witness box: Tew had given her a total of \$100,000 over a 2-week period some three or four years from 1986.

(e) On 6 October 2008, Chua swore her AEIC in Suit 9. She said that Tew asked her for financial assistance soon after they started dating in 1986, promising an equal share of the profit. She then started to provide "small cash loans", and went on to describe the mortgage of the Clementi Apartment which enabled CKT to obtain an overdraft of \$120,000. Similarly, in her affidavit in OS1052, Chua stated that she provided "small cash loans" to CKT. When cross-examined on this, she explained that although the total of some \$700,000 was high, she had handed over \$50,000 or \$60,000 on each occasion and she considered such sums to be small. When confronted with her supporting affidavit for interim injunction in Suit 251 in which she said she had loaned CKT "large sums" of money in cash, she gave an unintelligible answer. And in her OS1052 affidavit, after stating that she gave "small cash loans" to CKT, she went on to describe how she acceded to mortgaging the Clementi Apartment to secure the \$120,000 for CKT. In the circumstances, it is difficult to believe, if she had been giving sums of \$50,000 to \$60,000 to Tew on each occasion, that she would ever describe such sums as small. It is even more difficult to believe that she would fail to mention that she had advanced a total of some \$700,000 to Tew, which dwarfs the \$120,000 from the Clementi Apartment mortgage.

Whether Tew made the promises on profits and CKT shares as Chua had claimed

45 Without the \$700,000 to \$800,000, the only substantial financial assistance that Tew obtained from Chua was the 1987 mortgage of the Clementi Apartment which gave CKT access to a line of credit of \$120,000. However it must be borne in mind that in providing such assistance, she did not have to relinquish any cash or asset; what she did in substance was to assume the credit risk of CKS for this amount. She continued to have use of the Clementi Apartment, including the rental proceeds when she subsequently moved elsewhere. Chua had subsequently given further financial support when she agreed to mortgage the Fernwood apartment in 1992 and the 991 Maplewoods apartment in 1993. However in respect of the Fernwood Apartment, she had only paid out \$72,000 plus stamp duty and legal fees for it. The payments of the balance amounts to the vendor and progress payments to the developer were made by CKT. As for the 991 Maplewoods Apartment, Chua had only paid 20% of the purchase price of \$649,800 to the developer. The progress payments to the developer were paid by CKT. Against these contributions, Chua had the benefit of the entirety of the rental proceeds of these two apartments when they were leased out upon completion. It was in the mortgage of the Sommerville Apartment in 1994, which Chua had purchased in 1988, that Chua had given a substantial benefit to Tew, as in the case of the mortgage of the Clementi Apartment.

46 Chua's claims about the promises made by Tew must be seen in this context. Absent the \$700,000 to \$800,000, it is inconceivable that Tew would promise half the profits of CKT for the \$120,000 line of credit obtained from the mortgage of the Clementi Apartment. And although Chua did provide some degree of financial support in mortgaging the Fernwood Apartment and the 911 Maplewoods Apartment, and substantial support in mortgaging the Sommerville Apartment, this must

be seen in the familial context at the time that this was done. This aspect is discussed in [50]- [52] below. Although Tew was not available to refute these claims, Chua's lack of fidelity to the truth and propensity to exaggerate, combined with the factual matrix, make it impossible to make a finding in her favour.

