Oei Tjiong Bin and Another v Tsu Soo Sin and Another Suit
[2007] SGHC 215

Case Number : Suit 514/2006, 79/2007

Decision Date : 14 December 2007

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Indranee Rajah SC, Celeste Ang, Dipti Jauhar and Daniel Soo (Drew & Napier LLC) for the plaintiffs; Brendon Choa and Chen Chuen Tat (Acies Law Corporation) for the defendant

Parties : Oei Tjiong Bin; Siong Guan Company (Private) Limited — Tsu Soo Sin

Trusts

14 December 2007 Judgment reserved.

Lai Siu Chiu J

1 In these suits, claims were made by Oei Tjiong Bin ("the plaintiff") and Siong Guan Company (Private) Limited ("the company") against Tsu Soo Sin also known as Karen Oei ("the defendant"). The defendant is the legal representative of the estate of her late husband Oei Boon Wan ("the deceased") who died intestate. The claim of the plaintiff and the company against the estate of the deceased in Suit No. 514 of 2006 ("the first suit") was for the return of loans totalling $870,000 that had been extended to the deceased during his lifetime while the claim in Suit No. 79 of 2007 ("the second suit") was for a personal advance of $110,000 made to the defendant after the demise of the deceased.

The background

2 The company was incorporated on 28 September 1971 by the plaintiff and another person (Wee Swee Hock). They were also the first directors of the company. The plaintiff resigned from his directorship in December 1972 but was reappointed on 16 March 1998 and remains a director to-date. The company carried on the business primarily as forwarding agents for mainly Indonesian customers. It was also involved in general merchandising and investments. After the company's incorporation, Oei Tok Kek ("the father") who was the father of the plaintiff and the deceased, was appointed a director together with the plaintiff's elder brother Whang Ming Whee ("Whang"). The father was the major shareholder and chairman of the company. The father was a traditional Chinese businessman and treated the company as his own business, advancing moneys to the company when he felt it needed funds and withdrawing moneys therefrom to reduce his loans when he felt the company had sufficient funds. The father was also traditional in another respect. He did not involve any of his four daughters in the company's business nor did he give them any share of his estate in his Will. The father and Whang handled the operations of the company.

3 Whang was the father's favourite son. Unfortunately, Whang passed away on 23 September 1995. The father was devastated by Whang's death. The father himself passed away on 12 October 1999 while the deceased died on 14 April 2002. The plaintiff (who is also known as Tony Oei) is the only surviving son. The deceased was his younger brother. The plaintiff is an accountant by training and runs his own auditing firm known as Tony Oei & Company ("the firm") which he set up in 1972.

The facts

4 A few years after Whang's death, the father requested the plaintiff to move the firm to the premises occupied by the company. The plaintiff agreed and paid rent to the company for the firm's usage of the company's premises.

5 According to the plaintiff, the deceased was never involved in the business of the company although the deceased was a shareholder. The deceased worked for various organisations during his lifetime but the plaintiff was not certain of the nature or scope of the deceased's occupation.

6 Whenever the father made advances or withdrawals from the company's funds, he would direct the person who was in charge of the company's accounts to record the sums in the company's general ledgers under the name "Oei Tok Kek". The company's cash books would contain credit and debit entries to reflect payments to or withdrawals from the company. The company's accounts were maintained for more than 20 years by one Ng Beng Woon ("the book-keeper") and following his demise in August 1998, the plaintiff's niece Yeo Bee Lay ("Yeo") took over the bookkeeping functions. Yeo's mother Oei Geok Baw is the plaintiff's elder sister who is also the oldest of all his siblings including Whang. After Whang's demise, Yeo also replaced Whang as a director of the company (on 23 September 1995)

7 The plaintiff's understanding was that the moneys advanced by the father to the company were meant for the father, Whang and the plaintiff as only the three of them were involved in the company's business. However, after Whang's death, the father added the deceased's name. Hence, between 1996 and 2003, entries such as the following were seen in the books of the company:

Tony Oei/Oei Boon Wan

The plaintiff surmised that it was likely that the father included the deceased's name in case anything should happen to the plaintiff and the plaintiff died before the deceased. In other words, during the lifetime of the father, Whang and the plaintiff, the father's advances were to be repaid to the father, Whang and the plaintiff. After Whang's death, the advances were to be repaid to the father and the plaintiff and after the father's death, the advances were to be paid to the plaintiff solely.

8 As at 31 December 1995, the handwritten entries in the general ledgers of the company showed the following credit balances:

(a)	Oei Tok Kek	$1,000,000.00
(b)	Oei Tok Kek/Tony Oei	200,000.00
		$1,200,000.00

The sum of $1m was also reflected as "Amount owing to director" in the company's financial statements for the year ended 31 December 1995. The sum of $200,000 was reflected as a sum owed under "Other creditors" in the same financial statements.

9 As at 31 December 1996, the outstanding sum due from the company to the father and the plaintiff had increased to $1.7m from $1.2m. The additional $500,000 from the previous year was recorded in the company's ledgers against the names "Tony Oei/Oei Boon Wan".

10 The plaintiff pointed out that if the deceased felt he was entitled to repayment of any portion of the advances the father had made to the company over the years, the deceased would not have borrowed sums of money from the plaintiff but would instead have asked for repayment of the loans owed by the company and recorded against the deceased's name in its books and ledger entries.

11 The plaintiff's AEIC painstakingly referred to ledger entries of the company up to 1997 which were similar to those in [7] and [9] to substantiate his belief that the father intended that he (the plaintiff) should be the joint beneficiary (with the father) of the father's advances and the sole beneficiary of all the moneys, in the event the father predeceased him.

12 The plaintiff explained that he himself lent $15,000 to the company on 5 March 1998 followed by $500,000 on the following day. He handed his two cheques for the amounts to his niece (Yeo) and instructed her to record the sums as due and owing to him which she did.

13 Accordingly, Yeo recorded a credit balance of $15,000 under the name "Tony Oei" in the handwritten general ledgers of the company for the year 1998. In the course of 1998, the father's name was deleted from the page showing the entries where the father's name appeared. The plaintiff's second loan of $500,000 was recorded as a credit entry under the name 'Tony Oei/Oei Boon Wan" for 1998. As of 31 December 1998, the company owed the plaintiff and his father $2,485,000 according to the entries in the company's books of accounts.

14 On 10 March 1999, the company repaid the father $5,000 and the sum was recorded by the company in the ledger entries and reduced the sums owed to the father to $2.48m.

15 On 13 August 1999, the plaintiff made a further advance of $500,000 to the company from a joint account held with United Overseas Bank by the father, himself, Whang and/or Oei Boon Wan. The cheque was co-signed by the father. The advance was duly recorded in the ledger entries of the company.

16 On or about 10 September 1999, the ledgers entries of the company showed a credit balance of $480,000 under the name "Tony Oei". The plaintiff instructed the company to transfer the amount as a credit entry under the name "Yew Say Pte Ltd" ("Yew Say"). The plaintiff's action was to reduce Yew Say's outstanding debt owed to the company. Yew Say was a company in which the husband of his youngest sister Ng Geo Eng was a shareholder.

17 The plaintiff was the executor of the father's Will dated 24 February 1997. As of the date of the father's death (12 October 1999), the company owed $2m jointly to the father and/or the plaintiff and separately owed $500,000 to the plaintiff solely for the advance he had made on 6 March 1998 at [12].

18 On 13 October 1999, the company repaid the plaintiff $300,000 and the amount was debited in its books against the entry "Tony Oei/Oei Boon Wan".

