

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 152

Suit No 375 of 2017

Between

Estate of Mrs Yang Chun Nee
Sun Hui Min

... Plaintiff

And

Yang Chia-Yin

... Defendant

JUDGMENT

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Trusts] — [Constructive trusts]
[Trusts] — [Breach of trust] – [Remedies]

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Estate of Yang Chun (Mrs) née Sun Hui Min, deceased

v

Yang Chia-Yin

[2019] SGHC 152

High Court — Suit No 375 of 2017

Ang Cheng Hock JC

2-4, 10-11 January 2019; 22 February 2019

20 June 2019

Judgment reserved.

Ang Cheng Hock JC:

Introduction

1 This case arises from a disagreement over the beneficial ownership of the moneys in several joint bank accounts. The resolution of this dispute ultimately depends on whether, in the circumstances of the case, the right of survivorship operated, and what were the consequences that flowed from the defendant's actions in transferring the joint account moneys to his personal accounts.

Facts

The parties

2 The plaintiff in this case is the estate of the late Mrs Yang Chun Nee Sun Hui Min, who I will refer to as "Mdm Sun". She passed away on 1 October

2016 at the age of 97. Mr Howard Chi Hao Sun (“Mr Sun”) is her nephew and her estate’s sole executor and legal representative.

3 Mdm Sun had been married for over 50 years to Mr Jack Yang, also known as Yang Chun (“Mr Yang”), who had predeceased her. Mr Yang passed away on 15 May 2012 at the age of 95. The defendant is his nephew and the sole executor and legal representative of his estate.¹ However, he is being sued in these proceedings in his personal capacity.

Background to the dispute

The family dynamic

4 Mr Yang emigrated to Singapore from Taiwan in 1969. He became a managing director, director and shareholder of several companies here until he retired at the age of 80.² He was not known to be a spendthrift and lived frugally.³ Mdm Sun joined her husband in Singapore upon her retirement from her job in Taiwan in 1971.⁴ She did not work after moving to Singapore.

5 The couple had no children of their own but they were close to the nephews on both the Yang and Sun side of the family. In 1972, as a child, Mr Sun was formally adopted by Mr Yang and Mdm Sun in Taiwan. He and his younger brother re-located to Singapore and lived with the couple for a period

¹ Statement of Claim (“SOC”) paras 1-4.

² Howard Sun’s (“Howard”) Affidavit of Evidence-in-Chief (“AEIC”), HCHS-3.

³ Notes of Evidence (“NE”), 10 January 2019, p 41, line 10; NE, 2 January 2019, p 36, lines 3-16.

⁴ SOC para 4(ii).

of eight and three years respectively.⁵ Then, in 1982, at age 17, Mr Sun emigrated to the United States (“the US”) to further his studies and live with his biological mother. His adoption by Mr Yang and Mdm Sun was nullified for this purpose. However, they remained close and he continued to visit Singapore once or twice a year to see his uncle and aunt.⁶

6 Sometime in the 1990s, the issue of Mr Sun’s nullified adoption resurfaced. Mr Yang and Mdm Sun had considered emigrating to the US and it was agreed that Mr Sun would sponsor their visa applications. Unfortunately, the couple had forgotten that Mr Sun’s adoption had been nullified years before and did not disclose this fact during the application process. Owing to this non-disclosure, Mr Yang’s and Mdm Sun’s visa applications were denied.⁷ Mr Yang was greatly embarrassed by the incident and this became a sore topic of conversation between him and Mr Sun whenever the latter visited Singapore.⁸

7 The defendant emigrated to Singapore from Taiwan in 1972. He worked for his uncle, Mr Yang, for 14 years until 1984 when he set up his own construction business. However, he remained in contact with Mr Yang and Mdm Sun and continued to visit them regularly. This was also the evidence of the couple’s long serving domestic helper, Mdm Looi Ah Mooi (“Mdm Looi”). The defendant’s two sons had dinner with the couple on a weekly basis. Following Mr Sun’s departure to the US, the defendant’s family was the couple’s only close relatives who resided in Singapore.

⁵ Howard’s AEIC para 9.

⁶ Looi Ah Mooi’s (“Looi”) AEIC para 9.

⁷ Howard’s AEIC paras 14-16.

⁸ Howard’s AEIC para 16.

8 The couple were primarily cared for by Mdm Looi, who worked for them from 1982 until the time of Mdm Sun’s death in October 2016.⁹ She was also referred to by the parties as “Lichoo”. During her period of employment, Mdm Looi grew very close to Mr Yang and Mdm Sun, regarding the latter like her own mother.¹⁰ In 2009, Ms Ohmmar Thu (“Ms Ohmmar”) was hired as a second domestic helper to help Mdm Looi look after the couple, who needed more assistance as they grew older.¹¹

Mr Yang and Mdm Sun’s assets

9 During their years living in Singapore, Mr Yang and Mdm Sun resided at their apartment at 36 Tomlinson Road (the “Tomlinson Property”), which had been purchased sometime around 1975. The Tomlinson Property was initially registered in Mr Yang’s sole name but, in 2004, Mr Yang lodged an instrument of transfer such that the defendant and Mdm Sun held the Tomlinson Property with him as joint tenants.¹² There is no evidence that either Mdm Sun or the defendant provided any consideration for this transfer. On Mr Yang’s death in 2012, it is not disputed that ownership devolved to Mdm Sun and the defendant as joint tenants pursuant to the right of survivorship.

10 Acting in his capacity as the lawful attorney of Mdm Sun, Mr Sun later took steps to sever the joint tenancy, which was carried out on 26 April 2016.¹³ After Mdm Sun’s death in October 2016, there were legal proceedings between

⁹ Looi’s AEIC para 4.

¹⁰ Looi’s AEIC para 4.

¹¹ Looi’s AEIC paras 10-11.

¹² 5 Agreed Bundle (“AB”) 4044.

¹³ Howard’s Supplementary AEIC para 4a.

Mdm Sun's estate and the defendant concerning whether the severance was effective and whether the property should be sold.¹⁴ The High Court decided that the joint tenancy was severed and also granted the order for a sale. Eventually, in January 2018, the defendant purchased Mdm Sun's estate's half-share in the Tomlinson Property for S\$1.3m and he is now its sole owner.¹⁵

11 While living in Singapore, Mr Yang and Mdm Sun opened bank accounts together in Citibank, UOB and POSB. These accounts were in their joint names and they were both signatories for the accounts. The joint accounts that are relevant to these proceedings are:

- (a) POSB Passbook Joint Savings Account No. 081-XXXXXX-9 (the "POSB joint account");
- (b) UOB Joint Current Account No. 357-XXX-XXX-8 (the "UOB joint account");
- (c) UOB Joint Bank Account No. 126-XXXXXXX-1 (the "UOB time deposit account");
- (d) Citibank Joint SGD Maxisave (Base) Account No. 0-XXXXXX-028 (the "Citibank joint account"); and
- (e) Citibank Fixed Time Deposit Account No. 0000010XXXXXXXX000030 (the "Citibank time deposit account").

¹⁴ Originating Summonses No. 496 of 2017 and 652 of 2017.

¹⁵ Plaintiff's Closing Submissions ("PCS") para 9.

At the time of Mr Yang’s death in May 2012, the UOB time deposit account was no longer open. The defendant’s acts in relation to the moneys in these joint accounts at UOB, Citibank and POSB are the subject of these proceedings, as will be explained below.

12 As they grew older, Mr Yang and Mdm Sun became reliant on the defendant to assist them in their financial affairs. In the mid-1990s, the defendant was granted a mandate to operate the joint accounts with Citibank. This was described by the parties as a “power of attorney” in Citibank’s standard form, although the actual document that was executed by Mr Yang and Mdm Sun was a “Letter of Authority Application Form” that was undated.¹⁶

13 In the mid-2000s, the defendant was granted a mandate to operate the joint accounts with UOB. The document granting this mandate was not produced by the defendant in these proceedings. Around that time, Mr Yang also entrusted the defendant with the passbook for the POSB joint account passbook so that he could use the passbook for “deposit and drawing”.¹⁷ The defendant explained in his evidence that he was only able to deposit moneys into the POSB joint account but he could not withdraw any moneys from it.¹⁸ This is disputed by Mr Sun. I will deal with this point later in my judgment.

14 The defendant was given access to these accounts to assist Mr Yang “in certain (and not all) financial matters”.¹⁹ Given their close relationship, Mr Yang reposed a significant degree of trust and confidence in the defendant to

¹⁶ Yang’s AEIC, p 51.

¹⁷ 3AB 1696.

¹⁸ NE, 4 January 2019, p 35, lines 28-32; p 38, lines 27-29.

¹⁹ Yang’s AEIC para 43.

assist the couple with their affairs. By 2010, the defendant had taken on sole responsibility for managing Mr Yang's and Mdm Sun's living expenses.²⁰ Mdm Looi and Ms Ohmmar received reimbursements for their household expenditures by presenting their receipts to the defendant.²¹ This was done weekly.

15 Besides granting these mandates to operate the joint accounts, Mr Yang also provided the defendant with information about bank accounts which had been set up by Mr Yang and Mdm Sun in their names, and also in the names of their relatives, including the defendant's siblings, Mr Yang Chia-Ling and Mdm Lin Yang Min. He wrote letters to the defendant dated 21 August 1996 and 11 May 2005 setting out these accounts.²² This was for the defendant's "information and retention". Quite obviously, this was to ensure that the defendant was aware of the couple's finances in case anything should happen to them. In another letter dated 14 September 2009, Mr Yang also informed the defendant of other assets owned by the couple, including the details of a safe deposit box in Taiwan, jewellery, precious items and other valuables.²³

16 In addition to the joint accounts, the couple also held personal bank accounts in Taiwan and joint bank accounts in the US. This is relevant because Mdm Sun's savings from the time she worked in Taiwan were remitted to Singapore in two tranches from her Taiwanese bank accounts to the UOB time deposit account²⁴:

²⁰ Yang's AEIC para 8.

²¹ Yang's AEIC para 57.

²² 3AB 1692-1695.

²³ 3AB 1698-1704.

²⁴ Hsu Chih-Chi's ("Hsu") AEIC, HCC-1.