Whether Chua paid for the 270,000 and 90,000 CKT shares

47 As set out in [15] above, Chua was issued 270,000 CKT shares in 1993 and 90,000 CKT shares in 1996. Chua claimed that she had paid \$300,000 for the 270,000 CKT shares issued to her in 1993 under the following circumstances. Chua said that by 1993, she had loaned CKT large sums of cash for which she was no longer getting her half share of CKT as Tew had promised, and she had also mortgaged her Clementi Apartment and the Fernwood Apartment to secure CKT's bank facilities. Chua said that she became increasingly concerned as Tew told her nothing about CKT's business and she had no security for all the assistance she had given. Chua therefore asked Tew for some shares in CKT. Tew refused at first and they got into a quarrel over this. It was only when Chua threatened to revoke the mortgages on the Clementi Apartment and Fernwood Apartment that Tew relented. However Tew did not tell her how many shares he was going to issue to her and she did not ask as she feared another quarrel. Chua said that Tew asked her to pay \$300,000 for the shares and she paid up out of ignorance of corporate matters. She assumed that she would receive 300,000 shares for that payment, but it transpired that only 270,000 shares were issued to her and Tew told her that the balance \$30,000 was for payment of registration, audit fees and other fees. As regards the 90,000 shares issued, Chua said that sometime in 1996, Tew told her that CKT would be issuing further shares to her and asked her to pay an additional S\$150,000 for them. Chua said that she subsequently discovered that CKT had only issued 90,000 shares to her and that they were supposed to be bonus shares for which no payment was required.

48 I do not believe Chua's evidence on this issue. Quite apart from the fact that there is no record of her payment to CKT of \$300,000 in 1993 and \$150,000 in 1996, she had repeated her claim of having lent large sums of cash to CKT by 1993, which would refer to the \$700,000 to \$800,000. Having found that she did not make these loans, the absence of such "large sums of cash" would substantially dent the basis of her claim. Her story that she had timidly coughed up the \$300,000 cash for the shares despite having demanded from Tew the CKT shares in consideration of her substantial financial support is rather incredible. Crucially, Chua had made statements in her affidavit of 15 September 2009 in OS1056 that are not consistent with her position in the trial as to how the 270,000 shares came to be issued to her. At para 9 of her 15 September 2009 affidavit, she had said as follows:

... it was [Tew] who offered me the directorship and shares, profit sharing and interest of [CKT] stating that it was my reward for funding [CKT]. ... Looking back, I now realize that he had offered me the directorship and shares in [CKT] to make me trust him and entice me into mortgaging my properties for his and [CKT's] benefits.

49 I therefore find that Chua did not pay the \$300,000 and \$150,000 that she claimed she did for the 270,000 and 90,000 shares respectively.

Tew, Chua, Lay Ann and Lay Loon as a family

50 It was clear to me from the evidence that, although the relationships between Tew and Chua, Lay Ann and Lay Loon, soured in the last four years of Tew's life, this was not the case before that. As Chua herself had stated, she was reluctant to marry Tew on account of her sons and it was only when she was convinced of Tew's sincerity towards her sons that she agreed to marry him. Therefore

on her own evidence, Tew had succeeded on that score. It could be that Tew was insincere and Chua had not seen through it; she certainly painted a picture of Tew as a person who was out to take advantage of her wealth to further his business. Indeed, one could easily have believed this in the light of Tew procuring Chua to mortgage her Clementi Apartment to secure CKT's bank facilities and his changing of surname to please her. But when I consider what Tew gave to the family, I find the truth to be the opposite. When Tew married Chua, her sons were aged 9 and 6 years. Tew was not only there for their formative years, but certainly in respect of Lay Loon, he was a father to him. Lay Loon had said this in his AEIC in Suit 9 and had conceded to this in the witness box. That he might have not been as close to Lay Ann is understandable as the latter was three years older than Lay Loon. However the true test of Tew's sincerity is not in the talking but in the doing; in that aspect, Tew had shown that he had treated the boys as his own in the area of financial expenditure. Tew had supported them through school and through tertiary education. The first one was Lay Ann, for whom he provided full financial support throughout his five years in university in England. He even purchased a house in Manchester for him to live in. And when Lay Ann sold the house upon completion of his studies, Tew did not ask for the proceeds of sale. As observed earlier, Tew was much closer to Lay Loon, who said that he was the favourite son. Tew not only financed Lay Loon's university education in Australia, he had given him half the money to purchase the Studio Apartment in Melbourne. When Lay Loon wanted a larger one in contemplation of settling there, Tew gave him A\$380,000 to purchase the Melbourne Apartment. Tew also bought Lay Loon a car for his use in Melbourne. According to Lay Loon, Tew visited him often in Melbourne, staying with him in the apartment. When they were apart, Tew could telephone Lay Loon three or more times a week, talking as a father would to his son.

