

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 45

Suit No 121 of 2017
(Registrar's Appeal No 253 of 2017)

Between

- (1) Khalid Ali Salah Abdulla
- (2) Hussain, Ali Abdulla Al-Yazidi

... Plaintiffs

And

Alwee Alkaff

... Defendant

GROUND OF DECISION

[Civil Procedure] — [Striking out]
[Trusts] — [Breach of trust]
[Trusts] — [Accessory liability]

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Khalid Ali Salah Abdulla and another

v

Alwee Alkaff

[2018] SGHC 45

High Court — Suit No 121 of 2017 (Registrar's Appeal No 253 of 2017)

Chua Lee Ming J

5 October 2017

28 February 2018

Chua Lee Ming J:

Introduction

1 The plaintiffs, Mr Khalid Ali Salah Abdulla and Mr Hussain Ali Abdulla Al-Yazidi, brought this action in a representative capacity on their own behalf and on behalf of 29 other parties.

2 In summary, the plaintiffs claimed that

(a) the defendant, Mr Alwee Alkaff, had taken over as trustee of certain trust monies (“the Trust Monies”) which had been received by his father and uncle who were the original trustees;

(b) the defendant was therefore liable as trustee for the Trust Monies;

(c) in the alternative, the defendant had knowingly received the Trust Monies and/or dishonestly assisted in breaches of trusts committed by the original trustees in respect of the same.

3 The defendant applied to strike out the action under all four limbs of O 18 r 19(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Rules”). On 5 September 2017, the Assistant Registrar (“AR”) struck out the statement of claim. The plaintiffs appealed against the AR’s decision and on 5 October 2017, I dismissed the appeal. The plaintiffs have appealed against my decision.

Background

4 The plaintiffs, and the 29 parties whom they represent, are Yemenis who claimed to be descendants of Shaik Abdulla bin Husein bin Saleh bin Abdulla bin Toq Al Ahmadi (“Shaik Abdulla”). Shaik Abdulla was also known as “Shaikh Abdullah bin Hussein bin Salleh bin Abdullah bin Toq Alahmadi” and as “Shaikh Abdulla bin Hussein bin Salleh bin Abdullah bin Toq Alahmadi”.¹ According to the plaintiffs, Shaik Abdulla was their grandfather.²

5 On 14 October 1944, Shaik Abdulla passed away, leaving a will in which he appointed Shaikh Ali Alawi bin Toq Al Ahmadi as the executor (“the Executor”).³ The beneficiaries under Shaik Abdulla’s will were the Executor and Shaik Abdulla’s four sons (Hamood bin Abdulla, Salah bin Abdulla, Mohamed bin Abdulla and Ali bin Abdulla) (together, “the Beneficiaries”).

6 The Executor appointed Syed Mohamed bin Ahmad bin Shaikh Alkaff (“Syed Mohamed”) and Syed Husain bin Ahmad bin Shaikh Alkaff (“Syed Husain”) as his attorneys for the purposes of carrying out his duties as executor of Shaik Abdulla’s will.⁴

7 On 29 November 1946, the Supreme Court of the Colony of Singapore granted letters of administration with will annexed in respect of Shaik Abdulla’s estate to Syed Mohamed and Syed Husain (“the Administrators”), as the duly constituted attorneys of the Executor.⁵ The defendant, now aged 89, is the son of Syed Mohamed.

8 The schedule of assets in respect of Shaik Abdulla’s estate listed five properties – 24 Mosque Street and 58–61 Queen Street (together, “the Properties”).⁶ However, as will be seen later (at [22]–[25] below), a half share in 58–61 Queen Street was in fact held on trust and did not therefore form part of Shaik Abdulla’s estate.

9 Syed Mohamed died on 15 October 1971 and letters of administration of his estate were granted on 14 April 1972 to the defendant and his brother, Syed Ibrahim bin Mohamed bin Ahmad Alkaff.⁷

10 The remaining Administrator, Syed Husain, died later on 21 November 1976.⁸

The plaintiffs’ claim

11 In their statement of claim, the plaintiffs pleaded that the Administrators were trustees of, among other assets, the Properties, under Shaik Abdulla’s will and that

- (a) the Administrators breached their duties as trustees in respect of the Properties;⁹ and
- (b) alternatively, by reason of their breaches of duties as trustees, the Administrators held the Trust Monies on constructive trust for the Beneficiaries and consequently the plaintiffs.¹⁰ The Trust Monies

comprised rental income and sale proceeds from the Properties (see [35] below).

