

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 113

Suit No 392 of 2012/L

Between

Lai Hoon Woon (executor and
trustee of the estate of Lai Thai
Lok, deceased)

... Plaintiff

And

1. Lai Foong Sin
2. Low Kim Thai @ Liew
Kim Eng

... Defendants

JUDGMENT

[Trusts] — [Constructive trusts] — [Common intention
constructive trusts]

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

[Succession and wills] — [Testamentary capacity]

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Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased)

v

Lai Foong Sin and another

[2016] SGHC 113

High Court —Suit No 392 of 2012/L

Kannan Ramesh JC

25–26, 29–30 June, 1–3, 6–10, 14–15 July 2015; 29 December 2015.

14 June 2016

Judgment reserved.

Kannan Ramesh JC:

Introduction

1 Lai Thai Lok (“the Deceased”) succumbed to lung cancer on 25 June 2003 at the age of 73 leaving behind his wife Mdm Liew Kim Eng (“Mdm Liew”), who is the 2nd Defendant, and their seven adult children, of whom the Plaintiff and the 1st Defendant were two. Significantly, on 20 June 2003, five days before his death, the Deceased executed a will (“the Will”) which addressed comprehensively the distribution of his assets to his beneficiaries. The Will was drafted by a solicitor, Ms Anne Choo (“Ms Choo”), who was retained by the Deceased on or about 13 June 2003 primarily for that purpose. Given that the Deceased was ravaged by the final stages of terminal lung cancer at the time of preparation and execution of the Will and passed away shortly thereafter, it was not surprising that those who were least provided for

thereunder mounted a strident challenge to its validity. The Will was the subject of intense scrutiny in the evidentiary hearing before me with the gravamen of the complaint being the alleged suspicious circumstances surrounding its execution. Allegations that the Deceased lacked testamentary capacity and the execution of the Will was procured by undue influence flew thick and fast from the Defendants. The barbs were directed principally at the Plaintiff but two of his siblings, Lai Foong Chong (“Foong Chong”) and Lai Poh Lin (“Poh Lin”) were not spared criticism. Needless to say, the sums that the 1st Defendant and Mdm Liew were each bequeathed under the Will (they both received the same amount) paled in comparison to the bequests to the other beneficiaries.

2 The Deceased was not spared. Mdm Liew trained her sights squarely on him, alleging that he had dishonestly and surreptitiously transferred significant sums of monies, to the tune of \$404,225.19, from bank accounts in their joint names to bank accounts in his sole name several months before his death.

3 The challenge to the Will provided the setting for an equally significant second battlefront – whether the assets distributed under the Will were in fact the Deceased’s. At stake was ownership of two Housing Development Board (“HDB”) shop units and the businesses that were operated on the premises. Widely divided and wildly divergent positions were taken on whether these assets were in fact the Deceased’s, with the 1st Defendant laying claim to one shop unit and business, and Mdm Liew laying claiming to both shop units and the businesses. The heated discord over the Will, and these assets and businesses polarised the Lai family. I saw a family torn

asunder with wife pitted against husband, mother against children, father against children and siblings against each other, each doggedly sticking to entrenched positions. Unfortunately the principal protagonist, the Deceased, was not able to present his position or defend his turf and conduct in the face of numerous allegations that placed him in their cross-hairs. It was not pleasant viewing. This is the pith of this unfortunate dispute.

Background

The parties, the players, the properties and the businesses

4 Before I trace the background, it would be useful to begin by identifying the parties, and the properties and businesses that are at stake in this action. The Plaintiff is the executor and trustee of the estate of the Deceased appointed under the Grant of Probate of the Will obtained on 8 September 2006 (“the Grant”).

5 Mdm Liew is the Deceased’s wife and his widow. At the time of the evidentiary hearing, she was 79 years old. The 1st Defendant is the second child and son of the Deceased and Mdm Liew.

6 The Deceased and Mdm Liew had a total of 7 children - four sons and three daughters. The children, in descending order of age are:

- (a) Lai Khian Hin (“Khian Hin”);
- (b) the 1st Defendant;
- (c) Foong Chong;

- (d) Lai Siew Lian (“Siew Lian”);
- (e) Poh Lin;
- (f) Lai Pick Lian (“Pick Lian”); and
- (g) the Plaintiff.

7 Mdm Liew and all the children bar Khian Hin and Pick Lian testified. Fong Chong and Poh Lin were called as witnesses by the Plaintiff. Siew Lian was called as a witness by Mdm Liew. The 1st Defendant called Dr Ong Kim Kiat (“Dr Ong”), a cardiothoracic surgeon from Gleneagles Hospital (“Gleneagles”) who treated the Deceased between 3 and 5 June 2003 for severe breathlessness, as his witness. In addition, Mdm Liew called one Tan Hwee Kheng, a vendor to one of the businesses in question, whose evidence was not material in my view.

8 Two properties and the businesses that were operated thereon are critical to the present action. The first property is a shop unit at Block 221, Boon Lay Place #01-130 Singapore 640221 (“the Boon Lay Property”) which was initially leased by the Deceased from the Jurong Town Corporation (“the JTC”) sometime in 1978 on a month-to-month tenancy. Subsequently, on 26 December 1985, the 1st Defendant was added as co-tenant of the lease, with Khian Hin’s name added soon after. By an agreement to lease dated 30 June 1993, the Boon Lay Property was purchased from the HDB (the HDB having taken over ownership from the JTC) in the joint names of the Deceased and the 1st Defendant only as tenants-in-common, with their respective shares being 51% and 49%.

9 The business that operated from the Boon Lay Property carried the name Lokyang Department Store (“the Boon Lay Shop”). The Boon Lay Shop was registered by the Deceased as a sole proprietorship in his name on 16 March 1978, at about the time the Boon Lay Property was leased from the JTC. On 17 December 1985, Khian Hin and the 1st Defendant were added as partners of the Boon Lay Shop.

10 The second property is a shop unit located at Block 210, Bedok North #01-733 (“the Bedok Property”). It was leased from the HDB by the Deceased in 1979. At about that time, the Deceased registered a sole proprietorship in his name. It carried the name Loyang Department Store (“the Bedok Shop”). Sometime in 1992, the HDB offered the Bedok Property for sale to the Deceased. Instead of purchasing the same, the Deceased decided to make an immediate profit by flipping the property. He assigned his interest in the Bedok Property to one Lim Chi Beng (“Mr Lim”) for \$750,000. As a result, the Bedok Shop ceased operations.

11 There is disagreement over the ownership of the Boon Lay Property and Shop, the Bedok Property and Shop, and the proceeds of sale of the Bedok Property. While many of the facts are hotly disputed with widely polarised positions, there are some facts which are undisputed or indisputable. I shall recite them in a chronological manner starting from when the Deceased and Mdm Liew met and ending with the commencement of these proceedings.

The background facts

1954 to 1977

12 The Deceased met Mdm Liew when he was working for her mother as an apprentice tinsmith in the early 1950s. Mdm Liew was also working for her mother at that time. The relationship blossomed and in 1954, they married. Mdm Liew was then 18 years old.

13 After working in Singapore with “Carrier” and in Penang with a company called “Yo Li” maintaining air-conditioners, the Deceased eventually settled with the family in 1959 in an area then known as 15th Milestone, Jurong. By that time, the family had grown by three with the Deceased and the Mdm Liew having had the first three of their children. To help care for the children, the Deceased’s father moved in. Four more children were born while the family was living at 15th Milestone.

14 The Deceased was a businessman with a strong entrepreneurial streak. He started the first of his businesses, a tinsmith business, shortly before the family moved to 15th Milestone. The business continued thereafter at what was then known as 16th Milestone, Jurong. The business was named “Yong Seng Huat” in 1959. A small farm located at the back of the family’s residence in 15th Milestone was started in 1961. On this farm, vegetables were grown and livestock such as poultry and pigs was reared. Mdm Liew asserted that she owned and managed the farm. On the contrary, the Plaintiff asserted that the Deceased owned the farm and it was his grandfather who managed it. This difference of views is not significant.

15 Mdm Liew also asserted that she ran a small shop at the front of the home which she used to canvass orders for Yong Seng Huat. Apart from canvassing orders, Mdm Liew alleged that she delivered articles to customers of Yong Seng Huat on a bicycle. There is also disagreement on these allegations, which again is not material.

16 A resettlement scheme was implemented by the Government in Jurong in 1968, resulting in the closure of Yong Seng Huat. The resettlement scheme also affected the family home in 15th Milestone. The family and the Deceased's father relocated to a HDB rental unit in Toa Payoh in 1969. At about that time, as a result of a disagreement with the Deceased, Mdm Liew left home and stayed away from the family for about a year. The Deceased's father helped care for the children during her absence. Allegations of improper association were made. It would seem that the relationship between the Deceased and Mdm Liew was not a particularly calm one.

17 While at Toa Payoh, Mdm Liew operated a stall at a canteen in a school in the vicinity.

18 By that time, the Deceased had started a new business called Yong Hup Seng Metal Works ("Yong Hup Seng") in Jalan Alsagoff which handled the installation of air-conditioner ducting systems. Yong Hup Seng proved to be a big success between 1968 and 1976 when it employed as many as 50 workers and was ranked in the top three contractors in that sector in Singapore. Big projects were undertaken by Yong Hup Seng and it was common ground that the Deceased made a lot of money during that period. The 1st Defendant joined the business in 1977 after completing his National Service.

19 1976 brought some misfortune to the Deceased and Yong Hup Seng. A disagreement between the Deceased and his two partners resulted in the latter leaving the business. Though the Deceased continued operating Yong Hup Seng, these departures precipitated a significant loss of business and a consequent shrinking of the workforce. The Deceased started Thai Lok Engineering (“Thai Lok”) on 1 July 1977 – also an air-conditioning ducting business. The 1st Defendant assisted the Deceased in Thai Lok until 1979 when he was instructed to assist in the operations of the Bedok Shop. In 1978, Thai Lok and Yong Hup Seng had between 8 and 10 workers. It appears that Thai Lok had several air-conditioning projects on hand between 1977 and 1978. In particular, a substantial project for the Singapore Airport Terminal Services was secured in 1978.

20 1976 was also the year when the family moved from Toa Payoh to a flat in Ang Mo Kio purchased from the HDB. Mdm Liew started selling food from the flat to construction workers who worked in the vicinity. Subsequently, she took up a stall at a coffeeshop in Ang Mio Kio from which she ran a fishball noodle and laksa shop. Some of the younger children appeared to have assisted her in running the stall. The stall ceased operations when Mdm Liew sold it. Following the sale, she became involved in the Boon Lay Shop.

21 The Deceased was a feisty man. He did not take the resettlement of Yong Seng Huat lightly. He engaged the Government in protracted and intensive negotiations for compensation arising from the said resettlement. In 1978, after nine years of trying, his efforts bore fruit. The JTC offered him the Boon Lay Property on a month-to-month tenancy so that he could start a new

business in place of the displaced Yong Seng Huat. This saw the birth of the Boon Lay Shop.

1978 and the Boon Lay Property and Shop

22 The Boon Lay Property was taken on a month-to-month lease from the JTC in 1978. The tenancy was in the Deceased's sole name. At around that time, on 16 March 1978, the Boon Lay Shop was registered by the Deceased as a sole proprietorship in his name. The shop was a typical neighbourhood departmental store.

23 The circumstances surrounding the opening of the Boon Lay Shop are disputed. Mdm Liew and the 1st Defendant testified that it was Mdm Liew who had put up the start-up capital for the shop including its fit-out cost, the costs for the initial stock and the rent. The monies allegedly came from her savings garnered from the profits of the various businesses that she ran before the Boon Lay Shop was started. The 1st Defendant also testified that he had made significant direct financial contributions towards the start-up costs using money he had saved while working at Yong Hup Seng and Thai Lok, often on overtime and weekends. The Plaintiff's position and that of his witnesses was that the start-up capital came from the Deceased.

24 The Boon Lay Shop was initially managed by Mdm Liew and Foong Chong. Foong Chong had just completed his national service then. Some of the other children such as Siew Lian and Pick Lian helped out. The 1st Defendant was working in Thai Lok under the Deceased at that time. When business at the Bedok Shop commenced in 1979, Foong Chong moved over from the Boon Lay Shop. Thereafter, the day-to-day operations of the Boon

Lay Shop were managed by the 1st Defendant and Mdm Liew, with the other children helping out.

25 There is controversy over whether the Deceased was involved at all in the Boon Lay Shop. The 1st Defendant and Mdm Liew's position is that he was not. This is supported by Siew Lian. The Plaintiff's position, supported by Foong Chong and Poh Lin, is that while the Deceased was not involved in the day-to-day affairs of the business, he was there every evening for an update on the business for the day and to take stock of the revenue that was earned. In short, he exercised control as owner of the Boon Lay Shop.

1979 and the Bedok Property and Shop

26 Late 1979 brought a new development. Yong Hup Seng, which was operating then at Jalan Alsagoff, was the subject of resettlement by the Government. As part of the resettlement package, the HDB offered the Deceased the Bedok Property on a month-to-month lease. The Deceased accepted the offer and executed a lease with the HDB in his sole name. On 5 December 1979, he registered Loyang Department Store in his sole name. This was the birth of the Bedok Shop. The Bedok Property was different from the Boon Lay Property in that it was a shophouse, as opposed to a shop only, with both a commercial and a residential component. The family stayed in the residential unit for a period of time.

27 Like the Boon Lay Shop, the Bedok Shop was also a department store. Its focus was, however, on footwear. There are striking similarities between the controversy surrounding the ownership and management of both the Boon Lay Property and Shop, and the Bedok Property and Shop. The positions taken

by the parties as regards the Bedok Property and Shop and the Boon Lay Property and Shop are the same, except for the start-up capital for the former which was paid with monies taken from the Boon Lay Shop and not by Mdm Liew.

28 The Bedok Shop was run by Foong Chong up at least until 1982. He was assisted by Poh Lin and the Plaintiff. Foong Chong's wife (then fiancée) subsequently also helped out. Whether Mdm Liew was involved in the day-to-day management or indeed exercised control over the business is disputed.

1979 to 1987

29 The Boon Lay Shop was primarily managed by the 1st Defendant. Mdm Liew was also involved in its management. However, there is a dispute on Mdm Liew's exact involvement, if any, in the management of the Bedok Shop.

30 In 1982, Yong Hup Seng, which was operating at that time in Jalan Kambing, was resettled once again. The Deceased was offered a shop unit at Block 5 Unit 395K Yew Tee Industrial Estate ("the Yew Tee Unit") as a replacement. That offer was accepted and the Yew Tee Unit was purchased in the joint names of the Deceased and Foong Chong, using funds from the Boon Lay and Bedok Shops. The Deceased moved Yong Hup Seng and Thai Lok to the Yew Tee Unit, and Foong Chong left the Bedok Shop to take over management of Yong Hup Seng and Thai Lok. It appears that it was for this reason that Foong Chong was added as co-owner of the Yew Tee Unit. The Deceased stepped down from these businesses as a result and appears to have occupied himself with the Boon Lay Shop and the Bedok Shop, in particular

the latter. It seems reasonably clear that Foong Chong's wife and the Deceased were involved in the management of the Bedok Shop following Foong Chong's departure. There is, however, dispute as to who took charge of management.

31 1985 saw several significant events. First, on 17 December 1985, the 1st Defendant and Khian Hin were admitted as partners of the Boon Lay Shop. They were partners with 24.5% share each, with the Deceased holding the remaining 51% share. The 1st Defendant and Khian Hin were also added as co-tenants of the Boon Lay Property. The 1st Defendant and Khian Hin did not pay for their share of the partnership in the Boon Lay Shop. Their shares were given to them *gratis*, on the instructions of the Deceased. It is clear that the admission of the 1st Defendant and Khian Hin as partners was decided by the Deceased solely. The Deceased did not consult Mdm Liew before deciding. Nor did he communicate his decision to her after it had been implemented. Mdm Liew found out after the fact that the 1st Defendant and Khian Hin were admitted as partners and co-tenants. She did not raise any objection at not being consulted. Nor did she challenge the Deceased's right to deal with the Boon Lay Property and the Shop as he saw fit.

32 Second, the Yew Tee Unit was sold in 1985 by the Deceased and Foong Chong. By the 1980s, after Foong Chong took over, the business of Yong Hup Seng and Thai Lok declined in a difficult operating environment. The decline resulted in claims being threatened or made against both businesses by creditors. There is evidence of such claims in 1984 and 1985. These claims were resolved by payments being made using funds drawn from the Boon Lay Shop. It is clear that the businesses were struggling and Foong

Chong was having difficulty managing them. This prompted Foong Chong to exit the businesses with the Deceased's blessings, and the sale of the Yew Tee Unit. The proceeds of sale of the Yew Tee Unit were not returned to the Boon Lay and Bedok Shops but were instead taken by the Deceased solely. The sale of the Yew Tee Unit brought about the closure of Yong Hup Seng and Thai Lok.

33 Third, following his exit from Yong Hup Seng and Thai Lok, Foong Chong resumed management of the Bedok Shop. Foong Chong was assisted by his wife.

34 Foong Chong's second term managing the Bedok Shop ended in 1987 because of a misunderstanding with the Deceased. He left the business. The Plaintiff and his wife took over management of the business for a period of time thereafter.

1988 to 1993

35 The Plaintiff and his wife were involved in the Bedok Shop until 1991. On the parties' respective positions, the management of the Bedok Shop was either taken over by Mdm Liew or the Deceased with the assistance of Poh Lin. This difference is not material.

36 A significant event happened in 1992. The HDB offered the Bedok Property to the Deceased for purchase. The Deceased decided to "flip" the property by assigning to Mr Lim his right to purchase for \$750,000 ("the Assignment Proceeds"). The sale of the Bedok Property brought an end to the Bedok Shop. There is significant disagreement on who brought about this

transaction. At present, it suffices to note that the Assignment Proceeds were divided by the Deceased and deposited into three bank accounts. The details of the three bank accounts and the deposits that were made are as follows:

- (a) \$150,000 was deposited on 28 May 1992 in an Oversea-Chinese Banking Corporation (“OCBC”) account in the joint names of the Deceased and Mdm Liew (“Mdm Liew’s Joint OCBC Account”).
- (b) \$300,000 was deposited between 1 and 14 March 1993 in an Industrial & Commercial Bank (“ICB”) account in the joint names of the Deceased and Mdm Liew (“Mdm Liew’s Joint ICB Account”).
- (c) \$300,000 was deposited between 1 and 14 March 1993 in an ICB account in the sole name of Mdm Liew (“Mdm Liew’s ICB Account”). This amount was transferred shortly thereafter between 1 March to 5 March 1993 to a United Overseas Bank (“UOB”) account in the joint names of the Deceased and Mdm Liew (“Mdm Liew’s Joint UOB Account”).

Between May 1992 and 10 July 2003, the Assignment Proceeds flowed through multiple bank accounts. I have highlighted the principal movements in this recitation of the facts. For ease of reference, a tabulation setting out the flow of the funds is annexed to this judgment at Annex A.

37 In 1993, the HDB offered for purchase the Boon Lay Property. This time the offer was accepted and the HDB approved the sale on 30 April 1993. There is much controversy over the events and circumstances surrounding the discussions that resulted in the decision to accept the offer from the HDB. However, the following appears clear:

(a) The Deceased called for a meeting or meetings (there is dispute as to whether there were one or two meetings) of his sons to discuss the division of interest in the Boon Lay Property and Shop. Mdm Liew and the daughters were not invited to attend. Nor did they try to attend. The Deceased did not tell Mdm Liew that he was calling the meeting(s) though she eventually came to know of the same through the 1st Defendant.

(b) The Deceased did not discuss with Mdm Liew what he intended to communicate at the meeting(s).

(c) The Deceased decided the division of interest in the Boon Lay Property and Shop at the meeting(s). Mdm Liew was not consulted at all about the division. She did not attempt to stop the Deceased from dealing with the Boon Lay Property and Shop or confront him before, during or after the meeting(s).

38 Following the meeting(s), by an agreement for a lease dated 30 June 1993, the leasehold interest in the Boon Lay Property was purchased by the Deceased and the 1st Defendant as tenants-in-common with 51% and 49% shares respectively. Khian Hin retired as a partner of the Boon Lay Shop and the Accounting and Corporate Regulatory Authority (“ACRA”) records were updated to reflect this. The Deceased and the 1st Defendant continued as partners holding 51% and 49% shares respectively.

39 The purchase price for the lease was \$434,000, with \$399,280, being 92% of the purchase price, payable after the signing of the agreement and the remaining 8% payable on completion. The initial payment of \$399,280 was

funded by a 48-month term bank loan of \$215,280 from ICB commencing 28 July 1993 that was taken in the name of the Boon Lay Shop, on the terms set out in ICB's letter of offer dated 2 July 1993, and cash of \$183,652 from the Boon Lay Shop's bank account with UOB. The monthly loan repayments were made from the revenues of the Boon Lay Shop.

1994 to 2002

40 Apart from one event, nothing of significance occurred between 1994 and 1997. The management of the Boon Lay Shop was principally handled by the 1st Defendant.

41 On 6 June 1996, the Deceased purchased in his sole name a parcel of land in the People's Republic of China from Yong Ding County Xinyi Development and Construction Ltd ("the Yongding Property") for \$37,000. Funds from Mdm Liew's Joint UOB Account were used to make payment.

42 In 1998, the 1st Defendant bought a place of residence at Corporation Drive ("Corporation Drive"). The 1st Defendant took out a loan of \$300,000 ("the Loan") for this purpose. Again, there is vast disagreement on who gave the Loan, with the Plaintiff's position being that the Loan was given by the Deceased and the position of both the 1st Defendant and Mdm Liew being that the Loan was from Mdm Liew. However, it seems clear that the records on the Loan were maintained by the Deceased only. Mdm Liew offered no documentary evidence of the Loan.

43 Whether the Loan carried interest and was fully repaid are also matters of dispute. However, it appears clear that:

- (a) the Deceased was the one constantly harrying the 1st Defendant to repay the Loan;
- (b) the 1st Defendant hoped to settle the Loan using the proceeds of sale of his HDB apartment in Tampines; and
- (c) the Tampines apartment was sold in 2002 and \$284,126.52 from the proceeds of sale was received by the Deceased and banked into another ICB account in the joint names of the Deceased and Mdm Liew (“Mdm Liew’s Joint ICB Account No. 2”). The 1st Defendant and Mdm Liew take the position that this fully discharged the Loan, while the Plaintiff’s position is that there remains a shortfall of \$14,760.68.

44 The Deceased and Mdm Liew were joint tenants of a HDB apartment at Marsiling Drive (“the Marsiling Flat”). It is unclear who paid for the Marsiling Flat. The Plaintiff claims that the Deceased made the payment, but Mdm Liew contends that she provided the funds. The purchase price was \$106,200. Despite purchasing the Marsiling Flat, the Deceased and Mdm Liew resided in Corporation Drive with the 1st Defendant and his family , until the Deceased was diagnosed with advanced lung cancer in June 2003.

45 Despite living under one roof, the relationship between the Deceased and the 1st Defendant was not healthy. There was evidence that he was unhappy with the delay in repayment of the Loan and was critical of the 1st Defendant’s management of the Boon Lay Shop. The Deceased felt that the 1st Defendant and his wife lacked commitment and diligence, and consequently did not run the business well. The Deceased also felt that the 1st

Defendant was deceiving him by not properly accounting for the income, expense and profits of the Boon Lay Shop. In addition, the Deceased was unhappy with Mdm Liew as he perceived that she was supportive of the 1st Defendant.

46 The Deceased's unhappiness grew to such an extent that he harboured thoughts of selling the Boon Lay Property. From 1999, he started demanding that the Boon Lay Property be sold. His demands were to no avail. The Deceased tried another option – Mdm Liew. The Deceased requested Mdm Liew to persuade the 1st Defendant to sell the Boon Lay Property. Mdm Liew refused and took the side of the 1st Defendant. This caused significant friction in their relationship, so much so that on 9 December 2002, Mdm Liew lodged a police report (“the Police Report”). In the Police Report, she alleged that on the previous day, the Deceased had threatened to beat her to death if: (a) she did not persuade the 1st Defendant to sell the Boon Lay Property; and, (b) the 1st Defendant and his wife refused to sell the Boon Lay Property. Mdm Liew also made reference in the Police Report to an alleged assault by the Deceased on her in July 2002.

47 In 2002, the Deceased appointed GSK Valuers & Property Consultants Private Limited to value the Boon Lay Property in order to ascertain its price. Also, he approached lawyers from Unilegal LLC to examine his legal options as regards the 1st Defendant's 49% share in the Boon Lay Property. It is unclear whether these events occurred before or after the Police Report. Regardless, it is fair to conclude that the Deceased's relationship with the 1st Defendant and Mdm Liew had deteriorated by the end of 2002 quite materially.

2003 (January to May)

48 2003 was unfortunately the last year of the Deceased's life. As an indication of the disharmony with Mdm Liew, soon after the Police Report was lodged, between 7 January 2003 and 22 January 2003, the Deceased withdrew \$404,225.19 from three joint accounts with Mdm Liew and deposited the same into newly opened accounts in his sole name. The Plaintiff took the Deceased to the banks for this purpose. Mdm Liew only became aware of these transfers after the death of the Deceased. The details of the withdrawals and deposits are as follows:

(a) On 7 January 2003, the Deceased withdrew \$284,000 from Mdm Liew's Joint ICB Account No. 2. Out of this, \$280,000 was ultimately deposited into an OCBC fixed deposit account in the Deceased's sole name ("the Deceased's OCBC Account"), and the balance \$4,000 in an OCBC savings account in the Deceased's sole name.

