

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

**[2019] SGHC 179**

Suit No 487 of 2018

Between

- (1) Gian Bee Choo
- (2) Gian Lee Keow
- (3) McRoy Gian Beng Koon
- (4) Gian Beng Hong

*... Plaintiffs*

And

Meng Xianhui

*... Defendant*

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**ORAL JUDGMENT**

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[Family Law] — [Marriage] — [Nullity]

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**Gian Bee Choo and others**

**v**

**Meng Xianhui**

**[2019] SGHC 179**

High Court — Suit No 487 of 2018

Tan Siong Thye J

28–30 May 2019; 5 July 2019

31 July 2019

Judgment reserved.

**Tan Siong Thye J:**

**Introduction**

1 The central dispute is whether the marriage (“the Marriage”) between the deceased, Mr Gian Beng Hwee (“the Deceased”), and the defendant, Ms Meng Xianhui (“the Defendant”) was a sham marriage. If so, the next critical issue is whether the Marriage is valid.

2 The Marriage was solemnised on 20 January 2007.<sup>1</sup> The first to fourth plaintiffs (“the Plaintiffs”) are the Deceased’s siblings. They did not attend the wedding and were completely unaware of the Marriage. The Deceased’s sudden death from a heart attack in 2017 came as a shock to the Plaintiffs. They received another shock when the Defendant turned up at the Deceased’s funeral wake

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<sup>1</sup> Agreed statement of facts (“ASOF”) at S/N 1.

and claimed to be his wife. The Plaintiffs had known the Deceased to be a bachelor before his demise. In this action the Plaintiffs seek the following reliefs:

- (a) firstly, a declaration that the Marriage was a sham marriage or marriage of convenience (“the First Declaration”); and
- (b) secondly, a declaration that the Deceased’s Central Provident Fund (“CPF”) moneys and all his other assets are to be distributed among the Deceased’s immediate family according to the prevailing laws, rules and regulations to the exclusion of the Defendant (“the Second Declaration”).

3 The First Declaration requires the court to determine whether the Marriage was a sham marriage. This is a question of fact. The Second Declaration raises important legal issues, such as whether a sham marriage is a valid or void marriage under the Women’s Charter (Cap 353, 2009 Rev Ed) (“Women’s Charter”) and whether a party to a sham marriage is a “surviving spouse” under s 7 of the Intestate Succession Act (Cap 146, 2013 Rev Ed) (“ISA”) and a “wife” under s 73 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (“CLPA”). These provisions are relevant in determining whether the Defendant is entitled to the Deceased’s estate (under the ISA), CPF moneys (under the Central Provident Fund Act (Cap 36, 2013 Rev Ed) (“CPF Act”)) and life insurance proceeds (under the CLPA).

4 At the outset, the terminology used in this judgment ought to be clarified. The term sham marriage is not a term of art (*Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 (“*Toh Seok Kheng*”) at [17]). A sham marriage is a

general term which may refer to any marriage where the parties do not genuinely intend to live as man and wife for whatever reason (*eg*, a marriage to further the parties' business interests or to please their respective parents). However, the present case is *not* concerned with sham marriages in all its guises and forms, but only with a *specific sub-species* that corresponds with the definition of a marriage of convenience under s 11A of the Women's Charter, with the following elements:

- (a) the purpose of the marriage is to assist one party to obtain an immigration advantage (*eg*, the grant of permanent residence ("PR") under the Immigration Act (Cap 133, 2008 Rev Ed) ("Immigration Act"));
- (b) there is gratification given, offered, or received as an inducement or reward to the other party; and
- (c) the parties did not intend for the marriage to result in a genuine marital relationship.

I shall refer to a sham marriage with the above elements as an "immigration-advantage sham marriage". For short, I shall also refer to element (c) above in terms of whether the marriage was a "genuine marriage", and references to whether a marriage was a genuine one should be read accordingly.

5 I shall now refer to the facts of this case.

## **Facts**

### ***Brief background***

6 The Deceased was a Singapore citizen. The Plaintiffs are his siblings. The Deceased passed away intestate on 23 December 2017.<sup>2</sup> From 1973 to 2017, the Deceased, whom his family and friends regarded as a bachelor, lived with the first plaintiff (“PW1”) and his late mother at the flat in Whampoa Drive (“the Whampoa flat”).<sup>3</sup>

7 The Defendant is a citizen of the People’s Republic of China (“China”). She has two sons, aged 33 and 18 as of 2019, from a previous marriage.<sup>4</sup> She first came to Singapore in 2004. According to her, she was granted a five-year permit as a “study mama” to her younger son.<sup>5</sup> The Defendant and her younger son stayed at a five-room flat owned by her younger sister, Ms Meng Yutong (“DW2”) at Admiralty Drive (“DW2’s flat”).<sup>6</sup>

### ***The Marriage***

8 The Marriage was solemnised on 20 January 2007. The witnesses to the Marriage were DW2 and her then-husband, Mr Lee Chee Wah (“DW3”).<sup>7</sup>

9 It is not disputed that the Deceased’s family and friends were not present

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<sup>2</sup> ASOF at S/N 6.

<sup>3</sup> Gian Bee Choo’s affidavit of evidence-in-chief (“AEIC”) at paras 10 and 11.

<sup>4</sup> Meng Xianhui’s AEIC at para 4.

<sup>5</sup> Meng Xianhui’s AEIC at para 6.

<sup>6</sup> Meng Xianhui’s AEIC at para 8.

<sup>7</sup> Meng Yutong’s AEIC at para 11.



at the marriage ceremony and the wedding lunch thereafter.<sup>8</sup> The only attendees were the Defendant's relatives and a friend.<sup>9</sup>

***Events after the Marriage was solemnised***

10 Notwithstanding that they were married, the Deceased continued to live in the Whampoa flat with his late mother and PW1, while the Defendant and her younger son continued to stay with DW2 at DW2's flat. However, the address stated in the Defendant's Singapore National Registration Identity Card ("NRIC") was the Whampoa flat.<sup>10</sup> At that time, the Deceased also owned a three-room flat in Potong Pasir which was purchased in 1999 and sold in 2016 ("the Potong Pasir flat").<sup>11</sup> Nevertheless, the Deceased and the Defendant did not live in the Potong Pasir flat as well.

11 The Defendant applied for PR on 6 June 2007<sup>12</sup> and obtained PR status on 21 April 2009, which was renewed in 2014.<sup>13</sup> She remains a PR to date.<sup>14</sup>

12 In or around August 2011, the Defendant returned to China. She came back to Singapore in November 2014 to renew her PR status and left for China

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<sup>8</sup> ASOF at S/N 3.

<sup>9</sup> Meng Xianhui's AEIC at para 21; Meng Yutong's AEIC at para 12; Tr 28.05.19/43/1–3.

<sup>10</sup> Meng Xianhui's AEIC at para 26.

<sup>11</sup> Tr 28.05.19/54/17–20.

<sup>12</sup> Agreed Bundle of Documents ("AB") Vol 2 at p 275.

<sup>13</sup> Meng Xianhui's AEIC at paras 30 and 31.

<sup>14</sup> ASOF at S/N 2.

in January 2015.<sup>15</sup> The Deceased’s mother passed away in 2012 and the Defendant did not return to Singapore for the funeral.

13 The Deceased was declared a bankrupt in June 2017 by way of Order of Court No 3889 of 2017.

***The Deceased’s death and funeral***

14 The Deceased passed away intestate on 23 December 2017. His funeral was held from 23 to 27 December 2017.<sup>16</sup>

15 The Deceased’s niece, Ms Low Hui Ying (“PW2”), had used the Deceased’s mobile phone to send a message to all of his phone contacts to inform them of the Deceased’s demise and the details of the funeral.<sup>17</sup> The Defendant’s sister, DW2, was one of those in the Deceased’s contacts in his phone. However, the Defendant was not in the Deceased’s phone contact list. Upon receiving the message, DW2 informed the Defendant about the Deceased’s passing and the details of the funeral.<sup>18</sup>

16 The Defendant turned up at the Deceased’s funeral wake on the night of 26 December 2017 at about 11pm, along with DW2, DW3, her brother-in-law Mr Jeffrey Ng (“DW4”) and her younger sister. When the Defendant informed the Plaintiffs that she was the Deceased’s wife, they were shocked as they never

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<sup>15</sup> ASOF at S/N 5.