12 The plaintiffs did not sue the Administrators' estates. Instead, they sued the defendant. The plaintiffs pleaded that

(a) upon the Administrators' retirement and/or deaths, the Trust Monies passed into the defendant's possession and the defendant took over as trustee of the Trust Monies;¹¹

(b) alternatively, the defendant dishonestly assisted in the Administrators' breaches of duties as trustees;¹² and

(c) alternatively, the defendant knowingly received the benefits from the Trust Monies upon Syed Mohamed's death.¹³

13 The defendant applied to strike out the action under all four limbs of O 18 r 19(1) of the Rules. The principles applicable to O 18 r 19(1) were not in dispute. In substance, the defendant's case was that the action ought to be struck out because the pleadings disclosed no reasonable cause of action and/or the claims were plainly or obviously unsustainable. The relevant limbs of O 18 r 19(1) were therefore limbs (a), (b) and (d).

14 I will deal with the alleged breaches of the Administrators' duties as trustees and the alleged constructive trust before dealing with the question of the defendant's liability.

Alleged breaches of duties by the Administrators

24 Mosque Street

15 It was not disputed that on 16 February 1948, the Administrators sold 24 Mosque Street to a member of their family, Syed Abubakr bin Shaikh Alkaff (“Syed Abubakr”) for \$13,000.¹⁴ The conveyance was registered in the Index of Lands on 17 February 1948.¹⁵ According to the plaintiffs, Syed Abubakr was Syed Mohamed’s uncle and Syed Husain’s brother.

16 The plaintiffs’ case was that¹⁶

- (a) the Administrators had breached their duties as trustees in selling 24 Mosque Street to Syed Abubakr as they were in a position of conflict and had not obtained the Beneficiaries’ consent to the sale; and
- (b) the Administrators breached their duties in that they failed to pay the sale proceeds of \$13,000 to the Beneficiaries.

17 The allegation that the sale to Syed Abubakr was in breach of the Administrators’ duties as trustees was in my view arguable. However, the allegation that Administrators failed to pay the sale proceeds of \$13,000 to the Beneficiaries was nothing more than just speculation. The plaintiffs and those they represented were not even the persons whom it was alleged that the Administrators had failed to make payment to. The sale took place in 1948. The plaintiffs gave no explanation as to how they might have known that the sale proceeds were not paid to the Beneficiaries. Neither did the plaintiffs produce any evidence in support of their allegation. In my view, the allegation that the Administrators breached their duties by failing to pay the sale proceeds of \$13,000 to the Beneficiaries was unsustainable.

18 The plaintiffs also pleaded that

(a) from 1948 to 1992, 24 Mosque Street “remained under the ownership and possession of the Alkaff family” and that “the Alkaff family transferred” it to HKL Development Pte Ltd (“HKL”) in 1992;¹⁷ and

(b) the Beneficiaries and consequently the plaintiffs suffered losses in the form of rental income from 1948 to 1992 (“the 24 Mosque Street Rental”) and the proceeds from the sale to HKL.¹⁸

19 It was not clear what was the basis upon which the plaintiffs were claiming the 24 Mosque Street Rental and the proceeds from the sale to HKL. Further, there was neither explanation nor evidence as to who transferred the property to HKL, or the circumstances under which the transfer took place. In any event, these were not pleaded as breaches but as losses and I need not dwell further on them for present purposes.

58 Queen Street

20 The plaintiffs’ case was that¹⁹

(a) the Administrators stopped paying the Beneficiaries rental income from 58 Queen Street after 1964;

(b) on 31 December 1981, 58 Queen Street was compulsorily acquired by the Singapore Government and \$17,980 was paid as compensation;

(c) the Administrators failed to pay the Beneficiaries

- (i) the rental income from 1964 to 1981 (“the 58 Queen Street Rental”); and
- (ii) the compensation award of \$17,980.

21 Once again, the allegation that the Administrators failed to pay the 58 Queen Street Rental was speculation on the part of the plaintiffs. The plaintiffs gave no evidence whatsoever in support of their allegation. More importantly, as the defendant submitted, it was patently clear that 58 Queen Street no longer formed a part of Shaik Abdulla’s estate after 1959, for the reasons which follow.

