

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 74

Suit No 1142 of 2013

Between

- (1) Koh Ai Gek
- (2) Tan Weiyang (executor and trustee of the estate of Tan Tiong Luu, deceased)

... *Plaintiff(s)*

And

Geok Hong Company Private Limited

... *Defendant(s)*

And

Geok Hong Company Private Limited

... *Plaintiff(s) in Counterclaim*

And

- (1) Koh Ai Gek
- (2) Tan Weiyang (executor and trustee of the estate of Tan Tiong Luu, deceased)

... *Defendant(s) in Counterclaim*

And

- (1) Tan Wei Chieh
- (2) Tan Wei Hsien
- (3) Tan Weiyang
- (4) Zhang Zhaoling
- (5) Tan Weiyang (sued as the executor and trustee of the

estate of Tan Tiong Luu,
deceased)

... *Third Party(s)*

GROUND OF DECISION

[Trusts] — [Constructive trusts] — [Common intention constructive trusts]
[Equity] — [Estoppel] — [Proprietary estoppel]

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Koh Ai Gek and another
v
Geok Hong Co Pte Ltd
(Tan Wei Chieh and others, third parties)

[2018] SGHC 74

High Court — Suit No 1142 of 2013

Pang Khang Chau JC

17 – 19, 22 – 26, 29 – 31 August, 1 – 2 September, 17 November 2016, 29

August 2017

2 April 2018

Pang Khang Chau JC

Introduction

1 The defendant, Geok Hong Company Private Limited (“the Company”) held the legal title to a house at 17 Glasgow Road (“the Glasgow Road Property”). Being a family-owned company, all the directors of the Company at the time the dispute arose were siblings. One of these directors, the late Mr Tan Tiong Luu (“TTL”) had been staying in the Glasgow Road Property with his wife and children as their family home since the 1970s. TTL claimed that he was entitled to the Glasgow Road Property by reason of a common intention constructive trust or proprietary estoppel. He passed away on 9 November 2012.

2 The 1st plaintiff, Koh Ai Gek (“KAG”), is the widow of TTL and the person to whom TTL had specifically bequeathed the Glasgow Road Property in his will. The 2nd plaintiff, Tan Wei Yang (“TWY”) is the third son of TTL and the executor of TTL’s will. The plaintiffs claimed the Glasgow Road Property on behalf of TTL’s estate. The Company counterclaimed against the plaintiffs for delivery of vacant possession of the Glasgow Road Property and for damages. The Company also sought the same reliefs, by way of third party proceedings, against the other family members of TTL residing at the Glasgow Road Property.

3 I allowed the plaintiffs’ claim and dismissed the Company’s counterclaim and claims against the third parties. The Company has appealed.

Summary of the plaintiffs’ case

4 The plaintiffs claimed that the Glasgow Road Property was bought by TTL’s father, the late Mr Tan Geok Chuan (“TGC”) in 1975 for TTL. TGC decided to put the Glasgow Road Property in the Company’s name to avoid the possibility of KAG claiming a share in the Glasgow Road Property should her marriage with TTL break down. A similar arrangement was made in relation to TGC’s own family home at Surin Lane (“the Surin Lane Property”) which was originally held in the name of TTL’s eldest brother, Tan Tiong Wah (“TTW”). Legal title to the Surin Lane Property was transferred to the Company at TGC’s direction soon after TTW got married.

5 TGC made this arrangement for TTL because he was the main person helping TGC with the business of the Company and also because, by staying behind to help with the business of the Company, TTL made it possible for his younger siblings to have the opportunity to study abroad. Although TTL had

two elder brothers who were also working for the Company, TTL played a more significant role as he was the only one among them with good command of the English language. TTL's key role in the Company was evidenced by the fact that TTL was, at that time, drawing the same salary as TGC, which was roughly 40% higher than what his two elder brothers were drawing. TTL was also the only one among his siblings to be appointed as a director to all the family-related companies.

6 When TTL and KAG applied to buy a flat from the Housing and Development Board ("HDB"), TGC discouraged TTL from buying the HDB flat, explaining that TTL already had the Glasgow Road Property which was held on trust for TTL by the Company. Apart from property tax and insurance which were paid by the Company, all other expenses relating to the Glasgow Road Property were paid by TTL. Over the years, TTL and KAG made various improvements to the Glasgow Road Property. These include major earthworks such as filling in the pond in front of the house and changing the gradient of the driveway. It also included installing flushing toilets in the house and laying sewerage pipes under the land to connect the Glasgow Road Property to the public sewerage system when the neighbourhood converted from the night soil system to modern sanitation.

7 The directors of the Company were aware of these improvement works (since, as TTL's siblings, they would have visited the Glasgow Road Property from time to time) and had acquiesced in TTL expending his own money on the Glasgow Road Property in this way.

8 TTL contracted liver cancer in 2012. During the final fortnight of his life, after a visit by some of his siblings, TTL became agitated and told his

children that his siblings refused to “return” the Glasgow Road Property to him and had instead asked TTL to go and die quickly. (TGC had passed away in 1990, so the only persons who could effect a transfer of legal title from the Company to TTL would be his siblings who were also fellow directors of the Company.) TTL informed his children that he wished to make a statement in front of a commissioner for oath and lodge a caveat against the Glasgow Road Property. A statutory declaration (“the SD”) was made that same evening outlining TTL’s version of events concerning Glasgow Road Property. A caveat was lodged against the Glasgow Road Property five days later. TTL passed away nine days after the SD was made. About three weeks preceding the said visit by TTL’s siblings and the making of the SD, TTL had made a will bequeathing the Glasgow Road Property *in specie* to KAG, referring to it in the will as “my house”.

Summary of the defendant’s case

9 The Company submitted that there was no credible evidence of the representations TGC was alleged to have made to TTL and/or KAG. TTL’s SD was a self-serving document which was inadmissible under the rule in *Shephard v Cartwright* [1955] AC 431 (“*Shephard v Cartwright*”).

10 KAG was disliked by TGC and his wife because they disapproved of her marriage to TTL. It was therefore improbable that TGC would have made the alleged special arrangement in respect of the Glasgow Road Property for TTL’s benefit.

11 The overall conduct of the family members showed that TGC bought the Glasgow Road Property for the benefit of the family as a whole. The fact that TGC ensured, in his later years, that each of his children would have a similar

share in the Company was evidence that TGC intended that each of his children should get a similar share of the Company's assets through the ownership of shares in the Company.

12 TTW and his wife also resided at the Glasgow Road Property, the latter until she divorced TTW and left the family in 1981 and the former until he was committed to the Institute of Mental Health ("IMH") in 1993. The Glasgow Road Property was used to store the Company's goods and, in later years, was used by Tan Tiong Hin ("TTH"), TTL's second brother, to store goods for his other businesses. Tan Tiong Seng ("TTS"), TTL's fourth brother, also ran a *bakkwa* business out of an enclosed metal shelter at the back of the house for several years. ("*Bakkwa*" is a dried meat product similar to jerky which is made from pork.) This shows that the Glasgow Road Property was never intended for TTL's exclusive benefit.

13 Further, TTL had not relied on the alleged representations to his detriment. The improvements done to the Glasgow Road Property were either undertaken or paid for by the Company or, to the extent they were undertaken and paid for TTL, of too trivial a nature. TTL did not withdraw his HDB flat application in reliance on any assurance by TGC that the Glasgow Road Property belonged to TTL. TTL withdrew his HDB flat application either because he was cash-strapped or because he did not like the location of the available flats. On the contrary, TTL had benefited by being allowed to stay rent-free in the Company's property for 40 years.

14 TTL's delay in bringing forth his claim had caused prejudice to the Company such that TTL's claim was barred by the doctrine of laches. Significantly, TTL did not raise his claim to the Glasgow Road Property when

TGC made a will which did not mention the Glasgow Road Property nor did TTL do so when TGC passed away.

Procedural and evidentiary issues

15 A number of procedural and evidentiary points arising in these proceedings can conveniently dealt with preliminarily in this section of the judgement before I proceed to consider the facts and the law in detail. To give context to the discussion in this section of the judgment, I should mention that all the plaintiffs and third parties appeared in these proceedings as litigants-in-person.

KAG's standing

16 The suit was commenced on 13 December 2013 with KAG as the sole plaintiff. She was then represented by the Legal Aid Bureau. In May 2014, the Company applied to strike out the statement of claim on the ground, *inter alia*, that KAG had no standing to sue as she was merely a beneficiary under TTL's will. The application was dismissed. Although the Company appealed, it would appear from the court records that the appeal was pursued on other points, and that the point about KAG's standing was not taken up on appeal.

17 When I first saw parties at a pre-trial conference just before the commencement of the trial, KAG was still the sole plaintiff. By that time, legal aid had been withdrawn from KAG and she was acting in person. At that point in time, TWY's involvement in the case was only as a third party brought in by the Company. (TWY was sued in his personal capacity as the 3rd third party and in his representative capacity as the 6th third party.) I expressed doubts about KAG's standing to bring a claim on behalf of TTL's estate as she was

merely a beneficiary under TTL's will and not the personal representative of TTL. I directed parties to address their minds to the issue and resolve it by the commencement of trial as I did not wish parties to go through a three-week trial only to have the case disposed of solely on the question of KAG's standing.

18 On the morning of the first day of trial, TWY applied to be joined as co-plaintiff. As TWY, being the executor of TTL's will, was a proper plaintiff, the Company did not object to TWY's application in-principle. Instead, the Company sought only to be compensated for costs arising from joinder of TWY as a co-plaintiff. I therefore granted TWY's application while ordering costs in favour of the Company. (Despite this change in the capacity of TWY in these proceedings, the transcript of the trial continued to refer to TWY throughout as the 3rd and 6th third party.)

19 With TWY joined as a plaintiff, the issue of KAG's standing became moot. I therefore decided not to pursue the issue of whether KAG should continue to remain a co-plaintiff, especially since the Company did not apply to me to strike KAG off as a plaintiff.

Removal of TWC as the 5th third party

20 TTL's will appointed Tan Wei Chieh ("TWC"), his second son, and TWY as joint executors. On 8 September 2014, after the commencement of these proceedings, TWC resigned as executor, leaving TWY as the sole executor. As joint executor with TWY, TWC was sued by the Company in his personal capacity as the 1st third party and in his representative capacity as the 5th third party. TWC's resignation was brought to the court's attention on the fifth day of trial when TWC applied to be removed at the 5th third party. As TWC's application was not opposed by the Company, I allowed TWC to be

removed as the 5th third party. He continued to remain as the 1st third party in these proceedings.

Authenticity of annotations on receipt issued by M/s Boswell, Hsieh & Lim

21 Twelve days before trial (and two years after general discovery), the Company filed a supplementary list of 31 documents. The Company’s evidence was that, despite efforts over the past two and a half years to search for relevant documents, TTS chanced upon these documents at the bottom of a wooden box at the Surin Lane Property about a month before commencement of trial. (The Surin Lane Property was TGC’s family home. At the time of trial, TTS was one of the residents of the Surin Lane Property.)

22 Some of these belatedly disclosed documents were intended to substantiate TTS’s claim that he was running a *bakkwa* business from the Glasgow Road Property in the 1990s. This claim of TTS will be discussed at [110]-[115] below. For the purposes of the present discussion, the three relevant documents are:

(a) The Company’s payment voucher dated 27 October 1975 indicating that a payment of \$11,000 was made by Industrial & Commercial Bank (“ICB”) cheque number 089090. The payment voucher described the payee as “Property”, giving the particulars of payment as “Being payment of deposit to property”.

(b) A receipt dated 27 October 1975 made out by the law firm M/s Boswell, Hsieh & Lim (“Boswell”) to TTL acknowledging receipt of \$11,000 for the Glasgow Road Property. The receipt carried an annotation “ICB YCK 089090” below the figures “\$11,000”.

Significantly, there was an annotation “(Geok Hong)” immediately after TTL’s name on the receipt in a different handwriting from that with which the rest of the receipt was written. Further, the annotation “(Geok Hong)” was written in light blue ink while the rest of the receipt was written in dark blue ink (except for the signature on the receipt, which was also made in light blue ink).

(c) A bank statement from ICB’s Yio Chu Kang Road branch showing that \$11,000 was withdrawn on 27 October 1975 via cheque number 89090.

Notably, this supplementary list of documents did not disclose a copy of the ICB cheque number 089090 or its cheque butt.

23 The plaintiffs challenged the authenticity of the payment voucher and the authenticity of the annotation “(Geok Hong)” in the receipt from Boswell. In other words, the plaintiffs took the view that:

- (a) the receipt was evidence that Boswell received \$11,000 from TTL as deposit for the purchase of the Glasgow Road Property; and
- (b) the receipt had been tampered with through the subsequent addition of the annotation “(Geok Hong)” to give the impression that the \$11,000 deposit was paid by the Company instead of by TTL.

24 The Company suggested that, since the signature on the receipt was also in light blue ink, the annotation “(Geok Hong)” could have been made by the employee of Boswell who signed the receipt.

25 In response to the plaintiffs’ challenge over the authenticity of the payment voucher, the Company tendered the entire file containing receipts and payment vouchers from 1 October 1975 to 31 November 1975, in which the payment voucher in question was found. Thereafter, the plaintiffs did not persist with their challenge over the payment voucher but continue to press their challenge over the annotation “(Geok Hong)” in the Boswell receipt.