(b) On 21 January 2003, the Deceased withdrew \$80,000 and accrued interest of \$149.58 from Mdm Liew's Joint ICB Account, as well as \$40,000 and accrued interest of \$75.61 from another UOB account in joint names with Mdm Liew. The \$80,149.58 came from the \$300,000 deposited into Mdm Liew's ICB Account, of which \$200,000 had been transferred to Mdm Liew's Joint ICB Account. The total of \$120,225.19 (\$80,149.58 plus \$40,075.61) was deposited into a DBS Bank account in his sole name.

As a result, most of the Assignment Proceeds that were deposited into accounts in the joint names of the Deceased and Mdm Liew, were transferred to accounts in the sole name of the Deceased by 22 January 2003.

49 Sometime in early 2003, the Deceased and Mdm Liew visited Foong Choong and his family in Tanjong Pinang, Indonesia. Foong Chong had been declared a bankrupt in 1999. The Deceased raised the subject of selling the Boon Lay Property with Foong Chong, expressing concern that the 1st Defendant was not properly accounting for the income of the business.

2003 (3 June to the passing of the Deceased on 25 June)

50 On 3 June 2003, the Deceased became short of breath while at home. Mdm Liew and the Plaintiff, who happened to be there, took the Deceased to a neighbourhood clinic. He was referred immediately to a hospital. The Plaintiff brought the Deceased to the Singapore General Hospital (“SGH”). He was met by Poh Lin there. There is some dispute on whether Mdm Liew and the 1st Defendant refused to take the Deceased to SGH. But it seems clear that they did not accompany the Deceased to SGH.

51 As the SARS epidemic was on, there was a long queue at SGH. Poh Lin waited with the Deceased in the waiting area while the Plaintiff waited outside. A preliminary assessment of the Deceased’s condition was made at SGH. Notes of his medical examination were admitted in evidence. The SGH medical notes for 3 June 2006 recorded the Deceased as being “well and able to speak in full sentences”.

52 The wait at SGH for full medical attention proved too long for the Deceased. He secured a discharge and sought the assistance of Dr Ong that evening. Dr Ong's testimony, which was largely unchallenged, was as follows:

(a) When Dr Ong first saw the Deceased, he was hardly able to speak, being extremely short of breath.

(b) He was suffering from *cachexia*, the medical term for severe physical deterioration – essentially, he was skin and bones having lost about 30% of his body weight. Dr Ong explained that this was because the body was severely malnourished due to poor appetite as a result of which, the body's fat reserves followed by muscle were drawn upon for sustenance. The deterioration would have taken place over two to three months and ought to have been apparent to the family members.

(c) To alleviate the Deceased's breathlessness, Dr Ong carried out an emergency procedure that evening to drain fluids from his lungs. A second fluid drain was done the next day. In total, about 1.5 litres of fluid was drained.

(d) Consent for these procedures was given by the Deceased. Consent would not have been procured from the patient if there were doubts as to his ability to give consent, the hospital reserving its right to seek the same from the next of kin in such circumstances. This was expressly provided in the consent form. In this regard, Dr Ong was satisfied that the Deceased was able to understand the procedure and give consent. The Deceased was orientated at the time of admission,

being able to walk into the hospital and react to questions with a nod to indicate “yes”.

(e) Following the procedures, the Deceased felt a lot better and was able to converse in full sentences. Dr Ong felt that he was lucid and clear.

(f) The Deceased was discharged from Gleneagles on 5 June 2003 as he wanted to return to SGH for further treatment. At that time, there was residual fluid in his lungs though he was feeling a lot better.

(g) Based on X-rays of the Deceased’s lungs carried out on 4 June 2003, Dr Ong formed the view that it was highly likely that the Deceased had advanced lung cancer. The prognosis was poor. He communicated his views to members of the family (though it would seem that did not include Mdm Liew and the 1st Defendant). Dr Ong was told by the family members not to inform the Deceased of the diagnosis and prognosis.

53 During the stay in Gleneagles, the Deceased was visited by members of the family. It is unclear whether the 1st Defendant was one of them. He appeared to be lucid and alert carrying out conversations in full sentences. Dr Ong did not make an assessment of his mental capacity.

54 Following discharge from Gleneagles, the Deceased was admitted to SGH late on 5 June 2003 for further treatment. The Deceased was discharged with home oxygen on 10 June 2003 and returned to the Marsiling Flat where he resided with Mdm Liew until his passing on 25 June 2003. In that period,

all family members had access to the Deceased. It ought to be noted that Foong Chong stayed at the Marsiling Flat to care for the Deceased.

55 The medical and nursing notes of the stay at SGH between 5 and 10 June 2003 were admitted in evidence. During his stay in SGH, more fluid was drained from the lungs. A bronchoscopy was also done and consent for these procedures was obtained from the Deceased. The medical notes taken at admission noted the Deceased as “stable [and] comfortable” and his general condition “fair”. The nursing notes recorded his condition as “fair, conscious, alert” with his speech observed as “normal” and his behaviour during the interview “cooperative”. The medical notes for his stay recorded the Deceased as being conscious and alert on each day. The discharge documents reflected the Deceased as being “alert and rational” and his mental status “orientated towards own ability”. All the members of the family appeared to have visited the Deceased while he was at SGH bar the 1st Defendant.

56 Medical tests carried out at SGH confirmed the diagnosis of advanced lung cancer with poor prognosis. The family was informed. The Deceased was not.

57 Several events of significance took place between 13 and 20 June 2003. There are essentially two strands of fact – one concerns the execution of the Will, a declaration of trust dated 20 June 2003 (“the Declaration of Trust”) and a power of attorney dated 17 June 2003 (“the Power of Attorney”), all prepared by Ms Choo. The other concerns the opening of bank accounts and the transfer of monies by the Deceased. It is best that the events are addressed chronologically for a better appreciation of the facts.

58 On 13 June 2003, the Deceased visited the law firm of Citilegal LLC (“Citilegal”). He was taken there by Khian Hin, Foong Chong and the Plaintiff in Khian Hin’s car. Foong Chong and the Plaintiff brought the Deceased to Citilegal’s office while Khian Hin remained in the car. The Deceased met Ms Choo, a partner of Citilegal, on that visit. While it is clear that Ms Choo was recommended to the Deceased by Poh Lin, it is unclear whether she made or had a hand in the making of the appointment.

59 Ms Choo met the Deceased alone. Following the meeting, the Deceased mentioned that he would be executing a power of attorney appointing the Plaintiff to rent or sell the Boon Lay Property. A return visit was scheduled for 17 June 2003. Upon returning to the Marsiling Flat, the Deceased told the Plaintiff about a record book (“the Record Book”) he maintained and where it was kept. The Deceased gave the Plaintiff instructions to retrieve the Record Book and hand it over to Khian Hin following his demise. The Record Book is relevant to two of the Plaintiff’s claims – the claim on the Loan, and for rent of the Boon Lay Property.

60 On 14 June 2003, the Deceased was taken by the Plaintiff to OCBC Bank’s Causeway Point branch. The Deceased and the Plaintiff opened two joint accounts, one a savings account (“the OCBC Joint Savings Account”) and the other a fixed deposit account (“the OCBC Joint FD Account”). The Deceased withdrew \$280,517.82 from the Deceased’s OCBC Account. This sum was deposited into the OCBC Joint Savings Account. A further \$3,021.67 was deposited by the Deceased into this account. Thereafter, between 14 and 20 June 2003, the Deceased withdrew \$280,000 from the OCBC Joint Savings Account and deposited the same into the OCBC Joint FD Account.

61 Also on 14 June 2003, the Plaintiff and the Deceased went to DBS Bank's Woodlands Civic Centre Branch. There, the Deceased added the Plaintiff's name to a fixed deposit account in his name ("the DBS Joint Account"). At that time, the total sum in the account was about \$119,000.

62 On 17 June 2003, the Deceased met Ms Choo again at Citilegal's office. This time, he was taken there by Foong Chong and the Plaintiff. Khian Hin did not accompany them as he was working. As before, the Deceased met Ms Choo alone. Following the meeting, the Deceased informed the Plaintiff and Foong Chong that he had signed the Power of Attorney though a copy was not shown to them. The Power of Attorney, which was in the standard form required by the HDB, appointed the Plaintiff as the Deceased's attorney to sell, sub-let and generally manage the Boon Lay Shop. It was signed by the Deceased in the presence of Ms Choo. A third visit was planned for 20 June 2003 to execute a will.

63 On 20 June 2003, the Deceased visited Ms Choo for the third and last time. He was taken to Citilegal's office by Foong Choong and the Plaintiff. He saw Ms Choo alone. He signed the Will in the presence of Ms Choo and Ms Lilian Lee, Ms Choo's secretary. The Will recorded Ms Choo as having explained its terms to the Deceased in Mandarin, and he as having understood and approved the same. Subsequently, the Plaintiff was asked by Ms Choo to enter the meeting room. She showed the Plaintiff the Declaration of Trust and asked him to sign it, which he did in her presence. On the way back to the Marsiling Flat, the Deceased handed to the Plaintiff a copy of the Will and a draft tenancy agreement for the Boon Lay Property.

64 The following should be noted as regards the Will :

(a) The Will dealt with the Deceased's 51% interest in the Boon Lay Property by dividing the same amongst Khian Hin, Lai Yida ("Yida", Foong Chong's son) and the Plaintiff in 16/51, 16/51 and 19/51 shares respectively. It appears that the Deceased intended Yida to receive Foong Chong's share because Foong Chong was an undischarged bankrupt.

(b) The Will did not lay claim to and deal with the 1st Defendant's interest in the Boon Lay Property or the Deceased's interest in the Marsiling Flat.

(c) Poh Lin received a 25% share of the residuary estate. The remainder of the residuary estate was divided equally amongst the rest of the Deceased's children except for the 1st Defendant, with each receiving a 15% share (Foong Chong's share was given to Yida once again). The 1st Defendant received nothing.

(d) Although the Will made no specific mention of bank accounts, it is apparent when read in the context of the Declaration of Trust that the Will treated the monies in the joint bank accounts of the Deceased and the Plaintiff as part of the residuary estate ([60] *supra*).

(e) Mdm Liew and the 1st Defendant were each allocated \$3,000.

65 The Declaration of Trust was a declaration by the Plaintiff that he held the monies in the OCBC Joint FD Account (amounting to \$280,000) and the DBS Joint Account (amounting to \$119,000) on trust for the Deceased.

66 The Deceased was on home oxygen when he met Ms Choo. Mdm Liew and the 1st Defendant were not aware that the Deceased consulted Ms Choo, or that he visited OCBC Bank and DBS Bank between 14 and 20 June 2003. They were not informed by the Deceased, Khian Hin, Foong Chong or the Plaintiff. The 1st Defendant testified that he met the Deceased daily and spoke to him during this period. Mdm Liew testified that she cared for the Deceased in this period.

67 On the same day that he executed the Will (*ie*, 20 June 2003), the Deceased returned to SGH for a medical review. The Plaintiff, Foong Chong and the 1st Defendant took him, though only the latter two saw the doctor. The diagnosis and prognosis were explained to them but not the Deceased. Based on SGH’s medical report, the Deceased was diagnosed with dyspnea (difficult or laboured breathing), pain over the sacral region and poor appetite. The Deceased was discharged from respiratory follow-up and given an early oncology appointment.

68 On 25 June 2003, the Deceased fainted at the Marsiling Flat. Foong Chong and the Plaintiff were there at that time. An ambulance rushed the Deceased to NUH. Unfortunately, the cancer overcame the Deceased and he died that evening from “intractable shock and respiratory failure”.

2003 (after the passing of the Deceased)

69 On 25 June 2003, the 1st Defendant unilaterally updated the ACRA records for the Boon Lay Shop to reflect the withdrawal of the Deceased as an owner, leaving the 1st Defendant as the sole proprietor of the business. Mdm Liew was present with the 1st Defendant when this happened.

70 The Deceased's wake was held between 26 and 28 June 2003. On 26 June 2003, the Plaintiff and Poh Lin opened a fixed deposit account at OCBC Bank's Causeway Point branch in their joint names ("the Consolidated Account"). The money in the DBS Joint Account, which had since become \$119,072.38, was transferred into the Consolidated Account on the same day. Further, on 10 July 2003, a sum of \$49,052.78, which was realised on 3 July 2003 from the liquidation of a unit trust held by the Deceased, was also deposited into the Consolidated Account.

71 Following the death of the Deceased, the Plaintiff retrieved the original Will from Citilegal. The Plaintiff disclosed the contents to Khian Hin, Foong Chong and Poh Lin. A family meeting was thereafter called to read the Will. That meeting took place at the Marsiling Flat. All of the Deceased's children and Mdm Liew were present. Unfortunately the meeting descended into a fracas. The Plaintiff read the contents of the Will but did not show it to those present. When Mdm Liew and the 1st Defendant learnt that they were left only \$3,000 each, accusations started to fly and attempts were made to grab the Will. The meeting was consequently called off.

72 The Plaintiff instructed Citilegal to apply for the Grant. The Grant was issued on 7 August 2003 and extracted on 8 September 2003. It should be noted that while the schedule of assets to the Grant did not make reference to the Consolidated Account, the DBS Joint Account and the OCBC Joint Savings Account were included in the schedule.

73 On 13 August 2003, Mdm Liew lodged a police report alleging that the Deceased had, between 7 January 2003 and 6 March 2003, withdrawn monies held in their joint accounts in UOB's Jurong West branch without her consent.

Mdm Liew's ICB Account and Mdm Liew's Joint ICB Account, amongst others, were identified.

74 On 20 August 2003, Mdm Liew and the 1st Defendant visited Citilegal's offices to request a copy of the Will. Their request was turned down though they were again told that the distribution to them under the Will was \$3,000 each.

Post 2003

75 On 22 March 2007, the 1st Defendant redeemed the loan on the Boon Lay Property from UOB and retrieved the title deeds. He refused to let the Plaintiff have them despite the Plaintiff's demands.

76 Efforts were made by the Plaintiff to sell the Boon Lay Property to no avail. This resulted in the Plaintiff commencing this action against the 1st Defendant on 11 May 2012. Several other claims were brought against the 1st Defendant. On 9 September 2013, Mdm Liew was added as a co-defendant to the action pursuant to Order of Court No 6288 of 2013, on her application.

77 It should be noted that Mdm Liew was represented by Messrs Jeanny Ng ("Jeanny Ng") from 24 September 2007 until the 1st Defendant's solicitors, Messrs Ho Wong Practice Law LLC ("Ho Wong"), took over on 1 April 2011. It is also relevant to note that on or about 31 December 2007, Mdm Liew made a will dated 31 December 2007 ("Mdm Liew's Will No. 1") under which she bequeathed all her assets to the 1st Defendant. Despite Mdm Liew being represented by Jeanny Ng at that time, Mdm Liew's Will No. 1 was prepared by one Mr Aw Teng Pooi ("Mr Aw"), a friend of hers. Having

not been prepared by lawyers, not surprisingly, Mdm Liew's Will No. 1 fell short of fulfilling the requirements for a valid will, and was subsequently discarded. I should also point out that Mdm Liew did execute another will eventually ("Mdm Liew's Will No. 2"). That will was prepared by Ho Wong. Mdm Liew declined to produce Mdm Liew's Will No. 2.

The Claims

The Plaintiff's claims

78 The Plaintiff sues as the executor of the Estate of the Deceased. His case is as follows:

- (a) The Boon Lay Property was held by the Deceased and the 1st Defendant as tenants-in-common with the Deceased having a 51% interest.
- (b) The Deceased was a partner of the Boon Lay Shop with a 51% share.
- (c) The Boon Lay Shop was liable to pay rent of \$4,000 per month to the Deceased for use of the Boon Lay Property from July 2000 and has been in arrears since August 2000.
- (d) The 1st Defendant owed the Deceased \$42,403, being the unpaid balance of the Loan.

79 The Plaintiff seeks various reliefs against the 1st Defendant based on these claims. They include:

- (a) an order for the 1st Defendant to execute such documents as may be necessary for the registration of the Plaintiff as tenant-in-common of a 51% share in the Boon Lay Property, as an executor and a trustee of the Deceased's estate;
- (b) an account of the profits of the Boon Lay Shop from the time of the Deceased's passing;
- (c) an account of the outstanding rent due from the Boon Lay Shop at the rate of \$4,000 per month; and
- (d) judgment for \$42,403, being the balance of the Loan.

The Plaintiff also prays for an order that the 1st Defendant accounts and pays to the Plaintiff rent at the market rate for the same period. However, this appears to have been abandoned as it was not pursued in his closing submissions.

The 1st Defendant's defence and claims

80 As regards the Loan, the 1st Defendant's position is that it was an interest-free loan which was fully paid to the Deceased.

81 The 1st Defendant denies that there was any arrangement for the payment of rent by the Boon Lay Shop to the Deceased for use of the Boon Lay Property, and says that no rent was in fact paid.

82 The 1st Defendant alleges that the claims for the Loan and an account of profits as regards the Boon Lay Shop are time-barred by reason of s 6(1) or 6(2) of the Limitation Act (Cap 163, 1996 Rev Ed) ("the Act") given that the

Deceased passed away on 25 June 2003 and this action was commenced on 11 May 2012, more than six years later.

83 Additionally, the 1st Defendant mounts a counterclaim.

84 The 1st Defendant alleges that at a family meeting at Khian Hin's residence in 1993, it was agreed that he would purchase the interest of the Deceased in the Boon Lay Property and Shop by paying the Plaintiff and Foong Chong \$33,165 each, and Khian Hin \$53,165. In addition, the 1st Defendant asserts that he purchased Khian Hin's 24.5% share in the Boon Lay Property and Shop for \$20,000. The total amount he agreed to pay for the Deceased's 51% interest and Khian Hin's 24.5% interest was \$139,495. It should be noted that this number changed in the 1st Defendant's Affidavit of Evidence-in-Chief ("AEIC") and his oral testimony to \$138,695. The Deceased's name was allegedly retained on the title and the Boon Lay Shop in order to enjoy a rebate of \$96,000 granted by the HDB for the purchase of the Boon Lay Property. Accordingly, the 1st Defendant counterclaims for a declaration that he is the sole beneficial owner of the Boon Lay Property and Shop. In other words, that the Deceased 51% interest is held on trust for him.

85 Further, the 1st Defendant alleges that the Deceased did not have testamentary capacity at the time of execution of the Will. He seeks a declaration that the Will is void as a result.

Mdm Liew's claims

86 Mdm Liew too mounts a counterclaim. It pertains to the Boon Lay Property and Shop, the Bedok Property and Shop, and the Will.

87 As regards the Boon Lay Property and Shop, Mdm Liew asserts that:

- (a) she started the Boon Lay Shop using her funds;
- (b) the Deceased being a traditional Chinese man did not allow her name to be reflected as the owner of the Boon Lay Shop and the tenant of the Boon Lay Property;
- (c) however, the Deceased recognised her as the owner of the Boon Lay Property and Shop and represented orally and by conduct that she was the rightful owner of the same;
- (d) in reliance thereof, she made substantial contributions in the form of labour and money (from her savings) to pay for the rent for the Boon Lay Property and the operating expenses of the Boon Lay Shop;
- (e) the bank account that was used by the Boon Lay Shop belonged to and was managed by her;
- (f) as a result of the family meeting in 1993, she surrendered 49% of her interest in the Boon Lay Property and Shop to the 1st Defendant.

88 Mdm Liew therefore counterclaims for a declaration that the Deceased held his 51% interest in the Boon Lay Property and Shop on resulting or constructive trust for her. Alternatively, Mdm Liew asserts an interest in the Boon Lay Property and Shop by way of proprietary estoppel. It should be noted that she does not assert a claim over the 1st Defendant's 49% interest in the Boon Lay Property and Shop.

89 In very much the same vein and for very similar reasons, as regards the Bedok Property, Mdm Liew asserts that:

- (a) the Deceased held the Bedok Property and Shop on resulting and constructive trust for her;
- (b) alternatively, she has an interest arising from proprietary estoppel;
- (c) consequently, the Assignment Proceeds belonged solely to her;
- (d) alternatively, relying on the presumption of advancement, the Deceased by depositing the Assignment Proceeds in the bank accounts in her sole name or in joint names with the Deceased, gifted the same to her;
- (e) she permitted the Deceased to use the \$150,000 in Mdm Liew's Joint OCBC Account for his personal expenses, leaving a balance of \$600,000 from the Assignment Proceeds;
- (f) of this sum, the Deceased withdrew \$60,000 for the purchase of the Yongding Property but only utilised \$37,000 and did not account for the balance \$23,000;
- (g) in breach of his duties as trustee of the Assignment Proceeds, between 21 January 2003 and 6 March 2003, the Deceased withdrew a total of \$448,545.97 from joint accounts for his use.

On this basis, Mdm Liew counterclaims for an account of profits as regards that part of the Assignment Proceeds that is alleged to be held on trust for her.

There is an alternative claim for damages for \$600,000, being the Assignment Proceeds less the \$150,000 that Mdm Liew permitted the Deceased to use for his personal expenses.

90 Further, Mdm Liew asserts that the Will is void on the basis the Deceased did not have testamentary capacity when he executed the same. In the alternative, she asserts that the execution of the Will was procured by undue influence exercised by the Plaintiff over the Deceased.

The Issues

91 The issues that I therefore have to determine are as follows:

- (a) whether the Boon Lay Property and Shop were held by the Deceased on resulting or constructive trust for Mdm Liew;
- (b) in the alternative, whether a proprietary estoppel operates in favour of Mdm Liew against the Deceased as regards the Boon Lay Property and Shop;
- (c) whether the Bedok Property and Shop were held by the Deceased on resulting or constructive trust for Mdm Liew;
- (d) in the alternative, whether a proprietary estoppel operates in favour of Mdm Liew against the Deceased as regards the Bedok Property and Shop;
- (e) whether the Assignment Proceeds were a gift from the Deceased to Mdm Liew;

- (f) whether the Deceased was the legal and beneficial owner of 51% of the Boon Lay Property and Shop or whether he held the beneficial interest on trust for the 1st Defendant;
- (g) whether the Loan was fully repaid by the 1st Defendant;
- (h) whether there was an agreement for the Boon Lay Shop to pay rent of \$4,000 per month to the Deceased with effect from July 2000;
- (i) whether the claim for an account of profits for the Deceased's 51% share in the Boon Lay Shop is time-barred pursuant to s 6(1) or 6(2) of the Act; and
- (j) whether the Will is void for lack of testamentary capacity or the Deceased's execution of the same was procured by undue influence.

Before I consider these issues, it is useful to set out the law on resulting and constructive trusts, and proprietary estoppel.

Resulting and Common Intention Constructive Trusts, and Proprietary Estoppel – the Law

Purchase price resulting trust

92 The building blocks of a resulting trust were extensively considered by the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") and *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"). A resulting trust arises by operation of law in two scenarios. First, where A makes a voluntary payment to B or pays either wholly or in part for the purchase of a property which is vested in B's name

solely or in their joint names, there is a *presumption* that the money or property is held on trust for A (if he is sole provider of funds) or in shares proportionate to their contributions (in the case of joint names) (see *Lau Siew Kim* at [34] and *Chan Yuen Lan* at [36]). This is commonly referred to as the “purchase price resulting trust”. Second, where A transfers property to B on an express trust, but the trust does not exhaust the whole of the beneficial interest, a resulting trust arises. An example of this is a *Quistclose* trust. I say no more on the latter given that it is only the former that is engaged on the facts before me.

93 A resulting trust may not arise if there is proof of actual intention to benefit the recipient. It is the intention of the transferor and not the recipient that is relevant (see *Chan Yuen Lan* at [43]). In certain relationships, typically familial (for example between parent and child and husband and wife), a presumption of advancement may arise such that the transferor is presumed to have intended a gift of the monies or property to the recipient. However, as cautioned by the Court of Appeal in *Lau Siew Kim* at [59], the presumption of advancement is nothing more than a long-stop answer where there is a paucity of evidence that adequately reveals the intention of the transferor, or where such evidence is inconclusive. However, the Court of Appeal recognised that the presumption of advancement continues to accord with societal needs and norms and therefore ought not to be discarded or disregarded (see *Chan Yuen Lan* at [152]).

94 There are inherent inflexibilities in the purchase price resulting trust. As the trust is crystallised at the time the property is acquired, the quantification of the parties’ beneficial interests is assessed with reference to

their respective financial contributions at that time. It therefore follows that the assessment of beneficial interest is based on direct financial contributions *at the time of the acquisition*. Subsequent financial contributions are to be disregarded, though *Chan Yuen Lan* appears to accept that where the purchase price is financed by loans, contributions made towards mortgage payments, in the absence of any prior agreement of division of the beneficial interest, ought to be taken into account in assessing the parties' beneficial interests (see *Chan Yuen Lan* at [55] to [57]). Therefore, the assessment of beneficial interest is based on the strict arithmetic of direct financial contributions at the time of acquisition subject to the caveat on mortgage payments I have mentioned.

