IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 38

Civil Appeal No 23 of 2017

Between

(1) Wibowo Boediono
p(Koh Teng Teng Isabelle
2)

… *Appellants*

And

(1) Cristian Priwisata Yacob
(2) Denny Suriadinata

… *Respondents*

Civil Appeal No 24 of 2017

Between

(1) Wibowo Boediono
(2) Koh Teng Teng Isabelle

… *Appellants*

And

(1) Cristian Priwisata Yacob
(2) Nila Susilawaty
(3) Toh Wee Jin

… *Respondents*

Civil Appeal No 36 of 2017

Between

Tan Lay Pheng

… *Appellant*

And

(1) Cristian Priwisata Yacob
(2) Nila Susilawaty
(3) Toh Wee Jin

… *Respondents*

Civil Appeal No 37 of 2017

Between

Toh Wee Jin

… *Appellant*

And

(1) Cristian Priwisata Yacob
(2) Nila Susilawaty
(3) Tan Lay Pheng

… *Respondents*

JUDGMENT

[Tort] — [Misrepresentation] — [Fraud and deceit]

[Tort] — [Negligence] — [Solicitors' duties]

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v
Cristian Priwisata Yacob and another and other appeals

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Court of Appeal — Civil Appeals Nos 23, 24, 36 and 37 of 2017
Andrew Phang Boon Leong JA, Judith Prakash JA and Tay Yong Kwang JA
16 January 2018

9 July 2018 Judgment reserved.

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

Introduction

1 These appeals arise out of two suits commenced in the High Court in 2012 by connected Indonesian parties to recover certain sums of money and an apartment unit that were allegedly transferred as a result of fraud practised on the plaintiffs by three of the defendants. The other defendants are solicitors whose alleged negligence allowed the main fraudsters to succeed in the fraud.

2 In the first action, Suit No 71 of 2012 ("Suit 71"), the plaintiffs were Cristian Priwisata Yacob ("Mr Yacob") and his business partner Denny Suriadinata ("Mr Suriadinata"). The defendants were Wibowo Boediono ("Mr Boediono") and his wife Koh Teng Teng Isabelle ("Mdm Koh") (together "the Boedionoes"). Suit 71 concerned the payment of money to Mr Boediono

for the purpose of investment and also the purchase of a car.

3 The second action, Suit No 169 of 2012 ("Suit 169"), was started by Mr Yacob and his wife, Nila Susilawaty ("Mdm Susilawaty") (together "the Yacobs"), to recover an apartment unit in Singapore (the "Apartment") that they had apparently transferred to Bodiono Kweh, Mr Boediono's father. To avoid confusion we will call the elder gentleman, Mr Kweh. The defendants in Suit 169 were, in addition to the Boedionoes and Mr Kweh, two solicitors namely Toh Wee Jin ("Mr Toh") and Tan Lay Pheng ("Mr Tan") who did the legal work required to effect the transfer of the Apartment.

4 The parties were not in dispute over the fact of the transfer of the monies and the Apartment. What they disagreed on was the purpose of the transfers. The Yacobs claimed that the monies were transferred to Mr Boediono (a) for the latter to buy a car on Mr Yacob's behalf and (b) as their contribution towards a joint investment in two condominium apartments known as the Oasis Garden and Parc Mondrian apartments. Mr Boediono asserted that the monies were transferred to repay Mr Yacob's debt to Mr Kweh. As for the Apartment, the Yacobs claimed that the Boedionoes fraudulently procured its transfer to Mr Kweh. The Yacobs' claim against Mr Toh and Mr Tan was in negligence.

5 The Judge in the court below found for the plaintiffs on all the issues: see *Cristian Priwisata Yacob and another v Wibowo Boediono and another and another suit* [2017] SGHC 8 (the "Judgment"). The essential findings made by the Judge were as follows:

(a) First, that Mr Yacob did not owe Mr Kweh a debt. The monies transferred by the Yacobs and Mr Suriadinata to Mr Boediono were not

to repay any debt but to purchase a car on Mr Yacob's behalf and as part of the joint investment.

(b) Secondly, that the Boedionoes and Mr Kweh fraudulently procured the transfer of the Apartment to Mr Kweh.

(c) Thirdly, that Mr Toh and Mr Tan had each breached his duty of care. They failed to verify their clients' identities and instructions before facilitating the transfer of the Apartment.

6 In Civil Appeals Nos 23 and 24 of 2017 ("CA 23 and 24"), the Boedionoes appeal against the first and second findings made by the Judge and to aid understanding we will sometimes hereafter refer to them as "the appellants" as they are the primary disputants in the appeals. Mr Tan is the appellant in Civil Appeal No 36 of 2017 ("CA 36") while Mr Toh is the appellant in Civil Appeal No 37 of 2017 ("CA 37"). These latter appeals were brought with the purpose of overturning the second and third findings of the Judge.

7 After considering the parties' submissions, we reserved judgment. We now allow the appeals in part and give our reasons for doing so.

Background facts

8 The Indonesian parties in these appeals all hail from Surabaya, Indonesia. Mr Yacob and Mr Suriadinata were involved in the timber industry there and in the course of business, Mr Yacob became acquainted with Mr Kweh and the latter's wife, Liem Landy ("Mdm Landy"). In about 2005, the Yacobs decided to send their children to school in Singapore. By 2007, Mr Boediono had finished his own education, married Mdm Koh, a Singaporean, and settled

in Singapore. Mr Kweh and his wife also spent a considerable portion of their time here though their main home remained in Surabaya. As a consequence of their children's Singapore schooling, the Yacobs also began to come to Singapore frequently and got to know the Boedionoes in 2008. The events that led to the two suits took place between 2008 and 2011.

Suit 71

9 Suit 71 was commenced on 30 January 2012. It was started to recover various sums of money that Mr Yacob and Mr Suriadinata had transferred to Mr Boediono between 2008 and 2010. The transfers fell into two categories. The first comprised sums of money that Mr Yacob had remitted to Mr Boediono allegedly for the latter to buy a car on his behalf. Two sums were transferred for this purpose: $100,000 on 7 April 2008 and a further $140,100 in August 2009.

10 The second category comprised transfers made by both Mr Yacob and Mr Suriadinata to the appellants in December 2010. Specifically, Mr Yacob remitted $607,700 on 7 December 2010 while Mr Suriadinata transferred sums totalling $624,570.19 by various remittances in December 2010 and January 2011. Mr Yacob and Mr Suriadinata claimed that the purpose of the transfers was to enable the appellants to buy apartments in Oasis Garden and Parc Mondrian as joint investments for the four of them (*ie*, Mr Yacob, Mr Suriadinata and the appellants).

11 In April 2011, Mr Boediono emailed Mr Yacob, asking whether he wanted to convert the condominium investment into a cluster bungalow investment. In June 2011, the Yacobs flew to Singapore to meet the appellants. The parties dispute the precise dates of these meetings and what happened during the meetings. Mdm Susilawaty said she met the appellants on 20 June

2011 while Mr Yacob said his meeting with them took place on 21 June 2011. During these meetings, according to the Yacobs they signed documents relating to the sale of the Oasis Garden apartment. The appellants' version was completely different. They said that only one meeting took place and that the documents signed were for the transfer of the Apartment.

12 In July 2011, the appellants met the Yacobs in Bali to discuss yet another investment.

13 In August 2011, Mr Yacob allegedly became suspicious of the appellants after seeing an Indonesian news report that stated that Mr Kweh and his wife were wanted in Indonesia for fraud. He sent an email expressing his concern to Mr Boediono on 24 September 2011. After some correspondence, they agreed to meet on 1 November 2011, but this meeting did not materialise in the end. Finally, in December 2011, the Yacobs visited Singapore to check on the condominium properties but discovered that no units were registered in the appellants' names. Mr Yacob then sent an urgent SMS message to Mdm Koh.

14 Mr Boediono denied receiving any follow-up emails or messages from Mr Yacob in September 2011, but asserted that he met Mr Yacob on 31 October 2011. At that meeting, Mr Yacob handed over a statutory declaration that he had made for an application for a replacement certificate of title ("RCOT") in relation to the transfer of the Apartment. Mr Yacob denied that this meeting happened.

Suit 169

15 The factual background to Suit 169 was that in 2007, the Yacobs agreed to buy the Apartment which was a unit in a condominium development in Singapore known as The Chuan. The intention was to make the Apartment a home for their children. The purchase was completed in 2008 and the Apartment was registered in the joint names of the Yacobs. The allegation made in Suit 169 was that the Boedionoes and Mr Kweh had wrongfully procured the fraudulent transfer of the ownership of the Apartment to Mr Kweh using the RCOT. The Yacobs claimed that the transfer documents, which included the RCOT, were fraudulently procured by the appellants. They further claimed that in both the RCOT application and the eventual transfer, Mr Toh and Mr Tan acted negligently. It should be noted that Mr Toh acted for the Yacobs in the RCOT application and Mr Kweh in the transfer of the Apartment, while Mr Tan acted for the Yacobs in the transfer of the Apartment.

16 Mr Kweh died before the trial commenced. The court granted leave for the appellants to adduce an affidavit which Mr Kweh had made eight months before he passed away to set out his response to the allegations made by the Yacobs.

17 The following is a brief account of events relating to the transfer of the Apartment:

(a) On about 14 June 2011, Mr Toh (acting for Mr Kweh) prepared a draft sale and purchase agreement between the Yacobs and Mr Kweh which stated that the purchase price of the Apartment was $1.8m and further that the Yacobs acknowledged that they had received sums totalling $1,792,750 from Mr Kweh over a period of time prior to the

signing of the agreement. He also prepared a formal instrument of transfer.

(b) On 21 June 2011, Mr Boediono allegedly handed over a cashier's order to Mr Yacob. This cashier's order represented a refund of an amount of about $7,000 due to Mr Yacob because the Apartment's purchase price was slightly higher than Mr Yacob's debt to Mr Kweh. According to the appellants, this buttressed their claim that the transfer of the Apartment was made to satisfy Mr Yacob's debt to Mr Kweh. After the meeting, the parties flew to Surabaya where they passed the documents mentioned in (a) above to Mr Kweh.

(c) On 27 June 2011, Mr Kweh passed the signed sale and purchase agreement and transfer instrument, and a written statement confirming receipt of the remaining sum owed by Mr Yacob to Mr Kweh to Mr Boediono. The documents appear to have been signed before an Indonesian notary public.

(d) In late June or early July 2011, Mr Kweh informed Mr Boediono that Mr Yacob had misplaced the certificate of title issued in respect of the Apartment and asked his son for Mr Yacob's contact details so that Mr Toh could help the Yacobs apply for an RCOT.

(e) Mr Boediono provided Mr Toh with an email address ("Address A", [xxx]) and a mobile number. Mr Toh asked the appellants to collect documents to be signed for the application. Mr Boediono passed these to his friend, one Suteja Hartanto, to pass to Mr Kweh in Surabaya for the Yacobs to sign before a notary public. Mr Kweh later passed the signed documents back to his son.

(f) On 20 September 2011, Mr Toh used these documents to make an RCOT application. This application was rejected by the Singapore Land Authority ("SLA") as insufficient information had been provided.

(g) Mr Toh accordingly asked Mr Boediono for the additional details required by the SLA and wanted Mr Yacob to provide the details directly to him. On 24 September 2011, Mr Toh received an email from a second email address ("Address B", [xxx]), purporting to be from Mr Yacob.

(h) Mr Boediono alleged that he met Mr Yacob on 31 October 2011 and that the latter handed over a statutory declaration for use in the second RCOT application. Mr Yacob denied this meeting.

(i) Mr Toh then made a second RCOT application. This application was granted on 2 December 2011. The Yacobs averred that they had never received any notification from the SLA to that effect.

(j) Once the RCOT application was successful and a new certificate of title was in hand, it was time for the transfer. Mr Toh could not act for both sides of the transaction so he roped in Mr Tan to act for the Yacobs. In this connection, Mr Toh provided Mr Tan with both Address B and a third email address ("Address C", [xxx]) so that Mr Tan would be able to contact his clients. Mr Tan tried to do so but failed. Thus, on 7 December 2011, he emailed a Letter of Authority to Mr Toh for Mr Yacob and Mdm Susilawaty to sign, since Mr Toh said that he would be meeting them in Indonesia that month. Thereafter, on 12 December 2011, Mr Tan received an email from Address B

appearing to be from Mr Yacob, confirming that the Apartment had been fully paid for.

(k) On 23 December 2011, Mr Tan sent an email to Mr Yacob at Address B to ask Mr Yacob for permission to complete the sale early. According to Mr Tan, he received an affirmative reply on 27 December 2011.

(l) The registered ownership of the Apartment was transferred into Mr Kweh's name on 28 December 2011.