19 Sometime in December 1999, the deceased approached the plaintiff for a loan of $300,000 ("the first loan"). The deceased did not volunteer and neither did the plaintiff inquire as to, the reason for the first loan. The plaintiff informed the deceased that as the company owed him (the plaintiff) substantial sums, the plaintiff would arrange for the company to advance the money to the deceased. Consequently, the plaintiff arranged for the company to issue a cheque of $300,000 payable to the deceased.

20 When the cheque dated 29 December 1999 was ready, the plaintiff arranged for the same and

the company's payment voucher to be passed onto his sister Ng Guat Hwa ("Guat Hwa") who was very close to the deceased. The deceased duly acknowledged receipt of the cheque by signing the payment voucher, which the plaintiff collected from Guat Hwa's house. The first loan was recorded as a debit against the name "Tony Oei/Oei Boon Wan" in the ledger entries of the company. As of 31 December 1999 therefore, the company's books of accounts and its financial statements showed that it owed $1.9m to "Tony Oei/Oei Boon Wan".

21 In August 2000, the deceased again approached the plaintiff for a loan also in the amount of $300,000 ("the second loan"). As with the first loan and for the same reason, the plaintiff arranged for the company to make the advance. Similarly, the cheque dated 15 August 2000 for the second loan together with the payment voucher were passed onto Guat Hwa; both documents were received by the deceased who acknowledged receipt of the cheque on the payment voucher. As with the first loan, the second loan was duly recorded as a debit against the words "Tony Oei/Oei Boon Wan" in the ledger books of the company.

22 The deceased requested another advance of $300,000 ("the third loan") from the plaintiff in September 2000. The process in [20] as regards the first loan was repeated.

23 In March 2002, Guat Hwa informed the plaintiff that the deceased needed to borrow $270,000 ("the fourth loan"). As with the first, second and third loans, the plaintiff arranged for the company to advance the fourth loan. Again, the process in [20] was repeated.

24 Shortly after the fourth loan was made, the deceased passed away suddenly on 14 April 2002, to the shock of everyone. The company repaid the plaintiff $5,000.00 and $2,000.00 on 15 and 17 April 2002 respectively. The plaintiff used the moneys for the funeral expenses of the deceased.

25 The company followed by making three more payments to the plaintiff totalling $57,584.91. The first cheque for $30,584.91 and two cheques for $13,500 each were debited against the names "Tony Oei/Oei Boon Wan". The plaintiff said he used the first cheque to pay estate duty for the father while the second and third cheques were for his own use.

26 Sometime in June 2002, the plaintiff met the defendant in the presence of Guat Hwa. According to the plaintiff (but which the defendant denied), the defendant told the plaintiff she had to meet or expected to have to meet, many expenses including expenses relating to the estate of the deceased. The defendant said she did not have sufficient funds to pay for the anticipated expenses and asked to borrow $110,000 from the plaintiff ("the last loan). The plaintiff agreed (although Guat Hwa apparently did not).

27 The plaintiff drafted a letter dated 26 June 2002 on the company's behalf (which he signed as director) to the defendant in relation to the last loan as follows:

> We have been instructed by Mr Oei Tjiong Bin to advance to you the sum of Singapore Dollars One hundred and ten thousand only ($110,000). In this regard we enclose the Company's United Overseas Bank cheque no. 612945 for $110,000 together with a payment voucher for your acknowledgment and return.
>
> Please note that the above advance has been debited to Mr Oei Boon Wan's account in the Company.
>
> We would also inform that the Company had previously advanced to Mr Oei Boon Wan a total of Singapore Dollars One Million one hundred and seventy thousand only ($1,170,000), the details of

which are as follows:

Date of cheque	***Cheque number***	***Amount***
29 December 1990	UOB 154362	300,000.00
15 August 2000	UOB 292106	300,000.00
25 September 2000	UOB 292113	300,000.00
14 March 2002	UOB 612920	270,000.00

Yours faithfully,

28 After asking Yeo to check that the particulars stated in the above letter were correct, the plaintiff requested his sister Ng Yee Hoon ("Yee Hoon") to fax the letter (which she did) to the defendant. The defendant faxed back the above letter to Yee Hoon on 27 June 2002 adding the words "OK Karen". In turn, Yee Hoon faxed the letter to the plaintiff.

29 Eventually, the plaintiff also received the defendant's acknowledgment on the payment voucher for the last loan, which he passed onto Yeo for filing. The last loan was duly recorded in the ledger entries of the company.

30 On 7 November 2002, the company repaid $500,000 to the plaintiff and thereby reduced the outstanding sum to $355,415.00 against the names "Tony Oei/Oei Boon Wan" in its books and financial statements as of 31 December 2002.

31 On or about 1 August 2003 the company ratified the loans amounting to $1,170,000 that had been made over the years to the deceased during his lifetime. This was followed by another resolution on 14 August 2003 approving the last loan made to the defendant. Both resolutions stated that "the amount of….had been debited into Oei Tjiong Bin's current account in the respective years".

32 On 29 December 2003, the company repaid the plaintiff the entire outstanding balance of $355,415.09 in [30]. By then, the name "Oei Boon Wan" had been removed from the company's ledger entries (after the deceased's demise) leaving only the name "Tony Oei". Consequently, as of 31 December 2003, the financial statements of the company showed the figure "0" against the item "Amount owing to director".

33 On 20 September 2004, the company's (previous) solicitors made a demand on the defendant for repayment of the last loan. The company's solicitors furnished evidence of the last loan by providing to the defendant's (then) solicitors as requested, photocopies of both sides of the cheque for $110,000. It was after a considerable period of delay and only after two further reminders in June 2006 from the latter that the defendant's solicitors replied to the company's solicitors on 19 June 2006 as follows:

> Our client instructs that your clients' Mr Tony Oei is fully aware of what the sum of $110,000 was for.
>
> Our client would also wish to query as to why, if she was a debtor of the Company, there is

apparently no indication that such an amount is owing to the Company in the audited accounts of 2002 and 2003. Please let us have your clients' response to this query.

34 The company's present solicitors replied to the above letter on 8 August 2006 explaining that the plaintiff had extended the last loan to the defendant through the company. The solicitors repeated the company's demand for repayment of the last loan. The company's solicitors wrote a separate letter to the defendant's solicitors on the same day demanding repayment of $1,170,000.00 from the estate of the deceased.

The pleadings

(i) The first suit

35 Two days later (11 August 2006), the first suit claiming the return of the following loans against the estate of the deceased was filed:

Dates	Amounts
15 August 2000	$300,000
25 September 2000	300,000
14 March 2002	270,000
	Total: $870,000

36 Although the deceased owed $1,170,000 to the company, the latter did not/could not claim the first loan at [19] made to the deceased on 29 December 1999 as the claim was time-barred (on 29 December 2005) by the time the first suit was commenced.

37 The (amended) statement of claim averred that in the alternative, the plaintiff was entitled to the benefit and repayment of the above loans because the right was assigned to the plaintiff.

38 The plaintiff alleged that the deceased was aware that the loans would be advanced by the company and the same would be setoff against moneys owed to the plaintiff by the company, thereby discharging the deceased's liability to the company. The plaintiff pleaded that he was entitled to be indemnified or repaid by the estate for the full amount of the $870,000. Alternatively, the plaintiff was entitled to repayment on the basis that he had effected repayment of the said sum to the company at the deceased's express or implied request.

39 In the (amended) defence she filed, the defendant did not admit the loans made over the years to the deceased. The defendant contended that the (handwritten) ledger entries of the company as of 31 December 1994 showed that the company owed $1m to the father solely while as of 31 December 1995, the ledger entries showed that the company owed $1m to the father solely and $200,000 to the father and the plaintiff jointly.