<sup>16</sup> ASOF at S/N 6 and 7.

<sup>17</sup> Statement of claim (“SOC”) at S/N 6.

<sup>18</sup> Meng Xianhui’s AEIC at para 46.

knew that he was ever married.<sup>19</sup>

17 The last ceremonial rites and cremation took place on 27 December 2017 and the Defendant alleged that she was not allowed to attend.<sup>20</sup> At 3.44pm of the same day, the Defendant went to the CPF Board to reset her SingPass password and to enquire about the Deceased's moneys with the CPF Board.<sup>21</sup>

18 On 10 May 2018, an interim injunction was granted to the Plaintiffs to restrain the Defendant from withdrawing, encumbering, disposing of, transferring, charging or otherwise dealing with the Deceased's CPF moneys and/or his insurance policy proceeds/moneys.<sup>22</sup>

### **The parties' cases**

#### *The Plaintiffs' case*

##### *The Marriage was a sham marriage*

19 The Plaintiffs contend that the Marriage was a sham marriage, relying principally on the following points:

- (a) The Deceased had lived as a bachelor with PW1 and his mother at the Whampoa flat until his demise.<sup>23</sup> He did not inform his friends, family, insurers and employers about the purported marriage. He only

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<sup>19</sup> ASOF at S/N 8–9.

<sup>20</sup> Meng Xianhui's AEIC at para 52.

<sup>21</sup> ASOF at S/N 10; Meng Xianhui's AEIC at para 54.

<sup>22</sup> ASOF at S/N 11; Order of Court No 3092 of 2018.

<sup>23</sup> SOC at S/N 4.

claimed for wife deductions in his Inland Revenue Authority of Singapore (“IRAS”) forms for the years of assessment of 2009, 2010 and 2012 so as to enjoy a tax relief of \$2,000.<sup>24</sup>

(b) The Defendant could not give details of the frequency or duration of the Deceased’s alleged stays with her at DW2’s flat. Even DW4 stated that he had only seen the Deceased twice in the ten years of the Marriage although DW4 often visited DW2’s flat.<sup>25</sup>

(c) There were no records of communications between the Deceased and the Defendant, in contrast with the records of the Deceased’s communications with other individuals retained in his mobile phone (which was produced in court). The Deceased also did not have WeChat, a popular phone application in China, which the Defendant used.<sup>26</sup> Further, the Defendant only came to know of the Deceased’s demise and funeral because her sister was his WhatsApp contact.<sup>27</sup> There were also no photographs of the Deceased and the Defendant taken together other than their wedding photographs, which the Plaintiffs alleged were staged to mislead the authorities.<sup>28</sup>

(d) The circumstances of the registration of the Marriage were

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<sup>24</sup> Plaintiffs’ Written Submissions (“PCS”) at paras 12–14; AB Vol 2 at pp 31–32, 42.

<sup>25</sup> PCS at para 15.

<sup>26</sup> PCS at paras 16–18.

<sup>27</sup> PCS at para 20.

<sup>28</sup> PCS at para 19.

suspect.<sup>29</sup> Nobody from the Deceased's family attended and the Defendant was inconsistent in her evidence regarding whether her parents attended the wedding.

(e) Finally, it was odd that the Defendant immediately went to the CPF Board to enquire about the Deceased's outstanding account the very same day of the cremation when she was allegedly heartbroken, upset and in no mood to do anything.<sup>30</sup>

20 Although the Deceased had not told his mother and siblings about the Marriage, it transpired that he had told at least three individuals about it. The Plaintiffs called them as witnesses.

(a) The first witness is PW2. She is the niece of the Deceased and the daughter of the second plaintiff.<sup>31</sup> The Deceased and PW2 met about three times a week in 2017 after she returned from further studies in the United Kingdom. According to PW2, sometime in the middle of 2017, the Deceased informed her that he was married to a lady from China and that this was purely to help her obtain PR status in Singapore.<sup>32</sup>

(b) The second witness is Mr Soh Keng Boon ("PW3"). PW3 was a long-time friend of the Deceased for about 20 years. The Deceased referred to PW3 as his "big brother". They served as committee

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<sup>29</sup> PCS at paras 21–25.

<sup>30</sup> PCS at paras 26–29.

<sup>31</sup> Low Hui Ying's AEIC at para 1.

<sup>32</sup> Low Hui Ying's AEIC at paras 7–9.

members in the same temple for about ten years. According to PW3, in or around 2007, the Deceased had told him that he had married the Defendant and the purpose of the Marriage was to help the Defendant apply for PR status in Singapore.<sup>33</sup>

(c) The third witness is Ms Guo Wenhui (“PW4”). PW4 was the Deceased’s financial advisor who had first met him in or around 2007. According to PW4, during one of their earlier meetings in 2007, the Deceased had informed her that he was married. However, he told her that this marriage was a sham marriage and that he was paid a certain amount to enter into this marriage. He had also said that he would divorce the Defendant in due course after she had obtained PR status, so that she would not be entitled to his assets.<sup>34</sup>

*Legal consequences if the Marriage is found to be a sham*

21 The Plaintiffs contend that even if the Marriage is not void under the express provisions of the Women’s Charter, it is void for statutory illegality, or illegality at common law.<sup>35</sup> Immigration-advantage sham marriages are now expressly prohibited by statute (*ie*, s 57C(1) of the Immigration Act). Even though that provision was not yet in force in 2007,<sup>36</sup> such sham marriages would have been against public policy as the couples intended to deceive public authorities. Moreover, these sham marriages would have been prejudicial to the

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<sup>33</sup> Soh Keng Boon’s AEIC at paras 4, 6 and 9.

<sup>34</sup> Guo Wenhui’s AEIC at paras 4, 8 and 9.

<sup>35</sup> PCS at para 42.

<sup>36</sup> PCS at para 60.

status of marriage.<sup>37</sup>

22 The Plaintiffs assert that Parliament has all along been aware of the concept of immigration-advantage sham marriages,<sup>38</sup> which constitute “fraud on the immigration authorities”. Such marriages had been dealt with previously under s 57(1)(k) of the Immigration Act and s 5(b)(i) of the Prevention of Corruption Act (Cap 241, Rev Ed 1993) (“PCA”).<sup>39</sup> Sham marriages more generally would also constitute “fraud on the Registrar of Marriages”.<sup>40</sup>

23 Next, even if the Marriage were valid, the Defendant cannot succeed because the word “spouse” under the relevant provisions of the CPF Act and ISA should be interpreted to refer to a spouse in a genuine marriage.<sup>41</sup>

24 Finally, separate from the issue of whether the Marriage is void and regardless of how “spouse” under the above-mentioned statutes should be interpreted, the court can nonetheless declare that the Defendant is not entitled to inherit the Deceased’s estate because the parties should not be allowed to benefit from their own illegal activities.<sup>42</sup> The Plaintiffs rely on the principle that a person cannot gain the right to inherit properties by committing murder (also known as the “forfeiture rule”), citing *Dunbar v Plant* [1998] 1 Ch 412.

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<sup>37</sup> PCS at para 63.

<sup>38</sup> PCS at paras 4–5, 38, 41.

<sup>39</sup> PCS at para 66.

<sup>40</sup> PCS at para 73.

<sup>41</sup> PCS at para 43.

<sup>42</sup> PCS at paras 89–91.