51 Aside from the large sums of money that Tew expended on his stepsons' education, another key indicator to Tew's regard for them is the investment in Weststar. Through CKT, Tew coughed out \$4.8m to invest in Weststar in 2001. This investment was done at Lay Ann's instance, who was all of 24 years old at the time and a freshly minted graduate not long before that. This investment provided employment for Lay Ann and Lay Loon; indeed Lay Ann was appointed President of NetSecure Holdings Ltd ("NetSecure"), a subsidiary of Weststar, at the grand age of 28 years. More significantly, it resulted in Lay Ann and Lay Loon each receiving one-third of the shares of Weststar, with the remaining one-third going to CKT. Tew had, in effect, bequeathed a total of \$3.2m to his two stepsons. Furthermore, when NetSecure subsequently ran into financial trouble, Tew ploughed in more money in the form of loans, which eventually amounted to \$1.4m. These amount to a much higher sum than the financial assistance provided by Chua, even adding the \$700,000 to \$800,000 that she claimed she had provided. When the education costs of Lay Ann and Lay Loon, including purchases of properties in England and Australia are added, the total sum expended by Tew on his family dwarfs whatever financing that Chua claimed she had provided to him.

52 But my finding is that Tew never saw this in terms of numbers. He unhesitatingly provided for his stepsons to the extent that his financial circumstances allowed him. This explains why Lay Loon said that he was surprised that Tew was demanding that he sell the Melbourne Apartment and return the proceeds to him. Indeed, why did Tew do this, if he was a sincere father? I find that the reason for this was that by 2003, Tew had overstretched himself with the \$4.8m investment in Weststar in 2001. He had restructured the mortgages of the 3 Properties so that he and Chua (whom he had "forced" to agree) undertook personal liability for the loans in order to reduce the interest costs. However the Weststar investment was not doing well, and neither was CKT, as the huge financing costs incurred on account of the Weststar investment dragged down its performance. Tew needed to cut costs and liquidate unnecessary assets. That was why he turned to Lay Loon and asked him to sell the Melbourne Apartment. Things for the family took a turn for the worse when Tew was diagnosed with leukemia in January 2007 and he was not only unable to work at full capacity, but also saddled with huge medical bills. This was compounded by heavy financing costs of CKT and quarrels

with Chua over money. Tew had to turn to his sister, B N Teu for financial assistance. But this further aggravated the situation with Chua when she discovered that Tew had nominated B N Teu as the beneficiary of his CPF funds.

Conclusion

53 The last two years of Tew's life were tragically filled with worry and woe. His health and finances were crumbling around him. He had become estranged from his wife, and along with her, his stepsons as well, whom he had raised for over a decade and a half. He spent the last twelve months of his time in this world not only fighting to remain in it, but also fighting against his favourite stepson in court and his wife and other stepson out of court. His family situation had been reduced to this sorry state. And yet, in his prime, Tew had not only been a generous provider of financial support for the family, he had been a source of inspiration for Lay Loon, at the very least. He had put not only his faith in the abilities of his stepsons, but treasure as well, and vested in them shares of Weststar to the value of more than \$3m. He treated his stepsons no different from how an indulgent father in his circumstances would have treated his biological sons. And when the treasure ran out, he dealt with the situation no differently – he tried to retrieve it where he could in order to save the source of that treasure, CKT, so that it can continue to provide for him and his family.

54 I therefore conclude that all the transactions disclosed from the evidence, all the agreements, if they exist or can be so described, and understandings, were made in the context of what is found in a normal family. This was a family arrangement. All the financial support that Chua had provided were given as a wife to a husband, without expectations of any return and was not subject to any promise. In the course of the 15 years of harmonious family relationship, Tew had manifested his sincerity and Chua had no compunction about increasing the financial assistance. On the other side of the accounting ledger, not that there was any in the minds of Tew and Chua at the time, are the fact that Tew had been a father figure to Lay Ann and Lay Loon, and the financial outlay of their university education in England and Australia, as well as the investment in Weststar. It was a ledger that, by any standard, was balanced, with occasions when one side derived a larger benefit. More importantly, it was not thought of in such terms at the time that each side contributed to the proverbial balance sheet. It was only in the last few years, when good times turned to bad, that past suspicions came to the fore and Tew's failing health and financial ability failed to check the downward spiral in their relationship. In this factual context, I disbelieve Chua's claim that Tew had at various times promised to her that his shares in CKT would all go to her and her sons upon his death.