Common Intention Constructive Trust

95 A common interest constructive trust arises when A relies to his detriment on a common intention that the beneficial interest in a property is to be shared. Such an intention may (a) arise from express discussion; (b) take the form of an inferred common intention, as evidenced by direct financial contributions by A to the purchase price; or (c) in exceptional situations, arise from other conduct by A which gives rise to an implied common intention (see *Chan Yuen Lan* at [97]). The conduct necessary for a common intention need not always be financial, though relevant non-financial contributions would be the exception. The focus remains very much on the financial contributions of the parties. A key difference between common intention constructive trusts and resulting trusts is that in the former the division of beneficial interest does not follow a strict arithmetic calculus but is along the lines of the parties' express, inferred or implied common intention. It should be pointed out that *Chan Yuen Lan* (at [153]) preferred the approach of Lord Neuberger in his dissenting judgment in *Stack v Dowden* [2007] 2 AC 432 ("*Stack*"). Lord

Neuberger was of the opinion that common intention ought not be imputed by the court based on what is fair and reasonable. It should instead be determined according to the actual intention of the parties, whether that be express, inferred or implied.

96 It is in principle possible for the parties to alter their common intention post-acquisition and thereby also alter their respective shares of the beneficial interest as it stood on the date of acquisition. However, such alteration would require compelling evidence of “discussions, statements or actions, subsequent to the acquisition, from which an agreement or common understanding as to such change [could] properly be inferred” (see *Chan Yuen Lan* at [114] and *Stack* at [138]).

The Chan Yuen Lan approach to resulting and common intention constructive trusts

97 Having reviewed the differing approaches in England and the positions in Commonwealth jurisdictions such as Australia and Canada, and revisited *Lau Siew Kin*, the Court of Appeal in *Chan Yuen Lan* (at [160]) suggested a sequential analysis to ascertaining the beneficial interest in a property which has been purchased by parties making unequal contributions towards the purchase price.

98 The steps may be summarised in four broad strokes. First, the starting point is the presumption of resulting trust with the parties’ beneficial interest held in proportion to their respective financial contributions. If there is insufficient evidence of the parties’ respective financial contributions to the purchase of the property, it is then presumed that the parties hold the beneficial interest in accordance with their legal interest in the property.

99 Second, regardless of whether a purchase price resulting trust arises, where there is evidence of a common intention that the parties should hold the beneficial interest in the property in a proportion that differs from what is presumed, the parties shall hold the beneficial interest in accordance with that common intention. However, the common intention may not be imputed.

100 Third, where a purchase price resulting trust arises absent evidence of a common intention, the court has to consider whether there is evidence that the party who made the larger financial contribution intended a gift of his contribution to the other party. If so, the entire beneficial interest would vest in the donee, displacing the presumption of resulting trust. In assessing whether a gift was intended, the presumption of advancement would be relevant in the absence of direct evidence. As noted in *Buthmanaban s/o Vaithilingam v Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another* [2015] SGHC 35 (“*Buthmanaban*”) at [91], evidence of common intention serves the twin functions of rebutting the presumption of a gift and setting the division of the beneficial interest in a manner that does not accord with the mathematical precision of the resulting trust.

101 Fourth, the court must ascertain whether there is compelling evidence of a common intention, express or inferred, *subsequent* to the acquisition to alter the beneficial interest held at the time of the acquisition. If there is, the beneficial interest will be held in accordance with that subsequent common intention.

102 These steps provide a useful guide to assessing the beneficial interest of parties in property that is alleged to be under shared ownership.

Proprietary Estoppel

103 *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 (“*Hong Leong*”) is the leading judgment on proprietary estoppel. First and foremost, it must be remembered that the estoppel concerns conduct in relation to *land*. Three elements must be present:

- (a) representation by the party against whom the estoppel is asserted that the claimant is to have or has an interest or right in the land;
- (b) reliance by the claimant on the representation; and
- (c) detriment suffered by the claimant as a result of his reliance.

As noted in *Hong Leong*, the cornerstone of the estoppel is unconscionability – did the party against whom the estoppel is asserted, the representor, conduct himself in a manner that caused the claimant to take a certain course of action in circumstances that render it unconscionable not to prevent the representor from resiling from his earlier position (see *Hong Leong* at [171])?

104 The first element of representation is broadly construed to cover a range from an agreement to an expectation that was created or encouraged by the party being estopped (*Hong Leong* at [175]).

105 As observed in *Low Heng Leong Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [28], the principal difference between a proprietary estoppel and a constructive trust is that the latter recognises an equitable interest in the subject property, whilst the former confers an inchoate interest in equity that is left to be

satisfied by the court in the exercise of its discretion. There are, however, conceptual similarities.

106 Having set out briefly the law on resulting and common intention constructive trusts, and proprietary estoppel, I now turn to consider the issues.

Mdm Liew's Claims (save as regards the Will)

Resulting or Common Intention Constructive Trust - the Boon Lay Property and Shop

107 I must say at the outset that I harbour grave doubts over the testimony of Mdm Liew. I find her testimony riddled with inconsistencies. More disconcertingly, I find that she was largely parroting the positions of the 1st Defendant on matters concerning the Boon Lay Property and the Boon Lay Shop. In this regard, I am mindful of the fact that: (a) following the Deceased's death, Mdm Liew has been living with the 1st Defendant in Corporation Drive; and (b) the 1st Defendant was involved in the preparation of both Mdm Liew's Will No. 1 and Mdm Liew's Will No. 2. I have the distinct impression that the positions that she took were tailored to facilitate the 1st Defendant's claim as regards the Boon Lay Property and Shop. I highlight two obvious examples – (a) despite asserting that the Boon Lay Property and Shop are hers, Mdm Liew makes no claim against the 1st Defendant; and (b) despite asserting a claim over the Deceased's 51% interest in the Boon Lay Property and Shop, Mdm Liew repeatedly testified that that the share would go to the 1st Defendant. The terms of Mdm Liew's Will No. 1 are entirely consistent with this. Also, allegations were made in respect of the Deceased's behaviour as a husband and father, almost by way of pot shots, to advance her claim. I find these allegations to be quite unfair. They leave me

with the distinct and distasteful impression that Mdm Liew was taking full advantage of the fact that the Deceased was no longer around to defend himself to advance her case and that of the 1st Defendant. I therefore approach Mdm Liew's evidence with a significant degree of circumspection. With these prefatory remarks, I turn to the issue at hand.

108 For a purchase price resulting trust to arise in favour of Mdm Liew as regards the Boon Lay Property and Shop, she must establish that she made financial contributions towards the acquisition of the Boon Lay Property and the setting up of the Boon Lay Shop. It is common ground that the Boon Lay Property was at the outset (*ie*, in 1978) leased, not purchased, on a monthly basis from the HDB. Accordingly, no capital contribution was required for the acquisition of the Boon Lay Property. The fact is, there was no interest that could be purchased given that the property was leased on a monthly tenancy. Further, as noted at [39] above, when the Boon Lay Property was subsequently acquired from the HDB in 1993, part of the purchase price - \$183,652 - was paid from the bank account of the Boon Lay Shop with the rest being covered by a bank loan. Despite the said sum coming from a Boon Lay Shop bank account, it is not Mdm Liew's position that this payment constitutes her contribution towards the purchase price for the Boon Lay Property. In fact, it is the 1st Defendant who asserts that this payment came from his fixed deposit account which he broke and deposited into the said bank account. Further, it is not Mdm Liew's position that she made any of the mortgage payments. Her case on resulting trust is predicated on contributions that were made towards the rent and expenses of the Boon Lay Shop. It is difficult to see how a presumption of a resulting trust in favour of Mdm Liew could arise in such circumstances as regards the Boon Lay Property.

109 However, the fact that a resulting trust does not arise as regards the Boon Lay Property does not foreclose the possibility that a common interest constructive trust did in fact exist. If there was a common intention, express, inferred or exceptionally implied, between the Deceased and Mdm Liew at the time when the Boon Lay Property was first leased from the HDB in 1978 that she would be the sole beneficial owner of the Boon Lay Property, and she had relied on that common intention to her detriment, there would be a basis for concluding that the Boon Lay Property is beneficially hers. The same approach is also applicable to the Boon Lay Shop.

110 The burden of proof is on Mdm Liew to establish her beneficial interest in the Boon Lay Property and Shop. She has to show that there was a common intention. Has she discharged that burden? I do not think that she has.

111 Mdm Liew's pleaded position is that:

- (a) the Deceased recognised her as the owner of the Boon Lay Property and Shop; and
- (b) in reliance on this, she made substantial contributions in the form of funds and labour for the Boon Lay Shop, and rent and expenses for the Boon Lay Property from her savings.

112 Her pleaded position suggests that she relies on an *express* common intention. The relevant question therefore is whether there was an agreement, arrangement or understanding between the Deceased and Mdm Liew that the beneficial interest of the Boon Lay Property and Shop would be hers. Alternatively, if I am incorrect in my reading of her plea, the relevant question

is whether a common intention along the lines asserted by Mdm Liew may be inferred. The central inquiry with respect to both express and inferred common intention is whether the parties had a mutual understanding that Mdm Liew should have the beneficial interest of the Boon Lay Property and Shop. This is the first issue I have to examine.

113 The second issue is whether Mdm Liew made substantial contributions, and if so, whether they were made in reliance on a common intention. Answering this question would provide an insight into the answer to the first issue. I say this because substantial financial contributions would be suggestive of an express common intention. Such conduct would clearly be referable to and consistent with an express understanding on ownership. It would also be a basis for the inference of a common intention. In this regard, the observations of Lord Bridge of Harwich in *Lloyds Bank plc v Rosset* [1991] 1 AC 107 (“*Rosset*”) (at 133) are illuminating:

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however, reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and *where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust*. In this situation *direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily satisfy the inference necessary to the creation of a constructive trust. But ... it is at least doubtful whether anything less will do.* [emphasis added]

114 I am mindful that the Court of Appeal in *Chan Yuen Lan* endorsed a wider selection of factors than just financial contributions in discerning the parties’ common intention, following Lord Neuberger in *Stack* (see *Chan Yuen*

Lan at [112]). Nonetheless, financial contributions would lay down a clear if not the clearest marker of a common intention (see also *Buthmanaban* at [83]). I should also add that financial contributions, as noted in *Rosset*, would also serve the additional purpose of constituting relevant evidence of conduct in reliance on the common intention. For this reason, I will consider the second issue first.

Did Mdm Liew make financial contributions to the Boon Lay Property and Shop?

115 Mdm Liew's alleged funding of the Boon Lay Property and Shop relates to the start-up costs and initial operating cash flow of the business. The subsequent operating costs of the Boon Lay Shop came from the cash flow of the business. Accordingly, the core factual investigation is whether the start-up costs and capital to fund the initial operations were put up by her.

116 At the outset, I should observe that Mdm Liew, and to a lesser extent the 1st Defendant and Siew Lian, painted an unsettling picture of the Deceased. He was portrayed as a man who did not provide for his family at all or insufficiently either because of business woes or for no good reason, leaving Mdm Liew to fend for the family. They conveyed the impression that: (a) the Deceased as a husband and father was not particularly responsible; and, (b) Mdm Liew was the family's pillar of support. The distinct flavour of their combined testimony was that Mdm Liew was the one with business acumen and nous, and through her resourcefulness and dint of her hard work, made significant sums of money and thereby provided for the needs of the family. On the other hand, the Deceased was cast as not particularly responsible and reliant on Mdm Liew for money and leadership.

117 It was readily apparent to me why the Deceased was portrayed as such. It set the stage for Mdm Liew to make the case that all the financial contributions for the Boon Lay Property and Shop (and the Bedok Property and Shop as well) were made by Mdm Liew and not the Deceased because she was the only one able or willing to do so. Accordingly, there was every reason why an understanding or at the very least an expectation that the Boon Lay Property and Shop would belong to her beneficially would have existed.

118 Having examined the evidence, I see little to suggest that: (a) the Deceased was of the ilk or disposition that Mdm Liew, the 1st Defendant and Siew Lian portrayed; and, (b) the Deceased was crippled by business woes to such an extent that he could not discharge his responsibilities as a father and husband or provide the initial funding for the Boon Lay Property and Shop. On the contrary, I believe that he was a good and responsible husband and father. The evidence leads me to a finding that the financial contributions for the Boon Lay Property and Shop came from the Deceased and not Mdm Liew. In this regard, and in the interests of clarity, given that the Boon Lay Property was on a monthly lease at the outset, the initial financial contribution would have covered the fit-out of the same in readiness for the commencement of business, and the initial rent, deposit for the tenancy and the initial working capital for the Boon Lay Shop.

119 Mdm Liew testified that:

- (a) when the family moved to Toa Payoh in 1969, she supported the family from her savings, amounting to several thousands, earned from the sale of pigs and chicken, and ultimately her farm ;

- (b) she paid for the utilities, the rent, and the children's needs;
- (c) despite doing very well with Yong Seng Huat, the Deceased did not give Mdm Liew any money and the children, only if they asked;
- (d) while in Toa Payoh, she ran a canteen at Pei Chun Primary School for three years and earned about \$20 a day, and would sell Chinese desserts during school holidays and weekends;
- (e) when the family moved to Ang Mo Kio in 1976, the monthly instalments for the flat and expenses for the family were paid by Mdm Liew;
- (f) the Deceased did not contribute at all because he had lost significant sums of money, having been cheated by his business partners;
- (g) the Deceased's situation was so dire that he did not even have enough money to buy a cup of coffee;
- (h) the Deceased refused to work because of the dispute with his partners and was supported by Mdm Liew;
- (i) the Deceased only resumed work on 1977 when he started Thai Lok;
- (j) despite resuming business with Thai Lok, the Deceased did not provide for the needs of the family;

- (k) in order to provide for the family, Mdm Liew supplied cooked food to construction workers in the Ang Mo Kio area for a month;
- (l) subsequently, she secured a stall in the coffeeshop in Ang Mo Kio where she sold fishball noodle and laksa;
- (m) the fishball noodle and laksa stall proved a success and made a healthy profit of about \$2,300 per month allowing Mdm Liew to amass a sizeable amount of money; and
- (n) the stall continued until the opportunity to start the Boon Lay Shop presented itself in March 1978.

120 I have no doubt that Mdm Liew is a resourceful woman with an indomitable spirit. The fact that she left the family home for a year when the family moved to Toa Payoh in 1969 attests to her strength of will and independence. However, her constant refrain that she provided for all the family needs because the Deceased was unable or unwilling stretched the limits of credibility. I saw a family which was very much patriarchal. The Deceased was clearly the head of the household and made all major decisions. He also decided the deployment of the members of the family to the businesses that the family ran. The following are some illustrations of this:

- (a) the Deceased's decision for the 1st Defendant to work for Yong Hup Seng and Thai Lok after his National Service and his subsequent deployment to the Boon Lay Shop ([19] and [24] *supra*);
- (b) the Deceased's decision to initially deploy Foong Chong to the Boon Lay Shop after completing his National Service followed by his

re-deployments to the Bedok Shop in 1979, Thai Lok at the Yew Tee Premises in 1982 and the Bedok Shop in 1985 ([24], [30] and [33] *supra*);

(c) the deployment of the Plaintiff to the Bedok Shop in 1987 ([34] *supra*);

(d) the addition of Khian Hin and the 1st Defendant as partners of the Boon Lay Shop and co-tenants of the Boon Lay Property in 1985 ([31] *supra*); and

(e) the Deceased deciding the terms of the agreement that were reached in 1993 on the ownership of the Boon Lay Property and Shop ([37] *supra*).

121 Mdm Liew's evidence is that she was the one who had made these arrangements. I reject her evidence and accept the Plaintiff's evidence that she was not even consulted on most, if not all of these matters. Even on Mdm Liew's case, she played no role in the running of Thai Lok and I cannot see why she would have the authority to make decisions that impacted on Thai Lok's operations. If the Deceased took a patriarchal approach to the management of his sons and the business, it is difficult to believe that he would have consulted Mdm Liew or deferred to her. For the same reason, it is also difficult to believe that the Deceased would have adopted a nonchalant attitude towards his familial responsibilities as the head of the household. There are other factors that seriously undermine the credibility of Mdm Liew's testimony in this regard.

122 Mdm Liew conceded that when the family was residing at 15th Milestone between 1959 and 1969, the Deceased was the sole breadwinner. It would be remembered that the Deceased started the tinsmith business in Yong Seng Huat shortly before the move to 15th Milestone. That business continued at 16th Milestone after the family moved to 15th Milestone.

123 Therefore, when the family moved to Toa Payoh in 1969 as a result of the resettlement of Yong Hup Seng and the family home, it is inconceivable that the Deceased would have suddenly have shirked his responsibilities and left it to Mdm Liew to handle the same. No reason was attributed for such a change in attitude and I could see none. Indeed, the evidence suggests that the Deceased must have provided for the family. Two events ought to be highlighted. The first is Mdm Liew's one-year separation from the family which coincided with the family's move to Toa Payoh. The Deceased must have provided for the family during that period. Second, the Deceased started Yong Hup Seng on 1 November 1968. By all accounts that business was a roaring success, initially being ranked in the top three air-conditioner ducting companies in the country. Indeed, Mdm Liew conceded that the Deceased made a lot of money with many buildings along Orchard Road being amongst the jewels in Yong Seng Huat's crown. In particular, she accepted that between 1973 and 1974, the Deceased made a substantial amount of money. If so, it seems contrived to suggest that he did not give Mdm Liew any money. There is no compelling reason why the Deceased would not have provided for the family when living in Toa Payoh between 1969 and 1976. He had the means and there was nothing to suggest that he did not have the inclination to provide for the family.

124 It is also difficult to believe that Mdm Liew had the financial means to support the family when it moved to Toa Payoh. Even if I accept that she ran a farm at the back of the house and assisted the Deceased in relation to Yong Seng Huat while at 15th Milestone, that hardly suggests that she would have been armed with sufficient means to support the family.

125 Further, it seems contrived to suggest that the money Mdm Liew earned from the farm and Yong Seng Huat was hers. The income was earned working a farm at the back of the family home and assisting the Deceased in his business. It is unlikely that the Deceased and Mdm Liew would have drawn a clear line between the income of the family and the income of Mdm Liew. It is far more likely that they would have regarded the monies earned as family income. In much the same vein, the income that was earned while the family was at Ang Mo Kio – from the school canteen and selling desserts – was surely to supplement the family income.

126 Mdm Liew's credibility is stretched even thinner when one considers her evidence regarding the move to Ang Mo Kio in 1976. While it is true that the Deceased's fall-out with his business partners in Yong Hup Seng did significantly affect the business, there is nothing to suggest that the Deceased was financially crippled to the extent that he could not even afford a cup of coffee and became wholly reliant on Mdm Liew. Indeed, it is hard to imagine that Yong Hup Seng would collapse overnight. Even if the business did slow down, that does not mean that the Deceased had lost all of the money that he must have amassed over the years from Yong Hup Seng. Also, it seems totally out of character for the Deceased to have refused to go to work and to instead

live off his wife. From all accounts, the Deceased was a hardworking man with a strong entrepreneurial streak.

127 Unlike the Toa Payoh flat, the Ang Mo Kio flat was purchased from the HDB. Mdm Liew said that she paid the deposit and the mortgage payments. However, when queried, she was unable to provide any details on the amount of the deposit, the purchase price and the mortgage payments. Putting aside the question of whether she would have had the means to pay what must have been fairly significant sums of money, her inability to recall any details of a noteworthy purchase, even allowing for her advanced age, raises doubts over the credibility of her assertion. Also, it seems odd that the Deceased would have decided to purchase a flat when he was allegedly in dire financial straits (he was allegedly not even able to buy a cup of coffee).

128 It is not inconceivable that Mdm Liew might have made some money, perhaps even a not insubstantial sum, from running the fishball noodle and laksa stall in Ang Mo Kio between 1976 and 1978. However, it was very much a family enterprise. The evidence is that the children helped out in the stall. Even the Deceased helped out occasionally. For the reasons that had I articulated earlier, it would fanciful to suggest that the income generated thereby would have been treated as Mdm Liew's.

129 Be that as it may, by 1 July 1977, the Deceased was back on his feet with Thai Lok. By 1978, Thai Lok and Yong Hup Seng collectively employed between 8 and 10 persons. Therefore, while the Deceased business might not have reached the zenith of Yong Hup Seng in its heyday, clearly the Deceased was achieving moderate success. Indeed, the 1st Defendant testified that by working overtime and on weekends at Yong Hup Seng and Thai Lok, he was

able to save a significant sum ([23] *supra*). This would suggest that businesses were still doing considerable business.

130 I now consider the events of 1978, when the Deceased was offered the Boon Lay Property by the JTC. It is evident that the Deceased had the means at that time to finance the start-up costs of the Boon Lay Property and Shop. Was there any conceivable reason why he would not have paid for those costs and would have instead required Mdm Liew to pay for the same? Put another way, would the Deceased have believed that Mdm Liew had the financial wherewithal to start a business of this nature and therefore not impose on him to provide the funding? I believe the answers to both questions must be no. I make several observations.

131 First, it must be remembered that the Boon Lay Property was offered to the Deceased in lieu of the resettlement of Yong Seng Huat in 1969. The Boon Lay Property was compensation for the compulsory relocation of Yong Seng Huat, the Deceased's business. Surely the Deceased would not have so readily given up the opportunity to start a new business for himself.

132 Second, the Deceased fought hard for the Boon Lay Property. Between 1969, when Yong Seng Huat was relocated, and 1978, when the Boon Lay Property was allocated, the Deceased engaged in intense negotiations with the JTC for suitable compensation. Mdm Liew was not involved in the negotiations and had no knowledge of what was discussed. The Deceased would surely have wanted to start a new business at the Boon Lay Property. In this regard, Mdm Liew went so far as to say that the Deceased told her that if she did not take up the Boon Lay Property, he would give it up or give it to

someone else. This is completely unbelievable given the vigour with which the Deceased fought for the property.

133 Third, the name given to the Boon Lay Shop - Lokyang Departmental Store – is inconsistent with Mdm Liew’s account. Mdm Liew readily conceded that the “Lok” in the name was derived from the “Lok” in the Deceased’s name. While Mdm Liew’s evidence is that she had named it after the Deceased and a hill, it seems far more plausible that the Deceased named it after himself, and had done so as a means of asserting ownership over the Boon Lay Shop. This showed his desire to make it known that this was his business. This is reinforced by the Boon Lay Property and Shop being in his sole name.

134 In these circumstances, I find it difficult to believe that the Deceased would not have put up the money to start the Boon Lay Shop. He certainly had the means and the motivation to do so. Indeed, to require Mdm Liew to provide the funds for a property and business that were registered in and carried his name would have been out of character. The Deceased had funded all his other businesses himself. Why would he act differently with regard the Boon Lay Shop? Further, I am not convinced that the Deceased believed Mdm Liew had the financial means to fund the start-up costs and to pull off a successful business at the Boon Lay Property. Finally, for the reasons mentioned earlier, and given the nature of the family hierarchy, the Deceased would not have differentiated between family money and Mdm Liew’s money. Leaving Mdm Liew to fund the business and thereby putting at risk a property that he had fought so hard for seems to be an imprudent and indeed illogical step. I do not believe that the Deceased took that step.

135 In this regard, it is relevant to observe that the 1st Defendant had testified that the start-up costs of the Boon Lay Shop came from Mdm Liew's personal funds, loans from neighbours and a cash injection from him. Mdm Liew made no reference to these additional sources of funds in her testimony and on the whole, I question the integrity of this evidence. However, it is worth observing that if the need for cash was so desperate, it seems unbelievable that the Deceased would not have stepped forward to fund the start-up costs.

136 There are clear indications that the Deceased did fund the start-up costs. It is common ground that workers from the Deceased's businesses undertook the fit-out of the Boon Lay Property. Mdm Liew and the 1st Defendant, however, said that Mdm Liew paid for the same. I do not find this at all believable. Why would Mdm Liew be required to pay for work carried out by workers who worked for the Deceased for a business that carried his name? It is far more probable that the Deceased funded the costs.

137 It should be pointed out that in the financial statements for the Boon Lay Shop produced by the 1st Defendant from 1999 to 2003, the Deceased is reflected as having made a capital contribution of \$125,000. The 1st Defendant asserted that the contributions were in fact made by Mdm Liew, not the Deceased. I find this all too convenient. It is difficult to believe that Mdm Liew had the means at the outset or along the way to make a capital contribution of such a large amount. Even Mdm Liew did not assert that the said capital contribution was made by her. It should be noted that these financial statements were prepared by the 1st Defendant. If they were indeed hers, surely he would have taken steps to register her as a partner upon the

Deceased's passing. However, he never did that despite Mdm Liew being with him when he removed the Deceased's name from the ACRA records for the Boon Lay Shop on 25 June 2003. I saw the 1st Defendant's testimony as nothing more than an effort to talk up Mdm Liew's role and interest as regards the Boon Lay Property. The Boon Lay Shop's financial statements are clear confirmation that it was the Deceased and not Mdm Liew who made the relevant financial contributions.

138 The bases of Mdm Liew's case are that: (a) she funded the start-up costs because the Deceased was not able to do so; and, (b) she had sufficient personal funds to make the financial contribution. I have seen little to suggest the first. Indeed, I find that the Deceased clearly had the ability to fund the start-up costs. On the second, apart from her testimony, Mdm Liew has adduced absolutely no documentary evidence that she did fund the start-up costs. Indeed, the financial statements for the Boon Lay Shop point to the capital coming from the Deceased. Mdm Liew made reference to a personal ICB account from which payments were initially made by her. However, the relevant bank statements were not produced. There is of course the testimony of the 1st Defendant which corroborates her position that she put up the funds. However, for reasons which I will discuss later, I have grave doubts over the 1st Defendant's credibility as a witness. Ultimately, it comes down to whether I accept her testimony. I do not.

