

Ong Siew Lay v Ong Boon Chuan
[2009] SGHC 99

Case Number : Suit 404/2007
Decision Date : 23 April 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : James Ponniah and Leong Sue Lynn (Wong & Lim) for the plaintiff; Michael Khoo SC, Josephine Low and Andy Chiok (Michael Khoo & Partners) for the defendant
Parties : Ong Siew Lay — Ong Boon Chuan
Trusts

23 April 2009

Woo Bih Li J:

Introduction

1 The plaintiff Ong Siew Lay ("Siew Lay") and the defendant Ong Boon Chuan ("Boon Chuan") are siblings. Siew Lay claimed \$2 million being the purchase price of shares in Tong Guan Food Products Pte Ltd ("the Company") said to be held by their mother, Madam Chai Ah Chee @ Chua Ah Chee ("Madam Chai") in trust for her. Boon Chuan did not dispute that he bought the shares for \$2 million but asserted that the shares belonged beneficially to Madam Chai. Although he purported to pay the \$2 million, the money was returned to him, allegedly to let him use it for his real property development business and on the basis that he was to return it as and when Siew Lay required the same.

The background

2 The late Ong Tong Guan ("Mr Ong") had ten children with Madam Chai. They are:

| Name | Relationship | Year of Birth |
|---------------------------------|--------------|---------------|
| Ong Siew Hua ("Siew Hua") | Daughter | 1953 |
| Ong Leong Chuan ("Leong Chuan") | Son | 1954 |
| Boon Chuan | Son | 1956 |
| Ong Heng Chuan ("Heng Chuan") | Son | 1957 |
| Ong Siew Kuan ("Siew Kuan") | Daughter | 1958 |
| Ong Teck Chuan ("Teck Chuan") | Son | 1959 |

| | | |
|-----------------------------|----------|------|
| Ong Siew Chin ("Siew Chin") | Daughter | 1960 |
| Ong Siew Ann ("Siew Ann") | Daughter | 1962 |
| Ong Eng Chuan ("Eng Chuan") | Son | 1963 |
| Siew Lay | Daughter | 1965 |

3 Mr Ong started a sole proprietorship, Tong Garden Product Services, selling snack food under the "Tong Garden" brand in the 1960s. The business was later incorporated to form the Company. Shares in the Company were initially held by Mr Ong, Madam Chai and some of the ten children.

4 In 1984, Mr Ong fell seriously ill. Shortly before he passed away, he called for a meeting to distribute his assets ("the Meeting"). Madam Chai, Leong Chuan and Boon Chuan were present at the Meeting. Siew Kuan was supposed to attend but did not as she was ill that day. At the meeting, Mr Ong gave oral instructions as to how his shares in the Company were to be distributed. In brief, Mr Ong had instructed that his shares be split amongst his children, with 20% going to each of the boys, and 10% to each of the girls, except Siew Hua who had by then married into another family with a competing business. The consequences from his instructions, however, were later contested and led to a dispute between Leong Chuan and the rest of the family in Suit No. 1633 of 1999 ("Suit 1633") and Originating Summons No. 1944 of 1999 ("OS 1944"). They were also contested in the current action. I shall elaborate later on the contests.

5 Mr Ong passed away on 24 July 1984. The 165,000 shares of the Company which were registered under his name were transferred to Heng Chuan (25,000 shares), Teck Chuan (100,000 shares) and Siew Chin (40,000 shares). Boon Chuan also transferred 40,000 shares of the Company under his name to Leong Chuan because he (Boon Chuan) already had a stake in another related company.[\[note: 1\]](#) Likewise, the youngest brother Eng Chuan was to receive a stake in another related holding company.[\[note: 2\]](#) The registered shareholding structure before and after Mr Ong's demise as at 30 April 1983 and 3 July 1984 was as follows:

| Name | As at 30/4/83 | Transfer | As at 3/7/84 |
|-------------|---------------|---|--------------|
| Mr Ong | 165,000 | Shares transferred out | 0 |
| Madam Chai | 50,000 | No change | 50,000 |
| Leong Chuan | 110,000 | Transfer of 40,000 shares from Boon Chuan | 150,000 |
| Boon Chuan | 40,000 | Shares transferred out | 0 |
| Heng Chuan | 75,000 | Transfer of 25,000 shares from Mr Ong | 100,000 |

| | | | |
|------------|--------|--|----------------|
| Siew Kuan | 50,000 | No change | 50,000 |
| Teck Chuan | 0 | Transfer of 100,000 shares from Mr Ong | 100,000 |
| Siew Chin | 0 | Transfer of 40,000 shares from Mr Ong | 40,000 |
| | | | 490,000 |

6 In 1987, each of the shareholdings of Madam Chai, Leong Chuan, Heng Chuan and Teck Chuan doubled by an issue of shares from the Company. So, for example, Madam Chai received another 50,000 shares making her total 100,000 shares.

7 However, Mr Ong's death only marked the beginning of family strife. Several of the Ong siblings then involved in the Company constantly quarrelled over its management, and as a result, Siew Kuan and Siew Chin sold all their shares in the Company to Leong Chuan, Heng Chuan and Teck Chuan a few years later in 1991.

