**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2020] SGHC 147**

Suit No 428 of 2017

Between

Bhavika Manohar Godhwani

… *Plaintiff*

And

(1) Manohar Hargun Godhwani
(2) Larissa International Holdings Ltd
(3) Florenza Investments Inc

… *Defendants*

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# GROUNDS OF DECISION

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[Gifts] — [Inter vivos]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Companies] — [Incorporation of companies] — [Piercing corporate veil] — [Insider reverse piercing]

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# Bhavika Manohar Godhwani
# v
# Manohar Hargun Godhwani and others

**[2020] SGHC 147**

High Court — Suit No 428 of 2017
Kannan Ramesh J
27–30 August, 4 October 2019, 29 April 2020

22 July 2020

**Kannan Ramesh J:**

## Introduction

1 The plaintiff, Bhavika Manohar Godhwani, and the first defendant, Manohar Hargun Godhwani, are wife and husband respectively. This suit concerned the plaintiff's claim that the first defendant committed breaches of trust by misappropriating funds and securities that were beneficially owned by her, and were derived from her inheritance ("the Inheritance").

2 The funds and securities alleged to have been misappropriated were previously held in various bank accounts. A portion of the funds was held in several bank accounts in the plaintiff's and the first defendant's joint names (see [10(a)] below). The rest of the funds was held in bank accounts in the names of the second and third defendants, Larissa International Holdings Ltd and

Florenza Investments Inc, with the securities being held in a bank account in the name of the former (see [10(b)] and [10(c)] below). The second and third defendants are shell companies registered in the British Virgin Islands ("BVI"). The plaintiff and the first defendant are directors and equal shareholders of both companies. The plaintiff claimed that in breach of trust, the first defendant had transferred all of the aforementioned funds and securities to his own bank accounts or bank accounts in the names of companies owned and controlled by him. She also claimed that the funds and securities, as the case may be, in the bank accounts of the second and third defendants had been held by them on trust for her.

3 The first defendant claimed that the plaintiff had promised to give him 50% of the Inheritance ("the purported promise"). He further claimed that pursuant to the purported promise, the plaintiff had given him the *cash* portion of the Inheritance as the equivalent of the 50% she had promised. He explained that this was because the Inheritance also comprised non-cash assets which could not be readily liquidated. The cash portion of the Inheritance was therefore the proxy for the value of the purported promise. According to the first defendant, the funds that had been deposited into the plaintiff's and the first defendant's joint accounts, and the second and third defendants' accounts, were the gift that was made pursuant to the purported promise. It should be noted that the allegedly misappropriated securities were purchased with the said funds. Accordingly, the funds and securities that were alleged to have been misappropriated were his to deal with.

4 Having considered the evidence and the parties' submissions, I was not persuaded that the purported promise had been made and thereafter performed. Accordingly, I found that there was no gift as alleged by the first defendant, and that the first defendant had misappropriated the funds and securities. However,

for reasons that will be made clear in these grounds, I only allowed the plaintiff's claim in part. I gave detailed oral grounds on 14 May 2020, and both the plaintiff and the first defendant have since appealed (in CA/CA 86/2020 and CA/CA 89/2020 respectively). I now set out the full reasons for my decision.

### Limitation period

5 I state at the outset that none of the plaintiff's claims were time-barred. One of the issues raised by the first defendant's solicitors in the course of proceedings was that the plaintiff's claims were time-barred under the Limitation Act (Cap 163, 1996 Rev Ed) ("LA"). In this regard, the plaintiff's solicitors rightly noted that s 22(1)(*b*) of the LA was applicable:

> **22.**–(1) No period of limitation … shall apply to an action by a beneficiary under a trust, *being an action* –
>
> …
>
> (*b*) *to recover from the trustee trust property … in the possession of the trustee, or previously received by the trustee and converted to his own use.*
>
> [emphasis added]

The plaintiff's claims, if proven, quite clearly fell within the ambit of s 22(1)(*b*) of the LA. I therefore went on to consider the substance of the claims.

### The facts

6 The plaintiff and the first defendant have been married for 27 years. The plaintiff's father passed away on 6 April 2002, leaving behind substantial assets in his estate ("the Estate"), including funds, real property and shareholding in various companies. Under her father's will ("the Will"), the plaintiff was bequeathed the Inheritance, which comprised a quarter of the Estate. While the parties knew at that time that the plaintiff could expect to receive a substantial

inheritance as her father had been a very wealthy man, the precise value of the Inheritance and the proportion of cash and non-cash assets were not known.

7 Subsequently, the plaintiff's mother, who was also the executrix of the Estate, wanted the plaintiff to transfer over her rights to the Inheritance. According to the plaintiff, this was because her mother was concerned that the Inheritance would be controlled or misused by the first defendant and/or the plaintiff's uncle. At this point, the Inheritance had not been transferred to the plaintiff – the plaintiff's mother had refused to do so for the reasons outlined earlier.

8 Consequently, sometime in 2002, a number of suits were commenced in relation to the Estate ("the Estate Litigation"):

(a) On 2 June 2002, the plaintiff's solicitors applied for a succession certificate to be issued under Hindu succession laws. In July 2002, a succession certificate which stated that the Estate was to be distributed to five people was issued. The five people were the plaintiff, and her grandmother, mother and two sisters.

(b) In February 2003, the succession certificate was appealed, and in the appeal proceedings the Will was produced. The succession certificate was set aside and the plaintiff's mother as executrix was ordered to distribute the Estate in accordance with the Will.

(c) Around late 2005 or early 2006, the plaintiff reached a settlement with her mother ("the Settlement"). Under the Settlement, the plaintiff was to be given the Inheritance and there would be no further litigation over the Will and/or the Estate.

9 At the time of the Settlement, the plaintiff did not possess any bank accounts in her own name. Thus, in order to facilitate the receipt of the Inheritance, the first defendant assisted the plaintiff to open several bank accounts in Switzerland in her sole name ("the plaintiff's sole accounts").

10 By around May 2006, a portion of the Inheritance totalling US$81.46m had been deposited into the plaintiff's sole accounts. Further sums were also received thereafter. Subsequently, a portion of the sum deposited into the plaintiff's sole accounts (in various currencies having the approximate value of US$74.7m) was gradually transferred between June 2006 and November 2014 to five Singapore bank accounts. This was done with the plaintiff's consent. These bank accounts were as follows:

(a) Two joint accounts in the names of the plaintiff and the first defendant: Deutsche Bank account number XXXX984 and DBS account number S-XXX366 ("DB Account 984" and "DBS Account 366" respectively; collectively, "the Joint Accounts").

(b) Two accounts in the name of the second defendant: UBS AG account number XXX372 and UBS AG account number XXX472 ("UBS AG Account 372" and "UBS AG Account 472" respectively).

(c) One account in the name of the third defendant: Deutsche Bank account number XXXX894 ("DB Account 894").

Collectively, these five bank accounts are referred to as "the Bank Accounts". The transfers from the plaintiff's sole accounts to the Bank Accounts are referred to as "the transfers to the Bank Accounts". Both parties were authorised to access and operate the Bank Accounts.