139 Accordingly, I conclude that it was the Deceased and not Mdm Liew who funded the start-up costs for the Boon Lay Property and Shop. I am fortified in this regard by the fact that the testimony of the Plaintiff, Foong Chong and Poh Lian were entirely consistent with this finding. While it might

be fairly alleged that their evidence should be assessed carefully given their interests in both assets under the Will, I nonetheless accept their evidence. It must be remembered that the Plaintiff only claims the Deceased's share. There was no attempt to claim the 1st Defendant's share. This lends credibility to his evidence. When measured against the objective facts, their evidence is far more resilient to scrutiny than that of Mdm Liew's (and indeed the 1st Defendant's).

140 Several consequences flow from my conclusion that Mdm Liew did not make any financial contributions. First, the claim for resulting trust as regards the Boon Lay Property and Shop becomes unsustainable. Second, if there was no express understanding or agreement as to the parties' common intention, there would be an insufficient basis for inferring a common intention unless there is compelling evidence of conduct of some other form (see *Rosset* and *Chan Yuen Lan* at [97]). Third, it would be difficult to imagine that there was sufficient reliance on any common intention, express or inferred, that caused detriment to Mdm Liew. Detrimental reliance is a necessary ingredient of the common intention constructive trust.

141 As regards the second and third points, I am alive to the fact that Mdm Liew has also asserted that she managed the day-to-day management and operations of the Boon Lay Shop, as well as its finances, as constituting detrimental reliance. While it cannot be said that such conduct would always be insufficient, the authorities strongly indicate that financial contributions are of greater relevance. I will address the non-financial contributions when I consider whether the first issue of whether there was in fact a common intention.

Was there a common intention, express or inferred?

142 Mdm Liew will no doubt advance the argument that there is an obvious reason why she would have funded the start-up costs of the Boon Lay Property and Shop – she shared a common intention with the Deceased, an express agreement or understanding - that she was the beneficial owner of the Boon Lay Property and Shop. This is the first issue. I do not accept this argument as I am of the view that there was no common intention of the nature asserted. I will now explain the reasons for my conclusion.

(1) At the start

143 In her AEIC, Mdm Liew alleged that the Deceased recognised she would own the Boon Lay Property and Shop, and be responsible for all associated costs and expenses. At the trial, she testified that the Deceased had asked her whether she would like to run the Boon Lay Shop, and indicated that if she did not, he would offer it to someone else and there would be no compensation as a result. She accepted the offer and agreed to pay and did pay for the expenses. This of course was not in her AEIC.

144 Further, in her AEIC, Mdm Liew alleged that because he was a conservative Chinese man, the Deceased insisted that only his name should be reflected in the tenancy for the Boon Lay Property and the registration for the Boon Lay Shop. At trial, the ground shifted a little. She testified that the Deceased's name was there in order to enjoy a concessionary rate for rent.

145 I had earlier set out various reasons why it would reasonable to conclude that it was the Deceased who provided the funding for the Boon Lay Property and Shop. Those reasons equally militate against a finding of an express common intention.

146 I find it difficult to understand why having fought so hard with the JTC for the Boon Lay Property as compensation for the resettlement of Yong Seng Huat, the Deceased would have been so prepared to give it away or up. It would be more reasonable to believe that the Deceased would have required his family to manage the property and business for and on his behalf without relinquishing control. This would enable him to exercise control and supervision over the business, allowing him at the same time to focus on Yong Hup Seng and Thai Lok. The very fact that he insisted on putting his name on the tenancy and the business registration as the owner and ensured that the Boon Lay Shop carried his name, are sound indicators that he desired total and complete ownership of the Boon Lay Property and Shop. It is relevant to note that Mdm Liew accepted that the decision to run a business was made by the Deceased. There are two further reasons.

147 First, the fact that the Deceased was a conservative Chinese man insistent that only his name must be on the relevant documents would in and of itself diminish the scope for any discussion between the Deceased and Mdm Liew on the ownership of the Boon Lay Property and Shop.

148 Second, at that time, the only interest that the Defendant or Mdm Liew had in the Boon Lay Property was a mere monthly tenancy. There were no further property rights to speak of. Why then would there be any reason to discuss ownership of the Boon Lay Property? And if there was no discussion

as regards the Boon Lay Property, why would there be any discussion about the ownership of the Boon Lay Shop?

149 It must be remembered that the subject of ownership was allegedly raised by the Deceased, not Mdm Liew. Why would the Deceased even raise the subject given the circumstances and his attitude? Would he even contemplate an arrangement (and therefore raise it) where his name was on the title documents but the assets were in fact owned by Mdm Liew? If the Deceased did not raise the issue for discussion, would Mdm Liew not have managed the Boon Lay Shop nonetheless? I would think she would have as it would provide revenue for the family. It should be noted that Mdm Liew had ceased operating the fishball noodle and laksa stall before 1978, and it is not her pleaded case that she sold the stall relying on a common intention between her and the Deceased as regards the Boon Lay Property and Shop. There is therefore no sound reason for the subject of ownership to have been raised and discussed by the Deceased. It is far more reasonable to believe that the Deceased would have taken the view that the Boon Lay Property and Shop were his and ought to be managed by his family on his behalf. The Deceased's decision to redeploy the 1st Defendant from Thai Lok to the Boon Lay Shop is consistent with this. Mdm Liew as the wife and mother would have been asked to exercise supervision over the business and the 1st Defendant in the absence of the Deceased.

150 In the grand scheme of things, these factors collectively trend towards the conclusion that there was no discussion on ownership. Seen with the earlier conclusion that Mdm Liew did not make any financial contribution, the

result seems fairly unequivocal. There are, however, additional factors that render the conclusion inexorable.

(2) Subsequently

151 If there was indeed an express common intention at the outset, it would be entirely reasonable to expect the Deceased and Mdm Liew to each act consistent with that intention. However, their behaviour subsequently is entirely inconsistent with such an understanding.

152 First, in 1985, the Deceased added the 1st Defendant and Khian Hin as co-tenants of the Boon Lay Property and partners of the Boon Lay Shop. Mdm Liew was not consulted or told of this. The decision was made solely by the Deceased.

153 Mdm Liew's position on this was like shifting sands. In her AEIC, she alleged that their names were added because she wanted to cater for their inheritance. At trial, she testified that she told the Deceased to add the names. She allegedly told the Deceased that while she respected him, this was her property. She then said that she wanted the names added because the Deceased had many business failures and she was afraid that there would be nothing left for her sons as a result. Finally, she said that she was concerned that the Deceased would lose his assets in investments made on the advice of his friends. None of what she testified at trial was in her AEIC.

154 Needless to say, all of this was not at all credible. I make just four points:

- (a) The addition of names was a result of a change in HDB policy. Despite the change, and all her concerns, Mdm Liew did not seek to have her name added as a co-tenant.
- (b) There is absolutely no evidence that the Deceased acted at Mdm Liew's behest. It should be noted that even the 1st Defendant did not say that Mdm Liew was consulted.
- (c) The only evidence of any business issues at that time was as regards Thai Lok which was under the management of Foong Chong and not the Deceased.
- (d) If Mdm Liew was indeed fearful that the Deceased would lose the assets, surely that is consistent with the assets belonging to the Deceased rather than her.

155 Second, as noted earlier, the 1st Defendant testified that the Yew Tee Unit was purchased in 1982 using monies from the Boon Lay and Bedok Shops. Mdm Liew did not challenge this. The property was purchased in the joint names of the Deceased and Foong Chong. Despite the Yew Tee Unit being purchased using funds from businesses that were purportedly hers, Mdm Liew did not assert a claim to the Yew Tee Unit. The deployment of the funds from the Boon Lay and Bedok Shops in this manner suggests that the businesses in fact belonged to the Deceased.

156 Third, as mentioned earlier, Thai Lok faced some claims between late 1983 and 1985 while operating at the Yew Tee Unit. These claims were paid from the operating cash flow of the Boon Lay Shop. This is consistent with the

Deceased's ownership of the Boon Lay Shop. The Deceased was simply using revenue from one of his businesses to settle the debts of another.

157 Fourth, when the bank account was opened for the Boon Lay Shop in 1985, Mdm Liew was not named an account signatory.

158 Fifth, it was the Deceased who decided the distribution of interest as regards the Boon Lay Property and Shop in 1993 when the HDB offered the Boon Lay Property for purchase. Mdm Liew was not consulted or told about the manner in which the interest was divided. Neither did she confront or at the very least speak to the Deceased after she found out what he had done. Instead, she allegedly gave the 1st Defendant \$70,000 to enable him to pay his brothers for their shares as determined by the Deceased. It is quite unbelievable that Mdm Liew would have taken such a sanguine view of the Deceased's dealings with her assets. It is equally unbelievable that she would have given the 1st Defendant monies to enable him to pay for shares in assets that actually belonged to her.

159 Mdm Liew could offer no credible explanation as to why she was not consulted or why she did nothing to assert her interest. Most tellingly neither the Deceased nor his sons regarded Mdm Liew as the owner of the Boon Lay Property and Shop. All discussions were with the Deceased only, who was perceived to be the owner of both assets. It is significant that little attempt was made in Mdm Liew's closing submission to address the distributions in 1993, despite their obvious significance. I see this is a concession of the weakness of her case. It is worth noting that the 1st Defendant's evidence as regards the 1993 distribution and counterclaim as regards the Boon Lay Property and

Shop is predicated on the Deceased, *not Mdm Liew*, being the owner of the Boon Lay Property and Shop.

160 Sixth, following the distribution in 1993, the Boon Lay Property was purchased from the HDB. On her case, Mdm Liew would have been left with a 51% interest in the Boon Lay Property. Yet, she made no contributions whatsoever towards the acquisition cost of the property. The loan to purchase was taken in the joint names of the Deceased and the 1st Defendant. This again is a clear indication of where ownership lay and whether there was a common intention as alleged.

161 Seventh, in the Police Report, Mdm Liew alleged that the Deceased demanded that she procure the 1st Defendant to transfer the Boon Lay Property and Shop to the Deceased. Mdm Liew gave no indication in the Police Report that the Boon Lay Property and Shop belonged to her. In her AEIC, she alleged that the Deceased also told her to sell the assets. I find this to be a convenient afterthought. Given the seriousness of the Police Report, it is difficult to imagine that something as important as that would have been omitted. Further, it would be unnecessary for the Deceased to have demanded that of Mdm Liew as she was not one of the registered owners. The Boon Lay Property was in the names of the Deceased and the 1st Defendant only. The position taken in the Police Report is clearly an admission by Mdm Liew that she is not the owner of the Boon Lay Property and Shop.

162 Eighth, it is apparent that none of the income tax liabilities for profits generated from the Boon Lay Shop were paid by Mdm Liew. The only documents that were produced showed that the tax declarations were made by

the Deceased as regards the 51% interest that was vested in his name. I note that Mdm Liew has not alleged that she met the tax liabilities in part or in full.

163 Ninth, after finding out that she was to receive only \$3,000 under the Will, Mdm Liew took no steps to assert her interest over the Boon Lay Property and Shop. It was only in 2 August 2013, well after the Plaintiff had commenced action against the 1st Defendant on 11 May 2012, that she applied to intervene in this action to assert her claim.

164 In this regard, as noted earlier, on 25 June 2003, Mdm Liew accompanied the 1st Defendant to ACRA. The 1st Defendant was there to remove the Deceased's name from the ACRA records of the Boon Lay Shop. Despite her position that the Boon Lay Shop was hers, she did not insist that her name be reflected as the sole owner or at the least to the extent of a 51% share. I note that she does not make a claim over the 1st Defendant's 49% share in the Boon Lay Property and Shop. Clearly the 1st Defendant did not recognise her interest. Further, on 24 September 2007, Mdm Liew retained the services of Jeanny Ng as regards the Will. In all the letters that were sent thereafter by Jeanny Ng to the Plaintiff's and the 1st Defendant's solicitors on the contents of the Will, there was no assertion that the Boon Lay Property and Shop were Mdm Liew's. This is notwithstanding the 1st Defendant asserting in letters written by Ho Wong that the assets belonged to him solely based on an assurance given by the Deceased. Two letters are particularly relevant. On 19 March 2008, Ho Wong wrote to Jeanny Ng, asserting as follows:

We have received a request from Citilegal LLC dated 13 November 2007, the solicitors for the executor of [the] estate of the deceased to transfer 51% of [the Boon Lay Property] to the estate, a copy of which, is enclosed for your kind attention. Our client instructs that *the Property belongs to him entirely as*

he has been servicing the loan for the Property but the late deceased's name was retained out of respect. Consequently, the deceased's 49% share was held on resulting trust for the client. Your client can also testify to the same. In fact, your client has been running the business at the Property with our client. Kindly confirm. [emphasis added]

165 The reply from Jeanny Ng dated 25 March 2008 is telling:

We note that Citilegal's client wishes to distribute the assets of the deceased Lai Thai Lok. If you are making a claim for the Deceased's 51% share you would have to start proceedings for a declaration. *The distribution of the assets has nothing to do with our client.* [emphasis added]

This letter is emphatic confirmation that Mdm Liew did not have an interest in the Boon Lay Property. It is notable that despite both Mdm Liew and the 1st Defendant claiming the Deceased's 51% share in the Boon Lay Property and Shop in this action, counsel for Mdm Liew did not challenge the claim of the 1st Defendant at that time.

166 Tenth, the fact that the Deceased purported to distribute the Boon Lay Property and Shop under the Will is a clear indication that he regarded them as his assets. Of course, this conclusion is contingent on my determination that the Will was not void or voidable. As will be apparent later, I find the Will to be valid.

167 Eleventh, the absence of financial contributions is perhaps the final straw that breaks Mdm Liew's case. As I have found above ([137] *supra*), the financial statements of the Boon Lay Shop and the failure to register Mdm Liew's purported interest in the Boon Lay Shop after the Deceased's passing are clear indicators that Mdm Liew made no financial contribution to the purchase of the Boon Lay Property or the start-up costs of the Boon Lay Shop.

168 I make one final observation. Mdm Liew knew that the Deceased was suffering from terminal lung cancer and the end was near for him. She asserted that she was his primary caregiver in his last days. She had access to him. Given these circumstances, it is strange that Mdm Liew made no effort to procure the Deceased to acknowledge her alleged interest in the Boon Lay Property and Shop. The fact is that the Deceased was on paper a 51% owner of both. Without such an acknowledgement, her interest would not be safeguarded. That she did not take any steps to request that the Deceased make such an acknowledgment strongly indicates that she did not regard herself as having any interest to begin with. Indeed, this is consistent with the position she took in 2008 in the letter written by Jeanny Ng ([165] *supra*).

169 That finally leaves me with the non-financial contributions of Mdm Liew. It seems reasonably evident that Mdm Liew was involved in the management of the Boon Lay Shop. But it also seems evident that she ran it with her sons, initially Foong Chong and subsequently the 1st Defendant. The other children were also involved, as was the 1st Defendant's then-fiancée, who eventually became his wife. It is reasonable to conclude that this was an enterprise of the Lai family. Mdm Liew's effort was channelled towards managing the family enterprise, the Boon Lay Shop, for the Deceased. In this regard, the Plaintiff and Foong Chong testified that the Deceased would visit the Boon Lay Shop every evening to examine the business and revenue for the day and to take stock of the business moving forward. That is entirely consistent with the Deceased asserting ownership through daily supervision, leaving Mdm Liew and his sons to manage the day-to-day affairs. The words of Lord Bridge in *Rosset* at 131, though stated in the context of a residential property, are illuminating:

It is clear from these passages in the judgment that the judge based his inference of a common intention that Mrs Rosset should have a beneficial interest in the property under a constructive trust essentially *on what Mrs Rosset did in and about assisting in the renovation of the property* between the beginning of November 1982 and the date of completion on 17 December 1982. *Yet by itself this activity, it seems to me, could not possibly justify any such inference.* It was common ground that Mrs Rosset was extremely anxious that the new matrimonial home should be ready for occupation before Christmas if possible. *In such circumstances it would seem the most natural thing in the world for any wife, in the absence of the husband abroad, to spend all the time she could spare and to employ any skills she might have, such as the ability to decorate a room, in doing all she could to accelerate progress of the work quite irrespective of any expectation she might have of enjoying a beneficial interest in the property.* (emphasis added)

In the same vein, it is entirely possible that Mdm Liew laboured for the family enterprise without any expectation that she would enjoy a beneficial interest in the Boon Lay Property or Shop.

170 In the round, the conclusion that there was no common intention is quite impeachable. The only direct evidence I have of such an intention is Mdm Liew's which I do not accept. Indeed, the reasons cited above must militate against drawing any inference of such a common intention. Such an inference should only be drawn where there is no direct evidence of an express agreement or understanding, and the court is left to infer such an intention based on the circumstances. Where there are clear reasons why a common intention could not have been formed, it seems self-evident that an inference ought not to be drawn.

171 Therefore, I conclude that there was no common intention and there was no conduct that is referable to a common intention. Mdm Liew's claim for common intention constructive trust thus fails.

Proprietary estoppel - Boon Lay Property and Shop

172 As noted in *Chan Yuen Lan*, the relationship between common intention constructive trust and proprietary estoppel is complex, confusing, difficult and intricate (see *Chan Yuen Lan* at [99] and [159]). However, it seems that there is a significant *factual* overlap in the present case. Mdm Liew has pleaded her claim for proprietary estoppel very much on the same factual footing as that for common intention constructive trust. The estoppel is said to have arisen from the Deceased's recognition and/or representation that Mdm Liew was the rightful owner of the Boon Lay Property and Shop, as well as his lack of contributions (monetary or otherwise) to the same. These matters have already been canvassed as regards her argument for a common intention constructive trust. I have also held that there was no detrimental reliance by Mdm Liew on the evidence ([140] *supra*). For those reasons, I also conclude that the claim for proprietary estoppel is not made out.

173 I make one further observation. It is well-established that proprietary estoppel relates to an inchoate interest in equity in respect of *land*. The parties have not addressed me on whether the estoppel extends to an interest in a partnership. It is unnecessary to determine this for present purposes.

Resulting or Common Intention Constructive Trust - Bedok Property and Shop

174 Mdm Liew's description of the circumstances surrounding the alleged agreement for the Bedok Property and Shop mirrors in many ways that of the Boon Lay Property and Shop. Much of the analysis that pertains to the Boon Lay Property and Shop thus applies with equal force to the Bedok Property and Shop. It must be remembered that the Bedok Property was offered to the

Deceased in 1979 as part of the settlement package for Yong Hup Seng, just a year after he was offered the Boon Lay Property as compensation for the resettlement of Yong Seng Huat. If there was no common agreement or understanding that was reached in 1978 as regards the Boon Lay Property and Shop, it is difficult to imagine why a different conversation would have taken place or an understanding reached a year later in very similar circumstances. I make several other observations.

175 First, it was the Deceased, not Mdm Liew, who directed Foong Chong to move over from the Boon Lay Shop to the Bedok Shop to manage it. At the same time, the Deceased directed the 1st Defendant to move from Thai Lok to the Boon Lay Shop to take over Foong Chong's role. This is consistent with the Deceased exercising control over both businesses.

176 Second, it was workers from Yong Hup Seng who made shoe racks for the Bedok Shop. Mdm Liew alleged that she paid for these racks. Again, I find this difficult to accept.

177 Third, when the HDB changed its policy in 1985 to allow for addition of names to the tenancy, the Deceased did not take steps to add other names to the tenancy of the Bedok Property. Notably, Mdm Liew did not request the Deceased to add her name to the tenancy and the business.

178 Fourth, when the HDB offered for sale the Boon Lay Property in 1993, just a year after the sale of the Bedok Property, the Deceased acted as if he was the owner of the Boon Lay Property. There is no reason to believe that he would not have felt the same way in 1992 he flipped the Bedok Property.

179 Mdm Liew asserted that she made the decision not to continue the Bedok Shop and to assign the right to purchase, following receipt of an offer from Mr Lim. I had difficulty with this for the following reasons:

- (a) only the Deceased could have decided whether to assign the right to buy because the offer was made by the HDB to him given that the Bedok Property was in his name;
- (b) if the Deceased had decided to assign the right, he must at the same time have decided to dispose of the Bedok Shop; and
- (c) to accept that Mdm Liew made the decision would be to turn a blind eye to the manner in which the Deceased behaved in 1993 as regards the Boon Lay Property.

I therefore believe that the Deceased made the decision to assign the right to sell the Bedok Property and dispose of the Bedok Shop.

180 Fifth, when the right to purchase was assigned in consideration for the Assignment Proceeds, not all of the Assignment Proceeds were deposited in joint accounts, or in accounts carrying the sole name of Mdm Liew. Surely, if it was understood all along that Mdm Liew was the owner of the Boon Lay Property and Shop, the Assignment Proceeds would have been deposited into an account carrying her name only. Mdm Liew conceded that one of those accounts – which contained \$150,000 – was at the Deceased’s disposal for his daily expenses. Such a substantial sum must have been made available to the Deceased without restriction because the Assignment Proceeds were in fact his.

181 Sixth, the Deceased dealt freely with the balance of the Assignment Proceeds without consulting Mdm Liew and indeed without even informing her. Two examples stand out:

- (a) the purchase of the Yongding Property for \$37,000 on 6 June 1996 ([41] *supra*); and
- (b) the transfer of monies from various joint accounts to accounts in his sole name between 7 and 22 January 2003 ([48] *supra*).

182 Mdm Liew's evidence was that she was not only aware of the acquisition of the property but had overseen the construction of a building on the property. However, there is no evidence that she had been consulted *prior* to the purchase. If she was, there is no conceivable reason why she would have allowed the Deceased to register the property in his sole name. It is relevant that she has not made a claim for the Yongding Property. Accordingly, I am inclined to believe that Mdm Liew was not consulted on the purchase or her consent sought to use the monies in the joint account to pay the purchase price.

183 It is important that no allegation has been made that any of these transfers between 7 and 22 January 2003 were procured by undue influence exercised over the Deceased by anyone. There were allegations by the 1st Defendant and Mdm Liew that the Deceased was suffering from dementia at that time. However, for reasons that will become apparent later, I do not accept the allegation. I am of the view that the Deceased was fully cognisant of what he was doing. I am also of the view that the Deceased was not being surreptitious or dishonest in making any of these transfers. These were after all

joint accounts. Mdm Liew was at all times in a position to have discovered the movements of funds. Indeed, given the allegation in the Police Report that there had been constant bickering for three years, the Deceased could hardly have laboured under the expectation that Mdm Liew would not have found out about the movements of funds. The movement of these funds without obtaining the consent of Mdm Liew demonstrates that the Deceased regarded the monies as his. As the monies were from the Assignment Proceeds, it would be an indicium that the Deceased regarded himself as the owner of the Bedok Property and Shop.

184 Seventh, I see no evidence that Mdm Liew had made any contribution towards the start-up costs of the Bedok Property and Shop. The same reasons I have articulated on why I am of the view the Boon Lay Property and Shop are not hers would equally apply here.

185 I make a final observation. When Mdm Liew applied on 2 August 2013 to intervene in this action, her affidavit in support was conspicuously bereft of reference to the Bedok Property and Shop, or the Assignment Proceeds. The focus was on the Will and the Boon Lay Property and Shop. The claim as regards the Bedok Property and Shop was only introduced by way of amendments to the pleadings on 3 April 2014. This striking omission suggests to me that the claim was introduced very much as an afterthought.

186 Before I conclude on this issue, I should briefly deal with an alleged incident in September 1987 which Mdm Liew relies on. In September 1987, Mdm Liew was visiting Siew Lian in Calgary when she allegedly received a telegram from Foong Chong. In that telegram, Foong Chong is alleged to have sought her assistance to resolve issues with the creditors of the Bedok Shop

because there were difficulties paying its debts. Mdm Liew had to apparently return to Singapore to deal with the problem as a result. Siew Lian recalls Mdm Liew receiving a telegram from Foong Chong in English which was translated to her by a friend by the name of Sam. Foong Chong vehemently denied that he had sent a telegram or the Bedok Shop had issues with creditors. Mdm Liew relies on this incident as reflecting her control over the Bedok Shop.

187 I found this entire episode to be unusual for the following reasons:

(a) If indeed the Bedok Shop was experiencing urgent financial issues, Foong Chong would surely have gone to the Deceased to resolve them. After all, it was the Deceased who had assigned him to the Bedok Shop. It would be recalled that when Foong Chong faced financial issues while managing Thai Lok at the Yew Tee Unit in late 1983 to 1985, the debts were settled from the cash flow of the Boon Lay Shop. The easiest solution would therefore have been to use the cash flow of the Boon Lay Shop to settle the debts of the Bedok Property. Indeed, that is what Mdm Liew would presumably have done. There was therefore hardly any reason to trouble Mdm Liew in Calgary.

(b) Further, even if she had been troubled, surely there was no need for Mdm Liew to have returned home urgently. She could have asked the 1st Defendant to deal with the issues (the Deceased was apparently with her) or requested the creditors to wait until she returned. Mdm Liew's position afterall was that she had excellent rapport with the trade creditors of the Boon Lay and the Bedok Shops.

Instead, she allegedly cut short her visit to her daughter in Calgary to deal with a problem that did not seem to be critical, at least not to the extent that it required *immediate* attention.

(c) If Mdm Liew had been exercising such close supervision over the Bedok Shop, it is difficult to understand why she was not aware of the alleged financial issues. It seems strange that she would be taken by surprise.