8 In 1999, Madam Chai sold the shares she held in the Company to Boon Chuan for \$2 million. The payment was made in the following manner. On 8 March 1999, Boon Chuan issued a cheque for \$1 million to Madam Chai. The cheque was cleared on 9 March 1999 and credited into Madam Chai's UOB joint account with Siew Lay. On 9 March 1999, Madam Chai returned the \$1 million to Boon Chuan by way of a cashier's order. Again on 9 March 1999, Boon Chuan issued another cheque for \$1 million to Madam Chai as payment of the balance. The cheque was cleared on 10 March and credited into Madam Chai's UOB joint account with Siew Lay. On 10 March 1999, Madam Chai again returned \$1 million to Boon Chuan by way of a cashier's order. The share transfer form was dated 31 March 1999. Madam Chai passed away on 5 December 1999.

Suit 1633

9 The Ong family's disputes finally came to a boil and led to two related law suits, Suit 1633 and OS 1944 (collectively referred to as "the Two Actions"), pitting Mr Ong's eldest son, Leong Chuan, against most of the rest of the family.

10 Suit 1633 was a claim by the Company against Leong Chuan for breach of fiduciary duties. The Company initially sought a number of remedies in relation to the alleged misuse of company funds. However, during the course of the trial, the Company and Leong Chuan agreed to appoint an accountant to determine the veracity of all but one of the allegations of misuse of funds. The only remaining issue before the court was whether Leong Chuan had misused \$100,000 of the Company's money for the purchase of 10% of the shares in the Company from Siew Ann. This involved determining whether Leong Chuan held 10% of the shares in the Company on trust for Siew Ann. Siew Lay was subpoenaed by Leong Chuan to be a witness in the suit; Siew Kuan and Boon Chuan also testified. Boon Chuan had affirmed an Affidavit of Evidence-In-Chief (AEIC) in Suit 1633 stating:

6 At the meeting, my father told us that he wanted to give his sons a 20% share each in the Plaintiffs while his daughters would get a 10% share each. However, since I was involved in a related family business, I was to get shares in that company instead of the Plaintiffs. Another brother, Ong Eng Chuan was to receive shares in another company instead of the Plaintiffs as

well.

7 I am therefore able to confirm that [Ong Siew Ann] was to receive 10% of the Plaintiffs' shareholding. However, [Ong Leong Chuan] had suggested to my father that he should hold that [Ong Siew Ann's] 10% on trust for her and my mother would another sister, Ong Siew Lay's 10% share on trust for her.

11 Justice Tan Lee Meng ("Justice Tan") allowed the claim, and found that Leong Chuan held 10% of the shares in the Company on trust for Siew Ann. In his judgment (the "Suit 1633 Judgment"), Justice Tan held that:

10 Boon Chuan said that in accordance with his father's instructions, three of his brothers, namely the defendant, Heng Chuan and Teng Chuan, each got 20% of the shares in the plaintiff company while the remaining 40% was split equally between his four sisters, Siew Kuan, Siew Chin, Siew Ann and Siew Lay, with each getting 10%. **He added that Siew Lay's 10% was to be held on trust for her by their mother** while Siew Ann's 10% was to be held on trust for her by the defendant. This explains why 30% of the shares in the plaintiff company were registered in the defendant's name.

...

25 The defendant also alleged that it was not true that his late mother held 10% of the shares in the plaintiff company on trust for another of his sisters, Siew Lay. He said that his siblings lied about the existence of this trust in favour of Siew Lay in order to reinforce their claim that he held 10% of the shares in the plaintiff company in favour of Siew Ann. He also pointed out that after the shares in his mother's name were sold for \$2 million to his brother, Boon Chuan, the money was returned to Boon Chuan. He thus submitted that the sale of shares to Boon Chuan was a sham transaction. It was pointed out that in his affidavit of evidence-in-chief in another action, OS No 1944 of 1999, Boon Chuan had said that his late mother wanted to sell the shares to distribute the proceeds to "some of the children". **However, this does not give the complete picture. In para 25 of the affidavit in question, Boon Chuan made it clear that his mother held the shares on trust for Siew Lay.** If his mother had actually distributed the proceeds of the sale of the shares, Siew Lay's rights would have been infringed. Boon Chuan and his other siblings were not asked to clarify the position during cross-examination.

...

27 Siew Lay also testified that after her shares had been sold to her brother, Boon Chuan, she invested the proceeds of the sale in Boon Chuan's business. When cross-examined as to who made the decision to sell and to invest the money, she said:

Q. Did your mother tell you that the shares would be sold and that a big sum of money would come in?

A. It was my idea for the shares to be sold. My mother always asked me whether I wanted shares or money. I said I wanted money.

Q. When was the decision made as to what to do with the \$2 million?

A. When my elder brother decided to buy my mother's shares and subsequently, my mother discussed with me.

Q. What is the rate of interest?

A. It has not occurred to me what is the rate of interest. He is my brother and I did not impose the rate of return. I believe that if his company makes a profit, he would share the profits according to his conscience. I did tell him that if I need my money back, he would have to return it to me.

28 **I accept that Siew Lay's late mother held 10% of the shares in the plaintiff company on trust for her.** In any case, it was not disputed that Siew Lay was given part of the money in her father's Central Provident Fund account. As such, counsel for the plaintiffs pointed out that whether or not Siew Lay was given shares in the plaintiff company, Siew Ann remains the only sibling excluded from the distribution of their late father's assets with the exception of Siew Hua, who, as has been mentioned, was deliberately excluded because her husband's business competed with that of the plaintiffs.