***The Defendant's case***

*The Marriage was not a sham marriage*

25 The Defendant contends that the Marriage was not a sham marriage. According to the Defendant, she was introduced to the Deceased by her sister, DW2, sometime in the middle of 2006. They had a stable relationship which “grew steadily and developed quite fast” over the six months prior to their wedding.<sup>43</sup> The Defendant had also introduced the Deceased to her parents, who were in Singapore at the material time, and her sons.<sup>44</sup>

26 Sometime in late 2006, the Defendant’s family had a steamboat dinner at Marina South. The purpose of this dinner was to introduce the Deceased to the Defendant’s new brother-in-law, DW4.<sup>45</sup>

27 The Marriage was solemnised on 20 January 2007. A wedding lunch was held on the same day at a restaurant in Toa Payoh. There were around 20 people present, which included DW2, DW3, DW4 and two other sisters of the Defendant. Several photographs which were taken at the wedding and the lunch were produced before the court. The Defendant denied paying any money to the Deceased to marry her.

28 According to the Defendant, the Deceased was probably embarrassed to tell his family that he had married a wife from China, who was also a divorcee with two sons. They had also agreed to live separately, although the Deceased

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<sup>43</sup> Meng Xianhui’s AEIC at para 17.

<sup>44</sup> Meng Xianhui’s AEIC at para 18.

<sup>45</sup> Meng Xianhui’s AEIC at para 19.



would stay over at DW2's flat with the Defendant "whenever he could".<sup>46</sup> According to DW3, the Defendant stayed over at DW2's flat "occasionally", although he was unable to provide an estimate.<sup>47</sup> As for DW4, he testified that he would visit DW2's flat about twice a month between 2007 and 2017. During this ten-year period, he had met the Deceased "once or twice" at DW2's flat.<sup>48</sup>

29 In 2011, the Defendant had to return to China as her mother became seriously ill. Although the Deceased remained in Singapore, they would communicate by telephone "whenever [they] wanted to discuss something with each other or missed each other".<sup>49</sup> The Deceased would also meet the Defendant whenever he went to China for business.

30 When DW2 informed the Defendant of the Deceased's demise she quickly returned to Singapore and attended the funeral wake together with DW2, DW3, DW4 and her younger sister. The Defendant went to the CPF Board the following day to enquire about the Deceased's moneys as she perceived herself as the lawful wife of the Deceased.<sup>50</sup>

31 The Defendant also argues that even if the Marriage was initially a sham, it evolved over time into a genuine marital relationship.<sup>51</sup>

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<sup>46</sup> Meng Xianhui's AEIC at para 29.

<sup>47</sup> Tr 30.05.19/ 12 / 26–32.

<sup>48</sup> Tr 30.05.19/ 22 / 28–29.

<sup>49</sup> Meng Xianhui's AEIC at para 41.

<sup>50</sup> Meng Xianhui's AEIC at paras 48 and 54.

<sup>51</sup> Defendant's Closing Submission ("DCS") at para 165.

*Legal consequences if the Marriage is found to be a sham*

32 The Defendant argues that the court cannot grant the First Declaration in the terms sought, because a “sham marriage” or “marriage of convenience” had no legal status before the enactment of s 11A of the Women’s Charter.<sup>52</sup> A court cannot declare a marriage void on grounds other than those in s 105 of the Women’s Charter and the ground in s 11A cannot apply because this came into effect only on 1 October 2016. Thus, the Marriage would be valid and the Defendant retains all the rights of a lawful wife of the Deceased.<sup>53</sup> Moreover, even if the Marriage were a sham marriage, they were entitled to be issued a marriage licence by the Registrar of Marriages and so no offence was committed.<sup>54</sup> In support, the Defendant cited the cases of *Tan Ah Thee and another (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v Lim Soo Foong* [2009] 3 SLR(R) 957 (“*Tan Ah Thee*”), *Toh Seok Kheng*, and *Soon Ah See and another v Diao Yanmei* [2016] 5 SLR 693 (“*Soon Ah See*”).

33 The Defendant next argues that if the First Declaration is not granted, the Plaintiffs cannot be entitled to the Second Declaration.<sup>55</sup>

34 The Defendant also submits that if the court found that the Marriage was a genuine one, that finding should extend to the relevant findings made under other statutes such as the CPF Act. She submits that *Soon Ah See* was wrongly

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<sup>52</sup> DCS at paras 215 and 225.

<sup>53</sup> Defendant’s Skeletal Arguments on Preliminary Point of Law (“DSA”) at paras 19–20.

<sup>54</sup> DCS at para 263.

<sup>55</sup> DCS at para 232.

decided in holding that a sham marriage was valid but that for purposes of s 25(5)(a) of the CPF Act, Parliament’s intention did not extend to making financial provision for a surviving party to a sham marriage.<sup>56</sup>

## **My decision**

### ***Issues to be determined***

35 The main issues before me are as follows:

- (a) Was the Marriage an immigration-advantage sham marriage?
- (b) If so, is it a valid or void marriage under the Women’s Charter?
- (c) Is the Defendant a “surviving spouse” under s 7 of the ISA and a “wife” under s 73 of the CLPA?

36 The Defendant also challenges the admissibility of certain statements referred to by various witnesses. Thus, it is more appropriate to deal with this first.

### **Preliminary issue: Admissibility of statements**

37 The Defendant disputes the admissibility of statements allegedly made by the Deceased regarding the Marriage as recounted by PW2, PW3 and PW4 in their affidavits.<sup>57</sup> She alleges that these are hearsay statements under ss 32(1)(e) and 32(1)(j)(i) of the Evidence Act (Cap 97, 1997 Rev Ed)

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<sup>56</sup> DCS at para 267.

<sup>57</sup> Defendant’s Supplemental Closing Submissions (“DSCS”) at para 15.

(“Evidence Act”), which: (i) are inadmissible because the notice requirements under s 32(4)(b) read with O 38 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) have not been complied with; or (ii) should be excluded under s 32(3) of the Evidence Act because of their unreliability and limited probative value. Alternatively, (iii) these statements should be given minimal weight.

38 I shall deal with points (i) and (ii) together. I do not accept either argument. It is not disputed that the notice requirements were not complied with. But even when the notice requirements in O 38 r 4 of the ROC are not complied with, the court may exercise its discretion under O 2 r 1 to cure such non-compliance where the failure to give notice did not cause prejudice to the opposing party rendering it unfair for the hearsay evidence to be admitted: *Singapore Civil Procedure 2019* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 9th Ed, 2019) at para 38/4/3. The curing of any irregularity must be considered in the light of the court’s discretion to exclude evidence under s 32(3): *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 (“*Gimpex*”) at [137]–[141].

39 In this case, I decide to exercise my discretion to overcome the irregularity of the lack of notice under O 2 r 1 of the ROC and not to exclude the evidence under s 32(3) of the Evidence Act.

(a) The starting point under O 38 r 4(1) of the ROC is that the onus is on the party seeking to adduce hearsay evidence to comply with the requirements therein. These include serving a notice in writing to inform the other parties of his intention to introduce the evidence contained in the affidavit of evidence-in-chief (“AEIC”) of the witness through whom the statement is to be admitted, which must state the grounds

under s 32(1) of the Evidence Act that are relied on and give details about the circumstances in which non-documentary statements were made (eg, the time and place of making the statement, the name and address of the person who heard the statement, and the substance or actual words used).

(b) The Plaintiffs contend that they have in substance complied with O 38 r 4 because all the requisite details could be found in the affidavits of PW2, PW3 and PW4. Unfortunately, the requisite details are inadequate as the affidavits did not state, amongst others, the time and place of making the statement.

(c) However, what the Plaintiffs did or did not do must be seen against the fact that objections were not filed. The Plaintiffs' counsel pointed out that at the pre-trial conference of 14 February 2019, parties were directed to exchange affidavits by 25 February 2019 and objections were to be raised by 4 March 2019. The Defendant's counsel accepted that she had not filed a notice of objections, even though a party is obligated to file a notice of objections stating all grounds of objections under para 62 of the Supreme Court Practice Directions.

