V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) *v* Buthmanaban s/o Vaithilingam and another
[2015] SGCA 56

Case Number	: Civil Appeal No 94 of 2014
Decision Date	: 19 October 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Chan Sek Keong SJ
Counsel Name(s)	: A Thamilselvan (Subra TT Law LLC) for the appellant; Kanagavijayan Nadarajan (Kana & Co) for the first respondent; Muralli Rajaram and Lim Min (Straits Law Practice LLC) for the second respondent.
Parties	: V NITHIA THE CO-ADMINISTRATRIX OF THE ESTATE OF PONNUSAMY SIVAPAKIAM, DECEASED — BUTHMANABAN S/O VAITHILINGAM — KRISHNAVANNY D/O VAITHILINGAM THE ADMINISTRATRIX OF THE ESTATE OF PONNUSAMY SIVAPAKIAM, DECEASED

Civil procedure – Pleadings

Civil procedure – Parties

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2015] SGHC 35.]

19 October 2015

Chan Sek Keong SJ (delivering the grounds of decision of the court):

Introduction

1 The present appeal is brought against the decision of the Judge in *Buthmanaban s/o Vaithilingam v Krishnavany d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another* [2015] SGHC 35 ("GD"). At the conclusion of the hearing this appeal, we allowed the appeal and gave the following brief grounds for our decision:

> This is a case where the claim was advanced primarily on one footing, namely, on a purchase money resulting trust, which the Judge rejected, but the Judge then found for the plaintiff (*ie*, the first respondent) on another ground, namely, on proprietary estoppel, which was not pleaded. The two types of action, for purchase money resulting trust and proprietary estoppel, are quite distinct and rest on different factual premises. In our judgment, the Judge was not entitled to do what he did, and for this reason we allow the appeal and set aside the part of the Judgment holding that the plaintiff was entitled to relief on the ground of proprietary estoppel.
>
> As to the Judge's rejection of the plea of a purchase money resulting trust, there was no cross-appeal by the plaintiff and accordingly that stands. The end result is that the plaintiff fails in his claim to relief.

2 These grounds of decision seek to amplify our brief grounds and to restate the basic features of our civil litigation system that is designed to provide a fair and transparent process in the resolution of disputes between parties by our courts. The process, which is well-established, requires

a plaintiff to plead his cause or causes of action with sufficient particulars so as to enable the defendant to know the case he has to meet and to plead his defence with sufficient particulars so that the plaintiff may know the nature and substance of the defence. This longstanding and indeed basic principle is enshrined in O 18 r 7(1) and O 18 r 12(1) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("the ROC"). Furthermore, fair and transparent pleadings serve to apprise the court of the issues of fact and law that are in dispute and which it is required to render its decision.

3 In the instant case, the court below rendered a decision against the appellant ("the Appellant") and the 2nd respondent (who as the co-administratrices of the estate of Ponnusamy Sivapakiam ("the Deceased") were the defendants below) based on a cause of action, *viz*, proprietary estoppel, which was not specifically pleaded by the 1st Respondent (the plaintiff below). The pleaded cause of action was primarily a resulting trust, although the 1st Respondent's opening statement at trial also referred to an alternative claim based on constructive trust.

4 At the conclusion of the trial, the Judge indicated to counsel for the parties that he would like them to submit on proprietary estoppel, as it was his view that it was purely a question of law and that all the material allegations of fact had been pleaded by the parties. Counsel for all parties were somewhat surprised by this turn of events as the elements of a resulting trust are quite different from those of proprietary estoppel. Nevertheless, they addressed the issue of proprietary estoppel in their written submissions as directed by the Judge.

5 It is essential in a claim based on proprietary estoppel that any supporting allegations have to be pleaded with sufficient detail and with sufficient particulars of the substance of the representations, the reliance alleged to have been placed on the representations, and the detriment suffered by the party in relying on the representations. Here, the 1st Respondent had testified to certain unrecorded conversations he allegedly had with his uncle, A Govindasamy ("Govindasamy"), who had helped to finance the acquisition of the property that was the subject of the dispute, as well as the Deceased, but his testimony was directed more towards proving a resulting trust that would have come into being about 50 years ago. As the material events had taken place such a long time ago, this was very much a case where the Judge could, and did, give full range to a subjective reconstruction of the evidence. In so doing, he held that the evidence supported the 1st Respondent's claim based on proprietary estoppel.

6 In reversing the Judge on his decision in favour of the 1st Respondent, we were satisfied that the defendants below were prejudiced by the Judge's findings of fact based on the testimonies of these witnesses (including the evidence of the 1st Respondent) in relation to a pleaded cause of action based on a resulting trust, but which the Judge found to be sufficient to prove the existence of proprietary estoppel. We also found that the prejudice could not be remedied by an award of costs. We thus set aside that part of his judgment.

7 We now set out below our detailed grounds.

Facts

Dramatis Personae

8 This appeal arose from a dispute between siblings following the death of their mother – the Deceased – in 2008. The defendant administrators are sisters and are children of the Deceased. The 1st Respondent was one of their brothers. He sued the administrators for a 33.3% share of the Deceased's house at 43 Swan Lake Avenue ("the Property") in addition to his statutory share of the estate in intestacy under the Intestate Succession Act (Cap 146, 1985 Rev Ed). He claimed to have

had repaid an advance extended by Govindasamy for the purchase of the Property.

9 We list the *dramatis personae* below:

(a) The parents of the parties are as follows:

(i) the Deceased – the mother; and

(ii) A O Vaithilingam ("the Father") – the Deceased's late husband and the father of the parties.