11 The plaintiff had between 2006 and 2012 largely left the management of the funds in the Bank Accounts to the first defendant. However, she claims that around mid-2012, she became suspicious of his management of the Bank Accounts. She allegedly began to make inquiries from late-2012 and discovered in 2015 and 2016 that the first defendant had between 2009 and 2016 surreptitiously and gradually transferred funds held in the Bank Accounts to five other bank accounts. These bank accounts were as follows:

(a) Three of these accounts were in his sole name:

(i) Deutsche Bank account number XXXX606 ("DB Account 606");

(ii) DBS account number XXX967 ("DBS Account 967"); and

(iii) UBS AG account number XXX371 ("UBS AG Account 371").

(b) The other two accounts were in the names of two companies, Florenza Investments Pte Ltd ("Florenza PL") and Jupiter Gold Trading DMCC ("Jupiter"). These accounts were:

(i) Deutsche Bank account number XXXX745 ("Florenza PL's Account"); and

(ii) UBS AG account number XXX284 ("Jupiter's Account").

Florenza PL and Jupiter were companies incorporated by the first defendant, and are owned and controlled by him. These five accounts are collectively referred to as "the disputed bank accounts".

12 The first defendant accepted that he had effected the following transfers from the Bank Accounts between July 2009 and December 2016:

(a) From the Joint Accounts, a total of US$30,538,729.77 and S$51,038.28 was transferred to DB Account 606 and DBS Account 967 (in the first defendant's name), and CAD874,301.53 was transferred to Florenza PL's Account.

(b) From UBS AG Account 372 and UBS AG Account 472 (in the second defendant's name), a total of US$12,912,811.03, CAD501,741.05 and S$6,285.05 was transferred to UBS AG Account 371 (in the first defendant's name), and US$4,200,000 was transferred to Jupiter's Account.

(c) A portion of the funds in UBS AG Account 372 (in the second defendant's name), amounting to approximately S$2,151,813.72, was used by the first defendant to purchase various securities ("the Securities"), which were deposited in UBS AG Account 372 (in the second defendant's name). The Securities were subsequently transferred to UBS AG Account 371 (in the first defendant's name) in April 2014.

(d) From DB Account 894 (in the third defendant's name), a total of US$10,890,510.04 was transferred to DB Account 606 (in the first defendant's name), and US$4,500,000 was transferred to Florenza PL's Account.

The various transactions through which the Securities and the funds listed above were transferred to the disputed bank accounts are referred to as the "disputed transfers". They form collectively the funds and securities that the plaintiff asserted were misappropriated by the first defendant (see [2] above).

13 There was also ongoing litigation between the parties in the BVI ("the BVI Litigation") and in Dubai ("the Dubai Litigation"):

(a) The BVI Litigation related to the plaintiff's attempt to obtain leave from the BVI High Court to commence a derivative action against the first defendant in the names and on behalf of the second and third defendants. The brief details of these proceedings are as follows:

(i) At the time of the commencement of this suit, the BVI Litigation was ongoing.

(ii) On 10 January 2018, the BVI High Court ordered that the plaintiff was permitted to pursue a derivative action against the first defendant in the names of the second and third defendants. The relevant parts of the order of the BVI High Court are as follows:

> IT IS HEREBY ORDERED AND DIRECTED THAT:
>
> 1. The [plaintiff] be permitted to commence or pursue derivative action (including joining existing proceedings where appropriate) … before the High Court of the British Virgin Islands, the High Court of the Republic of Singapore or in such other forum or fora in which the [plaintiff] is properly advised by counsel to take action, in the name of, and for the benefit of, [the second defendant] against:
>
> …
>
> (II) [The first defendant], his agents, assigns or companies under his control, for the recovery of all assets of [the second defendant] that have been misappropriated by [the first defendant] and/or seeking declarations of trust.
>
> …

The order made with respect to the third defendant was in identical terms, save for the formal parts.

(iii) On 13 December 2018, the BVI Court of Appeal allowed the first defendant's appeal against the order of the BVI High Court and ordered the parties to appoint an independent third party to have control and conduct of any proceedings commenced by the second and third defendants.

(iv) As at the time of the main tranche of the trial, *ie*, in August 2019, the parties had not appointed the independent third party as directed by the BVI Court of Appeal. As such, the second and third defendants had not commenced proceedings against the first defendant. This appeared to be the case even as at the date of judgment in this suit (*ie*, 14 May 2020).

The BVI Litigation ought not to be confused with the alleged "legal battles" that the first defendant claimed took place in the BVI between 2002 and 2006, which I will address later in these grounds (see [40] below).

(b) The Dubai Litigation was commenced in 2016 by the plaintiff against the first defendant. The plaintiff claimed that the first defendant misappropriated monies held in Dubai Citibank bank accounts in their joint names (the "Dubai Accounts"). The first defendant did not dispute that US$15,270,648.50 and 27,632,390.02 United Arab Emirates dirhams had been deposited into the Dubai Accounts by the plaintiff. It was also not in dispute that these monies were also derived from the Inheritance. The result of the Dubai Litigation was that the monies in the

Dubai Accounts were found to be the plaintiff's and the first defendant was found liable for misappropriating all of these monies.

**The parties' cases**

***The plaintiff's case***

14 The plaintiff's overarching submission was that she did not make the purported promise and did not gift any portion of the Inheritance to the first defendant pursuant thereto. She raised five main arguments.

15 First, the plaintiff had no reason to make the purported promise. She denied the first defendant's assertion that she had felt compelled to give 50% of the Inheritance to him in return for his willingness to take charge of the Estate Litigation on her behalf. The plaintiff explained that:

(a) The first defendant instigated the plaintiff to commence the Estate Litigation, and threatened to walk out of the marriage if she did not comply. The plaintiff did not propose the Estate Litigation, and never asked the first defendant to devote his "life and time" to it.

(b) The plaintiff agreed to *continue* with the Estate Litigation because the first defendant was not able to provide her the standard of living she desired; it was in both their interests to recover the Inheritance through the Estate Litigation.

(c) While the plaintiff eventually felt grateful to the first defendant for his efforts in relation to the Estate Litigation, such gratitude did not translate into the purported promise.

16 The plaintiff also made the point that the first defendant adopted inconsistent positions. While he initially asserted that the plaintiff had made the purported promise out of *gratitude* to him for conducting the Estate Litigation, he later claimed that it was a pre-emptive *enticement* prior to the commencement of the Estate Litigation. Further, in so far as the first defendant contended that the purported promise was meant as an enticement, it made no sense for the plaintiff to have made the purported promise to the first defendant then (in 2002) given that their relationship was healthy. The plaintiff would not have thought of offering her husband a reward in exchange for his assistance. There was no reason for them to have behaved in a transactional manner.