40 The defendant added that based on the handwritten ledger entries of the company for the period 1994 to 1999, such loans/advances were to be repaid to the persons named or identified in the various accounts in the company *viz*:

(a) the account of the father;

(b) the joint account of the father and the plaintiff;

(c) the joint account of the plaintiff and the deceased.

Even if the moneys paid by the father to the company from 1995 to 1999 were not loans, the defendant contended that the company held such moneys on a resulting trust for the father and upon his death for his estate. She denied there was any assignment as alleged by the plaintiff or at all.

41 Consequently, as at the date of the father's death, there was an outstanding sum of $2.5m due from the company to the plaintiff and the deceased jointly. As the account was a joint account, the defendant asserted that the deceased was equally entitled to draw moneys from the account for his own purposes. The company's ledger entries showed that the company paid the plaintiff $300,000 on or about 13 October 1999 and similarly paid $300,000 to the deceased on 29 December 1999. The defendant contended that the said sum paid to the deceased came from the joint account held by the plaintiff and the deceased jointly. So too did the subsequent sums of $300,000 and $270,000 withdrawn by the deceased from the company on 25 September 2000 and 14 March 2002 respectively.

42 Consequently, the defendant averred, the total sum of $870,000 withdrawn by the deceased from the company were moneys from the joint account held by the plaintiff and the deceased, amounting to $2.5m. The plaintiff was therefore not entitled to claim the sum from the deceased or upon his death, from his estate.

43 The defendant added in any case $600,000 of the $870,000 withdrawn by the deceased was used for the following purposes:

(a) partial reimbursement ($96,000/-) to the deceased for his payment of $120,000/- estate duty for the father's estate on or about 3 May 2000;

(b) $504,00/- was utilised (between 13 August 2000 and 8 February 2001) to acquire 340,000 shares in the company from sixteen shareholders ("the minority shareholders") of the company;

(c) reimbursement on 14 March 2002 of $24,000, being the balance of the first tranche of the estate duty the deceased had paid and full reimbursement of the second tranche of $240,000 estate duty he had paid for the father's estate.

I note that the deceased's total outlay in (a) to (c) above came to $864,000 against his total withdrawals of $870,000/- from the company. I shall return to this discrepancy later (see [129]).

44 The defendant further averred that the loans of $504,000 used by the deceased to purchase 340,000 shares from the minority shareholders amounted to the giving of "financial assistance" under s 76(1) of the Companies Act (Cap 50 1994 Rev Ed) ("the Companies Act") and contravened s 76(5) thereof and were irrecoverable by the plaintiff by reason of illegality.

45 The plaintiff's Reply essentially denied the defendant's allegations. The plaintiff averred that he was unaware of the purpose for which the deceased took the two loans of $300,000. The plaintiff admitted the deceased paid estate duty on the father's estate in the sums of $120,000 and $240,000 on or about 9 May 2000 and 18 March 2002 respectively but disputed that any part of the $870,000 he withdrew was meant to be reimbursement of such estate duty paid; it was tantamount to

asserting that the company as well as the plaintiff in his individual capacity, were obliged to reimburse the deceased personally for such estate duty.

46 The plaintiff also denied that the loans amounted to "financial assistance" to the deceased to acquire shares from the minority shareholders of the company.

(ii) The second suit

47 The plaintiff's statement of claim in relation to the last loan set out the facts in [27] to [32] and [34] to [35] *supra*. The plaintiff pleaded that the last loan was advanced by the company as the plaintiff's agent and the sum was recoverable by the plaintiff.

48 Alternatively, the plaintiff averred, the defendant was aware that the last loan would be setoff against moneys owed by the company to the plaintiff, thereby discharging the defendant's liability to the company. Consequently, the plaintiff had a right to be indemnified and or repaid the last loan by the defendant.

49 In the defence that she filed, the defendant essentially repeated her defence in the first suit. In relation to the last loan, the defendant also asserted that the sum was withdrawn from moneys in the joint account held by the plaintiff and the deceased with the company. As the administratrix of the deceased's estate, she was equally entitled to draw on the joint account for purposes of the estate of the deceased. Consequently, the defendant contended, the plaintiff was not entitled to claim repayment of the last loan or any part thereof from her. What was noteworthy of the defences was that the defendant did not dispute the sums taken by the deceased in the first suit or by herself in the second suit.

The evidence

50 Besides the plaintiff (PW1), the witnesses for the plaintiffs in both suits were Yeo and the plaintiff's second and third sisters Yee Hoon and Guat Hwa. The defendant's witnesses were herself (DW1), her elder sister Tsu Soo Wen ("Soo Wen") and her two daughters Oei Shu-Yi ("Shu-Yi") and Oei Shu-Pei (Shu-Pei").

The plaintiffs' case

51 Nothing turns on the testimony of the plaintiff or his/the company's witnesses save for certain aspects to which I shall now refer.

52 The plaintiff's testimony (which was corroborated by his two sisters) that the father was a traditional Chinese businessman was borne out by the fact that in the father's Will dated 28 February 1997 (see AB225-227), no provision was made for any of his daughters. After Whang's demise in 1995, the plaintiff assumed the mantle of the eldest son. Therefore, the father appointed the plaintiff the executor of his estate and bequeathed to the plaintiff all his legal and beneficial interests in the company as well as in another company called SLC Private Ltd. The father left the remainder of his estate to the plaintiff as well as to the deceased.

53 It appeared from the plaintiff's testimony that the deceased was the "poorest' of the three brothers. The plaintiff usually used his sister Guat Hwa as his go-between for communication with the deceased as she was the closest to the deceased amongst the siblings. Guat Hwa (PW2) stressed that it was not because the plaintiff and the deceased did not have a good relationship – they did but the brothers had little interaction and rarely met save for special occasions. The deceased's family

members seldom met with his other siblings or their family members. Guat Hwa attributed this state of affairs partly to the defendant who did not have a good relationship with other members of the Oei family

54 Despite the fact that the two brothers had little interaction, the plaintiff had testified (corroborated by his two sisters) that he never once refused the deceased's request whenever the latter asked him (the plaintiff) for money. Neither would the plaintiff question the deceased on the reasons for the advances asked for nor would he ask the deceased to repay earlier advances first before giving more loans. Cross-examined on the reasons therefor, the plaintiff simply said (more than once) "he is my brother" and expressed confidence that the deceased would have repaid whatever moneys the plaintiff had advanced to him if the deceased had the means (see N/E 45).

55 The defendant had deposed (in para 68 of her affidavit-of evidence-in-chief [AEIC]) that she had and her daughter Shu-Pei had met the plaintiff (and Yeo) on the evening of 27 June 2002 at No. 45 Fort Road ("the house") and the plaintiff had informed her then that the last loan was to enable the defendant to complete the deceased's purchase of shares from nine of the minority shareholders. Apparently, the cost of purchase was $108,000/- and it was the defendant's case that when she queried the plaintiff on the excess ($2,000) the plaintiff replied that she could keep the balance for herself.

56 Cross-examined, the plaintiff denied there was any such meeting, pointing out that the house was at the material time rented to a company Eversafe Investment Pte Ltd ("Eversafe") that belonged to his sister Yee Hoon and her husband and he would not have had access. A rent receipt dated 14 June 2002 (at AB542) issued to Eversafe for its payment of $1,000/- rent for the month of June 2002 was included in the agreed documents before the court. The plaintiff maintained his stand notwithstanding the suggestion from counsel that the defendant (who used to live there) retained the keys to the house, although she had moved out therefrom before June 2002. The plaintiff testified he met the defendant and Shu-Yi on 22 April 2002, a week after the demise of the deceased and in cross-examination, he admitted meeting the defendant again at Yee Hoon's house in the presence of Soo Wen but he could not recall the date. Neither could the plaintiff recall meeting the defendant (with her daughters) yet again on 27 August 2002.