(b) The children (in order of birth) are as follows:

(i) Krishnavanny d/o Vaithilingam ("Krishnavanny") – the eldest sister, who was a co-administratrix to the Deceased's estate, as well as the 2nd respondent on appeal and the 1st defendant below;

(ii) Buthmanaban s/o Vaithilingam – the 1st Respondent, who as mentioned was the plaintiff below;

(iii) Olagaysbery d/o Vaithilingam ("Olagaysbery") – a daughter;

(iv) V Nithia – the Appellant, who was a co-administratrix to the Deceased's estate as well as the 2nd defendant below;

(v) Olagappan Vaithilingam Thirumall ("Thirumall") – a son; and

(vi) V Davadass ("Davadass") – the youngest son.

(c) The others are as follows:

(i) Nadarajan s/o Punnosamy ("Nadarajan"), the Deceased's brother; and

(ii) Govindasamy, the Deceased's brother-in-law.

Background to the dispute

10 The relevant events began in 1961 upon the death of the Father on 18 October 1961. He died intestate. The Deceased and Krishnavanny were appointed the administrators of his estate. The principal asset of his estate was money in his Municipal Provident Fund account amounting to $21,195.77. The money was held in the estate account and was not distributed according to the law on intestacy. After the Father's death, the Deceased and her children had to move out of the Father's staff quarters and relocated to Nadarajan's house, where they lived for a few years.

11 On 19 October 1966, the Property was purchased in the Deceased's sole name. While the parties disputed how the idea to buy the Property came about, it was not disputed that, earlier in 1966, Govindasamy viewed the Property and paid a sum of money to the broker to secure the Property. Govindasamy also negotiated a purchase price of $28,600.

12 The total cost of acquiring the Property, including transaction costs, was $30,177.70, of which at least $20,000 came from the Father's estate. Govindasamy provided the balance sum which was eventually repaid, although it was disputed who made the repayments.

13 In 2007, more than 40 years later, there was a meeting between all the siblings (except the Appellant) where the 1st Respondent indicated that the Property should be divided into 7 shares, with 1 ½ shares for himself and 1 ½ shares for Davadass. The Deceased was present watching TV although she did not participate in the meeting.

14 The Deceased died intestate on 14 February 2008. Letters of Administration were granted on 20 July 2011 to Krishnavanny and the Appellant as the administrators of the estate. The Appellant commenced proceedings in February 2012 against the 1st Respondent and Krishnavanny for the sale of the Property, which was sold pursuant to an order of court for $2.65m in October 2012 with completion taking place in January 2013. The net proceeds of sale amounted to $2,609,417.

15 The 1st Respondent filed the Writ of Summons in the present action on 27 September 2012 against the administrators of the Deceased's estate, *ie*, Krishnavanny and the Appellant.

Pleadings

The 1st Respondent's pleaded case

16 The 1st Respondent claimed a "beneficial interest" in the Property. He alleged that he had asked Govindasamy to make a payment as a loan towards the purchase of the Property and that he undertook to repay Govindasamy. Govindasamy agreed to do so if the Plaintiff "took the responsibility" of repaying him. The Plaintiff promised to do so in instalments without interest. Govindasamy agreed. The loan amount payable was $10,000.

17 Subsequently, the 1st Respondent told the Deceased about the loan and informed her that, even though he would put the Property in her sole name, he had a beneficial interest in the Property and the Deceased acknowledged that he had such an interest.

18 The 1st Respondent claimed he repaid Govindasamy the sum of $500 every six months for 10 years from 1966, and he eventually repaid the loan in 1975. The 1st Respondent also referred to other payments he made in relation to the Property.

19 He also claimed that the Deceased had acknowledged the 1st Respondent as a beneficial owner of the Property and that he should be given at least 33% of the proceeds of the sale of the Property.

20 The Respondent alleged that he had a 33% beneficial interest in the Property by way of a resulting trust.

The Appellant's pleaded case

21 The Appellant's defence was that Govindasamy did not intend his financial assistance to be a loan. He had paid part of the purchase price out of goodwill for the Deceased as his sister-in-law. The Deceased strove to repay Govindasamy because she disliked owing anyone any favours. The Deceased used monies given to her by the working children (the 1st Respondent, Krishnavanny and Olagaysbery) to repay Govindasamy.

22 The Appellant denied that the 1st Respondent had a beneficial interest in the Property or that the Deceased had acknowledged the existence of such an interest. Otherwise, she would have told one of the other siblings.

23 The Appellant also pleaded the defence of limitation under s 9 and/or s 12 of the Limitation Act

(Cap 163, 1996 Rev Ed), as well as laches.

Krishnavanny's pleaded case

24 Krishnavanny admitted to the material facts in the 1st Respondent's Statement of Claim ("SOC") and averred that the 1st Respondent was entitled to a beneficial interest in the Property.

Parties' positions on the pleadings at the end of the trial

25 After the parties had closed their respective cases, the Judge invited the 1st Respondent's counsel, Mr N Kanagavijayan, to clarify his client's claim. Counsel confirmed that the claim was *only* in resulting trust *even after* the Judge inquired as to the possibility of claims in constructive trust or proprietary estoppel. But he was prepared to submit on the causes of action mentioned by the Judge. However, when asked by the Judge whether he would amend his pleadings, he replied that he would not be applying to do so.

26 When inquired on this point by the Judge, the Appellant's lawyer, Mr A Thamilselvan, replied that parties *should stand by their pleadings* and expressed confusion as to what the 1st Respondent's cause of action was. The Appellant had, in her written submissions, maintained that it was *not* the 1st Respondent's case that the Deceased had told him that he would get a beneficial interest in the Property in reliance on which he proceeded to act to his detriment, and that the 1st Respondent's own evidence was that he had entered into the agreement with Govindasamy before he informed the Deceased about it.