18 The appellants denied that they had procured the transfer fraudulently. They averred that the Apartment was transferred by the Yacobs to Mr Kweh to pay off Mr Yacob's indebtedness. Around the time of the transaction, the debt stood at around $1.793m, which was slightly lower than the purchase price of S$1.8m. That was why there was a cashier's order for the balance sum. Mr Boediono asserted that as further security for repayment, Mdm Susilawaty had issued a cheque for $1.793m ("the HSBC cheque"), in favour of Mr Kweh. The HSBC cheque was to be encashed if the transfer was not made. Further, Mdm Susilawaty had signed a note handwritten by Mr Kweh which recorded that this was the reason for the HSBC cheque.

19 The Yacobs made the case that they never intended to transfer the Apartment to Mr Kweh and that they were the victims of fraud. They said that they never gave Mr Tan instructions to act for them in the conveyance nor did they give Mr Toh instructions to act for them in the RCOT applications. Mdm Susilawaty denied signing the HSBC cheque and the handwritten note. Before the Judge she gave evidence that her cheque book had been kept in the

Apartment and that when she entered the premises subsequently to retrieve their belongings the cheque book was missing.

20 Both Mr Tan and Mr Toh denied that they were negligent when purporting to act for the Yacobs. Mr Toh said that he acted in the RCOT applications based on information given to him by Mr Boediono, which he verified. Mr Tan said that his information came from Mr Toh, and he had taken proper steps to verify the same.

The decision below

Suit 71

21 The Judge found that the monies were transferred by the Yacobs for the purposes they stated and not to repay Mr Yacob's debt to Mr Kweh. He made three findings.

22 First, the Judge found that Mr Yacob did not owe a debt to Mr Kweh (Judgment at [69]–[75]). The Judge noted that there was no documentary evidence to support the appellants' claim. The HSBC cheque and the handwritten note did not count as neither was proven to be authentic. The Judge also found no convincing evidence in support of the debt. He rejected Mr Boediono's evidence because it contradicted his own conduct and was inherently implausible. No other witnesses were called to testify even though they could have been – for instance, one Haryono, an Indonesian businessman who was said to have known about the loan ("Mr Haryono"), was sitting in the public gallery during the trial but did not testify.

23 Second, the Judge found that Mr Boediono was given the money to purchase a car on Mr Yacob's behalf – in large part because Mr Yacob did not

owe Mr Kweh a debt (Judgment at [76]–[88]). But the Judge also considered the other evidence. Specifically, the Judge found as a fact that the Yacobs first met the appellants *before* Mr Yacob sent Mr Boediono the first remittance on 7 April 2008. Hence, it was plausible that Mr Yacob would trust Mr Boediono with that money to buy a car. The Judge also relied on an SMS message sent by Mr Boediono to Mr Yacob that was consistent with the latter owning the car. The Judge rejected the appellants' argument that Mr Yacob did not own the car since he did not act as a typical car owner would have. Instead, the Judge considered that Mr Yacob took a hands-off approach because he trusted Mr Boediono.

24 Accordingly, the Judge found the appellants liable for the tort of conversion. The Judge awarded the Yacobs $173,000 damages in respect of this head of claim as that amount represented the market value of the car when the car was sold by the appellants without Mr Yacob's consent or knowledge. The date of the sale was taken as the date of conversion (Judgment at [181]–[183]).

25 Third, the Judge found that the monies transferred by Mr Yacob and Mr Suriadinata to Mr Boediono were remitted for the purpose of a joint investment (Judgment at [89]–[112]). The Judge relied on emails between the parties that laid out the payment terms and schedule right before the monies were transferred, and also on emails subsequent to the transfer that indicated that the parties had bought the condominium apartments for an investment. The Judge also accepted the oral evidence of the plaintiffs that:

> (a) Mr Yacob and Mr Suriadinata had, respectively, met the appellants on 7 and 23 December 2010, right before the sums were transferred.

(b) Mr Yacob and Mdm Susilawaty had, respectively, met the appellants on 21 and 20 June 2011. During these meetings, the Yacobs signed documents for the sale of the Oasis Garden apartment.

Their evidence in this respect was consistent with the position that the sums were transferred pursuant to a joint investment.

26 The Judge found that Mdm Koh was also a party to this joint investment since she knew what would be done with the monies, which had been sent to a joint account held by both the appellants. She was also to be a co-owner of the condominium apartments once they were purchased, together with Mdm Susilawaty and Mr Suriadinata (Judgment at [190]).

27 Accordingly, the Judge found that the appellants were unjustly enriched. There was a total failure of consideration when the joint investment agreement was not carried out. The appellants were hence liable to return $607,700 to Mr Yacob and $624,570.19 to Mr Suriadinata, with interest of 5.33% per annum to run from the date of the writ to the date of payment (Judgment at [184]–[192]).

The fraud in Suit 169

28 The Judge found that the transfer of the Apartment was fraudulently procured by Mr Boediono and that Mdm Koh and Mr Kweh had knowingly participated in the fraud.

29 The Judge first found that there was fraud in that Mr Boediono, with Mdm Koh's help, had tricked the Yacobs into signing the transfer documents in ignorance of what the documents were. The Judge rejected Mr Boediono's

evidence that the documents were signed in Indonesia before notaries public, instead preferring the Yacobs' evidence that the documents were signed during the meetings on 20 and 21 June 2011. That said, the Judge found that the signatures on the documents were not forged, as had been alleged by the Yacobs, since there was insufficient expert evidence to that effect (Judgment at [117]–[136]).

30 The Judge also found that the two email addresses that Mr Boediono had passed to Mr Toh did not belong to Mr Yacob. They had been created and operated by the appellants (Judgment at [115]–[116]).

31 In finding fraud, the Judge noted that the appellants first revealed the change of ownership of the Apartment in their defence to Suit 71. He opined that by this time, the appellants had had no choice but to reveal what had happened because the transfer would have been discovered anyway. The Judge also noted that, while the evidence in favour of the Yacobs' position was thin, the appellants' version of events was even more unlikely (Judgment at [137]–[144]).

32 The Judge then found that both Mdm Koh and Mr Kweh were knowing participants in the fraud. Mdm Koh assisted her husband in various ways in relation to the transactions for example by collecting documents and contacting the Yacobs. Mr Kweh provided considerable financial support and was the transferee of the Apartment (Judgment at [145]–[161]). Accordingly, the Judge found both appellants and Mr Kweh liable for fraud and for the tort of conspiracy by unlawful means. The Judge ordered them to pay damages of $1.8m (being the market value of the Apartment at the date of appropriation) to the Yacobs (Judgment at [195]–[196], [219]).

The negligence in Suit 169

33 The Judge found that Mr Toh and Mr Tan had, by their negligence, allowed the fraud to be perpetrated. As both lawyers accepted that they owed the Yacobs a duty of care, the only issues before the Judge were whether they were in breach of that duty and, if so, whether the breach caused loss that Mr Toh and Mr Tan had to pay for.

34 The Judge found that both lawyers had breached their duty of care. He found that Mr Toh acted solely on the appellants' instructions despite knowing he was to represent the Yacobs in the RCOT applications. Mr Toh did not meet the Yacobs nor did he carry out independent checks on the information that Mr Boediono had given him, like the email addresses. As for Mr Tan, although he tried to contact Mr Yacob directly at the number that Mr Toh had provided, this was not enough. In his attempt to contact Mr Yacob, Mr Tan relied on information that Mr Toh – the solicitor for the counterparty to the conveyance – provided him with and, without even waiting for a response, he then sent his draft letter of authority to Mr Toh to pass to Mr Yacob for signature (Judgment at [167]–[174]).

35 Specifically, the Judge found that the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("PCR (2010)"), as supplemented by Practice Direction 1 of 2008 ("PD (2008)"), were breached. Although the PD (2008) spoke of money laundering and terrorist financing, it was generally applicable as it aimed to minimise the risk of inadvertent involvement in money laundering (Judgment at [229]–[236]).

36 The Judge rejected submissions from Mr Toh and Mr Tan that they could rely on the notarised documents. He held that there was no general rule

that solicitors would have discharged their duty of care merely because the documents were notarised. Instead, this was just one factor which had to be assessed in the overall matrix. Here, Mr Toh and Mr Tan failed to take enough steps to verify their clients' identities and instructions (Judgment at [237]–[274]).

37 The Judge rejected the argument that the chain of causation was broken in respect of either Mr Toh or Mr Tan by the other's negligence, or by the appellants' fraud. The Judge also rejected the argument that the damage was too remote because the fraud was superseded by the negligence (Judgment at [275]–[307]). The Judge found that the Yacobs had taken reasonable steps to mitigate their loss by conducting a STARS search and filing a caveat as soon as reasonably possible. Finally, the Judge rejected the submission that the Yacobs were contributorily negligent for signing documents without checking their contents (Judgment at [308]–[324]).

38 Accordingly, the Judge found that Mr Toh and Mr Tan were negligent. The Judge also found that Mr Toh himself was in one sense a victim of the fraud perpetrated by the appellants and therefore could claim contribution from them to the extent of 80% of his liability (Judgment at [325]–[335]). Mr Tan did not claim any contribution from the appellants but only from Mr Toh. The Judge held that Mr Tan could claim a 50% contribution from Mr Toh because of their relative culpability. The Judge dismissed Mr Tan's claim against Mr Toh in misrepresentation because the Misrepresentation Act (Cap 390, 1994 Rev Ed) did not apply and Mr Toh did not owe Mr Tan a duty of care (Judgment at [331]–[339]).

General observations on the oral evidence

39 Finally, the Judge noted that many of his findings were based on his observations as trial judge. He noted that although both parties' evidence contained some inconsistencies, the Yacobs were the more credible parties. While the evidence of the appellants was generally more consistent, the documentary evidence cast some doubt on whether Mr Boediono was entirely frank in his testimony (Judgment at [175]–[179]).

Parties' cases

The appellants' appeals in CA 23 and CA 24

40 In CA 23 and CA 24, the appellants challenge the Judge's findings in Suits 71 and 169 respectively.

41 In relation to Suit 71 (the transfer of the monies for the car and joint investment), the appellants submit that:

(a) Mr Yacob was indebted to Mr Kweh. The Judge failed to consider the HSBC cheque and the handwritten note. He also gave too much weight to the Yacobs' oral evidence but too little weight to Mr Boediono's.

(b) Mr Boediono did not buy any car on Mr Yacob's behalf. The Judge erred in finding that the parties met before the first payment was made. If the Judge had correctly found that the parties first met after Mr Yacob's first remittance to Mr Boediono, he would have reached a different decision. The Judge also gave too much weight to the SMS message that Mr Yacob exhibited.

(c) There was no agreement to make a joint investment in Oasis Garden and Parc Mondrian. In this respect, the appellants rely largely on the same arguments they advanced in the court below.

42 In relation to the findings of fraud in Suit 169, the appellants submit that:

(a) The Yacobs' position that their signatures on the documents were either forged or obtained by deceit was internally contradictory. They could not allege both possibilities.

(b) In any event, the facts surrounding the transfer show that both the Boedionoes acted *bona fide*.

43 We should point out that Mr Toh was the third respondent in CA 24 because the appellants also challenged the Judge's findings that they were liable to him in damages for deceit.

44 As the respondents in CA 24, the Yacobs seek to uphold the Judge's findings for the same reasons the Judge gave. In particular, they point out that whether Mr Yacob owed Mr Kweh a debt was the "lynchpin" of the appellants' case.

The solicitors' appeals in CA 36 and CA 37

45 In CA 36, Mr Tan appeals against the Judge's finding that he was negligent, but he accepts that he owed a duty of care to the Yacobs. He relies on essentially the same arguments as in the court below. Mr Tan also submits that he should be granted more than a 50% contribution since he was not as blameworthy as Mr Toh.

46 In CA 37, Mr Toh appeals against the Judge's findings on negligence. Like Mr Tan, Mr Toh accepts that he owed a duty of care to the Yacobs but disputes the rest of the Judge's findings on the same grounds as in the court below. Mr Toh also submits that the Judge erred in failing to allow him to claim contribution against Mr Tan. Mr Tan, as respondent, notes that this was because Mr Toh did not plead contribution against him.

Issues

47 There are three broad issues before the court:

(a) Whether the Judge erred in Suit 71 relating to the payments made by Mr Yacob and Mr Suriadinata to the Boedionoes for the car and the joint investment.

(b) Whether the Judge erred in finding that the Boedionoes and Mr Kweh fraudulently procured the transfer of the Apartment.

(c) Whether the Judge erred in finding that Mr Toh and Mr Tan were negligent in allowing the fraud to be perpetrated during the RCOT applications and the registration of the transfer of the Apartment.

Issue 1: Were the payments made by the plaintiffs in Suit 71 made for the car and the joint investment?

48 The Judge found that the payments were made for the car and the joint investment. This conclusion was primarily based on his finding that Mr Yacob did not owe Mr Kweh a debt. We shall therefore deal with this factual issue before turning to whether the payments were made for Mr Boediono to purchase a car on Mr Yacob's behalf and for the joint investment in the two condominium apartments.

Whether Mr Yacob was indebted to Mr Kweh

49 The Judge gave three reasons for his finding that Mr Yacob did not owe Mr Kweh a debt.

(a) There was no documentary evidence. Although the appellants referred to the HSBC cheque and the explanatory note signed by Mdm Susilawaty as evidence of the debt, the Judge rejected these documents on the basis that the appellants had not proved their authenticity (Judgment at [72]).