[emphasis added]

OS 1944

12 OS 1944 concerned a claim by Leong Chuan against Boon Chuan and two other brothers, Heng Chuan and Teck Chuan, for relief against alleged minority oppression. The OS was converted into a trial and it was eventually settled. A Tomlin order was recorded by Justice Tan. In the course of the proceedings, as in Suit 1633, Boon Chuan affirmed an AEIC. The relevant paragraphs stated:

5 All of us helped out one way or another in the business, especially during our school holidays. My parents never appointed [Leong Chuan] or any of the children to be in-charge of the business. All the decisions were made by my father. My father was solely in control of the business until early 1984 when he was diagnosed with cancer.

...

25 There were a series of family meetings before my father died. I remember that at one meeting which was also attended by my mother it was proposed that the shareholdings of Tong Guan be distributed as follows:

- | | |
|---|-------|
| 1. Plaintiff [Leong Chuan] | - 20% |
| 2. 1 st Defendant [Heng Chuan] | - 20% |
| 3. 2 nd Defendant [Teck Chuan] | - 20% |
| 4. Ong Siew Kuan | - 10% |
| 5. Ong Siew Chin | - 10% |
| 6. Ong Siew Ann | - 10% |
| 7. Ong Siew Lay | - 10% |

2 6 **As Ong Siew Lay was underage, it was proposed that my mother would hold the shares on trust for her.** My father instructed that my mother was to be paid \$2,000.00 a month for her expenses from Tong Guan.

27 [Leong Chuan] proposed that as Ong Siew Ann was working elsewhere, he [Leong Chuan] would hold the 10% on trust for her until she started working for Tong Guan.

...

36 He made a younger sister Ong Siew Ann gave up her rights to the 10% shares held by him in trust for her by payment of \$100,000 which turns out to be from funds of Tong Guan.

...

42 **Sometime in March 1999, I bought over my mother's shares in Tong Guan.** My mother had 10% of the shares in Tong Guan. My mother had earlier offered her shares to the existing shareholders but the shares were not taken up, as the terms were not agreeable. [Leong Chuan] had offered to purchase my mother's shares by way of an exchange of a factory in Johor and my mother was to receive the rental income. My mother's intention to sell her shares was to distribute the sale proceeds to some of the children. There is therefore no reason for her to accept [Leong Chuan's] offer. I paid my mother \$2 million for her shares. I decided to buy her shares because my mother asked me to obtain an interest in Tong Guan. She also want [sic] to help solve the problems faced by Tong Guan. I have no ulterior motive....

[emphasis added]

Prelude to the current proceedings

13 In 2005, Boon Chuan sent two text messages via his handphone to Siew Lay in Chinese. The English translation of the contents of the messages are as follows. The first translated message reads:

Dear Xiaomei,

You know that mum did not leave money. Mum left only 10% shares in Tong Guan and wanted me to join Tong Guan. I do not know how much money mum left to you. If you need money, please let me know and I will try my best. Tong Guan is still a seriously "ill" enterprise and substantial fund is needed to salvage it.

From second brother

The second translated message (the "second SMS") reads:

Mum did not say the shares belonged to you. Leong Chuan kept asking mum to leave the shares to Peng Wei, saying that the eldest grandson should be treated as the youngest son. She was worried that it would be to the detriment of the other brothers (if) Leong Chuan had too (many) shares. Therefore, the shares were transferred to me by way of **false purchase of shares**. But man proposes, God disposes. (Our) family is still torn apart. I do not wish to argue with you. Mum did not say they belonged to you, and neither did (she) [\[note: 3\]](#) want to lose the family affection. (I) will give you the shares if you want them.

[emphasis added]

14 Sometime in 2006, Siew Lay sent Boon Chuan an SMS message asking for \$50,000 for renovations to her flat. Boon Chuan wrote a cheque for \$5,000 but Siew Lay never collected this cheque.

Siew Lay's case

15 Siew Lay's case was that the late Mr Ong had distributed his shares in the Company *inter vivos* to seven of his ten children. Madam Chai was to hold and did hold Siew Lay's 10% of the shares in the Company on trust for her. Madam Chai had discussed with her whether she wanted the shares or money and she said that she wanted money. Madam Chai had also discussed with her about the sale of the shares to Boon Chuan for \$2 million and that the purchase money was to be returned to him for use in his property development business. Boon Chuan would return the money to her when she requested it. Siew Lay had agreed to the sale and to let Boon Chuan keep the money for the time being. Accordingly, when Boon Chuan bought the shares, the money was returned to him in the manner mentioned above (see [\[8\]](#) above). At all material times, Boon Chuan knew that a) Madam Chai's shares were held on trust for Siew Lay and b) he had to return the \$2 million to Siew Lay if she needed it.

16 Siew Lay relied heavily on the affidavits affirmed by Boon Chuan in the Two Actions as well as the Suit 1633 judgment. In her pleadings, Siew Lay raised the point of issue estoppel and estoppel on the record against Boon Chuan. However, this point was not pursued in her closing submissions.