(d) If the financial issues were so pressing, why wouldn't Foong Chong simply have made a telephone call to Mdm Liew rather than send a telegram? That would be the quickest means of communication and would have allowed him to fully explain the situation to Mdm Liew. In this regard, it is relevant to note that Foong Chong testified that he did not know what a telegram was.

188 I therefore harbour doubts that the incident actually took place. Even if I am incorrect in my conclusion, it is not inconceivable that Foong Chong would have sent Mdm Liew the message simply because he was managing the shop with her and wished to keep her updated.

189 In these circumstances, I am of the view that the Bedok Property and Shop were not held by the Deceased on resulting trust or a common intention constructive trust for Mdm Liew.

190 As the Assignment Proceeds were derived from the Bedok Property, subject to the issue of whether a gift was intended by the Deceased to Mdm Liew, Mdm Liew would not be entitled to the same. However, before I

consider that issue, I shall expeditiously address the plea of proprietary estoppel as regards Bedok Property and Shop.

Proprietary estoppel as regards the Bedok Property and Shop

191 Similar to my analysis as regards the Boon Lay Property and Shop, my findings of fact in relation to the purported common intention constructive trust are also sufficient to dispose of Mdm Liew's claim to the Bedok Property and Shop based on proprietary estoppel.

Was a gift of the Assignment Proceeds to Mdm Liew intended?

192 Mdm Liew's alternative plea is that the Deceased intended a gift when he deposited the Assignment Proceeds into accounts in her sole name or joint names with the Deceased. I am unable to agree.

193 I accept that the presumption of advancement exists as part of our law (see *Chan Yuen Lan* at [152]), and arises in the present case because of a spousal relationship. However, the strength of the presumption is a matter that has to be ascertained from the circumstances. It must be remembered that the lease of the Bedok Property was in the Deceased's sole name. He made the decision to sell the Bedok Property and close the Bedok Shop. In such circumstances, it is difficult to see what compelling reasons there were for the Deceased to have suddenly intended a gift of \$750,000 to Mdm Liew.

194 Further, having run an affirmative case that the Bedok Property and Shop were hers beneficially pursuant to an understanding with the Deceased, it seems contradictory for Mdm Liew to run a *factually* inconsistent case that the assets were not hers and the proceeds of their sale were gifted to her. While it

is always possible to run inconsistent pleas, it is less acceptable to predicate them on entirely inconsistent facts. Finding one way or the other raises huge questions of credibility as it must mean that Mdm Liew was not being truthful. In these circumstances, the presumption is a weak one. I make several further observations.

195 First, if a gift was intended, why would the Deceased place the Assignment Proceeds in joint accounts? Surely the clearest manifestation of a gift would be to deposit the monies in accounts in Mdm Liew's sole name. Such an account did exist – Mdm Liew's ICB Account. It is relevant that, initially, \$300,000 of the Assignment Proceeds was deposited into this account. However, shortly thereafter, the monies were transferred to joint accounts at the Deceased's insistence. Mdm Liew did not protest. This is telling. It is also relevant that despite the Assignment Proceeds nestling in joint accounts, Mdm Liew claims all of it and not just a part. The very fact that the monies were placed in joint accounts raises a significant doubt as to whether a gift of the whole was intended.

196 Second, it seems clear that the Deceased dealt with the monies in the account as if they were his. I make reference again to three events which I have highlighted earlier:

- (a) the transfers of monies to accounts in the Deceased's name between 7 January 2003 and 22 January 2003 ([48] *supra*);
- (b) the purchase of the Yongding Property ([41] *supra*); and
- (c) the use of the monies in an OCBC account for his personal expenses ([89(c)] *supra*).

As mentioned earlier, the first two events could hardly have been intended to be covert given that the monies were from joint accounts. The purchase of the Yongding Property took place on 6 June 1996, just 4 years after the Bedok Property was sold. The fact that the Deceased dealt freely and openly with the Assignment Proceeds, without reference to Mdm Liew, forms, in my view, an insuperable obstacle to the conclusion that a gift was intended.

197 Third, it seems clear it was the Deceased who harried and harangued the 1st Defendant for repayment of the Loan, and the Loan (or at least part of it, on the Plaintiff's case) was repaid *not to Mdm Liew* but the Deceased. The Loan was disbursed from one of the joint accounts into which part of the Assignment Proceeds, \$300,000, was transferred. The Deceased's conduct as regards the repayment of the Loan clearly suggests that he regarded the Assignment Proceeds as his.

198 Fourth, the Deceased had dealt with the Assignment Proceeds in his Will. This again is a clear manifestation that a gift was not intended.

199 Fifth, Mdm Liew lodged a police report on 13 August 2003 after discovering that the Deceased had transferred about \$600,000 to accounts in his name between 7 January 2003 and 22 January 2003. In that report, there was no assertion that the monies were hers solely. Her allegation was that the Deceased "had withdrawn all *our* money" [emphasis added].

200 Sixth, after Jeanny Ng was retained by Mdm Liew, the allegation was that the Assignment Proceeds belonged solely to Mdm Liew because "her claim and her entitlement to part if not all is based on the fact that she had

contributed to the acquisition of these monies”. There was no allegation at all that the monies were hers because of a gift.

201 Finally, as mentioned earlier, the claims as regards the Bedok Property and Shop, and the Assignment Proceeds were only introduced by way of the amendment to Mdm Liew’s Defence and Counterclaim on 2 April 2014. However, even at that stage, there was no averment that the Assignment Proceeds were gifted to Mdm Liew. The plea of a gift only arose on 29 June 2015 – on the cusp of the trial - by way of an amendment to the pleadings. No evidence was led in this regard as AEICs had been filed by then. No attempt was made to file a supplementary AEIC or adduce *viva voce* evidence. It therefore seems that the claim rests on the basis of the presumption of advancement, an evidential tool displacing the presumption of a resulting trust. I am convinced that the presumption, a weak one to begin with, has been rebutted. I therefore conclude that the Deceased never intended a gift of the Assignment Proceeds to Mdm Liew.

Summary of conclusions on Mdm Liew’s claims (excepting the Will)

202 To recap, I am of the view that:

- (a) there is no resulting trust, or common intention constructive trust as regards the Boon Lay Property and Shop, and the Bedok Property and Shop;
- (b) there is no inchoate interest in equity arising out of a proprietary estoppel as regards the Boon Lay Property and Shop, and the Bedok Property and Shop; and

(c) the Deceased did not gift the Assignment Proceeds to Mdm Liew.

The 1st Defendant's Claims (save as regards the Will)

203 The Deceased is on paper a tenant-in-common of 51% of the Boon Lay Property. He is also a partner of the Boon Lay Shop with a 51% share. The 1st Defendant, however, asserts that he is the sole beneficial owner of both the Boon Lay Property and Shop, as he had purchased the same in 1993. The Deceased's name only remained so that a rebate of \$96,000 offered by the HDB could be enjoyed. His claim rests on the events at a family meeting in 1993 involving the Deceased and all his sons. The Plaintiff asserts that there were two meetings. His version of the events is materially different from that of the 1st Defendant's. I shall now consider their respective versions.

The 1st Defendant's version of the 1993 events

204 The 1st Defendant's case is that sometime in 1993, shortly after the HDB offered the Boon Lay Property for purchase, a meeting took place in Khian Hin's home. The meeting was called because of unhappiness on the part of Khian Hin, Foong Chong and the Plaintiff that they did not receive a share of the Assignment Proceeds. This was also a position that was taken by Mdm Liew.

205 At this meeting, it was agreed that the 1st Defendant would buy over the Deceased's 51% share of the Boon Lay Property and Shop by *making payment, not to the Deceased*, but his brothers. The Boon Lay Property was valued at \$868,000, and the 1st Defendant agreed to pay his brothers a total of \$99,495 for the Deceased's 51% interest. In addition, as 24.5% was vested in

Khian Hin, he was paid a further \$40,000 giving a grand total of \$139,495. The 1st Defendant was allowed to retain a 24.5% share *gratis*.

206 In his AEIC and at trial, the position shifted somewhat. According to the 1st Defendant (per his AEIC), the Deceased agreed to split his 51% interest in the Boon Lay Property and Shop amongst his four sons with each receiving 12.25%. There was a remnant 2% that was given to the 1st Defendant. The Boon Lay Property was valued at \$868,000, and as the purchase price from the HDB was \$434,000, it was decided that the 1st Defendant had to account for that portion of the resultant profit of \$434,000 to his brothers in the proportion that the Deceased had decided. Each 12.25% was therefore valued at \$53,165. However, as Foong Chong and the Plaintiff each owed the Deceased \$20,000, they would receive \$33,165 each. Khian Hin would be paid an additional \$20,000 for his personal share of 24.5% in the Boon Lay Shop and his interest in the Boon Lay Property, making it a total of \$73,165 to Khian Hin.

207 At trial, the 1st Defendant confirmed that he paid Khian Hin \$20,000, not \$40,000, for his 24.5% interest in the Boon Lay Shop and Property. He alleged that he had instructed his solicitors to amend his pleadings to reflect this but they failed to do so.

208 The payments to Khian Hin were allegedly paid in 4 cheques totalling \$71,215 on four separate occasions. The balance \$1,950 was deducted for the purchase of a refrigerator that the 1st Defendant had previously paid on Khian Hin's behalf. The payments to Foong Chong and the Plaintiff came from a sum of \$70,000 given by Mdm Liew to him ([158] *supra*). Mdm Liew had kept the monies in a safe deposit box at home.

Foong Chong's and the Plaintiff's version

209 The Plaintiff and Foong Chong offered broadly similar versions. There were two meetings in 1993, both involving only the Deceased and his sons. The first meeting took place at Khian Hin's home. The second meeting was at the 1st Defendant's home.

210 At the first meeting, the Deceased said that he would retain 51% in the Boon Lay Property and Shop. He wanted his sons to have a share in the remaining 49%. He allocated 24.5% of the Boon Lay Property to the 1st Defendant as he was running the Boon Lay Shop. The other sons were allocated the remaining 24.5%, which the 1st Defendant had to purchase as he had indicated an interest in managing the Boon Lay Shop.

211 At the next meeting, the Deceased valued the said 24.5% interest in the Boon Lay Property at \$139,495. Khian Hin was allocated \$73,495 as he was already a partner and co-tenant. Foong Chong and the Plaintiff were allocated \$33,165 each. However, the 1st Defendant did not pay Foong Chong and the Plaintiff for their shares. The Deceased subsequently made those payments on the 1st Defendant's behalf.

Analysis

212 I have grave difficulty with the 1st Defendant's version of the events for several reasons. Before I state them, I should clarify that I am of the view that two and not one meetings took place. I formed this view because I accepted the Plaintiff's and Foong Chong's evidence principally.

213 First, the circumstances described by the 1st Defendant for the calling of the meetings are questionable. It is difficult to believe that the meetings were called because Khian Hin, Foong Chong and the Plaintiff were unhappy over not receiving a share of the Assignment Proceeds. The Bedok Property and Shop were not theirs to begin with. They would have grounds to feel disenfranchised if, for example, the Deceased had given a share of the Assignment Proceeds to their siblings and not them. But nothing of the sort happened. Also, such a challenge was not in keeping with the patriarchal nature of the family. The Deceased held sway over the family. It is relevant to note that the meetings took place a year after the Assignment Proceeds were received in early 1992. Why did the brothers wait such a long time to register their unhappiness? It is also hard to understand how such unhappiness could have been quelled by a distribution along the lines put forward by the 1st Defendant (see the analysis at [214] and [215] *infra*). It simply does not add up. I am more inclined to believe that the meetings were in fact called by the Deceased when the Boon Lay Property was offered by the HDB for purchase. It is not a coincidence that the meetings took place after that offer was received.

214 Second, the deal simply did not make commercial sense, even taking into consideration the fact that this was an agreement between family members. On the 1st Defendant's case, he was paying \$139,495 for the entire interest in the Boon Lay Property and Shop. Granted there remained the sum of \$399,280 that was payable to the HDB. Even assuming that the 1st Defendant bore the full brunt of the balance \$399,280 that was payable to the HDB, which I do not accept given that the evidence shows the payment came from a UOB bank loan in the name of the Boon Lay Shop ([39] *supra*) and

cash that appears to be from the Boon Lay Shop ([225] *infra*), he would have paid a total price of \$538,775 for a property that was valued at \$868,000. It should not be forgotten that that would be for both the Boon Lay Property and Shop. By buying the property, the 1st Defendant was getting the business for free. The Deceased received nothing for the assets and his other sons walked away with a lot less, while the 1st Defendant gained significantly. On the 1st Defendant's case, he received for free a 38.75% share made up of his original 24.5% share plus an additional 2% (being the remnant share) and the 12.25% that was his share of the Deceased's 51% share. By making part payment of Foong Chong's and the Plaintiff's shares by setting off against the sums due to them loans of \$20,000 each repayable by them to *the Deceased*, he was receiving a further sum of \$40,000 from the Deceased. Further, he was only paying \$20,000 for Khian Hin's 24.5% share, which would be a considerable discount given that a 12.25% share was valued at \$53,165. Add into the mix the fact that he was getting the Boon Lay Shop for free by buying the Boon Lay Property, and it becomes quite apparent that the transaction was so acutely slanted in the 1st Defendant's favour that it is difficult to imagine the Deceased and his other sons being comfortable with its terms let alone the Deceased actually suggesting them. I see nothing to suggest that the 1st Defendant was so heavily favoured as a child for the Deceased to have proposed such terms. The deal borders on the unreasonable.

215 Third, the mathematics simply does not add up. As Khian Hin's total share was 36.75% (24.5% and 12.25%), the payment to him ought to have been \$159,495. Yet he was to receive only \$73,495. It is preposterous to suggest that Khian Hin's 24.5% interest was valued at \$20,000 or even \$40,000 as asserted earlier) when it ought to have been valued at \$106,330,

using the value attributed to a 12.25% interest as a reference. Why would Khian Hin and the Deceased have agreed to such terms?

216 Fourth, the inconsistent position taken by the 1st Defendant on the value that was attributed to Khian Hin's 24.5% share ([206] *supra*) casts doubt over his account. It was pleaded as \$40,000 but was changed to \$20,000 in his AEIC and at trial. I do not accept the 1st Defendant's explanation that he had told his solicitors to correct the error. The \$40,000 must have been reflected in his pleadings on his instructions. He must have approved the draft pleadings. When the 1st Defendant took the stand, no attempt was made to correct the purported error in the pleadings *until the inconsistency was pointed out to him in cross-examination*.

217 Fifth, it is difficult to understand why the Deceased or, for that matter, the 1st Defendant's brothers would accept that the 2% remnant share be given to the 1st Defendant. It could just have easily have been carved out four ways evenly.

218 Ultimately, two things must be remembered:

- (a) the Deceased was the majority shareholder of the Boon Lay Shop; and
- (b) the offer from the HDB was to him.

There was really no reason for him to be so overly and implausibly generous to the 1st Defendant disregard his other sons in the process.

219 I am therefore inclined to accept the version of events put forward by Foong Chong and the Plaintiff. While it suffers from opacity as to how the figures for the individual distributions and Khian Hin's 24.5% interest were arrived at, it does not suffer from the severe logical deficits that plague the 1st Defendant's version. The Deceased, as the owner, continued to retain a controlling interest in the property and the business. The 1st Defendant was given a 24.5% interest in recognition of the fact that he had managed and would continue to manage the Boon Lay Shop. The other sons received a share with Khian Hin receiving more as he was on paper a co-tenant and partner. It made eminent sense for the Deceased to have distributed his property and business in this manner. It would therefore follow that no agreement was reached in 1993 for the 1st Defendant to buy out the Deceased's 51% interest in the Boon Lay Property and Shop.

220 There are other factors that support this conclusion.

221 First, the position taken by the 1st Defendant in letters written by his solicitors is not consistent with his account. I highlight just one – Ho Wong's letter dated 19 March 2008 in response to Citilegal's letter dated 13 March 2008 demanding that he register as tenants the beneficiaries under the Will. This is what was said:

Our client instructs that he purchased the Property in 1993 *together with the deceased* for purposes of carrying on the partnership under the name and style of Lokyang Department Store ("Partnership Business"). The deceased requested my client to buy over all the shares of Partnership Business from the other siblings and thereafter to proceed to purchase the *Property in the name of our client and the deceased for purposes of the business*. This is to avoid any future dispute among the siblings since my client will be running the business solely. *The deceased also assured my client that both*

the business and the Property would belong to him upon his death. [emphasis added]

This position is an echo of the earlier position set out in Ho Wong's letter dated 12 October 2007 to the HDB.

222 It is apparent that this letter is largely consistent with the events described by Foong Chong and the Plaintiff save as regards an alleged assurance by the Deceased. However, that assurance goes completely against the grain of the position taken by the 1st Defendant in his pleadings, that the Deceased had sold his interest to the 1st Defendant. The assurance makes plain that:

- (a) there was no sale of the Deceased's interest in the Boon Lay Property and Shop;
- (b) the only sale was of the interests of the 1st Defendant's brothers; and
- (c) the 1st Defendant *and the Deceased* purchased the Boon Lay Property for the purpose of their business.

This letter plunges a knife right into the heart of the 1st Defendant's case as regards the Boon Lay Property and Shop.

223 Second, consistent with the Boon Lay Property being purchased by the 1st Defendant *and the Deceased* for the purpose of the Boon Lay Shop:

- (a) the Deceased was a co-signatory and co-guarantor to the loan that was taken from UOB to finance the purchase;

- (b) all mortgage payments were paid from the cash flow of the Boon Lay Shop ([39] *supra*);
- (c) the Deceased continued to be reflected in the financial statements of the Boon Lay Shop as a partner; and
- (d) the Deceased declared, and it would seem paid, income tax on the basis of a 51% share of the profits earned by the partnership ([162] *supra*).

224 The 1st Defendant attempts to downplay the fact that the Deceased was reflected as owner of the Boon Lay Property. He alleges that this was so that the rebate offered by the HDB could be enjoyed. I make three observations:

- (a) it does not explain why the Deceased needed to continue as a partner of the Boon Lay Shop;
- (b) it does not explain why the Deceased received profits from the partnership in accordance with his profit share; and
- (c) it does not explain why, as it was the case with the Bedok Shop in 1992, the right to purchase the Boon Lay Shop could not have been assigned by the Deceased to the 1st Defendant.

The allegation was nothing more than a disingenuous attempt by the 1st Defendant to explain an obvious difficulty with his case.

225 The 1st Defendant also asserted that a cash payment of \$183,652 towards the purchase price came from him. He testified that he broke a fixed deposit account in his name to enable this payment to be made ([108] *supra*).

However, no documentary evidence of the alleged fixed deposit account was produced. It would not have been difficult for the 1st Defendant to have secured the bank statements to make his case. All he produced was a cashier's order that was applied for from a UOB account of the Boon Lay Shop. No bank statement of the Boon Lay Shop was produced to show the source of the deposit of \$183,652. On balance, it would seem that the monies came only from the revenues of the Boon Lay Shop. As the Boon Lay Shop was principally the Deceased's until he made the distribution at the 1993 meetings, the payment would in fact have been made by the Deceased. In this regard, I struggle to believe that the 1st Defendant had funds of \$183,652 available when his income after he left Thai Lok was derived solely from the Boon Lay Property, which was owned by the Deceased.

226 Third, the Deceased's conduct in examining ways to sell the Boon Lay Property which resulted in Mdm Liew lodging the Police Report suggests that he had an interest in the property. The Police Report makes clear that he was pressing Mdm Liew to persuade the 1st Defendant to sell the Boon Lay Property. He approached lawyers to examine his options as regards the 1st Defendant's interest in the Boon Lay Property, and appointed valuers to assess the value of the property ([47] *supra*).

227 Fourth, the fact that the Deceased dealt with the Boon Lay Property in the Will supports the view that he felt that he retained an interest. This is of course subject to the Will being upheld.

228 Finally, if indeed the 1st Defendant had purchased the Deceased's interest in the Boon Lay Property and Shop, or at the very least had been assured that upon the Deceased's passing, the same would be his, surely some

effort would have been made by the 1st Defendant to document this. If not, a fracas could ensue with his siblings and even his mother. The need to document such an event would have assumed greater urgency when the Deceased was diagnosed with terminal lung cancer. Yet no steps were taken by the 1st Defendant in this regard. This suggests to me that there was in fact no transaction or assurance in 1993 as alleged by the 1st Defendant

229 I therefore conclude that the Deceased does not hold a 51% interest in the Boon Lay Property and Shop on trust for the 1st Defendant.

The Plaintiff's Claims

The Loan

230 The sole issue that I have to decide as regards the Loan is whether it has been repaid in full. I note that despite the Loan having been advanced in 1998 and this action having been commenced on 11 May 2012, the 1st Defendant did not plead the defence of limitation under s 6(1) of the Act. Notwithstanding this, the 1st Defendant sought to rely on s 6(1)(a) of the Act in his closing submissions. As the defence was not pleaded, I reject the submission.

231 It is common ground that the Loan was advanced to the 1st Defendant in 1998 for the purchase of Corporation Drive from monies that were derived from the Assignment Proceeds. The Loan was for \$300,000. The monies were drawn from Mdm Liew's Joint ICB Account. It is also common ground that on 9 May 2002, the 1st Defendant made repayment of \$284,126.52 from the proceeds of sale of his flat in Tampines towards the Loan. This was deposited

into Mdm Liew's Joint ICB Account No. 2. This where the common ground ends.

232 The Plaintiff asserts that the Loan is interest-bearing and the only payment that was received was on 9 May 2002. Accordingly, there is an unpaid balance of \$42,403.

233 On the other hand, the 1st Defendant asserts that the Loan is interest-free, and that he had repaid the Loan in full. I do not accept the 1st Defendant's position for several reasons. Before I set out my reasons, I must address an important point which goes to the 1st Defendant's credibility generally but is also related specifically to this issue.

234 In his Defence, the 1st Defendant asserted that the Loan was from the Deceased. However, at trial, he shifted his position and asserted that it was from Mdm Liew. He attempted to explain the inconsistency by asserting that the repayment on 9 May 2002 was deposited into his joint account with Mdm Liew. However, he was unable to produce any evidence of such a bank account. This was not a position which even Mdm Liew took. When asked for details of this alleged joint bank account, the 1st Defendant was not able to provide the same and in desperation said that he did not even know about the account! These answers were quite incredible. When his attention was drawn to the fact that his position that the Loan was repaid to Mdm Liew was inconsistent with his pleadings and AEIC, and when he was shown the bank statement for Mdm Liew's Joint ICB Account No. 2, he simply had no response.

235 The inconsistency did not end there. The 1st Defendant admitted that it was the Deceased who pressured him for payment. When asked why he would repay the Loan to the Deceased if it was from Mdm Liew, he said that he did so because Mdm Liew was agreeable to this. I find the answer quite absurd.

236 It seems to me that the 1st Defendant took this obviously contrived position for two reasons. First, to shield himself from a claim by the Deceased's estate for the unpaid balance of the Loan. Second, to further Mdm Liew's position that the Bedok Property and Shop were hers given that the Loan was advanced from the Assignment Proceeds. Notably, Mdm Liew echoed the 1st Defendant's position that: (a) she had made the Loan; (b) it was interest free; and, (c) the 1st Defendant had repaid the same. However Mdm Liew was unable to provide any details of repayment of a loan which she was supposed to have made and which had allegedly been fully repaid. I reject both the positions taken by Mdm Liew and the 1st Defendant.

237 I now address the question of whether the Loan carried interest. I find that it did for two reasons. First, if the Loan was interest free, it is difficult to understand why it was recorded in the Record Book as carrying interest. The Record Book is a contemporaneous record of the terms of the Loan. The Record Book clearly sets out when the Loan was disbursed, and repayment made. More significantly, it set out the interest rate. It even captures the use of the proceeds of sale of the Tampines flat to pay down the Loan. The authenticity of this document has not challenged.

238 Second, based on the Record Book, the total amount outstanding is \$42,403. In this regard, the 1st Defendant's evidence initially was that a total

of \$302,011.95 was repaid. The 1st Defendant's evidence was riddled with the following inconsistencies:

(a) If the Loan was interest free, why would the 1st Defendant repay \$302,011.95? When questioned, he said that one of the payments, \$8,437.50, was actually made by a cheque *which was never banked in*. If the cheque was not banked in, how could there have been a payment to begin with? It was a totally ridiculous response. Further, his response contradicts his AEIC where he asserts that the payment was in cash. It is pertinent that the said payment was in fact reflected in the Record Book.

(b) By the time the 1st Defendant sold his Tampines flat, he had repaid, on his case, \$12,937.50 (\$4,000 in August 2000, \$8,437.50 in 2001 and \$500 in May 2002). He therefore ought to have repaid \$287,062.25 but in fact only paid \$284,164.95. There was a shortfall of \$2,875.50. However, he thereafter paid a further \$5,000 in February 2003. When asked for an explanation, he said that he did not keep track of how much he had paid. The 1st Defendant's answer smacks of dishonesty. Clearly, the "overpayment" was because the Loan carried interest.

239 In the round, I find that the 1st Defendant owed the Deceased \$42,403 as at 22 August 2002. As I do not have clarity as to the interest rate after that date, the Record Book being silent in this regard, I make no finding on the rate of interest after that date.