22 A deed of partition was made on 3 April 1959 (“the Deed of Partition”) in respect of 58–61 Queen Street (“the Queen Street properties”).²⁰ The Deed of Partition was registered in the Colony of Singapore Registry of Deeds.²¹ One of the recitals in the Deed of Partition stated that by a Deed of Declaration of Trust dated 20 November 1924 (“the 1924 Declaration of Trust”), Shaik Abdulla had declared a trust of a half share in the Queen Street properties in favour of Shaikh Ali bin Alwee bin Salleh bin Toke and Shaikh Mohamed bin Alwee bin Salleh bin Toke (“Mohamed”) equally.²² It appeared that Shaikh Ali bin Alwee bin Salleh bin Toke was the same person who was appointed as the Executor; one of his aliases (as stated in the Deed of Partition) was Shaik Ali Alawi bin Toke Alhamadi. The Executor and Mohamed were brothers.²³

23 The schedule of assets of Mohamed’s estate stated that Mohamed had a “one-fourth” share of the Queen Street properties.²⁴ This statement was consistent with the 1924 Declaration of Trust.

24 Pursuant to the Deed of Partition, the Queen Street properties were partitioned and

- (a) 58 Queen Street was conveyed to the Executor;
- (b) 59–60 Queen Street were conveyed to the Administrators as the legal representatives of Shaik Abdulla; and
- (c) 61 Queen Street was conveyed to Syed Mohamed as the legal personal representative of Mohamed. Letters of administration in respect of Mohamed’s estate had been granted to Syed Mohamed on 6 March 1953.²⁵

25 All four of the Queen Street properties were similar in size.²⁶ The conveyance of 58 and 61 Queen Street to the Executor and Mohamed’s estate respectively, was therefore consistent with the 1924 Declaration of Trust in which Shaik Abdulla declared a trust of a half share in the Queen Street properties in favour of the Executor and Mohamed equally.

26 The title to 58 Queen Street was subsequently issued to one “Lum Chan” on 15 July 1960.²⁷

27 The evidence was incontrovertible. 58 Queen Street ceased to form part of Shaik Abdulla’s estate after 1959. The Administrators could not have received any rental income from 58 Queen Street after 1959, or the compensation award in 1981, for the benefit of the Beneficiaries. The Beneficiaries were simply not entitled to either. The plaintiffs’ claims that the Administrators failed to pay the 58 Queen Street Rental and/or the compensation award to the Beneficiaries were obviously also unsustainable for this reason.

59–61 Queen Street

28 The plaintiffs’ case was that²⁸

- (a) the Administrators stopped paying the Beneficiaries rental income from 59–61 Queen Street after 1964;
- (b) the Administrators breached their duties as trustees in that they failed to pay the Beneficiaries
 - (i) the rental income from 1964 to 1967 when the three properties were sold (“the 59–61 Queen Street Rental”); and
 - (ii) the sale proceeds of \$26,000 from the sale of the three properties to the Kwek Family in 1967 (see [29] below).

29 As stated earlier, after the Queen Street properties were partitioned in 1959, 59–60 Queen Street remained as part of Shaik Abdulla’s estate whilst 61 Queen Street was conveyed to Syed Mohamed as administrator of Mohamed’s estate (see [24] above). On 26 August 1966, the Singapore High Court approved the sale of 59–61 Queen Street at a price of not less than \$24,500.²⁹ On 14 June 1967, the three properties were sold to Kwek Chye Seng, Kwek Kok Chuan, Kwek Chye Ann, Kwek Chye Guan, Kwek Kok Chye and Kwek Kok Hong (“the Kwek Family”) for a total sum of \$26,000 as follows:

- (a) the Administrators sold 59 and 60 Queen Street for \$8,667³⁰ and \$8,666³¹ respectively; and
- (b) Syed Mohamed (as *administrator of Mohamed’s estate*) sold 61 Queen Street for \$8,667.³²

30 Again, the plaintiffs’ allegations were just speculations. The plaintiffs have offered no evidence whatsoever in support of their allegations that the Administrators failed to pay the Beneficiaries the 59–61 Queen Street Rental or the sale proceeds from 59–61 Queen Street.

31 In addition, the plaintiffs’ claims with respect to 61 Queen Street were clearly unsustainable since that property had also ceased to form a part of Shaik Abdulla’s estate well before 1964 (see [24(c)] above).