- (a) a sum of US\$261,000 on or about 15 October 2007;²⁵ and
- (b) a sum of US\$157,000 on or about 19 November 2007.²⁶

17 These transfers were overseen by Ms Hsu Chih-Chi (“Ms Hsu”). Ms Hsu was the personal assistant of Mdm Sun’s brother-in-law in Taiwan, one Mr Fan. She was instructed by Mr Yang and Mdm Sun to remit the moneys from Mdm Sun’s Cathay United bank accounts (Account No. 020-50-XXXXXX-8 and 201-50-XXXXXX-4).²⁷ Ms Hsu had also earlier remitted a sum of US\$12,070 from Mdm Sun’s account on or about 20 June 2007.²⁸ This was on the instructions of Mr Fan. Ms Hsu was informed that Mr Yang and Mdm Sun had previously made an investment in Mr Fan’s company and he was now returning that sum to them first by payment into one of Mdm Sun’s Cathay United bank accounts, and then to the UOB time deposit account.²⁹

Mr Yang’s will

18 On 29 November 2007, at the age of 90, Mr Yang made a will (“the Will”) which appointed the defendant as the sole executor of his estate.³⁰ In the Will, Mr Yang set aside a sum of S\$300,000 for the maintenance of Mdm Sun:

2. I give to my Trustee a sum of **Singapore Dollars Three Hundred Thousand (S\$300,000.00)** to hold the same in trust for the care and maintenance of my wife **MRS YANG CHUN nee SUN HUI-MIN** ... during her lifetime and thereafter the balance

²⁵ 2AB 1638-1639; Hsu’s AEIC, HCC-1 p 7; Hsu’s AEIC para 6.

²⁶ 2AB 1640-1641; Hsu’s AEIC, HCC1 p 8; Hsu’s AEIC para 6.

²⁷ Hsu’s AEIC para 6.

²⁸ 2AB 1636-1637, Hsu’s AEIC, HCC-1 p 6; Hsu’s AEIC para 5.

²⁹ Hsu’s AEIC para 5.

³⁰ Howard’s AEIC, HCHS-6; 2AB 830.

of such sum, if any, to my Trustee absolutely. [emphasis in original]

He bequeathed the remainder of his assets to be distributed amongst the defendant and the defendant's two siblings. Mr Yang did not specifically refer to the joint accounts in the Will. Mr Sun and other members of Mdm Sun's family were not included as beneficiaries.

19 At the time of the making of the Will, a bank statement from UOB produced in evidence showed that the UOB joint account had a balance of S\$2,163,797.3.³¹ The defendant did not disclose the bank statement from Citibank for November 2007, but the bank statement of 31 December 2003, which was closest in time to when the Will was made, showed that the couple had a total of S\$1,313,053.11 in the Citibank joint account in savings and fixed-income investments.³²

The events following Mr Yang's death

20 Less than four and a half years after the making of the Will, Mr Yang passed away on 15 May 2012.³³ Seven days later, on 22 May 2012, the defendant carried out the following transactions in relation to the joint accounts at UOB and Citibank:³⁴

(a) he transferred S\$247,000 from the UOB joint account to his personal UOB Account No. 208-XXX-XXX-8³⁵;

³¹ 2AB 941.

³² 2AB 1069-1074.

³³ 2AB 833.

³⁴ Yang's AEIC paras 45-47; NE, 4 January 2019, p 11, line 11.

³⁵ 2AB 943.

(b) he transferred S\$68,000 from the Citibank joint account to his personal Citibank Account No. 0011XXXX15³⁶;

(c) he prematurely terminated the Citibank time deposit account of S\$200,000 which would have otherwise matured on 30 July 2012 and deposited this sum into the Citibank joint account;³⁷ and

(d) he transferred S\$200,000 from the Citibank joint account to his personal Citibank Account No. 0011XXXX15.³⁸

In total, a sum of at least S\$515,000 was moved from the joint accounts to the defendant's personal accounts, which were held with his wife. It is not in dispute that the defendant did not obtain Mdm Sun's consent to the said withdrawals. In fact, both parties are in agreement that the defendant could not have obtained Mdm Sun's consent because she lacked mental capacity at the time of Mr Yang's death.³⁹

21 It is also common ground that the defendant did *not* inform UOB or Citibank that Mr Yang had passed away when he gave instructions for the above transfers to be carried out. He only informed the respective banks of Mr Yang's death more than a month later on 6 July 2012 when he needed their assistance to apply for the grant of probate for the Will.⁴⁰ The grant of probate was applied for on 25 July 2012 and was granted on 25 September 2012.⁴¹

³⁶ 2AB 1342; 2AB 1091.

³⁷ 2AB 1336.

³⁸ 2AB 1342; 2AB 1091.

³⁹ NE, 2 January 2019, p 7, lines 14-17.

⁴⁰ 2AB 946-947.

⁴¹ 2AB 833.

22 Following Mr Yang's death, the defendant assumed primary care of Mdm Sun. He visited her once every one to two weeks to check in on her and pay for the groceries and household expenses.⁴² Mr Sun and members of the Sun family, who did not live in Singapore, trusted that the defendant would look after Mdm Sun. The defendant had informed them that Mr Yang had left a sum of S\$300,000 for Mdm Sun's care and maintenance.⁴³ On this basis, the Sun family did not raise questions the existing care arrangements for Mdm Sun. The defendant initially refused to show Mr Sun and the Sun family the Will on the basis that they were not beneficiaries.⁴⁴

23 In July 2012, Mr Sun's brother visited Singapore. During this visit, the defendant showed him a copy of the Will and also handed over the seal and passbooks for Mdm Sun's Taiwanese bank accounts.⁴⁵ He did not share any further information about Mdm Sun's assets. Mdm Sun's extended family was thus under the impression that Mdm Sun had no assets in Singapore. Mr Sun only discovered that this was untrue when he directed lawyers to conduct a land register search on the Tomlinson Property. The search revealed that the Tomlinson Property was held as a joint tenancy with Mdm Sun and the defendant. This aroused Mr Sun's suspicions as to the defendant's motives and he began to take a more active role in Mdm Sun's affairs.⁴⁶

24 As she aged, Mdm Sun had become weaker and less mobile. She had suffered a stroke in early 2002 and eventually lost the ability to walk by August

⁴² Looi's AEIC para 18.

⁴³ Howard's AEIC para 28.

⁴⁴ NE, 2 January 2019, p 49, lines 14-18.

⁴⁵ Howard's AEIC para 43; NE, 10 January 2019, p 45, lines 2-12.

⁴⁶ Howard's AEIC para 44.

2009.⁴⁷ She suffered from a number of other medical conditions, began exhibiting signs of dementia and became increasingly unresponsive.⁴⁸ When Mr Sun returned to Singapore in August 2012, he was alarmed to discover Mdm Sun in a semi-vegetative state.⁴⁹ He found that her condition had visibly deteriorated since Mr Yang’s funeral a few months earlier. Whilst the defendant had retained the family’s doctor, Dr Lee Keng Thon (“Dr Lee”), to look after Mdm Sun, Mr Sun was concerned that the defendant was not sufficiently addressing his aunt’s medical needs.⁵⁰

25 He discovered that Mdm Sun was being prescribed medication by Dr Lee without any physical examination.⁵¹ Mr Sun was also informed by Mdm Looi of other instances of inadequate care. In September 2012, Mr Sun decided to engage Dr Madeline Chew (“Dr Chew”) to treat Mdm Sun. The defendant was strongly opposed to Mdm Sun being treated by Dr Chew because he said that it was unnecessary. Subsequently, however, in Originating Summons No 205 of 2013 (“OS 205/2013”), which is described below at [30] to [34], Lai Siu Chiu J accepted that Mdm Sun demonstrated considerable improvement under Dr Chew’s care.⁵²

26 After Mdm Sun’s condition improved, on 17 October 2012 and 3 December 2012 respectively, she executed a Power of Attorney (“POA”) and

⁴⁷ Looi’s AEIC paras 6-8.

⁴⁸ NE, 3 January, p 10, lines 17 to page 11 line 1.

⁴⁹ NE, 2 January 2019 p 51, lines 11-14.

⁵⁰ Howard’s AEIC paras 29 and 30.

⁵¹ Howard’s AEIC para 30.

⁵² 1AB 781, para 32 of Grounds of Decision of Lai Siu Chiu J in OS 205/2013.

Lasting Power of Attorney (“LPA”) in favour of Mr Sun.⁵³ Mr Sun was appointed as her sole attorney and/or donee to conduct, manage and make decisions on her behalf in respect of matters relation to her personal welfare, property and affairs. The defendant was informed of Mr Sun’s appointment as Mdm Sun’s attorney in December 2012.

Prior related proceedings

27 Prior to the commencement of these proceedings, parties were involved in several other related legal proceedings. The outcomes of two of these proceedings are somewhat relevant to my judgment and I therefore set them out below.

Originating Summons Family No 9 of 2013

28 On 11 January 2013, the defendant filed Originating Summons Family No 9 of 2013 (“OSF 9/2013”) seeking an order to set aside the LPA executed in favour of Mr Sun on two grounds. He argued that Mdm Sun lacked capacity at the material time and that Mr Sun was not acting in her best interests. Numerous expert witnesses were called by both parties, particularly to give evidence on the issue of Mdm Sun’s mental capacity. Amongst them were Dr Lee and Dr Chew. Video evidence of Mdm Sun was also considered to assess her ability to understand and respond to questions.

29 In those proceedings, the District Judge made several important findings as to Mdm Sun’s mental capacity and the validity of Mr Sun’s LPA (see *TEB v TEC* [2015] SGFC 54 (“*TEB*”))⁵⁴:

⁵³ 3AB 1708, 1750.

⁵⁴ 1AB 269.

