

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 214

Suit No 549 of 2015 (Taking of Accounts or Inquiries No 1 of 2018)

Between

- (1) Philip Antony Jeyaretnam
- (2) Ruhunadevi Daphne Inparani
A Joshua

... Plaintiffs

And

- (1) Kulandaivelu Malayaperumal
- (2) Gopal Subramanian
- (3) Arulampalam Kanthimathy
- (4) Parvathi d/o Somu
- (5) Thirumurthy Ayernaar
Pamabayan

... Defendants

And

Thirumurthy Ayernaar
Pamabayan

... Third Party

- (1) Pramela d/o Govindasamy
- (2) Housing and Development
Board

... Non-parties

ORAL JUDGMENT

[Trusts] — [Constructive trusts] — [Housing and Development Act (Cap 129, 2004 Rev Ed)]

[Trusts] — [Constructive trusts] — [Fiduciary relationship]

[Equity] — [Equitable lien] — [Housing and Development Act (Cap 129, 2004 Rev Ed)]

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**Philip Antony Jeyaretnam and another
v
Kulandaivelu Malayaperumal and others
(Thirumurthy Ayernaar Pamabayan, third party; Pramela d/o
Govindasamy and another, non-parties)**

[2019] SGHC 214

High Court — Suit No 549 of 2015 (Taking of Accounts or Inquiries No 1 of 2018)

Debbie Ong J

5 February, 11 April, 12 September 2018, 20 February, 9 May 2019

30 August 2019

Judgment reserved.

Debbie Ong J:

Background facts and findings

1 The present decision arises from the taking of accounts in Suit No 549 of 2015. On 15 May 2017, I gave my decision in the main suit and found in favour of the plaintiffs. Unfortunately, the plaintiffs have struggled to recover the moneys which were the subject matter of my judgment.

2 The plaintiffs are the executors of the Estate of Dr Paul Freda Malliamalar (“Dr Paul”), and were previously her court-appointed deputies. Dr Paul was a paediatrician at the Singapore General Hospital and taught at the University of Singapore (now the National University of Singapore). She passed away on 6 August 2016 at the age of 87 years.

3 While Dr Paul was alive, she lived in a property at Haig Road (“the Haig Road property”) for many years. The first defendant, Mr Kulandaivelu Malayaperumal (“Perumal”) was employed as a construction worker sometime in 2001 and worked on a building adjacent to the Haig Road property. Perumal carried out some repair jobs for Dr Paul and befriended her. He eventually moved in to the Haig Road property with Dr Paul sometime around mid-2009 and played a role in the sale of the property and the purchase of a second property at Ceylon Road. In 2010, two cash gifts were made by Dr Paul to Perumal totalling a sum of \$2 million. I held in the main suit that Dr Paul had no mental capacity to make the gift of \$2 million to Perumal, finding also that Perumal had exerted influence over Dr Paul and hindered her independence in decision-making.

4 Perumal married the first non-party, Mdm Pramela d/o Govindasamy (“Mdm Pramela”) in November 2010. As the plaintiffs seek an order against the Housing and Development Board (“HDB”) flat jointly owned by Perumal and Mdm Pramela (“the HDB flat”), she has entered an appearance as a non-party. Given the possible implications of this decision on HDB flats, the HDB has also entered an appearance as a non-party.

5 The HDB flat is presently held in the names of Perumal and Mdm Pramela as joint tenants. Both of them were granted the option to purchase the flat in 2011, and completion took place on 30 April 2014 for a sale price of \$439,800. This payment was made in several tranches:

- (a) Down-payment of \$43,960 from Mdm Pramela’s CPF account;
- (b) \$66,465 from Mdm Pramela’s CPF account; and
- (c) \$329,812.55 by cheque.

6 On the date of completion on 30 April 2014, Perumal made a payment of \$329,812.55 by cheque to HDB. This sum amounted to at least 74.99% of the purchase price of the flat. It constitutes a meagre 16% of the \$2 million that Dr Paul had given to Perumal.

