IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 48

Civil Appeal No 93 of 2017

Between

LOW HENG LEON ANDY

… Appellant

And

LOW KIAN BENG LAWRENCE,
(ADMINISTRATOR OF THE
ESTATE OF TAN AH KNG,
DECEASED)

… Respondent

In the matter of Suit No 252 of 2011 (Registrar's Appeal No 47 of 2017)

Between

LOW HENG LEON ANDY

… Plaintiff

And

LOW KIAN BENG LAWRENCE
(ADMINISTRATOR OF THE
ESTATE OF TAN AH KNG,
DECEASED)

… Defendant

JUDGMENT

[Damages] — [Assessment] — [Assessment of equitable compensation]

[Equity] — [Satisfaction] — [Minimalist approach]

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v
Low Kian Beng Lawrence
(administrator of the estate of Tan Ah Kng, deceased)

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Court of Appeal — Civil Appeal No 93 of 2017
Andrew Phang Boon Leong JA and Steven Chong JA
1 August 2018

15 August 2018 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") to allow an appeal by Low Heng Leon Andy ("the Appellant") against the decision of the assistant registrar ("the AR") to, among other things, award the Appellant equitable compensation in the sum of $84,000. The AR had assessed this amount to be the appropriate sum to satisfy the Appellant's equity that had arisen following the Appellant's successful claim in proprietary estoppel brought against the estate ("the Estate") of his grandmother, one Tan Ah Kng ("the Deceased"), in Suit No 252 of 2011 ("the Suit"). The Judge increased the damages awarded to $100,000: see *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2017] SGHC 200 ("the GD"). However, the Appellant remains dissatisfied

with the quantum awarded and now brings this appeal, seeking an even higher sum of equitable compensation. Low Kian Beng Lawrence ("the Respondent"), who was the administrator of the Estate, was unrepresented and absent during the first instance assessment proceedings before the AR, the registrar's appeal before the Judge, and also during the appeal before us.

2 For the reasons that follow, we allow the appeal, albeit only to the extent that we increase the equitable compensation awarded to the Appellant to a sum of $140,000.

Background

3 We first set out the facts relevant to this appeal. A fuller account of the background and procedural history of the present dispute may be found in the GD (at [4]–[12]).

4 The Appellant has, since his birth in 1984, lived in a five-room Housing Development Board ("HDB") flat located at Block 306 Hougang Avenue 5 #02-355 Singapore 530306 ("the Flat") until he was evicted by the Respondent in July 2009. The Flat was held in joint tenancy by the Deceased and one Low Eng Cheng, who is one of the Appellant's aunts ("the Aunt"). The Aunt and the Deceased had previously moved out of the Flat in 1992, but returned to live with the Appellant in 2005. The Aunt passed away on 7 September 2007, while the Deceased passed away on 28 November 2008. This left the Estate, which the Appellant was not a beneficiary of, as the sole legal and beneficial owner of the Flat.

5 According to the Appellant, the Deceased had, before her passing, frequently emphasised to the Appellant, in the presence of his relatives and their family doctor, that the Flat was not to be sold in the event of her demise, and

that the Appellant would be free to continue staying in the Flat for as long as he wished. The Deceased also expressed her intention to leave everything in the Flat to the Appellant.

6 In reliance on the promises made by the Deceased, the Appellant took care of both the Aunt (who was suffering from ovarian cancer) and the Deceased (who was suffering from tuberculosis) during the entire period from 2005 till their deaths in 2007 and 2008, respectively. The Appellant claimed to have suffered from the following detriments:

(a) First, the Appellant spent time and effort to care for the Aunt and the Deceased, and took on the responsibility of paying for all of the household expenses, including food and utilities, as well as the medical expenses for the Deceased. He did not claim these expenses from a sum of $40,000 that the Aunt had left in her bank account, to which she had given the Appellant access for the purposes of maintaining and providing for the Deceased. He also refrained from asking his other family members to contribute to the expenses.

(b) Second, the Appellant refrained from seeking regular full-time employment, and subsequently also gave up his employment as a financial planner with Manulife Singapore (even though it allowed for relative flexibility in working hours) in order to take care of the Deceased on a full-time basis.

(c) Third, the Appellant claimed that while taking care of the Deceased, given that the Deceased had contracted tuberculosis, he had to endure the "mental anguish" that came with the fear of contracting tuberculosis himself. The Appellant was also compelled to sacrifice his

social life by avoiding social contact in the entire period when taking care of the tuberculosis-stricken Deceased.

7 Following the Appellant's eviction in July 2009, he brought the Suit, which is a claim in proprietary estoppel against the Estate. In the Appellant's original Statement of Claim filed in February 2010, the Appellant sought to recover only the moneys expended in taking care of the Deceased during her lifetime. However, the Appellant subsequently amended his Statement of Claim in March 2013 to include an additional claim for equitable compensation for the loss of his life-long licence to reside in the Flat.

8 On 24 August 2016, the Appellant obtained an order for interlocutory judgment against the Estate with damages to be assessed.

9 At first instance before the AR, the Appellant dropped his claim for the moneys expended in taking care of the Deceased, and focused only on his claim for the equitable compensation for the loss of his life-long licence, which he claimed is best quantified by reference to the rent that he has been paying in respect of his alternative accommodation following his eviction from the Flat. To that end, the Appellant sought a sum of $420,000.