- (a) A person's mental capacity could fluctuate and a finding that they lacked capacity at one point in time did not mean that they lacked capacity at all times and in regard to all issues. This is a fact recognised by the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("MCA") (at [38] and [251]).
- (b) There was a strong likelihood that the medication prescribed by Dr Lee to Mdm Sun had, "at one or more points in time, caused [Mdm Sun] to appear to lack (or have reduced) mental capacity as opposed to actually lacking mental capacity" (at [238]).
- (c) The appearance of a lack of capacity was also likely to have been caused by Mdm Sun's other untreated medical conditions which included hypertension, hyponatremia, renal impairment and Parkinson's disease (at [239] - [243]).
- (d) That being said, there was evidence (*ie*, the videos of Mdm Sun) which suggested that there had been a degree of impairment in Mdm Sun's cognitive ability (at [249]). However, the defendant had failed to prove that Mdm Sun had *definitely* lacked capacity *at the time of the LPA's execution*, particularly in light of the assumption of capacity under s 3(2) of the MCA (at [263]).
- (e) The defendant had also failed to demonstrate that Mr Sun had behaved in a way detrimental to Mdm Sun's interests (at [300], [329]).

Accordingly, the District Judge dismissed the defendant's application and the LPA was not revoked. The defendant's appeal against this decision was dismissed by the High Court.

Originating Summons No 205 of 2013

30 Following his efforts to improve the medical care of his aunt in the second half of 2012, Mr Sun incurred medical expenses which he sought to recover from the defendant. This was on the basis of his belief that Mr Yang had set aside the sum of S\$300,000 in the Will for the care and maintenance of Mdm Sun.

31 Mr Sun’s solicitors initially wrote to the defendant on 10 December 2012 detailing expenses amounting to \$9,864.13.⁵⁵ Mr Sun’s requests for reimbursement were refused. In the meantime, he continued to incur further costs on behalf of Mdm Sun. On 4 March 2013, in his capacity as Mdm Sun’s attorney, Mr Sun commenced OS 205/2013 against the defendant to claim reimbursement of sums he had incurred in the care and treatment of Mdm Sun out of the S\$300,000 that had been set aside by the late Mr Yang. He also sought to enforce Mdm Sun’s right to her share of the Tomlinson Property. The defendant had failed to lodge Mr Yang’s “Notice of Death” with the Singapore Land Authority (“SLA”) to ensure that the land register was updated to reflect Mdm Sun’s and the defendant’s entitlement to the Tomlinson Property as joint tenants. These proceedings were opposed by the defendant on the basis that Mdm Sun was mentally incapacitated and could not have validly authorised Mr Sun to act as her attorney (see OSF 9/2013).

32 On 23 July 2013, Lai Siu Chiu J made, *inter alia*, the following interim orders (see *Mrs Yang Chun nee Sun Hui Min v Yang Chia Yin* [2014] 1 SLR 1 (“*Mrs Yang Chun*”) at [3])⁵⁶:

⁵⁵ Howard’s AEIC, HCHS-10 page 2.

⁵⁶ 1AB 772.

(a) the defendant was to pay Mdm Sun's solicitors S\$100,000 to defray her future medical expenses and reimburse Mr Sun the sum of S\$52,202.53 that had already been incurred by him by the time of the hearing; and

(b) the defendant was to lodge with the SLA the instrument of transmission upon death to transfer Mr Yang's share in the Tomlinson Property to himself and Mdm Sun as joint tenants.

33 In so doing, Lai J made several findings which are of note for these proceedings. She found that Dr Lee had abrogated his duties as a medical doctor by taking instructions from the defendant on Mdm Sun's care (*Mrs Yang Chun* at [30]). This view was shared by the District Judge in *TEB* who expressed concerns that Dr Lee had written prescriptions for Mdm Sun without even seeing her (at [105] and [108]). Lai J also found that Mdm Sun's condition showed a marked improvement as a result of the treatment of Dr Chew. Mr Sun was not motivated by self-interest in arranging for Mdm Sun's medical treatment (*Mrs Yang Chun* at [32]). In contrast, the defendant had failed to discharge his duties as executor of Mr Yang's estate. The Will "did not confer on the defendant a carte blanche to care for [Mdm Sun] as he deemed fit" (*Mrs Yang Chun* at [33]). Lastly, Lai J found that more appropriate steps could have and should have been taken to improve Mdm Sun's physical and mental well-being (*Mrs Yang Chun* at [34]).

34 Lai J's interim order was varied by Judith Prakash J, as she then was, on 23 October 2013, limiting Mr Sun to claim S\$5,000 per month on a reimbursement basis up to the amount of S\$100,000, which was to be held by the defendant's solicitors. The sum of S\$52,202.53 that was ordered by Lai J

to be paid as reimbursement to Mr Sun was never paid by the defendant, as Prakash J stayed the order, pending the defendant's appeal against Lai J's order.

35 Mdm Sun's medical expenses subsequently exceeded this sum. Mr Sun claimed the full sum of S\$100,000 and incurred a further S\$222,356.63.⁵⁷ Once again, the defendant refused to reimburse him for these costs. The defendant was also reticent about providing an account of how he had allegedly incurred an amount of about S\$200,000 for the care and maintenance of Mdm Sun.⁵⁸

36 In August 2016, after repeated requests, the defendant furnished Mr Sun with a copy of his personal handwritten records in Chinese detailing his expenditure for Mdm Sun's care and maintenance.⁵⁹ No supporting receipts and invoices were provided until discovery of these was given in the present proceedings.⁶⁰

37 Also, at around that time, Mr Sun obtained a copy of the Schedule of Assets filed by the defendant when he obtained probate for Mr Yang's estate.⁶¹ The Schedule of Assets listed the various joint accounts with UOB, Citibank and POSB as Mr Yang's assets, describing simply as "Joint A/c" without mention as to who the joint account holder was.⁶² This was how Mr Sun came

⁵⁷ Howard's AEIC, para 35, HCHS-14.

⁵⁸ Howard's AEIC, para 36.

⁵⁹ Yang's AEIC, YCY-10; Howard's AEIC, HCHS-15.

⁶⁰ Howard's AEIC, para 36.

⁶¹ Howard's AEIC, HCHS-19; 2AB 831.

⁶² 2AB 831.

to be aware of the existence of the joint accounts. He subsequently came to know that these accounts had been held jointly with Mdm Sun.⁶³

38 Mdm Sun passed away on October 2016. In April 2017, the defendant's appeal against Lai J's order was withdrawn and OS 205/2013 was discontinued. I pause to observe that, during the course of those proceedings, and in OSF 9/2013, the defendant represented that the moneys which he had expended for Mdm Sun's care had been from the sum of S\$300,000 set aside by Mr Yang for Mdm Sun's benefit.⁶⁴ Hence, the orders by the Court, as described above, all proceeded on the basis that there was a separate sum of S\$300,000 which Mr Yang had provided from his own funds and for which the defendant was responsible for administering to take care of Mdm Sun. There was no disclosure of the fact that the S\$300,000 in the hands of the defendant in fact came from the joint accounts at UOB and Citibank, which were held in the names of Mr Yang and Mdm Sun.

The plaintiff's case

39 In these proceedings, Mr Sun claims on behalf of Mdm Sun's estate for the return of the sum of S\$518,277.79 comprising the sum of S\$515,000 withdrawn from the joint accounts with Citibank and UOB in May 2012 and an amount of approximately S\$3,277 that went missing primarily from the POSB joint account after Mr Yang passed away. He claims that the defendant had dishonestly misappropriated these moneys, which rightfully belonged to Mdm Sun.

⁶³ Howard's AEIC, para 46.

⁶⁴ Affidavit of Yang Chia Yin filed on 29 April 2013 in OSF 9/2013 paras 12, 26-27; 1AB 446 para 27; Affidavit of Yang Chia Yin filed on 29 August 2013 in Summons No 4529 of 2013 para 21.

40 First, he argues that that the moneys in the joint accounts with UOB and Citibank were beneficially owned by Mdm Sun upon Mr Yang's passing. While Mr Yang was still alive, the moneys in the joint accounts were jointly owned by the couple. Mdm Sun had also contributed to these moneys from her own funds from Taiwan. These had been remitted by Ms Hsu from Mdm Sun's Taiwanese bank accounts to the UOB time deposit account. When Mr Yang died, the ownership of the moneys in the joint accounts devolved to Mdm Sun on the basis of survivorship. Even if the presumption of resulting trust were found in favour of Mr Yang's estate, the presumption of advancement would have arisen in Mdm Sun's favour. On the evidence, this presumption has not been rebutted by the defendant.

41 Secondly, Mr Sun argues that the defendant was aware that the moneys in the joint accounts were beneficially owned by Mdm Sun. In spite of this, he dealt with the moneys in the joint accounts without her consent. This was unconscionable conduct which made him a constructive trustee of the sums withdrawn.⁶⁵ Moreover, the defendant also voluntarily assumed the position of a trustee by representing to the Sun family that he was Mdm Sun's guardian. This made him subject to the same duties as an express trustee.⁶⁶

42 Next, Mr Sun contends that the defendant breached his duties by failing to return the amounts withdrawn from the joint accounts to Mdm Sun's estate. He also wrongfully withheld details of Mdm Sun's ownership of the moneys in the joint accounts from the Sun family, representing that she had limited assets

⁶⁵ PCS paras 202-205.

⁶⁶ PCS paras 199-201.

in Singapore.⁶⁷

43 Mr Sun asserts that the defendant is not entitled to justify his actions on the basis that he was complying with the terms of the Will. The joint accounts did not form part of Mr Yang's estate and the defendant therefore had no right to deal with them in his capacity as executor of Mr Yang's estate.⁶⁸ Lastly, although the defendant had been granted mandates in respect of the joint accounts with Citibank and UOB, this did not give him the authority to act on Mdm Sun's behalf because, at the time of the transfers and withdrawals, which came days after Mr Yang's death, it is not in dispute that Mdm Sun was mentally incapacitated. Hence, the mandates that she had given to the defendant to operate the joint accounts would have terminated by then.

44 In the alternative, Mr Sun claims that the defendant has been unjustly enriched through his appropriation of the moneys in the joint accounts.⁶⁹

The defendant's case

45 In his evidence, the defendant did not dispute that he withdrew the moneys from the joint accounts after Mr Yang's death.⁷⁰ His primary argument is that he was entitled to deal with the moneys in the joint accounts as these formed part of Mr Yang's estate. The moneys in those accounts were held on resulting trust by Mdm Sun for Mr Yang's estate.⁷¹ This presumption of

⁶⁷ PCS para 215.

⁶⁸ PCS para 294(a).

⁶⁹ PCS para 294(e).