(b) Mr Boediono's oral evidence was internally inconsistent (Judgment at [73]–[75]).

(i) Mr Boediono said that his parents asked him to stop investing with the Yacobs and Mr Suriadinata in October and November 2010. Yet he sent the cluster bungalow email to Mr Yacob in April 2011 and discussed another investment with the Yacobs in Bali in July 2011.

(ii) Mr Boediono contradicted himself as to when he obtained details of the debt. At one point he said that it was only when Suit 71 commenced in 2012. At another point he said that his father told him these details in February or March 2011. The objective evidence showed that the former story could not be true since Mr Boediono informed Mr Toh about the existence of the debt when he instructed the latter on 15 June 2011.

(iii) Mr Boediono's position was also commercially untenable. It was unlikely that Mr Kweh would have agreed to

haphazard repayments for such a large loan – through a cheque, the Apartment, and buying insurance for a car.

(c) The appellants did not call other witnesses to testify even though they were available. For instance, although Mr Boediono's affidavit of evidence-in-chief ("AEIC") referred to Mr Haryono and the latter was sitting in the public gallery during the trial, he was not called to testify (Judgment at [70]).

50 We are persuaded that the Judge was, with respect, in error in this respect and allow the appeal against this finding for three reasons.

51 First, it seems to us that the Judge paid insufficient regard to the documentary evidence which showed that Mr Yacob was indebted to Mr Kweh. This evidence comprised the HSBC cheque, which was signed but undated, for the sum of $1,792,750 and the note in Bahasa Indonesia that accompanied the cheque. Translated, the note reads:

> I, Nila Susilawaty; of Passport No.: B891.695; is representing my husband, Christian Priwisata Yacob of Passport No.: B.891696 to resolve its deficiency on the submission of HSBC Cheque No.: 630410 #SGD1,792,750, - if the condo in Singapore of address Jln Lorong Chuan 31 #05-03 S(556 820) is submitted as amortization; then the HSBC Cheque No.: 630410 is not applicable.
>
> [original in uppercase; emphasis removed]

Collectively, these documents prove the debt because, as the note explains, the HSBC cheque could be encashed to satisfy the debt if the Apartment was not transferred to do so.

52 The Judge did not rely on these two documents because the appellants did not prove their authenticity. In our view, this reasoning was deficient

because it wrongly placed the burden of proof on the appellants rather than on the Yacobs. As the appellants correctly point out, the burden of proof is on the party alleging forgery of a particular document to prove it (see this court's decision in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [157]). Since the HSBC cheque and the note that accompanied it appeared to have originated from Mdm Susilawaty (it was not disputed that the cheque was from her cheque book), it was for the Yacobs to adduce evidence of forgery. Otherwise the cheque and the note would be taken to be authentic and they would be *prima facie* evidence that the debt existed.

53 The Yacobs provided no such evidence. Indeed, they did not submit the signatures on the HSBC cheque and the note for handwriting analysis even though they called on a handwriting expert for other documents such as the Letter of Authority. This made the omission troubling. When asked why, counsel for the Yacobs first stated during the hearing before us that the original HSBC cheque did not exist and was not with them. But after the hearing, the appellants produced emails showing that this was not true. The emails showed that the parties had corresponded about the HSBC cheque, and in particular, the appellants noted that they had the original cheque and would make it available for handwriting analysis if the Yacobs wished. The Yacobs did not reply. When faced with this evidence, the Yacobs backtracked. They took the new position that that they had made a mistake during the hearing and that the original HSBC cheque existed and was with the appellants. They then explained that they chose not to put the HSBC cheque (and the note) through handwriting analysis because it was too expensive to do so and because the appellants bore the burden of proving that the documents were authentic anyway.

54 Regardless of why the Yacobs failed to put the HSBC cheque and the note through handwriting analysis, the fact is that they had the chance to do so but did not. The burden of proof is on them to prove forgery and they cannot disavow the burden by merely stating that they did not believe the burden was on them.

55 Although the Yacobs did not put the HSBC cheque and the note through handwriting analysis, Mdm Susilawaty criticised the note in her evidence on the basis that Mr Yacob's name was spelt as "Christian" instead of "Cristian" and because the passport numbers in the note were not accurate. In our view, these criticisms are insufficient to show that the note was unreliable.

56 In relation to the spelling of Mr Yacob's name in the note, counsel for the appellants pointed Mdm Susilawaty to instances where Mr Yacob had referred to himself as "Christian", including an email authored by him and a sale and purchase agreement signed by him. When counsel for the appellants suggested to Mdm Susilawaty in that, in light of these instances, Mr Yacob's name was spelt as "Christian" because that was the way that the Yacobs referred to him in the "normal affairs of life", Mdm Susilawaty conceded that this was possible. In light of this, we do not think that this criticism diminishes the reliability of the note.

57 In relation to the passport numbers, while we accept that the Yacobs' passport numbers at the date of the trial were different from those on the note, there appears to be an explanation for this. The note was written on or about 25 May 2011 (see Judgment at [72]). At that time, the Yacobs were still using their previous passports, which, as Mdm Susilawaty agreed during cross-examination were valid until 20 November 2011. Thus, it appears that the

Yacobs' old passport numbers were stated on the note, but these numbers had changed by the time the matter came to trial. While Mdm Susilawaty asserted that this was not possible because she had changed her passport as of 8 April 2011, there was no evidence of this and indeed, she also agreed that as of 25 May 2011, the old passport was the "current passport". For these reasons, we are unable to accept Mdm Susilawaty's criticisms of the reliability of the note.

58 In addition to these criticisms, the Judge noted that Mdm Susilawaty gave evidence that she had lost her cheque book. According to Mdm Susilawaty, she discovered that her cheque book was missing when the parties jointly visited the Apartment for the first time after the alleged fraud was discovered, pursuant to a joint inspection by the parties together with the court bailiff (see Judgment at [66]). This explanation showed that during the period when the HSBC cheque and the note were issued, the cheque book was not with her and therefore she could not have issued the HSBC cheque.

59 We are unable to accept this explanation because it is nothing more than a mere assertion. It is not supported by any evidence. It would not have been difficult to obtain some evidence to support the loss of the cheque book. For instance, Mdm Susilawaty could have produced bank documents to show that she had issued no cheques from that cheque book during the period in question. And as we noted earlier, it would have been easy for the Yacobs to subject the HSBC cheque and the note to the handwriting expert that they had already called to inspect other documents. In the circumstances, we find that the Yacobs have not discharged their burden of showing that the HSBC cheque and the note were not authentic. Accordingly, the Judge erred in failing to give any weight at all to this documentary evidence. The HSBC cheque and accompanying note *prima*

facie show that Mr Yacob owed Mr Kweh a debt for the amount stated in the HSBC cheque.

60 Second, while the Judge preferred the Yacobs' evidence over Mr Boediono's, we find that in light of the documentary evidence, the oral testimony of Mr Yacob and Mdm Susilawaty is not enough to displace the *prima facie* inference that the HSBC cheque and the note give rise to. We accept that Mr Boediono's evidence is not entirely clear, but we do not agree with the Judge that there were material inconsistencies in this aspect of his evidence.

61 For instance, the Judge found that Mr Boediono's evidence was internally inconsistent as to when he knew the details of the debt. But the seeming inconsistency can be reconciled if we look at his position more closely. Mr Boediono said that he only discovered the "full details" of the debt after Suit 71 was commenced on 30 January 2012. If what he meant by this is that he knew of the debt but not its specific terms, then this would be consistent with his position that his father had initially informed him of the debt in late 2010 or early 2011. That would have allowed him to inform Mr Toh of the existence of the loan when he instructed the latter on 15 June 2011.

62 Indeed, in Mr Boediono's AEIC, he said that in October or November 2010, Mr Kweh "simply told [him] that [Mr Yacob] had borrowed [IDR 22.5m] from [him] (excluding interest), and that [Mr Yacob] had yet to repay any of the principal sum". Later in February or March 2011 he was "informed by [his] father that, as a result of the payments [made by cheque], the amount owed by [Mr Yacob] to [Mr Kweh] was reduced". Finally, he discovered the "full details" when Suit 71 was filed. Mr Boediono's evidence is not unbelievable as he could very well have been told about more details about the debt over time.

63 Apart from the internal contradictions about when Mr Boediono knew about the debt, the Judge also rejected his evidence because the Judge considered it was not consistent with the parties' conduct of the meeting for new investments. The Judge also thought it was commercially unlikely that Mr Kweh would agree to such "haphazard" repayment of a large debt (Judgment at [73]–[75]).

64 Like the apparent inconsistencies in Mr Boediono's evidence, we do not think that these factors are enough to displace the weight of the documentary evidence.

65 It was not necessarily inconsistent for Mr Boediono to meet with Mr Yacob to discuss investments in mid-2011, since the debt was owed to Mr Kweh, not to Mr Boediono. By that time Mr Yacob and Mr Boediono had become sufficiently acquainted outside of the former's relationship with Mr Kweh such that it was not anomalous for them to meet to discuss potential investments separately. Indeed, by then, Mr Yacob and Mr Boediono would have met on multiple occasions. As for the commercial sense of the repayment mechanism, while we agree that it may seem unusual for Mr Kweh to accept repayment in bits and pieces, it must be remembered that this was a personal and informal loan between business friends, not a loan from a financial institution or moneylender to a customer. The law reports are littered with cases of friendly loans where precise repayment amounts and dates have not been specified by the lender. Further, the evidence showed that here the largest repayment would have come from a single transaction – the transfer of the Apartment. If that transfer failed, the HSBC cheque would be encashed. Our point here is simply that while there may be some unexplained parts of the transaction that could have been illuminated further if Mr Kweh had been alive

to testify, these gaps do not displace the initial inference drawn from the HSBC cheque and its accompanying note.

66 Accordingly, we find that the Judge, with respect, erred in finding that the inconsistencies in Mr Boediono's evidence alone meant that Mr Yacob was not indebted to Mr Kweh. To be fair, the Judge made this finding after concluding that the HSBC cheque and the note were not shown to be authentic. He may well have come to a different conclusion if he had considered the documentary evidence to be genuine.

67 Third, the Judge considered it significant that no other witnesses were called to testify. Mr Kweh, of course, was deceased. Mr Haryono did not testify even though he was present in the public gallery. According to Mr Kweh's statement, Mdm Landy knew about the debt. She was originally listed as a witness but was eventually not called.

68 In our view, the Judge placed too much weight on this factor, although this could have been because the Judge thought he could not rely on the documentary evidence. We accept that the appellants' case might have been stronger if persons like Mr Haryono and Mdm Landy were available to testify and confirm they had direct personal knowledge of the loan made to Mr Yacob. And certainly in the absence of documentary evidence, Mr Boediono's evidence *alone* would not have been enough to carry the day, especially since his evidence was not entirely clear. But given our finding that the Judge should have considered the documentary evidence, the absence of corroborative evidence cannot in itself undermine the *prima facie* evidence provided by the HSBC cheque and the note.

69 We therefore allow the appeal against the Judge's finding that Mr Yacob did not owe Mr Kweh a debt. This finding does not, however, take the appellants all the way to a decision in their favour. Even given the existence of a debt, it did not necessarily follow that all payments made by Mr Yacob to Mr Boediono would have been for the purpose of repayment. Each transaction would still have to be analysed separately, although we accept that the existence of the debt provides a strong reason for the payments to have been made. With this in mind, we now turn to consider each transaction in turn.

Whether Mr Yacob's payments were for the car

70 The Judge found that Mr Yacob's payments of $100,000 and $140,100 in April 2008 and August 2009, respectively, were for Mr Boediono to buy a car on his behalf. He gave two main reasons. First, the parties first met in March or April 2008 before the first payment was made. So by the time the first payment was made, it was believable that Mr Yacob would have trusted Mr Boediono enough to transfer the funds. Second, although the rest of the evidence was thin, it supported Mr Yacob's position that the parties came to an arrangement where Mr Boediono would purchase the car on Mr Yacob's behalf (Judgment at [77]–[88]).

71 We disagree with the Judge and allow the appeal against this finding. We find that the parties only met for the first time *after* the first payment. This made it unlikely that Mr Yacob would trust a virtual stranger with a large sum of money. Instead the more plausible explanation was that Mr Yacob was repaying the debt he owed Mr Kweh. We agree with the Judge that the rest of the evidence put forward to support the assertion of the car purchase was thin. By itself it cannot support the finding that the funds were transferred on trust. We will elaborate below.

Whether the parties first met before or after the first payment

72 In finding that the parties met before the $100,000 payment, the Judge relied on the Yacobs' oral evidence, which he preferred over the appellants'. The Judge accepted that Mr Yacob and Mdm Susilawaty changed their story on the date of the meeting several times. But in his view, this was not material because of the lapse of time. It was normal for them to have been confused. In the Judge's view, this outweighed the appellants' evidence that the parties first met only in June or July 2008, which would have been after the first payment.