32 The plaintiffs were aware of the Deed of Partition and did not challenge the Deed of Partition or its contents. Yet, they persisted in pursuing their claims in respect of 58 and 61 Queen Street without any explanation or evidence as to why they were still entitled to make these claims when these properties ceased to form part of Shaik Abdulla’s estate in 1959. Further, the plaintiffs pleaded that the Administrators paid the Beneficiaries the rental income from the Queen Street Properties between 1944 and 1964.³³ However, this assertion was clearly contradicted by the 1924 Declaration of Trust pursuant to which a half share in the Queen Street Properties was held on trust for the Executor and Mohamed equally (see [22] above). In my view, the plaintiffs’ bald and unsupported assertion that the Beneficiaries received the rental income from all the Queen Street Properties attested to the speculative nature of their claims.

Conclusion on allegations of breaches of duties

33 For the reasons set out above, the allegations that the Administrators breached their duties as trustees in failing to pay the Beneficiaries the rental incomes from the Properties and/or the proceeds of sale of the Properties were plainly unsustainable.

34 The only breach alleged against the Administrators that was arguable was the allegation that the Administrators breached their duties in selling 24 Mosque Street to Syed Abubakr without having obtained the Beneficiaries' consent. However, for reasons that will become apparent later, this particular breach did not translate into a sustainable claim against the defendant.

Alleged constructive trust

35 The plaintiff pleaded that by reason of their breaches of duties as trustees, the Administrators held the Trust Monies on constructive trust for the Beneficiaries. As pleaded, the Trust Monies comprised the following:³⁴

- (a) the sum of \$13,000 from the sale of 24 Mosque Street to Syed Abubakr; alternatively, the 24 Mosque Street Rental and the proceeds of the sale to HKL in 1992;
- (b) the 58 Queen Street Rental;
- (c) the compensation award of \$17,980 in respect of the compulsory acquisition of 58 Queen Street;
- (d) the 59–61 Queen Street Rental; and
- (e) the sum of \$26,000 from the sale of 59–61 Queen Street to the Kwek Family.

36 It was not clear why the plaintiffs had to seek to impose a constructive trust on the Administrators. After all, the Administrators were said to be trustees under Shaik Abdulla's will and on that basis would have held the Trust Monies (which were either revenue from, or proceeds from the sale of, the Properties) as trustees.

37 Be that as it may, the constructive trust claims (although pleaded in the alternative) in fact stood or fell with the allegations that the Administrators breached their duties by failing to pay the rental incomes or the sale proceeds to the Beneficiaries. As I had concluded that these alleged breaches could not be sustained, it followed that the constructive trust claims were therefore also unsustainable.

The plaintiffs’ case against the defendant

38 The plaintiffs pleaded that the defendant (a) took over as trustee of the Trust Monies, (b) dishonestly assisted in the Administrators’ breaches of duties as trustees, and (c) knowingly received the benefits from the Trust Monies upon Syed Mohamed’s death (see [12] above).

Whether the defendant took over as trustee of the Trust Monies

39 The plaintiffs pleaded that on the Administrators’ retirement and/or deaths, the Trust Monies passed into the defendant’s possession and the defendant took over as trustee of the Trust Monies. The reliefs sought included orders for the transfer of the Trust Monies to the plaintiffs and an account of the Trust Monies.

40 The plaintiffs further pleaded that the fact that the defendant took over as trustee of the Trust Monies may be inferred from the following assertions:³⁵

- (a) The defendant’s father was one of the Administrators.
- (b) From 1957 to 1968, the defendant “understudied his father”.
- (c) Between 1957 and 1968, the defendant assisted the Administrators with their duties as trustees under Shaik Abdulla’s will

including sending correspondence to the Beneficiaries in relation to the Properties.

(d) The defendant took over Syed Mohamed’s duties in respect of the Properties after the latter retired in 1968.

During submissions before me, the plaintiffs also relied on the fact that the defendant took over, and remained, as trustee of another piece of property at 247 South Bridge Road, Singapore which had been declared as a *Wakaf* property (*ie*, a charitable endowment) by one Shaik Hamood bin Mohamed Bin Abdullah bin Toke Alahamdi (“Shaik Hamood”). Shaik Hamood was Shaik Abdulla’s uncle.

41 My earlier conclusions that the allegations of breaches of trust were unsustainable necessarily meant that there were no Trust Monies that the defendant could have taken over as trustee of.

42 In any event, in my judgment, the inference could not be supported. First, it was way too much of a stretch to infer from just the facts relied on by the plaintiffs that the defendant had taken over from his father as a trustee of the Trust Monies.