17 Second, the Bank Accounts were not opened for the purpose of facilitating the transfer of a gift. The plaintiff had transferred portions of the Inheritance into the Bank Accounts *solely* for the purpose of allowing the first defendant to manage and invest the said funds on her behalf. This arrangement was his idea. The plaintiff was under the impression that the Bank Accounts could only be operated by the both of them *jointly*. Further, the first defendant's evidence on this point was inconsistent and not credible: the first defendant initially claimed that the said funds had been held in *joint* accounts because he wanted the plaintiff to have access to the same for her expenses, but later changed his evidence and claimed that this arrangement was in place in case "something happened to him or if he became incapacitated". The first defendant's evidence in this regard had also been drip-fed, and portions of his in-court testimony never featured in his affidavit of evidence-in-chief ("AEIC").

18 Third, the plaintiff and the first defendant did not know of the value of the Inheritance, or what it comprised (whether in the form of cash or non-cash assets), at the time of the purported promise. The plaintiff would thus not have known that the cash portion of the Inheritance represented 50% of the

Inheritance. Accordingly, the first defendant's assertion on the nature of the purported promise – that the plaintiff promised to give him the cash portion of the Inheritance in lieu of the 50% she had promised initially – was "illogical and implausible".

19 Fourth, the first defendant adopted inconsistent positions in the suits commenced in different jurisdictions. This undermined the veracity of his evidence. The first defendant argued in this suit that the plaintiff had gifted him a portion of the Inheritance. However, in the Dubai Litigation, he argued that he took funds (which had also been derived from the Inheritance) held in the Dubai Accounts "for the family and their sons". He did *not* argue that he had been gifted the said funds on the basis that the gift from the plaintiff comprised all of the cash in the Inheritance. When questioned on this, the first defendant provided untenable explanations.

20 Fifth, the evidence of one Mohit Manohar Godhwani ("Mohit"), the elder son of the plaintiff and the first defendant, was unreliable. His account, which supported the first defendant's case, ought to be rejected.

21 Further, in her written reply submissions, the plaintiff contended that she had *locus standi* to bring a claim against the first defendant for the funds and the Securities (as the case may be) held by the second and third defendants. The plaintiff submitted that the second and third defendants were merely "shell" investment holding vehicles with no business or trading activities, and accordingly that the funds and the Securities held by these companies were held on trust for her. There was thus no need for the plaintiff to commence a derivative action under s 216A of the Companies Act (Cap 50, 2006 Rev Ed). Notably, she did not explain how the second and third defendants being shell

companies meant that leave either at common law or under s 216A was not required.

22 Based on the foregoing, the plaintiff contended that the first defendant had misappropriated a portion of the Inheritance, and was liable for breach of trust. As relief, the plaintiff prayed for:

(a) a declaration that the first defendant held the funds that were misappropriated from the Joint Accounts on trust for her (see [12(a)] above);

(b) a declaration that the first defendant held the funds that were misappropriated from UBS AG Account 372 and UBS AG Account 472 (both accounts in the second defendant's name) on trust for her and/or the second defendant (see [12(b)] above);

(c) a declaration that the first defendant held the Securities, which were misappropriated from UBS AG Account 372 (in the second defendant's name), on trust for her and/or the second defendant (see [12(c)] above);

(d) a declaration that the first defendant held the funds that were misappropriated from DB Account 894 (in the third defendant's name) on trust for her and/or the third defendant (see [12(d)] above);

(e) an order that the first defendant account for the aforementioned funds and the Securities;

(f) a tracing order in relation to the aforementioned funds and the Securities; and

(g) a declaration that the funds and the Securities, as the case may be, that were held in the second and third defendants' bank accounts were held on trust for her.

***The first defendant's case***

23 The first defendant's position was that the plaintiff made the purported promise in 2002. Pursuant to this promise, she gave him the entirety of the cash portion of the Inheritance representing 50% of the Inheritance. The first defendant made five main arguments corresponding to the arguments made by the plaintiff as outlined above.

24 First, the plaintiff made the purported promise out of gratitude. She had requested his assistance to "fight her mother and sisters to get [the Inheritance]". The plaintiff was accordingly grateful to the first defendant when he had assisted her in the Estate Litigation. The first defendant explained as follows:

(a) The plaintiff's AEIC and testimony at trial revealed that she wanted to obtain the Inheritance. She was unhappy with the standard of living provided by the first defendant, and wanted the Inheritance to sustain her extravagant lifestyle. She accordingly instigated the Estate Litigation.

(b) The plaintiff did not know how to conduct legal proceedings, and had no one to turn to except the first defendant. She thus requested his help in the Estate Litigation.

(c) The first defendant was reluctant to participate in the Estate Litigation. He did not want to be embroiled in long-term proceedings. He agreed only because the plaintiff asked. The plaintiff adduced no

evidence to show that he had been the driving force and instigator behind the Estate Litigation.

25 Second, the gift that was made pursuant to the purported promise comprised *the transfers to the Bank Accounts*. If there had been no gift, there would have been no need for the plaintiff to transfer any funds to the Bank Accounts. While the plaintiff claimed that she did so to allow the first defendant to manage and invest a portion of the Inheritance, this was "unbelievable" because she knew that he was not capable of making sound investments and "growing her inheritance money". Further, the plaintiff did not take steps to stop the first defendant when she allegedly became suspicious of his management of the Inheritance. She also did not adduce any evidence to show that she had in fact investigated whether funds had been moved out of the Bank Accounts. These went towards showing that she knew she had made a gift to the first defendant.

26 Third, the plaintiff was aware that the Inheritance included cash as well as assets such as shares and immovable property which could not be readily liquidated. She also had a rough idea of the value of the shares and immovable property due to her involvement in her father's businesses. Based on this, the plaintiff told him that she would give him the entirety of the cash portion of the Inheritance in performance of the purported promise. The cash portion of the Inheritance was thus the proxy for the value of the gift under the purported promise.

27 Fourth, on the Dubai Litigation, the first defendant had informed his Dubai lawyers of his defence, but "there was a lapse on their side". He had not understood the proceedings in Dubai because they were conducted in Arabic and because it was "an accounting case". Further, the Dubai Litigation was

"different from the Singapore Proceedings" – this appeared to be an argument suggesting that his behaviour in the Dubai Litigation was irrelevant for the purposes of this suit.

28 Fifth, Mohit's evidence supported the first defendant's position that the purported promise had been made. His evidence was credible. Accordingly, the court ought to disregard the plaintiff's assertion that Mohit's evidence was untrue and contrived.

29 Given that the plaintiff intended to and did make a gift to the first defendant, the disputed transfers were not acts of misappropriation – the first defendant was simply taking what was his. The plaintiff should therefore not be entitled to any relief.

30 Further, the first defendant submitted that the plaintiff did not have *locus standi* to bring claims against the first defendant arising from the disputed transfers from the bank accounts in the names of the second and third defendants. This would be a breach of the proper plaintiff rule. Moreover, the plaintiff's argument that the funds and the Securities (as the case may be) in the accounts of the second and third defendants were held on trust for her should fail as she was not the sole shareholder of those companies. In any event, the second and third defendants were separate legal entities and the rightful owners of the funds and the Securities.