7 The plaintiffs sought to establish either an institutional or a remedial constructive trust over the interest represented by the sum of \$329,812.55 in the HDB Flat.

8 I heard the trial for the taking of accounts and was satisfied that the sum of \$329,812.55 used to pay for the purchase of the HDB flat was moneys Perumal received from Dr Paul. Perumal had initially maintained that the contribution which came from Dr Paul's money amounted only to \$175,000. However, the documents showed that Perumal had made a payment of the sum of \$329,812.55 to the HDB on 30 April 2014. From Perumal's OCBC bank account statements, it was clear that he had earlier transferred a sum of \$300,000 on 29 January 2014 into Mdm Pramela's bank account. This same sum was transferred back into his OCBC bank account on 30 April 2014. Perumal did not fully disclose and provide the relevant information to the court. The plaintiffs had to seek the assistance of court orders in order to obtain the disclosures of his bank statements and other relevant information. His bank statements also show large sums of moneys being transferred about – for example, \$100,000 was withdrawn on 6 February 2012, another \$100,000 was withdrawn on 8 February 2012, \$100,000 was deposited on 8 November 2012, \$50,000 was withdrawn on 12 December 2012 and \$100,000 was withdrawn on 10 June 2013. Perumal was not cooperative in giving disclosure and explanation for the large movements of moneys. Considering the evidence as a whole, I find that the sum of \$329,812.55 was moneys Perumal received from Dr Paul.

9 At the hearing, I asked if the *equitable lien* might be applicable here and directed further submissions on the matter. I also appointed Mr Jamal Siddique Peer as the young *amicus curiae* to assist in the various legal issues presented by the current case. I record my deep appreciation to Mr Siddique for his very helpful assistance.

Constructive Trust

10 The plaintiffs submitted that Perumal is a constructive trustee either under an institutional constructive trust (“ICT”) or a remedial constructive trust (“RCT”) over the two cash gifts made by Dr Paul to him in January and July 2010 totalling a sum of \$2 million.

11 The distinction between an institutional constructive trust and a remedial constructive trust draws from the House of Lords decision in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (“*Westdeutsche*”). The distinction was subsequently endorsed by our Court of Appeal in *Ching Mun Fong v Liu Cho Chit* [2001] 1 SLR(R) 856. In an institutional constructive trust, the trust arises by operation of law from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. A remedial constructive trust is a judicial remedy giving rise to an enforceable equitable obligation, and this lies at the discretion of the court: *Westdeutsche* at 714–715.

Institutional constructive trust

12 The plaintiffs argued that an institutional constructive trust ought to arise in this case because (a) the nature of the relationship between Perumal and Dr Paul was a fiduciary one, notwithstanding that it did not fall within the traditional categories of fiduciary relationship and (b) Perumal breached his

fiduciary duties owed to Dr Paul. Relying on *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 (“*Guy Neale*”), the plaintiffs submitted that the court should declare an institutional constructive trust as the property in question was dealt with in an unconscionable manner.

Was Perumal a “fiduciary”

13 The plaintiffs cited Lord Justice Millett in *Bristol and West Building Society v Mothew* [1998] Ch 1 as the applicable test on who a fiduciary is: “a fiduciary is someone who has undertaken to act for or on behalf of another in a particular manner of circumstances which give rise to a relationship of *trust and confidence*” (emphasis added).

14 In the decision of *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655, the Court of Appeal said of the term “fiduciary”:

42 There is no universal definition for the term, though we note that there appears to be growing judicial support for the view that a fiduciary is “someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence” It has also been said that “[f]iduciary duties are obligations imposed by law as a reaction to particular circumstances of responsibility assumed by one person in respect of the conduct of the affairs of another” ... The concept of a fiduciary has also been described as one that “encaptures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal” ...