73 We should note that Mdm Susilawaty tried to tender as evidence passport entries showing that she was in Singapore from 2 to 25 April 2008. But the Judge did not consider this evidence as it was not properly admitted (Judgment at [79]). This finding was not challenged by either party on appeal. So we adopt the Judge's position and give no weight to these passport stamps. In any event, given that the Yacobs came to Singapore frequently for their children's sake, the fact that Mdm Susilawaty was here in April 2008 cannot by itself prove that during that visit she had met the Boedionoes.

74 In our view, the Judge, with respect, erred in considering that the discrepancies in Mr Yacob's and Mdm Susilawaty's evidence were immaterial. There were major inconsistencies in their evidence about the date of the first meeting and the location of that meeting. In light of these discrepancies, the Judge should have preferred the appellants' consistent account instead.

75 Mr Yacob and Mdm Susilawaty initially took the position that the parties first met in August 2008. Their AEICs contain the following identical accounts:

> 4. Sometime in August 2008, my wife ["husband" in Mdm Susilawaty's AEIC] and I purchased [the Apartment] as

> joint tenants for our two children who were studying in Singapore prior to March 2010. …
>
> 5. After we bought [the Apartment], we became acquainted with [Mr Boediono] and his wife, [Mdm Koh] as they also owned a unit in the same condominium at *The Chuan*. … We were introduced to [Mr Boediono] and [Mdm Koh] by [Mr Boediono's] mother … sometime after we bought the [Apartment]. …

While the Yacobs did not state expressly that the parties first met in August 2008, this is the only possible conclusion from their AEICs. According to that evidence, the Yacobs bought the Apartment in August 2008 and became acquainted with the appellants only after that. So at the earliest, the parties met in August 2008.

76 Mdm Susilawaty took a different position at trial.

(a) In cross-examination, she said that the parties first met in September 2008:

> Q: … When did you first meet [Mr Boediono]?
>
> A: Sometime in 2008, when the children have moved in, perhaps it's around September 2008.
>
> Q: So you think you met him during your first three-week stay in the apartment, in the property?
>
> A: Yes.
>
> Q: And what about [Mdm Koh]? Did you meet her at the same time or was it at some later time?
>
> A: At the same time.
>
> Q: How did you meet them?
>
> A: Chuan, there are two towers. We met at the lobby. They brought along [Mr Boediono's] younger brother. There were three of them.

(b) In re-examination, she changed the date to April 2008:

> MR QUEK: I have just asked, tell us a bit more about the circumstances how you met [Mr Boediono] before April.
>
> A: We have met [Mr Boediono] before we moved in in April. So the mother had introduced us, that means has introduced [Mr Yacob] to [Mr Boediono] and they contact each other. Since we also have the same apartment in The Chuan, at that time we met at my lobby. At that time, we met [Mdm Koh], [Mr Boediono] and [Mr Boediono's] younger brother.

77 Mdm Susilawaty took three different positions: the first in her AEIC, the second during cross-examination and the last in re-examination. She did not explain how she arrived at her new date of April 2008, which contradicted her evidence in her AEIC and in cross-examination.

78 Mr Yacob did not make the same mistake. When confronted with his AEIC evidence at trial, he stated that he first met the appellants in February or March 2008:

> Q: … You met [Mr Boediono] and [Mdm Koh] after you completed the transaction of purchasing the property.
>
> A: Of the Lorong Chuan, yes.
>
> Q: We know that the transfer was done on 30 July and was registered on 14 September 2008.
>
> A: However, the handing of key was done in January 2008.
>
> Q: I'm not asking about that. So which month would you say you met [Mr Boediono] and [Mdm Koh]?
>
> A: Sometime in March or February.

79 Mr Yacob explained that he changed his position from his AEIC because he had used the wrong reference point. In his AEIC he used the transfer date of the Apartment – July 2008 – as the reference point from which he derived the date of the parties' first meeting. But by trial he realised this was wrong.

The correct reference point should have been when the keys were handed over to him in January 2008. The parties would therefore have met after that time, at about February or March 2008.

80 Mr Yacob was then confronted with his wife's testimony where she variously pegged the date in August, September and April 2008. He explained that Mdm Susilawaty also got the reference point wrong. In her testimony, she thought that the parties first met in September 2008 because she thought that was when their children first moved in. But in actual fact, they had stayed at the apartment even before then, in April or May 2008. Mdm Susilawaty should have used that reference point instead, which is what she did during re-examination. We would point out that Mdm Susilawaty gave evidence during the first tranche of the trial while Mr Yacob went on the stand some months later during the second tranche.

81 The Judge did not address these inconsistencies in detail. Instead, he adopted a broad-brush approach, stating that the lapse of time explained the inconsistencies.

82 In our view, the lapse of time does not explain this inconsistency. Mr Yacob's and Mdm Susilawaty's initial position in their AEICs perhaps unwittingly pegged them to a position that they did not wish to take, since the paragraphs in their AEICs that we have cited were never meant to make the point that the parties had only met in August 2008. Nevertheless, as we have explained, this is the only possible conclusion to draw from the timeline of events stated in their AEICs. In our view, this is significant because the way the events had lined up in their minds showed that they could only have met the appellants for the first time in August 2008 at the earliest. This also corroborates

Mdm Susilawaty's initial evidence in cross-examination that the parties first met in September 2008, which was after August 2008.

83 In light of this, the Yacobs' subsequent recantation of their evidence hurts rather than helps their case. Mdm Susilawaty said in re-examination that she was wrong during cross-examination and that the parties first met in April 2008, not September 2008, because she used the wrong reference point. Initially, during cross-examination, she said that she remembered that the parties met in September 2008 because that was when her children first moved in. During re-examination her counsel referred her to a new reference point of January 2008, which is when the keys to the Apartment were collected. Mdm Susilawaty then said that since the renovations would have taken only three months, she must have moved into the Apartment in April 2008 and not September 2008 as she initially stated. We do not accept this explanation because she did not explain how this addressed the contradiction with her AEIC, which stated that the parties only purchased the Apartment in August 2008.

84 Mr Yacob would also have been faced with this conundrum once he took the stand. He had time to resolve this problem, however, since Mdm Susilawaty testified in March 2015, during the first tranche of the trial, whereas he only took the stand in November 2015. Thus, in court Mr Yacob sought to amend his AEIC to remove this reference to August 2008. He amended it not once but twice, first to August 2007 and then finally to April 2007. He explained that this amendment was meant to clarify their earlier misconception that the Apartment was bought in August 2008. The correct sequence of events was that the Yacobs bought the Apartment in April 2007 but only registered it with the Land Titles Registry in August 2008. Hence, this made Mdm Susilawaty's recantation possible and also enabled Mr Yacob to give evidence during cross-examination

that the parties first met in February or March 2008. Although Mr Yacob gave a more plausible reason for the contradiction, we consider it significant that Mdm Susilawaty did not proffer this explanation when she had the chance to do so in re-examination; nor did she amend her AEIC at that time to correct the relevant date.

85 That said, this by itself would not have been enough for us to find that the Judge was in error, because this could have been a genuine explanation for the mistake made in their AEICs. But this was not the only inconsistency in the Yacobs' evidence. They also contradicted each other as to where the first meeting took place. While their AEICs are silent on this point, Mdm Susilawaty volunteered this information in cross-examination when she was being questioned about the date of the first meeting. She said that the parties "met at the lobby" (see [76(a)] above).

86 This contradicted Mr Yacob's evidence at trial. He stated that the meeting was in Mr Boediono's apartment (another apartment in the same condominium) and not the lobby:

> Q: So you would have met him, your wife and you would have met [Mr Boediono] and [Mdm Koh] during the period that your unit was under renovation. Correct?
>
> A: Correct.
>
> …
>
> Q: I'm just wondering why you would arrange to meet at The Chuan?
>
> A: It was not me who arranged; at that time, it was [Mr Boediono] who wanted to show me his four-room apartment, as my apartment was only three bedroom.
>
> Q: So did you see the apartment during this meeting?

> A: I did enter his apartment -- I did enter into an apartment, but I was not sure whether this was his apartment or not, as the apartment was vacant.

87 Mr Yacob was then confronted with his wife's evidence that the parties met at the lobby. He sought to explain that the two were not inconsistent. According to Mr Yacob, the parties first met at the lobby and then went upstairs:

> Q: According to your wife, you met the brother in the lobby, and there was no mention about going to see an apartment after that.
>
> A: Something like that. What is sure is that we went up to that apartment and then he explained that this four bedroom -- that this was a four-bedroom apartment.

88 The Judge did not address this inconsistency. On appeal, the appellants submit that Mr Yacob's account cannot be true since they only obtained the keys to their apartment on 23 May 2008. So it was implausible that in April 2008 they would have invited Mr Yacob to an apartment that they did not have the keys to.

89 We accept the point made by the appellants. Taken alone, Mr Yacob's explanation about the location of the meeting is not entirely inconsistent with his wife's account. The parties could have first met at the lobby before being taken up to Mr Boediono's apartment. But, in light of the fact that the appellants only obtained the keys to their apartment on or after 23 May 2008, it is extremely unlikely that Mr Boediono could or would have invited the Yacobs to see that apartment in April 2008. Instead, this evidence buttresses our view that the Yacobs' AEIC evidence and Mdm Susilawaty's evidence in cross-examination which indicated that the parties could not have met until much later painted the more accurate picture. The Yacobs' own evidence about the location of the first meeting undercuts their position on the date of that meeting.

90 For the above reasons, we allow the appeal against the Judge's factual finding that the parties met before the first payment of $100,000. And because the parties only met *after* the first payment was made, Mr Yacob must have transferred $100,000 to a virtual stranger in April 2008. Thus, the Yacobs would have the court believe that Mr Yacob was perfectly comfortable in allowing this virtual stranger to handle such a large amount of money on his behalf and to buy a car for him. We find such a belief untenable. Rather, the more convincing explanation is that since the only "relationship" that existed between Mr Yacob and Mr Boediono as of April 2008 was that Mr Yacob knew Mr Kweh, the sum of $100,000 was transferred to satisfy Mr Yacob's debt to Mr Boediono's father. In this regard, the fact that Mr Boediono did not spend the $100,000 on the Honda Accord he bought in late May 2008, further supports our finding regarding the reason for the remittance. Mr Boediono paid a down payment of $28,640 in cash and financed the balance of the price by taking a bank loan of $69,160. It would not have made sense for him to incur liability for interest if the car was to be held for Mr Yacob.

91 Our finding on the first payment of $100,000 also affects the second payment of $140,100. The Honda Accord was later traded in with a top-up (using the $140,100) for a Mercedes E300 (Judgment at [31]). So our finding that the initial $100,000 was not even used for the Honda Accord would make it even more unlikely that the subsequent $140,100 was to be combined with a Honda Accord that belonged to Mr Boediono to get a Mercedes E300 for Mr Yacob alone. Again, the more likely explanation is that this $140,100 payment was also to discharge the debt that Mr Yacob owed Mr Kweh.

Whether the parties' arrangement showed that Mr Boediono bought the car for Mr Yacob

92 We turn now to address the Judge's second finding. The Judge found that although the evidence was "thin", it supported Mr Yacob's account that he transferred the $100,000 for Mr Boediono to buy a car on his behalf. In particular, the Judge relied on an SMS sent by Mr Boediono to Mr Yacob which suggested that the car belonged to the latter. The Judge rejected Mr Boediono's explanation for this SMS and his submission that there was no reason for Mr Yacob to have trusted him as nominal owner of the car.

93 Although we accept that the SMS appears to be documentary proof of the parties' arrangement, we consider that the SMS itself does not tell the whole story. The SMS was sent by Mr Boediono to Mr Yacob on 21 November 2010 and reads:

> Insurance: $3,075.50
> Road tax: $2409
> Altogether is $5484.50
> For one year. Please write a check to Koh Teng Teng

94 The clear implication of the SMS is that Mr Yacob was meant to pay Mdm Koh $5,484.50 and that she would use the money to pay the insurance costs and road tax for the car. Mdm Koh would take responsibility for paying these costs as she was the registered owner of the car. The authenticity of the SMS is not in doubt since the Yacobs' expert, Mr Tan Kah Leong, observed that the SMS was not tampered with. The appellants do not challenge Mr Tan's evidence.

95 That said, we are unable to give full weight to the SMS because we cannot appreciate the context in which it was sent. This SMS would not have been a standalone message from Mr Boediono to Mr Yacob out of the blue. It would have been part of a series of messages exchanged between them if there was indeed an arrangement for Mr Boediono to purchase a car on Mr Yacob's behalf. But that context is not available to the court.

96 Mr Yacob explained that he did not put the other SMS messages that had been exchanged into evidence because his BlackBerry telephone was faulty and he had to dispose of it. Therefore, the other messages on it could not be recovered. While we do not agree with the appellants' suggestion that Mr Yacob had *deliberately* taken the 21 November 2010 SMS out of context while failing to tender the rest of the messages as evidence, we accept the larger point that the SMS is of limited weight without its full context. The Judge also acknowledged this when he noted that the SMS evidence was "not conclusive" and was only "consistent with" Mr Yacob's account (Judgment at [84]).