**Issues**

31 The first and key issue was whether the plaintiff had made the purported promise, *ie*, promised the first defendant a gift of 50% of the Inheritance, and pursuant thereto made a gift of the cash portion of the Inheritance ("the gift issue"). Establishing the purported promise was key to the first defendant's case

that a gift had been intended and made. As I found that the purported promise had not been made, it followed that there was no gift. Two further issues followed: first, whether by effecting the disputed transfers, the first defendant was in breach of trust ("the breach issue"), and second, the remedies that ought to be granted to the plaintiff ("the remedy issue"). I address each of these issues in turn.

## The gift issue

32 The first defendant's assertion was that a gift was made. His case was twofold and cumulative: first, that the purported promise had been made (see [3] above); and second, that the purported promise was performed and the gift perfected *by the transfers to the Bank Accounts*. In other words, the funds that were transferred to the Bank Accounts constituted the cash equivalent of 50% of the Inheritance. These funds were gifted by the plaintiff to the first defendant. On the other hand, the plaintiff asserted that there was no gift, and that the funds in the Bank Accounts were held on trust for her. For there to have been a valid gift, I had to find in favour of the first defendant on both issues.

### *Whether the purported promise was made*

#### *The inconsistencies in the first defendant's evidence*

33 The first significant difficulty with the first defendant's case was his inconsistent account on the gift issue, in particular as to when the purported promise had been made. Whilst the first defendant asserted in his AEIC that the purported promise had been made in 2002, the Defence suggested that the purported promise had been made sometime in 2006 *after* he had supported the plaintiff in the Estate Litigation. Even as regards 2002, the first defendant was unclear on whether the purported promise had been made *before or after* he had

agreed to support the plaintiff in the Estate Litigation. These inconsistencies were material as the purported promise formed the cornerstone of the first defendant's case. The point in time at which it was made would materially affect related issues such as the question of the parties' contemporaneous knowledge of the nature and value of the Inheritance and the reasonableness of the purported promise. As such, the lack of clarity and the inconsistencies in his account raised serious doubt as to the veracity of his evidence. Having said that, I proceeded on the basis that the purported promise had been made sometime in 2002 as the first defendant affirmed that to be his position in cross-examination and closing submissions.

34 The first defendant also took inconsistent positions on the scope of the purported promise. His position in the Defence was that he had been promised the *cash portion* of the Inheritance, *and not any non-cash assets*. This was in view of the fact that the Inheritance comprised both cash and non-cash assets. Later, he testified that the "cash portion" he had been promised also comprised the *cash derived from liquidating non-cash assets*. These positions were inconsistent and difficult to understand. The first defendant should surely have been able to assert with clarity what exactly was the scope of the purported promise, *ie*, what exactly he was supposed to receive and the source from which it was to be derived.

35 When the inconsistency between the two positions was pointed out to the first defendant in cross-examination, his answers were evasive. When asked whether the Bank Accounts contained the cash (which he claimed he was promised) or non-cash portions of the Inheritance, he did not answer directly and kept insisting that the non-cash assets, "[once] distributed, … became cash" – in doing so, he was essentially asserting that the "*cash* portion" he was promised also comprised the proceeds arising from the liquidation of non-cash

assets. There were two key problems with this: first, he did not explain how much of the non-cash assets were realised for the purpose of performing the purported promise, which is a critical detail; and, second, this significant facet of his case did not surface in the Defence or his AEIC.

36 Further, the first defendant was inconsistent on what was the specific act that perfected the gift. He initially claimed that the act of gifting was a transfer of US$50m by the plaintiff to the parties' "BNP Paribas Switzerland" accounts "held in [their] joint names". However, he was unable to provide *any details* on this transfer and the bank account, whether in his answers to the request for further and better particulars or in cross-examination. Significantly, he eventually did not pursue this point, and instead fell back on the argument that the *transfers to the Bank Accounts* constituted perfection of the gift. As noted earlier, this point is *critical* and forms one of the two key pillars supporting the first defendant's case (see [32] above). It was accordingly difficult to understand how the first defendant could be so unclear on something so fundamental to his case.

37 In this respect, there were further critical problems with the first defendant's case. His case, as mentioned, was that the transfers to the Bank Accounts totalling US$74.7m (see [10] above) constituted the plaintiff's gift to him pursuant to the purported promise. There were difficulties with his evidence:

(a) There was an inconsistency between the nature of the funds in the Dubai Accounts (see [13(b)] above), and the first defendant's case that the transfers to the Bank Accounts (i) constituted the making of the gift, *and* (ii) comprised the entire cash portion of the Inheritance. As mentioned, the funds in the Dubai Accounts (which the first defendant

misappropriated from the plaintiff) were likewise derived from the Inheritance (see [13(b)] above). Such funds therefore represented yet *another cash portion* of the Inheritance *separate from* the transfers to the Bank Accounts. This was irreconcilable with the first defendant's position that the transfers to the Bank Accounts constituted the plaintiff's gift to him, and that this gift in turn comprised the *entire* cash portion of the Inheritance.

(b) Further, the transfers to the Bank Accounts did not comprise the entirety of the funds that were deposited into the plaintiff's sole account by May 2006 as part of the Inheritance. That sum was US$81.46m. Of that, only approximately US$74.7m (see [10] above) had been transferred to the Bank Accounts. This again contradicted the first defendant's assertion that he had been promised the *entire cash portion* of the Inheritance. In many ways, this is the same observation as regards the monies in the Dubai Accounts. The first defendant attempted to explain the shortfall by suggesting that there were cash portions "lying in other banks which [the plaintiff] withdrew later and … spent". This assertion, however, was unsupported by any evidence. More importantly, when this aspect of the first defendant's testimony was considered in light of the fact that he could not even clearly state the quantum of the gift he had received (see [34]–[36] above and [45]–[46] below), it became increasingly evident that his evidence simply did not cohere with his version of events.

(c) In addition, the transfers to the Bank Accounts were effected over a period of time, from 2006 to 2014. However, the sum of US$81.46m (from the Inheritance) had been deposited into the plaintiff's sole accounts *by May 2006* (see [10] above), and there was,

> according to the first defendant, an agreement reached about that time for him to take the entire cash portion of the Inheritance in lieu of 50% of the Inheritance. Accordingly, the sum of US$81.46m ought to have been transferred to the first defendant shortly after May 2006 in either a single tranche or in a series of tranches. However, the transfers to the Bank Accounts spanned *nine years*. This strongly suggested that these transfers were not intended as gifts as described by the first defendant.

38 These inconsistencies and difficulties collectively marred the first defendant's credibility to a significant degree. More importantly, the lack of clarity on the precise circumstances surrounding the purported promise, its value and how it was performed raised serious doubts as to whether such a promise had even been made.

*The plaintiff's lack of incentive to make such a disproportionate gift*

39 Next, I did not believe that the plaintiff had any reason to make the purported promise at the relevant point in time, *ie*, in 2002. The plaintiff accepted that she had felt some degree of gratitude to the first defendant because of the first defendant's promise to take charge of the Estate Litigation but asserted that her gratitude never manifested in the purported promise. I accepted this for three reasons.