(d) Furthermore, it is relevant to my determination that no prejudice was caused to the Defendant arising from the Plaintiffs' lack of notice. As explained in *Gimpex* (at [138], citing Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 4th Ed, 2013)):

The more difficult question is when and under what circumstances should a court exercise its discretion to cure such non-compliance. It seems to us that this is ultimately a question much dependant on the extent to which the non-compliance causes prejudice to the

opposing party which would render it unfair for the hearsay evidence to be admitted. As stated in *Pinsler* (at para 6.042):

The purpose of notice is to enable the opposing party to carry out his own investigation prior to the trial in order to ascertain its significance and veracity and to secure information which may refute it or reduce its weight (if necessary). The right of the opposing party to notice should be considered in conjunction with the procedures under s 32C, which permit him to adduce evidence concerning the credibility of the maker of the statement (and the original supplier of information under s 32(1)(b)) and the reliability of the statement.

The Defendant has, indeed, challenged the evidence of PW2, PW3 and PW4 and sought to discredit the reliability of the same<sup>58</sup> and whether the evidence is reliable should be viewed in that light. I note also that the Defendant ultimately relied on the Deceased's evidence elicited from their cross-examination to support her case.<sup>59</sup> She was not disadvantaged or caught off guard.

40 Accordingly, I find that the Deceased's evidence as recounted by PW2, PW3 and PW4 in their affidavits are admissible. What weight to be accorded to the evidence pertaining to the Deceased requires the court to carefully consider and analyse its reliability in the light of all the evidence to ascertain where the truth lies on the balance of probabilities. I shall explain in detail my analysis below.

41 The Defendant also disputes the admissibility of:

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<sup>58</sup> Tr 28.05.2019/67–68 at 79–80, 94–97.

<sup>59</sup> DCS at paras 15–22.

(a) an allegation by PW1 in her affidavit that “some of [the Deceased’s] friends also informed us during the funeral about the sham marriage” on the ground that this is hearsay;<sup>60</sup> and

(b) a statement in PW3’s affidavit regarding the Deceased’s alleged sexual lifestyle and the Defendant and her sister’s alleged involvement in vice-related activities on the ground that this is irrelevant.<sup>61</sup>

42 Regarding the allegation in [41(a)], PW1 had testified that:

... Some of his friends also informed us during the funeral about the sham marriage and one of them, SOH KENG BOON [PW3] ... has also agreed to be a witness.

The Plaintiffs had called the Deceased’s friend, *ie*, PW3, to testify. This aspect of PW1’s evidence is, therefore, not hearsay and is admissible. I have already dealt with PW3’s statement above.

43 Regarding the allegation in [41(b)], I do not accept that this particular statement is irrelevant. PW3 made the statement that he understood both the Defendant and her sister, DW2, to be working in the same trade and engaged in vice-related activities for a living in the context of explaining what he knew of the circumstances in which the Defendant met the Deceased. That forms part of the background to his understanding of the parties’ relationship. The weight to be attached to this statement is a separate issue.

44 I therefore find that the statements at [37] and [41] are admissible.

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<sup>60</sup> Gian Bee Choo’s AEIC at para 21.

<sup>61</sup> Soh Keng Boon’s AEIC at paras 7–8.

***Financial documents adduced by the Plaintiffs***

45 The Defendant also disputes the admissibility of the Deceased's financial documents found in the Plaintiffs' bundle of documents. The Plaintiffs' position is that these documents had been disclosed in a supplementary list of documents filed on 23 April 2019 and no notice of non-admission was filed by the Defendant under O 27 rr 4 and 5 of the ROC. Therefore, the Defendant is deemed to have admitted the authenticity of the documents.<sup>62</sup> The Defendant contends that while no notice of non-admission was issued, under O 27 r 4(1)(b) she is deemed to admit only that the copies of the financial documents are *true copies* but not that their *contents* are correct.<sup>63</sup>

46 The financial documents in this case are clearly admissible under s 32(1)(b) of the Evidence Act as these statements were made "in the ordinary course of a trade, business, profession or other occupation ...". Such documents are admissible as the risks of these documents and their contents being doctored are very low, if at all. Hence, the Defendant's objection is unmeritorious.

**Issue 1: Whether the Marriage was an immigration-advantage sham marriage**

47 I am of the view that the Plaintiffs have proven, on a balance of probabilities, that the Marriage was not a genuine one. I also find that the Deceased had agreed to marry the Defendant to help her obtain PR status and he was paid a sum of money in return, bringing the Marriage within the definition of an immigration-advantage sham marriage. There is no credible

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<sup>62</sup> Plaintiffs' Supplementary Written Submissions at para 4.

<sup>63</sup> DSCS at paras 4–6.



evidence that the parties had intended the Marriage to be a genuine one at any point during the ten years they were married. I shall now furnish my analysis.

***The Plaintiffs' lack of knowledge about the Marriage***

48 It was a key plank of PW1's evidence that the Deceased had never told her or their mother about his relationship or marriage with the Defendant despite them having a close relationship and living together.<sup>64</sup>

49 The Defendant argues that the Deceased did not tell his family about the Marriage as he was embarrassed to tell them he had married a "China lady" whom he picked up at a place like a KTV lounge;<sup>65</sup> alternatively, that he did not tell his family about her because she was a divorcee with two children. However, PW1 explained that the Deceased would not have felt ashamed to tell them about such a relationship because their mother was not strongly against any nationality and would have been very happy that the Deceased was getting married.<sup>66</sup> I note that the point made by the Defendant's counsel about her allegedly being picked up at a KTV lounge is inconsistent with the Defendant's own version of events, which is that she was introduced to him through DW2 at a meeting for selling health products.<sup>67</sup> The Defendant's alternative explanation for why the Deceased did not inform his family was, on her own admission, "just a conjecture on [her] part".<sup>68</sup> In any case, PW1 also stated that even if the

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<sup>64</sup> Gian Bee Choo's affidavit at paras 8–9.

<sup>65</sup> Tr 28.05.19/23.

<sup>66</sup> Tr 28.05.19/23–24.

<sup>67</sup> Meng Xianhui's AEIC at para 12.

<sup>68</sup> Tr 29.05.19/19.

Deceased's prospective wife was a divorcee, the family would still have supported his decision.<sup>69</sup> A marriage is a momentous and joyous occasion that would have warranted some announcement to the family members by the Deceased.

50 Accordingly, I find the undisputed fact that the Deceased did not tell his family of the Marriage to be significant circumstantial evidence that the Marriage was not genuine.

***Gratification for entering into the Marriage***

51 PW4 testified that she had first met the Deceased in 2007 after the Marriage. She was his financial advisor between 2007 and 2017. During their initial meeting, PW4 had asked the Deceased about his marital status and the nationality of his spouse.<sup>70</sup> These were standard questions that PW4 would pose to her clients in order to better advise them. These questions were also necessary as PW4 was a financial advisor working in CIMB Bank, thus, she had to fulfil her "know-your-client" responsibilities. It was in this context that the Deceased disclosed to her that he had entered into a sham marriage and that he was paid a certain sum of money to do so, though PW4 could not recall the quantum.<sup>71</sup> The Deceased also told PW4 that he was planning to undergo a divorce in due course. Subsequently, PW4 formed the impression from the Deceased's communications with her that he had become divorced. The Deceased did not mention a wife in their later conversations after 2007. In fact, around one or two

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<sup>69</sup> Tr 28.05.19/24.

<sup>70</sup> Tr 28.05.19/94.

<sup>71</sup> Tr 28.05.19/95; Guo Wenhui's AEIC at para 4.

years before his demise in 2017, the Deceased had informed PW4 about his intention for his estate to be divided among his siblings, nieces and nephews. There was again no mention of a wife.<sup>72</sup>

52 There is no reason for me to doubt the credibility and veracity of PW4's evidence as she is an independent witness with no vested interest. She is the only witness who is not a current or former family member or friend of either the Deceased or the Defendant.