10 The AR awarded the Appellant damages of $84,000, taking the view that a sum equivalent to rental of $1,000 per month for a period of seven years from the time when he was evicted from the Flat was sufficient to satisfy the equity that arose as a result of the detriment suffered by the Appellant. The AR also ordered the costs of the action to be taxed on a District Court scale if not agreed. The Appellant appealed.

The decision below

11 On appeal, the Appellant again limited his claim to the recovery of a sum representing equitable compensation for the loss of his life-long licence. The Judge allowed the appeal, increasing the quantum of equitable compensation awarded to $100,000 and awarding the Appellant the costs of the appeal fixed at $5,000. The Judge also ordered that the sum of $62,089.03 that the Estate had paid into court be paid out to the Appellant, and affirmed the costs order below.

12 In arriving at his decision, the Judge endorsed the *expectation-based approach* – which looks to what the claimant's position would have been had the defendant actually acted in accordance with his representations – on the ground that the Appellant here had formed the expectation that he would be allowed to live in the Flat for as long as he wished (GD at [19] and [20]). The Judge then affirmed the structured method adopted by the AR, which involved multiplying a base rental sum by a multiplier reflecting a time period in order to derive the cost of residing in an alternative flat for the applicable time period (at [20]).

13 In so far as the applicable multiplicand was concerned, the Judge held that the figure determined by the AR of $1,000 was too low, and preferred a base sum of $1,500 (at [23]). The Judge found that given that the Appellant's expectation was to live in a furnished flat, the AR should have awarded the additional $500 per month associated with the hiring of furniture, fittings and fixtures for the Appellant's flat, on top of the $1,000 per month for the basic rental sum (at [21]). But the Judge declined to adopt the Appellant's proposed sum of $2,400 per month, which was based on a newspaper clipping showing

that the median rent of a five-room HDB flat in Hougang in the fourth quarter of 2014 was $2,400 (at [22]).

14 As for the multiplier, the Judge affirmed the AR's decision to select a multiplier of seven years. The Judge considered the multiplicand of between 10 to 14 years proposed by the Appellant to be too high, as the Appellant had only taken care of the Deceased for about three years, and hence such a multiplicand would lead to a remedy that was disproportionate to the detriment that the Appellant had actually suffered (at [24]). This resulted in a final sum of $126,000. However, the Judge held that this sum should be moderated to $100,000 for the following reasons:

(a) The equity had been partly satisfied given that the Appellant had been staying in the Flat at the material time on a rent-free basis, and a benefit that a plaintiff acquires due to the conduct by which he satisfies the reliance element of a proprietary estoppel claim must be accounted for when determining the appropriate remedy (at [26] and [29]).

(b) The detriment in fact suffered by the Appellant was less than what he had claimed during the hearing. Although the Appellant submitted that he had spent some $80,000 on expenses for the Deceased, the Statement of Claim only stated that he had spent a far lower sum, *ie*, $18,350.50 (at [31]). Also, even in respect of this lower sum, the evidence adduced was not cogent (at [32]). Finally, a domestic helper had been hired to take care of the Deceased, such that the Appellant's burden had in fact been partially alleviated (at [33]).

Our decision

15 We now turn to explain our decision in this appeal, which we preface with a brief discussion of the relevant legal principles that should guide the court's task of fashioning an appropriate remedy to satisfy the equity that arises upon finding that a claim in proprietary estoppel is made out.

The applicable principles

16 In the decision of this Court in *Lim Chin San Contractors Pte Ltd v Shiok Kim Seng (trading as IKO Precision Toolings) and another appeal* [2013] 2 SLR 279 ("*Lim Chin San (CA)*"), the following principles were set out (at [42]):

> (a) Upon the equity arising, its value and how it should be satisfied are matters for the court's discretion.
>
> (b) In exercising this discretion, the court should have regard to all the circumstances, including the expectation upon which the plaintiff has acted and the specific detriment he has suffered.
>
> (c) In fashioning the remedy the court must ensure proportionality between the expectation, the detriment and the remedy.
>
> (d) The Court must recall that its task is to satisfy the equity that it considers has arisen. It follows that the strength of the equity will be a relevant consideration. This is another way of looking at the "maximum extent of the equity" which the remedy must satisfy.
>
> (e) The Court should also be mindful of the great flexibility it has at its disposal in fashioning the appropriate remedy. It may give effect to the parties' expectations (common or otherwise); or it may limit the remedy to maintain an element of proportionality, or because it considers that the equity has been satisfied by enjoyment or even exhausted.
>
> (f) Subject to the above, the court's aim, having identified the maximum extent of the equity, is to do the minimum required to satisfy it.

> See [*Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292] at [240], [244] to [249] and authorities cited there.

17 It is evident from the foregoing statement of principles that the exercise of assessing the appropriate remedy to satisfy the equity that has arisen in a proprietary estoppel claim is an ***intensely fact-specific*** one, with the court's exercise of its discretion being ultimately guided by the twin lodestars of ***achieving proportionality*** between the expectation, the detriment and the remedy, as well as ***doing the minimum required to satisfy the maximum extent of the equity and do justice between the parties***.