43 While there are settled categories of fiduciary relationships – such as the relationship of a trustee-beneficiary, director-company, solicitor-client, between partners – it does not mean that all such relationships *are* invariably fiduciary relationships. In these relationships, there is a strong, but rebuttable, presumption that fiduciary duties are owed. Equally, the categories of fiduciary relationships are not closed or limited only to the settled categories. Fiduciary duties may

be owed even if the relationship between the parties is not one of the settled categories, provided that the circumstances justify the imposition of such duties

15 On the facts of the present case, I find sufficient evidence of a fiduciary relationship between Perumal and Dr Paul. In my decision delivered on 15 May 2017, I had found that:

Parvathi also gave evidence that she would always be **required to get permission from Perumal or Kanthi to visit Dr Paul and that Perumal and Kanthi would impose limitations as to what Parvathi could do for Dr Paul**. She was denied access to Dr Paul in mid-2010 despite there being no suggestion that Dr Paul did not want her to visit.

Furthermore, it is not disputed that Perumal had stayed in the Haig Road property for at least 2 months in mid-2009 leading up to September 2009. Perumal was also the one who contacted Parvathi to be the real estate agent. I accept Parvathi's evidence that **she had to contact Perumal and/or Gopal in order to meet Dr Paul although the sale concerned the property owned by Dr Paul. Dr Paul's instructions were also mostly conveyed through Perumal** and Gopal and Dr Paul hardly participated in the discussions. When it came to purchasing a new home, Parvathi's evidence was that Gopal and **Perumal were the ones who would go through the list of potential property and told Parvathi which they were interested to view**. I note in particular an incident of outburst where Dr Paul expressed her desire not to move out of the Haig Road property. I find it telling of the uncertainties and pressures that Dr Paul may have been under with regard to selling the property.

In my judgment, these actual circumstances of Dr Paul's life at that time cause concern and are relevant to the present suit. From the evidence above, I find that the **defendants have supplied hindrances to Dr Paul's independence in decision-making. She was cut off from her friends and relatives** who may have been able to give her advice, or simply assisted her in thinking through various matters more clearly. **She was clearly reliant on Perumal and Kanthi**. The evidence given by the various witnesses as described above paint a state of affairs where Dr Paul was likely to have been influenced into making the Early 2010 Gifts. **Perumal and Kanthi had the greatest opportunity for unhindered and near exclusive access to Dr Paul for the years prior to and at the time of the making of the gifts and payments**. They acted in a manner that prevented any intervention from family or friends who might otherwise have put a stop to their influence on Dr Paul. Gopal

had access to Dr Paul for a shorter period of time. I note Dr Tan's expert opinion during the trial was that if a dementia patient is dependent on certain individuals, she may be easily influenced by these individuals, especially if they are her caregivers.

[emphasis added in bold]

16 My findings in the main suit highlighted in bold above are most pertinent to my finding of a fiduciary relationship. Dr Paul was elderly, physically weak, in need of care and showed signs of mental impairment. Perumal moved into her home and his own evidence was that he assisted in caring for Dr Paul and carried out various acts on her behalf. These acts involved monetary transactions and important matters such as where she would live. In particular, Perumal was centrally involved in the selling of Dr Paul's Haig Road property and her subsequent purchase of the Ceylon Road property. Dr Paul was clearly reliant on Perumal. There was a relationship of trust and confidence and Perumal certainly knew that. I hold that Perumal was in a fiduciary relationship vis-à-vis Dr Paul.

Basis for an institutional constructive trust

17 Mr Siddique appeared to think that the present case did not fall within any of the traditional categories in which an institutional constructive trust is imposed. His submissions relied on cases involving voidable transactions, for example, fraudulent misrepresentation cases where the court imposed a constructive trust to suggest that a similar trust should be imposed where a gift was transferred by an individual lacking mental capacity.