27 Krishnavanny's counsel, Mr Muralli Rajaram, also informed the court that he too could not see any allegations of material facts to support proprietary estoppel (*ie*, representation, reliance and detriment). Subsequently, Mr Rajaram addressed this in his written submissions as follows:

> [The 1st Respondent] has not specifically pleaded that he is relying on the existence of any proprietary estoppel, although he maintains that he is relying on the same. We are unable to determine precisely what facts [the 1st Respondent] is relying on in his pleadings that would amount to material facts that would give rise to the existence of a proprietary estoppel.

28 During oral closing submissions before the Judge on 28 June 2013, Mr Rajaram reiterated his client's stand that there was a resulting trust in favour of the 1st Respondent (save for quantification) but maintained the objection to any reliance on an unpleaded case of proprietary estoppel.

Decision below

29 After hearing submissions, the Judge reserved judgment and later issued oral judgment setting out his brief reasons. In the GD, which sought to expound on his brief reasons in his oral judgment, the Judge first decided a preliminary issue that his decision was binding on all the non-party beneficiaries to the Deceased's estate (*viz*, Olagaysberry, Thirumall and Davadass) as their interests were derived from the Deceased's estate, and the estate was represented by the administrators in the case. Furthermore, they had filed affidavits stating their respective positions in the case.

30 The Judge accepted as undisputed that Govindasamy paid $10,000 to the purchase of the Property. He also found that this payment by Govindasamy was *neither* a loan *nor* a gift. Again without determining the precise amount, the Judge found that the 1st Respondent did make substantial repayments to Govindasamy to settle the sum advanced by him. However, the Judge

found that the Deceased had *never* represented to the 1st Respondent that the latter had a present (*ie*, existing) beneficial interest in the Property. Instead, the Judge accepted that the 1st Respondent had undertaken to the Deceased that he would make payments to Govindasamy to discharge the family's *moral* obligation to him, and that the Deceased told the 1st Respondent that if he did so she would give him a larger share in the proceeds of sale.

31 On the basis of his factual findings, the Judge dismissed the 1st Respondent's claim in resulting trust and common intention constructive trust. None of the parties appealed against these two findings.

32 The Judge found on the evidence that the 1st Respondent had a good claim in proprietary estoppel and that the claim was not defeated by laches. He gave the following reasons:

(a) The Deceased intended the 1st Respondent to have a larger share of the sale proceeds of the Property and they spoke about this.

(b) The 1st Respondent had in detrimental reliance repaid Govindasamy despite having no legal obligation to do so. He had also supported the family financially in other ways.

(c) The claim in proprietary estoppel was not defeated by laches since the benefit of the claim only accrued when the Deceased died in 2008 and by bringing the action in 2012 the 1st Respondent had acted reasonably promptly.

33 The Judge decided that this equity that arose in favour of the 1st Respondent ought to be satisfied by giving the 1st Respondent a 21.43% share (rounded up) (*ie*, 1 ½ shares out of 7) in the net proceeds of sale of the Property.

Our Decision

Was the Judge entitled to require the parties to submit on the issue of proprietary estoppel?

General principles

34 The hallmark of an adversarial system of civil litigation like ours is that plaintiffs and defendants alike are required by procedural rules to set the boundaries of their disputes and to fight their battles within these boundaries. In a civil trial, this is achieved primarily through the pleadings, which are written statements setting out the relevant facts, or allegations of fact, and the applicable points of law in support of their respective claims, counterclaims, defences and replies. In *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 ("*PT Prima International Development*") (at [35]), this court adopted the following summary of the object of pleadings stated in Sir Jack Jacob and Iain S Goldrein, *Pleadings: Principles and Practice* (Sweet & Maxwell, 1990) at pp 2–4 as follows:

> **The object of pleadings — in detail**
>
> (a) … To define with clarity and precision the issues or questions which are in dispute between the parties and fall to be determined by the court. …
>
> (b) … To require each party to give fair and proper notice to his opponent of the case he has to meet to enable him to frame and prepare his own case for trial. …
>
> (c) … To inform the court what are the precise matters in issue between the parties which alone

the court may determine, since they set the limits of the action which may not be extended without due amendment properly made. …

(d) … To provide a brief summary of the case of each party, which is readily available for reference, and from which the nature of the claim and [the] defence may be easily apprehended, and to constitute a permanent record of the issues and questions raised in the action and decided therein so as to prevent future litigation upon matters already adjudicated upon between the litigants or those privy to them.

35 Cotton LJ expressed this point well in the *Philipps v Philipps* (1878) 4 QBD 127 at 138–139:

… The statement of claim, of necessity, must set out all the facts material to prevent the defendant being taken by surprise, because it is the first pleading, and that which ought to be referred to for the purpose of seeing whether there is a cause of action.

… What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial.

36 In other words, pleadings delineate the parameters of the case and shape the course of the trial. They define the issues before the court and inform the parties of the case that they have to meet. They set out the allegations of fact which the party asserting has to prove to the satisfaction of the court and on which they are entitled to relief under the law. Adherence to the rules of pleadings promotes good case management and results in cost and time saving efficiencies. In an age of burgeoning volume and complexity of modern litigation, adequate pleadings are necessary to reduce inefficiencies in the dispute resolution process, and they tend to increase the productivity of lawyers and courts alike.

37 Equally important to the principle of fairness, pleadings also serve to uphold the rules of natural justice (*Sheagar s/o TM Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [94]). Parties are expected to keep to their pleadings because it is only *fair and just* that they do so – to permit otherwise is to have a trial by ambush. Every litigant is entitled as a matter of procedural fairness to be informed of his opponent's case in advance and to challenge his veracity in cross-examination at the trial. As pithily stated by the Australian High Court in *Lee v The Queen* (1998) 195 CLR 594 at [32]: "Confrontation and the opportunity for cross-examination is of central significance to the common law adversarial system of trial". In *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR(R) 425 ("*UOB*") at [8], the High Court observed that procedural fairness and substantive justice interact with each other and cannot survive without the other. When procedure is defective, the very substance of the result may rightly be called into question.