⁷⁰ NE, 4 January 2019, p 20, lines 1-2; Defendant's written submissions para 9.

⁷¹ Defendant's written submissions para 93.

resulting trust arose on the basis that Mdm Sun had had limited control over the joint accounts and was not involved in the management of her own financial affairs. It was Mr Yang who had primarily been in charge of the couple's finances and there was thus an intention on his part to retain his beneficial interest in the moneys in the joint accounts.

46 The transactions which were executed in respect of the joint accounts were all premised on the defendant complying with the terms of the Will. He required funds to pay for Mr Yang's funeral expenses and to ensure that Mdm Sun continued to receive appropriate care. His evidence under cross-examination was that the joint accounts with Citibank and UOB were the only source of funds from which he could draw since he had been granted mandates to operate those accounts.⁷² This authorised him to deal with the joint accounts without consent from Mr Sun or Mdm Sun. She was mentally incapacitated at the material time and the defendant had to act on her behalf.

47 Moreover, whatever the defendant took out of the joint accounts was for the benefit of Mdm Sun.⁷³ He had no ulterior motives in his expenditure in the care and upkeep of Mdm Sun, and he kept a book of accounts detailing the moneys he had spent, with supporting receipts.

48 Of the S\$515,000 he admits to have withdrawn from the Citibank and UOB joint accounts, the defendant claims to still hold the sum of S\$193,133.30.⁷⁴ The rest was spent on Mdm Sun while she was still alive. The defendant's position is that the remaining sum of S\$193,133.30 belongs to him

⁷² NE, 4 January 2019, p 22, lines 23-29.

⁷³ NE, 2 January 2019, p 28, lines 19-20.

⁷⁴ Yang's AEIC paras 45-52.

and his siblings, as provided by the late Mr Yang in the Will.

49 The defendant also claims that he did not misrepresent to the Sun family that Mdm Sun had no assets to her name.⁷⁵

Issues to be determined

50 In my view, the crux of the parties' dispute turns on whether I find that the moneys in the joint accounts belonged to Mdm Sun after Mr Yang passed away. If the answer to that question is in the affirmative, then the only substantive questions that remain to be answered are whether the defendant is obliged to return the moneys to Mdm Sun's estate because he held the moneys subject to a constructive trust or whether he is excused from doing so because (i) he honestly believed that the moneys in the joint account belonged to Mr Yang solely, and (ii) he used a significant portion of the withdrawn sums for the care and maintenance of Mdm Sun while she was alive.

Ownership of the moneys in the joint accounts

51 It is not disputed that, following Mr Yang's death, the defendant made several transactions in respect of the joint accounts with Citibank and UOB (see [20] above). The parties' disagreement centres on who was the beneficial owner of the moneys in those joint accounts after Mr Yang's death. The defendant's case is that the moneys in the joint accounts belonged beneficially to Mr Yang's estate and that Mdm Sun thus held the moneys in the joint accounts on trust for his estate. In contrast, Mr Sun argues that Mdm Sun was the beneficial owner of the moneys in the joint accounts by reason of the operation of survivorship.

⁷⁵ Howard's AEIC para 28.

Relevant legal principles

52 I begin with a survey of the relevant legal principles. There are two types of concurrent interests over property in Singapore - the joint tenancy and the tenancy in common. Joint tenancy refers to a form of co-ownership where parties own the entire interest in property devoid of “shares”. A hallmark of joint tenancy is the right of survivorship. Upon the death of a joint tenant, the surviving joint tenant(s) will take the entire interest in the property. This is a convenient mechanism which does away with the need for a will or other formalities. The operation of the right of survivorship also has important implications as to how joint tenants may deal with their property. A joint tenant may dispose of their interest *during* their lifetime, effecting a severance of the joint tenancy to create a tenancy in common. However, a joint tenant may not devise their interest in their will because the right of survivorship takes precedence over testamentary dispositions (Tang Hang Wu and Kelvin FK Low, *Tan Sook Yee’s Principles of Land Law* (LexisNexis, 3rd Ed, 2009) at [9.8]).

53 The principles of survivorship are equally applicable to joint bank accounts (per Warren L H Khoo J in *Tan Seng Pow v Tan Seng Hock* [1992] SGHC 104 (“*Tan Seng Pow*”)). In that case, there was a dispute as to the ownership of moneys in a joint bank account. The deceased had opened the account with the defendant, one of her children. After the deceased passed away, her remaining children claimed that the sums of over S\$24,000 in the account were held on trust for the benefit of her estate. Khoo J accepted the defendant’s submission that, in the case of a joint account, the survivor would be presumed to take the whole benefit of the account in the absence of a contrary intention. On the evidence, such an intention was not established. It was clear that the deceased had intended the defendant to be the sole beneficiary. The reasoning in *Tan Seng Pow* was affirmed by Prakash J, as she then was, in

Collars Muriel Esther de Jesus and Another v Sandra Audrey Jude Collars [2008] SGHC 110 at [30]; in the case of a joint bank account, there is a presumption “that the survivor [takes] the whole of the benefit of the account in the absence of a contrary intention”. Further, Prakash J found that the onus would be on the person challenging this right of survivorship to demonstrate such a contrary intention.

54 It follows that where such a contrary intention can be shown, the rule of survivorship may be displaced by a resulting trust or a presumed resulting trust. A resulting trust will arise where there has been a transfer of property in circumstances where the deceased did not intend to benefit the survivor. There is nothing before me which indicates that there was a *clear* intention by Mr Yang to retain beneficial ownership of the joint accounts. As shall be seen below (at [67]–[68]), the circumstantial facts are equivocal. In the absence of any direct evidence of Mr Yang’s intentions, a resulting trust would have no application in the present case.

55 This leaves the presumption of resulting trust. The presumption of resulting trust operates where there has been a transfer of property to the survivor for which they have not provided the whole of the consideration (*Lau Siew Kim v Yeo Guan Chye Terrence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [35] citing Robert Chambers, *Resulting Trusts* (Clarendon Press, Oxford, 1997) at p 32) and there is no evidence before the court which “adequately reveals the true intention of the transferor” (*Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [79]). The deceased’s lack of intention to benefit the survivor is inferred. Lord Browne-Wilkinson provided an illustration of the presumption’s operation in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 (“*Westdeutsche*”) at 708. The judge observed that:

... 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) or in the case of a joint purchase by A and B in shares proportionate to their contributions.

Where the presumption of resulting trust arises, the burden of proof shifts such that “the [deceased] is presumed to have intended to retain the beneficial ownership” of the property (per Abella J in *Pecore v Pecore* (2007) 279 DLR (4th) 513 (“*Pecore*”) at [81]). Consequently, if this presumption is not displaced, the survivors hold the property on trust for the deceased’s estate.

56 The rationale behind the application of the presumed resulting trust in cases of joint tenancies was discussed by the Court of Appeal in *Lau Siew Kim*. The Court noted at [83] that the operation of survivorship “has the effect of divesting a deceased joint tenant of his unsevered interest and giving the survivor the entirety of the estate, producing a disproportionate effect” (citing *Halsbury’s Laws of Singapore* vol 9(2) (LexisNexis, 2003) at para 110.026). This goes against the equitable maxim, equality is equity. A tenancy in common is comparatively fairer to co-owners as they hold their beneficial interests in proportion to their respective contributions to the property’s purchase price. Therefore, the general position is that, in the absence of an express declaration, contrary intention or equal monetary contribution by the parties, “legal joint tenants (...) will be presumed to hold that property as beneficial tenants in common of shares proportionate to their contribution to the acquisition of that property” (*Lau Siew Kim* at [83]). A surviving joint tenant would hold the deceased’s share of the property on trust for his estate.

57 That being said, the Court in *Lau Siew Kim* pointed out that the presumption of resulting trust should not be applied mechanically. There may

be situations where, on an evaluation of the facts, the presumption clearly does not reflect the reality of the parties' intentions. The Court thus held that the strength of the presumption has to be accorded varying weight depending on the particular circumstances of each case (at [46]). For instance, in respect of married couples who have contributed jointly to the purchase of a property, the strength of the presumption would generally be weaker because there is a presumptive inference that spouses also intend to hold property as joint tenants in equity (at [101]).

58 There are other means of circumventing the presumption of resulting trust, which is a rebuttable presumption of law (*Lau Siew Kim* at [46]). In certain circumstances, the deceased (the transferor) may be regarded as having made a gift to the recipient, with no intention to retain an interest in the property concerned. This is the presumption of advancement. This presumption is only relevant where a presumed resulting trust has already been found on the facts, with the former operating to displace the latter (*Lau Siew Kim* at [57]). If applicable, it shifts the burden of proof *back* to the party who challenges the transfer to the surviving recipient.

59 There are certain types of relationships, such as the transfers of property from husband to wife and from father to child, which attract the presumption of advancement (*Lau Siew Kim* at [60]). The courts have accepted that, within these established categories of relationships, transfers of property are intended to be gifts in favour of the recipient. Although limited in number, the scope of these categories has been judicially expanded over time to accommodate shifting social realities and practices.

60 However, these modifications have been criticised as not being drastic enough. The spousal presumption does not extend to transfers from wives to

their husbands. This ignores the fact that many women are financially independent and often make significant monetary contributions in acquiring property with the intention that the property should be held jointly in equity. Unmarried cohabiting couples are also excluded from the presumption's ambit. These criticisms were considered by the Court in *Lau Siew Kim* which held that the presumption of advancement nevertheless remained relevant. It accepted, however, that the application of the presumption had to be refined to accommodate contemporary norms. Like the presumption of resulting trust, the Court held that the strength of the presumption should vary according to the individual circumstances of each case (at [77]). This would allow a court to more accurately give effect to the parties' intentions. A weaker presumption of advancement will be more easily displaced if there is sufficient evidence to rebut it.

61 In considering what individual circumstances courts should take into account, the Court expanded on the dicta in *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 ("*Low Gim Siah*"), where Chan Sek Keong CJ considered what effect the degree of the recipient's financial independence would have on the strength of the presumption of advancement (at [43]–[44]). The Court of Appeal in *Lau Siew Kim* determined that financial independence was a relevant factor but was just one of several to consider. It endorsed a fact-sensitive inquiry, taking into consideration *all* the circumstances of the case. There were two key elements to consider in guiding this inquiry (at [78]):

- (a) A court should first look at the nature of the relationship between the parties (*eg*, the obligation that one party has to another).