17 Further, Siew Lay adduced, as support for her case that the shares belonged to her, a receipt she signed on 1 September 2000 for Suit 1633 ("the Receipt"). It read:

I, Ong Siew Lay, confirm that I have received S\$2 million from Mr. Ong Boon Chuan for the sale of my shares through my mother Chua Ah Chee.

How I wish to distribute the monies to my other siblings is my wish. My mother did indicate to me how she would like me to distribute the monies to my brothers / sisters including Eng Chuan, Siew Chin, Siew Ann, Siew Kuan.

[signature, date of 1/9/00 and photocopy of Siew Lay's identity card]

In her affidavit, Siew Lay claimed that she did not remember whether Boon Chuan or Siew Ann had approached her to sign the Receipt. [\[note: 4\]](#) However, during cross-examination, Siew Lay said: [\[note: 5\]](#)

A: Boon Chuan passed the document for me to sign. That is I remember but the documents, after signing –

Court: But just now when you were giving your explanation you said Siew Ann or Boon Chuan, you see? Because we are all listening carefully to you, you know.

A: Can I clarify again? Sorry.

...

A: Sorry I can remember that night Boon Chuan have told me to sign this document so after

signing I can't remember is it I pass it back to him or give it to Siew Ann. This I cannot remember. So, after signing this document, the next day, or when I pass it to Siew Kuan.

Mr Khoo: Is that your story?

A: Yes.

18 Siew Kuan confirmed Siew Lay's story. She said that Boon Chuan told her that in the Meeting, Siew Lay was to get 10% of Mr Ong's shares. Later, Mr Ong also told her that Siew Lay's 10% of shares in the Company was held for her in Madam Chai's name. Subsequently, Madam Chai had informed her of Boon Chuan's purchase of the shares and that Boon Chuan would give the money to Siew Lay when Siew Lay requested for it. During cross-examination, Siew Kuan's evidence was that: [\[note: 6\]](#)

A. My father made [me] promise. He called me to his room before he died. He say "I give this 10 per cent of shares to Siew Ann held in trust, it's in the name of Leong Chuan because he is supposed to hold 20 per cent." You see it's 30 per cent. Because the 10 per cent belongs to Siew Ann. My father want me to ensure that Siew Ann 10 per cent Leong Chuan would have to return to her. I have to make sure and that another 10 per cent hold for Siew Lay, make sure that Siew Lay get her 10 per cent. He called me into the room and asked me to make sure that both sister has that 10 per cent, because Leong Chuan at that meeting, I do not know that he is such a person but, I think my father understand that. He just tell me, he warn me that you must make sure that both get their 10 per cent. So, during that period, I stand up for Siew Ann that Leong Chuan return 10 per cent. Leong Chuan was not happy with me.

...

A. Yes. My father at that time tell me that I don't want my mother to hold any share; the reason being is that at that moment when he distributed share he has a hard time. I don't know what Leong Chuan did to my father. He was suffering. He said "I do not want my mother to go through what I go through I only want to give her cash". She don't have to depend on any children for her money expenses. That is why he marked the holding share but the share my mother has is meant for Siew Lay the youngest daughter.

Q. Assuming that is what he told you.

A. It's not assuming, that is the truth. He told me personally.

Boon Chuan's Case

19 Essentially, Boon Chuan's case was that his affidavits in the Two Actions did not constitute admissions that Madam Chai was holding the shares registered in her name on trust for Siew Lay. They described only a proposal by Mr Ong which was not carried out.

20 According to him, after the Meeting in which Mr Ong had said that Siew Lay was to be given 10% of his shares, Leong Chuan, Madam Chai and he had a discussion among themselves. Leong Chuan had suggested to Madam Chai that she held the shares registered in her name in trust for Siew Lay but Mdm Chai refused. Hence, Mr Ong's wish for Siew Lay was not carried out and, as mentioned, what Boon Chuan had referred to in his affidavits in the Two Actions was only a proposal.

21 Boon Chuan said he had not seen the Receipt before the current proceedings. Neither was it

prepared on his instruction.

22 He also refuted Siew Kuan's evidence saying that she had an axe to grind against him. I will elaborate on this later.

23 Mr Khoo, counsel for Boon Chuan, contended that Siew Lay's claim as pleaded was contradictory. Siew Lay pleaded at paragraph 4 of her Statement of Claim that:

Ong gave the Plaintiff 10% of his shares. To the knowledge of the Defendant, the 10% shares were held in trust by Madam Chai for the benefit of the Plaintiff. **Accordingly**, Madam Chai was registered as the legal owner of the 10% shares.

[emphasis added]

24 This paragraph implied that Madam Chai was registered as the owner of the 10% shares to carry out Mr Ong's wishes expressed in the Meeting when in reality there was no such registration in 1984 at all. Madam Chai was already the registered owner of 50,000 shares since April 1983.

25 Also, Mr Ong only held 165,000 shares of the Company under his own name. 10% of that was 16,500 shares. Even if Siew Lay meant 10% of the entire issued capital, this only amounted to 49,000 shares and not the 50,000 shares as held by Madam Chai at that time. It was suggested for or by Boon Chuan that in the Meeting, Mr Ong was distributing only the shares under his own name, *ie.* the 165,000 shares which he transferred to Heng Chuan, Teck Chuan and Siew Chin.