26 I directed parties to send the Boswell receipt to the Health Sciences Authority (“HSA”) for forensic examination. The HSA indicated that, while they were able to determine if the annotation “(Geok Hong)” and the signature on the receipt were made using the same type of ink, they could not determine the date on which the handwritten entries were made. After forensic examination, HSA’s conclusion was that the annotation “(Geok Hong)” and the signature on the receipt were *not* made from the same type of ink.

27 The Company submitted that this finding did not show that the annotation “(Geok Hong)” was written in a different time period from the signature on the receipt, and “the *possibility* remains open that the words “(geok hong)” were added at the same time period as the signature.” [emphasis added] While the Company’s submission is technically correct as far as possibilities go, the court assesses evidence on the basis of probabilities and not possibilities. In my view, the conclusion in HSA’s report renders it:

- (a) less probable that the annotation “(Geok Hong)” was made by an employee of Boswell; and
- (b) more probable that the annotation “(Geok Hong)” was inserted subsequently.

Overall, this finding by HSA renders it difficult for the court to give full credence to either side's submission concerning the inferences which should be drawn from the document.

Evidence of Madam Ong Bah Chee

28 The Company called the 97-year-old widow of TGC, Madam Ong Bah Chee ("OBC") as a witness to testify that:

- (a) the purchase of the Glasgow Road Property was done in consultation with her and it was not a decision taken solely by TGC;
- (b) one reason TGC and OBC decided to purchase the Glasgow Road Property was that the Surin Lane Property had become crowded;
- (c) OBC's understanding was that the Glasgow Road Property was not for the sole benefit of TTL but was meant for all her children to share;
- (d) it was not possible that TGC would have made representations to TTL about the Glasgow Road Property and kept it a secret from OBC;
- (e) OBC and TGC would not have given the Glasgow Road Property to TTL as they were angry and disapproving of TTL's relationship with KAG.

29 OBC gave evidence in a mixture of Mandarin and Hokkien through a court interpreter. For the major part of her time on the witness stand, OBC's evidence was incoherent. For example, during re-examination, OBC was not able to distinguish between her sons and between her daughters in law. When the Company's counsel asked OBC about TTW's wife, OBC answered with a

description of TTL's wife, KAG. When asked about the wife of Tan Tiong Khong ("TTKKhong"), Lian Neo, OBC responded with the non-responsive comment that Lian Neo was still alive. When asked whether she approved of TTKKhong's marriage to Lian Neo, OBC responded that he had not married Lian Neo. Also, at one stage during cross-examination, OBC denied that TTL and KAG were married.

30 OBC's AEIC painted the picture that it was OBC who initiated the decision to invest in the Glasgow Road Property, that she went to view the Glasgow Road Property with TGC *before* the purchase was made, and that the decision to purchase Glasgow Road Property was made jointly by OBC and TGC. However, in response to my questions to her on the witness stand, what OBC said totally contradicted the contents of her AEIC. She said she went to view the Glasgow Road Property only *after* the purchase was completed. She also denied that TGC discussed the purchase of the Glasgow Road Property with her before the purchase was made. Her answers also revealed that the decision to purchase Glasgow Road Property was TGC's unilateral decision. In the circumstances, it was impossible for me to give any weight to OBC's evidence.

31 This is quite apart from the fact that some parts of her AEIC simply did not tally with the facts – *eg*, her claim that the Glasgow Road Property was purchased because the Surin Lane Property was getting crowded and the Glasgow Road Property was meant for all her children to stay is inconsistent with the fact that the Glasgow Road Property had been occupied solely by TTL's family for many years with none of TTL's siblings requesting to move from the Surin Lane Property to the Glasgow Road Property.

32 Despite OBC's general incoherence and haziness, there were three points on which OBC was surprisingly clear, firm and adamant when on the witness stand, and which she repeated again and again, even in response to questions which were not relevant to these points. These three points were:

- (a) the property belonged to the Company;
- (b) the property was meant for everyone in the Company to stay;
- (c) KAG came to stay with TTL's family by herself and refused to leave, and OBC did not like KAG.

I set out some examples below:

Q Okay. Are you aware that Mr Tan Tiong Luu has been residing in the Glasgow property?

A Yes.

Q The plaintiff---

A When his father was alive, *everybody could stay there*.

...

Q Are you aware that TTL and Mdm Koh are married?

A *That property belongs to the company. It doesn't belong to Tan Tiong Luu.*

Q Yes.

A *His wife came there by herself. We did not bring her there.*

...

Court: And Tan Tiong Luu's relationship with your husband?

Witness: My husband was the father. Tan Geok Chuan was the father. Tan Tiong Luu was the s---child.

Court: Were they close? Were they relationship close?

Witness: There were never disputes between them. *Koh Ai Gek followed by herself. We did not bring her there. Koh Ai Gek wu---wu---wu---was in Jurong Changi[sic]. She followed here by herself.*

[emphasis added]

33 In the light of the foregoing, I could not help but harbour a strong suspicion, from the manner OBC would reflexively regurgitate one of these lines in a rehearsed manner when triggered by certain keywords in the questions posed to her (even though the questions, if she had understood them, would not call for such answers), that OBC had been coached by representatives of the Company and had those lines drilled into her.

Authenticity, admissibility and reliability of TTL's SD

34 The full text of TTL's SD dated 30 Oct 2012 reads:

1. I have 2 elder brothers and 5 younger siblings.
2. My dad bought a house at 3 Surin Lane Singapore for my eldest brother, Tan Tiong Wah, the property was registered under his name, Tan Tiong Wah ("hereinafter called "the eldest brother"). My whole family (i.e. my parents and 6 siblings, my eldest brother, his wife and myself) were staying at 3 Surin Lane Singapore. My eldest brother was not having a good relationship with his wife at that time. My dad then told me to transfer the house at 3 Surin Lane under company's name, GEOK HONG (hereinafter called "the Company") so that in the event of a divorce, my eldest brother's wife would not get to share the property. I followed my dad's instructions and transferred the house at 3 Surin Lane under the company's name with my eldest brother's consent. One of my the other brother, Tan Tiong Heng, got a HDB flat at Toa Payoh after he was married and moved out of the house at 3 Surin Lane.
3. Around that time, Dean, the original owner of the house at 17 Glasgow Road, offered me to buy his house. I discussed with my Dad about this and he told me that he would buy the

house at 17 Glasgow Road for me since I will be staying behind and I am the main person handling the business to allow my younger siblings the opportunity to study abroad. However, he told me to put my house at 17 Glasgow Road under the company's name so that after I my marriage and in the event of a divorce, my wife would not get to share the property. Myself and my wife then moved into the house at 17 Glasgow Road. My father also instructed me to put all of my savings and bonuses I received from Tong Bee finance into the company.

4. When the HDB started selling flats, my wife and myself have applied with HDB to buy a flat. After my father learnt of this, he told me specifically that I should not buy a flat since I already have a house at 17 Glasgow Road. The company is only holding the house at 17 Glasgow Road in trust for me, Tan Tiong Luu. He instructed me not to apply for the HDB flat. I managed to convince and assure my wife that the house at 17 Glasgow Road will belong to us as long as she stays with me. My wife and I then withdrew our application for a HDB flat with HDB.
5. Sometime later, my siblings chased my eldest brother and his wife out of the home in 3 Surin Lane after a nasty quarrel, my wife and I agreed to take my eldest brother and his wife in to stay with us (me, my wife and sons) in my house at 17 Glasgow Road. Subsequent my eldest brother's wife left him. My eldest brother was sometime later admitted to Mental Hospital.
6. All of my younger siblings got their own house subsequently. All of them however, continued to stay in the house at 3 Surin Lane together with my parents. To my knowledge, all the bills at the house located at 3 Surin Lane are paid for by the company.
7. All bills, except the property tax and insurance, for my house located at 17 Glasgow Road are paid by me and my family (wife and sons). My siblings have also stopped paying me my salary from the company, sometime back around the year 1990 as they has claimed that my salary is used to pay back the company for the property tax and insurance for my house at 17 Glasgow Road.
8. Now that I am ill, I want to ensure my house at 17 Glasgow Road will be transferred to my wife, Koh Ai Gek, as I have willed my house to my wife.
9. I empower my wife, KOH AI GEK (NRIC XXXXXXXXXX) to deal with all of my affairs (including property and financial

matters), if ever I lack the mental capacity in making decisions.

Whether TTL's SD was a fabrication

35 The Company suggested that TTL's SD was a fabrication, giving the following reasons:

- (a) TTL was no longer in a conscious state when his siblings visited him on 30 October 2012, and thus could not have the mental capacity to make the SD.
- (b) Para 1 of the SD spelt TTH's name as "Tan Tiong Heng" instead of "Tan Tiong Hin". It was odd that TTL could get his brother's name wrong.
- (c) The reference to "Tong Bee finance" instead of "Tong Bee Company" in para 3 of the SD was an unlikely mistake for TTL to make if indeed he was of full capacity when he made the SD.

(1) Alleged misspelling of TTH's name in the SD

36 TTH's name was spelt in para 1 of the SD as "Tan Tiong Heng" even though it was spelt in official documents as "Tan Tiong Hin". This discrepancy was taken up by the Company's counsel in the cross-examination of TWC in the following exchange (TWC cross-examined on this point because he claimed to be the person who wrote out the SD at TTL's dictation):

- Q And you have personal knowledge of the name of Mr Tiong Hin. Did it---it appears to the defence that this is a very odd occurrence that Mr TTL got the brother's name wrong. Do you recall what caused this?
- A Er, Your Honour, actually, er, I couldn't recall what's the reason, er, but I just, er, follow my dad's instruction.

- Q When you say you followed Mr TTL's instructions, Mr TL gave you the spelling?
- A Yes.
- Q Did you then know the actual spelling of Tiong Hin's name?
- A Er, Your Honour, actually, that time I---I didn't check. Er, I was rushing. I---I---I can't remember. I---I don't think I checked.

37 In my view, nothing really turned on this. Both “hin” and “heng” are accepted pronunciations in Chinese dialects for the last character in TTH's name, which is written in Chinese as “兴”. (See TGC's obituary exhibited in KAG's AEIC for the Chinese names of all of TGC's children.) In fact, according to the transcript of the trial, both TTS and Victor Teo (who claimed to be TTH's “blood brother”) referred to TTH as “Tan Tiong Heng”. In all likelihood, TWC was not aware of the official spelling of his uncle's name, and he simply wrote TTH's name in the SD according to how he heard TTL pronounce the name when TTL dictated the contents of the SD to him.

(2) Monies from the Tong Bee companies

38 According to para 3 of TTL's SD, after informing TTL that TGC would buy the Glasgow Road Property for TTL while putting the legal title in the Company's name to avoid future complications should TTL's marriage breakdown, TGC also instructed TTL “to put all of [TTL's] savings and bonuses [he] received from Tong Bee finance into [the Company]”.

39 TGC's family had ownership interest in three companies bearing the name “Tong Bee” – Tong Bee Company Limited (“Tong Bee Company”), Tong Bee Company (1988) Limited (“Tong Bee (1988)”) and Tong Bee Finance Company Limited (“Tong Bee Finance”) (collectively, the “Tong Bee

companies”). TTS gave the following evidence concerning the Tong Bee companies:

(a) The shares in Tong Bee Company were owned by the male members of TGC’s family and another family owned company called Geok Hong Realty Pte Ltd (“Geok Hong Realty”), while Tong Bee Finance was a subsidiary of Tong Bee Company.

(b) Therefore, compared to the family members’ shareholdings in Tong Bee Company, no members of the family had a significant share in Tong Bee Finance and thus no members of the family received significant dividends from Tong Bee Finance.

(c) The reference to “Tong Bee finance” instead of Tong Bee Company was therefore “an unlikely mistake for TTL to make in his own statutory declaration if he had full capacity to do so at the time of signing on 30 October 2012”.

40 TTS also gave a tabulation of the dividends declared in 1989, 1991 and 1993 upon the members’ voluntary winding up of Tong Bee Company to demonstrate that there was no record of the Company receiving from TTL, in those three years, any amount corresponding to TTL’s share of the said dividends.

41 I had two observations to make. First, Tong Bee Company was a holding company while the operational and revenue-generating arm of the group was Tong Bee Finance. It would therefore not be reasonable to read too much into TTL’s reference to Tong Bee Finance instead of Tong Bee Company in his SD when discussing the monies he received from the Tong Bee companies,

especially since these companies have been wound up many years prior to the making of the SD.

42 Secondly, the reference to “dividends” in para 3 of TTL’s SD was more likely than not a reference to the regular dividends declared annually by the Tong Bee companies as a going concern from 1975 onwards instead of the dividends declared upon the winding up of the Tong Bee companies. This is because the conversation between TGC and TTL recorded in para 3 of the SD took place in 1975 and it was extremely unlikely that TGC and TTL were contemplating the winding up of the Tong Bee companies in that conversation.