53 I am unable to accept the Defendant's argument that PW4's evidence on gratification is "extremely weak" and must be disregarded simply because she could not recall the amount of gratification that was given to the Deceased,<sup>73</sup> given the lapse of time. PW4's evidence is compelling and reveals not only that the Marriage was not a genuine one from the outset but also that there was gratification paid to the Deceased for entering into the Marriage.

54 I would like to comment on a minor point relating to PW1's testimony. She appears to have conceded that there was no evidence that the Defendant had paid the Deceased and no evidence that the purpose of the Marriage was to help the Defendant obtain PR status.<sup>74</sup> This apparent concession has to be considered in its proper context. It is clear that PW1's testimony was based on her personal knowledge of the case and did not include the evidence of the other witnesses, *ie*, she had candidly admitted that she was unaware about the Marriage and that she knew nothing about the purpose of the Marriage. This is consistent with her

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<sup>72</sup> Tr 28.05.19/99/2–12.

<sup>73</sup> DCS at para 113.

<sup>74</sup> Tr 28.05.19/45.

testimony that she did not know about the Marriage, such that the sudden appearance of the Defendant at the Deceased's funeral wake came as a shock to her and her siblings.

***Lack of proper living arrangements***

55 The Defendant's position is that she lived in DW2's flat with her son and the Deceased stayed with her "whenever he could".<sup>75</sup> I do not accept the Defendant's version that the Deceased occasionally stayed with her and her son at DW2's flat. That position is undermined by the evidence of her own witness, DW4, who said that he saw the Deceased only "once or twice"<sup>76</sup> at DW2's flat in the ten years of the Marriage although he went there twice a month.

56 Instead, I find that the Deceased and the Defendant had lived separately at all material times. By her own admission, she had never moved into or lived together with the Deceased at the Whampoa flat (initially she believed this was rented out and later she found out that it was occupied by the Deceased's mother).<sup>77</sup> The Deceased lived in the Whampoa flat (owned by PW1) and the Defendant lived in DW2's flat. The Deceased purchased the Potong Pasir flat in 1999 and only sold it in 2016. Instead of living in the Potong Pasir flat with the Defendant and her younger son, the Deceased chose to rent out the Potong Pasir flat. The Defendant testified that there were eight people living in DW2's flat, which had four bedrooms. This would have made DW2's flat fairly

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<sup>75</sup> Meng Xianhui's AEIC at para 29.

<sup>76</sup> Tr 30.05.19/22.

<sup>77</sup> Meng Xianhui's AEIC at para 27.

crowded, as pointed out by DW3,<sup>78</sup> and ought to have provided greater reason for the Deceased, the Defendant and her younger son to live in the Potong Pasir flat which was owned by the Deceased.

57 This then raises the question of why the Defendant's address was reflected in her NRIC as the Whampoa flat even though she never lived there. The Defendant claimed that this was done so that the Deceased could help to read her letters.<sup>79</sup> This explanation is contrived. If the Deceased had, indeed, stayed over at DW2's flat with the Defendant regularly, then he could have easily helped to read her letters at DW2's flat. In all probability, the Whampoa flat was reflected as the Defendant's address on her NRIC to maintain the façade of a genuine marriage and to deceive the authorities into granting PR status to the Defendant. Interestingly, when asked in cross-examination whether it was misleading to the authorities to give the impression she was living there, the Defendant's reply was that it was a "very strange question" that she did not wish to and did not know how to answer.<sup>80</sup> I find that the true reason for this arrangement was to mislead the authorities by creating the impression that she and the Deceased were living together in a genuine marriage.

***No sharing of financial burdens between the Deceased and the Defendant***

58 In a genuine marriage, one would expect the Deceased to have made financial contributions to the Defendant's household expenses as he was drawing a salary and the Defendant had to support her family. There was a

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<sup>78</sup> Lee Chee Wah's affidavit at para 5.

<sup>79</sup> Tr 29.05.19/22.

<sup>80</sup> Tr 29.05.19/22/3–6.

complete silence in the Defendant's AEIC and testimony in court in this regard. Any financial contributions to the Defendant would be good evidence to support the legitimacy of her marriage to the Deceased. The inference that could be drawn, on a balance of probabilities, is that the Deceased did not contribute financially to the Defendant who had to care for and financially support her younger son studying in Singapore.

59 Subsequently, when the Deceased faced financial difficulties and eventually became a bankrupt, there was also no evidence that the Defendant helped to ease his financial woes. The Defendant did not deny that she had not assisted the Deceased financially in his hours of needs. In fact, it was PW1 who lent the Deceased around \$11,000 in 2017 as he had asked her for financial help instead of the Defendant.

***Lack of phone records and photographs***

60 If the Deceased and the Defendant were in a genuine marriage, then one would have logically expected her phone number to be listed in his phone's contact list. This would be all the more so if they had communicated frequently by phone, as the Defendant asserts. After all, the Defendant had returned to China in 2011 without the Deceased. She had only made two trips to Singapore thereafter: once in 2014 to renew her PR status and once more in 2017 to attend his funeral. However, the Defendant was not listed in the Deceased's phone contact list and it was in fact DW2 who was listed as a contact and who alerted the Defendant of the Deceased's demise.

61 The Defendant testified that she communicated with the Deceased

mainly through phone calls.<sup>81</sup> However, she was unable to produce any phone records in these proceedings.<sup>82</sup> Even if I accept her explanation that the phone records were with the Chinese telecoms authorities,<sup>83</sup> that does not explain why she could not produce any evidence of text messages exchanged with the Deceased. She claimed that the Deceased did not like to communicate through text messages. However, this assertion was flatly contradicted by the numerous text messages in the Deceased's phone, which were produced before the court and went unchallenged by the Defendant's counsel.

62 The Defendant, in trying to establish that the Marriage was a genuine marriage, produced a series of photographs taken during the wedding, including several taken of themselves.<sup>84</sup> The Defendant also produced a photograph of the Deceased and two friends in China, supposedly taken by the Defendant's elder son when the Deceased visited China sometime in 2013.<sup>85</sup> Notably, however, the Defendant was not in this photograph.

63 While the Defendant relied heavily on these photographs to assert that the Marriage was a genuine one, it is telling that these were the *only* photographs that she could produce. The Defendant explained that her mobile phone had been damaged and that her other photographs with the Deceased that were stored in the mobile phone could no longer be retrieved. There was no evidence to substantiate this explanation which was, in my view, contrived and a mere

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<sup>81</sup> Tr 29.05.19/24/6–8.

<sup>82</sup> Tr 29.05.19/25/20–21.

<sup>83</sup> Tr 29.05.19/25, 32.

<sup>84</sup> AB Vol 3 at pp 10–21.

<sup>85</sup> Meng Xianhui's AEIC at p 55.

afterthought. Even if the Defendant's mobile phone was indeed damaged, it was inexplicable that she could not obtain photographs of the couple from the Defendant's family and friends if the Marriage was genuine, taking into account the fact that the Marriage was 10 years long. The Defendant further sought to explain that the parties did not have the habit of taking photographs because they led a normal, routine life.<sup>86</sup> This point does not assist her because it does not explain the *complete lack* of non-wedding photographs.

64 The Defendant also argued that the Plaintiffs had produced only five photographs of the Deceased.<sup>87</sup> But reliance on the number of photographs produced by the Plaintiffs is misplaced. The Plaintiffs are not the ones alleging that the Deceased was in a relationship with the Defendant in these proceedings. Thus, there would have been no need for them to adduce extensive photographic evidence to prove that relationship.