38 Thus, the general rule is that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue. As Sharma J said in *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196 (approved in *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 ("*OMG Holdings*") at [21]):

… The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own

pleadings. The trial of a suit should be confined to the plea on which the parties are at variance.

39 Procedure is not an end in itself, but a means to the end of attaining a fair trial. The age of forms of action is long gone. Hence, a court is not required to adopt an overly formalistic and inflexibly rule-bound approach even in those *clear cases* that to do so might lead to an unjust result. Nevertheless, it would be improper for a court to adopt the approach that "the ends justify the means" (*UOB* at [4]). Even when the desire to ensure the ends of substantive justice pulls in the opposite direction from the need to maintain procedural fairness to the opposite party, "a just outcome requires that neither consideration be made clearly subordinate to the other" (*Sheagar* at [117]).

40 Thus the law permits the departure from the general rule in limited circumstances, where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so. In Singapore, the law was reiterated by this court in *OMG Holdings* at [18] as follows:

> … It is trite law that the court may permit an unpleaded point to be raised if no injustice or irreparable prejudice (that cannot be compensated by costs) will be occasioned to the other party (see *Lu Bang Song v Teambuild Construction Pte Ltd* [2009] SGHC 49 ("*Lu Bang Song*") at [17] and *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Ltd* [1995] 3 MLJ 331 ("*Boustead Trading*") at 341–342). In the same vein, evidence given at trial can, where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced (see *Lu Bang Song* at [17]).

41 We should add, however, that cases where it is clear that no prejudice will be caused by the reliance on an unpleaded cause of action or issue that has not been examined at the trial are likely to be uncommon. As Rimer LJ stated in the English Court of Appeal case of *Lombard North Central Plc v Automobile World (UK) Ltd* [2010] EWCA Civ 20 at [79]:

> … I am not suggesting that courts must adopt an inflexible approach to the question of whether or not a particular unpleaded issue may or may not be the subject of investigation at a trial. There will be cases in which it will be obvious that it would be unjust for the court not to entertain and decide a non-pleaded issue: for example, when it is apparent that both sides have come to court ready to deal with it as an issue in the case despite its omission from the pleadings. That, however, was not this case; and such cases are likely to be rare.

Whether the claim of proprietary estoppel was sufficiently pleaded

42 In the present case, the 1st Respondent accepted that he did not specifically plead proprietary estoppel as a cause of action. However, when the Judge indicated that it might be open to the 1st Respondent to argue for a claim on proprietary estoppel on the same facts as pleaded in his SOC in relation to the existence of a resulting trust (as well as constructive trust), the 1st Respondent did not seek to amend his pleadings, but was content to rely on his pleaded case.

43 The Judge was of the view that the words "proprietary estoppel" did not have to be *specifically* pleaded. We agree, except that if such a cause of action is to be relied on, the pleadings should at the very least disclose the material facts which would support such a claim, so as to give the opponent fair notice of the *substance* of such a case, especially in a claim based on proprietary estoppel. In *Chng Bee Kheng and another (executrixes and trustees of the estate of Fock Poh Kum, deceased) v Chng Eng Chye* [2013] 2 SLR 715, Chan Seng Onn J said at [94] as follows:

> Even though Mr Yeo did not object to this defect in pleading and proceeded to submit on the

basis that the Defendant's case was founded on estoppel by representation, promissory estoppel, proprietary estoppel and estoppel by convention, I am of the view that the Defendant has to plead his case accurately. The different types of estoppel may have similar undertones, but, as will be seen below, their constituent elements are dissimilar, and the facts relevant to the elements would accordingly differ and must be pleaded specifically. For instance, while Mr Bull argued that there was promissory estoppel, he described the alleged "promises" as "representations". There is a distinction between the two as a representation refers to a representation of fact and is not promissory in nature.

44 Accordingly, proprietary estoppel should be pleaded expressly and the facts relevant to each element should be pleaded specifically. The defendant should not be left to guess at what the plaintiff was really asserting. This is particularly important in an area of law where there are fine distinctions between a purchase money resulting trust, a common intention constructive trust, promissory estoppel and proprietary estoppel. We will discuss some of the distinctions between a resulting trust and proprietary estoppel in more detail at [56]–[59] below, but for now it suffices to say that it would be an uncommon case where facts sufficient to found a resulting trust would also be sufficient to found an alternative case of proprietary estoppel.

45 The 1st Respondent submitted before us that he had pleaded all the material facts necessary to establish the cause of action for proprietary estoppel at [16], [18]–[19] of his SOC as corresponding with the elements for a claim in proprietary estoppel. We reproduce those paragraphs below:

> 16. The Plaintiff then told his mother about the said $10,000.00 that the Plaintiff had to pay to Mr Govindasamy and that although the Plaintiff would be putting her name as the sole proprietor of the Swan Lake property, the Plaintiff had beneficial interests in the property and that the Plaintiff was paying to Mr Govindasamy in monthly instalments the sum of money that Mr Govindsamy had paid towards the purchase of the property inclusive of the estate agent fee of $500.00. The Plaintiff's mother acknowledged that the Plaintiff had a beneficial interests [sic] in the Swan Lake property although the Plaintiff's name was not included as a co-owner.
>
> …
>
> 18. As of October 1966, the Plaintiff had to return to Mr Govindasamy a sum of $10,000.00. In 1966, the Plaintiff was earning a take-home salary of $200.00 as an employee of Electricity Department of the Public Utilities Board. Every month, the Plaintiff would give the whole pay packet to his mother. She would then take what was necessary for the family and household expenses and she would give the Plaintiff the balance of $50.00 to $60.00. As the sum given to the Plaintiff was too small, the Plaintiff took on an additional job of being a part-time tutor. The Plaintiff would earn some money as a part-time tutor. The Plaintiff would save as much money as possible with the intention of giving Mr Govindasamy at least $500.00 every 6 months. As soon as the Plaintiff saved $500.00, he would go and see Mr Govindasamy and give $500.00 to him as instalment payment towards the fulfillment of the said loan of $10,000.00. Mr Govindasamy would keep a record in a book of the amount of loan the Plaintiff had paid and informed him of the outstanding balance due from the Plaintiff to Mr Govindasamy after each instalment payment was made.
>
> 19. Over a period of 10 years from 1966, the Plaintiff paid Mr Govindasamy $500.00 every 6 months. The Plaintiff remembers the last instalment he paid was in the year 1975. It was in the same year that Mr Govindasamy came to the Swan Lake property to tell the Plaintiff's mother that "your son had fully paid the loan that I had given towards the balance purchase of the