43 The Accounting and Corporate Regulatory Authority (“ACRA”) company profiles of the Tong Bee companies tendered in TWY’s AEIC showed that Tong Bee Company was established in 1951 and dissolved in 1994, Tong Bee Finance was established in 1968 and dissolved in 1999, while Tong Bee (1988) was established in 1976 and dissolved in 1999. Thus, the financial information tendered by the Company concerning the liquidation of Tong Bee Company from 1989 to 1993 threw no light on the amount of dividends which TTL would have received annually since 1975 from the Tong Bee companies and what TTL did with those annual dividends.

44 Having said that, there was one exhibit in TTS’s AEIC which showed TTL receiving \$287.50 in dividends from Tong Bee Finance for the year ending 31 December 1986 and \$200 in dividends from Tong Bee Company in the same year. If this evidence is anything to go by, it would appear (contrary to TTS’s testimony at [39(b)] above) that the annual dividends received by TTL directly from Tong Bee Finance exceeded the dividends he received from Tong Bee

Company. If this is correct, then TTL's reference to Tong Bee Finance in his SD would not be a mistake after all.

45 To sum up, the evidence showed that TTL was receiving annual dividend payments from the Tong Bee companies. The evidence tendered by the Company concerning money flows in and out of the Company *from 1986 to 1989* was of no probative value in refuting TTL's claim regarding what he did with the monies he received from the Tong Bee companies *since 1975*. The evidence adduced concerning the Tong Bee companies did not support TTS's allegation that TTL was mistaken in para 3 of the SD or that TTL lacked capacity to make the SD.

(3) Whether TTL was conscious enough to make the SD on 30 October 2012

46 The Company's case, as put to the plaintiffs' witnesses by the Company's counsel during cross-examination, was that TTL was not in a conscious state when his siblings visited him on 30 October 2012, and thus the SD was not made with the conscious decision of TTL. The implication of the Company's allegation was that the SD did not represent the views of TTL and were entirely fabricated by TTL's children. Strangely, such a serious allegation did not appear anywhere in any of the AEICs filed by TTL's siblings on behalf of the Company, *despite the Company having known for at least two years prior to trial that the plaintiffs were relying on the SD for their claim*.

47 The plaintiffs called as witnesses the commissioner for oaths who administered the SD on the evening of 30 October 2012, Mr William Ong, and the doctor who attended on the evening to assess TTL's mental capacity to make the SD, Dr Lew Yin Choo.

48 Mr Ong testified that his office was contacted on 30 October 2012 by TTL's second son, TWC with a request for preparation of a statutory declaration. Subsequently, Mr Ong was given a draft of the SD, which he proceeded to reformat into the format for a statutory declaration without changing the substantive content. When Mr Ong arrived with his office manager at the Glasgow Road Property, Dr Lew was already there. Mr Ong had brought his office manager along because she was conversant in several Chinese dialects and that would come in handy if interpretation was needed. However, as TTL spoke to Mr Ong in English, Mr Ong found that there was no need for interpretation.

49 Mr Ong asked TTL's family members to leave the room, such that the only persons remaining with TTL were Dr Lew, Mr Ong and his office manager. After confirming TTL's identity against his national registration identity card ("NRIC"), Mr Ong proceeded to read out the SD to TTL to make sure that TTL understood the contents of the SD and confirmed that those contents were true. Mr Ong testified that this process took about one hour.

50 Dr Lew testified that when she saw TTL, he was in his bedroom and *seated* in bed. TTL was conscious and spoke in English without any interpreters. Dr Lew found TTL to be lucid. He understood Dr Lew's questions and he communicated his answers to Dr Lew in clear comprehensible speech. When Dr Lew tested TTL's orientation to person by asking "Do you know who I am?", TTL answered: "You are the doctor". When Dr Lew tested TTL's orientation to place by asking "Where are you now?", TTL answered: "At home". When Dr Lew tested TTL's orientation to time by asking "What time is it now?", TTL answered "Night time". Dr Lew also testified that, before Mr Ong arrived, Dr

Lew had already spent 1.5 hours with TTL to assist him with the making of a lasting power of attorney.

51 Dr Lew further testified that when Mr Ong asked TTL how Mr Ong could assist, TTL spoke directly to Mr Ong about matters relating to his property. When Mr Ong explained details about executing a statutory declaration, TTL nodded and asked questions, indicating that he was able to understand, retain and use the information provided by Mr Ong relevant to making a decision to sign a statutory declaration. TTL then communicated his decision by signing the statutory declaration in handwriting. In Dr Lew's opinion, TTL had the mental capacity to execute a statutory declaration on 30 October 2012.

52 In the light of the evidence of Mr Ong and Dr Lew, I found the Company's allegations as outlined at [46] above to be untrue. In fact, TTL had the mental capacity and energy to spend 2.5 hours altogether that evening with Dr Lew and Mr Ong to complete the preparation of two legal documents. I also found that the SD was indeed made consciously by TTL and its contents accurately reflected what TTL had wished to convey regarding his claim to the Glasgow Road Property.

Admissibility of TTL's SD

53 The Company submitted that, even if the SD was authentic, it was inadmissible evidence under the rule in *Shephard v Cartwright*. I did not accept this submission. To begin with, the rule in *Shephard v Cartwright* had no application here, as that rule dealt with the use of subsequent declarations and conduct as evidence of the state of mind of a *transferor* for the purposes of rebutting the presumption of resulting trust or presumption of advancement. In

the context of the events described in the SD, the relevant “transferor” was TGC and not TTL. The SD was not a subsequent declaration by TGC of what his subjective intention was at an earlier time. The SD represented TTL’s recollection of remarks made by TGC to TTL contemporaneously with the events to which those remarks relate. In any event, *Shephard v Cartwright* is no longer good law in Singapore in the light of the Court of Appeal’s decision in *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 at [110] (“*Tan Yok Koon*”).

54 I therefore held that the SD was admissible pursuant to s 32(1)(j)(i) of the Evidence Act (“EA”), and that this was not a case in which the SD should be excluded under s 32(3) of the EA. However, having regard to the apparently self-serving nature of the SD, I warned myself to treat the SD with caution and, in keeping with the approach recommended in *Tan Yok Koon* at [110], to carefully ascribed the precise weight to the SD. I proposed to do so by checking for the SD’s consistency with the relevant factual background, the available objective evidence and as well as other evidence which has been found to be true. The need to carefully evaluate the weight of the SD in this manner is particularly important since TTL was no longer available to be cross-examined on the assertions made in the SD.

55 The plaintiffs described the SD as TTL’s “dying declaration”. I think this was based on a misunderstanding of what the term “dying declaration” means in the context of the law of evidence. In the law of evidence, “dying declaration” refers to a common law exception to the hearsay rule, which allows the dying declaration of a murder victim to be admitted as evidence of the identity of his assailant or of the cause of death. This exception has been codified as s 32(1)(a) of the EA. Although TTL was suffering from late stage liver cancer when he made the SD and he passed away nine days after making

the SD, that does not make the SD a “dying declaration”. I therefore did not ascribe any additional weight to the SD merely because TTL was aware that his death from liver cancer was imminent.

Other points raised by the Company concerning the reliability of the SD

56 The Company also raised two further points to generally attack the credibility of the SD.

- (1) Alleged request by TWY to Tan Tiong Kim and Tan Tiong Cher in relation to the Glasgow Road Property

57 Tan Tiong Kim (“TTKim”) gave evidence that, during a social outing with her and Tan Tiong Cher (“TTC”), TWY asked the two of them not to sign any resolution to sell the Glasgow Road Property in case there was a proposal by the Company to sell, so that TWY’s family could continue staying there. TTKim’s AEIC did not give a date for the incident. When I asked her for the date of the incident, she said “late 2000”. TTC also related the same incident in her AEIC but gave the date of the incident as 2009. The implication of this evidence was that TWY was already hatching a scheme to claim the Glasgow Road Property years before the SD was made.

58 TWY denied ever making such a request to TTKim and/or TTC.

59 The discrepancies as to dates between TTKim’s evidence and TTC’s evidence aside, it was difficult to assess the credibility of TTKim’s or TTC’s evidence relating to this incident. No context was provided by either TTKim or TTC as to why TWY would suddenly bring such a topic up nor was there any explanation by TTKim or TTC as to how TWY would have gotten the idea that the Company may be selling the Glasgow Road Property.

- (2) Discrepancy over when TTL’s family first contacted Mr Ong and Dr Lew

60 The Company also sought to attack the SD on the basis that there was some discrepancy in the evidence concerning the time of the day TTL’s children first contacted Dr Lew and Mr Ong on 30 October 2012.

61 The plaintiffs’ evidence was that TTL gathered his wife and three children, Tan Wei Hsien (“TWH”), TWC and TWY together after TWC and TWY came home from work on 30 October 2012. (TWH could not remember whether he was working on that day.) TTL appeared flustered and agitated, and said to his wife and children that, during the visit earlier in the day by his siblings TTKim and TTS, TTL had asked them to “return” the Glasgow Road Property to him but, not only did TTKim and TTS refused, they asked him to go and die quickly. TTL then gave instructions to his children to find a commissioner for oath and a doctor as he wanted to make a statement before a commissioner for oath and he wanted a doctor to certify that he had the capacity to make the statement. He also instructed the children to engage a lawyer to lodge a caveat on the Glasgow Road Property.

62 All three of TTL’s children testified that they were surprised by TTL’s revelation on 30 October 2012 that legal title to the Glasgow Road Property was held by the Company. Prior to that, they had always assumed the Glasgow Road Property was their home and had no reason to believe that legal title to the Glasgow Road Property was not held by their parents.

63 The plaintiffs’ witnesses further testified that, pursuant to TTL’s instructions, TWY found Dr Lew and TWC found Mr Ong. TTL dictated the contents of the proposed SD to TWC, who then e-mailed the draft SD to Mr

Ong’s office manager. According to Mr Ong’s records, this e-mail was received by his office at 8:49 pm that evening. When asked how long it took for TTL to dictate the draft SD to him, TWC replied that he could not remember exactly how long, but he recalled that “the process is quite long”, because:

he will say a sentence, I will, word by word, copy down and after that I will show to him, he confirm, then after that we proceed to the next sentence.

64 The plaintiffs’ witnesses could not recall the exact time they were given these instructions by TTL. When asked when they would normally reach home after work, TWC said he would typically reach home after work at around 5:30 pm to 6:00 pm, while TWY and TWH said they would typically reach home after work at around 7:00 pm.

65 Dr Lew’s evidence was that she could not remember what time of the day she was first approached by TWY but she deduced that it would have been before 6:00 pm as that was when she would close her clinic for the day. Dr Lew also gave evidence that she had arrived at the Glasgow Road Property at around 6:30 pm to assist TTL with making a lasting power of attorney. This was completed by about 8:00 pm. She then waited at the Glasgow Road Property for Mr Ong, who arrived at about 9:00 pm. Dr Lew recalled that TTL’s wife and three sons were present in the house when she arrived.

66 Mr Ong could not recall when his office was contacted by TWC, as TWC’s contact was with Mr Ong’s office manager and not directly with Mr Ong.

67 From the Company’s side, TTKim’s evidence was that she and her siblings visited TTL at his home on 30 October 2012 from 12:00 noon to 2:00

pm, and KAG and TWY returned home shortly before TTKim and her siblings left.

68 From the foregoing materials, the Company submitted that:

- (a) TWY and his siblings began preparations for the SD earlier than they alleged; and
- (b) this meant that the claim to the Glasgow Road Property and SD were planned by TWY and his siblings rather than by TTL himself.

This is an important submission - if it is proven that TTL's children began approaching Dr Lew and Mr Ong before there was any opportunity for them to have been briefed by TTL about the visit of his siblings on 30 October 2012, it would undermine the credibility of the plaintiffs' claim that that the SD was triggered by TTL being upset over his sibling's refusal to "return" the Glasgow Road Property to TTL.

69 To properly evaluate this submission, it is useful to go through the evidence in greater detail. In this regard, as a starting point, I note that the court should not accept uncritically TTKim's evidence on the timing of her visit on 30 October 2012 just as it should not accept the plaintiffs' witnesses' testimony uncritically. As for Mr Ong's evidence concerning when he was first approached, it would be useful to set out the entire exchange on this issue during Mr Ong's cross-examination:

- Q ---can you recall the time when you first heard from your manager of this request for you to attend to the SD?
- A *I can't recall. This is 4 years ago.*
- Q Okay.

- A Yah.
- Q Perhaps just estimate in relation to not exactly which hour---
- A Mm, mm-hm.
- Q ---but the time of the day; morning, after lunch?
- A Erm, okay, *what I suspect* was that there was some inkling that we were required to attend but we didn't know for sure until late---the later part of the day. So *I suspect probably late morning, there was something*, but, er, we would not able to confirm whether we were actually required to go down until the end of the day, probably quite po---late in the day actually. So in fact when we went down, I think it was quite late. It's---it was 8.00-plus or---or immediately actually---or---or---or I met rather, yah.
- Q I understand, I understand.
- A Mm-hm.
- Q What you recall, of course, to the best of your recollection---
- A Mm-hm.
- Q ---your office received some request---
- A Mm-hm.
- Q ---earlier on in the day---
- A Yes.
- Q ---*perhaps about lunch time?*
- A *Perhaps, yes.*
- Q Yes. And Mr William, when the---Mr Lawrence Tan contacted your manager, it was via a telephone call---
- A Er---
- Q ---or a visit in person?
- A No, not---not in person. It was a telephone call possibly also SMS messages as well, yah, through my manager
- Q Okay.
- A Mm.