***Objective evidence that the Deceased regarded himself as single***

65 The Plaintiffs adduced various documents which showed that the Deceased regarded himself as single and portrayed himself as such to third parties at all material times, even after the Marriage was solemnised on 20 January 2007. These documents are as follows:

- (a) a proposal form for an AXA insurance policy dated 25 October 2007, around 9 months after the wedding, in which the Deceased stated

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<sup>86</sup> Tr 29.05.19/ 34.

<sup>87</sup> DCS at para 74; AB Vol 2 at pp 270–274.



that he was single in two separate sections;<sup>88</sup>

(b) an IRAS Form IR8A completed by the Deceased's employer (ICOS Vision Systems Pte Ltd) on 5 February 2010, which indicated that the Deceased was single;<sup>89</sup> and

(c) salary slips by another employer of the Deceased (Provectus Lifestyle Asia Pte Ltd) from March 2014 to July 2014, which indicated that the Deceased was single.<sup>90</sup>

66 These documents show that the Deceased had regarded himself as single even soon after the wedding and support the Plaintiffs' contention that the Marriage was not a genuine one. While the Defendant does not accept that the Deceased would have stated that he was single<sup>91</sup> and also challenges whether the designation as "single" in the AXA insurance policy was made by the Deceased himself,<sup>92</sup> there is no reason for me to doubt the authenticity of these documents.

67 For completeness, I note that there is also a CPF nomination form signed by the Deceased but not submitted to the CPF Board, in which the Deceased stated that he was single. However, this form is not dated and I therefore place more weight on the other documents cited above. I also do not accept that the

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<sup>88</sup> Plaintiffs' Bundle of Documents ("PBD") at pp 26, 28 and 37.

<sup>89</sup> PBD at p 60.

<sup>90</sup> PBD at pp 61–65.

<sup>91</sup> Tr 29.05.19/31/7.

<sup>92</sup> DCS at para 202.

Deceased, by completing the nomination form but not submitting it, evinced an intention to benefit the Defendant.<sup>93</sup>

***Purpose of the Marriage and the Defendant's assertion that she does not require PR to stay in Singapore***

68 The Defendant claims that there was no reason for her to enter into the Marriage simply to become a Singapore PR and that she did not give any gratification to the Defendant. She had initially come to Singapore on a “study mama” pass, which was a legitimate pass allowing her to stay legally in Singapore from 2004 to 2009. This was granted well before she met the Deceased in mid-2006, which showed that she did not come to Singapore to obtain PR.<sup>94</sup> There was no urgency or necessity to apply for PR because she was here on a “study mama” pass. She also claims to be uninterested in applying for PR given her status as a “study mama” and to have been unsure about how to apply for PR.<sup>95</sup>

69 I find her alleged lack of knowledge about how to apply for PR to be an attempt to distance herself from the true purpose of the Marriage. The Defendant had to admit that she knew that if she was married, she could apply for PR. This was clear from the experiences of her two sisters, who obtained PR after their marriage to Singaporeans.<sup>96</sup>

70 Having PR status would be superior to having a “study mama” pass as

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<sup>93</sup> DCS at para 303.

<sup>94</sup> DCS at para 9.

<sup>95</sup> Tr 29.05.19/57.

<sup>96</sup> Tr 29.05.19/57.

the former would be valid for a longer duration and come with more privileges. In comparison, the continued validity of a “study mama” pass would depend on her son studying in Singapore. Thus, on the totality of the evidence, I am inclined to believe that the Defendant wanted to follow her sisters’ footsteps to seek PR status. The purpose of the Marriage was, therefore, to assist her in obtaining an immigration advantage.

***Evidence of other witnesses***

*PW2’s testimony that the Deceased had told her that he had entered into a sham marriage*

71 PW2 testified that the Deceased told her that the Marriage was purely to help the Defendant remain in Singapore, as the latter was in danger of being deported.<sup>97</sup> I have to view PW2’s evidence with great caution as she was the Deceased’s niece and was also the one who, by sending messages to everyone in the Deceased’s phone contact list, unwittingly alerted the Defendant (through DW2) and thereby precipitated this lawsuit. Thus, she may have a vested interest in this case.

*PW3’s testimony that the Deceased had confided in him about the Marriage being a sham*

72 PW3 said that the Deceased informed him that the purpose of the Marriage was to help the Defendant apply for PR status, but he was not told whether the Deceased was paid.<sup>98</sup> Although PW3’s testimony is relevant and pertinent, I initially approached his evidence with some caution, as he and the

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<sup>97</sup> Low Hui Ying’s affidavit at para 8.

<sup>98</sup> Soh Kheng Boon’s affidavit at para 9.

Deceased were friends involved in the same temple activities. However, I ultimately accept PW3’s evidence because it is materially corroborated by PW4’s testimony, which I have given full weight to as explained above.

*DW2’s testimony that the Defendant and the Deceased were a married couple after the Marriage*

73 I do not accept the evidence of the Defendant’s sister, DW2.

74 Firstly, DW2 conceded that she had no personal knowledge about the arrangements between the Deceased and the Defendant on matters such as why his family did not attend the wedding<sup>99</sup> and why he did not stay in her flat on a daily basis.<sup>100</sup>

75 Secondly, DW2 was unable to even estimate how frequently the Deceased allegedly stayed over in her flat with the Defendant, stating only that “[s]ometimes he would come during midnight” and “I can’t tell a figure, I don’t know how to go about calculating this”.<sup>101</sup> It beggars belief that she would have difficulty answering such a simple question, if it were true that the Deceased had stayed over. I disagree with the Defendant’s counsel’s contention that her inability to give details of the frequency of the Deceased’s stay at DW2’s flat “shows honesty on their part” in not trying to fabricate evidence.<sup>102</sup> DW2’s evidence on the frequency of the Deceased’s visits to DW2’s flat was materially contradicted by her own brother-in-law, DW4, who said he met the Deceased

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<sup>99</sup> Tr 29.05.19/64.

<sup>100</sup> Meng Yutong’s affidavit at para 16.

<sup>101</sup> Tr 29.05.19/67.

<sup>102</sup> Defendant’s (Oral) Closing Submissions (“DOCS”) at para 11.

once or twice at DW2's flat in the ten years of their Marriage, although he visited DW2's flat fortnightly.

76 Thirdly, some of her answers were clear postulations that show she was grasping at straws to present a credible account. The following exchange, regarding her allegation that the Defendant had asked her to look after the Deceased's health, is telling:<sup>103</sup>

Q. To the best of your recollection, what were the health conditions that the deceased was facing?

A. He definitely had three highs.

...

Court: Three highs? What "three highs"?

A. Yes. Meaning high blood glucose level, high cholesterol and blood pressure---high blood pressure. And following the conditions, you *will have* heart problems as well.

Q. Now, Mdm Yutong, your sister, Meng Xianhui in Court, yesterday mentioned "diabetes". Was there diabetes? To your knowledge?

A. *If one is telling "three highs" ... ---one would definitely have high blood glucose levels. And following that, **definitely have diabetes.***

Q. Now, Mdm Yutong, my instructions are that the deceased never had a diagnosis of diabetes. You have anything to say?

...

A. During the later stages when I met the deceased on a few occasions, I saw that---I saw that the lower part of his leg near his ankles had turned black. *So that is a **symptom and signs of diabetes.***

[emphasis added in italics and bold italics]

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<sup>103</sup> Tr 30.05.19/1-2.

The Plaintiffs' position is that the Deceased was never diagnosed with diabetes.<sup>104</sup> The above demonstrates that DW2 did not, in fact, have knowledge of the Deceased's medical status and was trying to cobble together a logical explanation. Thus, I disbelieve DW2.

77 I also do not have the confidence to accept DW3's evidence as his testimony merely corroborated the fractured defence. The Defendant urges the court to accept DW3's testimony as DW3 and DW2 were divorced. Although DW3 and DW2 were divorced in 2014, they are not on hostile terms. After DW3 testified, I noticed that he sat next to DW2 in the almost-empty public gallery.