57 Counsel for the defendant also cross-examined the plaintiff on the issue of estate duty pertaining to the father's estate. Apparently, the estate had been assessed with estate duty of $537,004.69 (and not $560,854.91 as counsel for the defendant said) of which there was no dispute that the deceased paid $360,000 whilst the plaintiff himself had paid $200,584.91(which included interest).

58 In her AEIC, Guat Hwa (PW2) deposed that for one of the three loans of $300,000 extended by the company to the deceased, the plaintiff had told her to inform the deceased (which she did), that the loan should be repaid by September. Guat Hwa revealed that she had nudged the plaintiff when he said "ok" to the defendant's request for the last loan, to indicate her disapproval. Cross-examined on her reasons, Guat Hwa explained that she felt that the defendant, being a school principal, should not have had any problems coming up with "a hundred over thousand" the defendant had requested from the plaintiff.

59 Yee Hoon (PW3) the plaintiff's second sister, is the deputy general manager of Asia Cement (S) Pte Ltd ("Asia Cement"). Her testimony was confined to the role she played at [28] in faxing to the defendant the company's letter dated 26 June 2002 (drafted by the plaintiff) from the fax machine at her office. Yee Hoon then faxed back to the company the copy that the defendant faxed to her (from Bendemeer Secondary School where the defendant was teaching), with the remark "ok". The originals

of the three faxes were produced in court (see exhibits P2 and P4).

60 Counsel for the defendant suggested (unsuccessfully) to Yee Hoon that Eversafe only rented a room rather than the entire house (see [56]). While the defendant maintained she had access to the house as she still had the keys, Yee Hoon testified that anyone who wished to have access would need to get the keys from her husband.

61 Contrary to the defendant's claim, Yee Hoon denied she had handed to the defendant at her (Yee Hoon's) home documents relating to the deceased's purchase of shares from the minority shareholders.

62 The plaintiff's niece Yeo (PW5) confirmed that the deceased was not involved in the business of the company. Indeed, she never saw him in the company's premises at Fook Hai Building, South Bridge Road.

63 Yeo testified that she took over the bookkeeping functions of the company in 1999 from the book-keeper's daughter, after the book-keeper's demise. Yeo would follow the plaintiff's instructions and carried on the book-keeper's practice of making handwritten entries in both the cash book and ledgers in the company's books, relating to loans made to or for advances taken from, the company. During his lifetime, Yeo also assisted the father (who was her maternal grandfather) to complete bank deposit slips and to bank in cheques on behalf of the company. She also prepared the company's trial balances from 1999 onwards for the auditors on an annual basis, by consolidating the various items in the ledger entries and signed confirmation slips for audit purposes, of amounts owing to directors from year to year.

64 Yeo (whom the defendant alleged was present) denied in her AIEC and during cross-examination, that she and the plaintiff had met the defendant on 27 June 2002 and the cheque for the last loan was handed to the defendant that evening. Yeo testified that she handed the cheque for the last loan (with the company's payment voucher) to the plaintiff at the company's premises. When the payment voucher was returned to the company by the plaintiff subsequently, it already had the defendant's acknowledgment on it.

65 When he was cross-examined, the plaintiff had said he was not aware who had removed the deceased's name from the account "Tony Oei/Oei Boon Wan". It was Yeo who revealed that the deceased's name was removed at the request of the company's auditors (Philip Liew & Co) after his demise.

The defendant's case

66 The defendant was granted letters of administration to the deceased's estate on 1 July 2002. This fact is significant as will become evident later.

67 The defendant's AIEC was noteworthy in one respect – it was short on facts, long on arguments, criticised the plaintiff's claims at length and contained numerous inferences and even more assumptions. A large portion of the defendant's AIEC should more appropriately have formed her closing submissions. Consequently, I shall only address the factual aspects of the defendant's written as well as her oral testimony.

68 The defendant did not dispute the figures set out in the plaintiff's AEIC or shown in the agreed documents produced before the court. Indeed, in her AEIC, the defendant referred to the company's books, accounts and ledger entries *in extenso* and admitted (at para 28) that the deceased had

taken the sum of $870,000 from the company. She further admitted (at para 40) that she had taken the last loan from the company.

69 As the sums claimed in both suits were admitted by her, the burden shifts to the defendant to prove that she, as the legal representative of the deceased and personally, did not have to repay the sums of $870,000 and $110,000 respectively.

70 In her AEIC, the defendant essentially repeated her defence (in the first suit) that the deceased was equally entitled to draw upon the joint account that was maintained in his and the name of the plaintiff. She produced no independent evidence to support this argument. She formed this personal view from the handwritten ledger entries and based on her inferences or assumptions (see N/E 130 as an example). The defendant testified she had lived with the father for 8 years and assumed that he would have given equal treatment and benefit to all his three sons. Hence, the father must have intended any joint accounts that included the deceased's name to benefit the account holders equally.

71 For the moneys in the account that was in the father's sole name, the defendant's view was that the father intended the sons including the deceased, to be the beneficiaries. In her cross-examination, it was clear that the defendant did not take the stand the moneys in such an account belonged to the deceased and the plaintiff – the moneys were legally the father's.

72 Neither did the defendant produce any supporting documents for her contention that the company had rendered "financial assistance" to the deceased under s 76(1) of the Companies Act (*supra* [44]) to help him buy over the shares of the minority shareholders of the company. As was pointed out to the defendant in cross-examination (N/E 138), if she maintained the deceased was beneficially entitled to the loans he had taken from the company, there could be no question of financial assistance to the deceased, as the company was not lending its moneys.

73 Counsel for the plaintiff had drawn the defendant's attention to a discrepancy in her AEIC. The defendant (at para 55) deposed that the deceased purchased 340,000 shares from the minority shareholders. It was only in the course of her cross-examination (N/E 145) that the defendant clarified that the shares were purchased *not* at $1.00 per share but at $1.80 per share. The total consideration was therefore $612,000 (340,000 x $1.80) and not $340,000. The defendant's case was that the deceased paid $504,000 for the shares from the advances he took from the company [44] while she paid the shortfall of $108,000 from the last loan ($504,000 + $108,000 = $612,000) and there was a balance of $2,000 which the plaintiff allegedly said she could keep for herself.

74 As for her defence that the deceased was reimbursed estate duty he had paid (of $360,000) from the $870,000, it was clear this again was purely an inference the defendant drew (see her para 51) due to the proximity of dates between the deceased's payments to the estate duty office and his receipt of two sums from the company. To elaborate, the computation from the estate duty office) dated 12 October 1999 (at AB505) showed that the deceased paid $120,000 on 9 May 2000 followed by $240,000 on 25 March 2002. The second loan was extended to the deceased on 15 August 2000 while the fourth loan of $270,000 was given on 14 March 2002. However, the deceased's DBS Bank statement for May 2000 (at AB 784) showed the cheque for $120,000 to the estate duty office was cleared on13 May 2000.