Q And lu---that telephone call contact was made to the office?

A Erm---if I'm not mistaken, I think it was, initially, I think, directly through my manager. I believe so. Er, I can't quite---*I can't quite remember but because it came from her that, oh, this person, er, is required.* So it's either through her---her office line or through her handphone. I mentioned handphone because, erm, erm, most of her clients actually reached her by handphone. So I'm a---I'm assuming that that's how she was reached as well.

Q Okay.

A Mm.

Q It could be either telephone, office telephone or her mobile.

A Yes, yes, that's right.

Q And *your recollection is that earlier on in the day around lunch time*, you had a---the information that you might be required to attend to this request?

A Yes. *I can't be sure of the time* but earlier on in the day, yes. We a---I was told that I may be---I may be quite---to go down actually, yes.

Q And that information you received is because your manager informed you so?

A Yes, that's right.

Q And your manager informed you so because the client contacted her---

A That's right.

Q - --that day.

A Yes.

[emphasis added]

70 When the Company's counsel asked Mr Ong when he first heard from his manager about the request for him to witness the SD, Mr Ong answered: "I can't recall. This is 4 years ago." When the Company's counsel pressed Mr Ong further, he replied "[s]o I suspect probably late morning, there was

something ...”. When the Company’s counsel asked Mr Ong to confirm that the contact was made “earlier in the day around lunch time”, Mr Ong declined to confirm that it was around lunch time, replying instead with: “I can’t be sure of the time but earlier on in the day, yes”. Given that Mr Ong qualified his mention of “late morning” with “probably” and “I suspect”, given his unwillingness to be more specific than “earlier on in the day”, and given his repeated caveats that “I can’t recall” and “I can’t be sure of the time”, I did not think it was safe to draw any conclusion from Mr Ong’s evidence concerning when in the day he was first contacted by TTL’s children. The overall thrust of Mr Ong’s evidence was that he simply could not recall when he was first contacted.

71 Dr Lew’s evidence was more helpful. She testified that TTL’s children were already at home when she arrived at about 6:30 pm. At first blush, this may appear inconsistent with TWY’s and TWH’s evidence that they would typically arrive home after work at 7:00 pm. However, once it is recalled that:

- (a) TWC, TWY and TWH *did not* give positive evidence that TTL’s instructions to them were given only after 7:00 pm;
- (b) what TWC, TWY and TWH actually said in evidence was that they could not recall the time at which TTL had given them instructions; and
- (c) the information they gave about the time they would typically reach home from work was merely general information regarding what would occur on a typical day, and not evidence of what had actually occurred on 30 October 2012;

it became clear that there was no inconsistency. The fact that Dr Lew saw TWC, TWY and TWH at home when she arrived at 6:30 pm on 30 October 2012 meant that they were home earlier on that day as compared to a typical day. (Whether they had reasons to come home earlier that day was not a matter which was explored at trial.)

72 The fact that TWC, TWY and TWH were home on 30 October 2012 earlier than on a typical day meant that there was nothing surprising or contradictory about them having contacted Dr Lew and Mr Ong earlier than the Company's hypothesised timeline of 7:00pm (as proposed in para 105 of the Company's closing submission). Consequently, I found nothing in Dr Lew's and Mr Ong's evidence which was inconsistent with TWY's and TWC's testimony that they received their respective instructions from TTL after the visit from TTL's siblings. I therefore do not accept the Company's submission on this issue.

KAG's evidence

73 The Company submitted that, apart from evidence that improvements were carried out at the Glasgow Road Property, KAG's evidence consisted almost solely of hearsay of what TTL allegedly said to her. As TTL had already passed away, the Company submitted that it had lost the chance to cross-examine TTL and the Company had therefore been prejudiced in its ability to test the plaintiffs' case. As such, the Company submitted that it was dangerous to rely on KAG's evidence and little weight ought to be given to her evidence.

74 While I agree that a significant part of KAG's evidence involved informing the court of what TTL had said to her, I also note that KAG was able to give direct evidence on issues such as when she moved into the Glasgow

Road Property, what improvement works were done at the Glasgow Road Property, what she heard TGC say when he told her and TTL not to apply for a HDB flat, the state of her family's relationship with TTW and his wife, the events surrounding the making of TTL's SD as well as other relevant events which may have taken place at the Glasgow Road Property during the entire period she was residing there.

75 While her evidence concerning what TTL had told her was hearsay, it was hearsay admissible pursuant to s 32(1)(j)(i) of the EA. While the Company was right that it had been hampered in its defence by not being able to cross-examine TTL, it would not be consistent with s 32(1)(j)(i) of the EA if the court were to dismiss such evidence offhand simply because there was no opportunity for cross-examination. Parliament must have factored in the risk inherent in the lack of opportunity to cross-examine when it enacted s 32(1)(j)(i) of the EA. The court's role is not to act in a way which would defeat the object and purpose of s 32(1)(j)(i) of the EA. The court's role is to carefully evaluate the weight to be ascribed to such evidence, having regard to the lack of opportunity to cross-examine as well as by examining such evidence in the light of other the other available evidence and established facts in the case.

76 In doing so, the court also needs to be mindful that an added complication with evaluating KAG's testimony about what TTL had said to her orally is that the court needs to factor in the risk that there could be inaccuracies in KAG's memory or interpretation of what TTL said to her. This is a complication not present in the evaluation of evidence in the form of written documents left behind by TTL.

77 While still on the subject of KAG’s evidence, I note that the Company had, in para 27.7 of its closing submission, quoted a portion of the transcript from the second day of trial which showed the Company’s counsel asking KAG during her cross-examination to “Look at the Judge. Don’t look at your sons”. To the extent that the Company’s counsel was trying to insinuate that KAG was attempting to seek guidance from her sons on how she should answer questions while she was on the witness stand, I do not think it was a fair insinuation. The seating arrangement in court during the trial was such that TWY was seated on the right side of the counsel’s table, nearer the witness stand, while the Company’s counsel was seated on the left side of the counsel’s table, further away from the witness stand. Therefore, if the witness were to look directly at the Company’s counsel while he was asking questions, the position where TWY was seated would be along the line of sight between the witness and the Company’s counsel. I was observing KAG throughout her time on the witness stand and at no time did I see her looking to her sons for guidance on how to respond to questions posed to her during cross-examination.

Undisputed facts

78 The undisputed facts in the present case are:

(a) TGC incorporated the Company in 1960 with two of his nephews. By 1968, TGC bought out his nephews’ shares and installed his three sons, TTW (then aged 29), TTH (aged 22) and TTL (aged 20) as directors of the Company. TGC was at all material times the managing director of the Company.

(b) In 1963, TGC purchased the Surin Lane Property but he chose to put the legal title to the property in the name of TTW (then aged 24).

(c) TTW married Roselina on 21 March 1972. On 1 August 1972, the Company passed a resolution to acquire the Surin Lane Property from TTW. Legal completion of the acquisition took place 17 days later, on 18 August 1972.

(d) TTL married KAG on 14 October 1975. On 25 October 1975, the Company passed a resolution to purchase the Glasgow Road Property from one Ulric Deans at the price of \$110,000. The resolution appointed TTL to sign the sale and purchase agreement on behalf of the Company. A 10% deposit for the purchase amounting to \$11,000 was paid on 27 October 1975. Legal completion of the purchase took place on 7 February 1977.

(e) In the mid-1970s, TTL was drawing a remuneration from the Company which was equal to TGC's, and about 40% more than TTW's and TTH's.

(f) The purchase of the Glasgow Road Property was reflected in the Company's financial statement for the year ending 31 December 1976, in the form of a \$114,058 increase in the value of fixed assets under "Freehold land and building" over the previous year. (The additional \$4,058 beyond the purchase price of \$110,000 was probably to account for stamp duties and legal fees.) However, despite a note under "Significant accounting policies" indicating that the purchase of the Glasgow Road Property was pending full payment, the Company's balance sheet did *not* reflect an outstanding liability to the seller of the Glasgow Road Property for the remaining 90% of the purchase price.

(g) The seller of the Glasgow Road Property, Ulric Deans, was known to the family prior to the sale and purchase of the Glasgow Road Property. (KAG's evidence was that TTL told her that Ulric Deans was his godfather, while TTH's evidence was that Ulric Deans was a regular customer of the Company.)

(h) On 26 July 1977, the Commissioner of Stamp Duties informed the Company that the Government valuation of the Glasgow Road Property as at 25 October 1975 was \$130,000. As such, the Company was required to pay an additional \$600 in stamp duty. (This probably indicated that Ulric Deans could have sold the Glasgow Road Property at an undervalue.)

(i) TWH was born on 25 March 1976. Both TWH's birth certificate and the record of birth issued by the clinic indicated TTL's and KAG's address as the Glasgow Road Property.

(j) While there was some dispute as to whether TTL and KAG moved into the Glasgow Road Property in 1976 or 1977, it was not disputed that TTL and KAG had used the Glasgow Road Property as their family home at least from 1977 to the present.

(k) TTL and KAG applied for a HDB flat in the 1980s but, in the end, did not proceed with the purchase of a HDB flat. Since then, TTL and KAG had never purchased any HDB flat or any private residential property of their own.

(l) TGC's family was involved in other businesses besides the Company. These included Geok Hong Realty and the Tong Bee companies.

(m) TGC passed away on 20 October 1990, leaving behind his wife, OBC, and eight children. Three of these children (TTW, TTL and Tan Tiong Puan (“TTP)) were no longer alive at the time of these proceedings.

(n) TTL passed away on 9 November 2012, leaving behind his wife, KAG, and three children.

Disputed facts

79 In this section of the judgment, I examine a number of key disputed facts and provide my findings on them. There is one disputed fact – whether TGC told TTL in 1975 that TGC would buy the Glasgow Road Property – which is not examined in this section, as that matter is more conveniently dealt with in a later section of the judgment discussing the existence of common intention.

The reason TTL and KAG withdrew their HDB application and never applied for a HDB flat again

80 According to para 4 of TTL’s SD, when TGC learned that TTL and KAG had applied for a HDB flat, TGC told TTL that they should not buy a HDB flat since TTL already had the Glasgow Road Property, which the company was only holding in trust for TTL. In compliance with TGC’s instructions, TTL persuaded KAG that they should withdraw their application for a HDB flat. After withdrawing their application, TTL and KAG never applied for a HDB flat again. TTL noted that all of his younger siblings bought their own property subsequent despite their continuing to reside at the Surin Lane Property.

81 KAG’s evidence was that, when TGC came to know that TTL and KAG applied for a HDB flat, TGC instructed TTL not to purchase the HDB flat since TTL owned the Glasgow Road Property. TGC also assured TTL and KAG that the Glasgow Road Property belonged to them, and instructed TTL and KAG not to purchase the HDB flat.

82 The Company submitted that KAG’s testimony was inconsistent with the SD because “[a]t paragraph 4 of the SD, it was alleged that TGC told TTL alone not to buy the HDB flat. There was no mention of KAG being present.” This is a misreading of TTL’s SD, which merely stated:

After my father learnt of this, he told me specifically that I should not buy a flat since I already have a house at 17 Glasgow Road. The company is only holding the house at 17 Glasgow Road in trust for me.

This passage did not say the TGC spoke to TTL alone. It also did not say KAG was not present. The passage was silent on whether KAG was present. I therefore found no merit in this submission by the Company.

83 During KAG’s cross-examination, there appeared to be some confusion as to whether TGC spoke to KAG about the HDB application once or twice. In the end, KAG clarified that she had only one conversation with TGC on this matter. Despite this minor confusion, I formed the overall impression that KAG’s testimony had withstood cross-examination intact. She was able to give details of what TGC said to her on the issue (“You already have a house. 17 Glasgow Road is your house. You shouldn’t buy a HDB flat” and “The house belongs to the both of you. The two of you cannot make the purchase”). She was also able to describe TGC’s expression and demeanour during the conversation and recall the fear and obedience which TGC’s demeanour elicited from her (“He told us this way and he stared at us. I didn’t dare to say a word.

How---he is---opened his eyes very widely and looked at me. We didn't dare to say a word, so we had no choice but not to buy.”).

84 The Company did not deny that TTL and KAG withdrew their HDB application in 1986 and that they forfeited \$9,200 in deposit as a result of the withdrawal. The Company also did not deny that TTL and KAG never bought their own property subsequently. However, the Company offered two suggestions as to why TTL and KAG would decide to withdraw their HDB application.

85 The first suggestion was that TTL withdrew the application because he had bought a new car and thus did not have sufficient funds to complete the purchase of the HDB flat. The other suggestion was that TTL decided not to proceed with the purchase of the HDB flat because he did not like any of the locations available.

86 Neither of these suggestions could explain why TTL did not apply for a HDB ever again. If TTL was cash-strapped, he could have borrowed money from TGC or from the Company. Alternatively, he could apply again subsequently when he had saved up enough money. If TTL did not like the locations available, he could have applied again when other locations became available.