property." The Plaintiff's mother was glad to hear that.

46 In our view, the aforesaid paragraphs do not support a claim based on proprietary estoppel but one based on a resulting trust. The 1st Respondent did not plead that the Deceased encouraged him to obtain an advance from Govindasamy or to repay Govindasamy on the understanding that he would have a beneficial interest in the Property. There was no promise, reliance or detriment alleged in these paragraphs.

Whether any prejudice was caused to the Appellant

47 Was irreparable damage caused to the Appellant by the Judge's direction that the parties should submit on the existence or otherwise of proprietary estoppel? Were the Appellant and the other objecting beneficiaries denied a fair opportunity to meet the new case? In our view, the answer was "Yes". In *Asia Business Forum Pte Ltd v Long Ai Sin* [2004] 2 SLR(R) 173 ("*Asia Business Forum*"), the appellant sought to amend its pleadings on appeal to reclassify certain documents and information from "confidential information" to "trade secrets" and *vice versa*. The appellant argued that it was a simple amendment which would not require any new evidence. The respondent there disagreed, arguing that, *inter alia*, they would be denied the opportunity of arguing why certain information could not be "trade secrets". Furthermore, the respondents argued that if the pleadings had originally been in the form under the proposed amendments, they would have introduced additional evidence to meet the case and the cross examination of witnesses might have taken on a different character.

48 Chao Hick Tin JA, who delivered the judgment of the court in *Asia Business Forum*, refused leave to amend. He noted that evidence had been led and the parties had cross-examined on the categorisation of trade secrets and confidential information as pleaded. Notwithstanding the considerable overlap in the concepts, trade secrets and confidential information were nonetheless distinct and it was not a case where there was nothing more that the respondents could have amplified or explained. Allowing the amendments would have "presented the respondents with a somewhat different 'battle'", which "was not a problem which could be taken care of just by way of an order for costs" (*Asia Business Forum* at [19]).

49 In the instant case, all the witnesses had testified on the basis of a claim based on resulting trust. The 1st Respondent's affidavit of evidence-in-chief ("AEIC") had maintained essentially the same narrative as his pleadings – that Govindasamy had extended a loan that the 1st Respondent promised to and did repay of his own accord. The AEIC of his witness, Nadarajan, also stated that he had advised the 1st Respondent to seek a loan from Govindasamy and that the 1st Respondent repaid the loan. Nadarajan also stated that the Deceased was *reluctant* to buy the Property as she did not want to borrow money to make up the difference in price and that it was the 1st Respondent who "daringly came forward to borrow money and make payment of the loan in full". During cross-examination, the 1st Respondent maintained that he had talked Govindasamy into giving *him* an interest-free loan. It was also Nadarajan's evidence that it was a loan by Govindasamy to the 1st Respondent.

50 The Judge noted that the *Appellant* had not taken objection to the 1st Respondent's failure to expressly plead reliance on proprietary estoppel (GD at [17]). Although Mr Thamilselvan did not in his closing submissions expressly raise an objection regarding the failure to plead proprietary estoppel, he did make the following remarks (while submitting on common intention constructive trust) in oral submissions below:

Thamilselvan:	… The o—idea of a common intention and all that, as Your Honour will note, came up later, after the trial---after the cross-examination. *And all these being mentioned in the pleadings, issues then would have been joined and we would have cross-examined or we would have taken a different approach towards—*
Court:	But what kind of trust were you under the impression that the plaintiff was asserting?
Thamilselvan:	I think he was---
Court:	When the trial began.
Thamilselvan:	I think he was, as he said, asserting *some kind of resulting trust*, Your Honour, based on the fact that he had paid the purchase price.

[emphasis added in italics]

51 However, the Judge did not address Krishnavanny's objection (through her counsel, Mr Rajaram) to the suggested claim based on proprietary estoppel being pursued.

52 Before us, the Appellant, through her counsel Mr Thamilselvan, argued that she had been irreparably prejudiced by the Judge's decision to allow the unpleaded claim of proprietary estoppel to proceed. She maintained that the record showed that she had addressed the issue of proprietary estoppel only because the Judge directed her to do so. It did not mean she did not object to the same. If the 1st Respondent had in fact sought to amend his pleadings, the Appellant would have vigorously objected, and even if such an amendment was allowed, the Appellant would at least have known what aspects of the evidence the 1st Respondent was relying on to show representation, reliance and detriment, and be in a position to test them. This could not be done through submissions alone. Furthermore, it was also Krishnavanny's position that the Judge had erred in finding on a claim based on proprietary estoppel, thereby maintaining her objection to the reliance on an unpleaded point.