75 Counsel for the plaintiff then referred the defendant to the deceased's April 2000 bank statement (at AB 782) which showed a credit entry for 24 April 2000 of $300,000. This date was well before the dates of the second and third loans at [27]. The defendant's attention was then drawn to a handwritten and undated note of the deceased (at AB958) that stated the following:

29/12/99	300,000
24/4/2000	300,000
	600,000
13/5/2000	(120,000)
	480,000
13/8/2000	(144,000)
	236,000
Commitment till June/Sept 2001	165,000
	71,000

76 There was another handwritten undated note that the defendant had also produced (at AB957) which had the following computation:

29/12/99	300,000.00	
24/4/2000	300,000.00	
~~15/5~~/2000	300,000.00	
	600,000.00	
	(120,000)	
	(144,000)	
	336,000	
	(270,000)	(Neo family)
	66,000.00	
	27,000.00	Tan Kah Chai
	27,000.00	Ng Suat Lay
	12,000.00	

	(67,500.00)	Estate of Ng Cheong Heng
Cheque 612920(15/3/2002)	UOB	270,000 (Deposit)
18/3/2003 Commissioner Estate Duties	of	$240,000

77 Counsel then showed the defendant another credit entry in the deceased's DBS Bank statement, of $317,500/- on 18 August 2000, three days after he took the second loan from the company.

78 Contrary to the defendant's case, the computation in [76] clearly showed that the deceased did not rely on the second or third loans for his acquisition of shares from the minority shareholders. The credit of $300,000 to his bank account on 24 April 2000 was also unrelated to the loans from the company.

79 The computation in [76] was different from that in [75] as the deceased had scratched out the date and month in15/5/2000 in the former. Again, contrary to the defendant's pleaded case at [43] that $96.000 was a partial reimbursement to the deceased of his first payment of estate duty ($120,000) for the father, the computation showed that the deceased deducted $120,000 either from the first loan (which is not the subject of these suits) or from his own funds of $300,000 deposited into his DBS account on 24 April 2000. The defendant eventually agreed with counsel for the plaintiff (at N/E 202) that the deceased did not intend to reimburse himself estate duty he had paid, from the second to fourth loans claimed in these proceedings.

80 I would add that the originals of the computations in [75] and [76] were produced in court (exhibit D1) and it was noted therefrom that the handwriting in [76] was in two different inks. The figures were written in blue whilst the names were written in black ink including the last two entries relating to the sums of $270,000 and $240,000. It seemed highly unlikely in any event that the deceased could have made the last entry as the date 18/3/2003 was after his demise. I am sceptical of the defendant's claim that the paper was written entirely by the deceased.

81 The defendant's argument that the deceased used the company's loans to buy shares was refuted during cross-examination. Indeed, pressed by counsel for the plaintiff to explain how the document in D1 supported the defendant's contention that $600,000 of the $870,000 was used for the purchase of shares from minority shareholders, the defendant admitted (at N/E 180) that her inferences were in fact inconsistent with D1.

82 To elaborate, counsel for the plaintiff had referred to exhibit D2, a document produced by the defendant herself and apparently prepared by the deceased. The exhibit listed the names of ten of the minority shareholders from whom the defendant purchased shares, with the quantities also stated. Counsel took the defendant through the exercise of comparing the computation in [76] with para 46 of her AEIC as well as D2. Paragraph 46 of the defendant's AEIC listed 16 minority shareholders whereas D2 only had 9 shareholders. Undated cheques corresponding to the names of shareholders for the quantity of shares in D2 were also produced by the defendant as part of D1 exhibit. Three shareholders' names listed in the defendant's para 46 were absent from D2. The result

was that the defendant agreed with counsel (at N/E 175) that the deceased could not have used the second and third loans for the purchase of shares from the minority shareholders.

83 I would add that the first cheque of $144,000 listed in para 46 of the defendant's AEIC as payment to minority shareholder Ng Tian Hoe was dated 13 August 2000. It was the only August 2000 cheque issued by the deceased and that was two days before the second loan was made. The last cheque listed in her para 46 was dated 8 February 2001 and it was issued to Neo Ee Leong for $15,000. February 2001 was not close to the dates of either the third or fourth loans.

84 The defendant was adamant that the company/the plaintiff made the last loan to enable her to pay the outstanding sum due to minority shareholders for the deceased's purchase of their shares. The defendant was equally vehement in her insistence that she had met the plaintiff on 27 June 2002 notwithstanding his and Yeo's denials.

85 It was the defendant's case that after the plaintiff had issued the cheque for the last loan to her, she had in turn issued her own nine cheques totalling $108,000 to pay the minority shareholders. While the company's cheque was dated 27 June 2002 (see AB556) the defendant's own cheques were dated three days later, on 30 June 2002 which was a Sunday. She denied she did not have her own means to pay the minority shareholders even though on her own admission, she wanted to wait for the company's cheque to be cleared before she issued her own cheques. What was strange about the defendant's evidence was the fact that she was able to produce photocopies (at AB552-554) of all nine cheques despite her claim that she handed the cheques to Yeo after her daughter Shu-Pei had written them out. The copies could not have been obtained from the bank (as the defendant initially claimed but subsequently retracted in re-examination) because there were no endorsements to show clearance by DBS Bank. Neither the defendant nor her daughter could explain how the photocopies came about.

86 Questioned why she did not respond to the letter of demand for repayment of the last loan from the company's solicitors (at [33]), the defendant said she ignored it as she felt there was no claim. She was ambivalent in her stand on why she refused to repay the last loan. Queried by the court, she said she did not consider it a gift from the plaintiff but from the father. When counsel for the plaintiff pointed out that the father had already passed away by then, the defendant corrected herself and asserted that the money in any event came from her late father-in-law because it was the company's money. It was her understanding that her husband would never actually have to borrow, beg or steal (see N/E 216), whatever that meant. Pressed by the court for her understanding of the word "advance" in the company's letter to her dated 26 June 2002 (see [27]), the defendant, after some prevarication finally agreed that "advance" meant it had to be repaid. She qualified her answer however by adding "from Oei Boon Wan's account".

87 According to the defendant's older daughter Shu-Yi (who is a lawyer practising in Boston in the United States) there was a meeting that she, Shu-Pei and the defendant attended at the plaintiff's house on 27 August 2002, where he raised the subject of helping the deceased to complete his purchase of shares from the minority shareholders. Earlier [56], I had stated that the plaintiff had no recollection of this meeting. Nothing turns on what transpired at this meeting (if it took place). Shu-Yi's testimony was limited to what the plaintiff reportedly said and she had little personal knowledge of events that had transpired before the wake and funeral of the deceased, while her knowledge of the company was largely based on hearsay.

88 The defendant's sister's testimony was confined to the meeting the defendant and she attended at Yee Hoon's house on 2 June 2002. Soo Wen testified that the plaintiff had raised the subject of the long overdue outstanding balance owed by the deceased to minority shareholders and

appeared anxious that the defendant should settle the amounts. She said she was handed certain documents by Yee Hoon (who disagreed) that were exhibited in her AEIC. What was strange was that Soo Wen took it upon herself to write out an acknowledgement for two out of four documents Yee Hoon purportedly handed to her, but she could not give a satisfactory explanation for her selective action.

The issues

89 The issue that the court has to determine for the first suit is, what was the nature of the amounts the deceased had withdrawn during his lifetime? Were they advances as the plaintiff contended or were they (as the defendant contended) part of the deceased's entitlement, as a joint account holder with the plaintiff? If the deceased was not the beneficial owner of the credit balances, then who owned the credit balances under the names "Tony Oei/Oei Boon Wan" in the company's ledgers when the sums of $870,000 and $110,000 were advanced to the deceased and to the defendant respectively?

90 The issue in the second suit is, was the defendant liable to repay the last loan? If it was a loan made to the defendant by the company, did that amount to "financial assistance" such as to contravene s 76 of the Companies Act?