87 The Company sought to attack KAG's evidence on the basis that, despite her fear of losing a roof over her head if the bank were to foreclose against the Glasgow Road Property, she and TTL withdrew their HDB application without the slightest reluctance and did nothing to address their alleged concerns. The Company's submission that the HDB application was withdrawn without the slightest reluctance represented a misapprehension of the evidence. TTL stated

very clearly in the SD that he had to convince and assure KAG before she agreed to withdraw the HDB application. So clearly, there was no lack of reluctance on KAG's part. As for the claim that neither KAG nor TTL did anything to address their concerns about foreclosure, the evidence showed that this was KAG's concern, and not a matter which TTL had difficulties with. Therefore, if TTL had successfully persuaded KAG to come round to his point of view, there would have been no further need for anything to be done to address KAG's concern.

88 KAG's version was also corroborated by the chronology of events. TTH testified that, since TTH made his application to HDB for purchase of a flat in or around 1980, he believe TTL also made his application at about the same time because of the similarity between the sales registration number of his application (AA5/294941E) and that of TTL's (AA5/294864H). Indeed, TTH's estimate was consistent with KAG's CPF statement, which showed a "housing withdrawal" of \$9,200 in 1980. This timing coincided with the timing of the evaluation of the Glasgow Road Property for intended mortgage with the Standard Chartered Bank. The date of the valuation report was 3 December 1980. This meant that the actual evaluation would have been done sometime in 1980.

89 On balance, I found it more likely than not that TTL withdrew his HDB application and never again applied for a HDB flat *because* he was led to believe that the Glasgow Road Property was his.

90 The Company pointed to a letter from HDB dated 9 May 1986 to TTL and KAG informing them that their request for deferment of the purchase of the HDB flat had been rejected. It is not clear what submission the Company wished

to make concerning HDB's letter of 9 May 1986. The relevant passage in the Company's closing submission read:

65. We further submit that TTL had initially requested to defer the purchase but since his reason for deferment was not accepted. This is based on the letter dated 9 May 1986 from HDB to TTL at page 395 DBD1 which refers to an earlier letter from TTL. Therefore, although the parties do not have the said earlier letter in their possession, it may be deduced from the contents of HDB's reply that TTL had made a request to defer his application for allocation of the HDB flat.

91 The first sentence in this paragraph of the Company's closing submission ended abruptly and did not make sense – it appears to be an incomplete sentence. It was therefore not clear what point the Company was attempting to make in this sentence. If the Company was suggesting that TTL had initially sought a deferment of the application and that he only decided to withdraw the application after HDB had rejected the application for deferment, such a suggestion would be inconsistent the evidence. The documentary record showed that TTL wrote to HDB on 21 April 1986 to unequivocally withdraw the application for a HBD flat – in other words, TTL's unequivocal withdrawal of the HDB application pre-dated HDB's letter of 9 May 1986. Therefore, even assuming the Company was correct to think that TTL had written prior to 21 April 1986 to seek a deferment, TTL's decision to withdraw the HDB application on 21 April 1986 must have been made independently of HDB's reply of 9 May 1986 and not because of HDB's reply of 9 May 1986.

92 Even if the Company was right that TTL had initially sought a deferment only to change his mind on 21 April 1986 and convert the request to an outright withdrawal, that would not affect the analysis at [86] above once it is accepted that TTL's change of mind was not due to HDB's letter of 9 May 1986 but due to other reasons. Looking at the totality of the evidence, including the fact that

TTL never subsequently applied again for a HDB flat or purchased any other residential property of his own, I found that the most probable explanation for TTL's withdrawal of his HDB application was the one proffered in para 4 of TTL's SD.

Renovations and improvements to the Glasgow Road Property

93 TTL and KAG did a fair amount of renovation and improvement works to the Glasgow Road Property over the years. These are documented in KAG's AEIC. According to KAG, major works undertaken include:

- (a) filling in of the pond in front of the house;
- (b) changing the gradient of the driveway, such that instead of the original long, gently sloping driveway, the driveway was made shorter and steeper so as to create more flat, usable land at the top of the slope which was flush with the level of the rest of the land in the front garden (including the level of the in-filled pond);
- (c) the shifting of the front gate and the gate pillars away from the main road and nearer the house as a result of the change in the gradient of the driveway
- (d) conversion of the garage into an additional bedroom;
- (e) installing flushing toilets in the house and laying sewerage pipes below the land to connect the Glasgow Road Property to the public sewerage system;
- (f) building a metal shelter at the back of the house to enclose most of the backyard;

- (g) building boundary walls and fences with neighbours;
- (h) building cemented walkways and cemented drains around the house;
- (i) cementing and sealing a door within the house;
- (j) installing and replacing electrical wiring and circuit boards;
- (k) installing and replacing internal and external lighting;
- (l) restructuring and building additional water pipes.

In addition to the foregoing, various renovation works had also been done to the interior of the house from time to time.

94 The key witness for the Company on this issue was TTH, who is the sole surviving director of the Company from the 1975-1977 period. (For the period 1975-1977, the directors of the Company were TGC, TTW, TTH and TTL. TGC, TTW and TTL had all passed away before commencement of these proceedings.)

95 To better understand the works that had been done to the Glasgow Road Property, I conducted a site visit with the parties, during which both KAG and TTH explained to me their respective recollections concerning the works. After the site visit, summaries of their explanations were given in court and captured in the transcript of the proceedings.

96 One major dispute of fact was whether TTL and KAG had installed flushing toilets in the house and laid sewerage pipes below the land to connect the Glasgow Road Property to the public sewerage system. That would, by any

estimate, be substantial work. TTH's evidence was that the Glasgow Road Property was already equipped with modern sanitation when TTL moved in and no works were done by TTL to install flushing toilets in the house and lay sewerage pipes below the land to connect the Glasgow Road Property to the public sewerage system. KAG's evidence was that Glasgow Road Property was served by the night soil system when TTL and KAG moved in, and TTL had to subsequently install flushing toilets and lay sewerage pipes below the land when modern sanitation arrived.

97 I directed parties to write to PUB to ask whether the Glasgow Road Property was served by the nightsoil system or by modern sanitation in the period from 1975 to 1977. PUB's response was:

We do not have any information on when water-flush toilets were installed within the Property. Based on our archived as-built drawings, we can confirm that the public sewers for the area were laid circa 1978 and completed by 1980. From the drawings, we can also deduce that the Property, together with the houses along the same row, was served by the night soil system as there was no indication that it was served by a sewage treatment plant (STP).

98 PUB's response showed that KAG's testimony on this issue was true while TTH's testimony on this issue was untrue. TTH was either less than truthful about the state of the Glasgow Road Property upon purchase or simply unaware of the state of the property. If it is the latter, then TTH was not being truthful when he claimed to be aware of the state of the property.

99 In closing submission, the Company submitted that all the *major* works done, *except for the installation of modern sanitation*, were arranged by TTH and paid for by the Company. My observations on this submission are:

(a) The Company could not produce any records that it paid for any of the works done at the Glasgow Road Property, apart from two identical entries for “Repair of roof – 17 Glasgow Road” for \$150 each in the Company’s accounts for the year 2000 and 2001.

(b) In contrast, there were various records in the Company’s accounts of payment for works done at the Surin Lane Property – *eg*, there was an entry in the Company’s accounts for 1978 for “Repairs at 3, Surin Lane” for \$1,485.20 and an entry in the Company’s accounts for 1989 for \$15,706.70.

(c) When TTH was confronted with this disparity between how the Company’s books accounted for works done to the Surin Lane Property as compared to the Glasgow Road Property, TTH’s response was “But I’m not sure about the accounts”.

(d) When TTKim was asked about the two entries for \$150 each for repair of the roof, her explanation was that she would reimburse TTL directly if TTL were to make a claim, but if TTL did not present the bill to the Company, she would “just take it that there is no repair or maintenance”.

(e) TTH agreed in cross-examination that all the renovations to the inside of the house, the conversion of the garage into a bedroom and works on the driveway were all paid for by TTL and KAG. However, TTH continued to maintain that the in filling of the pond and the construction of a metal shelter at the back of the house were paid for by the Company.

(f) TTH's AEIC contained an astonishing claim that TTL only painted the house once in all the time he was staying there.

100 Quite apart from TTH's admission that a significant amount of work was undertaken and paid for by TTL (see [99(e)] above), there was no evidence to support the Company's claim that it paid for the remainder of the works (besides the two entries in 2000 and 2001 of \$150 each). This lack of record should also be viewed against the background that, as late as a few weeks before the trial, TTS was able to find, in one of the wooden boxes kept at the Surin Lane Property, complete files of payment vouchers and receipts from as early as 1975.

101 The Company pointed to the plaintiffs' inability to produce any receipts as proof that TTL and KAG did not pay for any of the works. In my view, KAG had a reasonable response to this – if TTL believed he was performing the works for his own benefit and not for the Company's benefit, he would have no reason to retain and preserve the receipts.

102 On the contrary, what I found significant was TTKim's evidence that the Company would depend on TTL to claim reimbursements from the Company. In other words, this was evidence that the Company did not actively monitor the need to maintain and improve the Glasgow Road Property. Further, given that the directors of the Company, being TTL's siblings, would have visited him from time to time and would have noticed the improvements done to the Glasgow Road Property over the years, the failure of the Company to catalogue the works and insist on making payments for them in a documented manner was telling.

103 In the light of the foregoing, and also in the light of my shaken confidence in TTH's credibility as a result of the matters discussed at [96]-[98] above, I found on the balance of probabilities that all the works in question were done and paid for by TTL and/or KAG.

When the Company first learnt of TTL's claim to the Glasgow Road Property

104 The Company's evidence was that they did not know about TTL's claim to the Glasgow Road Property until they received a letter of demand from the Legal Aid Bureau on behalf of KAG in November 2013, about one year after TTL's death.

105 The plaintiffs' position was that TTL's siblings knew of his claim to the Glasgow Road Property well before their visit to TTL on 30 October 2012 which resulted in TTL's decision to make the SD. This was because the thrust of what TTL told his family after the visit, according to the plaintiffs' evidence, was that TTL was upset with his siblings for not honouring an earlier understanding that the Glasgow Road Property belonged to TTL.

106 While the plaintiffs' position as outlined in the previous paragraph was based entirely on the oral evidence of the plaintiffs' witnesses as well as the content of TTL's SD, there was documentary evidence on record which indicated that the Company knew of TTL's claim much earlier than the Company was prepared to admit. First, solicitors representing the executors of TTL's estate wrote to SW Management Consultant Pte Ltd ("SWMC"), the Company's corporate secretarial services provider, on 4 December 2012, seeking information about the number of shares in the Company registered in the TTL's name and asking if any dividends, salary or other amounts were due

to TTL. The letter enclosed a copy of TTL's will, *which stated that TTL had bequeathed the Glasgow Road Property to KAG*. Secondly, in an affidavit filed in this action on 17 August 2015 in response to an application for specific discovery, TTKim described a meeting on 3 January 2013 with SWMC at which the directors of the Company discussed and disagreed with TTL's claim of ownership to the Glasgow Road Property.

107 From the foregoing, the plaintiffs submitted that the Company's failure to immediately respond after the 3 January 2013 meeting is probative of the validity of TTL's claim.

108 I found that the Company's claim at trial, that it first learnt of TTL's claim only in November 2014, to be inconsistent with the evidence discussed at [106] above. I therefore found that the Company knew of TTL's claim at the latest by 3 January 2013, if not earlier. I also held that my rejection of the Company's evidence as outlined at [104] above meant that the plaintiffs' version as outlined at [105] above was more likely to be true.

Claim by TTS that he ran a bakkwa business from the Glasgow Road Property

109 The Company's main business was the operation of a petrol kiosk along Upper Serangoon Road. It had a secondary business of importing and exporting hardware. After the petrol kiosk ceased operations, TTL and his siblings began exploring other business options. In this regard, TTH and TTL established B-Tech Marketing Pte Ltd ("B-Tech") to deal in cosmetics. TTH and TTL also established Sandilands Enterprise Pte Ltd ("Sandilands") together with TWH to deal in drinks.

110 TTS gave evidence that he and his deceased sister, TTP, ran a *bakkwa* business out of the Glasgow Road Property, using the space behind the house enclosed by the metal shelter. He said in his AEIC dated 29 March 2016 that this took place “throughout the 1990s until early 2000s”. Two weeks before commencement of the trial, TTS filed a supplementary AEIC to introduce some invoices and receipts which he claimed were proof of purchase of equipment for the *bakkwa* business:

- (a) an invoice dated 15 August 1996 for a custom-made steel cabinet costing \$2,580. As this invoice was marked for “self collection”, there was no documentary evidence that this steel cabinet was meant to be used at the Glasgow Road Property;
- (b) an invoice dated 15 August 1996 for two custom-made steel tables costing \$1,300 in total. Again, as this invoice was marked for “self collection”, there was no documentary evidence that this steel cabinet was meant to be used at the Glasgow Road Property;
- (c) an invoice dated 16 August 1996 for two chest freezers costing \$2,407.76 in total, to be delivered to the Glasgow Road Property;
- (d) an invoice dated 30 August 1996 for an industrial strength meat grinder costing \$1,700. Again, there was no delivery address;
- (e) an invoice dated 3 September 1996 for 20 bamboo baskets costing \$114 in total. Again, there was no delivery address.

These invoices, together represented an investment of \$8,101 in the *bakkwa* business, if indeed these were items meant for the *bakkwa* business.