18 Mr Siddique cited various authorities seeking to establish that an institutional constructive trust is imposed where a contract is procured by fraudulent misrepresentation. Relying on Lord Sumption's dicta in *Angove's Pty Ltd v Bailey and another* [2016] 1 WLR 3179 at [30] for the foundation of

an institutional trust as being at least partly based on vitiated intention, he submitted that an institutional constructive trust should similarly arise over a gift transferred by a person lacking mental capacity, as this too was an example of “vitiated consent”.

19 I note that Mr Siddique’s submission is that an institutional constructive trust should be imposed in the present case. I agree with that ultimate outcome he has submitted, but I do not think that the basis of such a constructive trust needed to be premised on an extended category as submitted by him.

20 The authorities show that an institutional constructive trust is imposed where a fiduciary breaches his fiduciary duties to make a profit for himself. Professor Tang Hang Wu, in *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) states (at [10.040]):

Currently, the constructive trust arises in a wide array of situations. A non-exhaustive list of when a court may declare a constructive trust includes situations where there is:

...

(e) a breach of fiduciary duty.

21 Prof Tang cites a substantial number of case and academic authorities at footnote 124 on “a breach of fiduciary duty” as a basis for the institutional constructive trust. One of these is *Guy Neale*. The Court of Appeal in this case explained that (at [126]) “(t)he principle underlying the imposition of an institutional constructive trust in these circumstances [of abuse of a fiduciary position] is that a person must not use his position to gain a benefit for himself when he owes obligations of the utmost good faith and loyalty to another.”

22 I have found that the facts and circumstances of this case gave rise to a relationship of trust and confidence where Dr Paul relied on Perumal for her

physical care as well as the management of important issues including those involving large sums of moneys. Perumal abused her trust to enrich himself. My findings in the main suit quoted at [15] above provide a picture of how Perumal breached his fiduciary duty, influencing Dr Paul to make the gifts totalling \$2 million to himself. He was found to have “supplied hindrances to Dr Paul’s independence in decision-making. She was cut off from her friends and relatives who may have been able to give her advice, or simply assisted her in thinking through various matters more clearly. She was clearly reliant on Perumal [and] likely to have been influenced into making the Early 2010 Gifts. ... it also appears that Dr Paul was not well taken care of, contrary to what the defendants claimed.” The breach of fiduciary duty gave rise to an institutional constructive trust over the moneys received by Perumal.

Remedial Constructive Trust

23 The plaintiffs argued that “the basis of the RCT in Singapore appears to be founded on fault and “is predicated on a state of knowledge which renders it unconscionable for the recipient to keep the moneys”. The few cases in which the courts have considered whether or not to impose a remedial constructive trust appear to me consistent with the notion that a remedial constructive trust is premised on “fault”. However, I note that this doctrine is less developed than that of the institutional constructive trust. The Court of Appeal observed in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 (at [172]) that “[t]he basis of an RCT in Singapore law at its present stage of development therefore appears to be founded on fault”, suggesting that the basis of a remedial constructive trust is still in its developmental stages in Singapore.

24 Having found an institutional constructive trust and noting that it is a long-established doctrine, I do not think it necessary to go further into this

submission. What I do need to address is whether an institutional constructive trust can arise in respect of the HDB flat.

Sections 51(10) and (6) of the Housing and Development Act (Cap 129, 2004 Rev Ed) (“HDA”)

25 Section 51(10) of the HDA states:

No person shall become entitled to any protected property (or any interest in such property) under any resulting or constructive trust whensoever created or arising.

26 This provision prohibits a party who is ineligible to own HDB property from having any interest in the HDB property by virtue of a resulting or constructive trust. Mr Siddique submitted that HDB Property is simply incapable of being considered a trust asset due to the operation of section 51(10). I agree with this position.