***Summary of findings on the first issue***

78 To summarise my findings on the first issue, the Marriage was entered into with the purpose of assisting the Defendant to obtain PR status, there was gratification given and the parties did not intend for the Marriage to result in a genuine marital relationship. For this reason, I reject the Defendant's argument that s 11A(2) of the Women's Charter applies in this case. This provision deals with marriages where both parties to the marriage believed on reasonable grounds when contracting or entering into the sham marriage that the marriage would result in a genuine marital relationship. There is no evidence to that effect for the Marriage. Nor did the Marriage evolve into a genuine marital relationship at any point afterwards.

79 The Defendant submits, relying on *Tan Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 at [10]–[15], that

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<sup>104</sup> Tr 30.05.19/2.

while the standard of proof in a civil case where fraud is alleged is still based on a balance of probabilities, the more serious the allegation, the more the party on whose shoulders the burden of proof falls needs to do to establish his case. Even on this more onerous threshold, I find that the Plaintiffs have adduced sufficient evidence to discharge their burden of proof on a balance of probabilities.

## **Issue 2: Validity of the Marriage**

80 The next issue is whether the Marriage, which was solemnised on 20 January 2007, is void under the Women's Charter. Before I start my analysis with the relevant provisions of the Women's Charter, I would like to deal briefly with the Plaintiffs' arguments that the principles of illegality in contract law are applicable to the contract of marriage. The Plaintiffs rely on *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 and argue that marriages should be analysed as contracts and subjected to the usual contractual principles regarding statutory and common law illegality. I disagree. The concept of illegality applicable to commercial contracts cannot be transplanted to the context of marriage as all aspects regarding the contract of marriages are dealt with under the Women's Charter. Moreover, that approach is too simplistic considering that a marriage is more than a contract. Marriage embodies concepts of love, the union of different genders, procreation, life, morality and institutional facets (see *Toh Seok Kheng* at [11]). I shall now examine the relevant provisions of the Women's Charter.

### ***Sections 11A and 105 of the Women's Charter***

81 The Marriage was solemnised on 20 January 2007. If the marriage was solemnised on or after 1 October 2016, it would have fallen squarely within the

definition of a marriage of convenience as defined under s 11A(1) of the Women's Charter and thus void under s 105 of the same.

82 Section 11A of the Women's Charter states:

**Avoidance of marriages of convenience**

**11A.**—(1) A marriage solemnized on or after [1 October 2016], whether in Singapore or elsewhere, is void if —

- (a) a party to the marriage contracts or otherwise enters into the marriage knowing or having reason to believe that the purpose of the marriage is to assist the party or the other party to the marriage to obtain an immigration advantage; and
- (b) any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage.

(2) However, a marriage is not void under subsection (1) if it is proved that both parties to the marriage believed on reasonable grounds, when contracting or entering into the marriage, that the marriage would result in a genuine marital relationship.

(3) A marriage solemnised on or after [1 October 2016] is deemed to be void under subsection (1) if either party to the marriage is convicted of an offence under section 57C(1) of the Immigration Act (Cap. 133) in respect of the marriage.

...

83 In line with the introduction of s 11A, s 105 of the Women's Charter was also amended in 2016. Section 105 of the Women's Charter now contains a new paragraph (aa) which states:

**Grounds on which marriage is void**

**105.** A marriage which takes place after 1st June 1981 *shall be void on the following grounds only:*



- (a) that it is not a valid marriage by virtue of sections 3(4), 5, 9, 10, 11, 12 and 22;
- (aa) *where the marriage was solemnized on or after [1 October 2016], that it is not a valid marriage by virtue of section 11A; or*

[emphasis added]

84 The Defendant contends that because all immigration-advantage sham marriages solemnised on or after the commencement date of ss 11A and 105(aa) are void, all such sham marriages solemnised *before* 1 October 2016 are valid. I disagree:

(a) Nothing in the relevant Parliamentary debates indicates that it was Parliament’s intention for immigration-advantage sham marriages solemnised before 1 October 2016 to be valid.

(b) To the contrary, having regard to the statutes and case law (which I shall refer to below), it is consistent with Parliament’s intention that such marriages should be invalidated.

***Parliament’s intention in introducing s 11A of the Women’s Charter***

85 The Parliamentary debates on s 11A of the Women’s Charter shed light on why the commencement date of 1 October 2016 was chosen. This puts to rest the Defendant’s contention that Parliament intended to validate all immigration-advantage marriages pre-dating the commencement date of s 11A that would otherwise have been caught by that provision.

86 It is clear from the Parliamentary debates that Parliament was under the impression that s 11A of the Women’s Charter would only operate upon a conviction under s 57C of the Immigration Act. During the second reading of

the Women’s Charter (Amendment) Bill 2016 (Bill 46 of 2016), then-Minister for Social and Family Development Mr Tan Chuan-Jin (“Mr Tan”) stated (*Singapore Parliamentary Debates, Official Report* (29 February 2016) vol 94):

... The numbers of marriages between Singaporeans and non-residents have been increasing from 5,411 in 2004, and a decade later in 2014, 6,686.

The vast majority of such marriages are genuine. *But there are instances where parties enter into a sham marriage for immigration purposes.* In 2012, [the Ministry of Home Affairs] introduced a provision in the Immigration Act criminalising such marriages for immigration advantage. Parties convicted can be fined or imprisoned, or both, with their immigration facilities revoked. As of 2015, 218 parties have been convicted.

*It is an offence for parties to abuse marriage laws for immigration advantage. It follows therefore that such marriages should be void. The new Section 11A will now make a marriage void **if one party to the marriage is convicted of the marriage of convenience offence under the Immigration Act.***

[emphasis added in italics and bold italics]

In his response to questions posed by Members of Parliament, Mr Tan also explained as follows:

... ***Marriages are void only when at least one party is successfully charged and deemed guilty by the Courts under section 57C of the Immigration Act for entering into a marriage of convenience.*** Such cases would have been scrutinised through the judicial process. It is only consistent that *such marriages are consequentially and automatically void, given that the act of entering into such a marriage is an offence.*

[emphasis added in italics, bold italics and underlined bold italics]

87 Section 57C(1) of the Immigration Act, which came into force on 19 December 2012, states:

**Marriage of convenience**

**57C.—(1)** Any person who contracts or otherwise enters into a marriage —

- (a) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and
- (b) where any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

88 When one examines s 57C of the Immigration Act, s 11A of the Women’s Charter and the relevant Parliamentary debates, it becomes apparent that s 11A of the Women’s Charter was introduced in the wake of s 57C of the Immigration Act. The legal test to determine a sham marriage, which was *first* set out in s 57C(1) of the Immigration Act, is in substance exactly the same as that in s 11A(1) of the Women’s Charter. Parliament was also under the understanding that s 11A of the Women’s Charter would *only* operate once a party to the marriage had been convicted under s 57C of the Immigration Act.

89 Therefore, there is a close nexus between s 11A of the Women’s Charter and s 57C of the Immigration Act. Critically, s 57C of the Immigration Act is a penal provision and cannot apply retrospectively. Retrospective criminal laws are unconstitutional under Art 11(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) which protects against retrospective criminal laws. With this background in mind, one can then understand why s 11A of the Women’s Charter does not have retrospective effect.

90 However, I am unable to accept the proposition that just because s 11A of the Women’s Charter only applies to marriages solemnised on or after 1 October 2016, this means that all immigration-advantage sham marriages solemnised before then were valid. By introducing s 11A of the Women’s Charter, the legislature made clear that such sham marriages entered into from 1 October 2016 are *invalid*. Did the legislature intend *to validate* such marriages simply because they occurred before this date?

91 To answer this question, it is necessary to derive the intention of Parliament regarding immigration-advantage sham marriages prior to 2012. I shall refer to this issue in the context of three relevant High Court decisions that have touched on the issue. In chronological order, these are *Tan Ah Thee*, *Toh Seok Kheng* and *Soon Ah See*. All three decisions were decided before s 11A of the Women’s Charter was introduced. In the case of *Tan Ah Thee* and *Toh Seok Kheng*, these two decisions were also decided before s 57C of the Immigration Act was introduced.