43 Second, the plaintiffs’ assertion that the defendant understudied his father from 1957 to 1968 was based on a transcript of an interview given by the defendant to the National Archives in 1982.³⁶ In that interview, the defendant said that when his father retired in 1968 or thereabouts, he took over the management of the family business and that he understudied his father from 1957 to 1968. In his affidavit, the second plaintiff acknowledged that the defendant appeared to be recounting the history of his family business and his taking over of the same in 1968.³⁷ The Alkaff family business was in property.³⁸

However, the mere fact that the defendant took over the management of the family business did not mean that he therefore also took over as trustee of the Trust Monies.

44 Third, the plaintiffs asserted that the defendant assisted the Administrators with their duties between 1957 and 1968 by sending correspondence to the Beneficiaries in relation to the Properties. However, the only evidence that the plaintiffs could point to in support of this assertion were two letters dated 14 June 1965³⁹ (“the 14 June 1965 letter”) and 14 July 1967⁴⁰ (“the 14 July 1967 letter”). It was not disputed that the defendant signed the 14 July 1967 letter.⁴¹ However, even assuming that the defendant also signed the 14 June 1965 letter, both letters merely showed that the defendant assisted the Administrators on two occasions, once in 1965 and the second time in 1967. In my view, these two letters were not enough to prove that the defendant was assisting the Administrators in their duties as trustees of the Properties or the Trust Monies on any regular basis between 1957 and 1968 (as alleged by the plaintiffs), much less support an inference that the defendant took over as trustee of the Trust Monies in place of his father in 1968.

45 Fourth, the plaintiff’s assertion that the defendant took over Syed Mohamed’s duties as trustee in respect of the Properties when the latter retired in 1968 begs the question whether the defendant had taken over as trustee of the Trust Monies.

46 Finally, the fact that the defendant became trustee of the *Wakaf* property set up by Shaik Hamood was neither here nor there. The mere fact that Shaik Hamood was related to Shaik Abdulla was clearly insufficient to support an inference that the defendant therefore also became a trustee of the Trust Monies.

Claim for dishonest assistance

47 The elements of a claim in dishonest assistance are (a) the existence of a trust, (b) a breach of that trust, (c) assistance rendered by the third party towards the breach and (d) a finding that the assistance rendered was dishonest: *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 at [20] (“*George Raymond*”).

48 The plaintiffs pleaded that it was to be inferred that the defendant knew and/or dishonestly assisted in the following:⁴²

- (a) The Properties and/or Trust Monies were held by the Administrators on trust for the Beneficiaries and consequently the plaintiffs.
- (b) The Administrators intended to and attempted to conceal the Trust Monies from the Beneficiaries and the plaintiffs.
- (c) The Administrators intended to retain the Trust Monies for their own benefit and the defendant’s benefit.

In substance, the plaintiffs’ claim was that the defendant dishonestly assisted the Administrators in not paying the Beneficiaries the Trust Monies, concealing the Trust Monies from the Beneficiaries and retaining the Trust Monies for their own use.

49 I had concluded that the allegations of breaches of trust in respect of the alleged failures to pay the Trust Monies to the Beneficiaries were unsustainable. This meant that the claims for dishonest assistance in connection with these breaches also had to fail since element (b) would not be satisfied.

50 That left the alleged breach in the sale of 24 Mosque Street to Syed Abubakr which I had concluded was arguable. However, as can be seen from [48] above, the claim for dishonest assistance related to the Trust Monies and did not include dishonest assistance in the sale of 24 Mosque Street to Syed Abubakr. Further, the plaintiffs' claim was that the defendant assisted the Administrators between 1957 and 1968 (see [40(c)] above) whereas the sale took place in 1948.

51 In any event, in my view, the plaintiffs' claims for dishonest assistance (even if one included the sale of 24 Mosque Street to Syed Abubakr) were doomed to fail because elements (c) and (d) would not be satisfied.

52 The plaintiffs pleaded that the defendant's dishonest assistance in relation to the Administrators' breaches of duties as trustees was apparent and/or to be inferred from the following:⁴³

- (a) The defendant's father was one of the Administrators.
- (b) From 1957 to 1968, the defendant understudied his father.
- (c) Between 1957 and 1968, the defendant assisted the Administrators with their duties as trustees under Shaik Abdulla's will including sending correspondence to the Beneficiaries in relation to the Properties.
- (d) In an affidavit dated 24 August 1966 deposed to by the Administrators in relation to the Properties, the Administrators falsely stated that the Beneficiaries were residing in Tarim, Hadhramaut when they were in fact residing in Yafa, Aden, and the defendant knew the statement in the affidavit was false.

(e) The defendant took over Syed Mohamed's duties in respect of the Properties after the latter retired in 1968.