97 Against this SMS, we consider three factors significant. First, as we have explained earlier, we find that the payments of $100,000 and $140,100 made by Mr Yacob to Mr Boediono were meant for the former to discharge his debt to Mr Kweh (see [90]–[91] above) in large part because the parties did not meet until after the first payment was made. Because the payments were made for this purpose, this undercuts the submission that they were also made for Mr Boediono to purchase a car on Mr Yacob's behalf.

98 Second, we also consider it significant that Mdm Susilawaty had given differing accounts about when she had first driven the car. She agreed in cross-examination that she would only have bought the car sometime during the

period between October and December 2008. She asserted that she knew this because she only bought the car sometime after she moved into the Apartment in September 2008 and she recalled that after moving into the Apartment, she had been taking public transport for a while. But Mdm Susilawaty changed her evidence in re-examination, stating instead that she first drove the car in May 2008, without any explanation as to how she arrived at this alternative date.

99 Obviously, Mdm Susilawaty had clarified her evidence because her position in cross-examination, that the Yacobs had not obtained the car even by the fourth quarter of 2008, would have sat uncomfortably with the fact that the first payment was transferred in April 2008. It would have been implausible that the parties would have transferred the money in April 2008 but then allowed Mr Boediono to keep it for half a year or so without using it for the designated purpose. Given that Mdm Susilawaty did not explain how she arrived at the new date of May 2008, her sudden change in position undercuts the assertion that the parties had an arrangement for Mr Boediono to purchase the car on Mr Yacob's behalf.

100 Finally, we also consider it significant that Mr Yacob's behaviour was atypical of that of a car buyer. He did not take any test drives or even inquire about car prices. By itself, this disinterest would not be conclusive. As the Judge noted, this could have been because Mr Yacob had trusted Mr Boediono as a car aficionado or because the couples were on friendly terms (Judgment at [87]). But this explanation is less convincing when we consider that at the time the $100,000 was transferred, the parties had not even met one another and it was unlikely that Mr Yacob knew that Mr Boediono was knowledgeable about cars or trusted him to quote the right price for the car.

101 Hence, while we agree with the Judge that the evidence apart from the date of the first meeting is "thin", we disagree with the Judge that, overall, the evidence is in favour of the Yacobs' account. Rather, we find that because the parties had not yet met by the time of the first payment, this gives additional significance to the fact that Mr Yacob did not act as a typical car buyer would. Mdm Susilawaty's changing testimony – without proper explanation – also suggested that her new position in re-examination was not entirely believable. Given the lack of context for the SMS of 21 November 2010, its contents are outweighed by the factors just mentioned.

102 Accordingly, we allow the appeal against the Judge's finding that Mr Yacob's payments of $100,000 and $140,100 to Mr Boediono were meant for the latter to purchase a car on behalf of the former.

Whether Mr Yacob and Mr Suriadinata's payments were for a joint investment

103 Apart from the sums that were said to have been paid for a car, Suit 71 also involved a second set of payments to the Boedionoes: $607,700 from Mr Yacob and a total of $624,570.19 from Mr Suriadinata. The two men claimed that these payments were pursuant to a joint investment entered into with the appellants to purchase condominium apartments in Oasis Garden and Parc Mondrian. The Judge accepted the claim. In coming to this conclusion, the Judge relied on the parties' conduct both before and after the sums were transferred, specifically emails that Mr Boediono had sent to Mr Yacob which were forwarded to Mr Suriadinata (Judgment at [89]–[112]).

104 In so far as the claim relates to Mr Boediono, we agree with the finding of the Judge. Before delving into the evidence, we note that these payments

were made in 2010 and are entirely distinct from the 2008 payments allegedly intended for vehicle purchases. By December 2010, it was more than two years after the parties had first met and therefore factors such as the date of the first meeting, which had strongly influenced our finding on the 2008 payments, were no longer significant. That said, it is correct that our finding that Mr Yacob was indebted to Mr Kweh could still affect our assessment of the reason for the 2010 payments. For the reasons given below, however, we have concluded that notwithstanding the existence of that debt, these payments were made for a joint investment between Mr Boediono, Mr Yacob and Mr Suriadinata.

105 In coming to his finding the Judge correctly relied on the emails that Mr Boediono sent to Mr Yacob. First, on 27 November 2010, Mr Boediono sent two emails to Mr Yacob. The first email provided the details of the Oasis Garden and Parc Mondrian properties and their prices. But that was not all. The email went further and divided the purchase price by two, presumably for two purchasers/investors, which gave a price of $607,700 for the Oasis Garden apartment and $637,570 for the Parc Mondrian apartment. The second email then set out the payment schedule for these properties, noting that while the purchase price needed to be paid within four weeks, it could also be paid earlier because they "[could] not afford to be late". Mr Yacob then replied that he would "forward it", which he testified to mean that he would send the emails on to Mr Suriadinata (Judgment at [91]–[93]).

106 Just ten days after these emails, on 7 December 2010, Mr Yacob paid $607,700 to Mr Boediono – the exact sum that Mr Yacob would have had to pay if he were a purchaser interested in acquiring a half share in the Oasis Garden apartment. In December 2010 and January 2011, Mr Suriadinata transferred $624,570.19 to Mr Boediono – an amount which was nearly the

entire sum that a potential investor interested in acquiring a half share of the Parc Mondrian apartment would have had to pay. These payments were made within the four-week payment period that the second email prescribed. The natural inference from this chain of events is that Mr Yacob and Mr Suriadinata had made the payments pursuant to their joint investment plan with Mr Boediono.

107 The inference is supported by an email exchange between the parties four months later in April 2011. Then, Mr Boediono sent an email to Mr Yacob attempting to persuade him to invest in the cluster bungalow project. That email stated (Judgment at [96]):

> Selling price of oasis garden condo $1,500,000
>
> Selling price of Parc Mondrian condo $1,800,000
>
> within 4 weeks, the money from the condos shall be returned to us, at the most 8 weeks (document is complete)
>
> payment scheme: $10,500,000 in cash to be entitled for
>
> credit minimum 70%
>
> credit will be arranged within 3 weeks at the quickest, or at the latest within 2 months
>
> *You will not lose money building a landed house uncle, although property price may drop for the condo market but it will remain stable and even climb for landed property.*
>
> Thank you
>
> [emphasis added]

108 Mr Boediono was, therefore, proposing to replace the joint investment in the two apartments with an investment in a cluster bungalow project. He attempted to convince Mr Yacob that this was an advantageous course of action by explaining the greater benefit of investing in a landed property over a condominium. The crucial point in this email is that it presupposes that the

parties already had an investment in the Oasis Garden and Parc Mondrian apartments, which is why Mr Boediono had to persuade Mr Yacob to give up the same in exchange for the cluster bungalow investment. Taken as a whole, the email correspondence suggests that Mr Yacob and Mr Suriadinata had made the payments in December 2010 pursuant to a joint investment plan that they had with Mr Boediono. Although Mr Boediono took the position that the parties mutually agreed to abort the joint investment on an unspecified date (Judgment at [98]), we do not accept this explanation because there is absolutely no evidence to support it.

109 Apart from saying that the parties had aborted the joint investment, the appellants also submit on appeal that Mr Suriadinata's evidence contained several inconsistencies. Their submissions do not make clear precisely what point they hope to make, but presumably, they are saying that these inconsistencies suggest that his payment of $624,570.19 was really intended to repay Mr Yacob's debt to Mr Kweh. The gist of the alleged inconsistencies was that Mr Suriadinata could not recall when he paid the money to the appellants and whether he paid it through an Indonesian moneychanger or directly to them.

110 We reject this submission for two reasons. First, Mr Suriadinata's evidence is not necessarily inconsistent. His general position is that he remitted the money to the appellants through a helpful friend. This position did not change even though other changes were made to his AEIC and pleadings. While Mr Suriadinata could not recall precisely who the helpful friend was and whether other intermediaries had been involved, these were fine details that did not have a major impact on his overall testimony that he had transferred the monies to Mr Boediono. Second and more importantly, even if Mr Suriadinata had been imprecise as to the dates on which he made money transfers to

Mr Boediono and how he did so, it is unclear how this vagueness supports the appellants' position. It is not disputed that of the total sum of $624,570.19, Mr Suriadinata had transferred $450,000 to Mr Boediono on 23 December 2010 (Judgment at [103]). At the very least, more than 70% of the overall sum of $624,570.19 was accepted to have been transferred within the four weeks stated in the payment schedule, which is enough to support our finding on the purpose of the transfer. The appellants also did not explain how the vagueness undercut Mr Yacob's and Mr Suriadinata's position that they had made the payments pursuant to a joint investment. Unlike Mr Yacob's nonchalant approach towards the purchase of the car, both he and Mr Suriadinata took active steps to ensure that they paid the exact sums specified by the first email of 27 November 2010 during the payment period specified in the second email.

111 While it is true that Mr Yacob still owed Mr Kweh a debt during this time, this is not fatal to the existence of a joint investment. Mr Yacob could have maintained a joint investment with Mr Boediono while owing Mr Kweh a debt at the same time. Indeed, there is no explanation for the two sets of emails in November 2010 and April 2011 other than a joint investment.

112 For the above reasons, we uphold the Judge's finding that the sums of $607,700 and $624,570.19 were paid to Mr Boediono pursuant to a joint investment plan. We differ, however, from the Judge on the issue of Mdm Koh's liability. The Judge held that both the appellants must return the said sums to Mr Yacob and Mr Suriadinata (see Judgment at [343]). For the reasons given below, we hold that only Mr Boediono can be ordered to make such repayment.

113 The Judge was aware (Judgment at [190]) that there was no direct evidence before him showing that Mdm Koh was a party to the joint investment agreement. He found her to be a party, however, because he considered:

(a) that she was fully aware of the agreement and the purpose of the transfer of the money;

(b) that her husband and Mr Yacob/Mr Suriadinata intended for her to hold the investment properties as joint owner with Mdm Susilawaty; and

(c) the moneys were paid into the joint account of herself and her husband.

114 In our view, however, the evidence is not strong enough to support a finding that Mdm Koh was a party to the joint investment agreement. The main evidence establishing the existence of the agreement itself came from the emails which Mr Boediono sent to Mr Yacob and Mr Suriadinata (see [105]–[107] above). These emails were sent from Mr Boediono's personal email account and were *not* copied to Mdm Koh. *Prima facie* therefore, it would appear that she was not a party to the agreement. The way that Mdm Koh was cross-examined only strengthens that impression. Counsel for the Yacobs and Mr Suriadinata spent a large part of the cross-examination on the fact that Mr Boediono had used Mdm Koh's email account and her telephone number to communicate with the Yacobs and Mr Suriadinata. He asserted that Mdm Koh should be liable for the dealings because Mr Boediono's lavish use of her email account and telephone number showed her involvement in her husband's actions. The documents themselves indicated, however, that while Mdm Koh's email account and telephone number may have been used in respect of the alleged car

purchase and the transfer of the Apartment, they were not used for the communications involving the joint investment. Those emanated only from Mr Boediono himself. Further, Mr Yacob's evidence was that it was Mr Boediono who proposed the investment and Mr Yacob referred to the joint investment agreement as "[his] agreement with [Mr Boediono]" and to his contribution as his "half share of the investment". Mr Suriadinata testified that Mr Yacob asked whether he was agreeable to investing jointly with Mr Boediono in the Parc Mondrian unit. Mr Boediono in his evidence made no mention of any interest on the part of Mdm Koh and described the joint investment as one that was for him to contribute 50% whilst the other 50% would be contributed by Mr Yacob/Mr Suriadinata. Thus, the oral evidence supported an agreement between three persons only, not four.

115 On the other hand, the reasons that were given for finding Mdm Koh to be a party to the agreement do not stand up to scrutiny. Her position as a joint holder of the account into which the money was paid was a neutral fact. By itself, it did not evidence her participation in the agreement. Mdm Koh's evidence, which was not controverted, was that she left money matters to her husband and this evidence implied that he was free to use the joint account as he saw fit. Similarly, although Mdm Koh was aware of the plan for the joint investment, that did not necessarily mean that she was a party to it.

116 The strongest point supporting the finding that Mdm Koh was a party is that she was designated as one of the joint owners of the properties. Counsel for the Yacobs and Mr Suriadinata put to her, during cross-examination, that the proposal was that she would participate in the joint investment by becoming the joint owner with Mdm Susilawaty. For the record, Mdm Koh disagreed with this suggestion. Her evidence was that while she knew that the proposal for a

joint investment had been made, this proposal never crystallised into an actual agreement. In any case, being an owner is, to our minds, equivocal: she could have been designated as owner as nominee for Mr Boediono, rather than as participant in the joint venture, just as Mdm Susilawaty was designated as the other "joint owner", presumably as nominee for Mr Yacob/Mr Suriadinata.

117 In our judgment, there is, overall, insufficient evidence to support a finding that Mdm Koh was a party to the joint investment. The Judge noted that the joint investment was never carried out and no units were purchased in the name of any of the parties. Thus, nothing concrete materialised to which Mdm Koh could be tied, on whatever basis.