18 We note that the Judge similarly recognised this, having also referred to the observations at [42] of *Lim Chin San (CA)* (GD at [16]). However, the Judge proceeded to quote, at [18] of the GD, the following observations of Robert Walker LJ (as he then was) in the English Court of Appeal decision in *Jennings v Rice and Others* [2003] 1 P & CR 100 ("*Jennings*") at [50]–[51] with approval:

> [50] To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor's house, either outright or for life. *In such a case the court's natural response is to fulfil the claimant's expectations. But if the claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has suffered, the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way*.
>
> [51] But that does not mean that the court should in such a case abandon expectations completely, and look to the detriment suffered by the claimant as defining the appropriate measure of relief. Indeed in many cases the detriment may be even more difficult to quantify, in financial terms, than the claimant's expectations. Detriment can be quantified with reasonable precision if it consists solely of expenditure on

> improvements to another person's house, and in some cases of that sort an equitable charge for the expenditure may be sufficient to satisfy the equity … But the detriment of an ever-increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms. Moreover the claimant may not be motivated solely by reliance on the benefactor's assurances, and may receive some countervailing benefits (such as free bed and board). In such circumstances the court has to exercise a wide judgmental discretion.
>
> [emphasis added]

19 The Judge then set out the following principles that would guide the rest of his analysis (GD at [19]):

> (a) Where the plaintiff has formed an expectation, based on a mutual understanding with the benefactor, of coming into the latter's home, it may be appropriate to adopt the expectation-based approach.
>
> (b) However, the expectation-based approach does not require the court to give complete or direct effect to the relevant expectation. A fundamental consideration is proportionality between the expectation, the detriment and the remedy. The aim is to award the remedy which does the minimum necessary to satisfy the equity which has arisen.

20 In our judgment, in so far as the effect of the Judge's reference to Walker LJ's judgment in *Jennings* and his summary of the applicable principles is to suggest that the court should, in attempting to satisfy the equity, ***always*** fashion a remedy that ***first*** seeks to fulfil the claimant's *expectation* and honour the defendant's *promise* before turning to consider the detriment suffered in various specific situations, the Judge might, with respect, have overstated the legal position.

21 There appear, in fact, to be two different approaches towards assessing the appropriate remedy to enforce in satisfaction of the equity that has arisen in a claim in proprietary estoppel. One school of thought is that the claimant's *expectation* should be the starting point of the assessment exercise (*ie*, the

expectation-based approach). As we have just noted, this is the approach adopted by the Judge in the present case. Another school of thought is that the claimant's *detriment* should be the starting point instead (*ie*, the reliance-based approach).

22 Indeed, there is support for both views in both the case law as well as the legal literature. In relation to the expectation-based approach, Walker LJ's judgment in *Jennings* has, for example, been cited and applied in the English Court of Appeal decisions in *Powell and another v Benney* [2007] EWCA Civ 1283 ("*Powell*") (at [19]–[23] and [25]–[26]) and *Suggitt v Suggitt and another* [2012] EWCA Civ 1140 (at [43]–[44]), as well as the English High Court decision in *Davies v Davies and others* [2015] EWHC 1384 (Ch) (at [49]–[54]). The expectation-based approach also finds support – in so far as the legal literature is concerned – in K R Handley, *Estoppel by Conduct and Election* (Sweet & Maxwell, 2nd Ed, 2016) at paras 11-034–11-035, where the learned author refers to an array of Australian decisions that affirm the proposition that the court should *prima facie* give effect to the reasonable expectations of the claimant. However, it is important to note that the expectation-based approach has not received unqualified and universal support.

23 Major proponents of the reliance-based approach appear to include the learned authors of Sean Wilken QC & Karim Ghaly, *The Law of Waiver, Variation, and Estoppel* (Oxford University Press, 3rd Ed, 2012) ("*Wilken & Ghaly*"), who observe (at para 11.94) that:

> … [t]he prime aim of the discretion should be to prevent detriment. Where the detriment that [the claimant] would suffer is easily ascertained and quantified then [the claimant's] expectations ought to be relevant only as a limit on the relief that the Court may grant. Even where detriment is difficult to quantify the Courts should attempt to create a remedy which is proportionate to what [the claimant] has given up in reliance on

> the assurance. Only in circumstances where the detriment is intangible and of comparable magnitude to a lost education or a lost career should it be necessary to look to [the claimant's] expectations in order to prevent the unconscionable assertion of [the defendant's] rights. …

24 In other words, the court should look first towards what *detriment* the claimant has suffered, and then turn to consider the expectation held by the claimant ***only if*** the detriment suffered is so uncertain that it is unquantifiable, or so significant that it might exceed the claimant's expectation. This approach, for example, arguably finds support in the judgment of Hobhouse LJ (as he then was) in the English Court of Appeal decision in *Sledmore v Dalby* [1996] 72 P & CR 196 at 208–209, citing the High Court of Australia decision of *Commonwealth of Australia v Verwayen* (1990) 95 ALR 321 ("*Verwayen*") at 333 *per* Mason CJ.