The findings

91 I would first of all note that none of the plaintiff's witnesses were very certain of the deceased's occupation while he was alive, although Guat Hwa was aware that he had worked for Keppel Shipyard before the deceased went into partnership in a golf equipment business. According to Guat Hwa's understanding from the deceased, he apparently also had a pawnshop business, for which investment he took one of the three loans of $300,000 from the company, reportedly to earn interest, as the loans he took from the company were interest-free. What was common ground was the fact that unlike the plaintiff and Whang, the deceased was the only son of the father who was not involved in the business of the company and he was never appointed its director during his lifetime.

92 Having had the benefit of seeing the defendant in the witness box, I was not at all surprised that there was a strained relationship between the defendant and her late husband's siblings and their family members. The defendant could not have endeared herself to members of the Oei family by her abrasive attitude. Worse, she gave the impression (without basis I would add) that she thought she was a "cut" above the deceased's siblings. I was not impressed with the defendant as a witness. Her testimony under cross-examination was inconsistent with documents before the court, she was sometimes incoherent and often contradictory.

93 It was clear from the documents and from her own cross-examination, that the defendant was fully aware why the last loan was advanced to her. Yet, her former solicitors wrote repeatedly to the company's solicitors to ask for details of the loan when repayment was demanded from her; undoubtedly, it was to delay matters. When her former solicitors finally gave a substantive reply on 19 June 2006 (at [33]) after almost two years' delay, para 1 was evasive to say the least. Contrary to the defendant's denials, I am certain she deliberately failed to apprise her solicitors of details and the reason for the last loan because she did not want to repay the amount. If indeed her defence (at [49]) to the last loan was true, her former solicitors would have immediately informed the company's solicitors instead of saying "Mr Tony Oei is fully aware of what the sum of $110,000 was for".

94 My assessment of the defendant's poor character is supported by another event. Guat Hwa had deposed in para 33 of her AEIC that the defendant had once complained to Yee Hoon in her presence

(which Yee Hoon confirmed) that the father had not treated the deceased fairly as the latter was given less UOB shares than his brothers, not knowing that the deceased had been given the same number of shares as his brothers but had sold them off earlier. This was not challenged or denied by the defendant.

95 In sharp contrast to the defendant, the plaintiff came across as a kindly old man who was good to his siblings particularly the deceased, despite his apparent lack of contact with the deceased and his poor relationship with the defendant. He was also close to his sisters.

96 A significant aspect of the evidence adduced was that unlike the plaintiff's detailed knowledge, the defendant had admitted (at N/E 131) she had no idea why the ledger entries were recorded in the manner shown in the accounts. All that the defendant deposed to in her AEIC on what the three accounts in [40] meant were therefore pure conjecture on her part.

97 It bears noting that from 1999 until now, Yeo had continued the (previous) book-keeper's practice of writing ledger entries relating to the accounts under the names "Tony Oei" (1998-1999) and "Tony Oei/Oei Boon Wan" (1996 to 2003). In court, Yeo had also testified (at N/E 121) that the first trial balance she prepared was for 1999. Based on the trial balance of 1999 and of later years that Yeo prepared, the financial statements and the audited accounts of the company were then prepared. The credit amounts in the two accounts mentioned would appear in the yearly audited accounts as the item *Amounts owed to directors* under the heading OTHER CREDITORS AND ACCRUALS. I am satisfied that the handwritten cash book as well as ledger book entries of the company accurately recorded the credits and debits of the following accounts:

(a) Oei Tok Kek for the period 1994 to 1997;

(b) Oei Tok Kek/Tony Oei for the period 1995 to 1997; and

(c) Tony Oei/Oei Boon Wan for the period 1996 to 2003.

98 The plaintiff's chart marked "A" succinctly set out the full details of the debits and credit entries for all three accounts. It is necessary for the purpose of my findings to recapitulate the movements in the accounts over the years.

99 As of 31 December 1997, Oei Tok Kek's account had a credit balance of $1m which was transferred to the account of 'Tony Oei/Oei Boon Wan". Thereafter, there were no further entries under the account of "Oei Tok Kek".

100 The ledgers under the account "Tony Oei/Oei Boon Wan" first began on 3 April 1996 with a credit entry of $500,000. After that, there were no further entries until 31 December 1997 when the $1m in [99] was transferred from the account "Oei Tok Kek". Thus the credit balance for this joint account was $1.5m as of 31 December 1997.

101 On 6 March 1998 (see [12]), the plaintiff advanced $500,000 of his own money to the company. This credit brought the balance under the account "Tony Oei/Oei Boon Wan" to $2m. Then on 13 August 1999 (see [15]), the plaintiff deposited another $500,000 into the same account so that the credit balance increased to $2.5m. This credit balance was unchanged as at the date of the father's death (12 October 1999).

102 The evidence showed that neither of the two sums claimed in these suits came from the credit balance in the ledger entries under the name "Tony Oei/Oei Tok Kek" or from the account under the

name of "Tony Oei". The second to fourth loans claimed in the first suit (see [35]) as well as the first loan made to the deceased (on 29 December 1999), were all debited to the account "Tony Oei/Oei Boon Wan"; so too was the last loan.

103 So the question which arises is, who was the source of the credit balance of $2.5m? In summary the sources were:

Date	Amount	Source
7 Mar 1996	$500,000	Oei Tok Kek.
31 Dec 1997	$1,000,000	Transferred from Oei Tok Kek's account.
6 Mar 1998	$500,000	The plaintiff.
13 Aug 1999	$500,000	Joint bank account of Oei Tok Kek and his three sons.

104 Taking the defendant's own case that the deceased was beneficially entitled to moneys that belonged to Oei Tok Kek, that meant the plaintiff's loan of $500,000 to the company on 6 March 1998 should be excluded from the deceased's entitlement. There was clear evidence (not challenged by the defendant) that the cheque no. 146418 for $500,000 deposited into the company's bank account came from the plaintiff's personal account with UOB (see AB 274).

105 The plaintiff's closing submission also excluded the $500,000 paid to the company on 13 Aug 1999, on the basis that there was a presumption of advancement in the plaintiff's favour, of the joint account from which the funds came. The UOB cheque issued for this amount was not produced but the plaintiff recalled that the two signatories were himself and the father. The father had pre-signed cheques before he became ill and had instructed the plaintiff to countersign the cheques if the plaintiff needed money. The plaintiff submitted he had a right to use the moneys from the joint account in any manner he chose (relying on *Low Gim Siah v Low Geok Khim* [2007] 1 SLR 795 at 796 holding no. 3).

106 What then of the $1.5m that originated from the father? At law, a debt is a legal chose in action *viz* it is a personal right of property which can be claimed or enforced by action (see *Halsbury's Laws of England* vol 6 (Butterworths, 4th ed, 2003 reissue) (at para 1) and is assignable under s 4(8) of the Civil Law Act Cap 43 1999 Rev Ed ("the CLA"). Did the father intend the right of repayment to the $1.5m to remain solely with him or, did he assign the chose in action to anyone between the time this sum was paid to the company and his demise? If there was no assignment, the right to repayment would have remained with the father and would now vest in his estate. The plaintiff as the executor of the father's estate would have a right of claim. In that event, the sum claimed in the first suit would be repayable to the father's estate, subject to a setoff against the deceased's share as a beneficiary of the estate and the estate duty (totalling $360,000) that the deceased had paid.