Conclusion on Issue 1

118 To summarise our findings on Issue 1:

(a) We allow the appeal against the Judge's finding that Mr Yacob did not owe Mr Kweh a debt and substitute that with a finding that the debt did exist as alleged.

(b) We allow the appeal against the Judge's finding that Mr Yacob's payments of $100,000 and $140,100 were made to Mr Boediono for him to purchase a car on Mr Yacob's behalf. Instead, we find that the payments were made to discharge Mr Yacob's debt to Mr Kweh.

(c) We dismiss the appeal against the Judge's finding that the $607,700 paid by Mr Yacob and the $624,570.19 paid by Mr Suriadinata to Mr Boediono were pursuant to a joint investment and affirm his order that Mr Boediono must repay these sums.

(d) We allow Mdm Koh's appeal against the order that she pay Mr Yacob and Mr Suriadinata the sums of $607,700 and $624,570.19 respectively.

Issue 2: Was the transfer of the Apartment fraudulent?

119 The Judge found that the transfer of the Apartment was fraudulently procured and that Mr Kweh, Mr Boediono and Mdm Koh were parties to that fraud. On appeal, the appellants challenge the finding of fraud. They do not challenge the finding that they participated in the transaction.

120 In the court below, the Yacobs had taken alternative positions in relation to the authenticity of the documents that were used to obtain the transfer. Their first position was that their ostensible signatures on the transfer documents were not in fact theirs and were forgeries. In the alternative, they asserted that the signatures were theirs but that such signatures had been procured by fraud. The Judge held that it was not inconsistent for them to take both positions. He found insufficient evidence of forgery but found that the signatures had indeed been procured by fraud at the meetings on 20 and 21 June 2011. The Judge rejected the appellants' contention that the Yacobs had signed these documents before notaries public in Indonesia.

121 In addition, the Judge found that the email addresses that the appellants provided to Mr Toh did not belong to Mr Yacob. These fake email addresses were created and operated by the appellants. The Judge rejected the appellants' submission that they could not have been fraudsters because they disclosed the transfer of the Apartment in their defence to Suit 71 and thereby showed that they had nothing to hide.

122 On appeal, the appellants focus on the transfer documents. They submit that the Yacobs cannot take both positions on the authenticity of the signatures because the positions are inconsistent. Additionally, they argue that the Yacobs could not show that their respective signatures were procured by fraud because their evidence was contradictory. Mr Toh also challenges the Judge's findings on fraud on substantially the same basis as the appellants.

123 We first address whether Mr Yacob and Mdm Susilawaty took inconsistent positions. We then address the Judge's findings on forgery and fraud.

Whether Mr Yacob and Mdm Susilawaty took inconsistent positions

124 The Judge found no inconsistency in the two positions because he said that they reflected the same underlying position. The "key point [was] that they never signed documents whether in Indonesia or elsewhere for the transfer of the [Apartment] to Kweh" (Judgment at [119]).

125 The Judge's reasoning is not entirely clear. Presumably, what the Judge meant was that Mr Yacob and Mdm Susilawaty actually signed some documents on 20 and 21 June 2011. But because it was dark, they did not know what documents they were signing. So when they were confronted with the transfer documents that bore their signatures, they could not be sure if these were the documents that they signed on 20 and 21 June 2011. They then took the position that if the transfer documents were signed at the meetings, then the signatures must have been obtained by fraud. But if the transfer documents were not the documents signed at the meeting, the signatures on them must have been forged.

126 We respectfully disagree with the Judge. We find that the two positions are inconsistent and that it was not open to the Yacobs to maintain both without any reflection on the creditability of their case.

127 We accept that, theoretically, both positions could be maintained but this would only be possible if Mr Yacob and Mdm Susilawaty were not able to identify the documents that they signed on 20 and 21 June 2011. If they could identify these documents as either the transfer documents or some other documents, then their two factual positions would "offend common sense" (see this court's decision in *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [37]). They would in that case be able to say whether their signatures on the documents were obtained from them fraudulently or were not obtained from them at all (and were therefore forged).

128 In our judgment, the Yacobs could not maintain both positions because by their evidence they identified the documents signed in June 2011 as the transfer documents, although Mdm Susilawaty also contradicted herself by insisting at the same time that the documents signed then related to the Parc Mondrian apartment. In parenthesis we note that the Judge held that documents relating to the joint investment were signed at the June 2011 meetings (see Judgment at [47]–[48], [105]–[107]), a finding that we have no reason to upset.

129 We now elaborate on our decision that the Yacobs could not maintain both positions in relation to the transfer documents. Mr Yacob and Mdm Susilawaty initially took both positions in the alternative. Their AEICs both contain the following identical accounts, save for the differing paragraph numbers:

> 54. I set out below the documents that I had purportedly signed and indicate to the best of my belief, based on photocopies of the documents, whether or not the purported signatures in those documents are really mine:
>
> (a) Purported Sale & Purchase Agreement dated 13 June 2011 and accompanying alleged written confirmation: I deny that the signatures affixed to these documents are mine. …
>
> (b) My purported initials on the Cashier's Order dated 20 June 2011: I deny that the signature affixed to this document is mine.
>
> (c) Purported application for replacement certificate of title filed on 20 September 2011, with a purported supporting statutory declaration: I deny that the signatures affixed to these two documents are mine.
>
> (d) Purported statutory declaration dated 2 November 2011: I deny that the signature affixed to this document is mine.
>
> (e) Purported application for replacement certificate of title filed on 10 November 2011: I deny that the signature affixed to this document is mine.
>
> (f) Purported letter of authority dated 10 December 2011: I deny that the signature affixed to [this] document is mine.
>
> (g) Purported instrument of transfer dated 28 December 2011: The signature affixed to this document has resemblance to mine, but I will need to view the original to give a considered answer.
>
> …
>
> 55. However, I am very sure that if they are my signatures, then they would have been obtained or inscribed by the deception and fraud of [Mr Boediono] and others acting in concert with him, and do not represent my true assent to the purposes of the documents upon which they were inscribed.

The documents listed in the Yacobs' AEICs are the transfer documents.

130 The Yacobs were questioned on the apparent inconsistency during cross-examination. We first deal with Mr Yacob's evidence. In cross-examination, Mr Yacob was insistent that he "never signed on the sale of Lorong Chuan", although he did not clarify whether this meant that he did not sign on the documents at all, or whether he did but the signatures were procured by fraud. But when pressed on what his precise position was, Mr Yacob agreed with counsel for the appellants on three separate occasions that the documents in para 54 of his AEIC "were used to effect what [he said] was the fraudulent transfer of the property", that the documents he had signed in June 2011 "were used to transfer [his] property at Lorong Chuan to [Mr] Kweh", and again, that those documents "were used to transfer [his] Lorong Chuan property to [Mr] Kweh". In other words, Mr Yacob was saying, at least, that some of the documents he signed during the June 2011 meetings were in fact the transfer documents.

131 Mr Yacob was then asked why he continued to hedge his position in his AEIC if his position in reality was that he signed the transfer documents but never intended to. Mr Yacob's reply is telling. He said that he wanted to "keep on the look-out or to be wary in case of other documents that may surface". To put it another way, Mr Yacob wanted to hedge his bets in case new evidence came to light that would contradict his initial position.

132 In light of his evidence during cross-examination, we are satisfied that Mr Yacob's true position was that he accepted that among the documents he signed in June 2011 were the transfer documents, but that his signatures found on those documents were procured by fraud since he did not intend to transfer the Apartment. Mr Yacob nevertheless maintained two different positions in his

AEIC because he thought it was possible that other evidence may surface during the trial that would support one position over another.

133 This concession is significant. As we noted earlier, the only possible way that Mr Yacob could maintain both the positions in his AEIC was if he was unsure whether the documents he signed in June 2011 were the transfer documents. Given his concession that the documents signed during the June 2011 meetings were the transfer documents, we find that he could not hold both positions in his AEIC without offending common sense.

134 We turn now to Mdm Susilawaty's evidence. Her evidence is much more difficult to comprehend than Mr Yacob's. Like her husband, Mdm Susilawaty accepted during the course of cross-examination that the documents she signed during the June 2011 meetings were the transfer documents. But unlike Mr Yacob, she also continued to insist that the only documents she had ever signed related to the sale and purchase of the Oasis Garden unit, and not the Apartment. The problem with Mdm Susilawaty's evidence is that like her contradictory positions in her AEIC, she cannot insist on having her cake and eating it. All the parties agree that some documents were signed during the June 2011 meetings. Therefore, if Mdm Susilawaty had never put her signature on the transfer documents as she says, then those documents could not have been among the ones signed during the June 2011 meetings.

135 When the appellants' counsel pointed out to Mdm Susilawaty this tension in her evidence and asked her for an explanation, she simply refused to answer the question. Each time, she retreated to the familiar trope of being confused and not knowing how to answer, or simply repeated answers that she had given before which did not address the contradiction.

136 The only possible explanation that can be found on the transcripts is Mdm Susilawaty's elaboration that she "did not sign [the documents] for that purpose", *ie*, the purpose of effecting the transfer of the Apartment. If this is Mdm Susilawaty's position, then this accords with Mr Yacob's concession, because the premise underlying this explanation is that Mdm Susilawaty *did* sign the transfer documents during the June 2011 meetings. She merely thought that they were some other documents, which is why she says that she did not sign documents during the June 2011 meetings for the purpose of transferring the Apartment. If this is the case, then we would have to conclude that Mdm Susilawaty could not take both positions in her AEIC without offending common sense.

137 However, we hesitate to make a finding that this was Mdm Susilawaty's true position because in court she insisted at every available opportunity that she never signed any documents relating to the Apartment at all. She continued to say this even after the appellants' counsel tried to follow up on her explanation that she did not sign the documents during the June 2011 meetings "for [the] purpose" of transferring the Apartment. Given Mdm Susilawaty's continued refusal to explain the inconsistency inherent in her evidence, we conclude that she did not answer the question simply because she had no answer. The outcome would be the same: like her husband, Mdm Susilawaty would not be able to credibly hold both positions in her AEIC. In Mdm Susilawaty's case, her credibility was impugned because she was confronted with the inconsistencies in her own evidence but could not give an explanation for them.

138 Accordingly, we cannot affirm the finding of the Judge in this respect. We hold that the Yacobs were not entitled to insist that the signatures were

forged and at the same time that the signatures were procured from them by fraud. They needed to elect in favour of one of the positions. While Mr Yacob's concession makes it clear that his true position was that he signed the transfer documents but they were procured by fraud, his wife's position is much less clear. We shall therefore address the allegations of forgery and fraud in turn.

Whether the signatures on the documents were forged

139 The Judge found insufficient evidence of forgery because the Yacobs' expert evidence only pertained to the Letter of Authority. This evidence was specific to the signatures on that document and could not be extended by implication to the rest of the documents (Judgment at [121]–[124]). This finding was not contested by either party on appeal. We therefore affirm the Judge's finding that the signatures on the transfer documents (apart perhaps from the Letter of Authority) were not forged.

Whether the signatures on the documents were procured by fraud

140 The Judge found that Mr Yacob's and Mdm Susilawaty's signatures were procured by fraud for the following reasons.

(a) The Judge rejected the contention that the Yacobs signed the transfer documents before notaries public in Indonesia rather than during the meetings in June 2011. This was primarily because these notaries public did not testify in court (Judgment at [125]–[133]).

(b) The Judge rejected the appellants' evidence that in June 2011, there was only one meeting (on the morning of 21 June 2011) and not two. The appellants' position was inconsistent with an SMS that

Mdm Koh sent Mr Yacob, stating that Mr Boediono would only return on the night of 21 June 2011 (Judgment at [106]).

(c) The Judge found that Mr Boediono's evidence was inconsistent with Mr Toh's, in that they differed on who gave the initial instructions that the documents were to be signed in Indonesia (Judgment at [134]–[136]).

(d) The Judge found that the appellants' disclosure of the Apartment's transfer in the defence in Suit 71 did not help them. They had no choice but to do so (Judgment at [137]–[140]).

141 It is immediately apparent that the Judge's reasoning focused on why *the appellants'* version of events did not stand up to scrutiny. In our view, this wrongly placed the burden on the appellants to prove their version of events. As the plaintiffs, the Yacobs bore the burden of showing that their signatures were procured by fraud. To the extent that *both parties'* versions were inherently implausible (as the Judge noted at [142]–[143] of the Judgment), any doubt should have been resolved in favour of the appellants.

142 In any event, we find that the Yacobs did not discharge their burden of proof for two reasons.

143 First, some of the transfer documents did not exist at the time of the meetings in June 2011, which meant that the signatures on those documents could not have been procured fraudulently from the Yacobs. It will be recalled that the transfer documents said to have been signed during the June 2011 meetings included the RCOT applications and the statutory declarations relating

to them (see [129] above). But these documents that were essential to the transfer were only created *after* June 2011:

(a) Mr Toh said in his AEIC that the first RCOT application and statutory declaration were only prepared in July 2011. Indeed, that RCOT application was only filed on 20 September 2011.