25 We would also observe, parenthetically, that the reliance-based approach advanced in *Wilken & Ghaly* arguably finds further support in the approach propounded by Prof Ben McFarlane in his treatise, *The Law of Proprietary Estoppel* (Oxford University Press, 2014) ("*McFarlane*"), where he frames the entire inquiry in the context of the three questions set out by Scarman LJ (as he then was) in the English Court of Appeal decision in *Crabb v Arun District Council* [1976] Ch 179 ("*Crabb*") at 193, which require the court to consider: "First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And thirdly, what is the relief appropriate to satisfy the equity?" (see *McFarlane* at para 7.01). In the context of addressing the second inquiry, Prof McFarlane advocates the application of a two-part test, which essentially provides that, at the first stage, the court's primary task is to assess what is the *detriment* that the claimant will suffer as a result of the claimant's reasonable reliance on the defendant's promise, and at the second stage, the court has the discretion to reduce the defendant's basic liability to the

claimant if the court finds that, on the particular facts of the case, it is not unconscionable for the defendant to leave the claimant to suffer some detriment (see paras 7.35–7.69). Prof McFarlane then goes on to suggest that the court should – under the rubric of addressing the third question (see para 9.01) – consider, *inter alia*, whether the claimant's right should be specifically enforced and how the court should, in practice, give effect to the claimant's right, which are in turn considerations that entail having regard to the claimant's *expectation* (see generally, paras 9.25–9.70).

26 We pause to note that the tripartite inquiry as framed by Scarman LJ in *Crabb* has not been universally applied, and that the inquiry could essentially be condensed to a bipartite one of whether an equity has arisen, and, if so, how the court should satisfy this equity: see *eg*, *Cobbe v Yeoman's Row Management Ltd and others* [2006] 1 WLR 2964 at [126] *per* Dyson LJ (as he then was) (whilst this decision was reversed on appeal, the House of Lords did not, apparently, deal with this particular point (see *Cobbe v Yeoman's Row Management Ltd and another* [2008] 1 WLR 1752)). However, in the absence of comprehensive submissions in this regard, we decline to express any view on which is the normatively preferable approach. Regardless, for the purpose of the present discussion, to the extent that Prof McFarlane's approach essentially entails the court first considering only the *detriment* suffered by the claimant and then, at a later stage, going on to consider the claimant's *expectation*, this appears to be a view that, in substance, coincides with the reliance-based approach as set out in *Wilken & Ghaly*.

27 In any event, in the context of *the present proceedings*, we note that the AR and the Judge had proceeded throughout on the basis of the *expectation-based* approach simply because *that was at all times the Appellant's case* (see [9] and [11] above). It is therefore now too late for this court to take into account

the reliance-based approach – not least because we are bound to consider only the evidence on record. That having been said, it might well be the case that what appears to be a *factual* situation might have *normative* implications as well. Let us elaborate.

28 In the preceding paragraph, we referred to the Appellant's ***choice*** (to adopt, as the legal fulcrum of his case, the expectation-based approach). However, this concept of ***choice*** may furnish us with a legal clue of sorts as to what the *normative or legal* position ought to be in relation to the expectation-based approach on the one hand and the reliance-based approach on the other. In particular, the controversy just alluded to – that it is unclear which approach *the court* should focus upon – might represent a *false dichotomy*. Put simply, *whether or not the court focuses on the expectation-based approach or the reliance-based approach depends, in the final analysis, on the particular* ***choice*** *made by the plaintiff* (here, the Appellant). In other words, the legal principles set out above (particularly those in *Lim Chin San (CA)* (see [16] above)) relate to the ***legal relationship*** *between the expectation-based approach and the reliance-based approach* – and ***not*** the ***starting-point*** that ought to be adopted by *the court* as such. The latter (*viz*, the ***starting-point*** *that* ***the court*** *should adopt*) depends on the ***choice*** *made by* ***the plaintiff*** concerned, who then bears the legal burden of adducing the necessary evidence in order to make good his or her case.

29 Indeed, the analysis suggested in the preceding paragraph finds its analogue in the law relating to *contractual damages*. In so far as a claim for contractual damages is concerned, the plaintiff is ***free to elect*** whether or not to claim *expectation* loss or *reliance* loss. However (and this deals with the ***legal relationship*** between *expectation* loss and *reliance* loss in the context of the law relating to *contractual damages*), the plaintiff is ***not*** permitted to claim *both*

total (or gross) loss *as well as* reliance loss because to permit such recovery would be to permit a kind of *double-recovery* on the part of the plaintiff. Nor is the plaintiff permitted to claim *reliance* loss if he or she has made a *bad bargain* (*ie*, where the reliance loss *exceeds* the expectation loss) (see, *eg*, the English Court of Appeal decision in *C & P Haulage (a firm) v Middleton* [1983] 1 WLR 1461).