(f) In 1985, the defendant held himself out to be the agent of 5 Chin Chew Street, Singapore and failed to inform the relevant beneficiaries that the property had been compulsorily acquired. 5 Chin Chew Street belongs to the estate of the defendant's great-grandaunt, in respect of which Syed Mohamed was an administrator.

(g) The defendant continued to be the trustee of the *Wakaf* property at 247 South Bridge Road (see [39] above).

53 It was not at all clear how the defendant was alleged to have assisted in the alleged breaches by the Administrators. Be that as it may, in my view, the above matters pleaded by the plaintiffs did not support any inference that the defendant had assisted in the Administrators' alleged breaches of duties as trustees, much less that he had done so dishonestly.

54 The matters set out in [52(a)], [52(b)], [52(c)], [52(e)] and [52(g)] above have been dealt with earlier. Suffice it to say that I did not see how these matters could support an inference that the defendant had dishonestly assisted in the Administrators' alleged breaches of duties. I would only add that it was completely perplexing how the defendant's trusteeship in respect of the *Wakaf* property could even be relied upon to support an inference of dishonest assistance. It seemed to me that the plaintiffs were clutching at not even straws but air.

55 The plaintiffs' reliance on the Administrators' statement in the affidavit dated 24 August 1966 was also unjustified. Even assuming that the Administrators had made the statement knowing it was false, there was no

evidence whatsoever that the defendant knew the statement to be false or had any part to play in relation to that affidavit. Besides, it was really difficult to see any nexus between that statement and the alleged dishonest assistance in this case.

56 Likewise, it was also difficult to see any nexus between the plaintiffs' assertion in relation to the Chin Chew Street property and the alleged dishonest assistance in this case.

Claim for knowing receipt

57 The elements required to establish knowing receipt are (a) the disposal of the plaintiff's assets in breach of fiduciary duty, (b) the beneficial receipt by the defendant of assets which are traceable as representing these assets, and (c) knowledge on the part of the defendant that the assets received are traceable to a breach of fiduciary duty: *George Raymond* at [23]. The test with respect to knowledge is whether the recipient possessed the state of knowledge that makes it unconscionable for him to retain the benefit of the receipt: *George Raymond* at [23]. This can be actual knowledge or wilful avoidance of knowledge: *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 at [81].

58 The plaintiffs pleaded that as Syed Mohamed's son, the defendant received the benefits from the Trust Monies upon Syed Mohamed's death.⁴⁴ Assuming that some at least of the allegations of breaches of duties could be made out, I was prepared to accept that it was arguable that as one of the legal representatives of Syed Mohamed's estate (see [9] above) and/or Syed Mohamed's son, the defendant could have received the Trust Monies or assets

representing the Trust Monies after Syed Mohamed died. It was arguable therefore that element (b) was satisfied.

59 However, my earlier conclusion that the allegations of breaches of duties in respect of the Trust Monies were unsustainable meant that element (a) would not be satisfied and accordingly the claim for knowing receipt would be unsustainable as well.

60 In any event, in my view, element (c) would also not be satisfied. The plaintiffs submitted (although not expressly pleaded) that the defendant knew of the matters set out at [48] above and that this knowledge was apparent and/or to be inferred from the following facts:⁴⁵

- (a) The defendant's father was one of the Administrators.
- (b) From 1957 to 1968, the defendant understudied his father.
- (c) Between 1957 and 1968, the defendant assisted the Administrators with their duties under Shaik Abdulla's will including sending correspondence to the Beneficiaries in relation to the Properties.
- (d) In 1968, Syed Mohamed retired and the defendant took over Syed Mohamed's duties in respect of the Properties.
- (e) The defendant is/was also involved in the management of other property belonging to other members of Shaik Abdulla's family, *ie*, the 5 Chin Chew Street property and the *Wakaf* property.

61 Suffice it to say that these matters have already been dealt with earlier. In my view, these were insufficient to support the inference sought by the plaintiffs.

Section 20 of the Trustees Act

62 Although not pleaded, the plaintiffs also sought to rely on s 20(2) of the Trustees Act (Cap 337, 2005 Rev Ed). Section 20(1) and (2) provide as follows:

20.-(1) Where a power or trust is given to or imposed on 2 or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or where there were 2 or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other trustees or trustee for the time being.

...

63 The plaintiffs submitted as follows:⁴⁶

(a) Under s 3 of the Trustees Act, the terms “trust” and “trustee” extend to constructive trusts.