(b) Mr Toh further confirmed in his AEIC that the second RCOT application and statutory declaration were only prepared between 18 and 20 October 2011. Again, this is supported by the fact that the second RCOT application was filed on 10 November 2011 and the statutory declaration was dated 2 November 2011. In any case, the second RCOT would not have been prepared before the first one was even rejected.

144 Since these documents did not exist in June 2011, the signatures on them could not have been procured from the Yacobs at any meeting held that month. The only way in which the signatures could have been procured from the Yacobs in June 2011 is if the appellants had convinced them to sign on completely blank pages and then printed the transfer documents over the signatures later.

145 We reject this as a plausible explanation for two reasons. First, it would contradict the Yacobs' own evidence. Both gave evidence that not all the pages that they signed were blank. Mdm Susilawaty said that while some pages were blank, many other pages also contained blank lines but were not entirely blank. Mr Yacob took a firmer stance. He was sure that none of the pages were completely blank but instead only contained blank lines. We will deal with this in greater detail later, but for present purposes it suffices to note that the Yacobs could not, believably, take the position that the transfer documents were printed

over after they were signed to evade the implications of the fact that the documents did not exist as of June 2011.

146 The second reason why we reject this as an alternative possibility is because it is inherently incredible. Many of the transfer documents required Mr Yacob and Mdm Susilawaty to sign at very specific places, for instance, beside boxes that bore their names and titles. If the Yacobs are to be believed and the appellants procured their signatures for documents that were yet to be created, the court would have to believe that Mr Yacob and Mdm Susilawaty were persuaded by the appellants to sign at random spots in the middle of completely blank pages without their suspicions being aroused. There was no evidence to suggest that this had happened.

147 Accordingly, we find that since many of the transfer documents did not exist in June 2011, this undercuts the credibility of Mr Yacob's and Mdm Susilawaty's evidence that the signatures on these documents were fraudulently procured from them during the June 2011 meetings.

148 The second reason why we find that the Yacobs have not discharged their burden of proof is that their testimony as to *how* their signatures were fraudulently procured by the appellants during the June 2011 meetings was unconvincing. As we noted earlier, their evidence was that they were made to sign either blank pages or pages with blank lines. Presumably, these blank pages or lines would later be filled up with the relevant information that effected the transfer.

149 Their testimony is unconvincing because Mr Yacob's and Mdm Susilawaty's evidence contradicted each other in two ways. The first contradiction was in relation to whether they were made to sign blank pages or

only pages with blank lines. Mdm Susilawaty's evidence, both in her AEIC and during cross-examination, was that while some pages contained only blank lines, other pages were completely blank. Her evidence was contradicted by Mr Yacob, who took the position in his AEIC that he did not sign pages that were completely blank. Instead, while the pages he signed had some blanks on them, they were not entirely blank. Mr Yacob even explained that he asked Mr Boediono about these blanks and the latter assured him that the blanks would later be filled up later with the necessary particulars. Mr Yacob confirmed this position in cross-examination.

150 The second contradiction was that Mr Yacob testified that no other signatures were on the pages that he signed. But this cannot be true even on their version of events. It will be recalled that the Apartment was jointly owned by the Yacobs such that the transfer documents required both their signatures. Indeed, the transfer documents themselves showed both Mr Yacob's and Mdm Susilawaty's signatures on them – most of the time on the same page. The Yacobs' version of events was that Mdm Susilawaty first met the appellants on 20 June 2011 and signed the documents; and then Mr Yacob met the appellants the next day and signed the same documents. So if his wife had signed the documents first, Mr Yacob would have seen her signatures. Mr Yacob's evidence that there were no other signatures on the papers he signed is implausible.

151 Taken together, the contradictions show that the Yacobs could not piece together a coherent account of what happened during the meetings in June 2011 and how their signatures were fraudulently procured by the appellants.

152 For these reasons, we find that the Yacobs did not discharge their burden of proving that their signatures were fraudulently procured by the appellants. The Judge should not have focused almost exclusively on how the appellants' version of events was implausible. Rather, he should have also looked at whether the Yacobs' version of events stood up to scrutiny. In our view, it did not.

Conclusion on Issue 2

153 To summarise our findings on Issue 2:

(a) We allow the appeal against the Judge's finding that, in effect, the credibility of the Yacobs' case was not affected by the two contradictory positions taken on how their signatures came to be on the documents.

(b) We affirm the Judge's finding that the signatures on the transfer documents were not forged.

(c) We allow the appeals of the appellants and Mr Toh against the Judge's finding that the signatures on the transfer documents were procured fraudulently by the appellants. This means that the transfer of the Apartment was validly procured and must be upheld.

Issue 3: Were the solicitors negligent?

154 In respect of the first two issues we have found that:

(a) Mr Yacob owed Mr Kweh a debt. The debt was to be satisfied by the Yacobs transferring the Apartment to Mr Kweh. If the Apartment

was not transferred, the HSBC cheque provided by Mdm Susilawaty could be encashed to satisfy the debt.

(b) The transfer of the Apartment to Mr Kweh was not procured by fraud.

155 Given these findings, the transfer of the Apartment into the name of Mr Kweh did not result in any actionable loss to the Yacobs. Consequentially, their claim against Mr Toh and Mr Tan in the tort of negligence naturally falls away and the appeals by the two solicitors must be allowed.

156 Having said that, we wish to make some observations on three important issues. First, the applicable practice directions and rules for such situations. Second, whether solicitors can rely on notarised documents to discharge their duty of care to their clients to verify the identities and instructions of such clients before acting. And third, whether solicitors can rely on instructions given from a third party to discharge the duty of care, especially when the third party is the counterparty to the transaction. We shall set out the Judge's findings before addressing each of these points in turn.

The Judge's findings

157 It was accepted by all parties that both Mr Toh and Mr Tan owed a duty of care to the Yacobs. The Judge proceeded on this basis, devoting the bulk of his analysis to whether this duty was breached and whether this breach caused loss to the Yacobs.

158 In relation to the discharge of the duty of care, the Judge made the following findings (Judgment at [229]–[249]):

(a) Both PCR (2010) and PD (2008) applied even though PD (2008) speaks specifically of money laundering and terrorist financing.

(b) Solicitors cannot rely *solely* on notarised documents to discharge their duty of care. Order 41 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which provides a presumption of regularity for notarised documents, is a rule concerning the admission of documents. It cannot apply directly to a solicitor's duty of care.

(c) Rather, whether solicitors meet their standard of care even though they make use of notarised documents would depend on all the circumstances. The standard of care required is that which a reasonably competent solicitor would adhere to having regard to the standards normally adopted in the profession.

159 In this case, the Judge found that neither of the solicitors took sufficient steps to discharge their duty. Mr Toh accepted information provided by the appellants without question despite this course being fraught with risk in view of the relationship between the appellants and the Yacobs, *ie*, that their interests were opposed. While Mr Tan took more steps, the steps he took were still inadequate to discharge his duty.

The applicable rules

160 We affirm the Judge's finding that both PCR (2010) and PD (2008) applied. In addition to these two sets of rules, we also consider relevant Practice Direction (Paragraph 1 of 2015) ("PD (2015)"), which took effect from 23 July 2015 and superseded PD (2008). We shall first explain why these rules applied and then the effect of these rules on whether solicitors can rely on notarised

documents to discharge their duty of care.

Whether the rules were applicable

161 The Judge found that both PCR (2010) and PD (2008) applied. On appeal, both Mr Toh and Mr Tan accept that PCR (2010) applies; instead, they submit that they have complied with its provisions. While Mr Tan accepts that PD (2008) applies, Mr Toh does not. According to Mr Toh, PD (2008) applies only to money laundering and terrorist financing but not to situations of pure conveyancing practice.

162 We agree with the Judge that PD (2008) applies to the situation. While it is true that the objective of the direction is to target money laundering and terrorist financing, it does not follow that PD (2008) would only be triggered if money laundering or terrorist financing is proved or suspected. Rather, PD (2008) prescribes certain rules for solicitors to follow so that they can detect whether money laundering or terrorist financing is present in the first place, even if at that point they do not yet know or suspect that these acts are being carried out. For instance, Part C of the direction provides that the identity of the client must be verified "at the beginning, before the solicitor-client relationship is established" (at para 14). Obviously, at that point in the relationship, the solicitor would not know whether money laundering or terrorist financing was present. So if PD (2008) only applied to situations where money laundering had already taken place or where the solicitor already knew or suspected that money laundering had taken place, this would severely limit its scope. Such a limitation of the scope of PD (2008) would not further its purpose, which is to detect and prevent money laundering and terrorist financing.

163 Since PD (2015) was meant to supersede PD (2008), it would apply to similar situations occurring after its implementation. We turn now to address the impact of PCR (2010), PD (2008) and PD (2015) on the question of whether solicitors can rely on notarised documents.

Whether the rules prohibit reliance on notarised documents

164 Although the rules apply to situations like the present case, none of the rules specifically prohibits a solicitor from relying on notarised documents.

(a) Rule 11D(1) of the PCR (2010) requires a solicitor to "take reasonable measures to ascertain the identity of a client as soon as reasonably practicable before accepting instructions to act in a matter".

(b) PD (2008) expands on what such "reasonable measures" entail. It provides that a client's identity must be verified, using reliable, independent information, before the solicitor-client relationship is established (at para 14). It further elaborates that such verification may be done via a face-to-face meeting, but if the client is unable to meet face-to-face, the solicitor must ask for a certified true copy of the client's identity document, and must take appropriate precautions to ensure that the client's identity and particulars provided to him are adequately verified (at para 36).

(c) Similarly, PD (2015) provides that a client's identity must be verified using objectively reliable and independent source documents, data and information. If the client is unable to produce original documents, the solicitor "may consider accepting documents that are certified to be true copies by other professionals (for example lawyers or notaries)" (at para 3.6.1).

165 Thus, para 3.6.1 of PD (2015) appears to contemplate that the solicitor may consider using information obtained from *notaries*. Furthermore, apart from the provisions that we have set out above, para 19 of PD (2008) and para 3.10 of PD (2015) provide that a law practice may rely on a third party (*eg*, other legal professionals, auditors, financial institutions) to carry out a client identity check if certain requirements are satisfied. Essentially, such third parties must comply with anti-money laundering and terrorist financing requirements and the law practice must be able to obtain all source documents, data and information to verify the client's identity from the third party without delay.

166 Taken together, these rules envisage situations where solicitors can rely on information from third parties – like notaries – in discharging their duty of care. Far from prohibiting reliance on notarised documents, they suggest that there are at least some situations where solicitors are entitled to rely on notarised documents to discharge their duty of care. But the practice directions and rules do not explain *when* solicitors can do so and *how* they should approach notarised documents. In light of this, we take this opportunity to set out some general principles that pertain to when and how solicitors can rely on notarised documents in discharging their duty of care.

The relevance of notarised documents to a solicitor's duty of care

167 We agree with the Judge that the presence of a notarised document does not *always* mean that a solicitor has discharged his duty of care. But nor is the solicitor always required to verify the source and contents of the notarised document. Otherwise, the references to third parties (and notaries) in the practice directions and rules would be rendered meaningless.

168 Instead, our view is that whether a solicitor needs to go behind the notarised document depends on the particular facts and circumstances. In particular, the solicitor must ask whether there are any red flags or suspicious indications in the notarised document or the transaction it relates to that put him on notice, thereby preventing him from relying on the notarised document alone – or at all – in discharging his duty of care. Solicitors should consider the following factors.

(a) Whether the notarised documents appear, on their face, to have been regularly notarised.

(b) The particular circumstances of the notarisation, including:

(i) whether the notarisation was previously discussed and agreed upon between the solicitor and the client;

(ii) how the notarisation was actually implemented, *eg*, if the notarisation was done overseas, how the relevant documents were transported there and back, if the notary public was specifically chosen, by whom and for what reason; and

(iii) whether the client subsequently confirmed that he participated in the notarisation process.

169 While there are no local or foreign cases that deal specifically with this point, we are satisfied that the approach we have set out here is consistent with the authorities. They generally support the proposition that notarised documents enjoy a presumption of validity but are not conclusive.

170 We shall explain each of these points in turn.

Whether the documents appear to have been regularly notarised

171 This factor requires the solicitor to consider whether the document appears, on its face, to be regular. This includes:

(a) whether all relevant fields have been completed as required;

(b) whether the client has signed the document as required, and if there are any obvious discrepancies in the signatures;

(c) whether the notary public has signed and affixed his seal as required, and if there are any obvious discrepancies in his signature;

(d) whether any party named in the document has an obviously fictitious name; and

(e) the general appearance of the notarised document.

172 If any of these defects appear on the notarised document, then the solicitor would not be entitled to rely on this document without further checks because the document would present obvious red flags on its face. The presumption of proper notarisation would not arise.