30 Hence (and returning to the present case), the principle for determining the appropriate remedy to satisfy the equity that has arisen in a proprietary estoppel claim – which provides that the inquiry is a heavily factual exercise that behoves the court to achieve proportionality between the expectation, the detriment and the remedy, and do the minimum required to satisfy the maximum extent of the equity and do justice between the parties (see [17] above) – is *likewise* one that relates to the ***legal relationship*** between the *expectation-based* approach and the *reliance-based* approach. Seen in this light, the fact that this principle embodies – at one and the same time – a reference to *both* expectation *and* detriment (or reliance) does ***not*** render it *doctrinally incomprehensible or theoretically incoherent*. The examination of the ***legal relationship*** *entails* an examination of *both* – there is *no need* to ***choose*** one over the other as such. ***However***, in so far as ***the plaintiff's case*** is concerned, the element of ***choice*** is *not only* ***necessary*** *but also* ***inevitable***.

31 We note, however, that we were *not addressed* on the ***nature*** of *the abovementioned legal principles*. The views we have just expressed must therefore be ***tentative*** in nature, with a definitive view being expressed only when the issue next comes directly for decision by this Court. ***In any event***, as we have already noted (see [27] above), the respective parties and courts all proceeded on the basis of the *expectation-based* approach. That is therefore the approach which we will adopt for the purposes of the present case.

32 With the above legal principles in mind, we now return to the facts of this appeal.

The principles applied

33 In our judgment, the application of the expectation-based approach in this case ought to yield a remedy in the sum of $140,000.

34 In assessing the appropriate remedy that would do the minimum necessary to satisfy the maximum extent of the equity according to the expectation-based approach, we agree with the methodology employed by the Judge, which is to first identify a suitable multiplicand to be multiplied by a suitable multiplier in order to arrive at an amount that fulfils the Appellant's expectation, and then consider whether this amount should be reduced to ensure the proportionality of the remedy with the detriment suffered. However, we would respectfully differ from the Judge in a number of respects in relation to this assessment exercise, which we will proceed to elaborate on below.

Quantifying the multiplicand and the multiplier

35 In so far as the multiplicand is concerned, we agree with the Judge that a multiplicand of $1,500 per month is appropriate.

36 The Appellant submits, as he did before the Judge below, that the multiplicand should be $2,400 per month – which is based on the newspaper clipping that he had adduced below reflecting the median rental rate of $2,400 for a five-room HDB flat in Hougang in the fourth quarter of 2014 (see [13] above) – because his expectation is to enjoy life-long free accommodation in the Flat, which is a five-room HDB flat. He thus claims that in so far as his tenancy agreements entered into following his eviction from the Flat merely

correspond to the rental of a three-room or four-room flat, they do not fully reflect his expectation.

37 We disagree with the $2,400 figure proposed by the Appellant for two reasons. First, we find the newspaper clipping adduced by the Appellant (and correspondingly the rental rates cited therein) to be an unreliable basis for determining the applicable multiplicand. The Appellant relies in particular on the median rental rate for a five-room HDB flat in Hougang in the fourth quarter of 2014 to support the mooted figure of $2,400. But in that same newspaper clipping tendered, the median rental rates for a three-room flat and a four-room flat in Hougang were $1,900 and $2,300, respectively. These depart significantly from the rent that the Appellant had *in fact* paid in the same period: based on the tenancy agreements that the Appellant had actually entered into following his eviction from the Flat, both the first tenancy agreement (which was for a three-room HDB flat from 7 September 2014 to 6 September 2016) and the second tenancy agreement (which was for a four-room HDB flat from 7 September 2016 to present) involved the Appellant paying $1,000 per month for the premises. In our view, the difference between the figures that the Appellant had actually paid and the figures presented in the newspaper clipping – especially the difference between the $1,000 rental paid for a three-room flat under the first tenancy agreement entered into in 2014 and the $1,900 rental rate for a three-room flat in 2014 reflected in the newspaper clipping – is difficult to ignore, and is one that seriously calls into question the reliability of the $2,400 figure cited in the newspaper clipping. We therefore agree with the Judge's decision not to rely on the rental rates cited in the newspaper clipping adduced by the Appellant.

38 Second, we reject the Appellant's submission that only the rental rate for a *five-room* flat would be a fair reflection of what he was in fact promised.

His expectation is to enjoy a life-long licence to *occupy* the Flat (and not to, for example, own the entire unit). This means that it should correspondingly also be within his expectation that the Estate, as the sole legal and beneficial owner of the Flat following the Deceased's demise, may take possession of the Flat and proceed to rent out any of the rooms in the Flat other than the one that the Appellant is occupying. Given this possibility, we consider it fair to, as the Judge has done, rely on the aforementioned tenancy arrangements for three-room or four-room HDB flats that the Appellant had entered into post-eviction in order to quantify his expectation loss. Accordingly, we find that the rental sums that the Appellant has been made to pay in renting the alternative three-room or four-room flat units post-eviction (*ie*, $1,000 per month for the premises) are an appropriate proxy for the losses arising out of the Appellant's unmet expectation.

39 We also affirm the $1,500 figure adopted by the Judge as the multiplicand. In our view, the Judge was correct to include *both* the basic monthly rent of the flats that the Appellant had rented as alternative accommodation after being evicted from the Flat (*ie*, $1,000) *and* the monthly fee for the hire of the furniture, fittings and fixtures in the flats (*ie*, $500), because the Appellant's expectation was to live in a *furnished* flat. The Judge was also correct to exclude the monthly service and conservancy charges (amounting to $500 for the first tenancy agreement and $300 for the second tenancy agreement) because those are costs that the Appellant had to bear in any event.