55 In the premises, my orders in respect of the following paragraphs of the amended statement of claim in Suit 251 are as follows:

- (a) The claim in [74.2] against Tew's estate for \$322,857 being excess payment by Chua to Tew for the 360,000 CKT shares is dismissed on the ground that there was no such payment.
- (b) The claim in [74.3] against Tew's estate for Tew's shares is dismissed on the ground that Tew had not promised that such shares would go to Chua and her sons upon his death, and that even if he did, the circumstances under which it was given did not justify a claim on the basis of proprietary estoppel. Accordingly, the prayers in [74.4] and [74.5] against Tew's executors and CKT relating to the transfer and registration of Tew's shares in CKT are dismissed.
- (c) The claims in [74.6] and [74.7] in respect of the Mun Hean Office are dismissed on the ground that this was part of the family arrangement relating to provision of financial assistance by Chua.

(d) The claim in [74.8] for damages in relation to Tew's occupation of the Fernwood Apartment in the last year of his life is dismissed on the ground that Tew is a tenant-in-common and has equal rights to the property. I also find, in this egregious manifestation of the degree of bitterness between the parties, that there is no evidence of damages.

(e) The claim in [74.9] for director's fees and dividends is dismissed as I find that the agreement between Tew and Chua was that Tew would be at liberty to use it.

(f) The claims in [74.10] to [74.15] in respect of the 3 Properties are dismissed on the ground that this was part of the family arrangement. With Tew no longer able to service the mortgage payments, it was open to Chua to dispose of the property to keep it afloat and she chose the latter course.

56 In respect of the counterclaim in Suit 251, consequential to my finding that all financial transactions between Tew and Chua were in the context of a family arrangement, I find that the beneficial ownership of the Fernwood Apartment and the 991 Maplewoods Apartment were intended to be on the basis of the legal ownership and I so hold. For removal of doubt, I would state that this pertains to the equity remaining in those properties, net of all legal encumbrances on those properties.

57 The remaining issue in the counterclaim in Suit 251 is the claim by CKT, along with Teo and Ang as executors of Tew's estate, for an account of the investments in and loans to Weststar and its related corporations. I have found that Tew had regarded all the financial transactions in these suits to be in the nature of a family arrangement. When he made the decision to invest in Weststar and to vest one-third of the shares each to Lay Ann and Lay Loon, it was the decision of a father for the benefit of his sons. When the investment fell into financial distress, he did not flinch from pouring in another \$1.4m. Indeed, an indication of the fact that Tew regarded this as his personal investment is found in the fact that Tew eventually purchased the Weststar shares held by CKT for the sum of \$4.8m, the amount of the original investment. CKT is no longer a shareholder and no longer entitled (if there is such entitlement as shareholder) to the Weststar accounts. Consistent with my finding that Tew regarded this as a family arrangement, there is no legally enforceable right for an account. However this finding does not prejudice any right that CKT may have in relation to any loan it had advanced to Weststar or its related companies.

58 Finally, I turn to the claim against Lay Loon in Suit 9. I find that it was a desperate clutching at straws to try to retrieve some cash. Another possibility was, as Lay Loon had expressed in his AEIC in Suit 9, that it was an attempt by Tew to jolt Lay Loon into taking his side against Lay Ann in relation to Weststar's affairs. Whatever it may be, it is a father asking a disobedient son to do something against the latter's will. Whatever may have been the moral obligation on the part of Lay Loon to carry out Tew's wishes, there is certainly no legal obligation as would impel a court to order Lay Loon to comply with them. Accordingly, the claim by Tew's estate against Lay Loon in Suit 9 is dismissed.

59 I will hear counsel on the question of costs.

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