(b) Therefore, s 20(2) applies to constructive trustees.

(c) Following the Administrators’ breaches of their duties as trustees, they held the Trust Monies on a constructive trust. Upon the Administrators’ death and/or retirement, the defendant took over as trustee of the Trust Monies that were held under a constructive trust.

64 It was not clear why s 20(2) was relevant to the plaintiffs’ case. First, as stated earlier, Syed Mohamed died in 1971 leaving Syed Husain as the last surviving trustee under Shaik Abdulla’s will. Section 20(1) empowered Syed Hussain to perform the trust as sole trustee. Upon Syed Husain’s subsequent death in 1976, s 20(2) empowered the personal representatives of *Syed Husain* to exercise the powers given to or exercisable by Syed Husain, until new trustees

were appointed. Section 20(2) would not apply to the defendant since Syed Mohamed was not the last surviving trustee. It was not alleged, and there was no evidence, that the defendant was the personal representative of Syed Husain.

65 Second, even if the defendant was a personal representative of the last surviving trustee, s 20(2) of the Trustees Act could not possibly make him a trustee of the Trust Monies by reason of this fact alone. In such a scenario, s 20(2) merely empowered the defendant to exercise or perform any power or trust given to, or capable of being exercised by the last surviving trustee in respect of the Trust Monies. If the defendant did not in fact exercise the powers of a trustee of the Trust Monies, s 20(2) would not make him a trustee. On the other hand, if the defendant did in fact take over as trustee of the Trust Monies (as the plaintiffs alleged), he would be liable as trustee because he did so; there would have been no need to rely on s 20(2).

66 The plaintiffs referred me to *In re Benett* [1906] Ch 216. In that case, Benett was the last surviving trustee under the will of Elizabeth Horne. Benett died intestate and insolvent. As he had previously committed a breach of trust, Benett's estate became indebted to the trust under the will. Benett's widow took out administration to his estate and became his personal representative. Under the will, the trustee's personal representative could take over as trustee of the will. However, the court found that Benett's widow had not accepted the office of trustee of the will. Consequently, the court held that she could not be compelled to exercise the right of retainer in favour of the beneficiaries under Elizabeth Horne's will. The right of retainer (since abolished in England) was a right vested in Benett's widow (as administrator of his estate) to retain assets out of Benett's estate sufficient to pay any debt due from the estate to her in priority to other creditors of the estate. The plaintiffs sought to rely on the judgment of Cozens-Hardy LJ who said (at 233) that if the legal personal

representative *fills the position of trustee* then he is compellable to exercise the right.

67 *In re Benett* did not advance the plaintiffs' case any further. The key question in the present case was whether the defendant did take over as (or fill the position of) trustee of the Trust Monies. The answer to this question depended on the evidence in this case. In my view, the plaintiff's reliance on s 20(2) of the Trustees Act was neither here nor there.

Other miscellaneous issues

The plaintiffs' standing

68 The defendant's main submission was that the Beneficiaries' estates were the proper parties to bring this action and that the plaintiffs were not authorised to act for the Beneficiaries' estates.

69 I disagreed with the defendant. A beneficiary is entitled to claim reliefs on behalf of the estate: *Ching Chew Weng Paul v Ching Pui Sim and others* [2010] 2 SLR 76 at [58]. In this case, whether the plaintiffs were descendants of Shaik Abdulla and consequently beneficiaries under Shaik Abdulla's will (albeit through the Beneficiaries) were issues that were more appropriate for trial. Further, any pleading inadequacies in this respect may be addressed through appropriate amendments to the statement of claim.

Limitation

70 I disagreed with the defendant's submission that the present action was time-barred under s 22(2) of the Limitation Act (Cap 163, 1996 Rev Ed). Under s 22(2), no action by a beneficiary to recover trust property or in respect of any breach of trust shall be brought after the expiration of six years from the date on

which the right of action accrued. However, s 22(2) is expressly stated to be subject to s 22(1) which provides that no period of limitation prescribed by the Limitation Act applies to an action by a beneficiary under a trust (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy or (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use. In my view, the plaintiffs' reliance on s 22(1) could not be said to be plainly unsustainable.

The plaintiffs' reliance on the discovery process

71 The plaintiffs relied on “*The Bunga Melati 5*” [2012] 4 SLR 546 in which the Court of Appeal cautioned (at [75]) against speculating at an interlocutory stage on the evidence that might or might not surface during trial where the parties have had the benefit of discovery, interrogatory and cross-examination processes.