27 The plaintiffs, on the other hand, focused on *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* (“*Andy Low*”) [2013] 3 SLR 710, where the court held (at [20]) that the way in which s 51(10) of the HDA operates is to prevent ineligible persons from becoming entitled to a HDB flat by way of a resulting or constructive trust, but does not void the underlying transaction or transfer. An example was where ineligible persons under the HDA inherit HDB flats: “[Such persons] are not allowed to keep the flats, but are entitled to the sale proceeds” (*Andy Low* at [22]). They submit that applying this principle to the present case, the underlying constructive trust imposed is not nullified, and the plaintiffs are not prevented from taking an interest in the HDB Flat.

28 I observe that there was no constructive trust imposed on the facts of *Andy Low*. The issue there was whether a proprietary estoppel as a cause of

action is precluded by s 51(10) of the HDA: *Andy Low* at [23]. The court explained that “a claim in proprietary estoppel is based on an equity which may be satisfied by various means, including ways by which an interest in land need not be part of the remedy”: *Andy Low* at [29].

29 In the present case, the plaintiffs seek to recover the sum of \$329,812.55 through an order of sale of the HDB flat and recovering that sum from its sale proceeds. There is no dispute that the plaintiffs are not eligible persons for the purposes of the HDA. As s 51(10) of the HDA applies to the present facts, there can be no constructive trust in the HDB flat even though I have found that Perumal holds the moneys he received from Dr Paul under a constructive trust. It follows that as no constructive trust can arise in favour of the plaintiffs, there is no basis to order a sale of the HDB flat.

30 However, the imposition of an equitable lien is not prohibited under s 51(10) of the HDA and I shall address this next.

Equitable lien

31 Mr Siddique’s submissions on the equitable lien cited the Court of Appeal’s decision in *Bestland Development Pte Ltd v Mani Udomkunnatum and another* [1997] 1 SLR(R) 177 which adopted *Hewett v Court* (1983) 149 CLR 639: “An equitable lien is a right against property which arises automatically by implication of equity to secure a discharge of an actual or potential indebtedness”. He submits that an equitable lien is not precluded by s 51(10) of the HDA as the interest does not take the form of a resulting or constructive trust. The plaintiffs also made this similar submission. I accept that the equitable lien is not prohibited by s 51(10) of the HDA.

32 Mr Siddique further submitted that s 51(6) of the HDA provides that a HDB flat cannot be attached in execution of an order save for two exceptions. The provision reads:

No protected property shall be attached in execution of an order of any court unless the order of court is obtained by –

- (a) a mortgagee in exercise of his rights under a mortgage created with the prior written consent of the Board over that property; or
- (b) a chargee in exercise of his rights under a charge under any written law over that property.

33 He cited *Hitachi Leasing (Singapore) Pte Ltd v Vincent Ambrose and another* [2001] 1 SLR(R) 762 where the court observed that the objective of s 51(6) is to “preserve the home of the HDB owner” and that a compulsory sale of the flat by a creditor is prohibited. He submitted that a court should be slow to order a compulsory sale of a HDB flat in satisfaction of a security interest.

34 In my view, imposing an equitable lien does not necessarily result in an order for sale. It is possible to impose an equitable lien but still preserve the home of the HDB dwellers until an event (such as a voluntary sale) occurs where sale proceeds can be used to satisfy the equitable lien.

35 Where a claimant seeks a claim against a substituted asset which exists in the hands of the trustee, the claimant may elect between remedies, whether it be by way of an equitable lien or the entire beneficial ownership of the substituted asset under a constructive trust. The court in *Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 15, citing *Snell’s Equity* (John McGhee, ed) (Sweet & Maxwell, 33rd Ed, 2015) noted (at [181]):

[The claimant] may enforce an equitable lien against [the asset] for the value of the original asset which was applied to acquire

it. Alternatively, he may claim the entire beneficial ownership of the substituted asset under a constructive trust ...