- (b) Secondly, the court should consider the state of the relationship (eg, whether the parties were in a close or distant relationship).

62 The decision in *Lau Siew Kim* itself is a good illustration of this approach. The case concerned a dispute over the estate of the deceased, Yeo. He had been thrice married and died intestate as a result of the statutory revocation of his will by his third marriage. Yeo's two sons from his first marriage then sought to claim an interest in his estate via intestacy, arguing that there was a resulting trust in their favour. His widow asserted that the properties in dispute had been held on the basis of a joint tenancy and therefore passed to her on the basis of survivorship.

63 The Court found that, while there was a presumption of resulting trust in respect of both properties, there was also a strong presumption of advancement. Yeo's wife had been financially independent whilst Yeo did not work. This went towards the nature of the parties' relationship. The Court reiterated that financial independence was only one relevant factor and did not preclude the application of the presumption (at [139]). It then went on to consider the state of the parties' relationship, which had been close and loving (at [141]). The Court also considered the fact that the properties were held in joint tenancy *after* the parties had received legal advice on the effect of a joint tenancy (at [137]). It was clear that Yeo had intended to confer the benefit of survivorship to his surviving spouse (at [148]). Accordingly, she was entitled to absolute ownership of the properties.

64 To summarise, in determining whether the right of survivorship should operate in favour of a surviving joint-tenant, the court should adopt the following stages of analysis:

- (a) consider if the facts give rise to a presumption of resulting trust;
- (b) if the presumption of resulting trust applies, determine its strength based on the individual factual matrix of the case;
- (c) consider if the presumption of advancement is applicable;
- (d) if the presumption of advancement applies, determine its strength based on the *nature* and *state* of the parties' relationship; and
- (e) based on the weight of the evidence, determine if the presumption of advancement has been successfully rebutted.

If the challenging party succeeds in defeating the presumption of advancement, then the original presumption of resulting trust will operate. Conversely, if they fail, the presumption of advancement will displace the presumption of resulting trust and the right of survivorship shall take effect.

65 As a final point, the Court in *Lau Siew Kim* confirmed that the foregoing principles were also applicable to bank accounts which are jointly held and operated by spouses. In such cases, there is a strong inference that the right of survivorship is intended to apply. The existence of bank documents declaring the operation of survivorship, or at least demonstrating evidence of the parties' intention for the sums to devolve to the surviving account holder, would strengthen this inference (at [108]).

Application to the facts

66 With this in mind, I now consider whether the right of survivorship operated in Mdm Sun's favour in respect of the joint accounts.

67 Mr Sun argues that the moneys in the joint accounts were intended to be held jointly by Mr Yang and Mdm Sun, and would therefore be subject to the operation of survivorship upon Mr Yang's death. This supposed intention was premised on several key facts. Unlike their bank accounts in Taiwan, all of the couple's monetary assets in Singapore had been consolidated and were held in joint accounts.⁷⁶ Further, these accounts were not capable of being unilaterally operated by Mr Yang. Mdm Sun's consent and signature was required to execute the direction to Citibank and UOB to permit the defendant to operate the joint accounts.⁷⁷ Lastly, Mr Yang, who was known to be careful with his finances, made no provision for the joint accounts in the Will. According to Mr Sun, this was indicative of the fact that he did not consider the joint accounts would form part of his estate and that the sums therein should devolve to Mdm Sun upon his death.

68 In contrast, the defendant asserted that Mr Yang had not intended for the moneys in the joint accounts to be a gift to Mdm Sun. It was Mr Yang who had been primarily in control of the couple's finances. An example of this was the remittance of US\$12,070 on 20 June 2007 by Ms Hsu to the couple's UOB time deposit joint account. Although this sum related to a joint investment which had been made by Mr Yang and Mdm Sun, the directions to remit the money to the account only came from Mr Yang.⁷⁸ It was also the defendant's submission that, notwithstanding her position as a joint signatory, there was no evidence that Mdm Sun had dealt with or controlled the moneys in the joint accounts.⁷⁹

⁷⁶ PCS para 106.

⁷⁷ 2AB 1335; PCS paras 105-109.

⁷⁸ NE, 3 January 2019, p 51 line 21 to p 52 line 8.

⁷⁹ Defendant's Closing Submissions ("DCS") para 90.

All of this indicated that the moneys in the joint accounts were Mr Yang's rather than Mdm Sun's assets. Thus, they should be held on resulting trust for Mr Yang's estate.⁸⁰

69 In making this point, the defendant analogised the facts in this case with the decision in *Saylor v Madsen Estate* (2006) 261 DLR (4th) 597 ("*Saylor*") (cited in *Low Gim Siah* at [52]–[53]). In *Saylor*, the Ontario Court of Appeal agreed with the findings of the trial judge that a father, whose daughter had been a joint signatory to his bank accounts, had been the only person in control of the finances therein. The father had claimed all interest from the accounts for tax purposes and during his lifetime, his daughter had not deposited any of her own money into the accounts. She also only drew cheques on the account on her father's directions. The trial judge consequently found that there was "no evidence to support [the daughter's] position that [the father had] intended to gift the contents of his joint accounts to her." (*Low Gim Siah* at [52]). Similarly, it was contended that Mr Yang's exclusive control over the joint accounts was not suggestive of an intention to make a gift to Mdm Sun, but instead to retain beneficial ownership.

70 Bearing the parties' arguments in mind, I applied the analysis laid down in *Lau Siew Kim* to determine whether the presumption of resulting trust arose over the moneys in the joint accounts. It is not disputed that Mdm Sun contributed to the joint accounts. At least US\$418,000 was remitted from Mdm Sun's Taiwanese bank accounts to the UOB time deposit joint account. That being said, no evidence has been produced to demonstrate additional contributions by Mdm Sun. This suggests that Mr Yang was the contributor of

⁸⁰ DCS para 93.

the remaining amounts in the joint accounts. I found this inference to be reasonable because Mr Yang continued to work in Singapore for a number of years⁸¹ whilst Mdm Sun had retired. He carried on working even after the purchase of the Tomlinson Property. Having a steady income, it is likely that he would have contributed more consistently to the couple's savings than the one-off transfers made from Mdm Sun's accounts. On the basis of these unequal contributions, I accept that the presumption of resulting trust arises with respect to some part of the moneys in the joint accounts although there is insufficient evidence before me to say how much. However, the strength of this presumption would be weaker in light of the fact that Mr Yang and Mdm Sun were married.

71 I turn next to whether the presumption of advancement could operate to displace this initial presumption. The transfer of property from husband to wife clearly falls within one of the established categories which give rise to the presumption of advancement. The setting up of the joint accounts by Mr Yang and Mdm Sun on terms that stipulate that the surviving account holder would be entitled to all the moneys therein would show an intention by Mr Yang to make a gift of the moneys to Mdm Sun should she survive him. Having established that the presumption of advancement is applicable, this then leads to an assessment as to the strength of the presumption and if it can be rebutted by contrary evidence.

72 Mr Yang's and Mdm Sun's marriage was traditional in nature. After retiring from her job in Taiwan and moving to Singapore, Mdm Sun became a homemaker. Mr Yang then became the sole breadwinner and she remained

⁸¹ Howard's AEIC, HCHS-3.

financially dependent on him. Their living arrangement in Singapore reflects one of the original rationales behind the spousal presumption. As explained by Lord Reid in *Pettit v Pettit* [1970] AC 777 at 793, “wives’ economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage”. Applying this reasoning, a greater level of dependence in the relationship points to a stronger presumption.

73 The facts of *Saylor* are distinguishable from the instant case. Unlike Mdm Sun, the daughter in *Saylor* made no monetary contributions to the joint accounts. She also acted entirely on her father’s instructions. It would appear that she was nothing more than a formal joint signatory, for the purpose of expedience or convenience. I do not think that the evidence goes so far in this case to show that Mdm Sun surrendered the general management of the joint accounts to Mr Yang. She was certainly not oblivious to or unconcerned about transactions being made in relation to the joint accounts.

74 In her evidence, Ms Hsu noted that whilst Mr Yang had given the instructions on the transfer of the US\$12,070, Mdm Sun had also been privy to this information.⁸² In respect of the other two remittances later that year in 2007 (see [16] above), Mdm Sun had communicated her initial preference for Ms Hsu to remit the money by way of bank draft but she subsequently agreed to have the moneys electronically transferred instead.⁸³ In fact, according to Ms Hsu’s evidence, the couple had a disagreement over the method of remittance.⁸⁴ This shows that Mdm Sun was involved in decisions concerning her financial affairs.

⁸² NE, 3 January 2019, p 51, lines 30-32.

⁸³ NE, 3 January 2019, p 53, lines 3-17.

⁸⁴ NE, 3 January 2019, p 53, lines 3-17.

The need for Mdm Sun's authorisation for the defendant to operate the joint accounts also demonstrates that she was not as disconnected from the management of her finances as the defendant claimed.

75 As for the state of the couple's relationship, the evidence points to them having a close and caring marriage which lasted more than 50 years. Mr Yang made an express provision for Mdm Sun's care in the Will. He also made her a joint tenant of the Tomlinson Property along with the defendant. This points to efforts made by Mr Yang to ensure that Mdm Sun would be maintained and cared for comfortably after he died. This being the case, it cannot be fairly concluded that, as it was in *Saylor*, there is no evidence that Mdm Sun was intended to have ownership of the moneys in the joint accounts.

76 Besides the inferred intentions of Mr Yang, Mr Sun also put forward documentary evidence as to the terms and conditions of DBS (who owns POSB) and UOB which indicated that the moneys in the joint accounts would devolve to Mdm Sun upon her husband's death. This strengthens the presumption of advancement. This fact was communicated to the defendant, in his capacity as the executor of Mr Yang's estate, by way of letters from the banks after they were informed of Mr Yang's death. In its letter dated 24 August 2012, DBS provided the balance amount in the POSB joint account as of 15 May 2012. It also went on to state as follows:⁸⁵

⁸⁵

2AB 1622.