111 TTS testified that he would prepare the *bakkwa* in the evenings after work. It was an involved process, from grinding the meat to marinating the meat to baking them in a charcoal oven. The charcoal oven was located within the enclosed metal shelter behind the house. The whole process would take about three hours. TTS said he would be doing this with TTP about three times a week. TTS's evidence as to how much *bakkwa* he made in each session fluctuated during the court of his evidence. He said 5 kg during some parts of his cross-examination and 10 kg during other parts of his cross-examination. When asked for documentary records of the *bakkwa* business, TTS said he kept no records as everything was transacted in cash. He also admitted that he did not obtain a license from the relevant authorities to operate a sale of food business.

112 TTS also gave evidence that he began making *bakkwa* on a trial basis, getting friends to taste-test so he could adjust his recipe, for about six months before the business took off. I asked TTS whether the various equipment bought in August 1996 were for this initial phase or were bought only after the business took off. He responded that they were bought during the initial phase.

113 The plaintiffs' witnesses testified that there was no *bakkwa* business operating from the Glasgow Road Property. As they were residing in the Glasgow Road Property, such a major operation which took place for two to three hours per evening over three evenings per week with the attendant heat, smoke and smell would not have gone unnoticed by the residents of the Glasgow Road Property. The plaintiffs also suggested to TTS in cross-examination that operating a charcoal oven in such a confined space over such prolonged periods would have been very hazardous to TTS's health.

114 Both sides’ testimony on this issue were so diametrically opposite that the discrepancies could not be attributed to a mere misunderstanding or differences in perception. I found certain aspects of TTS’ evidence difficult to accept. First, he could not decide whether he was making 5 kg of *bakkwa* per session or 10 kg per session and his evidence shifted between the two versions. Secondly, even though his AEIC stated that he was in the *bakkwa* business “throughout the 1990s”, he said in court that the purchase of equipment in August 1996 represented the initial phase of the business. I also found TTS’s willingness to invest more than \$8,000 at one go during what was meant to be the trial phase difficult to believe. The absolute lack of documentary evidence of the business transactions undertaken by this *bakkwa* business also did not engender confidence in TTS’s evidence on this issue. I also took into account inconsistencies between TTS’s and TTH’s testimony regarding the location of the *bakkwa* making equipment. TTS said the meat grinder was brought to Surin the Lane Property after the *bakkwa* business ceased while TTH believed it was left behind at the Glasgow Road Property. Finally, there was my own impression, based on my own site visit, that acceptance of TTS’s story of making *bakkwa* in the enclosed space behind the house required a serious dose of suspension of disbelief.

115 On balance, I do not accept TTS’s evidence that he had been running a *bakkwa* business from the Glasgow Road Property. However, I should add that, even if I were to accept TTS’s evidence on this issue, it would not significantly impact my legal conclusions, having regard to the other evidence available in this case to support those conclusions.

The reason TTW stayed at the Glasgow Road Property with TTL's family

116 The plaintiffs' position was that TTW came to stay with TTL's family at the Glasgow Road Property only sometime after TTL had moved in, and that the reason TTW moved in was that he had fallen out with the rest of his siblings and was chased out of the Surin Lane Property. Consequently, TTL decided to take TTW in.

117 The Company's position was that TTW moved into the Glasgow Road Property at the same time as TTL, and this was an indication that the Glasgow Road Property was never meant for TTL's exclusive use. Further, the Company claimed that it was TTL who was chased out of the Surin Lane Property by TGC and OBC because they did not approve of TTL's marriage to KAG.

118 On the period of time which elapsed between TTL allegedly being chased out of the Surin Lane Property and TTL moving into the Glasgow Road Property, there was conflict between the evidence of TTH and TTC. TTH thought it was a few years while TTC thought it was one year.

119 TTH further alleged that TTW's family and TTL's family did not get along when they were staying together at the Glasgow Road Property and this tense domestic situation was one of the causes of TTW's divorce in 1981. This was denied by KAG who recalled that TTW's wife was a nice person and that the relationship between TTL's and TTW's families was fine.

120 TTH further alleged that, after TTW's divorce, when TTW became the only person staying with TTL's family, TTW was subject to abuse constant abuse by TTL, KAG and their children. TTH added that the whole family knew of these abuses. When TTH was asked in cross-examination why the family did

not intervene if they knew of these alleged abuses, TTH completely evaded the question. To me, it seemed incredible that, if TTW was subject to abuse while under TTL's roof, none of TTW's siblings would have intervened or offered to take TTW in so as to stop the abuse.

121 On balance, I found the plaintiffs' explanation of how TTW came to stay at the Glasgow Road Property more believable.

The reason TGC decided to transfer the legal title to the Surin Lane Property from TTW to the Company

122 It was not disputed that the Surin Lane Property was bought by TGC and not by TTW, even though TGC decided to put the legal title to the Surin Lane Property in TTW's name. TTL stated in his SD that, soon after TTW's wedding, TGC decided to transfer the legal title to Surin Lane Property from TTW to the Company to avoid TTW's wife claiming a share of the property in the event that TTW's marriage ended in a divorce.

123 The Company suggested that TGC put the legal title to the Surin Lane Property in TTW's name initially because the Company, being co-owned by TGC's nephews at the time, was not a suitable vehicle for holding the legal title to the property. It was after the Company became wholly owned by TGC and his family that it became suitable to place the legal title to the Surin Lane Property in the Company's name.

124 I found the Company's suggested explanation unsatisfactory. The fact that the Company became a suitable candidate for holding the legal title to the Surin Lane Property in 1968 after the Company became wholly owned by TGC and his family does not explain why TGC would want to do so – *ie*, the fact that

the Company had become suitable does not mean that TTW was no longer suitable as a nominee in whom the legal title to the Surin Lane Property could be vested. More tellingly, the transfer of the title to the Company took place four years after the Company became wholly owned by TGC and his family but less than five months after TTW's wedding.

125 I therefore found TTL's explanation more likely than not to be true.

Whether the Company contributed to the cost of acquiring the Glasgow Road Property

126 There was documentary evidence of the payment of the initial 10% deposit for the purchase of the Glasgow Road Property in the form of the receipt issued by Boswell. Although the receipt was issued to TTL by name, it noted a cheque number which corresponded with both the cheque number found in the Company's payment voucher of the same date and the cheque number found in an entry of the same date in the Company's bank statement.

127 The plaintiffs submitted that:

- (a) for the cheque to have cleared on the same day it was issued, it must have been a cash cheque;
- (b) since TTL was paying Boswell the initial deposit using a cash cheque, this suggested that the cheque was issued to TTL *for TTL to use as his own money* to pay for the purchase of the Glasgow Road Property. In this regard, the plaintiffs suggested that it is not unusual for one party to use a cash cheque given by another party to make payment to a third party in discharge of the first party's obligations.

128 I found this submission speculative as there was also no documentary record of TTL taking \$11,000 from the Company for his own use, whether as a loan, gift or remuneration. In the final analysis, I found the evidence of the source of funds for the \$11,000 inconclusive, and decided that it was more fruitful to examine the payment of the entire purchase price as a whole.

129 As for the payment for the remaining 90% amounting to \$99,000, no receipts or payment vouchers could be produced by the Company for the payment of the balance 90%. Further, no record of payment of the balance 90% could be found in the Company's annual financial statements.

130 The 1976 financial statements of the Company showed the Company making an operating loss of \$18,941 in 1976 and having a cash balance of \$14,048 as of 31 December 1976. It was therefore not clear how the Company could have paid for the balance \$99,000 in February 1977. TTKim suggested that the Company had an overdraft facility which it could draw upon to obtain the funds to pay the balance. However, this overdraft facility was taken out long before 1976 to, presumably, fund the Company's general trading expenses. There was no evidence that the overdraft was used for the acquisition of the Glasgow Road Property. The Company's counsel, in closing submission, provided a table of comparison of the Company's assets and liabilities in 1975 with those in 1976, in an attempt to demonstrate that there was a significant increase in the Company's cashflow in 1976 from which payment of the balance \$99,000 could be made. I do not find the cashflow analysis persuasive, especially since it was clear from the Company's 1976 financial statements that the Company only had a cash balance of \$14,048 as of 31 December 1976.

131 There was another aspect of the Company’s 1976 financial statement (which was finalised on and dated 13 March 1978) which I found significant. The 1976 financial statement made reference to the Glasgow Road Property in a note concerning significant accounting policies, under the heading “fixed assets and depreciation”, in the following manner:

No provision for amortisation was made in respect the property known as 17, Glasgow Road which was purchased in 1976. The conveyancing of the property was pending full payment which was made in 1977.

What I found significant was that, despite acknowledging that full payment had not been made for the Glasgow Road Property, and despite having already booked the full value of the Glasgow Road Property under “Fixed Assets” (see [78(f)] above), the balance sheet in the 1976 financial statements did not show an outstanding liability to the seller of the Glasgow Road Property for the remaining 90% of the purchase price. This was probably an indication that the Company was not expecting to pay the remaining 90% of the purchase price from its own funds.

132 Ultimately, TTH’s answer in cross-examination that TGC and OBC would put money into the Company from their other sources of income probably comes close to the truth concerning where the funds for purchase of the Glasgow Road Property came from. I therefore found, on the balance of probabilities, that the funds for the purchase of the Glasgow Road Property came from TGC.

Summary of findings on the disputed facts

133 For the reasons explained above, I made the following findings of fact:

- (a) TTL withdrew his HDB application and never again applied for a HDB flat or purchased a residential property of his own because he was led by TGC to believe that the Glasgow Road Property was his.
- (b) All the major renovation and improvement works on the Glasgow Road Property were undertaken and paid for by TTL.
- (c) TTS was not running a *bakkwa* business from the Glasgow Road Property.
- (d) TTW came to stay at the Glasgow Road Property only sometime after TTL and his family had moved in. TTW moved in with TTL because TTW had fallen out with the rest of his siblings and was chased out of the Surin Lane Property by them.
- (e) TGC transferred the legal title in the Surin Lane Property from TTW to the Company because he did not wish to risk TTW's wife laying claim to property should TTW's marriage break down.
- (f) The source of the funds for the purchase of the Glasgow Road Property was TGC.

Analysis

134 The plaintiffs based their claim on both common intention constructive trust and proprietary estoppel. These are two distinct, yet overlapping concepts. As noted in John McGhee, *Snell's Equity* (Sweet & Maxwell, 33rd ed, 2015) ("*Snell's Equity*") at para 24-047:

A constructive trust arising out of an express agreement between the parties may overlap with a claim founded on proprietary estoppel. In both, the claimant may have acted to his detriment in reliance on the belief that he would obtain an

interest. In both, equity acts on the conscience of the legal owner to prevent him from defeating the common intention. The distinction between the claimant's rights under an estoppel and under a constructive trust is now much diminished since both may operate as interest in land and be overreached. The difference remains, however, that the remedy by which an estoppel is enforced is discretionary, while under a constructive trust the claimant is entitled to his agreed share.

135 Similarly, it was noted in Philip H Pettit, *Equity and the Law of Trusts* (Oxford University Press, 12th ed., 2012) at 216 that:

In both cases, the claimant must show that he has acted to his detriment; however, in the case of constructive trust, a common intention must be established, while in proprietary estoppel, the unilateral act of the defendant must raise an expectation in the claimant that it would be unconscionable for the defendant to deny. Further, the evidentiary requirements for constructive trust are more stringent than those for proprietary estoppel.

Common intention constructive trust

136 The juridical basis for the courts to enforce a common intention constructive trust was explained by the learned authors of *Snell's Equity* in this way:

Simple proof of the oral or inferred agreement between parties or an unwritten declaration of trust would not be enough to entitle the claimant to an enforceable interest in the property under a trust. Such an arrangement could only take effect as an express trust. It would be unenforceable since it would not be evidenced by writing signed by the party declaring the trust. Accordingly, proof that the claimant has acted to his detriment in reliance upon the agreement that he would take an interest in property is essential to explaining the constructive trust. In these circumstances it would be fraudulent for the proprietor of the legal estate to rely on the formality requirements to deny the enforceability of the beneficial interest and claim the entire beneficial rights to the property for himself. The constructive trust arises to prevent this result. *Where the agreement is inferred, then the parties' conduct is both the evidence from which the agreement is inferred and the detriment which gives rise to the constructive trust.*

[emphasis added]

Thus the element which renders enforceable an arrangement which could otherwise be categorised as an unenforceable oral express trust or unenforceable tacit agreement is the existence of detrimental reliance.

137 The applicability of common intention constructive trust is not confined to situations of properties being held in joint names or situations of shared housing among family members (see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [108], [140], [153] and [157]).

Existence of common intention

138 In their statement of claim, the plaintiffs referred to three categories of representations or assurance:

- (a) The assurance by TGC to TTL, at the time the Glasgow Road Property was acquired, that TGC was buying the Glasgow Road Property for TTL.
- (b) The assurance by TGC to TTL and KAG that they should not purchase a HDB flat as the Glasgow Road Property was theirs.
- (c) The failure of the Company to claim or assert beneficial ownership over the Glasgow Road Property throughout the 40 years during which TTL and his family were residing there.