53 After careful scrutiny of the Notes of Evidence, we agreed with the Appellant that, had proprietary estoppel been pleaded, the trial would have taken a very different turn. She would have known clearly, if not precisely, what the case against her was. The 1st Respondent would have been cross-examined on his allegations, and his answers would have a bearing on his veracity or his credibility as a witness. We accepted this argument. In our view, the pleadings were crucial in this case because the events relied upon by the 1st Respondent occurred about 50 years ago. The most important participants to the alleged agreements or arrangements had died. There was no written record of these alleged agreements or arrangements. The 1st Respondent's case was based purely on his account of what had transpired between him and Govindasamy and between him and the Deceased. Not once when the Deceased was alive had the 1st Respondent asked the Deceased to inform or confirm to his siblings what the Deceased had supposedly agreed with or promised. He was also unable to produce any documentary evidence to support his account of the actual amount of money he had repaid to Govindasamy, even though he had testified that he had kept records of the repayments which he had destroyed.

54 Krishnavanny did say in her testimony that the Deceased had mentioned to her that the 1st Respondent should receive a higher proportion of the proceeds of sale of the Property in view of his contributions. This statement is more consistent with the recognition of a moral obligation than the

existence of a legal right.

55 For these reasons, and given the significant differences in the factual underpinnings between a case of proprietary estoppel and resulting trust, we also could not agree with the Judge that the issue of proprietary estoppel could proceed because it involved only "pure issues of law" (GD at [17]). We elaborate below.

56 The elements of proprietary estoppel are well established. In *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong Finance*") Sundaresh Menon JC (as he then was) stated them at [170] as "a representation on the part of the party against whom the estoppel is sought to be raised, and reliance and detriment on the part of the party seeking to raise the estoppel". Lord Walker of Gestingthorpe in *Thorner v Major and others* [2009] 1 WLR 776 ("*Thorner*") stated them (at [29]) as "a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance". Underlying this claim is the principle of unconscionability. Equity seeks to prevent a party from resiling on his promises to another party who has acted on them to his detriment by giving effect to the promises. In domestic relations disputes, an inquiry as to whether proprietary estoppel is established frequently involves conflicting oral testimony relating to events from long ago involving individuals who were likely to have expressed their intentions orally, or not clearly or precisely. In every case, one has to ask what words were said or not said; what property the words relate to; what the claimant would reasonably have taken the words, acts or silences to mean given the context; whether he did rely on the representation or whether it played no part in his subsequent actions, and if it did whether it was reasonably relied upon; whether it led to his detriment; and finally whether in all the circumstances it is unconscionable for the defendant to go back on the assurance or representation, if any. In the present case, it involved material participants who were dead and who had left no written record behind.

57 In this case, the Appellant (and indeed Krishnavanny, when she admitted to the facts in the SOC) had proceeded on the footing that the case to be met was what was pleaded in the SOC, *ie*, a resulting trust. A resulting trust does not require proof of any assurance or representation flowing from the Deceased or any reliance from the 1st Respondent to his detriment. Thus the dispute revolved around whether Govindasamy had made a gift or given a loan by way of his payment towards part of the purchase price of the Property, and the questioning of the witnesses was directed towards the proof or disproof of that assertion. Given that the 1st Respondent did not assert in his SOC or in his evidence that he had made repayment to Govindasamy because of any reliance on any assurance from the Deceased, which would in any case have contradicted his evidence that he had repaid it because of an *earlier agreement* with Govindasamy, it was not surprising that the Appellant did not deal with those issues at trial as fully as she would have done had it been properly pleaded.

58 Indeed, the operative representation that the Judge found to have been made–that the Deceased would give the 1st Respondent a larger share in the proceeds of sale in the Property–was not within the expectation of *any* of the parties and certainly well outside the bounds of the pleadings or even the AEICs. In the result, the case for proprietary estoppel (based on the representation found by the Judge) was largely untested because no one knew there was such a case to test.

59 A useful illustration of how the differences between the elements of a trust and proprietary estoppel could impact a trial may be seen in *Joshua Steven v Joshua Deborah Steven* [2004] 4 SLR(R) 403 ("*Joshua Steven*") where Tan Lee Meng J dismissed the defendants' application to amend their counterclaim to rely on proprietary estoppel in these words (at [5]):

> An assertion of proprietary estoppel is clearly distinct from an assertion that rights arise under a

trust. In their affidavit in support of their application to amend the Counterclaim, two of the HOI defendants declared that SJ would not be prejudiced by the proposed amendment because they had not sought to adduce any fresh evidence in support of their case. However, SJ's counsel, Mr James Ponniah, rightly pointed out that there would be a need for further cross-examination of witnesses if the counterclaim was amended as he had conducted his cross-examination during the trial solely on the basis that the counterclaim rested on the law of trust. As such, he had not cross-examined the HOI defendants on matters such as the nature of the alleged representation that led to the estoppel, the detriment suffered by them as a result of the alleged representation or how the representation altered their position. He also pointed out that during the trial, the HOI defendants decided not to call Mr James Abraham ("JA"), one of their witnesses, to testify after it became obvious that the latter would, if cross-examined, face embarrassing questions as to why he, a lawyer, helped to create a trust in favour of foreigners in violation of the Residential Property Act (Cap 274, 1985 Rev Ed) when he knew that some of the HOI defendants were foreigners at the time 577A Sembawang Place was purchased. As the HOI defendants now contended that JA was one of those who made representations that led to the alleged estoppel, Mr Ponniah argued that he should be allowed to cross-examine JA if the Counterclaim was amended.