Please note that for joint account(s), the surviving operator(s) is/are entitled to claim the available funds in the account(s).

77 In its letter dated 20 July 2012, UOB provided the balance amount in the UOB joint account as of 15 May 2012 and included a similar statement:⁸⁶

For joint account(s), the Bank will release monies in the joint account to all the surviving joint account holder(s), in the absence of any notice of severance of joint ownership of the deposits and adverse claims on the deposits by any third party.

78 No similar letter was provided in respect of the Citibank joint accounts. However, after the trial, Mr Sun procured an email from Citibank dated 11 February 2019 that the 2010 Terms and Conditions, Citibank Global Consumer Banking Singapore (the “Citibank Terms and Conditions”) were applicable to the couple’s Citibank joint accounts.⁸⁷ It was contended by Mr Sun that these Citibank Terms and Conditions were incorporated via Citibank’s account opening forms. However, the actual account opening forms signed by Mr Yang and Mdm Sun were not produced in evidence. Instead, Mr Sun relied on the relevant clauses in an account opening form current as at 2012, which are reproduced below:⁸⁸

1. I/We confirm that I/we have read the Citibank Singapore Global Consumer Bank Terms and Conditions and agree to be bound by the same and by any other terms and conditions of Citibank applicable from time to time ...

2. I/We agree that the provisions in this Customer Confirmation and Declaration be deemed to be fully effective in relation to all and any Account(s) ... now existing or hereafter opened by me/us with Citibank of any type, category and whether opened in single or joint names or in trust and the provisions herein shall be deemed to be repeated in in any account opening form

⁸⁶ 2AB 948.

⁸⁷ PCS, Annex A p 118.

⁸⁸ PCS, Annex A, p 117.

and/or terms and conditions governing any Account(s) now existing or hereafter opened by ...

79 Clause 9.4(a) of the Citibank Terms and Conditions states⁸⁹:

If any one of the Joint Account(s) holders dies, you [Citibank] shall forthwith be entitled to close the Joint Account(s), and the credit balance in the Joint Account(s) and any securities held by you in the Joint Account(s) shall be transferred to a new account(s) to be opened by you in the name(s) of the survivors...

80 In his reply submissions, the defendant did not make any submissions about the admissibility of Citibank's email of 11 February 2019. The defendant also did not make any submissions about the applicability of clause 9.4(a). Given that the defendant, as the lawful representative of Mr Yang's estate, would be in a position to confirm the position with Citibank, and he has not expressed a contrary view as to what is the applicable clause in question, I am prepared to accept that clause 9.4(a) was probably applicable to Mr Yang's and Mdm Sun's joint accounts.

81 The defendant argues that the clauses in the banking documents are not conclusive of joint ownership of the moneys in the accounts. The defendant placed emphasis on the reasoning in *Low Gim Siah*, where the Court of Appeal highlighted that bank documents should not be assigned presumptive value in determining a party's intention. "The probative value of such documents ... [can] only be ascertained after an assessment of the totality of the relevant evidence and ... [such] documents [do] not always provide accurate evidence of the parties' intent" (*Low Gim Siah* at [53]).

⁸⁹ PCS, Annex A p 136.

82 Having assessed the evidence in its totality, I am of the view that the relevant clauses in the bank documents only enhance an already strong presumption of advancement in Mdm Sun's favour. The operation of survivorship as expressed in the clauses is consistent with the nature and state of Mr Yang's and Mdm Sun's relationship. It is important to add that this in itself is not conclusive of the operation of survivorship. However, it imposes a higher burden on the defendant to rebut the presumption of advancement.

83 According to Mr Sun, the defendant has failed to raise sufficient evidence to do so.⁹⁰ I accept Mr Sun's submission. I find that the level of control which Mr Yang had over the couple's assets does not weaken the presumption of advancement. Indeed, I found this factor to be rather equivocal on the question of whether the presumption is rebutted. Besides this, the defendant has not put forward any other objective evidence to rebut the operation of survivorship. I do not accept that the provision made for Mdm Sun in the Will is exhaustive and therefore reflects an intention to exclude any other beneficial interest in her favour.⁹¹ Such an argument presumes, rather than proves, that the moneys in the joint accounts were part of Mr Yang's estate.

84 Accordingly, I find that the presumption of advancement was applicable and was not rebutted on the facts. On the basis of survivorship, the moneys in the joint accounts were beneficially owned by Mdm Sun.

85 I have thus far dealt with the moneys in the joint accounts with Citibank and UOB. The defendant initially did not claim that the moneys in the joint

⁹⁰ PCS para 122.

⁹¹ DCS paras 91-93.

account of the couple at POSB were beneficially owned by Mr Yang's estate. This was until the fourth day of trial when he did an about-turn in his evidence.⁹² But, in any event, I found that he could not explain the evidence showing that he actually treated the moneys in the POSB joint account differently from the moneys in the Citibank and UOB joint accounts. Unlike the other joint accounts, the defendant did not take any steps as Mr Yang's estate's legal representative to deal with the moneys in the POSB joint account. In my judgment, for the same reasons that I found that the UOB and Citibank joint account moneys belonged to Mdm Sun after Mr Yang passed away, the amount of S\$7,335.14 standing to the credit of that POSB account belonged to her as well.

86 The parties' dispute in relation to the POSB account concerns the amount of S\$3,093.48 which went missing between the time of Mr Yang's death in May 2012 and Mdm Sun's death in October 2016.⁹³ This forms part of a slightly larger unaccounted sum of S\$3,277.79 that went missing from the joint accounts. It is clear that this sum of S\$3,093.48 was withdrawn from the POSB joint account. It is Mr Sun's case that the defendant was also responsible for this withdrawal, since he had control of the POSB joint account passbook at all material times.

87 While the defendant admitted to having possession of the passbook, he denied that he had withdrawn any moneys from the account. He explained that he could only deposit moneys into the account and could not withdraw any

⁹² NE, 10 January 2019, p 2 lines 31 to p 3 line 6.

⁹³ 2 AB 832; 2 AB 841.

sums.⁹⁴ While being cross-examined, the defendant suggested that the missing amount might be explained by ongoing GIRO payments for SP Services and for the levies payable for Mdm Looi and Ms Ohmmar. To counter this, Mr Sun relies on a letter from the bank dated 24 August 2012 which states that GIRO payments would cease upon Mr Yang's death.⁹⁵ But, this does not answer the question conclusively because the bank was only informed of Mr Yang's death almost two months after he died.

88 Disclosure of the POSB bank statements would have shed light on this issue of the missing S\$3,093.48. Mr Sun urges me to draw an adverse inference against the defendant for not producing the relevant POSB bank statements. However, it was well within the power of Mr Sun to obtain the relevant documents and information from POSB since he is the lawful representative of Mdm Sun's estate, but he did not do so. Given the absence of evidence produced by Mr Sun in this regard, I find that he has not discharged the burden of showing that this withdrawal of S\$3,093.48 was effected by the defendant.

Whether the defendant is a constructive trustee of the sums withdrawn from the UOB and Citibank joint accounts

89 Mr Sun claims that the defendant became subject to duties as a constructive trustee by reason of his dealing with moneys in the joint accounts that did not belong to the estate of Mr Yang. Where there is conduct which amounts to a legal or an equitable wrong, an institutional constructive trust may arise by operation of law. Although there is no fixed test to determine when such a trust arises, "the fundamental question is whether the conscience of the

⁹⁴ NE, 4 January 2019, p 38, lines 27-29.

⁹⁵ NE, 10 January 2019, p 7, lines 22-24; 2 AB 1622.

recipient is bound in such a way as to justify equity in imposing a trust on him” (per Megarry VC in *In Re Montagu’s Settlement Trusts* *Duke of Manchester v National Westminster Bank Ltd* [1987] Ch 264 at 277. The requirement that the defendant’s conscience must be affected means that he cannot be held to be a trustee if he is ignorant of the facts that would have affected his conscience (per Lord Browne-Wilkinson in *Westdeutsche* at 705).

90 Discounting the certainty of intention, the other certainties required of private trusts also apply to constructive trusts. Accordingly, the trustee or beneficiary must be defined with sufficient certainty (John McGhee & Ors, *Snell’s Equity* (Sweet & Maxwell, 33rd Ed, 2015) (“*Snell’s Equity*”) at [26-004]) and there must be identifiable trust property. However, the scope of the constructive trustee’s duties is narrower than that of a trustee who has given an express undertaking to hold the property on trust. He is not subject to the irreducible core of fiduciary obligations, to perform the trust honestly and in good faith for the benefit of the beneficiary, owed by express trustees. This is because the trust is created by law and it would be unreasonable to impose such obligations on constructive trustees. Indeed, a constructive trust is “very often a bare trust and, as such, only requires the trustee to convey the trust property when called upon to do so” (*Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 (“*Tan Yok Koon*”) at [190]).

91 Of course, until the trust property is conveyed to the beneficiary, the trustee will remain subject to other duties *ie*, to retain or preserve the property and, if he deals with it, to account for that to the beneficiary (*Cheong Soh Chin and others v Eng Chiet Shoong and others* [2018] SGHC 131 at [99]–[100] as per Coomaraswamy J in the context of a resulting trust). I should also mention that the Court in *Tan Yok Koon* did not foreclose the possibility that involuntary trustees may owe fiduciary obligations. It noted that “the *facts and*

circumstances leading to the imposition of a resulting trust may also disclose an undertaking by the trustee – whether *express or implied* – to act in a certain way” [emphasis in original] (at [196]). There is no reason in principle why this reasoning should not extend to constructive trustees.

92 According to Mr Sun, the requirements of a constructive trust are fulfilled in this case. The certainties of subject matter and the beneficiary are satisfied. The only contest is whether the defendant’s conduct of dealing with the moneys in the joint accounts was unconscionable. Mr Sun’s case is that the defendant was always aware that the moneys in the accounts belonged to Mdm Sun. Therefore, his withdrawals from the joint accounts amounted to dishonest misappropriations.⁹⁶ The defendant, on the other hand, argues that he honestly believed that the moneys in the joint account belonged beneficially to Mr Yang’s estate and he was simply carrying out his duties in good faith as the executor by constituting the fund of S\$300,000 necessary to care for Mdm Sun as provided for under the Will.