26 In his closing submissions, Mr Khoo also relied on the point that there was another allotment of 50,000 shares to Madam Chai in 1987 which Madam Chai had supposedly paid for (refer to [\[6\]](#) above). Mr Khoo submitted that even if there was a trust created for the benefit of Siew Lay in 1984, the trust was over the 50,000 shares that Madam Chai held in 1984 and did not include the additional 50,000 shares registered in Madam Chai's name in 1987.

27 Lastly, Mr Khoo relied on s 7(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") which provides that, "A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorised in writing or by will". Thus, even if Mr Ong held the beneficial interest in Madam Chai's shares and made an oral disposition divesting his beneficial interest to Siew Lay, this oral disposition was not effective in transferring his beneficial interest to Siew Lay because it was not in writing.

28 He submitted that Siew Lay was estopped from even arguing against the operation of s 7(2) CLA because it had already been adjudicated that Mr Ong's disposition of his beneficial interest in the shares was unenforceable under s 7(2) CLA. [\[note: 7\]](#) This was a reference to an order made by Justice Lee Seiu Kin on 1 September 2008 in the current proceedings which stated:

[I]t is hereby determined that Ong Tong Guan's oral direction to Chai Ah Chee @ Chua Ah Chee to hold the 10% per cent share for the Plaintiff was a disposition by Ong Tong Guan of his equitable interest in those shares and it was not in writing for the purpose of section 7(2) of the Civil Law Act.

Siew Lay's position in respect of s 7(2) CLA

29 Mr Ponniah, counsel for Siew Lay, submitted that s 7(2) CLA was not applicable because her equitable interest in the shares had been converted into cash of \$2 million (being the sale proceeds of

the shares). He relied on *Tsu Soo Sin nee Oei Karen v Ng Yee Hoon* [2008] SGHC 30 ("*Tsu Soo Sin*") for this argument.

30 Mr Ponniah also submitted that there was part performance of a consensual family arrangement as to the distribution of Mr Ong's shares. He submitted that in such a situation, equity would not permit a statute to be used as an instrument of fraud, citing *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR 417 ("*Estate of Tan Kow Quee*").

31 Thirdly, Mr Ponniah submitted that as Boon Chuan had received the return of the \$2 million on the basis that he would return the money to Siew Lay, Boon Chuan is a constructive trustee of the money. He relied on *Koh Kim Eng v Lim Geok Yian* [2001] 4 SLR 219 ("*Koh Kim Eng*") for this argument.

My decision

32 From the evidence given by all three witnesses, *ie*, Siew Lay, Siew Kuan and Boon Chuan, it was clear to me that Mr Ong was the controlling mind behind the Company. Although Mr Khoo relied heavily on the register of shareholders, I was of the view that the registered shareholding could not be relied upon to prove the beneficial shareholding because the Company was simply not run that way. Even in the case of another company, B&S Investment Pte Ltd ("*B&S*"), which belongs to Boon Chuan and Siew Kuan, some of Boon Chuan's shares were held for him by Siew Kuan. In my view, Mr Ong had caused the shares in the Company to be registered in the names of the persons he chose. As Siew Kuan mentioned, Mr Ong had also placed his money in the bank account of such family member as he chose. Thus, regardless of the actual names under which the shares in the Company were held, I found that Mr Ong retained the beneficial interest in all the shares including those in Madam Chai's name. Indeed, this was reinforced to some extent by Boon Chuan's own evidence.

33 It will be recalled that Boon Chuan's version was that after the Meeting, Leong Chuan had suggested that Madam Chai hold the shares in her name on trust for Siew Lay. There was no suggestion that Leong Chuan was referring only to 16,500 shares (being 10% of the 165,000 shares held in Mr Ong's name). Furthermore, there was no suggestion that Leong Chuan was referring only to 49,000 shares (being 10% of the 490,000 issued shares) but to the entire 50,000 shares then registered in Madam Chai's name. The only issue in respect of this version was whether Madam Chai had refused to hold the shares on trust for Siew Lay.

34 Likewise, as regards the late point that, in any event, Madam Chai would have held only the first 50,000 shares in her name on trust for Siew Lay and not the second 50,000 shares subsequently allotted to her, there was no suggestion in the pleadings or in the evidence that if Madam Chai was holding her shares on trust for Siew Lay, this would extend only to the first 50,000 shares. The issue was whether she was holding the entire 100,000 shares in trust for Siew Lay or not at all.

35 As mentioned above, it was only in closing submissions that Mr Khoo submitted that if there was any trust, it extended only to the first 50,000 shares.

36 It also seemed to me that if Madam Chai held the entire 100,000 shares in trust for Siew Lay, this would be consistent with the allegations made by Boon Chuan in the Two Actions that Leong Chuan held 100,000 shares, not 50,000 shares, in trust for Siew Ann. As Siew Ann and Siew Lay were each given 10%, the total number of shares given to them would be the same and continue to be the same in the absence of any specific evidence that some time after 1984, Siew Ann was in fact given more shares than Siew Lay.

37 I come now to Boon Chuan's allegation about what he said in his affidavits in the Two Actions.

38 While it was true that, upon more careful examination, his affidavits did not explicitly state that Madam Chai held her shares in trust for Siew Lay, I was of the view that that was clearly the impression he sought to convey and that was effectively the meaning of his affidavits. Otherwise, why mention a proposal without mentioning that the proposal had not been carried out? It must be remembered that the purpose of mentioning the trust of 100,000 shares for Siew Lay was to support the contention in the Two Actions that Siew Ann was also given 10% of the shares by Mr Ong and Leong Chuan had used the Company's money to buy Siew Ann's shares.