72 In my view, *The Bunga Melati* did not assist the plaintiffs. In the present case, the plaintiffs did not have a single iota of evidence in support of their allegations that the Administrators failed to pay the rental incomes and/or the sale proceeds in respect of the Properties. They were not even the persons it was alleged that the Administrators had failed to make payment to and there was neither explanation nor evidence as to how they had any knowledge of such failure to make payment. All that the plaintiffs had were their bald assertions. Further, as shown earlier, their claims in respect of 58 and 61 Queen Street were entirely without substance in the light of the unrefuted documentary evidence.

73 Under these circumstances, in my view, it would be an abuse of the process of the court to permit the plaintiffs to pursue these otherwise obviously

unsustainable claims with nothing more than the hope that the discovery process might produce some evidence that might help their case.

Whether the statement of claim disclosed a reasonable cause of action

74 It is trite that so long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out under O 18 r 19(1)(a).

75 Although the plaintiffs' claims could have been better pleaded in the statement of claim, in my view, this was not a case where it could be said that the statement of claim disclosed no reasonable cause of action. The statement of claim did plead that the defendant took over as trustee of the Trust Monies, that the defendant was aware that the Administrators held the Trust Monies on trust for the Beneficiaries and consequently the plaintiffs, and that the defendant dishonestly assisted the Administrators in attempting to conceal the Trust Monies from the Beneficiaries and plaintiffs in order to benefit themselves and the defendant.⁴⁷ However, as discussed earlier, the plaintiffs' claims ought to be struck out under O 18 r 19(1)(b) and/or (d), as they were plainly unsustainable and bound to fail.

Conclusion

76 In my view, this was just an opportunistic action by the plaintiffs based on speculation and with no evidence to support their claims. I was satisfied that the plaintiffs' claims were plainly unsustainable and ought to be struck out under O 18 r 19(1)(b) and/or (d). It would be unfair to the defendant to put him through a trial. Accordingly, I dismissed the appeal and ordered the plaintiffs to pay costs of the appeal fixed at \$7,500 inclusive of disbursements.

Chua Lee Ming
Judge

Wong Hin Pkin Wendell, Priscylia Wu Baoyi, Wong Zi Qiang,
Bryan (Drew & Napier LLC) for the plaintiffs;
Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for the
defendant.

- 1 Respondent's Bundle of Documents ("RBD") at p 92.
- 2 2nd plaintiff's 2nd affidavit affirmed on 24 July 2017 at para 10(b).
- 3 RBD 19–21.
- 4 RBD 45–46.
- 5 RBD 81–83.
- 6 RBD 83.
- 7 Defendant's 3rd Affidavit affirmed on 30 June 2017, at pp 52–54.
- 8 RBD 128.
- 9 Statement of claim ("SOC"), para 25.
- 10 SOC, para 40.
- 11 SOC, para 41.
- 12 SOC, paras 42 and 43.
- 13 SOC, para 44.
- 14 RBD 57–59.
- 15 RBD 55.
- 16 SOC, paras 12, 26–30.
- 17 SOC, paras 13 and 14.
- 18 SOC, para 30.
- 19 SOC, paras 16 and 31–34.
- 20 RBD 73–75.
- 21 RBD 72.
- 22 See second recital at RBD 73.
- 23 See RBD 52.
- 24 RBD 53.
- 25 RBD 52–53.
- 26 See, *eg*, RBD 65.

- 27 RBD 64–65.
- 28 SOC, paras 19 and 35–37.
- 29 RBD 93–94.
- 30 RBD 95–98.
- 31 RBD 99–102.
- 32 RBD 103–106.
- 33 SOC, paras 16 and 19.
- 34 SOC, para 40.
- 35 SOC, para 41.
- 36 2nd plaintiff’s 3rd affidavit affirmed on 2 October 2017 at para 60. See, also, the copy
of the interview transcript tendered to the court.
- 37 2nd plaintiff’s 3rd affidavit at para 60.
- 38 Defendant’s 3rd affidavit at para 14.
- 39 2nd plaintiff’s 3rd affidavit at pp 32–33.
- 40 2nd plaintiff’s 3rd affidavit at pp 58–59.
- 41 Defendant’s 3rd affidavit at paras 56–57.
- 42 SOC, para 43.
- 43 SOC, para 42.
- 44 SOC, para 44.
- 45 Plaintiffs’ submissions, para 124.
- 46 Plaintiffs’ submissions, paras 27–29, 164–170.
- 47 SOC, para 43.