36 In the present case, s 51(10) of the HDA prohibits the court from imposing a constructive trust on Perumal's HDB flat. Therefore, the only remedy remaining is the imposition of an equitable lien against the property in the value of \$329,812.55 – this was part of the moneys held on constructive trust and was applied to acquire the property. The more pertinent question is whether an equitable lien may be imposed on a HDB property, given the policy behind s 51 of the HDA.

37 I am of the view that the imposition of an equitable lien is appropriate in the present case. Perumal has been found to have known, or ought to have known, that Dr Paul had no mental capacity; moreover, he actively abused her trust by influencing her to make the gifts (see [15]-[16] and [22] of this judgment, above). Section 51(6) of the HDA may have been aimed at protecting the HDB flat owner from losing his home and affecting his and his family's shelter against creditors, but the present case goes beyond such a situation. The HDB flat owner in this case, Perumal, had acted in breach of his fiduciary duty and profited from his breaches. An equitable lien is the least that the law must do in the circumstances where a more effective remedy of a constructive trust is expressly prohibited by statute. Further, the imposition of an equitable lien is still consistent with preserving the home if an order of sale is not immediately made (see [34] above). An equitable lien itself, without more, does not transgress the provisions or policy of the HDA.

38 The equitable lien is proprietary in nature and constitutes a caveatable interest. However, I will not order a sale of the HDB flat under the present circumstances. Mdm Pramela is a joint owner of the flat and I take that into account in reaching my decision in declining to make an order of sale. My

decision reaches a fair balance between enabling the plaintiffs a real remedy and ensuring protection over the home of HDB flat owners.

Other orders

39 The plaintiff also seeks other declarations, specifically:

- (a) a declaration that Perumal has not provided a full account of the use of the gifts totalling S\$2,000,000 made by Dr Paul to him in January and July 2010;
- (b) a declaration that Perumal held and/or continues to hold the said sum of S\$2,000,000 on constructive trust for the Estate given that the gifts totalling S\$2,000,000 made by Dr Paul to Perumal in January and July 2010 were set aside pursuant to the judgment in the main suit;
- (c) a declaration that Perumal held and/or continues to hold any property that he purchased with the said sum of S\$2,000,000 on constructive trust for the Estate and in particular but not in any way limiting the generality of the foregoing:-
 - (i) that Perumal had purchased the Pondicherry property entirely with the gifts and not from his own resources; and
 - (ii) a sum approximately amounting to S\$125,000 (=INR 4,375,000.00 as per exchange rate in 2010), which comprised part of the gifts, was invested into his son's businesses.

Conclusion

40 For the above reasons, I decline to order the sale of the HDB flat. However, I hold that there is an equitable lien on the HDB flat for \$329,812.55.

41 Perumal should co-operate to find ways to return the sums Dr Paul has given him when she lacked the mental capacity to do so. His conduct in these proceedings show that he does not agree with the court's findings and continues to assert that he deserved the moneys. I further hold that:

- (a) Perumal has not provided a full account of the use of the gifts totalling S\$2,000,000 made by Dr Paul to him in January and July 2010;
- (b) Perumal held and/or continues to hold the said sum of S\$2,000,000 on constructive trust for the Estate;
- (c) Perumal had purchased the Pondicherry property entirely with the moneys given to him by Dr Paul (the S\$2,000,000 referred to in [41(a) and (b)] and not from his own resources. For clarity, I state that the Pondicherry property encompasses the Property and the house erected on the Property.

42 The other orders prayed for are excluded as the evidence have fallen short of what is required for me to make those holdings.

Debbie Ong
Judge

Herman Jeremiah, Mark Lewis Shan and Lee Chia Ming (Dentons
Rodyk & Davidson LLP) for the plaintiffs;
The first defendant in person;
The second, third, fourth and fifth defendants and the third party
absent and unrepresented;
The first non-party in person;
Rajashree Rajan (HDB (Legal Group)) for the second non-party;
Jamal Siddique Peer (Shook Lin & Bok LLP) as young *amicus*
curiae.