173 In such circumstances, the solicitor must instead contact the client personally to confirm whether the document was signed before a notary public. The solicitor must also take reasonable steps to confirm whether the person named as the notary public was in fact a notary public. Whether the solicitor had taken sufficient steps to constitute a reasonable enquiry is to be assessed objectively at the material time and not with the benefit of hindsight. If, upon checking, there arises a reasonable doubt as to whether the client signed the documents before a notary public or whether the person named was a notary

public, then the solicitor cannot rely on the notarised document *at all*. Likewise, the solicitor would not be able to rely on that notarised document to prove that he has discharged his duty of care.

Circumstances of the notarisation

174 Even if the notarised document appears proper on its face, the solicitor is not entitled to rely entirely on it to discharge his duty of care. Rather, the solicitor must look at the circumstances of the notarisation to see if they, too, raise any red flags. These red flags include:

(a) whether the instruction to use a notarised document came directly from the client or from the client through third parties;

(b) if the instructions came through third parties, whether these third parties have any interest in the transaction;

(c) whether the notary public was approached or recommended by an interested party to the transaction;

(d) whether the notary public himself was interested in the transaction or had any ties with parties interested in the transaction;

(e) how the documents were brought to and from the notary public; and

(f) how the documents were passed back to the solicitor after they were notarised.

175 As with the red flags on the face of the document, the solicitor is not entitled to rely on the document if any of these red flags relating to the notary is

present. The solicitor would need to take reasonable steps to ascertain the source of the instructions and the identity of the notary public to see if there was any fraud. Again, whether the steps taken were sufficient is an objective inquiry to be assessed at the material time and not with the benefit of hindsight.

176 We accept that at first blush, this may appear to undermine the utility of the notarised document, because such documents are usually used when the client is unable to meet the solicitor face-to-face. The client then relies on third parties to certify true copies of the relevant documents which would then be passed to the solicitor. Because of this, the steps needed to verify the source of the instructions are not onerous. All the solicitor needs to do to verify the instructions is to directly communicate with the client. There is no need for the client's physical presence, otherwise it would defeat the purpose of using notarised documents. But the solicitor cannot simply rely on the instructions of third parties who say that they are giving instructions on behalf of the client. The solicitor must be able to verify that it is the client giving the instructions, either through a direct and verifiable line of communication with the client, or through a third party who is a trusted source. Similarly, when verifying the identity of the notary public, physical presence is not needed. Reasonable steps would include direct communication with the notary public or certified documents that confirm the status of the notary public.

177 If no red flags are raised on the face of the notarised document or the circumstances of the notarisation, then the solicitor can rely on the notarised document as proof of its contents. But this does not mean that the document alone would always discharge the solicitor's duty of care. For instance, if the document pertained to the application for an RCOT, then the notarised document would only assist the solicitor at the stage of applying for the same.

The duty of care on a solicitor applies to all stages of the transaction and the solicitor may need to take further steps to discharge his duty at other stages of the transaction.

The importance of a direct and verifiable line of communication with the client

178 The common thread that underlies the approach we have set out is the importance of a direct and verifiable line of communication with the client. The notarised document is peculiar in that it is usually only used where the client cannot meet with the solicitor face-to-face. It is therefore used to lessen the burden on the solicitor in situations where it would be too onerous to expect the solicitor to confirm the client's instructions through the traditional means. But this works both ways. It is precisely because the solicitor does not meet the client face-to-face in such situations that there is a greater danger of fraud. So any inquiry by the solicitor into discrepancies on the face of the document or in the circumstances of the notarisation *must* be done through a verified and reliable means of communicating with the client.

Application to the facts

179 We turn now to apply these considerations to the facts before us, although we note that this discussion is strictly speaking *obiter* because of our findings on Issues 1 and 2.

180 Under the approach set out above, Mr Toh and Mr Tan could only rely on the notarised documents to discharge their duty of care if there were no red flags either on the face of the notarised documents or in the circumstances of the notarisation. We accept, and this was not disputed by any of the parties, that

on their face the notarised documents themselves would not arouse suspicion. We therefore turn now to the circumstances of the notarisation.

181 We find that the circumstances of the transactions indeed should have raised red flags and telegraphed the need for greater care. To recapitulate, there were two sets of transactions in this case: the RCOT applications and the eventual conveyance of the Apartment. While Mr Toh acted for Mr Kweh and Mr Tan acted for the Yacobs in the conveyance, it was *Mr Toh* who acted for the Yacobs in the RCOT applications.

182 Notaries public were involved at multiple stages of these transactions.

(a) Signing of the sale and purchase agreement. In June 2011, Mr Toh prepared a draft sale and purchase agreement and other transfer documents. The documents were meant to be signed before a notary public in Indonesia. Mr Toh did not give the documents to Mr Yacob or Mdm Susilawaty directly, but passed them to Mdm Koh to pass them on. The signed and notarised documents were later returned to Mr Toh by Mr Boediono. The documents appeared to have been signed before an Indonesian notary public known as Hengki Budi Priyanto Putro.

(b) The first RCOT application. In late June or early July 2011, Mr Kweh informed Mr Boediono that Mr Yacob had misplaced the certificate of title. Mr Toh was instructed to apply for an RCOT. So he obtained from Mr Boediono what was allegedly Mr Yacob's email address. Mr Toh prepared the documents which were, once again, to be taken to Indonesia to be signed before a notary public. As with the transfer documents, they were returned to Mr Toh by Mr Kweh through Mr Boediono.

(c) The second RCOT application. The first RCOT application was rejected because it contained insufficient information. So Mr Toh prepared a second RCOT application, allegedly with input from Mr Yacob. Once again, these documents were taken to Indonesia to be signed before a notary public. This time the notary was one Ali Husein. Eventually the notarised documents were handed back to Mr Toh by Mr Boediono.

(d) Signing of Letter of Authority appointing Mr Tan to act in the conveyance. After the RCOT application was complete, Mr Tan was appointed to act for the Yacobs in the conveyance. Mr Tan obtained their contact details from Mr Toh and attempted to email them a draft Letter of Authority and sale and purchase agreement. But the emails did not get through. Mr Tan then passed the documents to Mr Toh to hand to Mr Boediono who was to take them to Indonesia for the Yacobs to sign. Eventually Mr Boediono sent the notarised draft Letter of Authority back to Mr Toh, who passed it back to Mr Tan.

183 The most striking feature of this factual matrix is that the notarisation of the documents was, to a very large extent, facilitated by the parties who stood to gain the most out of the entire transaction (*ie*, Mr Kweh and his son and daughter-in-law). They couriered documents from the two solicitors to Indonesia so the same could be sent to the Yacobs for signature before a notary. The signed documents were then returned to Mr Toh or Mr Tan as required also by way of Mr Kweh, Mr Boediono or Mdm Koh. In other words, Mr Kweh and/or Mr Boediono and/or Mdm Koh were, in every instance, third-party intermediaries who came into contact with the notarised documents that the

solicitors now rely on to claim that they have discharged their duty to the Yacobs to verify their identities and instructions.

184 These were no ordinary third parties. Mr Kweh was the counterparty in the transaction, standing on the opposite side from the Yacobs. There was no good reason for Mr Kweh or his relatives to obtain possession of documents relating to work that Mr Toh and Mr Tan were undertaking for the Yacobs as the owners in the RCOT applications and the sellers in the conveyance. Both solicitors should have been put on high alert by the fact that they were being expected to give their clients' documents to the counterparty and were receiving the documents back from such party without any independent contact with the clients. At that point, they should have independently verified their clients' identities and instructions on how to get the documents to them through a direct and verifiable line of communication with the clients.

185 Mr Toh and Mr Tan did not do so. Instead, it appears that they were content to entrust such crucial documents – some going towards their very authority to act for the Yacobs in the conveyance – into the hands of the counterparty to the transaction, creating an extremely risky situation by which Mr Kweh stood to gain significantly.

186 Although Mr Toh and Mr Tan submit that they had tried to contact Mr Yacob and Mdm Susilawaty through the email addresses provided, we would note that these email addresses were *also provided by Mr Boediono* to Mr Toh, and then by Mr Toh to Mr Tan. Since the red flags in this case arose from all the information coming from and passing through third parties who were interested in the transaction, the email addresses obtained from Mr Boediono obviously could not be relied on. They were tarred by the same

brush. What Mr Toh and Mr Tan should have done was to insist that they would not act without being contacted by the clients directly or by verifiable agents of the clients who were independent of the counterparties to the transaction. This would not have been too difficult in this age of videoconferencing, Skype calls and other methods of instantaneous oral and visual communication.

187 In any case, even if the solicitors could rely on the email addresses given to them, they never received confirmation from the Yacobs expressly stating that those documents had in fact been signed before Indonesian notary publics. At best, Mr Tan can only point to an email received on 27 December 2011 allegedly from Mr Yacob confirming that he was agreeable to early completion (see Judgment at [64(u)]), but that email says nothing about the Letter of Authority.

188 Accordingly, if the issue had been live, we would have found that neither Mr Toh nor Mr Tan took adequate steps to verify their clients' identities and instructions although they should have been put on alert by the circumstances. They were therefore not entitled to rely on the apparent notarisation of the documents alleged executed by the Yacobs as evidence that they had discharged their duties to their clients. The solicitors were negligent but as the documents have not been proved to be fraudulent, no liability attaches to such negligence.

Conclusion on Issue 3

189 To summarise our observations on Issue 3:

(a) PCR (2010) and PD (2015) (and PD (2008) prior thereto) are relevant rules to follow even if money laundering and terrorist financing have not been proven or detected.

(b) These rules do not prohibit solicitors from relying on notarised documents. In fact, they envisage that solicitors may rely on them in certain situations. But they do not explain when and how solicitors may rely on such documents.

(c) In our view, a solicitor is entitled to presume, in the absence of evidence to the contrary, that a document which on its face appears to have been regularly notarised has, in fact, been properly notarised – *ie*, that the signature or seal is indeed the signature or seal of the person named as the notary public, and that the document was in fact signed before the notary public. Accordingly, the solicitor would also be able to rely on these documents to discharge his duty of care to verify his client's identity and instructions.

(d) This presumption of notarisation does not hold when either the face of the document or the circumstances of the notarisation would raise a red flag in the mind of a reasonable solicitor. Where such a red flag pops up, the solicitor must take adequate steps to verify the identity and instructions of the client and the identity of the notary public. Whether the solicitor has taken adequate steps is to be assessed objectively at the material time and not with the benefit of hindsight.

(e) The most crucial factor in determining whether the solicitor has taken adequate steps is whether he used a direct and verifiable line of communication with the client.

(f) If the solicitor has not taken adequate steps, then he would not be able to rely on the notarised document to discharge his duty of care,

although he could, in theory, still adduce other evidence to show that he discharged his duty.

(g) If the solicitor had taken adequate steps, he could rely on the notarised document. But this would not inevitably mean that the solicitor could discharge his duty of care. For instance, if the notarised document pertained only to one aspect or stage of the transaction, then the solicitor would still need to take adequate steps to discharge his duty in relation to the other aspects or stages of the transaction.

190 In this particular case, Mr Toh and Mr Tan should have been put on notice by the red flag that the counterparties to the transaction who stood to gain the most handled all the documents and communication. The solicitors did not do enough to lay those suspicions to rest. Simply attempting to contact their clients through email addresses and phone numbers that the counterparties themselves had provided was manifestly inadequate.

Conclusion

191 For the above reasons, we allow the appeals in CA 23 and CA 24 in part and the appeals in CA 36 and 37 in full. We set aside the orders made by the Judge at [342], [344], [345]–[347] and [349]–[353] of the Judgment. We affirm the Judge's order at [343] of the Judgment only to the extent that it is made against Mr Boediono and orders him to return $607,700 to Mr Yacob and $624,570.19 to Mr Suriadinata, with interest on these amounts awarded at 5.33% per annum from the date of the writ of summons until the date of the judgment. We set aside the Judge's order at [343] of the Judgment to the extent that it pertains to Mdm Koh's liability.

192 As for costs, we note that the appellants have succeeded on the majority of their grounds of appeal in CA 23 and CA 24, both in terms of the legal outcome and the factual findings. Mr Toh and Mr Tan have also succeeded in their respective appeals. This outcome affects the costs of the trial as well as of the appeals. The parties shall make their submissions on costs, here and below, limited to 15 pages each within 14 days of the date of this Judgment.

Andrew Phang Boon Leong	Judith Prakash	Tay Yong Kwang
Judge of Appeal	Judge of Appeal	Judge of Appeal

Appellants in Civil Appeals Nos 23 and 24 of 2017 in person;
Quek Mong Hua, Jacqueline Chua Yi Ying and Lee Jing Yan (Lee & Lee) for the respondents in Civil Appeals Nos 23 and 24 of 2017 and the first and second respondents in Civil Appeals Nos 36 and 37 of 2017;
Kuah Boon Theng SC, Vanessa Yong and Samantha Oei (Legal Clinic LLC) for the appellant in Civil Appeal No 36 of 2017 and the third respondent in Civil Appeal No 37 of 2017;
Sarjit Singh Gill SC, Tan Su Hui and Lin Ruizi (Shook Lin & Bok LLP) for the appellant in Civil Appeal No 37 of 2017 and the third respondent in Civil Appeal No 36 of 2017.