40 On the other hand, in respect of the multiplier, the Appellant submits that the Judge has erred in considering seven years to be the appropriate multiplier, and should instead have decided on a multiplier of 14 years, if not at least ten years. Ten years would represent the period of time from the

Appellant's eviction from the Flat to when the Appellant is first eligible for the HDB Single Singapore Citizen Scheme ("SSCS") when he is 35 years old, while 14 years would represent the period of time that further takes into account the approximate four years required for the completion of HDB Build-To-Order ("BTO") developments. According to the Appellant, 14 years represents the appropriate length of time spent renting an alternative flat that should be taken into account, given that the Appellant's expectation is to enjoy a life-long licence to reside at the Flat, at least until he is able to move into his own HDB flat.

41 In our judgment, there is, with respect, no sound basis for adopting seven years as the multiplier. The AR suggested seven years as the multiplier on the basis that it represents "more than enough time to satisfy the equity that the [Appellant] had from taking care of [the Deceased] for 3 years and paying monies on her behalf", while the Judge affirmed this figure for the same reason given by the AR, and also on the basis that "applying a [multiplier] of 10–14 years … would have led to a remedy which was disproportionate to the detriment which the [Appellant] had suffered" (GD at [24]). Neither of these two explanations is particularly persuasive, given that they do not provide an objective basis that justifies why seven years is the appropriate period of time to take into account in assessing the amount that would meet the Appellant's expectation.

42 Moreover, and turning to the Judge's reasoning in particular (see GD at [24]), we consider that in so far as he was purporting to apply a discount to the 14-year multiplier that the Appellant was principally arguing for, such an approach would also, with respect, be wrong in principle. Based on the expectation-based approach (as set out at [18] above), the stage at which the court determines the sum that represents the claimant's expectation is not the

correct stage to apply a discount having regard to the principle of proportionality. Assuming that the Judge had first reduced the multiplier to account for the fact that the Appellant had taken care of the Deceased for only a short period, and then went on to *further reduce* the final sum awarded to account for the fact that the detriment suffered by the Appellant was less substantial than he had pleaded, the Judge would effectively have double-counted. In other words, he would have implemented a reduction in the remedy on account of the detriment suffered *twice over* by first reducing the sum that is supposed to accurately reflect the Appellant's expectation before proceeding to *further* reduce the final sum on account of proportionality with the detriment.

43 Instead, we consider ten years to be the most appropriate yardstick for the period of time that the court should take into account in fashioning an award to meet the Appellant's expectation. We consider it apposite to select a multiplier of ten years because although the Appellant was promised a life-long licence to occupy the Flat, the Appellant has expressed an intention to reside in the Flat only up till when he is first eligible to apply for public housing as a single. This takes into account the period of time from when the Appellant was evicted (in 2009) to when the Appellant would first be eligible to apply for public housing as a single at the age of 35 (in 2019), which we consider to be a suitable objective reference point for our calibration of the multiplier to be premised on.

44 Finally, we reject the Appellant's submission that the multiplier should be 14 years. The Appellant advances this submission on the basis that due consideration should be given to the additional period of time required for an HDB BTO development to be completed. In our view, it would be unprincipled to take this additional period of time into account, given that the award would otherwise be recognising the Appellant's rather specific intention of applying

for a BTO flat under the HDB SSCS. Specifically providing for the Appellant's desire to purchase an HDB BTO flat as a single would in turn be taking us beyond the realms of doing the minimum necessary to satisfy the maximum extent of the equity in this case.

45 For these reasons, therefore, the amount that would fulfil the Appellant's expectation should have been obtained by multiplying the multiplicand of $1,500 per month by a multiplier of ten years, which gives us a total sum of $180,000.

Ensuring proportionality with the detriment

46 Having arrived at a provisional figure of $180,000 that represents the equitable compensation that ought to be awarded to fulfil the Appellant's expectation, the next step in the analysis, according to the expectation-based approach set out at [18] above, would be to consider whether the Appellant's expectation is "extravagant, or out of all proportion to the detriment which the [Appellant] has suffered", such that the Appellant's equity ought to be satisfied in a more limited way.

47 In our judgment, the provisional figure of $180,000 obtained at [45] above would indeed be out of all proportion to the detriment that the Appellant has suffered, and should thus be reduced to the sum of $140,000 in order to ensure proportionality between the expectation of the Appellant and his detriment suffered. We consider this to be an appropriate reduction to the provisional sum representing the Appellant's expectation, in the light of what we consider to be a fair evaluation of the detriment suffered by the Appellant.

48 In particular, we consider the detriment suffered by the Appellant to be, *on the whole*, more significant than what the Judge had assessed it to be.

49 We turn, first, to consider the aspects of the Judge's quantification of the detriment that we agree with. First, we agree with the Judge's observation that the Appellant's detriment suffered has, in certain respects, not been adequately pleaded or proved. In the decision of the English Court of Appeal in *Jones v Watkins and Others* [1987] Lexis Citation 841 ("*Jones*"), Slade LJ (with whom Glidewell LJ and Caulfield J agreed) astutely emphasised that:

> ... if a claim based on proprietary estoppel is to be made, particularly against the estate of a deceased person, the items of detriment relied on should, in my judgment, be specifically alleged and proved. The court should not, in my view, readily infer detriment which has not been specifically alleged and proved.