40 First, in 2002, when the purported promise was allegedly made, the Estate Litigation was in its infancy. There had been no significant contribution by the first defendant at that point. The extent of contribution that would be needed was also uncertain. Further, it was not clear whether the first defendant was able or prepared to contribute significantly to the Estate Litigation moving forward. Any support the first defendant rendered in the "legal battles" in *other* jurisdictions namely, the BVI, Switzerland and India, only took place later, from

2003 to 2005. His contribution to these "legal battles" could not have been on the parties' minds in 2002. It was not even in evidence that these battles were contemplated in 2002. More pertinently, the first defendant confirmed in cross-examination that no *formal* legal proceedings were commenced in the three jurisdictions mentioned. It was thus clear that he overstated the extent of the "legal battles". His *limited* contribution did not comport with the extravagance of the purported promise. It would have been a wholly disproportionate response on the plaintiff's part.

41 Second, I agreed that the status of the parties' relationship in 2002 would not have led to the plaintiff making the purported promise. The parties were then a happily married couple. It was not conceivable that they would have behaved in such a transactional manner. Why would the plaintiff feel compelled to make the purported promise? The first defendant was after all assisting his wife, the plaintiff, to recover her Inheritance and if such efforts were successful, he, as the husband, would have received incidental benefits. There was simply no need to split the Inheritance in this manner. This question must be considered against the overlay of the extravagance of the gift and the uncertainty of the effort on the part of the first defendant that would be required (according to the first defendant) in return for the purported promise.

42 Third, I was not convinced that it was the plaintiff's idea to commence the Estate Litigation. I found it more likely that the first defendant instigated her to do so. This was the plaintiff's consistent position which I accepted. The first defendant was down and out financially in 2002: he admitted during cross-examination that in April 2002, he had no job, no income and no home. As explained, he stood to gain incidentally from the Estate Litigation. There was thus good reason why the first defendant would instigate the Estate Litigation. It was also particularly relevant that *all* of the correspondence with lawyers over

the Estate Litigation had been carried out by the first defendant, not the plaintiff; this was borne out on the documentary evidence. Hence, as it was the first defendant who instigated the Estate Litigation, there would have been no need for the plaintiff to entice him with, or offer him, a reward (*ie*, the purported promise). As mentioned earlier, the first defendant stood to gain incidentally from the fruits of the Estate Litigation from being the plaintiff's husband.

43 For the above reasons, I was not persuaded that the plaintiff had any compelling reasons to make the purported promise.

*The parties' lack of knowledge on the extent of the Inheritance*

44 I also found it unlikely that the plaintiff would have made the purported promise given the state of the parties' knowledge on the true value of the Inheritance. The first defendant's case as pleaded was that before the Inheritance was received, the plaintiff had promised him the entire *cash portion* of the Inheritance in lieu of the 50% of the Inheritance she had originally promised. However, in order to conclude that the cash portion of the Inheritance would approximate to 50% of the Inheritance, the parties would have needed to have some concrete knowledge of the nature and extent of the Inheritance, the value that was attributable to its non-cash components, as well as the amount of cash that would be received. Clearly, the plaintiff and the first defendant would have had to know the value of the non-cash assets and the amount of cash that the plaintiff expected to receive under the Inheritance for the trade-off to have been agreed.

45 Neither the plaintiff nor the first defendant possessed such knowledge at that time. The Estate was very much under the control of the plaintiff's mother and sister, with the latter actively involved in the family business before the plaintiff's father's demise. Further, a significant portion of the non-cash assets

comprised shares in tightly-owned private companies of significant value incorporated in the UAE (Dubai) and India. The first defendant described them as "very big companies". However, there was a fair degree of opacity as to their true value. Although the plaintiff accepted that she vaguely understood the Inheritance to comprise cash, shareholdings, and real property, she maintained that she did not know the value or quantum of each of these components. She was not involved, at least actively, in the management of the family business. I accepted her evidence. She was never seriously challenged on this, and it was never put to her that her evidence was false. No documentary or contemporaneous evidence showing the contrary was adduced. The first defendant accepted that *he, likewise, did not have specific knowledge of these variables* as regards the Inheritance at the material time. As such, I found it difficult to believe that the plaintiff would have been willing to make a gift of unknown proportions, or that the parties would have casually settled on a then-unknown cash portion as an approximation of 50% of the Inheritance. The contention was quite absurd.

46 It was particularly troubling that the first defendant's lack of knowledge on the extent of the Inheritance continued even at trial. He explained that this was because the Estate comprised interests in "very big companies" in India and the UAE, and the purported promise had been an informal agreement between husband and wife. It was inconceivable that even at the time of trial, the first defendant was unable to state with precision the exact extent of the gift. By this time, on his case, the purported promise had been performed. He must surely have known the extent of the Inheritance and how the gift was computed. This spoke to the conclusion that the purported promise had *not* in fact been made, and that it was never subsequently agreed that the cash component of the Inheritance would be taken in lieu of performance of the purported promise.

*The first defendant's inconsistent positions in different jurisdictions*

47 The first defendant took inconsistent positions in the proceedings in different jurisdictions. In this suit, the first defendant's case was that the plaintiff made the purported promise and pursuant to it, effected the transfers to the Bank Accounts. In short, the gift promised under the purported promise was perfected by the transfers to the Bank Accounts. However, in the Dubai Litigation, he ran a different defence. As mentioned, the plaintiff had similarly accused him of misappropriating monies *derived from the Inheritance* (see [13(b)] above). The first defendant did not argue that these monies were likewise gifts to him from the plaintiff; instead, he argued that his withdrawal of the misappropriated monies was "for the family and their sons". This was a wholly inconsistent position.

48 The first defendant was cross-examined on this inconsistency. He claimed that he had informed his Dubai lawyers that the plaintiff had made him a gift as promised but there had been a "lapse" on their part in failing to advance that defence in the Dubai Litigation. Two points arose from this testimony:

(a) First, the Dubai Litigation concerned monies in the Dubai Accounts. These accounts were not part of the Bank Accounts. Thus, as noted above (see [37] above), the first defendant's evidence that the monies in issue in the Dubai Litigation were part of the gift was inconsistent with his position in this suit that the gift comprised *only* the transfers to the Bank Accounts.

(b) Second, as explained earlier (see [37] above), the first defendant's allegation that the gift from the plaintiff consisted of *all the cash* in the Inheritance could not square with his case in this suit that this gift comprised *the transfers to the Bank Accounts*. It was common

> ground that the monies in the Dubai Accounts were derived from the Inheritance. That being the case, the monies that had been misappropriated from the Dubai Accounts represented *another cash portion* of the Inheritance in addition to the transfers to the Bank Accounts. In other words, the transfers to the Bank Accounts could not have been the entire cash portion of the Inheritance as alleged by the first defendant. This undermined his evidence that the entire cash portion of the Inheritance was gifted to him pursuant to the purported promise.