Was the defendant’s conscience affected?

93 As a preliminary point, it should be noted that the defendant’s evidence on the withdrawals from the joint accounts with Citibank and UOB shifted considerably throughout the proceedings. In his defence filed on 29 May 2017, he initially denied that these transactions, as asserted in the statement of claim, had occurred at all.⁹⁷ However, upon being presented with bank statements which demonstrated the contrary, the defendant then admitted to the

⁹⁶ PCS para 204.

⁹⁷ Defence para 22; SOC para 22(i).

transactions in his affidavit of evidence-in-chief.⁹⁸ Subsequently during the trial, the defendant claimed that he had never denied these transactions in his defence⁹⁹ and he had in fact disclosed these transactions earlier in the course of OSF 9/2013¹⁰⁰. He also amended his defence in the midst of trial to admit to carrying out those transactions.

94 As I have mentioned, it is not correct for the defendant to claim that he had disclosed these withdrawals from the joint accounts of the Mr Yang and Mdm Sun in the course of the earlier legal proceedings in OSF 9/2013. None of the defendant's affidavits filed in OSF 9/2013 refer to withdrawals from the accounts. In my view, it is quite evident that the defendant initially sought to conceal these transactions. When this was no longer possible, he then tried to present himself as having always been transparent on the withdrawals. This is troubling. If the defendant had been acting for legitimate purposes, there would have been no need for such evasive behaviour. This suggests that he was aware that the transactions should not have been made.

95 I come now to the defendant's state of knowledge as to the ownership of the moneys in the joint accounts. There can be no dispute that the defendant was aware that Mr Yang and Mdm Sun were not only joint account holders, but co-signatories of the joint accounts. This was made clear in the letters of 21 August 1996 and 11 May 2005 from Mr Yang to him. Also, his own evidence was that Mr Yang and Mdm Sun had jointly executed mandates for him to operate the UOB and Citibank joint accounts.

⁹⁸ Yang's AEIC para 45.

⁹⁹ NE, 4 January 2019, p 11 line 15 to p 12 line 4.

¹⁰⁰ NE, 4 January 2019, p 12 lines 9 -21.

96 The evidence also showed that the defendant was probably aware that Mdm Sun's savings from Taiwan had been remitted to Singapore. Ms Hsu's evidence was that she told the defendant, not long after Mr Yang's death in May 2012, that the Sun family had asked her to provide them with copies of the remittance slips showing that moneys were transferred from Mdm Sun's accounts in Taiwan to Singapore.¹⁰¹ The defendant was thus informed about Mdm Sun's savings being remitted to Singapore. Given that he was familiar with the finances of the couple, the defendant knew that they held almost all their moneys in joint accounts. As such, it is reasonable to infer that the defendant was aware that Mdm Sun probably contributed her own savings to the pool of moneys in the joint accounts at Citibank and UOB.

97 During the trial, in his evidence, the defendant also demonstrated familiarity with the concept of joint ownership and survivorship.¹⁰² He recognised that he and Mdm Sun were the joint owners of the Tomlinson Property after Mr Yang died. He claimed not to have touched the moneys in the POSB joint account which I have already found belong beneficially to Mdm Sun. He could not give any coherent explanation as to why he treated the joint accounts with UOB and Citibank differently. I find that the defendant should therefore have been aware of the operation of the right of survivorship over the joint accounts.

98 I find that the defendant's conduct in withdrawing the moneys from the joint accounts in a rush after Mr Yang's death, before telling the banks about what had happened to Mr Yang, reveals the defendant's thinking at that time.

¹⁰¹ NE, 3 January 2019, p 53 line 18 to p 54 line 7.

¹⁰² NE, 4 January 2019, p 33, line 31 to p 34 line 6.

He must have known that the moneys in the joint accounts would be treated by the banks as belonging to the surviving account-holder and that he would not be permitted to withdraw the moneys. This was in fact confirmed by the letters from DBS and UOB to this effect, after he informed them in July 2012 about Mr Yang's death. Thus, the defendant was cognisant that what he was doing was wrong. He chose not to disclose the truth to the banks so as to allow him to carry out the withdrawals.

99 The defendant tried to justify the withdrawals by explaining that he needed funds to pay for Mdm Sun's continuing expenses and for Mr Yang's funeral arrangements.¹⁰³ However, such an explanation does not indicate to me that he was unaware as to who owned the moneys in the joint accounts. Rather, it suggests that the defendant felt it expedient to disregard questions of ownership because he needed the funds to carry out his duties as the executor of Mr Yang's estate.

100 On this point, it is relevant to note that the defendant was by no means cash-strapped. He had over S\$690,000 in his personal Citibank accounts at the time of Mr Yang's death. He thus had the means to continue maintaining Mdm Sun, which in his own estimation cost about S\$4,000 a month and which I would observe is a very generous estimate.¹⁰⁴ This is on the assumption that there are *no* other sources of cash in Mr Yang's estate. So, if the defendant honestly believed that the moneys in the joint accounts belonged solely to Mr Yang's estate, he could have obtained the grant of probate and then applied for the necessary order of court that the banks pay over the money to him as the

¹⁰³ NE, 10 January 2019, p 27, lines 29-31.

¹⁰⁴ NE, 10 January 2019, p 35, lines 29-31.

executor of Mr Yang's estate. In fact, his own evidence was that he would have had no difficulty if he had to pay for the funeral expenses and Mdm Sun's care first, and then claim reimbursement from the estate.¹⁰⁵

101 As for the defendant's explanation that he needed to constitute the sum of S\$300,000 to care for Mdm Sun as required by the Will, it is notable that the defendant withdrew S\$515,000 in total from the joint accounts at Citibank and UOB, which is well in excess of the amount required. Not only that, as was pointed out by Mr Sun, the defendant left a few thousand dollars in the Citibank and UOB joint accounts. After the withdrawals, the Citibank joint account had a balance of S\$1,836.88 and the UOB joint account a balance of S\$1,590.47.¹⁰⁶ The defendant could not give any credible explanation as to why he did this. He first said that he kept the accounts open for his "future reference" and to show that they still existed.¹⁰⁷ He also said that it was because Mdm Sun was "still around at that point in time".¹⁰⁸ I find that the defendant probably left the small sums in the joint accounts because he knew that they could not be closed without Mdm Sun's consent, which was not forthcoming or possible at that time given her mental incapacity. This shows that he was well aware that it was only Mdm Sun who was permitted to operate the accounts after Mr Yang passed away.

102 When viewed in totality, I find that the weight of the evidence suggests that the defendant did know that the moneys in the joint accounts belonged to Mdm Sun but he nevertheless chose to deal with them. He knew that a fresh

¹⁰⁵ NE, 4 January 2019, p 21 line 30 to p 22 line 4.

¹⁰⁶ 2AB 841.

¹⁰⁷ NE, 4 January 2019, p 35, lines 13-22; NE, 10 January 2019, p 15, lines 15-17.

¹⁰⁸ NE, 4 January 2019, p 39, lines 5-7.

mandate from Mdm Sun was likely to be required for him to operate the accounts. At the very least, the defendant would have been required to produce Mr Yang's death certificate, a grant of probate and a lasting power of attorney form from Mdm Sun.¹⁰⁹ Making the withdrawals almost immediately after Mr Yang's passing allowed him to act without being subject to these restrictions.

103 I find it difficult to accept the defendant's repeated explanations that he had a poor understanding of the law.¹¹⁰ On the contrary, it seemed to me that he appreciated the significance of joint account ownership. Having such an understanding, I cannot accept that the defendant carried out the transactions in respect of the joint accounts honestly and in good faith. His knowledge that Mdm Sun was the owner of the moneys in the joint accounts made his conduct unconscionable. The law would therefore impose a constructive trust in respect of the sums that were withdrawn.

Non-disclosure of Mdm Sun's assets to her extended family

104 Mr Sun claims that the defendant represented to the Sun family that Mdm Sun's assets were limited to the passbooks for the Taiwanese bank accounts which he handed over to Mr Sun's brother in July 2012. This denied Mdm Sun the benefit of better care because her extended family was unaware of the additional funds she had. The defendant argues that Mdm Sun's family were not beneficiaries of the Will and he therefore had no obligation to disclose the assets owned by "the late Mr Yang and/or the late Mdm Sun at that material time".¹¹¹ Although the Sun family were not beneficiaries of the Will, the

¹⁰⁹ 2AB 1083.

¹¹⁰ See for eg, NE, 10 January 2019, p 8, lines 15-24; p 21, lines 25-32.

¹¹¹ Yang's AEIC para 28.

defendant could not rely on such a basis to withhold relevant information. This is because the joint account moneys were not part of Mr Yang's estate and he had taken control of these moneys.

105 The defendant concealed details of the joint accounts for some time following Mr Yang's death. He did not inform Mr Sun's brother of their existence and, when Mr Sun insisted that Mdm Sun had other moneys of her own in September 2012, he told Mr Sun that Mdm Sun had not been employed for years and the bank books which he had handed over to his brother were likely all of her savings.¹¹² This was an attempt to mislead Mr Sun as to the extent of Mdm Sun's assets.

106 The defendant attempted to explain this conversation, saying the joint accounts were meant for Mdm Sun's care and maintenance as part of the Will and were therefore not her assets.¹¹³ There was thus no need to give their details to Mr Sun. He went on to say "Jack Yang wanted me to use the [moneys] in [the UOB joint account] for the maintenance of my aunt..." and had said so in the Will.¹¹⁴ On this point, I have already found that the defendant was aware that the moneys in the joint accounts did not belong to Mr Yang's estate.

107 An alternative justification put forward was that Mr Yang and Mdm Sun had granted him the mandate over some of the joint accounts and it was on this basis that he could use the moneys to care for Mdm Sun. However, given that Mr Yang had passed away and it is common ground between the parties that Mdm Sun was mentally incapacitated at the time of Mr Yang's death, there is

¹¹² 1AB 446, para 27 of Yang's affidavit of 19 April 2013 in OS 205/2013.

¹¹³ NE, 10 January 2019, p 48 lines 2-18.