60 It seemed to us that, at the time that the 1st Respondent was asked to clarify his pleadings, the Judge might have formed a preliminary view that the 1st Respondent had a good case that was badly or not pleaded at all. This kind of situation can put a conscientious judge in a difficult position, and it has been said that "inadequate pleadings are the bane of a judge's life" (*Ireland v David Lloyd Leisure Ltd* [2013] EWCA Civ 665 at [30], *per* Ryder LJ). Nevertheless, every judge must be mindful of his position as a disinterested arbiter between the parties. His primary role is to hold an even hand between the parties and ensure that the proper procedure is followed. As observed by Dyson LJ in *Al-Medenni v Mars UK Limited* [2005] EWCA Civ 1041 at [21] (cited in *PT Prima International Development* at [36]):

> … It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. *The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. Bu[t] if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness.* [emphasis added]

61 This does not mean the judge must always bite his tongue. In *PT Prima International Development* at [37], this court provided some guiding principles as to what a judge may do in such a situation. The court may express its wish that the parties reframe the issues so that the case may be better decided. However, if a court raises a new issue or a new cause of action on its own motion after hearing the evidence at trial, good order requires that the court invite the parties to amend their pleadings and for the party affected by this issue be allowed to re-examine the witnesses and/or to call rebuttal evidence on the hereinbefore unexplored point. However, the court must bear in mind that such a step may not be taken if it causes irreparable damage to the other party, *ie*, damage that cannot be compensated by an order for costs thrown away.

62 In our view, the judgment under appeal crossed this red line. We accordingly allowed the appeal.

Whether it was necessary to join the other siblings as parties

63 We now turn to the preliminary issue on whether it was necessary for the other non-party beneficiaries, *viz*, Olagaysbery, Thirumall and Davadass, to be joined as parties before they could be bound by the court's decision.

64 The Appellant argued that if one of the two administrators, although sued jointly, supported the plaintiff in an action and the other did not, the administrators could not be said to represent the estate jointly, or to represent the interest of the "non-party beneficiaries in fact", even on a nominal basis. She relied on *Tacplas Property Services Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching Miow, deceased)* [2000] 1 SLR(R) 159 at [38] for the well-established proposition that administrators must act jointly and not severally.

65 The Judge held that it was not necessary to join the other non-party beneficiaries on the ground that their interests, which arose through an intestacy, were *fully* represented by the Appellant as one of administrators. The Judge relied on *Seah Peng Koon and others (the trustees of the estate of Seah Liang Seah, deceased)* v *Seah Peng Song* [1993] 1 SLR(R) 480 on the interpretation of the scope of O 15 r 14 of the ROC.

66 In our view, O 15 r 14 makes it unnecessary to join the beneficiaries of an estate or a trust as parties to any action against the estate or the trust if the estate or trust is represented either by personal representatives or trustees. It is only where the court considers that the representatives or trustees could not or did not represent the interests of the beneficiaries that it may join them as parties, or if they cannot be found, appoint persons to represent their interests. In the present case, the issue is whether representation by one administrator (in a situation where both administrators are parties to the action) is sufficient for the purpose of protecting the interests of non-party beneficiaries. The Judge held that it was sufficient. He also took the precaution of requiring the non-party beneficiaries to file affidavits to state their position in the case. As it turned out, although Krishnavanny accepted the 1st Respondent's claim based on resulting trust, she objected to his claim based on proprietary estoppel.

67 The case before us is not a dispute between beneficiaries as to their respective interests in the estate. It is a dispute between the 1st Respondent, not as a beneficiary of the Deceased's estate, but as an ordinary claimant seeking to be entitled to one-third of the Property as the beneficial owner under a resulting trust, although at the same time he is also entitled to a share of the estate in intestacy. His claim does not conflict with his interest in an intestate estate, although it might affect his share of the estate if he succeeded in his claim. This was an adversarial claim between the 1st Respondent and the Deceased's estate, and not between the parties *qua* beneficiaries of the estate. The 1st Respondent's claim necessitated the administrators to defend the claim, and ultimately their rights as beneficiaries. Their interests as beneficiaries are the same as that of the Appellant. Accordingly, we agreed with the Judge both on the law and on his exercise of discretion. Any decision to join the non-party beneficiaries to the action would have come with a price either to the parties or to the Deceased's estate. They would have to be separately represented by counsel who have to be paid their fees, as otherwise the joinder would be pointless.

Statutory formalities and proprietary estoppel

68 Before us, the Appellant has raised a new legal argument which was not raised before the Judge–that s 7 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") barred the proprietary estoppel claim that had been brought against the estate because it was not a resulting, implied or constructive trust that is excluded from the operation of that section. Section 7 of the CLA states:

Trusts respecting immovable property and disposition of equitable interest

7.—(1) A declaration of trust respecting any immovable property or any interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.

(2) A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorised in writing or by will.

(3) This section does not affect the creation or operation of resulting, implied or constructive trusts.

69 In support of her argument, the Appellant relied on the dictum of Lord Scott of Foscote in *Cobbe v Yeoman's Row Management Ltd and another* [2008] 1WLR 1752 ("*Cobbe*") at [29] as follows:

… Section 2 of the [Law of Property (Miscellaneous Provisions) Act 1989] declares to be void any agreement for the acquisition of an interest in land that does not comply with the requisite formalities prescribed by the section. Subsection (5) expressly makes an exception for resulting, implied or constructive trusts. These may validly come into existence without compliance with the prescribed formalities. *Proprietary estoppel does not have the benefit of this exception. The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the section 2 prescribed formalities, but would be specifically enforceable if it did can become enforceable via the route of proprietary estoppel.* It is not necessary in the present case to answer this question, for the second agreement was not a complete agreement and, for that reason, would not have been specifically enforceable so long as it remained incomplete. *My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void.* The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section 2 is, in my opinion, unacceptable. The assertion is no more than the statute provides. *Equity can surely not contradict the statute*. …

[emphasis added in italics]

70 Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (c 34) (UK) ("the LPMPA 1989") states as follows:

Contracts for sale etc. of land to be made by signed writing.

(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each…..

(5) This section does not apply in relation to—

[certain types of contracts]

and nothing in this section affects the creation or operation of resulting, implied or constructive trusts.