107 However, if the father during his lifetime had assigned the right of repayment of the $1.5m, to whom did he assign the right? If indeed there was an assignment of the chose in action, was it a valid assignment at law or in equity? At this juncture, it would be appropriate to look at the relevant law.

The law

108 Section 4(8) of the CLA states:

> Assignment of debts and choses in action effectual to pass right and remedy
>
> Any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law subject to all equities which would have been entitled to priority over the right of the assignee under the law as it existed before 23rd July 1909, to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

109 The above section is *in pari materia* with s 136 of the UK Law of Property Act 1925 ("the U K Act"). *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell 31st edition 2005) states (at para 3-04) that this provision of the UK Act and correspondingly s 4(8) of the CLA, extends to both legal and equitable assignments.

110 For a legal or statutory assignment to take effect, four conditions must be satisfied:

(a) the assignment must be in writing;

(b) the assignment must be absolute;

(c) there must be notice to the debtor; and

(d) there must be notice to the assignee.

It is obvious that none of the above criteria was satisfied in this case. In fact, there was no assignment in writing by the father in the first place. Consequently, I reject the defendant's argument (in para 42 of her closing submissions) that it was a legal assignment by virtue of the handwritten ledgers and audit confirmation letters – those entries and confirmations were not made by the father.

111 The next question that arises is, was there an equitable assignment of the debt?

112 Unlike a legal assignment, the law does not require any particular form for an equitable assignment to be valid. Equity looks to intent rather than form. All that is required is a sufficient expression of an intention to assign (see *Snell's Equity supra* at para 3-13) and that the chose to be assigned is identified. In addition, an equitable assignment does not have to be in writing unless specifically required by statute, such as dispositions of an equitable interest or trust under s 7(2) of the CLA . Even a verbal assignment would suffice (see *Snell's Equity supra* at para 3-16). However, a debt is not an equitable interest. Hence, the assignment of the right to repayment need not be in writing.

113 Value from the assignee would not be necessary either for an equitable assignment, provided the assignor has done everything required to be done to transfer the chose in action. According to *Snell's Equity* (*supra* at para 3-18), value is also not required for other equitable assignments of legal choses in action. Thus an assignment of part of a debt is valid despite the absence of consideration.

According to *Holt v Heatherfield Trust Ltd* [1942] 2 KB 1, an assignment of a legal chose in action will be valid in equity notwithstanding that no notice was given to the debtor under s 136 of the UK Act, since the giving of such notice is not something required to be done by the assignor.

114 The plaintiff's closing submissions pointed out that the key issue was whether the father intended to assign the chose in action to his son. If so, to which son and was the assignment valid?

115 It was the plaintiff's evidence (which the defendant could not challenge because she did not know of the three accounts at the material time) that the father intended any moneys that he (the father) advanced to the company to be repaid to the father and the sons. This was based on the plaintiff's understanding of the father's instructions to the book-keeper (that he overheard) on how the loans were to be recorded. It was only after Whang's demise (on 23 August 1995) that the father created a new account on 18 December 1995 under the names "Oei Tok Kek/Tony Oei" with a credit entry of $200,000. This was followed by the opening of the account "Tony Oei/Oei Boon Wan" by the father on 3 April 1996 with a credit entry of $500,000. However, both the plaintiff and the defendant under cross-examination (at N/E 223) agreed that while the father was alive, he could take back all the moneys in the various accounts as that was his prerogative. Hence, the naming of the accounts in itself was not conclusive.

116 The plaintiff submitted that it was more likely than not, that the father intended (in the event the father predeceased him) that the plaintiff should have priority to and the benefit of the chose in action. The deceased would only get the benefit if the plaintiff predeceased him.

117 Although no notice of the assignment was given to the debtor (*viz* the deceased), the plaintiff's closing submissions stated that notice was given to the plaintiff prior to the father's death. The plaintiff became aware of the ledger entries when he was reappointed a director of the company in 1998 and that constituted sufficient notice to him to complete the equitable assignment.

118 In contrast, the plaintiff submitted, there was no evidence whatsoever that the deceased had notice of the assignment. Indeed, the evidence was to the contrary. It was not the defendant's case that the deceased was told at any time before the father's death that the credit balances in the account "Tony Oei/Oei Boon Wan" had been assigned to him. In fact, there was no evidence that the deceased was even aware of the existence of the ledgers or of the audit confirmation reports. This meant that the father had never informed the deceased of the various accounts or that the deceased's name was included in one of them. Neither did the defendant herself know until after these proceedings began and she found out in the discovery process.

119 The plaintiff's closing submissions pointed out that the payment vouchers signed by the deceased to acknowledge the four loans were executed *after* the father's death and could not possibly constitute an effective notice of assignment.

120 In addition to [115] to [119] above which points were raised in the plaintiff's submissions, another significant piece of evidence was the fact that the deceased himself did not think there were moneys in the company in which he had an interest. He had asked to borrow from the plaintiff, not from his entitlement in the company. The deceased was unlikely to have signed payment vouchers acknowledging he had taken advances if he thought he had a right to the moneys borrowed.

The decision

121 Based on the manner in which the father created and operated the three accounts, I accept the plaintiff's submission that the father intended the plaintiff to have the sole benefit of the accounts in

the event the father died. The father was a traditional and patriarchal figure. The father believed in the hierarchy of the eldest son having priority before younger sons and he valued sons above daughters. It was only when his eldest son Whang predeceased him, that the father focussed his attention on the plaintiff. Had Whang not died earlier, I very much doubt the father would have made the plaintiff the executor of his Will. Instead, the father would have appointed Whang and would have given all his shares in the company and in SLC Private Limited to Whang, not the plaintiff.

122 I am also satisfied that all the necessary requirements for a valid equitable assignment have been fulfilled *viz*. the intention to assign on the part of the father, the legal chose in action was identified and there was sufficient notice to the plaintiff as the assignee.

123 As my finding disposes of the issue in the first suit, there is no necessity to go on to consider whether the account "Tony Oei/Oei Boon Wan" was a joint tenancy or a tenancy-in-common although the evidence and intention of the father pointed to the former as being the more likely.

124 It follows from my finding in the first suit that the defendant is liable to pay the plaintiff for the last loan in the second suit. Even if I am wrong in my finding in the first suit and the account "Tony Oei/Oei Boon Wan" was a joint tenancy, the fact remains that the last loan was extended on 27 June 2002, after the demise of the deceased (14 April 2002). Under the rule of the right of survivorship in a joint tenancy, all the interest in the credit balances vested in the plaintiff upon the death of the deceased.

125 There remains only the issue of the purpose of the loans to be dealt with, in tandem with the defendant's contention that the sums she and her late husband borrowed were used to buy shares in the company and constituted "financial assistance" under s 76(1) and thereby contravened s 76(5) of the Companies Act (*supra* [44]).

126 Section 76 of the Companies Act state:

(1) Except as otherwise expressly provided by this Act, a company shall not —

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —

(i) the acquisition by any person, whether before or at the same time as the giving of financial assistance, of —

(A) shares or units of shares in the company; or

(B) shares or units of shares in a holding company of the company ; or

(ii) the proposed acquisition by any person of —

(A) shares or units of shares in the company ; or

(B) shares or units of shares in a holding company;

(b) whether directly or indirectly, in any way —

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company of the company ; or

(c) whether directly or indirectly, in any way, lend money on the security of —

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company of the company.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise.

127 As was correctly pointed out in the plaintiff's submissions (at para 145) the issue of financial assistance only arises if the loans were made by the company. On the facts, it is clear that the loans of $870,000 and the last loan of $110,000 were *not* made by the company but by the plaintiff because the amounts were debited against the account "Tony Oei/ Oei Boon Wan". The defendant herself conceded this in the course of cross-examination (at N/E 140). Consequently, s 76 of the Companies Act has no application.