¹¹⁴ NE, 10 January 2019, p 13, lines 8-22.

no basis for the defendant to rely on the mandates that had been given for him to operate the joint accounts. It is a well-established principle that any authority given by way of a power of attorney or a mandate to operate bank accounts on behalf of the donor, save in the case of a lasting power of attorney, is revoked as a matter of law once the donor ceases to have mental capacity. “If the donor ceases to have the capacity to do the acts for which a power of attorney delegates authority, that power comes to an end” (Shindler and Sherry, *Aldridge: Powers of Attorney* (Sweet & Maxwell, 11th Ed, 2016) at [7-06]). Also, as stated by the authors of *Bowstead & Reynolds on Agency* (Sweet & Maxwell, 19th Ed, 2010) at [10-015] and [10-020]:

The actual authority of an agent, whether conferred by deed or not and whether expressed to be irrevocable or not, is determined by the death or supervening mental incapacity of either the principal or the agent ... There is fairly clear authority that the agent’s actual authority determines where the principal becomes mentally incapable...

108 Hence, any authority granted by Mdm Sun would have come to an end by the time of Mr Yang’s passing in May 2012, at the very latest, since parties are in agreement that Mdm Sun lacked mental capacity at that time. It follows that the defendant would not have had the authority to act on her behalf to withdraw any moneys from the joint bank accounts or expend those sums without her consent. It is not open to the defendant to argue that *because* Mdm Sun’s mental state had begun to deteriorate, he was entitled to make decisions and/or expenditures on her behalf.¹¹⁵ This would be to ignore the scope of his authority to act.

¹¹⁵ DCS para 75.

109 As such, I find that, by not informing Mr Sun of the moneys that he had withdrawn from the joint accounts, the defendant breached his duties as a constructive trustee over these sums in his possession. I should add that the point was also made by Lai J in *Mrs Yang Chun* at [33] that Mr Yang had intended for Mdm Sun to “live out her remaining days in as much comfort as possible”. I think that it was not enough that the defendant was simply maintaining the same standard of care that she had had prior to Mr Yang’s death when her condition was evidently deteriorating. There was an obligation to make the funds in the joint account, which in any event belonged to Mdm Sun, available to Mdm Sun’s lawful attorney, so that he could decide whether the level of care provided to her was appropriate and adequate. Regrettably, this was not done.

Acting in accordance with the Will

110 In his closing submissions, the defendant maintains that he withdrew funds from the joint accounts to execute the terms of the Will, that is, to constitute the sum of S\$300,000 which Mr Yang had set aside to provide for Mdm Sun’s care and maintenance. He should therefore be absolved from any wrongdoing. However, this is not a tenable position to take because it proceeds on the fundamental misconception that the moneys in the joint accounts were for Mr Yang to dispose of by way of a testamentary bequest.

111 The Will provided for the sum of S\$300,000 to be taken from Mr Yang’s estate. However, the moneys in the joint accounts belonged to Mdm Sun, not Mr Yang. As such, the sums from the joint accounts could not be used to constitute the S\$300,000 that had been set aside for Mdm Sun.

112 The defendant claimed that Mr Yang had no other sources of funds from which he could constitute the amount of S\$300,000. I have some doubt as to whether the defendant has disclosed the full extent of Mr Yang's estate given that, as mentioned above, there was an excess of S\$2m in the joint accounts at UOB alone when the Will was prepared near the end of 2007 and Mr Yang passed away less than four and a half years later. Not only that, the defendant never stated that Mr Yang's estate had no other assets in his affidavit of evidence-in-chief or his defence. He made this claim for the first time under cross-examination.¹¹⁶ However, even if it was the case that there were no other sources of funds, it did not follow that the defendant would be justified in laying his hands on moneys that did not belong to Mr Yang's estate.

Relevance of how a part of the withdrawn sums were expended

113 The defendant asserts that just over S\$300,000 of the funds taken from the joint accounts were applied by him towards for Mdm Sun's care and maintenance up to the time she passed away. He claims to have kept a detailed record of these expenditures, together with supporting receipts. Mr Sun questions whether there has been a proper or full account of these expenses incurred by the defendant on Mdm Sun. He points out that many of the receipts produced by the defendant are illegible because they have faded over time.¹¹⁷ He also challenges many of these expenses as being unnecessary or not properly incurred for the care and maintenance of Mdm Sun, such as the substantial fees incurred by the defendant in subjecting her to tests and medical examinations to produce reports to support his case in OSF 9/2013 and OS 205/2013.

¹¹⁶ NE, 10 January 2019, p 43, lines 17-31.

¹¹⁷ PCS para 259.

114 Although this point is not made very clearly in the defendant's submissions, it appears that the defendant is suggesting that he should not need to return the portion of the withdrawn moneys which he had already expended for the care and maintenance of Mdm Sun.¹¹⁸ I am unsure what the legal basis is for such a submission and the defendant has not articulated any in his submissions. I have already found that the defendant's conduct with respect to the withdrawals of the moneys from the joint accounts was wrongful and rendered him a constructive trustee of the amounts that had been withdrawn. In my judgment, the way in which the defendant subsequently expended these sums is not relevant in establishing his liability to account.

115 In any event, the other difficulty faced by the defendant in respect of these expenses is that he has not provided evidence to show the source of the moneys that he expended on Mdm Sun. As I have already alluded to at [19] and [112], I have doubts as to whether the defendant has disclosed the full extent of Mr Yang's estate. In other words, I am unable to conclude from the evidence that there were no other sources of cash that Mr Yang had in his lifetime and that therefore the expenses incurred for Mdm Sun's care *must* have come from moneys withdrawn from the joint accounts.

116 The defendant's evidence was that he constituted the sum of S\$300,000 that was used to care for Mdm Sun, as required by the Will, in his UOB account. At [20], I already explained that S\$268,000 had been transferred from the joint account of Mr Yang and Mdm Sun at Citibank to the defendant's account at Citibank. The defendant then transferred the sum of S\$78,130 from that

¹¹⁸ See also NE, 4 January 2019, p 27, lines 4-17.

Citibank account to his UOB account,¹¹⁹ even though he did not produce any documentary evidence of such a deposit being made. At this time, the defendant's UOB account already contained S\$247,000 which had been transferred from Mr Yang and Mdm Sun's joint account at UOB. The defendant's UOB account was one which he held jointly with his wife. He also does not deny that his UOB account already contained his own moneys prior to the receipt of the moneys from the joint accounts of Mr Yang and Mdm Sun.¹²⁰

117 According to the defendant's evidence, the expenses incurred on Mdm Sun all came from this UOB account¹²¹ and were from the moneys which originated from the joint accounts of Mr Yang and Mdm Sun. However, the defendant has chosen not to disclose his bank statements for this UOB account. Hence, there is no evidence to support his assertion that the expenses were paid with moneys from that account. Further, given that the defendant admits the UOB account is a mixture of his own moneys and the moneys from the joint accounts of Mr Yang and Mdm Sun, I find it difficult to understand how the defendant can assert that it was the latter moneys which were incurred for Mdm Sun's care and maintenance. The operative presumption is that when a trustee mixes his personal moneys with trust moneys, any expenditure from the mixed fund is first regarded as the trustee's personal moneys (*Snell's Equity* at [30-057]; *In re Hallett's Estate* (1880) 13 Ch D 696 at 726–729). Without sight of the defendant's UOB bank account statements, it is impossible for the defendant to establish that he had utilised the moneys from the joint accounts of Mr Yang and Mdm Sun for the care and upkeep of Mdm Sun.

¹¹⁹ Yang's AEIC para 45(d).

¹²⁰ NE, 11 January 2019, p 13, line 23 to p 14, line 6.

¹²¹ NE, 11 January 2019, p 14, lines 12-14.

118 Insofar as the defendant may have incurred his own moneys for the care of Mdm Sun in the period of 2012 to 2016, it is perhaps possible that he might have some claim against the estate of Mdm Sun for recovery of a debt. But, that is not the defendant's pleaded case. There is also no plea of any set-off in the defence or reference to this in the closing submissions. I therefore do not consider that issue any further.

The claim of unjust enrichment

119 In the alternative to its claim for breach of trust, Mr Sun claims that the defendant is liable in unjust enrichment. He is required to account for the joint account moneys having been unjustly enriched by his wrongful conversion, misappropriation and/or retention of the funds. The elements of a claim in unjust enrichment were set out by the Court of Appeal in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]:

- (a) the defendant must have received a benefit (*ie*, he was enriched);
- (b) the enrichment was at the claimant's expense;
- (c) it is unjust to allow the defendant to retain the enrichment; and
- (d) there are no defences available to the defendant.

120 Having found that the defendant is constructive trustee over the amounts withdrawn from the joint accounts and is thus liable to account for and return these amounts, there is no need for me to deal with the claim for unjust enrichment in any detail, save to say that it is quite clear that the defendant has been unjustly enriched by his receipt of moneys belonging to Mdm Sun, and he is bound to restore the moneys to Mdm Sun's estate.

Remedies

121 In circumstances of a breach of trust and/or fiduciary duties, the beneficiary may have both personal and proprietary remedies available to him. Where a constructive trust has been imposed, the claimant gains a proprietary interest in the trust property. The purpose of such a trust is restitutionary, to strip the defendant of the benefits of his wrongdoing (*Snell's Equity* at [26-001]). The defendant will hold the property as a bare trustee and is obliged to convey the property as the claimant directs (*Snell's Equity* at [26-005]).

122 In this case, for the reasons set out above in this judgment, I find that the defendant is a constructive trustee of the amount of S\$515,000 which had been withdrawn from the UOB and Citibank joint accounts. He must give an account of the sums withdrawn from these joint accounts. Insofar as any of the withdrawn moneys are still in his possession, they are subject to a constructive trust, and must be restored to Mdm Sun's estate. The amounts that still stand in the UOB, Citibank and POSB accounts must obviously also be paid over to Mdm Sun's estate.

123 I also make an order that the defendant must equitably compensate Mdm Sun's estate for the amount of S\$515,000, with interest from 22 May 2012, which is the date of the withdrawals from the joint accounts.

124 I will hear parties separately on the question of costs.

Estate of Yang Chun (Mrs) née Sun Hui Min, deceased
v Yang Chia-Yin

[2019] SGHC 152

Ang Cheng Hock
Judicial Commissioner

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