39 I also found Boon Chuan's oral evidence in the current proceedings that Siew Lay's shares were irrelevant in the Two Actions to be disingenuous. If they were irrelevant, then there was no reason to allude to them at the material time but his own affidavits did so for the purpose I have mentioned.

40 In view, partly or solely, of his affidavits, the High Court found in Suit 1633 that Madam Chai held the shares in her name on trust for Siew Lay and that Leong Chuan had held 10% of the shares in the Company for Siew Ann and bought the same from her.

41 While I accepted that there was no issue estoppel or *res judicata* estoppel against Boon Chuan in respect of Siew Lay's shares, his affidavits in the Two Actions were clearly significant evidence against him in the current proceedings.

42 I did not accept Boon Chuan's explanation on what he said in his affidavits in the Two Actions. I also did not accept his version in the current proceedings that Madam Chai had refused to agree to hold the shares in her name on trust for Siew Lay. In addition to Boon Chuan's affidavit evidence in the Two Actions and Siew Kuan's evidence before me in which I will say more later, there was the fact that Madam Chai knew of Mr Ong's dying wish. She would not have denied this wish. Besides, if she had disagreed without letting Mr Ong know, it would mean that Siew Lay was left with nothing from the distribution. There was no suggestion that she was that kind of a mother, except for Boon Chuan's desperate version in the current proceedings.

43 The Receipt was also evidence in support of Siew Lay's claim. Although Boon Chuan said he had not seen the Receipt before, he did not suggest that Siew Lay was behind the idea of the Receipt although he did suggest that the Receipt was actually in favour of Siew Lay and not against her interest. He suggested that with the Receipt, Siew Lay could claim that the shares belonged to her but that was not the purpose for which the Receipt was issued. It was issued to meet Leong Chuan's suggestion that the purchase of the shares held in Madam Chai's name was a sham in that no money passed hands. The Receipt stated that Siew Lay had received the \$2 million when, effectively, she had not. It was not in her interest to issue it and she should not have done so. Clearly she was put up to it. Whether it was Boon Chuan or Siew Ann who asked her to do so, I was of the view that Boon Chuan was not unaware of it. He said Siew Ann was in charge of the Company's litigation against Leong Chuan in Suit 1633 but he too was involved in the overall dispute. I did not believe that he was as uninvolved as he sought to suggest.

44 Having considered all the evidence, I found Boon Chuan to be a dishonest witness. I had no hesitation in rejecting his explanation of his affidavits in the Two Actions and his version in the current proceedings.

45 As regards Boon Chuan's allegation in oral evidence in the current proceedings that Madam Chai had asked him to help the Company out, this was neither here nor there. It might well be that he was asked to get involved in the Company which was facing a financial crisis but the point was not

whether he had bought the shares registered in Madam Chai's name or not. That was a non-issue even on his own position in the current proceedings, except that he sought to suggest that the purchase money was given to him. For example, in the second SMS (see [\[13\]](#) above), he referred to a "false purchase of shares". When he was asked what he had meant by that, he did not say that actually the shares were given to him. However, he suggested that while there was a purchase of the shares, the purchase money was given to him. [\[note: 8\]](#) He also explained that as he was not then a shareholder, the price of \$2 million was arrived at to put the shares out of the reach of his brothers who might otherwise be prepared to acquire them under a pre-emption provision in the Company's articles of association. Yet, he stopped short of asserting that the sale price was actually less than \$2 million. No doubt he was aware that had he asserted that the shares were given to him or that the sale price was less than \$2 million, other things might unravel and all the things he had done on the strength or basis of the shares he had acquired might become unstuck.

46 There was also a suggestion that Boon Chuan did not need the return of the purchase money for his property development business because he had subsequently used \$1 million to acquire additional shares, by way of a rights issue, in the Company. To me, this was irrelevant. It was undisputed that the \$1 million he had paid twice for the shares he had purchased, to make up \$2 million, was returned to him twice. It seemed to me that he had led Madam Chai, and consequently, Siew Lay, to believe that he had needed the money for his property development business. They did not concern themselves with the actual use of the money.

47 I found Boon Chuan's distinction between a gift of the shares and a gift of the purchase money to be disingenuous. By suggesting that the purchase money was given to him, he was really saying that the shares had been given to him. That was what he was really alluding to when he referred to a "false purchase of shares" in the second text message he sent to Siew Lay in 2005 (see [\[13\]](#) above). However, that was contrary to the picture he had painted all along especially in OS 1944. In OS 1944, he had stated that he had bought the shares from Madam Chai. That was why he had to maintain before me that there was no gift of the shares but a gift of the purchase money.

48 I did not accept such a distinction. I would also add that Madam Chai would not have given the shares or the purchase money to Boon Chuan. She knew that they were not hers to give and she would not have short-changed Siew Lay by giving them to Boon Chuan.