Slade LJ's observations in *Jones* about the requirement for detriment were cited with approval in the decision of the English Court of Appeal in *Gillett v Holt* [2001] Ch 210 ("*Gillett*"), where Robert Walker LJ also goes on to state that any "detriment alleged must be pleaded and proved" (at 232F). In the decision of the English High Court in *Magrath v Parkside Hotels Ltd* [2011] EWHC 143 (Ch), Judge Mackie QC makes the same point, holding that where a claimant brings a claim in proprietary estoppel, the claimant's "pleading should state with precision and clarity all the matters relied upon, including detriment, to make good its case" (at [32]).

50 We would also emphasise that the need for a claimant bringing a claim in proprietary estoppel to plead the detriment suffered and adduce evidence in support of such pleading is critical, *irrespective of* whether the claimant elects to adopt the expectation-based or reliance-based approach. In respect of the reliance-based approach, the need to plead and prove the detriment suffered is self-evident. As for the expectation-based approach, evidence of the detriment is equally relevant, in order for the court to be well placed to examine the proportionality of the remedy with the detriment suffered.

51 Returning to the present facts, we agree with the Judge that the Appellant's detriment suffered in the form of the medical and household expenses borne on behalf of the Deceased is *not* as substantial as he claims. Although the Appellant claimed in his submissions before the Judge below that he had spent about $80,000 on medical and household expenses for the Deceased, the Judge rightly observed that his pleaded case was merely that he had spent a *far lower sum* of $18,350.50 (GD at [31]). Moreover, even in respect of this lower pleaded sum, the Judge also observed (correctly, in our view) that the evidence adduced in support of the pleaded amount was not of the highest quality (GD at [32]). Accordingly, by dint of the sparse evidence on record in this regard, this particular head of the Appellant's detriment suffered should be limited to no more than $18,000.

52 Also, in so far as the Judge appeared *not* to have taken into account the Appellant's decision to refrain from seeking regular full-time employment, and also to forego his subsequent employment as a financial planner with Manulife Singapore, in order to take care of the Deceased on a full-time basis (see [6(b)] above), we agree with the decision of the Judge. Although the Appellant did plead this particular detriment, he has failed to adduce the necessary evidence to support his claim. The Appellant could have, for example, adduced evidence of his income statements when he was employed as a financial planner with Manulife Singapore, but failed to do so. We therefore decline to ascribe any value to this particular head of detriment in the Appellant's pleadings.

53 Secondly, we also affirm the Judge's assessment that the detriment that the Appellant has suffered from having spent time and effort to take care of the Deceased is in fact less pronounced than the impression that the Appellant has given, because it was the Appellant's own pleaded case that a domestic helper had been hired to look after the Deceased, alongside the Appellant (GD at [33]).

The Appellant suggests that not much weight ought to be placed on the fact that a domestic helper had been hired, given that she was not the best provider of care, and that it was ultimately the Appellant who had borne the substantial part of the responsibility of caring for his grandmother. In our view, however, the fact remains that the Appellant *did* benefit from help in taking care of the Deceased.

54 We next proceed to consider the aspects of the Judge's assessment of the detriment that we have difficulty with. First, in evaluating the extent of detriment that the Appellant has suffered, it must be recalled that the Appellant had to endure the genuine fear of being infected with tuberculosis, and also to sacrifice his social life, when taking care of the Deceased (see [6(c)] above). In *McFarlane*, Prof McFarlane helpfully observes that detriment need not consist only of the suffering of quantifiable financial loss, and could also include non-financial loss (at paras 4.94–4.97). In arriving at this view, the learned author relies on the influential *dicta* of Robert Walker LJ in *Gillett* (at 232D) and Deane J in *Verwayen* (at 359), which we agree with. Account should, in our view, be taken of this additional non-financial detriment suffered by the Appellant in quantifying the remedy to be awarded to him. Indeed, in so far as the Judge did consider the non-financial detriment suffered by the Appellant in the form of the time and effort spent in looking after the Aunt and the Deceased, it appears that the Judge would also have agreed with the need to consider the intangible detriment suffered as a result of the Appellant having to look after the Deceased when she was diagnosed with tuberculosis. Looked at in this light, the detriment suffered by the Appellant should, taken as a whole, be greater than what the Judge had assessed.

55 Secondly, the Appellant submits that the Judge had erred in considering the fact that he was receiving rent-free accommodation while staying at the Flat

at the material time to be a benefit that ought to be offset against the detriment that he sustained. To this end, the Appellant argues, relying heavily on the decision of the English Court of Appeal in *Southwell v Blackburn* [2014] EWCA Civ 1347 ("*Southwell*"), that the rent-free accommodation that he had enjoyed was merely an incident of his relationship with the Deceased and the circumstances of his birth and family, and was not a direct consequence of his reliance upon the Deceased's promise.