49 In any event, I did not accept the first defendant's evidence that there was a lapse on the part of his Dubai lawyers. If what the first defendant alleged was true, his Dubai lawyers would effectively have ran not only an *entirely incorrect* defence but one that was *contrary to his instructions*; this was in substance an allegation of professional negligence bordering on misconduct. It was inconceivable for that to have happened without any real reason or motive to explain such conduct by his Dubai lawyers. There was simply no evidence corroborating this allegation. There was also no evidence that the first defendant had pursued this issue with his Dubai lawyers. This is difficult to understand given the gravity of the mistake and the result of the Dubai Litigation being adverse to the first defendant. Further, the first defendant's solicitors in this suit had been instructed by his Dubai lawyers. That was surprising given the gravity of the mistake on their part. That aside, one would have then expected: (a) the "lapse" in the Dubai Litigation to have manifested itself again in this suit, or (b) corrections to reflect his true instructions that the monies in the Dubai Accounts were part of the gift. However, the fact is that the first defendant's position in this suit was calculably different. He did not assert that the monies in the Dubai Accounts were part of the gift. He was specific and deliberate in limiting his claim to only the transfers to the Bank Accounts. This suggested that he had conveyed a different position to his solicitors in this suit from that which was

conveyed to his Dubai lawyers. There was no "lapse" as alleged. Finally, it would be astonishing if the first defendant had in fact failed to detect the "lapse" by his Dubai lawyers. It was a lapse of great significance relating to the very basis of his defence to a claim involving tens of millions of dollars (see [13(b)] above). I was thus convinced that there was no lapse. The first defendant knowingly ran entirely different defences despite both sets of proceedings involving misappropriation of monies *derived from the Inheritance*. This suggested that he was being untruthful in his evidence that there had been a gift.

*Mohit's evidence*

50 Mohit, the elder son of the parties, came forward as a witness for the first defendant. He testified that on several occasions from 2002 to 2006, he witnessed the plaintiff "promis[ing] to share half of her inheritance" with the first defendant. He also recounted specific incidents in 2004 and 2009 to similar effect. I did not accept his evidence.

51 Mohit's testimony was unreliable. In giving evidence, he relied on his understanding of his parents' conversations. This should be viewed in light of the fact that the incidents Mohit referred to would have occurred when he was between the ages of eight and 12, more than a decade ago – indeed, Mohit accepted at trial that he could not remember the context of their discussions due to the significant lapse of time.

52 It was also important for Mohit's evidence to be assessed against the *totality* of the evidence. There were manifest deficiencies that plagued the first defendant's case as a whole. Mohit's evidence was not reconcilable with these deficiencies, and could not suffice to shore up the shortcomings in the first defendant's case.

53 Further, it was apparent that Mohit had a far better relationship with the first defendant than the plaintiff. It was fair to say that his relationship with the plaintiff was unhealthy and decidedly frosty. It was also relevant that Mohit was largely dependent on the first defendant for his needs, and that the first defendant had lavished Mohit with extravagant gifts such as a BMW X5 car for his 18th birthday. There were therefore significant reasons why Mohit's evidence might have been, intentionally or otherwise, coloured. Accordingly, I viewed his evidence with a significant degree of circumspection.

*Conclusion on the purported promise*

54 For the above reasons, I was not persuaded that the purported promise had been made. The first defendant's evidence was inconsistent, and his story was improbable. In contrast, the plaintiff by and large maintained a consistent version of events that was supported by the documentary evidence and prevailing circumstances.

***The significance of the transfers to the Bank Accounts***

55 A gift is perfected when the subject matter of the gift is *transferred with donative intent* from donor to donee: see *Teo Song Kheng v Teo Poh Hoon* [2020] SGHC 47 at [18]. I was not satisfied that the transfers to the Bank Accounts had been intended as gifts by the plaintiff to the first defendant pursuant to any promise she had made.

56 As noted earlier (see [25] and [32] above), the first defendant's case was that the gift had been perfected by the transfers to the Bank Accounts *pursuant* to the purported promise. Hence, for the first defendant's case to be sustained, the court had to find that the purported promise was made. Absent the purported promise, the first defendant had no factual basis to explain why the plaintiff

would have made a gift by effecting the transfers to the Bank Accounts. In light of my earlier conclusion that the plaintiff did *not* make the purported promise, the first defendant's argument in this regard failed *in limine*. I have also addressed the various inconsistencies that plagued this aspect of the first defendant's case (see [37] above). For completeness, I will nevertheless explain why, upon an examination of the circumstances surrounding the transfers to the Bank Accounts, it was even clearer that these were not transfers that perfected a gift, and were instead explicable on other grounds.

57 Critically, two of the Bank Accounts (the Joint Accounts) were in joint names, while the other three were in the names of companies (the second and third defendants) in which both the plaintiff and the first defendant were directors and equal shareholders. This was not consistent with the first defendant's case that there had been a gift of all of the monies in the Bank Accounts. It should be emphasised that it had never been the first defendant's case that half of what was in the Bank Accounts was his. *His case was that all of it was his.* Further, the Bank Accounts could be operated by either the plaintiff or the first defendant. The plaintiff always retained control of and access to the portions of the Inheritance transferred to the Bank Accounts. Again, this was not consistent with a gift.

58 In this respect, the plaintiff testified that she retained control of and access to the Bank Accounts because she "was not prepared to simply hand over [her] money" to the first defendant. She agreed to the transfers to the Bank Accounts at *the first defendant's* behest, as she trusted him and believed that the Bank Accounts "could only be operated by both [of them] together". The first defendant's role was to facilitate the investment and management of the funds in the Bank Accounts. I accepted her account, which was credible and consistent. If the plaintiff truly intended to make a gift, the relevant funds could

easily have been transferred to bank accounts in the first defendant's sole name. It made no sense for the funds to be first transferred to the Bank Accounts over a period of nine years, and then over an extended period of time (eight years) transferred without the plaintiff's knowledge, through the disputed transfers (see [12] above), to accounts in the first defendant's sole name and in the names of companies owned and controlled by him (*ie*, Florenza PL and Jupiter).

59 The first defendant's case in this regard, in contrast, was difficult to follow:

(a) He asserted that it was the plaintiff's idea to incorporate and transfer the relevant funds to the second and third defendants. There were two problems with this. First, he accepted that this assertion only surfaced during trial, which suggested that it was an afterthought. Second, even if his assertion was true, he offered no explanation as to why the plaintiff would have wanted to remit funds meant to be part of a gift to companies which were *jointly* owned by them.

(b) He also asserted that the arrangement on the Joint Accounts was to allow the plaintiff to avoid any inconveniences with the funds "[being] frozen or [going] into probate" if *he* passed away. This, however, was not asserted in the Defence or his AEIC. This also did not explain why it was necessary to transfer some of the monies into accounts in the second and third defendants' names. Also, if this had truly been the arrangement, it did not explain why the first defendant would then have needed to subsequently make the disputed transfers, and why those transfers took place over a period of eight years. The first defendant would have left the monies in the Joint Accounts and the bank accounts in the second and third defendants' names. More importantly,

it was not clear why this (*ie*, concerns over estate issues) would have been a relevant consideration at that time. Between 2006 and 2014, when the transfers to the Bank Accounts were being gradually effected, the parties were relatively young. In 2006, the first defendant was about 39 years old. He also did not claim that he had been suffering from any serious ailments at the time. There were no prevailing circumstances that supported the need for such an arrangement.