Rent for the Boon Lay Property

240 The Plaintiff asserts that rent was collected by the Deceased for the Boon Lay Property from the time it was purchased by the Deceased and the 1st Defendant. The rent was \$2,000 per month until July 2000 when it was increased to \$4,000. The Boon Lay Shop was in arrears since August 2000. The Plaintiff claims for arrears of rent since August 2000. The 1st Defendant denies that there was such an arrangement. In his closing submissions, he relied on the defence of limitation in s 6(1)(a) of the Act. I have not considered that defence as it was not pleaded. The Plaintiff made an alternative claim for an account for rent at a market rate from August 2000 which has not been pursued in the closing submissions.

241 I reject the Plaintiff's claim for rent.

242 The claim is for rent payable by the Boon Lay Shop for use of the Boon Lay Property. The Boon Lay Shop was a partnership between the Deceased and the 1st Defendant. The Boon Lay Property was owned by Deceased and the 1st Defendant as tenants-in-common. That being the case, I do not see why or how:

- (a) the Deceased is entitled to levy rent for his *sole benefit* on the Boon Lay Shop for use of the Boon Lay Property;
- (b) require the 1st Defendant to bear the rent *solely* for the use of the Boon Lay Property for the *benefit of the Boon Lay Shop*; and
- (c) the 1st Defendant would have agreed to this arrangement.

243 Further, on the Plaintiff's case, rent had been paid right up to July 2000. However, based on the financial statements for the Boon Lay Shop for the year ending December 2000 (being the latest financial statements that were produced), there is no line item for rent.

244 I note that the Record Book records a liability for rent for the Boon Lay Property. There are references to cheques reflecting payments for two time periods – 15 July to 15 August 2000, and 15 August to 15 September 2000. However, the document does not establish that rent had in fact been paid from as early as the Plaintiff asserts. I do not discount the possibility that payments were in fact made to the Deceased by his sons in relation to the Boon Lay and Bedok Properties which the Deceased in his mind regarded as rent. Foong Chong testified that he had paid rent for the Bedok Shop. However, that does not make such payments constitute rent. Conceptually, I do not see how the Deceased was *solely entitled* to receive rent from the 1st Defendant for use by a business in which he and the 1st Defendant were partners of premises jointly owned by them.

245 I therefore do not allow the Plaintiff's claim for rent.

Account of profits and limitation

246 The Plaintiff seeks an account of all income and expenditure of the Boon Lay Shop and for an order that the 1st Defendant pays to the Plaintiff as the executor of the Deceased's estate *the profits due to the Deceased from the business* with effect from the date of the death. In his submissions, the Plaintiff has based his claim on s 42 of the Partnership Act (Cap 391, 1994 Rev Ed) ("the PA") which provides as follows:

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of 5% per annum on the amount of his share of the partnership assets:

Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under this section.

247 The 1st Defendant pleads that an action for an account is barred by limitation under either s 6(1) or s 6(2) of the Act. The sections provide as follows:

6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

- (a) actions founded on a contract or on tort;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award;
- (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

248 The 1st Defendant also refers to s 43 of the PA in support of the argument that the claim for a share of profits is a debt accruing due from the surviving partner to the estate of the deceased partner at the date of dissolution of a partnership. For completeness, I reproduce s 43 of the PA:

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

249 In order to appreciate the Plaintiff's claim, it is important to understand what follows under the PA as a result of the death or retirement of the partner. This issue was considered in detail by the Court of Appeal in *Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) v Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others* [2015] 4 SLR 180 ("*Mitre Hotel*").

250 As a starting proposition, death of a partner brings to an end the relationship not only as between the surviving partners and the deceased partner, but also as between the surviving partners, subject to any agreement to the contrary. This principle is encapsulated in s 33(1) of the PA. In the absence of an agreement to continue, a general dissolution of the partnership results. Even if there is an agreement to continue the partnership, dissolution nonetheless occurs. However, that would be a technical dissolution and occurs as a matter of law. The difference is that in a technical dissolution, the business continues as a newly constituted partnership of the surviving partners without a winding up of the affairs of the business, which a general dissolution would wrought. However, certain consequences follow under the PA as result of the dissolution of the partners, whether it be general or technical.

251 First, upon dissolution, partnership property will be sold and the net proceeds, after satisfaction of all debts, will be divided amongst the partners in their proportionate share. In this regard, based on the equitable doctrine of conversion, partnership property which is supposed to be sold at the date of dissolution will be *deemed as sold* (see *Mitre Hotel* at [112]). This is particularly relevant in a technical dissolution. The equitable doctrine of conversion is codified in s 22 of the PA which stipulates that where land or any interest has become partnership property, it shall be treated as between partners and the heirs, executors or administrators of a deceased partner *as personal and movable property and not real estate*. In other words, as between the partners, s 22 of the PA treats partnership property as having been converted into money (*ie*, sale proceeds). This is true as between the surviving partners, and as between them and the deceased partner.

252 Second, as a consequence, the partner's share in the partnership property is limited to a proportionate share in the net proceeds of sale of partnership property after the firm's debts and liabilities have been paid or provided for (see *Mitre Hotel* at [117]). The obligation to apply the partnership property towards the payment of debts and liabilities, and thereafter to pay the surplus assets to the partners in accordance with their share is encapsulated in s 39 of the PA.

253 Third, as result of these provisions, upon dissolution of the partnership, the surviving partners have an obligation to give an account of the share of the partnership property that is due to the estate of the deceased. The obligation to give an account therefore arises as a consequence of the death of a partner. It must be remembered that the account relates to the share *of the partnership*

property that is due to the deceased partner. The manner in which the accounts ought to be taken is, subject to agreement, provided in s 44 of the PA.

254 Fourth, this share *of the partnership property* is treated as a debt due from the surviving or continuing partners accruing as at the date of the dissolution or death. This is provided in s 43 of the PA. *Mitre Hotel* establishes that the share is a debt, and a claim in relation to the same is subject to the limitation period in s 6(1)(a) of the Act.

255 In light of these conclusions, as the partnership is brought to an end by the death of the deceased partner, his estate is: (a) entitled to a share of the net proceeds of the partnership property, after deducting debts and liabilities, as a debt due from the surviving partners; and, (b) not entitled to a share of the profits of the partnership if it continues after his death as a newly constituted partnership. There is, however, an exception to the bar to a share of the profits under s 42 of the PA.

256 Section 42 of the PA applies where: (a) the surviving partners carry on the business of the firm with its capital and assets; and, (b) do not provide a final settlement of accounts as between them and the estate of the deceased partner. In such an event, the estate of the deceased partner has the option of seeking a share of profits made since dissolution as the court may find *is attributable to the use of his share of the partnership asset*, or interest at 5% per annum on the amount of his share of the partnership asset.

257 It is therefore clear that the right under s 42 of the PA only arises when the surviving partners have failed to provide an account of the deceased partner's share of the net proceeds of sale of the partnership property, pursuant

to s 39 read with s 44 of the PA. In that event, if his personal representatives elect for a share of profits, that share is limited to such profit as may be attributable to use of his share of the partnership asset, *and not his share of the partnership at the time of dissolution.*

258 The Plaintiff's claim is for an account of income and expenditure of the Boon Lay Shop and payment to the Plaintiff as trustee of the Deceased's estate the share of profits due to the Deceased from the Boon Lay Shop. If by this, the Plaintiff seeks an account of the share of profits that are attributable to use of his share of the assets of the Boon Lay Shop, that will fall within s 42 of the PA. This is provided the 1st Defendant has not provided a final settlement of accounts to the estate of the Deceased, and has continued the business following the passing of the Deceased. Both these pre-requisites are satisfied on the present facts.

259 The 1st Defendant submits that such a claim is barred by limitation under s 6(1)(a) of the Act as it is claim for a debt under s 43 of the PA. He relies on *Mitre Hotel*. On the other hand, the Plaintiff submits that s 43 of the PA relates to a share of the net proceeds of the partnership property. The present claim is under s 42 of the PA, which does not fall within s 43 of the PA and therefore not barred by s 6(1)(a) of the Act. I agree with the Plaintiff. Sections 42 and 43 of the PA deal with quite different claims. One concerns a share of profits (s 42) and the other a share of the proceeds of sale of partnership property (s 43). The latter is treated as a debt and therefore brings into operation s 6(1)(a) of the Act. The former is not a debt claim. Section 6(1)(a) is therefore inapplicable.

260 However, the Plaintiff faces an insurmountable hurdle in the form of s 6(2) of the Act. Section 6(2) provides that:

An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

As the Plaintiff's claim is one for an account to ascertain the share of profits that is attributable to use of the Deceased's share of the assets of the Boon Lay Shop, s 6(2) of the Act would apply. The 1st Defendant has pleaded and relies on s 6(2) of the Act.

261 The Plaintiff submits, relying on the Indian authority of *PS Nagarajan Robert Hotz* [1954] AIR 278 ("*Nagarajan*"), concerning s 37(1) of the Indian Partnership Act which is *in pari materia* with s 42(1) of the PA, that the Act does not apply to a claim under s 42(1) of the PA. The court in *Nagarajan* drew a distinction between a claim for an account for the period leading up to a partner's death, and one for the period subsequent to the partner's death. It held that while the defence of limitation would apply in respect of the former claim, it would not apply to the latter as "the cause of action continues from day to day" (see *Nagarajan* at [6]).

262 I am unable to agree. It seems to me that a claim under s 42(1) of the PA is subject to the limitation period stipulated in s 6(2) of the Act. In *Brownlow William Knox v Frederick Gye* (1871) LR 5 HL 656 ("*Knox v Gye*"), the appellant was the executor of the estate of a deceased man who had entered into a partnership with the respondent. The deceased partner passed away in 1854 but his will was only proved by the appellant in 1861. The appellant then brought an action in 1864 for an account of the partnership

estate and the share of the deceased partner as at 1854, as well as the assets and profits subsequently received by the surviving partner. This was motivated by what was said to be a considerable sum received by the respondent in 1859 as a compromise of a debt due to the partnership estate. It was held that the defence of limitation applied and started to run from the date of dissolution of the partnership, *ie*, the date of the deceased's passing, and that the right to account was time-barred as of 1860, six years from the death of the deceased partner. The holding of Lord Colonsay at 677-678 is apposite:

I hold that the *Statute of Limitations* does apply to a suit brought by the executor of a deceased partner against the surviving partner demanding an account of the partnership concerns; and ... in the general case, the *punctum temporis* from which the statutory period of six years begins to run, is the date at which the partnership estate came to be vested in the surviving partner. At any time during the currency of that period the executor of the deceased partner may bring a suit demanding from the surviving partner an account of the partnership concerns, but after the statutory period has elapsed no such suit can be maintained. ... [I]t is said that in the interval, viz. in January, 1859, a considerable sum was received by the surviving partner as a compromise of a debt of larger amount due by one Hughes to the partnership estate; and it is contended that, as a period of six years had not run from the date of that recovery, until the filing of the bill, the statute does not apply. I cannot adopt that view. If adopted, the result would be that a new period of six years would run from the date of every recovery of partnership debts, and that would, in effect, make the statute valueless in regard to partnership accounts. And I see no reason for it, because the account if sued for within the statutory period must have comprehended all debts and claims, whether recovered or unrecovered, and whether good, bad, or doubtful. ...

[emphasis in original]

263 This aspect of *Knox v Gye* was also followed in *Mitre Hotel* at [151]. While *Mitre Hotel* only dealt with a claim under s 43 of the PA, its discussion of the decision in *Betjemann v Betjemann* [1895] 2 Ch 474 ("*Betjemann*"),

which involved a claim for an account of partnership dealings from the time of a partner's death, suggests that its findings on the applicability of a limitation defence in that context could equally apply to s 42. The Court of Appeal noted in *Mitre Hotel* at [149]–[151]:

149 ... [T]he 1st and 2nd Respondents' next line of argument is that the Limitation Act has no application because no account was ever rendered to them following the death of Toh Say, and the surviving partners instead carried on a new partnership. They rely on the decision in [*Betjemann*] in support of this. There a father and his two sons had carried on the business as partners from 1856 to 1886; the father died in 1886 but the sons continued the business until 1893 when one of the sons died. The deceased son's executor brought an action against the surviving partner for an account of the partnership dealings from 1886. The surviving partner claimed that the accounts of the old partnership should be taken from 1856. The court found that the surviving son was entitled to an order for the accounts to be taken against the deceased son's executor with effect from 1856, on the basis that the accounts of the original firm had been carried on into the new firm without interruption or settlement.

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

151 *Betjemann* thus stands only for the limited proposition that the event of a technical dissolution following the death of one partner does not start time running as between the surviving partners who can rather seek an account from the inception of the earlier partnership if there was no break in the partnership account and the earlier partnership account was never settled. Save in that exceptional factual situation, which does not avail here, the settled law is as promulgated in *Knox v Gye* ... namely that a limitation defence will be available and effective as between the continuing or surviving partners on the one hand and the outgoing partner or his

estate on the other, regardless of whether the accounts are rendered or have been settled.

264 I am therefore of the view that the claim under s 42 of the PA is time-barred. The claim was brought on 11 May 2012. The account is sought as regards matters that happened more than 6 years before that date. Section 6(2) of the Act would apply to bar the claim.

265 For the reasons above, I disallow the Plaintiff's claim for an account of a share of the profit attributable to use of the Deceased's share of the partnership property. I note that the Plaintiff has not made a claim for the share of the net proceeds of the partnership assets of the Boon Lay Shop or to wind up the business on the ground that the same should be generally dissolved. I say no more.

Alignment of Interests and the Credibility of Mdm Liew and the 1st Defendant

266 Before I turn to consider the final issue of the validity of the Will, I make some observations on the credibility of Mdm Liew and the 1st Defendant, and the positions that they have taken in these proceedings. As indicated earlier, I harbour serious doubts over the credibility of Mdm Liew. I share the same doubts as regards the 1st Defendant. I have a strong suspicion that Mdm Liew's evidence was largely tailored with the end objective of ensuring that the 1st Defendant secures the Deceased's 51% interest in the Boon Lay Property and Shop. Similarly, the 1st Defendant's testimony as regards Mdm Liew's role in the Boon Lay Property and Shop, and the Bedok Property and Shop were tailored with the end objective of ensuring that Mdm

Liew secures the Boon Lay Property and Shop (if he fails), and the Assignment Proceeds. I will explain.

267 I have highlighted four facts earlier. It is worth reiterating them:

(a) Mdm Liew has been residing with the 1st Defendant and his family at Corporation Drive since the death of the Deceased ([107] *supra*).

(b) Under Mdm Liew's Will No. 1, Mdm Liew purported to bequeath all her assets and property, including the Marsiling Flat and monies in bank accounts in her sole name and joint names with others, to the 1st Defendant. Mdm Liew's Will No. 1 was prepared by Mr Aw despite Mdm Liew being represented by Jeanny Ng at that time. Mdm Liew's Will No. 1 was invalid as it did not comply with the required formalities for a valid will ([77] *supra*).

(c) However, subsequently, Mdm Liew made what would appear to be a valid will, Mdm Liew's Will No. 2. That will was prepared by Ho Wong, the 1st Defendant's then and present solicitors. Mdm Liew declined to produce the will.

(d) Mdm Liew repeatedly testified that her interest in the Boon Lay Property and Shop would be given to the 1st Defendant.

These facts left me with the distinct impression that Mdm Liew was asserting an interest in the Boon Lay Property and Shop, and the Bedok Property and Shop in order to benefit the 1st Defendant. If her claims are upheld, the 1st Defendant will receive the Boon Lay Property and Shop and the Assignment

Proceeds given her stated intention to pass all the property to him upon her death. There are several other indicators that suggest their interests are aligned.

268 First, the position taken by Mdm Liew in 2007 as regards the Boon Lay Property and Shop in the following sequence is germane. It must again be borne in mind that Mdm Liew was residing with 1st Defendant *at that time*:

- (a) On 24 September 2007, Jeanny Ng, on Mdm Liew's behalf, wrote to the Plaintiff to assert an interest in the joint accounts into which part of Assignment Proceeds were deposited. No claim was made in relation to the Boon Lay Property and Shop. *This letter was copied to all her children including the 1st Defendant.*
- (b) On 12 October 2007, Ho Wong wrote to the HDB to assert that the Deceased had assured the 1st Defendant when they had purchased the Boon Lay Property that the Deceased's 51% interest in the same would be the 1st Defendant's upon the Deceased's passing.
- (c) On 31 December 2007, Mdm Liew's Will No. 1 was made.
- (d) On 19 March 2008, Ho Wong wrote to Citilegal in the same terms as their letter dated 12 October 2007 to the HDB.
- (e) By a letter of the same date, Ho Wong wrote to Jeanny Ng to assert that the Deceased's interest in the Boon Lay Property was held on resulting trust for the 1st Defendant, and *Mdm Liew could testify to that.*

(f) On 25 March 2008, Jeanny Ng replied to Ho Wong to state that the distribution of the Deceased's interest in the Boon Lay Property had nothing to do with Mdm Liew (at [165] above).

This was all just too convenient. There was really no reason for Ho Wong to write to Jeanny Ng to assert the 1st Defendant's claim and to solicit her support. Jeanny Ng's reply by not asserting a claim by Mdm Liew over the same, was clearly aimed at facilitating the 1st Defendant's claim to the Deceased's interest in the Boon Lay Property. Clearly, Mdm Liew was partial to the 1st Defendant. Mdm Liew's Will No. 1 made that evident.

269 Second, when these proceedings were brought against the 1st Defendant, Mdm Liew did a *volte face* on the Boon Lay Property and Shop. She applied to intervene on 2 August 2013, more than a year after the commencement of this action, to assert a claim over the Deceased's interest in the Boon Lay Property. Obviously this was at odds with the concurrent claim by the 1st Defendant over the same interest. However, given Mdm Liew's intentions as manifested in Mdm Liew's Will No. 1, perhaps there was no clash of position in substance. Her repeated proclamations during the trial that her share in the Boon Lay Property was to go to the 1st Defendant only serves to underscore this view.

270 Third, both Mdm Liew and the 1st Defendant did not challenge each other's positions despite they being at odds. The 1st Defendant's consistent refrain was that Mdm Liew provided the start-up costs for both the Boon Lay Property and Shop, and the Bedok Property and Shop, and effectively controlled and managed the businesses thereon. In fact, the 1st Defendant went so far as to assert on the stand that the Deceased orally told him that he

would give Mdm Liew both businesses. Notably, this was not in his AEIC. On Mdm Liew's part, she was quite content to assert a claim to only 51% of the Boon Lay Property and Shop because 49% was vested in the 1st Defendant. However, she made it quite plain that the said 51% would find its way to the 1st Defendant upon her death. In this regard, I again note that despite asserting that the Boon Lay Property and Shop were entirely hers, Mdm Liew claim: (a) is restricted to only the Deceased's 51% interest in both assets; and, (b) does not extend to the 1st Defendant's 49% interest in both assets. The alignment of positions is crystal clear.

271 Fourth, Mdm Liew's position on the Loan was obviously taken to assist the 1st Defendant to defend the claim. From my analysis of that claim, it is apparent that Mdm Liew was not being truthful in her testimony. Following the same analysis, the 1st Defendant's position that the Loan came from Mdm Liew is also untruthful. I surmise that one reason why these obviously unsustainable positions were taken is because they advanced Mdm Liew's and the 1st Defendant's case that the Bedok Property and Shop were beneficially owned by the 1st Defendant.

272 Fifth, both the 1st Defendant and Mdm Liew turned up at ACRA to remove the Deceased's name from the register as a partner of the Boon Lay Shop. Yet Mdm Liew placidly let the 1st Defendant assume full ownership and control over the business despite her claim that it belonged to her.

273 In the round, I harbour deep suspicion that Mdm Liew's *volte face* on the Boon Lay Property and Shop coming so late in the day and well after the commencement of this action was really a "Plan B" by the 1st Defendant in the event he failed in his claim to the Deceased's 51% interest in the Boon Lay

Property and Shop. Similarly, facilitating Mdm Liew's claim as regards the Bedok Property and Shop would be of benefit to the 1st Defendant if she held true to her intention that he would be the beneficiary of her assets.

274 Mdm Liew's partiality to the 1st Defendant was crystal clear to me. The terms of Mdm Liew's Will No. 1 and her repeated utterances that her share in the Boon Lay Property would go to the 1st Defendant underscored that view. Over the course of this judgment, I had made several comments about how contrived the positions that Mdm Liew had taken on key issues were. I therefore do not discount the possibility that the 1st Defendant influenced Mdm Liew to take these positions.

275 I make one final comment. I was not at all impressed by the 1st Defendant as a witness. Again, I have highlighted over the course of this judgment several instances when the 1st Defendant's testimony was quite disingenuous. For completeness, I should mention one glaring example of his unacceptable conduct. The 1st Defendant was requested to produce the income tax returns which the Boon Lay Shop had filed with the Inland Revenue Authority of Singapore ("IRAS") between 1999 and 2003. He disclosed the same on 17 June 2015 in his 3rd Supplementary List of Documents. The documents produced showed that the 1st Defendant was the sole owner of the business in that period. There was no mention of the Deceased. The documents each had an entire column that was blank. The Plaintiff's solicitors then applied to IRAS for copies of the same documents. The copies that they received showed a column had been blanked off. That column reflected the Deceased as a partner and the income that he had received. When confronted, the 1st Defendant testified that he had produced exactly the documents that

IRAS had made available to him. The 1st Defendant was not being truthful. The very fact that the Plaintiff was able to obtain unredacted documents from IRAS shows up the 1st Defendant's testimony. Even if IRAS had made available the documents in the manner suggested by the 1st Defendant, he would have surely known that they were not the complete tax returns. After all, these were tax returns for the Boon Lay Shop which he would have received. Yet he did not point out the inaccuracies. The 1st Defendant was clearly trying to convey the picture that the Deceased was not a partner of the Boon Lay Shop by "doctoring" the evidence. This one instance sums up the credibility of the 1st Defendant.

276 I therefore form the view that both Mdm Liew and the 1st Defendant lacked credibility as witnesses.

The Will

277 Both the 1st Defendant and Mdm Liew allege that the Deceased lacked testamentary capacity when he made the Will. In addition, Mdm Liew alleges that the execution of the Will was procured by undue influence exercised by the Plaintiff over the Deceased. Before I consider both issues, I shall briefly set out the law on testamentary capacity.

The law on testamentary capacity

278 The Court of Appeal's decision in *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 ("*Muriel Chee*") is the leading decision on testamentary capacity. *Muriel Chee* approved the requirements of testamentary capacity set out in the

decision of this court in *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 613 (“*George Abraham*”). The requirements are, that:

- (a) the testator understands the nature of the act and what its consequences are;
- (b) he knows the extent of the property which he is disposing;
- (c) he knows who his beneficiaries are and can appreciate their claims to his property; and
- (d) he is free from an abnormal state of mind that might distort feelings or judgments relevant to the making of the will.

279 Whether the testator had mental capacity to understand the will is only one element of testamentary capacity. As established in *Muriel Chee* (at [39]), although the mental capacity of the testator may be reduced by physical or mental infirmity to below ordinary standards, he may still retain sufficient intelligence to appreciate the testamentary act. The propounder of the will bears the burden of proving that the testator possessed mental capacity. This is *prima facie* assumed by due execution of the will in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. Accordingly, if the testator was seriously ill when he made the will, the propounder has to show that the illness did not affect the testator’s testamentary capacity. An indication of testamentary capacity is gleaned from the rationality of the will having regard to its terms and the identities of the beneficiaries (see *Muriel Chee* at [39]–[40]).

280 In determining whether there was testamentary capacity, the court has to have reference to the evidence of medical experts and also non-medical evidence such as the behaviour of the testator before, during and after the execution of the will (see *Muriel Chee* at [42]).

281 The rebuttable presumption that the testator knew and approved of the contents of the will does not arise where the circumstances surrounding the execution of the will raises a well-grounded suspicion that it did not express the mind of the testator. Contemporaneous as well as subsequent conduct may be taken into account. However, only circumstances that are pertinent to the *preparation and execution of the will may be taken into account* (see *Muriel Chee* at [46]). Thus, only events that have a direct bearing on whether the testator knew and approved of the contents of the will may be taken into account. This was made clear by the Court of Appeal in a recent judgment in *Lian Kok Hong v Lian Bee Leng* [2016] SGCA 24 (“*Lian Kok Hong*”). A passage from *Muriel Chee* (at [48]) is particularly relevant:

One oft-cited example of suspicious circumstances is where a will was prepared by a person who takes a substantial benefit under it, or who has procured its execution, such as by suggesting the terms to the testator or instructing a solicitor to draft the will which is then executed by the testator alone (see John G Ross Martyn, Stuart Bridge and Mika Oldham, *Theobald on Wills* (Sweet & Maxwell, 16th Ed, 2001) at p35). In such suspicious circumstances where no presumption arises, the propounder of the will must produce affirmative evidence of the testator’s knowledge and approval. The court will typically look for evidence that the testamentary instrument was read over by, or to, the testator, or evidence that the testator gave instructions for the drafting of the will and that the will was drafted in accordance with those instructions (see *Butlin* at 483-485). The court may require further evidence if the circumstances so require (see *Fulton* at 469). Thus, in *Mahendran* at [26], the Court of Appeal held that evidence that the will was read and explained to the testatrix with the requisite mental capacity gave rise to the

“natural and proper inference” that the testatrix understood and approved of the contents of the will before she signed it. Similar evidence was accepted by the Hong Kong Court of First Instance in *Ip Wai Hung v Yip Man Chiu* [2007] HKCU 2108 to establish that a testator who did not suffer from any mental diseases had knowledge of a will read over to him and had approved it. Returning to the case of *Cattermole v Prisk* ([43] *supra*), although there were suspicious circumstances surrounding its execution, Norris J found (at [76]) that the widow knew and approved of the will because she alone gave instructions for it without the aid of notes and spoke about the terms to her banker.