128 In the light of my comments in [78], [82] to [83] above, I agree with the plaintiff's submission (at para 161) that this alleged defence was no more than an *ex post facto* attempt to find a basis for the defendant's refusal to repay the loans claimed. Moreover, the figures put forth by the defendant for the first suit did not add up.

129 To elaborate, in the course of cross-examination (at N/E 149), counsel for the plaintiff had handed to the defendant a chart marked "B" with the following workings (relating to the second and third loans of $600,000):

15.8.00	300,000	
25.9.00	300,000	600,000
Partial reimbursement of estate duty		(96,000)
Financial assistance to purchase		
Shares from minority		(504,000)
		600,000
14.2.02	270,000	270,000
Reimbursement of balance of $120,000 estate duty paid by Oei Boon Wan		(24,000)
($120,000 - $96,000 = $24,000)		
Full reimbursement of $240,000		
Estate duty paid by Oei Boon Wan		(240,000)

$6,000

The defendant was unable to explain the excess of $6,000.

130 In this regard. I wish to address the hotly disputed issue of a meeting that the defendant insisted took place on 27 June 2002 at the house rented out to Eversafe but which both Yeo and the plaintiff denied attending. I found it strange, even if the defendant still retained a set of keys to the house, why the plaintiff would want to meet her at the house when he had met the defendant earlier at the company's premises, he met her subsequently at Yee Hoon's house and (according to the defendant) he met her a third time at his house.

131 I disbelieve the testimony of the defendant and her younger daughter that a meeting with the plaintiff took place on 27 June 2002, never mind the venue. It makes no difference to my findings whether another meeting did or did not took place on 2 June 2002 between the parties (as Soo Wen claimed at [88]) and whether Yee Hoon did or did not hand certain document to Soo Wen then. It seemed to me highly unlikely that the meetings on 2 June, 27 June and 27 August 2002 took place because the plaintiff had already briefed the defendant (and her older daughter Shu Yi) earlier on 22 April 2002, so there was no need to repeat the process again and more than once at that.

132 I accept the plaintiff's evidence that he met the defendant and her daughter Shu-Yi on 22 April 2002 (see [56]). It is noteworthy that neither the defendant nor Shu-Yi referred to this meeting at all in their AEICs. To prove the meeting did indeed take place, the plaintiff had produced (at exhibit P1) Shu-Yi's acknowledgement to the following note he had prepared in order to enable him to brief them:

> Received copies of the following documents on 22 April 2002 from Tony Oei:
>
> 1 List of shareholders of Siong Guan Co Pte Ltd;
>
> 2 List of shareholders of SLC Pte Ltd;
>
> 3 Last Will and Testament of Oei Tok Kek.

Confronted with her signature on exhibit P1, Shu-Yi admitted a meeting did take place on 22 April 2002. Cross-examined on why her AIEC omitted mention of the meeting, her wholly unconvincing explanation (at N/E 235) was as follows:

> Erm because I was asked to testify on…let me makes clear…I was asked to testify on whether I knew…I was asked to testify on whether I knew whether 1st plaintiff had knowledge of the fact that the monies that were transferred to my father, erm, were used to purchase Siong Guan shares and that was what I was asked to testify about, erm and, in all honesty, I don't remember whether that subject came up on the April 22nd meeting.

As for the defendant, she had referred to part of exhibit P1 in her AEIC and produced it in her exhibit TSS-13. Her reference was to the plaintiff's handwritten note (that he handed to Shu-Yi) where he had set out the father's shareholding (590,000) in the company and the three sons' original shareholding of 100,000 shares each. The plaintiff had then added the following note.

> Boon Wan 100,000

Buy over:

Neo's group	135,000)	
Ng Tian Hoe	80,000)	
Ng CB's group	105,000)	Advance money
Loh's group	20,000)	
	340,000	
Total is	440,000	

The defendant orally amended her AEIC (para 70) in court (at N/E 128) to say that the above note was handed to her on 27 June 2002, notwithstanding her daughter's acknowledgment on 22 April 2002. According to the defendant her daughter had a "different understanding" of the handwritten note. During cross-examination (at N/E 182), the defendant sought to explain her omission (and Shu-Yi's) of this meeting from the AEICs with the lame excuse that 22 April 2002 was too close to the death of "our husband/ the father" and all three of them could not remember. Again, I prefer the plaintiff's testimony in this regard and find that the meeting between the parties took place on 22 April 2002.

133 I disbelieve the defendant's claim that the last loan was extended to enable her to complete the deceased's purchase of shares from the minority shareholders even if that was her real motive and not what she told the plaintiff at [26] *viz*. she had a lot of expenses to cover. Similarly, I reject her submission (at para 105) that $108,000 from the last loan was "earmarked" and severed from the rest of the moneys in the account "Tony Oei/Oei Boon Wan" just before the deceased's death, for the specific purpose of enabling the deceased to complete his purchase of shares from the minority shareholders. There was no basis for this submission and it completely ignored the defendant's unqualified acknowledgement (in P3) when she faxed back the company's letter dated 26 June 2002 (at [27]) confirming that the last loan was an advance to her, like the previous loans to the deceased.

134 What likely did happen (as the plaintiff's closing submission at para 227 surmised) was that at the meeting on 22 April 2002, the plaintiff made known to the defendant the deceased's existing shareholding of 100,000 shares in the company. She was also made aware of the fact that the deceased still owed a sum of $108,000 for the additional 340,000 shares he had bought from the minority shareholders. The defendant decided she would complete the deceased's purchase but she was not willing to pay the outstanding purchase price from her own pocket or from the estate of the deceased. She revealed her true character in the following extract from her cross-examination (at N/E 193):

A: Even if I have $10 in my cheque book, why sh… it is not for me to ensure that I make the payment. It has nothing to do with my money, I'm an administrator of the estate.

Q: And these are shares…

A: So…

Q: …which your late husband….

A: Yes

Q: …had agreed to purchase, and as administrator of his estate, you should honour his legal obligations.

A: Of course, but it is with the….the….the money taken from Siong Guan to complete the act, so I don't see why it should be complicated with my own state of, uh, financial soundness or whatever. It's…the…it's totally irrelevant and nobody has a right to look into my account just because you want to finish business some…on some issues. Because you provided for it, what…what has that to do with my financial state?

135 I find that the defendant decided to approach the plaintiff for the last loan to pay the required $108,000 but couched her request generally and rounded up the figure to $110,000. She felt that the obligation to pay the outstanding purchase price should be borne by members of the deceased's family. She did not want her inheritance (which was half of the deceased's estate pursuant to Rule 2 under s 7 of The Intestate Succession Act Cap 146 1985 Rev Ed) to be reduced by $108,000 let alone by another $870,000.

136 For completeness, I shall deal with the issue of estate duty paid by the deceased for the father's estate. The two suits were instituted by the plaintiff in his personal capacity *not* as the executor of the father's estate. The defendant is therefore not entitled to set off the estate duty payment of $360,000 against either claim. It is for the defendant as the legal representative of the deceased, to make a claim for reimbursement of the $360,000 from the plaintiff in his capacity as the legal representative of the father's estate.

Conclusion

137 Accordingly, I award judgment to Oei Tjiong Bin in the first suit in the sum of $870,000 and judgment in his favour in the second suit in the sum of $110,000 against the defendant together with interest at 5.33% from the dates of the writs of summons, with one set of costs on a standard basis to the plaintiffs for both suits.