56 It is undoubtedly true – as the Judge observed in the GD at [26] – that the law allows for benefits acquired by the claimant to be offset against the detriment suffered when quantifying the equitable compensation to be awarded. Indeed, it was observed by the English Court of Appeal in *Powell* that "it would offend common sense to leave out of account a benefit received in connection with a detriment when considering the detriment for the purpose of proprietary estoppel" (at [30]).

57 We also agree with the Judge's observation that the Appellant's reliance on *Southwell* is misplaced (see GD at [27]–[28]). In *Southwell*, the respondent, in reliance on the appellant's promise that she would have a home for life, gave up her rented house (in which she had invested about £15,000), and spent about £5,000 on a new home with the appellant. In assessing the detriment suffered by the respondent, Tomlinson LJ (with whom McFarlane and Macur LJJ agreed) declined to take into account the benefits that had accrued to the respondent during the course of their relationship, which included rent-free accommodation that she had enjoyed, and offset these against the detriment suffered. Crucially, however, Tomlinson LJ so held ***only*** because he found that the "benefits did not … all flow in one direction", and the *appellant* too had benefitted from their living arrangement (at [15] and [18]). Therefore, although the court in *Southwell* did indeed decline to offset the rent-free accommodation

enjoyed by the respondent against the detriment suffered by the respondent, this was only on account of the fact that the rent-free accommodation should instead be offset against the benefits that the *appellant* had derived from living with the respondent. *Southwell* thus does not specifically support the Appellant's contention that his rent-free accommodation in the Flat in the period when he was looking after the Aunt and/or the Deceased from 2005 to 2008 should not be offset against his detriment suffered.

58 Having said all that, we are unable, with respect, to agree with the Judge's ultimate finding that the Appellant's rent-free accommodation in the Flat should be considered a countervailing benefit to be offset against his detriment suffered. In our judgment, benefits garnered by the claimant should be taken into account *only if* acquired as a ***direct result*** of the very course of conduct through which the claimant satisfies the reliance element of his claim (see *McFarlane* at para 4.125). In the decision of the Judicial Committee of the Privy Council (on appeal from the Court of Appeal of the Eastern Caribbean Supreme Court (St Lucia)) in *Henry and Another v Henry* [2010] UKPC 3, Sir Jonathan Parker (delivering the judgment of the Board) held that detriment can be reduced by "the countervailing advantages which [the claimant] enjoyed *as a consequence of that reliance*" [emphasis added] (at [51]). In *McFarlane*, Prof McFarlane elaborates thus (at para 4.128):

> … a benefit *should not* be taken into account if there is no factual link between that benefit and the course of conduct through which [the claimant] establishes reliance. … The key point is that ***such detriment must flow from the course of conduct adopted by [the claimant] in reliance on [the defendant]***. Disadvantages that [the claimant] would in any case have incurred are not taken into account in assessing detriment. ***Benefits that [the claimant] would in any case have received must similarly be rejected***. [original emphasis in italics; emphasis added in bold italics]

59 In the present case, the Appellant has been living in the Flat since his birth, and has never had to pay for rent to reside in the Flat. Rent-free accommodation in the Flat is thus a benefit that the Appellant has always enjoyed, and is *not* factually linked to the course of conduct that he undertook in reliance on the Deceased's promise of a life-long licence to occupy the Flat. Put another way, rent-free accommodation at the Flat is a benefit that the Appellant would have enjoyed regardless of whether the Appellant had acted in reliance on the promise that the Deceased had made. Accordingly, we find that the Judge, with respect, erred in considering the fact that the Appellant had been staying rent-free in the Flat at the material time to be a countervailing benefit that should offset the detriment suffered.

60 To summarise, in quantifying the detriment suffered by the Appellant, we take into account, on the one hand, the feeble state of the evidence adduced in respect of the medical and household expenses that the Appellant claimed to have borne on behalf of the Deceased, the complete lack of evidence regarding the full-time employment opportunities that the Appellant had allegedly forgone in order to take care of the Deceased on a full-time basis, as well as the fact that the Appellant had received assistance from a domestic helper when looking after the Aunt and the Deceased. However, as against these, we consider the fact that some value ought to be ascribed to the not insignificant non-financial detriment suffered by the Appellant because he had to wrestle with the constant fear of contracting tuberculosis and had to sacrifice his social life while taking care of his tuberculosis-stricken grandmother. We also consider it unnecessary to offset the aforementioned detriment suffered against the rent-free accommodation that the Appellant had enjoyed at the material time. Taking all these considerations in the round, we consider that the detriment suffered by the Appellant must surely be more significant than what the Judge had assessed it to be.

61 In the result, we find that the remedy that would best achieve proportionality between the expectation of the Appellant and the detriment he has suffered, and also involve us doing the minimum necessary to satisfy the maximum extent of the equity and do justice between the parties, would be an award of equitable compensation in the sum of $140,000.

Conclusion

62 For the reasons set out above, we allow the appeal and find that the Appellant should be awarded equitable compensation in the sum of $140,000. The costs of the appeal, which we fix at $10,000 (inclusive of disbursements), are to follow the event. There will be the usual consequential orders.

Andrew Phang Boon Leong
Judge of Appeal

Steven Chong
Judge of Appeal

Tan Wen Cheng Adrian and Low Zhi Yu Janus (August Law Corporation) for the appellant;
The respondent unrepresented and absent.