282 To summarise, the following circumstances may establish knowledge and approval of the content of a will notwithstanding any suspicious circumstances:

- (a) whether the will was read over and explained to the testator; and
- (b) whether instructions for the will were given by the testator who discussed its terms with the solicitor.

The standard of proof required to show that the testator knew and approved of the contents of the will is on a balance of probabilities. The quality of evidence required to discharge the burden depends on the gravity of the suspicious circumstances (see *Lian Kok Hong* at [63]).

283 I now turn to consider the issue of the Deceased’s testamentary capacity.

Did the Deceased have testamentary capacity?

284 Two grounds are relied on by Mdm Liew and the 1st Defendant in support of their plea that the Deceased did not have testamentary capacity:

- (a) the Deceased was suffering from dementia; and
- (b) the Deceased was suffering from terminal lung cancer.

I will address dementia first.

Dementia

285 The 1st Defendant and Mdm Liew both allege that the Deceased suffered from dementia. Mdm Liew referred to alleged incidents of bizarre behaviour by the Deceased in the two years immediately preceding his demise. The 1st Defendant did not provide any details in his AEIC but unsurprisingly corroborated Mdm Liew's evidence. I am unable to accept their assertions for the following reasons.

286 First, there is absolutely no medical evidence that the Deceased suffered from such a condition. It would seem obvious that if the Deceased had struggled with this condition for two years before his death, medical treatment would have been sought, particularly if the Deceased was exhibiting the bizarre behaviour alleged (see [287] *infra*). It should be noted that the Deceased was staying with Mdm Liew under the 1st Defendant's roof in that period. The 1st Defendant asserted in his AEIC that the Deceased was receiving treatment in SGH and Gleneagles for dementia. However, he did not produce an iota of documentary evidence to back this up. Indeed, under cross-examination, he conceded that such treatment was for cancer and not

dementia. He therefore was not truthful in his AEIC. It seems clear that no medical treatment was in fact sought for dementia.

287 Second, the failure to seek medical treatment for the Deceased's alleged dementia is in my view inexplicable. Some of the alleged actions of the Deceased were not merely bizarre. For example, it was alleged that the Deceased had been violent towards Mdm Liew since May 2002, and in fact hit her on 10 May 2002 and 8 December 2002. This culminated in the making of the Police Report. It should be noted that the alleged incident in May 2002 resulted in a fracture of Mdm Liew's sternum. It was also alleged that the Deceased used a wooden pole to strike the 1st Defendant's car. If these incidents did really occur, there can be no doubt that treatment of the Deceased for his dementia was not only necessary but also a matter of some urgency. Yet, nothing seems to have been done.

288 Third, it is unlikely that the 2nd Defendant would have lodged the Police Report instead of seeking help from more relevant authorities had she truly suspected the Deceased to be suffering from dementia. In this regard, I note that the Police Report made no reference to any suspicion of dementia.

289 Fourth, in the letters written by Jeanny Ng and Ho Wong to challenge the Will, there was no allegation of dementia. The focus was on a lack of testamentary capacity because of terminal lung cancer. It is relevant that in her affidavit in support of her application to intervene, Mdm Liew made no allegation that the Deceased suffered from dementia on the issue of the validity of the Will. It is axiomatic that if dementia was suspected, that would have been one of the first allegations.

290 Fifth, none of the other children of the Deceased has alleged that he was suffering from dementia. Surely, they would have witnessed or at least been told of the Deceased's alleged bizarre conduct, in particular his violence towards Mdm Liew, and sought medical assistance.

291 Sixth, while no medical assessment of his mental state was made during his stay at Gleneagles and SGH, it seems evident from the medical notes that the Deceased exhibited no signs of bizarre behaviour. Indeed, the notes suggest that the Deceased exhibited normal behavioural characteristics and was lucid, and gave consent for all the medical procedures that were undertaken ([51], [52] and [55] *supra*). Indeed, Dr Ong did not feel that he had any cause to suspect that the Deceased was suffering from any mental infirmity. This is also relevant when I consider the question of the impact that the lung cancer had on the mental capacity of the Deceased.

292 Seventh, it would be remembered that the Deceased transferred the funds from the joint accounts with Mdm Liew to accounts in his sole name between 7 and 22 January 2003 ([48] *supra*). There is no allegation that the Deceased was then without his full mental faculties, or that his conduct was a result of influence exerted by others. These acts suggest that the Deceased knew exactly what he was doing, contrary to his purported dementia.

293 Eighth, it is difficult to believe that Ms Choo would not have been alerted to any signs of dementia when she met the Deceased. She met him alone on three occasions - 13, 17 and 20 June 2003 – to take his instructions and by her account did not notice anything untoward about his mental state.

294 Having considered all these circumstances, I am of the view that Deceased did not suffer from dementia as alleged. Indeed, given the paucity of evidence and the reasons that suggest otherwise, the fact that only the 1st Defendant and Mdm Liew make the allegation fortifies my earlier observation about their alignment of interests and credibility as witnesses.

Terminal lung cancer

295 It does not follow that the Deceased did not have testamentary capacity simply because he suffered from terminal lung cancer. The key question is whether the lung cancer affected the testamentary capacity of the Deceased to such an extent that he did not meet the requirements set out in *George Abraham* ([278] *supra*). As noted earlier, in answering this question, I will have to examine the medical evidence and the non-medical evidence of the behaviour of the testator before, during and after the execution of the Will.

296 There are several relevant considerations:

- (a) the rationality of the Will having regard to its terms and the identities of the beneficiaries;
- (b) whether the Deceased was able to communicate coherently his decision; and
- (c) the ability of the Deceased to understand the information that is relevant to his decision.

The determinative issue is *whether the testator was able to make a decision for himself notwithstanding that he might have been suffering from an*

impairment of or disturbance in the functioning of the mind (see *Muriel Chee* at [45]).

297 I do not have the opinion of a medical expert on the Deceased's testamentary capacity based on an examination of the Deceased at the time of, or shortly before or after the execution of the Will. I therefore turn to other sources to assess his testamentary capacity. In this regard, I place weight on two factors:

- (a) the evidence of Dr Ong and the medical records of the Deceased's stay in Gleneagles and SGH; and
- (b) the rationality of the Will.

Dr Ong and the medical records

298 Dr Ong was the only medical practitioner before me. Though he was not called as an expert witness who had examined the Deceased's testamentary capacity at the relevant time, he was nonetheless called by the 1st Defendant to show that the Deceased's lung cancer was so advanced that it would have impacted his mental capacity. Dr Ong made it clear that he did not make an assessment of the Deceased's mental capacity. Nevertheless, it is apparent from his testimony as sketched out earlier ([52] *supra*) that Dr Ong felt that the Deceased was lucid and clear, and able to speak in full sentences after the fluid in his lungs had been drained. Dr Ong's satisfaction with the Deceased's mental state is apparent from the fact that he got the Deceased to sign the consent form for the procedure to drain the fluid from his lungs. Dr Ong made it clear that hospital policy required consent to be obtained from

next-of-kin if there were doubts as to the patient's ability to give the same. In fact, that is exactly what was stated on the form.

299 Dr Ong testified that during the last weeks, a patient suffering from terminal lung cancer becomes very sick and very breathless because of fluid accumulation in the lungs. However, he also said that the extent of deterioration was very hard to predict. Some patients might be lucid until their last days while others might suffer from greater deterioration. Mdm Liew relies on this testimony.

300 I do not think this testimony assists. Dr Ong was speaking generally and even then was careful to qualify his answer by saying that it was difficult to predict how each patient would regress. He acknowledged that there were patients who remained lucid almost to the very end. Dr Ong's testimony in this regard was too generic and an inappropriate basis to draw the conclusion that Mdm Liew invites me to arrive at on the specific facts of this case. It would be more relevant to examine the conduct of the Deceased in the period leading up to execution of the Will and just after to understand whether his mind was so impaired that he did not have the ability to make a decision for himself.

301 During his stay at Gleneagles from 3 June 2003 to 5 June 2003, the Deceased was visited by various family members and was observed to be lucid, alert, and able to carry out conversations in full sentences. All in all, the Deceased was feeling a lot better upon discharge from Gleneagles. Having the fluid drained from his lungs obviously brought about a significant improvement in his disposition.

302 The medical notes of his visit to SGH on 3 June 2003 shortly before his admission to Gleneagles record the Deceased as being "well and able to

speak in full sentences” ([51] *supra*); The medical notes at the time of admission at Gleneagles record the Deceased as being orientated and able to react to questions with a nod to indicate “yes” ([52(d)] *supra*).

303 Between 5 and 10 June 2003, the Deceased was admitted to SGH for further treatment. The medical notes record the Deceased as “stable and comfortable”, and his general condition as “fair” and “alert and orientated” ([54] *supra*). The nursing notes repeatedly record the Deceased as “fair, conscious, alert” exhibiting “normal speech” and “cooperative” behaviour. The discharge documents record the Deceased as “alert and rational” and “orientated toward own ability” ([55] *supra*). The medical and nursing notes provide a clear and objective picture of the Deceased shortly before he met Ms Choo between 13 and 20 June 2003 ([58] to [63] *supra*). It is a picture of a conscious, alert, rational and coherent man. Coherence and the ability to assimilate information are indicia of testamentary capacity. It seems reasonably clear that the Deceased was able to make decisions as regards his treatment based on the advice of his physicians. This suggests to me that he had testamentary capacity when he was discharged from SGH on 10 June 2003.

304 If he had testamentary capacity on 10 June 2003, it is difficult to believe that his mental state would have regressed so rapidly as to result in the loss of testamentary capacity when he met Ms Choo soon thereafter. Would his mental state have deteriorated to the point where he did not have testamentary capacity between 10 June 2003 (when he was discharged from SGH) and 13 June 2003 (when he first saw Ms Choo)? I see no reason to believe that it would have and if it did not, it would follow that the Deceased intended to make a will when he first met Ms Choo.

305 The issue that was of immediate concern and which caused discomfort to the Deceased was the fluid accumulation in his lungs. Bar that, he seemed to have his faculties about him. The discomfort caused by the fluid accumulation was ameliorated by the drainage that was undertaken in Gleneagles and SGH. That undoubtedly improved the Deceased's condition. The medical notes and Dr Ong's testimony confirm this. With his breathing difficulties addressed at least in part, the Deceased was discharged from SGH on 10 June 2003 with home oxygen. Between the time of discharge from SGH on 10 June 2003 and the next appointment at SGH on 20 June 2003, the Deceased was on home oxygen at the Marsiling Flat. He was paid regular visits by his children and Mdm Liew was there to provide for his needs. No one rushed him to hospital for immediate medical care. This suggests that no one perceived the Deceased as being in immediate distress. The fact that the Deceased was not admitted to hospital during his final medical appointment at SGH on 20 June 2003 is confirmation that the Deceased was not under immediate distress. It is therefore hard to imagine that the Deceased's mental capacity would have changed so markedly between 10 and 20 June 2003. The three meetings with Ms Choo fall squarely within this period. That Ms Choo was sufficiently comfortable interacting with the Deceased as solicitor and client indicates to me that she was not troubled by concerns over the Deceased's testamentary capacity. I will address the meetings with Ms Choo later in this judgment.

306 Much ink was spilt over the fact that the Deceased was terminally ill and was on home oxygen. It is undoubtedly true that the Deceased was suffering and in distress. But that does not mean that he had no testamentary capacity. It is important to remember that his medical condition was

physiological, not mental. There was no medical evidence from attending physicians showing that the Deceased's lung cancer impacted his testamentary capacity. *Muriel Chee* is relevant in this regard.

307 The testatrix in *Muriel Chee* had dementia or cognitive impairment. Her condition varied in severity and fluctuated over time. There were moments of lucidity. There were no contemporaneous clinical observations. This was important because her condition was not consistent over time. The court was, however, of the view that the mere fact that the testatrix suffered from dementia did not mean that she was without testamentary capacity. By the same token, the fact that the Deceased had terminal lung cancer does not mean that he did not have testamentary capacity.

308 The court also held that in the absence of contemporaneous clinical observations on testamentary capacity, non-medical evidence could be adduced to show testamentary capacity. Here, we have observations by physicians and nursing staff of the Deceased's mental condition shortly before his meetings with Ms Choo. Although they were not contemporaneous clinical observations of his mental capacity, the fact remains that they were observations by medical professionals of the Deceased's behaviour proximate in time to the preparation and execution of the Will.

309 Also of relevance is the first instance judgment in *Lian Kok Hong v Lian Bee Leng* [2015] SGHC 205 ("*Lian Kok Hong (HC)*"). The testator in that case had one functioning lung and was on medication for a heart condition. He was also suffering from severe hypothyroidism. Attending physicians testified on the potential adverse impact that those ailments could have had on the testator's testamentary capacity though none was able to say

that there were signs of mental impairment. There was evidence that by the time of execution of the will, the testator's condition improved and he was able to talk rationally. The court found that the testator had testamentary capacity. It seems that the facts here are not too far removed from *Lian Kok Hong (HC)*.

310 Dr Ong's evidence and the medical and nursing notes suggest that the Deceased's testamentary capacity was not impaired by his lung cancer.

Rationality of the Will

311 The rationality of a will is relevant to the question of testamentary capacity. Conversely the irrationality or unusual content of a will may go towards raising suspicious circumstances (*Muriel Chee* at [49]). The 1st Defendant and Mdm Liew have alleged that the Will is irrational and was executed in suspicious circumstances. Therefore, my observations and conclusion on the question of rationality of the Will would apply to both issues.

312 I find the Will to be rational having regard to its terms and the identity of the beneficiaries. I will explain.

313 The 1st Defendant and Mdm Liew impugn the rationality of the Will principally on the basis that they each have been left with only \$3,000. Juxtaposed against the bequests to the other members of the family, their bequests would at first blush seem derisory and therefore an indication of irrationality. Closer scrutiny suggests a different conclusion. The background upon which the Will rests is relevant in this regard.

314 First, as regards Mdm Liew, the Will is conspicuous in its failure to deal with two assets: (a) the Marsiling Flat; and (b) Mdm Liew's Joint OCBC Account into which part of the Assignment Proceeds, some \$150,000, was deposited. It is relevant that when transferring the Assignment Proceeds from joint accounts to accounts in his sole name between 7 January 2003 and 22 January 2003, the Deceased left the monies in this account untouched. It seems evident to me that the Deceased took these two assets into account in deciding the appropriate allocation for Mdm Liew.

315 Second, as regards the allocation to the 1st Defendant, three factors are relevant:

- (a) the generous terms upon which the Deceased allocated a 49% share in the Boon Lay Property and Shop to the 1st Defendant;
- (b) the 1st Defendant's failure to pay for the shares that were allocated to Foong Chong and the Plaintiff resulting in the Deceased paying for the same; and
- (c) the assistance that was rendered to the 1st Defendant through the Loan to acquire Corporation Drive.

These factors suggest that the 1st Defendant had benefited from the generosity of the Deceased, arguably to the disadvantage of his siblings. I find that the Deceased had in all likelihood weighed this in the balance in deciding the quantum of distribution to the 1st Defendant.

316 Third, the Deceased was discontented with the 1st Defendant over the Boon Lay Property and Shop, and Mdm Liew's support for him. The gravity of the unhappiness that Deceased felt is evident from the following factors:

- (a) the Deceased consulting lawyers in 2002 on his legal options;
- (b) the incident captured in the Police Report where the Deceased threatened Mdm Liew with violence for refusing to persuade the Deceased to sell the Boon Lay Property; and
- (c) the Deceased moving monies from joint accounts to accounts in his sole name between 7 and 22 January 2003.

Collectively, these factors show why the Deceased might have been less generous with the 1st Defendant and Mdm Liew. In particular, the last factor, coming shortly after the incident captured in the Police Report, might suggest that the Deceased did not want the monies in the joint accounts to pass to Mdm Liew for fear that they would end up in the 1st Defendant's pocket.

317 Fourth, the Will is detailed and complete in identifying all of the Deceased's assets and beneficiaries except for the Marsiling Property and Mdm Liew's Joint OCBC Account. In fact, the level of thought that the Deceased had applied is clear from the following:

- (a) the share that was to go to Foong Chong was redirected to Yida, as Foong Chong was an undischarged bankrupt;
- (b) Yida was specifically identified as Foong Chong's eldest son was not mentally stable; and

(c) the Deceased ensured that the Plaintiff executed the Declaration of Trust under which the Plaintiff declared that all the monies in the bank accounts that were in the joint names of the Deceased and the Plaintiff were held on trust for the Deceased and therefore available for distribution under the Will ([65] *supra*).

It is clear that the Deceased took a careful and calibrated approach.

318 Fifth, the Deceased was meticulous in determining the distributions to each beneficiary. The following points are relevant:

(a) All the sons bar the 1st Defendant and the Plaintiff received exactly the same amount. The Plaintiff received a bigger slice of the Boon Lay Property perhaps because he had been picked as the executor.

(b) Only the sons, and not the daughters, received a share of the Boon Lay Property.

(c) Save for Poh Lin, the rest of the daughters received exactly the same. It is true that Poh Lin received more but that could simply be a reflection of the Deceased's partiality towards her. There is no suggestion that Poh Lin engineered this as she did not have anything to do with the preparation of the Will apart from recommending Ms Choo to the Deceased.

(d) Notwithstanding the reasons set out earlier, the fact that the Deceased saw fit to leave something to Mdm Liew and the 1st

Defendant suggests that he carefully considered their entitlement as beneficiaries.

319 Sixth, the choice of the Plaintiff as executor appears to have been carefully considered. It is clear that Deceased did not favour the 1st Defendant. Foong Chong was a bankrupt. Khian Hin, being the eldest son and first child, would have been a reasonably obvious choice. However, he was distracted by matrimonial issues and issues at work. The Deceased did not seem to regard the daughters as suitable. Accordingly, the Plaintiff was left as the appropriate choice. The choice of the Plaintiff shows careful thought.

320 In the round, I am of the view that the Will is rational. The mere fact that the 1st Defendant and Mdm Liew received less, and the Plaintiff and Poh Lin received more is in and of itself insufficient to show irrationality. A will is a manifestation of a testator's testamentary intention. Its terms would therefore capture the testator's sentiment towards each beneficiary and his assessment of what they deserve in his eyes. Differentiation in treatment is inevitable as familial relationships and feelings are rarely equal and always subjective. If there is a reasonable basis for understanding why the testator differentiated in the way he did, his wishes must be respected. In this case, such a basis exists. I should point out that despite the difference in treatment, none of the other beneficiaries have sought to challenge the Will on the ground that it is not rational. Ultimately, the question is whether the Will is rational having regard to its terms and the identity of the beneficiaries. I am satisfied that it is.

Conclusion on testamentary capacity

321 I therefore find that the Deceased was not suffering from any form of mental disability, and the Will is rational and was duly executed. Accordingly,

the Deceased is presumed to have had testamentary capacity when he executed the Will, and I am satisfied on the evidence that this presumption has not been rebutted.

Did the Deceased know and approve of the contents of the Will?

322 Once testamentary capacity is established, a rebuttable presumption arises that the testator knew and approved of the contents of the will. The presumption removes the evidential burden of proving knowledge and approval of the contents of the will by presuming that same. However, where there are suspicious circumstances, the evidential burden is reversed and it falls on the propounder to establish knowledge and approval.

323 Mdm Liew and the 1st Defendant allege that such circumstances exist. The following reasons have been offered in support of the allegation:

- (a) the poor health of the Deceased when he executed the Will on 20 June 2003;
- (b) the Will was executed so close to his death;
- (c) the Deceased clearly did not have mental capacity at the time of execution of the Will;
- (d) the dementia;
- (e) the failure to obtain medical certification of mental capacity at the time of execution of the Will notwithstanding the ill health of the Deceased even though the Deceased had visited SGH for a medical appointment on the date of execution;

(f) apart from the Plaintiff, Foong Chong and Khian Hin, the other members of the family, in particular Mdm Liew and the 1st Defendant, were kept in the dark about the Will ;

(g) Poh Lin and the Plaintiff benefitted more than the their siblings under the Will;

(h) Poh Lian and the Plaintiff opened the Consolidated Account into which \$119,000 was transferred from the DBS Joint Account ([70] *supra*);

(i) the Plaintiff, despite being the youngest son, was appointed executor of the Will;

(j) given no alarm bells were raised by Ms Choo, the nature of the Deceased's medical condition must have been concealed from her; and

(k) the refusal by the Plaintiff to reveal the Will at the family meeting held following the funeral.

324 Only circumstances that are pertinent to the preparation and execution of the Will may be taken into account. It would seem the reasons in [323(h)] and [323(k)] above have nothing to do with execution of the Will, and are therefore not relevant. In fact, a reason similar to that in [323(k)] was argued in *Lian Kok Hong* and not accepted by the court.

325 The reasons in [323(g)] and [323(i)] relate to the rationality of the Will which I have dealt with. The reasons in [323(c)] and [323(d)] deal with testamentary capacity which I have dealt with as well.

326 Distilling the reasons to only the relevant ones, it would seem that the complaint is that:

- (a) the Will was executed when the Deceased was in frail and poor health, and close to death;
- (b) there was no medical certification obtained of his testamentary capacity;
- (c) the preparation of the Will was kept to a small circle; and
- (d) Ms Choo was not told of the condition of the Deceased.

327 The oft-cited example of suspicious circumstances is where a person who takes a substantial benefit under a will has procured its execution by suggesting the terms to the testator or instructing the solicitor to draft the will which was then executed by the testator (*see Muriel Chee* at [48]) ([281] *supra*). The second instance has not been alleged, and there is no evidence before me of the same. As regards the first, Mdm Liew (notably not the 1st Defendant) alleges that the execution of the Will was procured by the undue influence of the Plaintiff. However, there is a complete paucity of details in this regard. It is not clear how, when and in what manner and the Plaintiff is supposed to have exercised undue influence. There is no suggestion that the terms were suggested to the Deceased. In any event, as will be seen later, I have concluded that the allegation of undue influence is not made out on these facts.

328 If the terms of the Will were not suggested to the Deceased and the instructions to Ms Choo did not come from a third party, it would follow that

it was the Deceased who gave instructions on its terms. It would be recalled that although the Deceased was accompanied by Foong Chong to Ms Choo's office on all three occasions (Khian Hin remained in the car on the first and the Plaintiff remained in the car on the third), the Deceased met Ms Choo alone on each occasion ([59], [62] and [63] *supra*). I make several observations in this regard.

329 First, as noted earlier, Ms Choo would have taken instructions solely from the Deceased. This not only suggests that the Deceased had the requisite testamentary capacity, but also that he knew and approved of the contents of the Will. It is difficult to believe that the Deceased could have been coached by his sons on the terms to be included in the Will given the frailty of his condition. He surely would not have been able to remember.

330 Second, if the Deceased had given instructions to Ms Choo, then details of: (a) the beneficiaries; and, (b) the assets, must have come from him. In this regard, the Declaration of Trust is extremely pertinent. The details of the bank accounts identified in the Declaration of Trust must have come from the Deceased. It is most unlikely that the Declaration of Trust followed from a proposal of the Plaintiff, given that the Declaration of Trust is opposed to the Plaintiff's interests (assuming that he was not acting *bona fide*). Without the Declaration of Trust, the monies in the joint accounts with the Deceased would have passed to the Plaintiff. The Declaration of Trust must therefore have been the subject of discussion between Ms Choo and the Deceased when he disclosed his assets to her, and a decision must have been made by the Deceased, on advice, to preserve the monies in those accounts for distribution under the Will. The very fact that the Deceased took the step of having the Declaration of Trust executed shows that he wanted to preserve the integrity of

the distributions under the Will. This must be a strong indicator that he knew and approved of its contents.

331 Third, the fact that the Marsiling Flat did not feature in the Will is strong indication that the Marsiling Flat was also a topic of discussion between the Deceased and Ms Choo. In the course of preparing the Will, the question of how the Marsiling Flat would devolve upon the Deceased's death must have been considered. The Marsiling Flat was held by the Deceased and Mdm Liew as joint tenants and presumably the Deceased would have been told by Ms Choo that Mdm Liew would survive to his interest. This would explain why it was left out of the Will. I alluded to this earlier as a reason for concluding that the Will is rational ([314] *supra*). It is reasonable to believe that the Deceased was well aware of the position as regards the Marsiling Flat.

332 Fourth, if Ms Choo was taking instructions only from the Deceased, it would follow that she would have had ample opportunity to satisfy herself that he had testamentary capacity, and knew and understood and contents of the Will. That she did not raise any alarm bells suggests she was satisfied on both counts. I note that no allegation has been made about Ms Choo's conduct in the discharge of her retainer.

333 In this regard, Ms Choo was unable to recall the specific meetings with the Deceased. However, she testified that it was her practice and that of her firm to assess testamentary capacity through conversations to ascertain if the client understood the testamentary act. She also testified that the draft would have been read over and explained to the client. Indeed, that is exactly what the Will stipulates in the execution column. It is provided there that the terms were explained in Mandarin to the Deceased. When Ms Choo's attention was

drawn to the same, she confirmed that she would ordinarily have done exactly that. She said that the same would also have happened as regards the Declaration of Trust even though that was a document signed by the Plaintiff. The execution of the Will was witnessed by her secretary Ms Lilian Lee who was called as a witness. She corroborated Ms Choo's testimony. I saw no reason not to accept their evidence.