(c) In his AEIC, the first defendant asserted that the Bank Accounts could be operated by both the plaintiff and himself because he intended to allow the plaintiff to use the funds therein. He affirmed this in cross-examination. This was difficult to reconcile with the funds being a gift to the first defendant – a gift would suggest that the funds were his to keep. Further, the suggestion that the plaintiff would need to turn to the first defendant for her expenses was absurd. On the first defendant's case, the plaintiff was left with 50% of the Inheritance even after the gift. She was clearly more than self-sufficient and adequately funded.

60 Based on the foregoing, it was sufficiently clear that the transfers to the Bank Accounts were not what the first defendant described them to be. They were quite clearly not intended to be a gift from the plaintiff to the first defendant.

***Conclusion on the gift issue***

61 I thus concluded that there was no gift from the plaintiff to the first defendant comprising the transfers to the Bank Accounts. I now turn to address the breach and remedy issues, starting with the funds that were held in the *Joint Accounts* prior to misappropriation.

## The breach and remedy issues

### *The funds held in the Joint Accounts*

62 On the breach issue, it was necessary to first identify with precision the basis of the trust relationship. In my view, the first defendant was a trustee of such part of the Inheritance as was held in the Joint Accounts by virtue of the presumption of resulting trust. The presumption of resulting trust operates where one person makes a voluntary payment to another that is then vested in the other person or in both of them jointly. In the *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 decision, Lord Browne-Wilkinson stated the following at 708A:

> … where A makes a voluntary *payment* to B or pays (wholly or in part) for the purchase of property *which is vested* either in B alone or *in the joint names of A and B*, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the *sole provider of the money*) …
>
> [emphasis added]

63 The passage above was recently cited in *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 at [55]. In that case, it was held (at [70]) that the presumption of resulting trust applied to monies held in a joint account where the account holders had made unequal contributions (see also *One Investment and Consultancy Ltd and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] 5 SLR 923, in the context of garnishee proceedings). This is sound as a matter of principle; the court in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [38] and [44] stated that the presumption is equity's response to the *lack of intention on the part of the transferor to benefit the recipient*. As a result, each party holds a beneficial interest in the property equivalent to their respective direct financial contributions to the same (*Chan Yuen Lan* at [53]).

64 While the presumption of resulting trust can be displaced either by evidence of the transferor's intention to make a gift or the presumption of advancement (see *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [52] and [56]), neither applied in this case. The presumption of advancement had no relevance as the first defendant's case was a positive one, *ie*, he asserted and sought to prove that a gift had been intended by the plaintiff. On this issue (*ie*, the gift issue), as indicated above, I found that the plaintiff did not intend to make a gift to the first defendant by effecting the transfers to the Bank Accounts. My finding applied to all five of the Bank Accounts (see [10] above), including the Joint Accounts. Therefore, while the Joint Accounts might have been in both parties' names, the beneficial interest in the funds held therein resided with the plaintiff. Thus, the first defendant held the funds in the Joint Accounts on trust for the plaintiff.

65 However, for reasons which were not clear, the plaintiff did not seek as one of her reliefs a declaration of trust *over the funds in the Joint Accounts*. This ought to be juxtaposed against the declaration of trust in her favour that she sought over the funds and the Securities, as the case may be, in the second and third defendants' accounts (see Statement of Claim (Amendment No 4) ("Statement of Claim"), prayer E(24)):

> (E) Other Relief
>
> (24) A Declaration that the Plaintiff is the beneficial owner of the 2nd Defendant's Funds, Securities and 3rd Defendant's Funds, and that she is personally entitled to payment of the same from the 1st Defendant and/or the 2nd and 3rd Defendants;

Instead, she sought as against the *first defendant*, a declaration of trust in her favour over *the funds that were dissipated from the Joint Accounts via the disputed transfers* (see Statement of Claim, prayer A(1)):

> (A) In respect of the [funds in the Joint Accounts]
>
> (1) A Declaration that the 1st Defendant holds the sums of USD 30,538,729.77, CAD 874,301.53 and SGD51,038.28 (representing the aggregate of the [funds in the Joint Accounts]) as trustee for the Plaintiff;

A declaration was sought *against the first defendant* as regards these sums even though a portion – CAD874,301.53 – was not in bank accounts in the first defendant's name and instead was in Florenza PL's Account (see [12(a)] above). It could not therefore be said that the first defendant held such sums on trust. The choice the plaintiff made in this regard had repercussions on the appropriate remedies that could be ordered for the disputed transfers from the Joint Accounts, which I now turn to.

66 As noted earlier, a total of US$30,538,729.77 and S$51,038.28 was transferred by the first defendant from the Joint Accounts to accounts in his sole name – DB Account 606 and DBS Account 967 (see [12(a)] above). A further CAD874,301.53 was transferred by the first defendant from the Joint Accounts to Florenza PL's Account (see [12(a)] above). Given the conclusion that I had reached, *ie*, that the funds held in the Joint Accounts were impressed with a trust in favour of the plaintiff, the disputed transfers from the Joint Accounts, as outlined above, would thus have been breaches of trust on the first defendant's part, and the plaintiff ought to have properly sought and would have been entitled to an account from the first defendant of the funds transferred out, as well as a consequential order for payment. However, as noted earlier, the plaintiff did not seek a declaration of trust *over the Joint Accounts* and consequential orders for an account and payment. Instead, she sought a declaration that *the funds that were dissipated* from the Joint Accounts via the disputed transfers were held by the first defendant on trust for her (see Statement of Claim, prayer A(1)). However, as part of these funds – the sum of CAD874,301.53 – had been transferred to Florenza PL's Account, it could not

be said that the same was held on trust by the *first defendant* for the plaintiff. This sum was held by Florenza PL and not the first defendant.

67 Thus, in so far as the plaintiff sought a declaration of trust over the sum of CAD874,301.53 in Florenza PL's Account as against the *first defendant*, that could not be granted. Accordingly, I declared that the first defendant held the sums of US$30,538,729.77 and S$51,038.28 – which were held in his sole name in DB Account 606 and DBS Account 967 – on trust for the plaintiff, but *not* the sum of CAD874,301.53 in Florenza PL's Account.

68 I further ordered the first defendant to give an account to the plaintiff for the sums of US$30,538,729.77 and S$51,038.28, which he had been holding on trust for the plaintiff. The first defendant was ordered to pay the plaintiff all sums found to be due to her on the taking of the account. I also granted a *tracing order* to trace the assets or proceeds into which the said sums had been converted, if any. If those sums had been converted into other traceable assets, the plaintiff was entitled to trace her claim into those assets, and to maintain a proprietary remedy subject to the limitations recognised by law: see *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 at [633].