139 For the purposes of the claim in common intention constructive trust, the operative representation or assurance would be the first category listed above, as that was made at the time the Glasgow Road Property was acquired. While the second and third categories of representation or assurance listed

above are capable of giving rise to a proprietary estoppel (if other relevant requirements are met) they would not give rise to a common intention constructive trust. Having said that, the second and third categories of representation or assurance are not completely irrelevant to the claim in common intention constructive trust. This is because, if the second and third categories of representation or assurance are proven, they could corroborate the existence of the first category and thus make the plaintiffs' claim concerning the first category of representation or assurance more believable.

140 As noted in *Chan Yuen Lan* at [160], common intention may be express or inferred but may not be imputed. As explained by Lord Neuberger in *Stack v Dowden* [2007] 2 AC 432 ("*Stack*") at [126] (cited with approval in *Chan Yuen Lan* at [111]), an inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements.

141 Based on para 3 of TTL's SD, the plaintiffs were relying on express common intention, in the sense that TGC expressly told TTL that TGC would buy the Glasgow Road Property for TTL. I faced a number of difficulties in deciding on the credibility of TTL's claim that such an express assurance was given by TGC. First, para 3 of TTL's SD appeared to be the only evidence that TGC had given such an assurance. Although the assurance was also mentioned in KAG's evidence, she acknowledged that, unlike the episode concerning the HDB flat, she had no direct knowledge of the assurance given by TGC at the time the Glasgow Road Property was acquired, and she was merely repeating what TTL had told her. Secondly, the assurance was not evidenced in writing. Thirdly, there were no other witnesses to the conversation between TGC and TTL at which the assurance was allegedly made. In my view, the court should

be slow to give credence to what appears at first blush to be a bare assertion by TTL.

142 In evaluating how much credence to give to para 3 of TTL's SD, I begin by observing that paras 2, 4, 5 and 6, as well as the first part of para 7, of TTL's SD are borne out by the finding of facts I made at [80]-[133] above. (The second part of para 7 of the SD will be discussed at [159] below.) The fact that the other paragraphs of TTL's SD have been found to be generally true and corroborated by other evidence renders it more probable that para 3 of TTL's SD is also true. The fact that TGC's assurance was not evidenced in writing would be a neutral factor. It is in the nature of the type of informal understandings among family members giving rise to common intention constructive trusts that such understandings are generally not reduced to writing. The fact that TTL had undertaken major renovation and improvement works on the Glasgow Road Property and the fact that TTL withdrew his HDB flat application and never purchased another residential property of his own all would add to the likelihood that para 3 of TTL's SD was true.

(1) The Company's arguments against the existence of common intention

143 The Company put forth a number of arguments as to why it was unlikely that the alleged common intention existed.

(A) TGC'S ACTIONS IN RELATION TO THE SHARES OF THE COMPANY

144 The Company's first argument was that TGC's actions in:

(a) divesting most of his shares in the Company to his children in July 1976, thus reducing his shareholding from 42% to 5%; and

(b) subsequently adjusting the shareholding in the Company such that, by the time he passed away in 1990, all his children held roughly equal shares in the Company;

were inconsistent with an intention to favour TTL with ownership of the Glasgow Road Property. The Company pointed out that the shares transfer in July 1976 took place before the legal completion of the purchase of the Glasgow Road Property, and this was evidence of TGC's intention to have all of his children share the benefits of ownership of the Glasgow Road Property through part ownership of the Company.

145 It was unclear to me what inference could be appropriately drawn from the transfer of TGC's shares in the Company to his children nine months after purchasing the Glasgow Road Property. To be fair, the Company's suggested explanation as outlined at [144] above was certainly one possibility. However, it was equally possible that any intention imputed to TGC concerning the sharing of the assets of the Company among his children, through the redistribution of shareholding in the Company, only applied to assets which were actually owned by the Company and did not apply to assets, such as the Glasgow Road Property, for which other arrangements have already been made some time ago. At the end of the day, the appropriate inference to be drawn from the said share transfers should be one which appeared most consistent with the rest of the facts and evidence. In my view, the inference sought to be drawn by the Company was inconsistent with the conduct of the parties – in particular, the major renovation and improvement works undertaken by TTL and TTL's withdrawal of his HDB flat application. I therefore do not accept the Company's submission concerning the said share transfer.

(B) USE OF THE GLASGOW ROAD PROPERTY FOR NON-RESIDENTIAL PURPOSES

146 The Company submitted that TTL’s family was never entitled to exclusive use of the Glasgow Road Property as it was also used for storage of the Company’s goods (and, in later years for storage of goods belonging to B-Tech and Sandilands) and TTH and TTS were in possession of keys to the Glasgow Road Property. The plaintiffs’ position was that the Glasgow Road Property was used for storage of goods for B-Tech and Sandilands only. B-Tech and Sandilands were formed in 2004, a decade after the Company ceased operating the petrol kiosk. B-Tech and Sandilands were neither part of the Company nor businesses related to the Company.

147 The Company called one Victor Teo as witness to testify that he had been delivering goods for the Company at the Glasgow Road Property once every two months from 1977 to 2008 (a period of 31 years). The plaintiffs and third parties maintain that they have never met Victor Teo even though they have all been residing at the Glasgow Road Property. For the reasons given below, I had serious doubts over the credibility of Victor Teo’s evidence.

148 First, he was not able to provide the court with specifics on a number of points, which he ought to be able to provide if his testimony concerning regular deliveries of goods to the Glasgow Road Property since the 1970s were true. For example, Victor Teo claimed in his AEIC that he would sometimes see TTW at the Glasgow Road Property when he made deliveries. Since it was the Company’s case that TTW was committed to the IMH in 1993, I asked Victor Teo which were the years during which he saw TTW at the Glasgow Road Property. Victor Teo’s answer was: “Can’t remember”. I then asked whether there was a period after which he would notice that TTW was no longer seen at the Glasgow Road Property. He replied: “no idea about this”. I then asked if he

could remember when he last saw TTW, he replied that he had no memory of when the last time he saw TTW was.

149 In response to questions from me, Victor Teo claimed that he would park the delivery truck near the porch to unload the goods and then put the goods into a room in the house. This was the exchange he had with me:

Witness: Mm, it's a---you unload it, it would be---er, to---er, near the porch and then the room---*put in the room.*

Court: You unload near the porch?

Witness: Yah, yah, yah. *And so we bring it to the room.*

Court: Where the---is the room located?

Witness: Very near, quite near to the porch.

Court: Quite near to the porch?

Witness: Yah, yah.

Court: How many---roughly how many steps?

Witness: About---about se---I think it's about seven---seven step, er, mm.

Court: Is it inside the house? Is it outside the house?

Witness: The house ah.

Court: Yes?

Witness: Er, it's a single storey house, Sir.

Court: Yes.

Witness: Mm-hm.

Court: So is it one in---inside the house, right?

Witness: Mm.

Court: Among the bedrooms or the dining rooms or is it outside the house---

Witness: *I put---*

Court: ---behind?

Witness: *It---put in the room, mm.*

Court: 50 cartons would fill up how much of the room?

Witness: Mm, we pile it up quite high and about---about half a room.

Court: 50 cartons fill up half the room?

Witness: Yah, yah.

[emphasis added]

150 Following this exchange, the Company's counsel asked Victor Teo whether the porch was on the left side or the right side of the house. Victor Teo answered "right-hand side", when the correct answer should be "left-hand side". This was the exchange between the Company's counsel and Victor Teo:

Q Okay. And the porch, if I am standing at the front gate looking into the house---

A Mm.

Q ---the porch is on the right-hand side of the house or left-hand side of the house?

A *Right-hand side.*

Q *Right-hand side of the house?*

A *Ah, ah, ah.*

Q *Okay.*

A *Mm.*

Q So your lorry would reach the porch.

A Mm-mm.

Q And if I walk in towards your lorry---

A Mm.

Q ---where would be the room when I reached your lorry, is it to---further back or is it to my left-hand side or is it to my right-hand side?

A *I can't remember. We just put outside only. I don't know where.*

Q *You put outside---*

A *Outside the room, yah.*

Q *---the room?*

A *Yah, yah, yah.*

[emphasis added]

151 The foregoing exchange also showed that, when pressed to pinpoint the location of the room which Victor Teo claimed to have placed the goods in, he claimed he could not remember. He also changed his evidence to say that he only left the goods outside, abandoning his earlier testimony that he placed the goods inside the room.

152 Victor Teo also claimed that he delivered cosmetics to the Glasgow Road Property for B-Tech and that he began doing so in the 1980s. This was clearly not credible as B-Tech was established only in 2004. This is relevant exchange:

Q And do you remember cosmetic is for which company?

A Er, B-Tech's.

Q Oh, B-Tech.

A Yah.

...

Q And do you recall roughly when you were more heavily involved with cosmetic?

A Er, be around we---during the 80s. Okay. During 80, yah.

Q Cosmetic?

A Yah.

153 In the light of the foregoing, I found the Company's evidence concerning storage of goods at the Glasgow Road Property difficult to accept.

Given the key position held by TTL in the Company and the proximity of the Glasgow Road Property to the Company's petrol kiosk, I would not be surprised if TTL had stored some of the Company's materials at the Glasgow Road Property. However, I doubt the situation was one of large scale and regular usage of the Glasgow Road Property as a warehouse, as the Company had alleged.

154 In any event, usage of the Glasgow Road Property for storage of the Company's goods was not inconsistent with TTL treating the Glasgow Road Property as his own property, given the key role he held in the Company. In a similar vein B-Tech and Sandilands were businesses owned partly by TTL and there was nothing unusual about TTL allowing goods from these two businesses to be kept at the Glasgow Road Property. Significantly, B-Tech and Sandilands had nothing to do with the Company. As for the keys to the Glasgow Road Property, it was again not unusual for homeowners to entrust a couple of close relatives with keys to their homes. The crux of the issue was whether these were all done with the consent of TTL. If so, they would not be inconsistent with TTL treating the Glasgow Road Property as his own property. The Company had produced no evidence to show that any of these acts were done as an assertion of right by the Company, over TTL's objections. I therefore did not find any of these acts to be of significant probative value in the Company's favour.

(C) CLAUSE IN THE COMPANY'S FINANCIAL STATEMENTS CONCERNING
DIRECTORS' CONTRACTUAL BENEFITS

155 The Company pointed to following statement found in the Company's annual financial statements from 1989 to 1999:

Directors' Contractual Benefits

Since the beginning of the financial year, no director has received or has become entitled to receive a benefit which is required to be disclosed under s 201(8) of the Companies Act, Cap. 50 by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial interest except for :-

- (i) remuneration as shown in the financial statements;
- (ii) *the company's freehold land and buildings were occupied by the directors free of charge.*

[emphasis added]

The Company's submission was that TTL should have known from this statement that he was permitted to stay in the Glasgow Road Property "only as a contractual benefit conferred by his status as a director".

156 This submission was without merit. In the first place, this statement on "Directors' Contractual Benefits" only appeared in the Company's financial statements from 1989 to 1999. Therefore, even if there was merit in the Company's reading of the statement, it did not explain the basis for TTL's occupation of the Glasgow Road Property since 1976. More importantly, as was clear from the face of the statement, it was included in the Company's financial statements to fulfil a regulatory requirement imposed by s 201(8) of the Companies Act (Cap 50, 1990 Revised Ed). The version of s 201(8) prevailing in the 1990s read:

The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the amount of emoluments received or due and receivable by the directors shown in the accounts or, if the company is a holding company, the consolidated accounts in accordance with the Ninth Schedule or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related

corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

Quite clearly, the reporting obligation under s 201(8) was to ensure that companies were transparent about benefits in kind received by directors from their companies. It was an obligation imposed for the protection of shareholders and persons dealing with the company. The inclusion of the phrase “the company’s freehold land and buildings were occupied by the directors free of charge” in the statement on “Directors’ Contractual Benefit” merely reflected the assessment of the person preparing the financial statements that this was a benefit which ought to be disclosed pursuant to s 201(8). This statement could neither be the source of the directors’ right to stay in properties belonging to the Company nor an authoritative statement on the nature or origin of any such right.

(D) PAYMENT OF PROPERTY TAX AND INSURANCE FOR THE GLASGOW ROAD PROPERTY

157 The Company also relied on the fact that the Company had been paying for the insurance and property tax on the Glasgow Road Property to rebut the existence of the alleged common intention.

158 The examples of the insurance policies adduced by the Company show that they were taken out as a requirement of the mortgage created by the Company over the Glasgow Road Property to secure banking facilities taken out for the Company’s business. (See the policy dated 8 August 1977 which was addressed to “M/s Geok Hong Co. (P) Ltd., as Owners and the Industrial & Commercial Bank Ltd., (Head Officer) as Mortgagees” and the policy dated 6 March 1992 which was addressed to “Geok Hong Co Pte Ltd as Owner and Standard Chartered Bank Ltd as Mortgagees”. The 6 March 1992 policy also

provided expressly that in the event of loss, the insurance payout would be paid to the Standard Chartered Bank to the extent of their interest.) Since the mortgage was taken out for the Company’s business purpose and since the insurance policies were part of the cost and expense of taking out the mortgage, the Company’s payment for the insurance policies did not detract from the overall findings discussed above.