49 I come now to Siew Kuan's evidence. Boon Chuan had suggested that Siew Kuan's evidence should not be accepted because she had an axe to grind with him. He explained how her joint investment with him in B&S resulted in another law suit, leading to the deterioration of their previously close relationship. However, it is important to bear in mind why that dispute arose. As mentioned earlier, Siew Kuan had held some shares in B&S for Boon Chuan. She initially refused to transfer those shares back to Boon Chuan leading to his having to sue her for the same. Siew Kuan explained that she had initially refused to transfer those shares because she had learned that Boon Chuan was refusing to return Siew Lay's money to her. Significantly, Siew Kuan said she initially thought highly of Boon Chuan. She stated in her AEIC for the current proceeding that "[s]ince the shares were sold to Boon Chuan, I was confident that he would live up to his obligation as he was at that time just about the only dependable brother that I had". In any event, Siew Kuan eventually decided not to contest Boon Chuan's claim for the B&S shares in question. She said that she knew she would have to lie if she was to contest and she did not want to do so. Siew Kuan's conduct in initially refusing to transfer Boon Chuan's shares back to Boon Chuan was wrong. She acknowledged that. However, the reason why she had refused was Boon Chuan's own refusal to honour his obligation to Siew Lay. I found Siew Kuan to be truthful in her evidence on the trust arrangement for Siew Lay.

50 The only issue left was whether, given that Mr Ong had orally disposed of his beneficial interest

in 10% of the shares in the Company to Siew Lay to be held on trust by Madam Chai, this oral disposition fell foul of s 7(2) CLA.

51 Both Mr Khoo and Mr Ponniah had proceeded on the basis that s 7(2) CLA was the correct provision to be considered. However, after they had completed their submissions and I had given my oral judgment, I realised that actually s 7(2) was not, strictly speaking, the correct provision to be considered.

52 The disposition by Mr Ong was made in 1984. The correct provision to be considered would have been s 9 of the English Statute of Frauds 1677, ("the Statute of Frauds") which states:

IX. And be it further enacted, That all Grants and Assignments of any Trust or Confidence shall likewise be in Writing, signed by the Party granting or assigning the same, or by such Last Will or Devise, or else shall likewise be utterly void and of none Effect.

53 The Statute of Frauds would have been applicable to Singapore in 1984 by virtue of the Second Charter of Justice 1826.

54 Thereafter, under the Application of English Law Act (Cap 7A) ("AELA"), the Civil Law Act (Cap 43, Rev Ed 1988) was amended to introduce a new s 6B(2) which was the predecessor of the current s 7(2) CLA. S 6B(2) came into effect on 12 November 1993.

55 There is a difference between s 9 of the Statute of Frauds and s 7(2) CLA in that s 9 refers to "grants and assignments" whereas s 7(2) refers to "disposition". Does the former mean the same thing as the latter?

56 Interestingly, a similar question was considered but not answered in *Grey v Inland Revenue Commissioners* [1960] AC 1 ("Grey"). In that case, a settlor had transferred to trustees, as his nominees, a number of shares in a company on 1 February 1955. On 18 February 1955, he gave oral directions to the trustees to hold various blocks of shares for the settlements he had earlier created. On 25 March 1955, the trustees executed six declarations of trust which recited the settlor's oral direction of 18 February 1955 and the trustees acceptance of the oral direction. A question arose whether the six declarations executed by the trustees attracted *ad valorem* stamp duty as voluntary dispositions within the meaning of s 53(1)(c) of the English Law of Property Act 1925 ("LPA 1925") which is *in pari materia* with s 7(2) CLA except for some minor differences which are irrelevant for present purposes.

57 The argument for the trustees was that the word "disposition" in s 53(1)(c) LPA 1925 means "grants and assignments" in s 9 of the Statute of Frauds and that what the settlor had done orally was to create a trust but not to assign any equitable interest. Hence, the beneficial interest had already passed orally then and the six declarations of trust did not attract *ad valorem* stamp duty. It was also argued that the LPA 1925 was a consolidating statute and not an amending one.

58 The House of Lords held that the LPA 1925 had consolidated earlier statutes which were themselves amending statutes. They did not think that the interpretation of the word "disposition" in s 53(1)(c) LPA 1925 should be influenced by the phrase "grants and assignments" in s 9 Statute of Frauds. It was clear to them that what the settlor did orally was a disposition and therefore void and did not pass any beneficial interest then. Hence, the six declarations attracted *ad valorem* stamp duty.

But that is not the question which has led to difference of opinion in the courts below. Where opinions have differed is on the point whether his direction was a "disposition" within the meaning of section 53 (1) (c) of the Law of Property Act, 1925, the argument for giving it a more restricted meaning in that context being that section 53 is to be construed as no more than a consolidation of three sections of the Statute of Frauds, sections 3, 7 and 9. So treated, "disposition," it is said, is merely the equivalent of the former words of section 9, "grants and assignments," except that testamentary disposition has to be covered as well, and a direction to a trustee by the equitable owner of the property prescribing new trusts upon which it is to be held is a declaration of trust but not a grant or assignment. The argument, concludes, therefore, that neither before January 1, 1926, nor since did such a direction require to be in writing signed by the disponent or his agent in order to be effective.