### *The funds and the Securities held in the second and third defendants' accounts*

69 The plaintiff sought a declaration of trust in her favour over the bank accounts in the second and third defendants' names (see [65] above). She also sought a declaration of trust in favour of the second and third defendants and her as against the first defendant over the funds and the Securities, as the case may be, that were transferred from the said bank accounts via the disputed transfers (see Statement of Claim, prayers B(7), C(12) and D(18)). This raised

two questions. First, whether the funds and the Securities in the second and third defendants' bank accounts were held on trust *for the plaintiff*. Second, whether the plaintiff had *locus standi* to seek a declaration of trust as against the first defendant either in her own name or for and on behalf of the second and third defendants in relation to the funds and the Securities that were misappropriated from the second and third defendants' bank accounts. These questions were inter-related and I shall address them collectively.

70 The plaintiff had no *locus standi* to bring the action against the first defendant for the funds and the Securities that were misappropriated from the second and third defendants' bank accounts (see [10(b)] and [10(c)] above). It was difficult to see how the plaintiff could contend otherwise in light of the BVI Litigation (see [13(a)] above). There, she had sought leave of court to bring proceedings on behalf of the second and third defendants against the first defendant in relation to "all assets" of the second and third defendants that were misappropriated by the first defendant. That was an admission that she did not have *locus standi* to bring such a claim. Such leave had in fact been granted by the BVI High Court, in the terms reproduced at [13(a)(ii)] above. More importantly, the first defendant's appeal against the decision of the BVI High Court was allowed, to the extent that the BVI Court of Appeal held instead that *conduct of such proceedings (on behalf of the second and third defendants) should be left in the hands of* ***not the plaintiff****, but an independent third party appointed by the parties*. In other words, the independent third party to be appointed would have charge of the proceedings instead of the plaintiff. The plaintiff was bound by this determination and therefore had no *locus standi* to bring proceedings on behalf of the second and third defendants against the first defendant. *Locus standi* was with the independent third party.

71 I make a further point. If the first defendant had frustrated the plaintiff's attempts, as he appeared to have done, to commence proceedings on behalf of the second and third defendants by refusing to concur in the appointment of an independent third party pursuant to the BVI Court of Appeal's order (see [13(a)(iii)] above), that did not mean that the plaintiff could take matters into her own hands and commence proceedings in *her own name*. She was bound by the BVI Court of Appeal's order. She would have to apply to vary the order made by the BVI Court of Appeal on the ground that the first defendant was deliberately frustrating its objective. This she had failed to do and her failure was fatal.

72 The plaintiff argued that she could bring an action directly against the first defendant because she beneficially owned the funds that had been transferred, as part of the transfers to the Bank Accounts, to the accounts of the second and third defendants. In other words, the second and third defendants were bare trustees. However, the plaintiff's assertion was inconsistent with her application for leave in the BVI Litigation and its outcome. It was also inconsistent with the declaration she had sought in this suit – that the funds and the Securities that were misappropriated from the second and third defendants' accounts were held on trust for her *and/or the second and third defendants* (see Statement of Claim, prayers B(7), C(12) and D(18); see also [22(b)]–[22(d)] above). Asserting a trust in favour of the second and third defendants was consistent with the action being a derivative action for which she had not obtained leave to bring in her own name.

73 Further, the facts did not support the plaintiff's assertion that the second and third defendants were bare trustees. Her pleaded case was that in 2006, the first defendant had persuaded her to allow him to manage the Inheritance and the income it generated. The second and third defendants were incorporated as

investment holding companies as a result, and the said funds were transferred to them with her consent. That being the case, it was artificial for the plaintiff to contend that the second and third defendants held the said funds on trust for her. As investment holding companies, title to the said funds would have vested in them in the usual way. That must have been the intention. Otherwise, no purpose would have been served by the incorporation of such companies to hold and manage investments. Consistent with this was the plaintiff's claim that she had agreed to the first defendant's suggestion to place funds in the second and third defendants' accounts for *the purpose of protecting those funds* from her mother and sister. She accordingly must have intended to transfer the ownership of the said funds in order to "immunise" them from her mother and sister by using the shield that incorporation affords. The second and third defendants thus had good title both in equity and at law. Accordingly, I did not accept that the monies in the second and third defendants' accounts were held on trust for the plaintiff.

74 While the plaintiff emphasised in reply submissions that the second and third defendants were *shell companies* that had not been conducting business, this was irrelevant. What mattered, as explained, was the plaintiff's intention when she transferred the said funds to the second and third defendants. Having validly transferred good title to the second and third defendants, what the plaintiff then sought to do in these proceedings was to engage in *insider reverse piercing*, *ie*, a shareholder of a company attempting to pierce the corporate veil by disregarding the separate legal personality of that company, in order to avail himself/herself of corporate claims against third parties: see *Jhaveri Darsan Jitendra and others v Salgaocar Anil Vassudeva and others* [2018] 5 SLR 689 ("*Salgaocar*") at [47]. This is impermissible (see *Salgaocar* at [48]–[75]). Having sought the benefits of incorporation, the plaintiff had to accept the

consequences that came with it. In any event, her argument was inconsistent with the leave she had sought and the order that was made in the BVI Litigation.

75 I thus made no order with respect to the funds and the Securities that were held by the second and third defendants and the disputed transfers that were made from their bank accounts. It was for the plaintiff to pursue those claims in the appropriate way if she so chose.

**Conclusion**

76 I partially allowed the plaintiff's claim with respect to the transfers listed at para 14 of the Statement of Claim. Accordingly:

(a) I declared that the first defendant held the sums of US$30,538,729.77 and S$51,038.28, which had been held by him in the manner described in paras 14(a) and (b) of the Statement of Claim, on trust for the plaintiff.

(b) I ordered the first defendant to provide an account to the plaintiff for the sums of US$30,538,729.77 and S$51,038.28 within 21 days from the date of judgment (*ie*, 21 days from 14 May 2020). The first defendant had to pay the plaintiff all sums found to be due to the plaintiff on the taking of the account, including interest, benefits, profits and/or traceable assets.

(c) I granted a tracing order with respect to the sums of US$30,538,729.77 and S$51,038.28, for the plaintiff to trace and recover the assets or the proceeds thereof into which the said sums had been converted.

77 I made no order with respect to the transfers listed at paras 14A, 14B and 15 of the Statement of Claim.

78 Parties were directed to file submissions on costs by 28 May 2020. Having considered the parties' submissions, on 3 June 2020, I ordered costs of S$132,500 against the first defendant in favour of the plaintiff, as follows:

(a) The plaintiff was granted the costs of the action on a standard basis based on five trial days at a daily rate of S$26,000, giving a total of S$130,000. On disbursements, the court invited parties to agree on the appropriate sum, failing which they were to write in for determination by the court. The parties have not to-date written in.

(b) The plaintiff was granted the costs of the submissions on costs fixed at S$2,500 inclusive of disbursements.

Kannan Ramesh
Judge

Teh Guek Ngor Engelin *SC*, Yeo Yian Hui Mark, Lim Xiao Wei Charmaine and Bryan Hew Jianrong (Engelin Teh Practice LLC) for the plaintiff;
Yogarajah Yoga Sharmini, Subashini d/o Narayanasamy and Kannan s/o Balakrishnan (Haridass Ho & Partners) for the first defendant.