159 As for payment of property tax, TTL explained in the SD that these were recouped by the Company from him when it stopped paying him his salary “around the year 1990”. The Company produced evidence that the Company stopped paying salary to its directors in the mid-1990s and switched to paying consultancy fees, and that the Company ceased paying any form of remuneration to its directors from around 2002. In response, the plaintiffs pointed to the fact that some of TTL’s sibling continued to draw a salary from a related company, Geok Hong Realty Pte Ltd. Given the state of the evidence, while I was not prepared to accept that the plaintiffs have proven that the ultimate source of funds for payment of the property tax came from TTL, I was also not prepared to accept that the Company had completely refuted this part of the plaintiffs’ case. In the final analysis, the amount involved in the payment of property tax was relatively small compared to the TTL’s expenditure on the Glasgow Road Property (see [93]-[103] above), and thus would not skew my overall conclusion when all relevant evidence is looked at in the round.

(E) TGC’S AUTHORITY TO MAKE REPRESENTATIONS

160 The Company submitted in its closing submission, in relation to proprietary estoppel, that TGC would have no authority to make any representation on behalf of the Company giving rise to proprietary estoppel as TGC had no authority to dispose of the Company’s property to the Company’s

detriment. The Company, quite rightly, did not make the same submission on lack of authority in the context of common intention constructive trust. This is because the plaintiffs' case concerning common intention constructive trust did not require the plaintiffs to argue that the Company had subsequently given away what it had originally owned. The plaintiffs' case on common intention constructive trust concerned intentions which were formed at the time of, or prior to, the acquisition of the Glasgow Road Property. As such, no disposal of the Company's assets was involved.

(F) KAG'S RELATIONSHIP WITH OBC AND TGC

161 The Company submitted that: "KAG's testimony that TGC spoke to her about the Property is put in further doubt by the Defendants' evidence that TGC and OBC did not approve of her marriage to TTL". It was not clear whether the Company was submitting that:

- (a) because TGC and OBC did not approve of KAG's marriage to TTL, they would never consider making arrangements for TTL's benefit; or
- (b) KAG's was not on speaking terms with her in-laws and therefore TGC would never have spoken to her about the Glasgow Road Property.

162 If the Company's submission is the former, I do not see how disapproval of a marriage relationship could lead TTL's parents to decide never to make any arrangements for TTL's benefit. By all accounts, TTL's relationship with TGC remained good and TTL continued to play a key role in the Company. In any event, if TGC had been wary of KAG, he had already taken the precaution of

placing the legal title to the Glasgow Road Property in the Company's name instead of TTL's name in order to keep the property out of KAG's reach.

163 If the Company's submission is the latter, I highly doubt that, by the time TGC was alleged to have told TTL and KAG to withdraw their HDB application, which would have been 10 years or more after the wedding, TGC would still have been harbouring such anger as to not wished to speak to KAG about anything. In fact, KAG produced evidence that in 1989 she brought OBC on a holiday in Thailand together with KAG's children, which probably meant that KAG was well-accepted by OBC by then.

(G) CONCLUSION ON EXISTENCE OF COMMON INTENTION

164 For the reasons given above and looking at the evidence and the conduct of the parties in the round, I found the common intention alleged in para 3 of TTL's SD to have been proven on the balance of probabilities.

165 For completeness, I would add that, even if I were to give no weight to the assertions about express common intention in para 3 of TTL's SD, my findings regarding the conduct of the parties, such as the improvement works undertaken by TTL and TTL's withdrawal of his HDB application, would lead me to find an inferred common intention.

Detrimental reliance

166 TTL had suffered detriment by making various improvements to the Glasgow Road Property and paying for them. These included major works such as filling in the pond, changing the gradient of the driveway, installation of modern sanitation (including the laying of sewerage pipes under the land), conversion of the garage into an additional bedroom, enclosing the backyard

with a metal shelter, etc. These are works not of a trivial nature. In addition, TTL withdrew his application for a HDB flat in 1986 at TGC's instruction, thus foregoing the opportunity to purchase his own residential property and the opportunity for significant capital gains arising from the ownership of his own residential property, an opportunity that was available to and utilised by TTL's siblings. I therefore found that the requirement for detrimental reliance was met.

Conclusion on common intention constructive trust

167 For the reasons given above, I found that the Glasgow Road Property was held subject to the common intention constructive trust for the benefit of TTL.

Proprietary estoppel

168 Given my findings concerning common intention constructive trust, it was strictly not necessary to consider the plaintiffs' claim in proprietary estoppel. However, for completeness, I shall deal with the point briefly.

169 The learned authors of *Snell's Equity*, at paras 12-034 to 12-036, categorised the cases concerning proprietary estoppel into following three strands:

- (a) Cases based on acquiescence – see *eg, Fisher v Brooker* [2009] UKHL 41 in which Lord Neuberger stated, at [62] that:

The classic example of proprietary estoppel, standing by whilst one's neighbour builds on one's land believing it to be his property, can be characterised as acquiescence.

- (b) Cases based on representation of facts – see *eg, Hopgood v Brown* [1995] 1 WLR 213 in which concerned representation as to the

location of a boundary. One key difference between the acquiescence-based cases and the representation-based cases is that there is a requirement that the party to be estopped knew the true state of affairs in acquiescence-based cases but there is no such requirement in representation-based cases.

(c) Cases based on promises – see *eg, Thorner v Major* [2009] UKHL 18 (“*Thorner v Major*”) which involved an assurance by the owner of a farm to a relative that he would inherit the farm.

170 The nature of the assurance relied on by the plaintiffs in this case (*ie*, assurance by TGC that he would buy the Glasgow Road Property for TTL and assurance by TGC that there was no need for TTL to apply for a HDB flat because TTL already had the Glasgow Road Property) brought the case within the promise-based strand of promissory estoppel. Promise-based proprietary estoppel can be used as a cause of action leading to reliefs which include orders for transfer of property (see *eg, Thorner v Major, Gillet v Holt* [2001] Ch 210 and *Pascoe v Turner* [1979] 1 WLR 431).

171 In all three strands of cases, detrimental reliance is an essential requirement. As discussed at [166] above, this requirement has been met in the present case.

172 Unlike the common intention constructive trust where the court has no discretion as to the remedy to be ordered and would simply order the enforcement of the constructive trust it has found, the court has a discretion in shaping an appropriate remedy in claims of proprietary estoppel, applying the principle of “minimum equity to do justice to the plaintiffs”. Given the nature of the assurance relied on by TTL and the nature of the detriment to TTL, as

well as the likely value of the Glasgow Road Property, the appropriate relief to be ordered under a successful proprietary estoppel claim in the present case may not necessarily require the transfer of the entire property to TTL's estate. It could, for example, involve ordering the sale of the Glasgow Road Property and splitting the proceeds between the Company and TTL's estate in such proportion as to ensure that KAG would be able to purchase alternative accommodation which is sufficiently comfortable to house herself and the families of her three children. Given that I have found in favour of the plaintiffs on common intention constructive trust, I would say no more about the appropriate remedy for proprietary estoppel.

Laches

173 The Company relied on the doctrine of laches and cited the cases of *Re Estate of Tan Kow Quee* [2007] SGHC 19 ("*Tan Kow Quee*") and *Quek Hung Heong v Tan Bee Hoon* [2014] SGHC 17 ("*Quek Hung Heong*") as precedents.

174 In *Tan Kow Quee*, a claim was brought by two children of the deceased against the administrators of the deceased estate for a declaration that a property occupied by one of the administrators continued to form part of the estate of the deceased and ought to be sold and the proceeds distributed among beneficiaries of the deceased's estate. The administrators' position was that the administration of the deceased's estate was completed 50 years ago with all beneficiaries receiving their share of the deceased's estate in cash while the administrator in question retained the property as part of the overall distribution. The court held that the doctrine of laches applied as, among other things, the delay of 50 years was considerable by any yardstick.

175 In *Quek Hung Heong*, the plaintiff sought to enforce an alleged family arrangement reached in 1966 under which he would be entitled to the entire beneficial interest in a property. The court noted that, if the plaintiff's case was to be believed, he would have been entitled to call for the transfer of the other four one-fifth shares in the property to him when he had fulfilled the terms of the alleged family arrangement in 1972. While the court acknowledged that confrontation is the option of last resort between family members, the court noted that familial inhibitions would have weakened long before the commencement of the suit in 2011 given the following developments:

- (a) In 1973, the plaintiff's brother refused to transfer his one-fifth share to the plaintiff unless the plaintiff repaid the entire amount due under an overdraft facility. This was a clear breach of the alleged family arrangement, yet the plaintiff took no action.
- (b) In 1979, the plaintiff's brother and parents issued a lawyer's letter demanding that the plaintiff vacate the property. This demand was totally inconsistent with the alleged family arrangement, yet the plaintiff did not bring up the alleged family arrangement as a basis for rejecting the demand.
- (c) In 1982, the plaintiff discovered that his father had devised his share in the property in a manner inconsistent with the alleged family arrangement. Yet again, the plaintiff did nothing to assert his alleged rights over the property.

176 The Company sought to draw an analogy between *Quek Hung Heong* and the present case by submitting that TTL should have asserted his claim over the Glasgow Road Property on any of the following occasions:

- (a) when TGC signed a will in 1990 in TTL's presence without mentioning the circumstances under which the Glasgow Road Property was purchased;
- (b) when TGC passed away in 1990 without clarifying with anyone in writing about the alleged promises made to TTL;
- (c) when the Company switched from paying TTL a salary to paying him a consultancy fee in 1995;
- (d) when the Company ceased paying any fees or salary to all directors in 2002;
- (e) when the mortgage on the Glasgow Road Property was discharged in 2003.

177 A quick comparison of the list at [176] with that at [175] above will reveal the vast difference in the nature of the events in these two lists. Unlike the events listed at [175] above, none of the events listed at [176] above involved a direct confrontation over the Glasgow Road Property or a denial of TTL's claim over the property.

178 Nothing concerning the lack of mention of the Glasgow Road Property in TGC's should alarm TTL. Legal title of the property was with the Company, not with TGC. By the same token, there was nothing for TTL to clarify with his siblings about when TGC passed away. This was especially since, if the plaintiffs' evidence were to be believed, TTL's siblings were aware of TTL's rights over the property. There were two indications of this in the evidence:

(a) on 30 October 2012, TTL asked his siblings to “return” the Glasgow Road Property to him. Such a request would not have made sense unless TTL assumed that his siblings knew of TTL’s rights over the property; and

(b) the various improvements made to the Glasgow Road Property by TTL at his own expense without query or challenge from TTL’s siblings in circumstances where these improvements would have been observable by the directors of the Company who visited the Glasgow Road Property.

(For completeness, I should add that there is nothing circular about evaluating the application of the doctrine of laches on the assumption that the plaintiffs’ case were to be believed. This approach, which was adopted in *Quek Hung Heong*, made eminent sense because the essence of the inquiry into the applicability of the doctrine of laches is the question – if the plaintiff was right, why did he not act earlier?)

179 The stoppage of salary, on the Company’s case, was not directly related to the Glasgow Road Property and therefore would not, in the normal course of events, have triggered in TTL the thought that he should assert or protect his rights over the Glasgow Road Property. While the discharge of the mortgage over the property was an event which concerned the property, it was not an event which threatened or was in any way inconsistent with TTL’s rights over the Glasgow Road Property.

180 In fact, the only event which should have caused TTL to spring into action was the conversation on 30 October 2012 during which TTL requested the “return” of the Glasgow Road Property which request was denied by his

siblings with the remark that TTL should go and die quickly. Consistent with TTL's claim, he sprang into action as he should by making the SD and lodging a caveat against the property.

Conclusion

181 This was a case in which documentation and objective evidence on both sides were lacking in many respects. In the end, after evaluating the evidence and considering parties' submissions, I came to accept the plaintiffs' version of events on the balance of probabilities. In coming to this decision, I was conscious of the presumption that beneficial interest follows legal title. However, I was of the view that, thin though the available evidence may be, there was sufficient evidence to rebut that presumption in this case.

182 In assessing the evidence, I took into account a number of difficulties I had with the credibility of the Company's witnesses. These included:

- (a) how the Company's testimony that TTL was already unconscious and uncommunicative on 30 October 2012 conflicted with the independent evidence of Mr Ong and Dr Lew;
- (b) how TTH's evidence concerning the presence of modern sanitation at the Glasgow Road Property when it was purchased was debunked by independent evidence from PUB;
- (c) how OBC's evidence on the witness stand directly contradicted her own AEIC and how her behaviour made me strongly suspect that she had been coached and drilled to say certain things by the Company's representatives; and

(d) the unsolved mystery over the annotation “(Geok Hong)” in the very belatedly disclosed Boswell receipt.

183 As for the plaintiffs’ evidence, despite warning myself to treat TTL’s SD with caution, I was able to find corroboration of critical aspects of the SD in the other available evidence and in the established facts.

184 I therefore found that the plaintiffs had proven their case on common intention constructive trust on the balance of probabilities. Consequently, I declared that the Glasgow Road Property was held by the Company on trust for TTL and ordered the Company to convey the Glasgow Road Property to TTL’s estate. The counterclaim and claims against third parties were therefore dismissed.

Pang Khang Chau
Judicial Commissioner

Plaintiffs in person;
Chong Kuan Keong and Sia Ernest (Chong Chia & Lim LLC) for the
defendant;
Third Parties in person.