In my opinion, it is a very nice question whether a parol declaration of trust of this kind was or was not within the mischief of section 9 of the Statute of Frauds. The point has never, I believe, been decided and perhaps it never will be. Certainly it was long established as law that while a declaration of trust respecting land or any interest therein required writing to be effective, a declaration of trust respecting personalty did not. Moreover, there is warrant for saying that a direction to his trustee by the equitable owner of trust property prescribing new trusts of that property was a declaration of trust. **But it does not necessarily follow from that that such a direction, if the effect of it was to determine completely or pro tanto the subsisting equitable interest of the maker of the direction, was not also a grant or assignment for the purposes of section 9 and therefore required writing for its validity.** Something had to happen to that equitable interest in order to displace it in favour of the new interests created by the direction: and it would be at any rate logical to treat the direction as being an assignment of the subsisting interest to the new beneficiary or beneficiaries or, in other cases, a release or surrender of it to the trustee.

I do not think, however, that that question has to be answered for the purposes of this appeal.
...

[emphasis added]

60 It seems to me that what Mr Ong did in 1984 was similar to what the settlor did in *Grey*. However, I did not have the benefit of arguments as to whether what Mr Ong did did come within the meaning of "grant" or "assignment". With that qualification in mind, it seems to me that what Mr Ong did was to orally assign his equitable interest to Siew Lay and therefore, s 9 Statute of Frauds might have applied to defeat her claim.

61 Before I continue, I would say that I did not accept Mr Ponniah's argument that s 7(2) CLA (or s 9 Statute of Frauds) was inapplicable because Siew Lay's claim was in respect of the sale proceeds and not the shares. Her claim to the sale proceeds was premised on her being the beneficial owner of the shares. Without that interest, she would not be entitled to the sale proceeds. The case of *Tsu Soo Sin* which Mr Ponniah had relied on dealt with different facts.

62 I also did not agree that Boon Chuan was holding the sale proceeds as constructive trustee for Siew Lay. It was her own case that the money was returned to Boon Chuan to let him use it for his own property development business but he was to return the money to Siew Lay if she needed it. Such an arrangement was more akin to a loan of the money than a trust. The case of *Koh Kim Eng* which Mr Ponniah cited dealt with different facts.

63 The purpose of s 9 Statute of Frauds and s 7(2) CLA is to prevent equitable interests from being the subject of hidden oral transactions and to enable trustees to ascertain the beneficiaries, see *Vandervell v IRC* [1967] 2 AC 291 at 311. The ruling by Justice Lee (see [28] above) might have been available to Mr Ong's estate if it wished to claim the beneficial interest to the shares held by Madam Chai and to Madam Chai's estate if it was disputing Siew Lay's beneficial interest.

64 However, in the current proceedings, there was no claim by Mr Ong's estate that he was the true beneficial owner of the shares held by Madam Chai. Neither was Madam Chai's estate disputing Siew Lay's claim to be the beneficial owner of the shares. I found that Boon Chuan, who had bought the shares, had known and accepted that they belonged to Siew Lay. In the circumstances, he could not use s 9 Statute of Frauds to deny Siew Lay's claim.

65 I would add that to allow Boon Chuan to do so would be to allow him to use s 9 Statute of Frauds to defraud Siew Lay – see *Estate of Tan Kow Quee* at [15] where Sundaresh Menon JC applied the maxim that equity would not allow the Statute of Frauds to be used as an instrument of fraud to s 7(2) CLA. Although Menon JC also referred to the doctrine of past performance, that is, in my view, not an essential ingredient to prevent the abuse of the relevant statute. I.C.F. Spry, *The Principles of Equitable Remedies* (Sweet & Maxwell, 7th Ed, 2007) states at p 250:

The instances where equitable intervention of this nature can be obtained today may be divided into two categories. In the first place, there are certain anomalous cases where a defendant is not permitted to rely dishonestly on the absence of a sufficient writing. ... In the second place, there are cases where courts with equitable jurisdiction hold that there has come into existence an equity to relief by reason of part performance by the plaintiff of his obligations.

66 In the circumstances, it was not necessary for me to decide whether there was part performance which Siew Lay could have relied on. The part performance which Mr Ponniah was referring to was the carrying out of Mr Ong's wishes but, as I have mentioned, Madam Chai was already the registered owner of 50,000 of the shares at the material time.

67 I would add that the maxim (see [65] above) has been applied in cases like *Rochefoucauld v Boustead* [1897] 1 Ch 196, *Re Duke of Marlborough* [1894] 2 Ch 133, *Di Pietro v Official Trustee in Bankruptcy* [1995] 59 FCR 470 and *Leong Sze Hian v Teo Ai Choo* [1984-1985] SLR 345.

68 In the circumstances, I granted judgment in favour of Siew Lay. Boon Chuan was to pay her \$2 million forthwith with interest thereon at the rate of 5.33% from the date of the writ to judgment. He was also to pay her the costs of the action to be agreed or taxed.

[note: 1] Notes of Evidence ("NE") 20/2/09, pp 55-56

[note: 2] Ibid.

[note: 3] Boon Chuan, during cross-examination clarified that it should be read as "I" instead of "she".

[note: 4] Siew Lay's AEIC p7 at [15]

[note: 5] NE 19/2/2009, p30

[\[note: 6\]](#) NE 19/2/09, pp 114–115

[\[note: 7\]](#) Defendant’s Closing Submissions [73]

[\[note: 8\]](#) NE 20/2/2009 at pp 95-96

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