334 Fourth, Ms Choo would have seen the condition of the Deceased during the interview. She would have seen that he was on oxygen, and suffered from dyspnea and *cachexia*. There was no possibility of hiding his condition from her. If she had concerns over the Deceased's health and mental capacity, she would have insisted on a medical examination to certify testamentary capacity. It is clear that she did not insist on one. These points collectively put an end to two of the reasons offered by the 1st Defendant and Mdm Liew on why the circumstances were suspicious ([326(b)] and [326(d)] *supra*).

335 If the Will is a reflection of the Deceased's instructions and it was read over and explained to him, that would go some distance towards showing that the circumstances were not suspicious, provided there was testamentary capacity (see *Muriel Chee* at [48] and *Mahendran* at [26]). I have concluded that there was testamentary capacity. If there was testamentary capacity, it would "... give rise to the "natural and proper inference" that the testatrix understood and approved of the contents of the will" (see *Muriel Chee* at [48]). The fact that the Deceased saw Ms Choo alone, gave her instructions, and had the documents read over and explained to him indicate that there were no suspicious circumstances. The fact that the Plaintiff did not try and

participate in the meetings with Ms Choo is further indication that the circumstances were not suspicious.

336 That essentially leaves two reasons for me to consider – (a) keeping the fact of the Will to a closed circle; and, (b) execution of the Will taking place close to the Deceased’s death when he was frail and in poor health. To a large extent, the second of these reasons has been addressed by the factors I have covered as regards Ms Choo. The mere fact that the Deceased was frail and in poor health has no bearing on the validity of the Will if he had testamentary capacity, and knew and approved the contents of the Will.

337 I agree that keeping of the preparation of the Will within a small circle, if seen in isolation, does raise questions. A suggestion might even be raised that the whole exercise was engineered. However, the relevant question is: engineered by whom? When in seen the proper context, there is nothing particularly sinister about the circumstances.

338 The closed circle was the Plaintiff, Foong Chong and Khian Hin. Poh Lin’s involvement was limited to introducing Ms Choo. She testified that when the Deceased was in Gleneagles, he had requested for the contact details of a lawyer for the purpose of preparing a will. Poh Lin provided him with the contact details of Ms Choo. She had no further involvement.

339 It is relevant that the closed circle included Foong Chong and significantly Khian Hin. No allegations of impropriety have been levelled by the 1st Defendant and Mdm Liew against Khian Hin and Foong Chong despite their involvement. It must be remembered that Khian Hin drove the Deceased to Ms Choo’s office for the first visit though he remained in the car. The cross-

hairs were on the Plaintiff and to a lesser extent Poh Lin for setting things up with Ms Choo. This was primarily because they were given a larger share than the other siblings. Though Khian Hin and Foong Chong were involved in the visits to Ms Choo's office, they were not targeted. Khian Hin and Foong Chong (through Yida) received a lesser share than the Plaintiff under the Will. However, they make no allegations about validity of the Will. It seems strange to suggest that the circumstances involving all three (the Plaintiff, Foong Chong and Khian Hin) are suspicious when: (a) only one of the three – the Plaintiff – is the target of accusations; and, (b) the others two are not raising any issues despite receiving less.

340 I think it is important to see the picture from a broader perspective. By the time he was admitted to Gleneagles, the Deceased must have known that he was seriously ill. He had lost a tremendous amount of weight (30% according to Dr Ong), had difficulty walking and breathing. More than 1.5 litres of fluid were drained from his lungs in Gleneagles. While he might not have been told that he had terminal lung cancer, he must have realised that the end was not far. He did inform the Plaintiff to retrieve the Record Book upon his demise when he returned to the Marsiling Flat on 20 June 2003 ([59] *supra*). It is therefore entirely conceivable that he would have considered making a will. This would account for the conversation he had with Poh Lin at Gleneagles regarding the contact details of a lawyer. His resolve to make a will would have hardened during the hospitalisation at SGH when he received intensive treatment and further draining of fluid from the lungs. The difficulties he was under would have brought home an acute awareness of his mortality. As such, when he was feeling better following treatment at

Gleneagles and SGH, the Deceased went about the task of having the Will prepared expeditiously.

341 The Deceased could not have visited Ms Choo without the assistance of others. He would not turn to the 1st Defendant and Mdm Liew for reasons I have outlined earlier. In any event, Mdm Liew was not in a position to help given her age. It is therefore not unreasonable that he would turn to his other sons (at least the ones he trusted). He seemed to have a preference for them. He did exactly that turning to Khian Hin, Foong Chong and the Plaintiff.

342 The Deceased did not disclose his plans to make a will to the 1st Defendant and Mdm Liew. He also did not disclose to Mdm Liew the trips to Ms Choo's office. He could easily have done so had he wanted. He was after all living with Mdm Liew. All family members had ready access to the Deceased. In particular, no one prevented Mdm Liew from speaking to or interacting with the Deceased. The fact that the Deceased did not disclose anything to Mdm Liew and the 1st Defendant suggests that he did not want to alert them as to his plans. This is not surprising given his sentiments towards them.

343 Foong Chong, the Plaintiff and significantly Khian Hin knew of the Deceased's plans. Yet, they did not make those plans known to the 1st Defendant or Mdm Liew. Why did they act in this manner? They would have had no reason to keep the Deceased's plans from the 1st Defendant and certainly Mdm Liew. Yet they did not inform the 1st Defendant and Mdm Liew.

344 I therefore have the distinct impression that it was the Deceased who did not want the 1st Defendant and Mdm Liew to know about the Will. The children who were in the know acted in accordance with his wishes. Seen from this perspective, the fact that plans for the Will were kept within a closed circle does not raise any questions at all. Indeed, it would suggest that the Deceased knew exactly what he was doing. This only corroborates my conclusions on testamentary capacity, and knowledge and approval of the contents of the Will.

345 Serious accusations have been made against the Plaintiff by the 1st Defendant and Mdm Liew. They allege that his conduct was not *bona fide*, as evidenced particularly by four factors:

- (a) he masterminded the execution of the Will including exercising undue influence over the Deceased;
- (b) shortly before the Deceased passed away, he procured the transfer of monies in the Deceased's account to accounts in the joint names of the Deceased and himself on 14 June 2003;
- (c) shortly after the Deceased's death, on 26 June 2003, he and Poh Lin transferred monies from the DBS Joint Account to the Consolidated Account; and
- (d) he refused to disclose the terms of the Will at the family meeting.

I do not find any of these allegations compelling. The observations I will make as regards them are equally pertinent to Mdm Liew's allegation of undue influence. I make the following observations.

346 First, the nub of the allegation is that the Plaintiff procured the execution of the Will through undue influence. However, the question remains as to the Plaintiff's motive for wanting to ensure that Mdm Liew and the 1st Defendant would receive so little. Why would the Plaintiff have desired such an outcome? They were his mother and brother after all. It is one thing to suggest that Plaintiff wanted to enrich or benefit himself. It is quite another to suggest that he would specifically target the 1st Defendant and Mdm Liew. Neither the 1st Defendant nor Mdm Liew imputed any motive to the Plaintiff. Nor was one put to him in cross-examination. I have searched for and have not been able to find one. Further, the fact that there were significant distributions to all the siblings, bar the 1st Defendant, with in fact Poh Lian getting more of the residuary estate than the Plaintiff, clearly suggests that there was no real attempt by the Plaintiff to disenfranchise others for his benefit. Surely if the Plaintiff was the mastermind, he would have ensured that the lion's share would accrue to him. Surely, if he was the mastermind, he would have limited access by Mdm Liew and the 1st Defendant to the Deceased. None of that happened.

347 Second, if the Plaintiff was trying to enrich himself, it seems strange that the transfers on 14 June 2003 were to joint accounts instead of an account in his sole name. The transfers took place the day after the first meeting with Ms Choo on 13 June 2003. If the Plaintiff was pulling the strings, he would have ensured that..On 20 June 2003, the Plaintiff signed the Declaration of

Trust declaring that the monies in these joint accounts were held on trust for the Deceased. Why would the Plaintiff agree to this if his purpose in procuring the transfers on 14 June 2003 was to enrich himself? If the Deceased was being manipulated by the Plaintiff, the Plaintiff could have easily ensured that the Declaration of Trust would not have been prepared in the first place. The allegation simply does not make sense.

348 Third, if the Plaintiff's intention was not *bona fide*, it does seem strange that he would transfer the monies in the DBS Joint Account to the Consolidated Account. It would be more logical to transfer to an account in his sole name. It is equally strange that the Plaintiff left the monies in the OCBC Joint FD Account untouched. Why did he not transfer the monies therein to the joint account with Poh Lian as well? I am inclined to reconcile the transfers in the following manner. As regards the transfers on 14 June 2003, the Deceased wanted to ensure that the Plaintiff controlled the funds following his death. Keeping them in an account in his name would mean that the Plaintiff would not have control until probate has been granted. As regards the transfer on 26 June 2003, it might very well have been the case that the Plaintiff proceeded out of an abundance of caution, borne out of a fear of how the 1st Defendant and Mdm Liew would react to the Will. There might have been some concern that the 1st Defendant and Mdm Liew would prevent the Plaintiff from dealing with the monies if they remained in a joint account in the names of the Plaintiff and the Deceased. That this concern was not misplaced is evident from the events of the family meeting when the terms of the Will were disclosed.

349 My fourth and final observation is on the family meeting. It is not surprising that the Plaintiff did not want to show the Will to the 1st Defendant and Mdm Liew at this meeting. The amount bequeathed to them was likely to prompt a hugely negative reaction. And it did. The Plaintiff's caution was well justified. In any event, the refusal to show the Will at this meeting is a non-event. Any beneficiary, including the 1st Defendant and Mdm Liew, could have applied to inspect the original copy of the Will in the court file following the Plaintiff's application for Grant of Probate. The Grant was extracted on 8 September 2006. The terms of the Will could not have been kept away from the 1st Defendant and Mdm Liew.

350 I therefore am unable to attribute any absence of *bona fides* to the Plaintiff. Consequently, I am also unable to see how his conduct as regards the preparation and execution of the Will was suspicious.

Conclusion on knowledge and approval of the contents of the Will

351 I therefore conclude that:

- (a) the circumstances surrounding the preparation and execution of the Will are not suspicious;
- (b) given that the Deceased had testamentary capacity, the presumption arises in favour of the Plaintiff that the Deceased knew and approved of the contents of the Will; and
- (c) even if I am wrong in my conclusion as regards the circumstances, and the evidential burden has therefore shifted to the Plaintiff, examining the evidence as a whole, I am satisfied that there is

a clear basis to conclude that the Deceased knew and approved of the contents of the Will.

352 In the round, I conclude that the Deceased had testamentary capacity, and knew and approved of the contents of the Will.

Undue Influence

353 This is an allegation made by Mdm Liew only. It is unclear on exactly what basis the allegation is made.

354 Undue influence cannot be presumed and must be proven. Actual coercion is required. Mere persuasion and advice is insufficient as long as there is free volition on the part of the testator to accept or reject it (see *Lian Kok Hong* at [45]). It must be shown that the persuasion was of such intensity as to overpower the volition of the testator without actually convincing him (see *Rajaratnam Kumar (alias Rajaratnam Vairamuthu) v Estate of Rajaratnam Saravana Muthu (deceased) and another* [2010] 4 SLR 93 at [66]). I have seen no evidence of this. I make the following observations.

355 First, it is evident that all family members had access to the Deceased following discharge from SGH until his death. He was staying at the Marsiling Flat then, and Mdm Liew was caring for his needs and had full access to him. Foong Chong also stayed in the property to care for the father. Everyone had full and unbridled access to the Deceased. In such circumstances, it seems quite absurd to suggest that that the Plaintiff alone could have and in fact did exercise undue influence over the Deceased.

356 Second, it is equally absurd to suggest that the Plaintiff procured the preparation and execution of the Will when the Deceased was taken to Ms Choo's office. The Plaintiff was not the only one who accompanied the Deceased. So did Khian Hin and Foong Chong. No allegation of undue influence has been levelled against them. I find it difficult to comprehend how the Plaintiff was able to solely influence the Deceased when he was one of a party of three.

357 Third, the observations that I had made earlier on the Plaintiff's *bona fides* show in my view that he would not have and did not exercise undue influence over the Deceased ([346] to [349] *supra*). It seems to me that there was no motivation on his part to enrich himself and alienate his siblings and mother in the process.

358 Mdm Liew relies on the following in support of her allegation:

- (a) The Deceased did not harbour any intention to draw up a will. Reference is made to an incident between Pick Lian and the Deceased when he reacted angrily to a suggestion from her that he draw up a will.
- (b) The timing of the preparation of the Will, the Deceased's physical and mental condition, and the movements of funds on 14 June 2003.
- (c) The bequests to the Plaintiff and Poh Lin are favourable.
- (d) The bank transfers between 7 and 22 January 2003.

359 Many of these points have been addressed earlier. To recap:

(a) There was a good reason why the Deceased would have wanted to make a will. The skirmish with Pick Lian was at a time when the Deceased's health was not dire. That the Will was prepared and executed at a time of poor health was not a matter of coincidence. The Will happened precisely because of the physical state of the Deceased.

(b) There was good reason why the Deceased gave more to the Plaintiff. It is unclear why he gave more to Poh Lian but no allegation of undue influence has been made against her. Also, there is no reason why the Plaintiff would have influenced the Deceased to give her more or for that matter give Mdm Liew and the 1st Defendant less.

(c) The transfers on 14 June 2003 have been addressed. They do not seem to have been driven by the Plaintiff.

360 That leaves one point – the transfers between 7 and 22 January 2003. I think this argument is a non-starter. If the Deceased was under the influence of the Plaintiff at that time, which is difficult to accept given that his physical condition was a lot better than what it was in June 2003, why wouldn't the Plaintiff have influenced the Deceased to place the monies in an account in his sole name? Also, surely the Plaintiff would have disclosed the transfers to Mdm Liew and his other children when he was not operating under the Plaintiff's influence. Six months passed between the transfers and his death. There was ample time for the Deceased to have disclosed the transfers. I see absolutely no merit in the point.

361 Finally, I note that no one else, not even the 1st Defendant, has made this allegation. There is some significance in that.

362 I therefore conclude that the preparation and execution of the Will was not procured by undue influence exercised by the Plaintiff over the Deceased.

Conclusion

363 Mdm Liew submits that this is a tragic story of ungrateful children. I share her view that this is indeed a tragic story. However, the tragedy does not lie in ungrateful children. The true tragedy is seeing a family torn apart because of the refusal of some members to come to terms with the testamentary wishes of the Deceased. Curial intervention has therefore unfortunately become necessary to carry out the Deceased's last wishes. Relationships have been damaged, perhaps irreparably, as a result of the sparks engendered by a court battle.

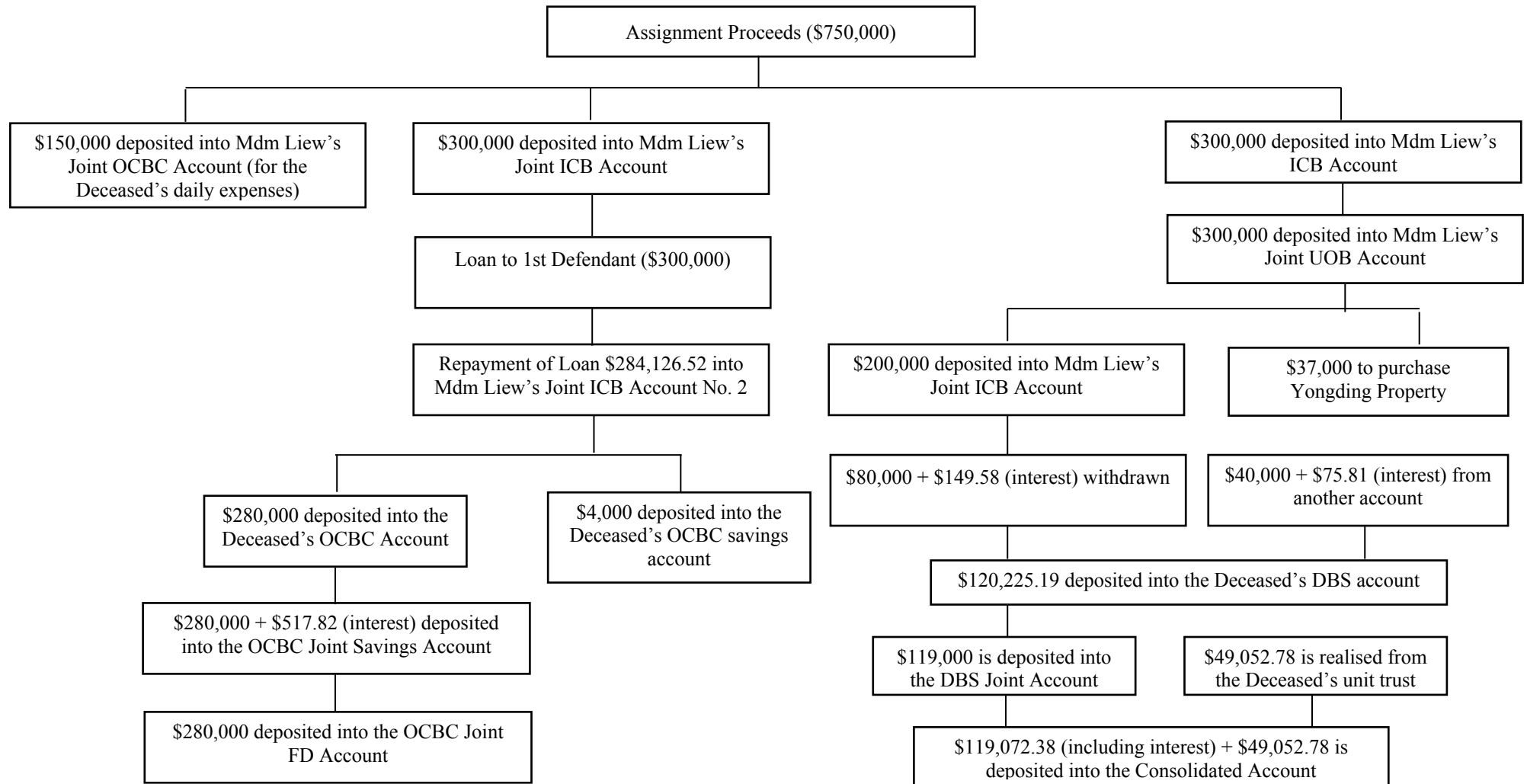
364 In conclusion, I dismiss all of the 1st Defendant's and Mdm Liew's counterclaims. There shall be judgment for the Plaintiff as regards the following claims:

- (a) The 1st Defendant shall execute such documents as may be necessary for the registration of the Plaintiff as tenant-in-common of the Boon Lay Property with a 51% share, as an executor and a trustee of the Deceased's estate.
- (b) The 1st Defendant is liable to pay the Plaintiff \$42,403, that being the unpaid balance on the Loan.

365 I will hear parties on costs.

Kannan Ramesh
Judicial Commissioner

Chong Thian Choy Gregory (Loo & Chong Law Corporation) and
Ramalingam Kasi (Rajkumar & Kasi) for the Plaintiff;
Kishan Pratap and Wong Soo Chih (Ho Wong Law Practice LLC)
for the 1st Defendant;
Nair Suresh Sukumaran and Tan Tse Hsien Bryan (Straits Law
Practice LLC) for the 2nd Defendant.

Annex A: Movement of the Assignment Proceeds

Annex B: Glossary of Defined Terms

Abbreviation	Reference
ACRA	Accounting and Corporate Regulatory Authority
AEIC	Affidavit of Evidence-in-Chief
The Assignment Proceeds	The consideration provided by Mr Lim in exchange for the Deceased's interest in the Bedok Property
Mr Aw	Mr Aw Teng Pooi, a friend of the 2nd Defendant who assisted in the drafting of Mdm Liew's Will No. 1
The Bedok Property	The shop unit located at Block 210, Bedok North #01-733 that was offered to the Deceased but assigned away in exchange for the Assignment
The Bedok Shop	The business that operated from the Bedok Property in the name of Loyang Department Store
The Boon Lay Property	The shop unit located at Block 221, Boon Lay Place #01-130 Singapore 640221 that was bought from JTC in 1993
The Boon Lay Shop	The business that operated from the Boon Lay Property in the name of Lokyang Department Store
Citilegal	Citilegal LLC
The Consolidated Account	An OCBC fixed deposit account in the joint names of the Plaintiff and Poh Lin that was opened on 26 June 2003
Corporation Drive	The 1st Defendant's place of residence, which he had bought in 1998 with the Loan
The DBS Joint Account	The Deceased's DBS fixed deposit account, in respect of which the Plaintiff's name was added on 14 June 2003

The Deceased	Lai Thai Lock, father of the Plaintiff and the 1st Defendant and husband of Mdm Liew
The Deceased's OCBC Account	An OCBC fixed deposit account in the Deceased's sole name, in which \$280,000 of the Assignment Proceeds was deposited
The Declaration of Trust	A declaration of trust executed by the Plaintiff on 20 June 2003, declaring that the Monies in the OCBC Joint FD Account and the DBS Joint Account were held on trust for the Deceased
Dr Ong	Dr Ong Kim Kiat, a cardiothoracic surgeon from Gleneagles who treated the Deceased between 3 and 5 June 2003
Foong Chong	Lai Fong Choong, son of the Deceased and the 2nd Defendant who testified on behalf of the Plaintiff
Gleneagles	Gleneagles Hospital
The Grant	Grant of Probate in respect of the Will
HDB	Housing Development Board
Ho Wong	Messrs Ho Wong Practice Law LLC, the 1st Defendants' solicitors
ICB	Industrial & Commercial Bank
IRAS	Inland Revenue Authority of Singapore
Jeanny Ng	Messrs Jeanny Ng, who represented the 2nd Defendant from 2007 to 2011
JTC	Jurong Town Corporation
Khian Hin	Lai Khian Hin, eldest child of the Deceased and the 2nd Defendant who did not testify
Loan	The Loan of \$300,000 taken by the 1st Defendant for the purchase of the Corporation Drive

The Marsiling Flat	The HDB apartment located at Marsiling Drive in the joint names of the Deceased and the 2nd Defendant
Mdm Liew	The 2nd Defendant, wife of the Deceased
Mdm Liew's ICB Account	An ICB account in the sole name of the 2nd Defendant, in which \$300,000 of the Assignment Proceeds was deposited
Mdm Liew's Joint ICB Account	An ICB account in the joint names of the Deceased and the 2nd Defendant, in which \$300,000 of the Assignment Proceeds was deposited
Mdm Liew's Joint ICB Account No. 2	An ICB account in the joint names of the Deceased and the 2nd Defendant, in which the money in repayment of the Loan was banked
Mdm Liew's Joint OCBC Account	An OCBC account in the joint names of the Deceased and the 2nd Defendant, in which \$150,000 of the Assignment Proceeds was deposited
Mdm Liew's Joint UOB Account	A UOB account in the joint names of the Deceased and the 2nd Defendant, in which \$300,000 of the Assignment Proceeds was deposited
Mdm Liew's Will No. 1	Mdm Liew's invalid will dated 31 December 2007
Mdm Liew's Will No. 2	A will executed by Mdm Liew subsequent to Mdm Liew's Will No. 1, prepared by Ho Wong
Mr Lim	Lim Chi Beng, the assignee of the Deceased's interest in the Bedok Property
Ms Choo	Ms Anne Choo, a solicitor introduced by Poh Lin to the Deceased who drafted and witnessed the execution of the Will
OCBC	Oversea-Chinese Banking Corporation

The OCBC Joint FD Account	An OCBC fixed deposit account in the joint name of the Deceased and the Plaintiff that was opened on 14 June 2003
The OCBC Joint Savings Account	An OCBC savings account in the joint names of the Deceased and the Plaintiff that was opened on 14 June 2003
Pick Lian	Lai Pick Lian, daughter of the Deceased and the 2nd Defendant who did not testify
Poh Lin	Lai Poh Lin, daughter of the Deceased and the 2nd Defendant who testified on behalf of the Plaintiff
The Police Report	A police report lodged by the 2nd Defendant in 2002 alleging that the Deceased had threatened to beat her to death
The Power of Attorney	The power of attorney executed by the Deceased on 17 June 2003 appointing the Plaintiff as his representative to manage the Boon Lay Shop
The Record Book	Handwritten records of the Deceased alluding to interest accruing on the Loan and payment of rental for the Boon Lay Shop
Siew Lian	Lai Siew Lian, daughter of the Deceased and the 2nd Defendant who testified on behalf of the Defendants
SGH	Singapore General Hospital
Thai Lok	Thai Lok Engineering, a business started by the Deceased dealing with the installation of air-conditioner ducting systems
UOB	United Overseas Bank
The Will	The will executed by the Deceased on 20 June 2003.

The Yew Tee Unit	The shop unit at Block 5 Unit 395K Yew Tee Industrial Estate that was offered to the Deceased as compensation for the resettlement of Yong Hup Seng
Yong Hup Seng	Yong Hup Seng Metal Works, a business started by the Deceased dealing with the installation of air-conditioner ducting systems
The Yongding Property	The parcel of land in the PRC that was purchased by the Deceased from Yong Ding County Xinyi Development and Construction Ltd in 1996