71 Lord Scott's *dictum* has been rejected or distinguished by some English judges and roundly criticized by academics on two distinct grounds: (a) proprietary estoppel is not founded on a contract, and accordingly does not engage s 2(1) of the LPMPA 1989, and (b) proprietary estoppel is equivalent to a common intention constructive trust, and thus excluded from the operation of s 2 (see *Thorner* at [99]; *Alvina Whittaker v Anthony David Kinnear (acting by his agents on Gershinson and Louise Brooks of Allsop LLP being Receivers appointed under the Law of Property Act 1925* [2011] EWHC 1479 at [27]–[28]; Lord Neuberger of Abbotsbury, "The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity" [2009] CLJ 537 at p 546; Ben McFarlane and Andrew Robertson "The Death of Proprietary Estoppel" [2008] LMCLQ 44; Ben McFarlane in *The Law of Proprietary Estoppel* (Oxford University Press, 2014) ("*The Law of Proprietary Estoppel*") at paras 6.98–6.104).

72 The Appellant did not bring our attention to the divided views in England on Lord Scott's dictum in inviting us to follow Lord Scott's policy approach to s 7 of the CLA to hold that it bars the existence of proprietary estoppel. We are not disposed to do so, for the following reasons. First, since we have set aside the Judge's decision on a claim based on proprietary estoppel, the argument based on s 7 of the CLA is no longer relevant. Second, the court only had the benefit of one side of the arguments (*ie*, the Appellant's submission) as the 1st Respondent did not (was unable to) respond to that argument. In fact, the Appellant also did not draw our attention to the fact that s 2(1) of the LPMPA 1989 had elements of both s 6(d) and s 7(3) of the CLA. Section 7(3) qualifies s 7(1) and s 7(2), and unless it can be demonstrated that these two sub-sections apply to proprietary estoppel, s 7(3) would not be engaged. Third, Lord Scott's approach opens up a much larger issue on how a Singapore court should approach the policy considerations underlying s 7 of the CLA and balance it with the need to prevent s 6(*d*) or s 7 (assuming either section applies to proprietary estoppel) from being used by unscrupulous persons from resiling on their promises in reliance of statutory formalities.

73 In *Actionstrength Ltd (t/a Vital Resources) v International Glass Engineering IN.GL.EN SpA* [2003] 2 AC 541 ("*Actionstrength*"), Lord Hoffmann made the following observations (at [19]–[20]) in a case concerning an oral guarantee, where the plaintiff argued that the defendant was estopped from relying on the statute:

> 19 In an application for summary judgment such as this, which is in the nature of a demurrer, one has to assume that Actionstrength's version is true. And that naturally inclines one to try to find some way in which the putative injustice can be avoided. It is, however, important to bear in mind that the purpose of the Statute was precisely to avoid the need to decide which side was telling the truth about whether or not an oral promise had been made and exactly what had been promised. Parliament decided that there had been too many cases in which the wrong side had been believed. Hence the title, "An Act for prevention of frauds and perjuries". …
>
> 20 The terms of the Statute therefore show that Parliament, although obviously conscious that it would allow some people to break their promises, thought that this injustice was outweighed by the need to protect people from being held liable on the basis of oral utterances which were ill-considered, ambiguous or completely fictitious. This means that while normally one would approach the construction of a statute on the basis that Parliament was unlikely to have intended to cause injustice by allowing people to break promises which had been relied upon, no such assumption can be made about the Statute. Although the scope of the Statute must be tested on the assumption that the facts alleged by Actionstrength are true, it must not be construed in a way which would undermine its purpose.

74 The issue of the court subverting or repealing the statutory formalities does not arise unless the policy as expressed in the legislation is so clear that there can only be one answer to the question. Equity cannot contradict a statute, but only when the statute may not be contradicted.

This is an issue of statutory interpretation to determine what the legislative policy is. A claim based on proprietary estoppel may or may not be consistent with the policy of the legislation. An illustration of this is the judicial recognition of part performance in relation to the Statute of Frauds 1677 (c 3) (UK) (see *Actionstrength* at [22]–[24]).

75 In Singapore, a series of court decisions and dicta have reached different conclusions with respect to different legislation. Reference may be made to the following cases:

(a) *Joshua Steven* (at [15]), *Public Prosecutor v Intra Group (Holdings) Co Inc* [1991] 1 SLR(R) 154 (at [31]–[37]) and *Cupid Jewels Pte Ltd v Orchard Central Pte Ltd and another appeal* [2014] 2 SLR 156 (at [37]), in relation to non-citizens acquiring or trying to acquire residential property subject to the Residential Property Act (Cap 274, 1985 Rev Ed); and

(b) *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 (at [13]–[39]), in relation to non-eligible persons acquiring or trying to acquire HDB flats protected by the Housing and Development Act (Cap 129, 2004 Rev Ed).

76 Given the circumstances of this case, it is not appropriate for this court to examine the the policy of s 6(*d*) and s 7 of the CLA and render a decision on whether giving effect to a claim based on proprietary estoppel in relation to interests in land would contradict the policy of these two sections. The law will have to be established at a future time in some other case.

Costs

77 We reserved judgment on costs and directed the parties to file written submissions on the costs of the trial and the appeal. After considering their arguments, we directed as follows:

(a) The 1st Respondent shall bear the Appellant's costs of the trial below fixed at $65,000, and the Appellant's costs of the appeal fixed at $22,000, both inclusive of disbursements.

(b) The 1st Respondent shall bear Krishnavanny's costs of the trial below fixed at $30,000 inclusive of disbursements. Having regard to the fact that Krishnavanny's counsel have waived their fees for the appeal and only require reimbursement of their disbursements, the 1st Respondent shall bear only Krishnavanny's disbursements for the appeal fixed at $1,800.

(c) There will also be the usual consequential orders.