### ***The relevant case law***

#### ***Tan Ah Thee***

92 In *Tan Ah Thee*, the two plaintiffs were the deceased’s children from his first marriage. They were also the administrators of the deceased’s estate. The plaintiffs sought a declaration that there was no valid marriage between the deceased and the defendant whom the deceased married in 1996 (“the second marriage”) after his first wife passed away in 1994. It transpired that the deceased had an extramarital relationship with the defendant much earlier, around 1952, which resulted in the defendant bearing a child. But by the time of the second marriage in 1996, the deceased was 81 years old, wheelchair-

bound and suffering from Parkinson’s disease.

93 The plaintiffs argued, amongst other things, that the marriage was void because it was “a sham marriage against public policy as the defendant’s sole or predominant motive in registering the marriage was to revoke the deceased’s will”, made before the second marriage (*Tan Ah Thee* at [10]). The plaintiffs contended that the grounds provided for in s 105 of the Women’s Charter were not exhaustive of the grounds on which a marriage may be found void.

94 Judith Prakash J (as she then was) rejected the plaintiffs’ contention that the marriage was void for being a sham marriage. Prakash J reasoned that s 105 of the Women’s Charter is an “all exhaustive provision” and marriages celebrated in Singapore could not be declared void on any ground other than those provided for in s 105 (at [35]). In holding that the second marriage was valid, Prakash J added at [56]:

... the law desists from identifying what are the “proper” motives of marriage and does not allow the parties’ private motives to undermine the validity of the marriage. ...

95 However, it ought to be emphasised that while the second marriage in *Tan Ah Thee* was characterised by the plaintiffs as a “sham marriage”, the facts differ materially from the type of sham marriage that this case is concerned with (*ie*, immigration-advantage sham marriages). In *Tan Ah Thee*, the deceased and the defendant had a genuine romantic relationship and the couple even had a son. There was no allegation that the couple had defrauded or deceived the Registrar of Marriages into issuing them a valid marriage licence. There was also no allegation that the parties had contravened any laws in the process of getting married. Furthermore, while the plaintiffs in *Tan Ah Thee* had alleged that the marriage contravened public policy, this public policy was not clearly

identified and articulated. In the circumstances, the facts of *Tan Ah Thee* are wholly distinguishable from this case.

96 I accept the propositions stated by Prakash J in *Tan Ah Thee*, namely, that s 105 of the Women’s Charter is an “all exhaustive provision”. But it is worth pointing out that *Tan Ah Thee* did not consider the situation where a marriage licence issued by the Registrar of Marriages was procured by the parties’ fraud and deception, and where the primary purpose of the marriage was never to live as husband and wife but only to perpetuate criminal acts and contravene existing laws. If such a marriage can be caught under one of the grounds in s 105 of the Women’s Charter (which is indeed the case, under s 22 and s 17 of the Women’s Charter read with s 105, as I shall go on to explain), then it will be void.

*Toh Seok Kheng*

97 The plaintiff in *Toh Seok Kheng* was the mother of the deceased, who died intestate in 2009. The defendant was a Chinese national whom the deceased married without informing his family. He continued to live with his family even after the marriage and his family only found out about the existence of the defendant at the deceased’s funeral. After the deceased’s death, the plaintiff applied for a grant of letters of administration of the deceased’s estate but ran into difficulty because the defendant had lodged a caveat, intending to do the same herself.

98 The plaintiff applied for, amongst others, a declaration that the marriage entered into between the deceased and the defendant was void as a “sham marriage in keeping with public policy considerations” (at [6]), alleging that the marriage was entered into to facilitate the defendant’s PR application.

99 Prakash J dismissed the plaintiff's application. There were procedural defects in the plaintiff's application, given that it was mandatory for the contentious probate action to be commenced by writ. It was an abuse of process for the plaintiff to initiate an originating summons for a declaration that the plaintiff be made the sole administrator of the deceased's estate (*Toh Seok Kheng* at [26]).

100 Prakash J also reiterated the legal propositions stated in *Tan Ah Thee*. In response to the local cases cited by the plaintiffs in support of the public policy argument where the parties involved were convicted for corruption for entering into sham marriages, Prakash J stated as follows at [16]–[17]:

16 ... I did not find [those cases] to be relevant. Those cases are not authority for the proposition that the validity of a marriage, which must be determined solely according to the Charter's precepts, can be affected by the motives of the spouses for entering into marriage. *Those cases did not hold that contracting such a "sham marriage" in itself offends against general public policy and, a fortiori, nor did they hold that it rendered the marriages in question void.* The tenor of those cases was that *when parties used their validly constituted marital status to obtain something available only to authentically married couples, they might be in breach of specific laws which uphold specific public policies, which in those cases were immigration policies.* The outcome in those cases depended on whether the elements of those laws were satisfied, and not on whether there was a sham marriage *per se*. ...

17 ... [W]hile judges have used the term sham marriage, it is not a term of art and does not create any legal implications in and of itself. Whether or not there are actionable consequences flowing from a putative sham marriage would depend on the existence of other laws which prohibit its incidents. Even then, unless the particulars of the sham marriage involved the requirements stipulated by s 105 of the Charter, the validity of the marriage would remain unaffected.

[emphasis added in italics and bold italics; original emphasis removed]

101 I agree entirely that the court cannot declare a marriage void on a ground

other than those provided for in s 105 of the Women's Charter (*Toh Seok Kheng* at [12]). But with the greatest of respect, I am of the view that there is a general public policy against immigration-advantage sham marriages in Singapore, which also existed at the time the Marriage in this case was solemnised in 2007.

102 I note that arguments pertaining to whether the marriage was void pursuant to s 22 and s 17 of the Women's Charter, read with s 105, were not raised in *Toh Seok Kheng*. I shall now examine the judgment of *Toh Seok Kheng* in the light of public policy and other relevant statutory provisions.

- (1) A general public policy against immigration-advantage sham marriages existed in 2007

103 It could, perhaps, be the case that Prakash J was referring to sham marriages in a broad and generic sense, where parties enter into the sham marriage for “motives which some might consider improper” or where “spouses continue to conduct their respective lives as though they were unmarried” (*Toh Seok Kheng* at [12]). These types of sham marriages are not relevant to this case, and I need not say more regarding whether there was a general public policy against sham marriages in that broad sense. However, with regard to immigration-advantage sham marriages *specifically*, I find that there was already a public policy that existed against such sham marriages in 2007.

104 Section 57C of the Immigration Act and s 11A of the Women's Charter were only introduced in 2012 and 2016 respectively, after *Toh Seok Kheng* was decided. However, I do not find that a public policy against sham marriages only existed once these provisions came into effect. I am of the view that such a public policy had always existed and that s 57C of the Immigration Act merely created a *specific* and *targeted* offence against such sham marriages. Prior to the



enactment of s 57C, acts associated with such sham marriages were frequently prosecuted under other statutory provisions, namely s 5(b)(i) of the PCA or s 57(1)(k) of the Immigration Act (*Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 (“*Mehra Radhika*”) at [32]). I shall elaborate on these provisions after explaining the intention behind enacting s 57C of the Immigration Act.

(2) The Parliamentary debates on s 57C of the Immigration Act

105 Prakash J had stated in *Toh Seok Kheng* that a public policy against sham marriages ought to be “properly reserved to Parliament for articulation, delineation and enactment” (*Toh Seok Kheng* at [15]). However, in my view, it is proper for the courts to identify such a public policy, so long as it is attributable to a constitutionally authoritative source, as stated by the Court of Appeal in *UKM v Attorney-General* [2019] 3 SLR 874 (“*UKM*”) at [162(a)(i)]. In *UKM*, the Court of Appeal stated that there were at least four authoritative sources of public policy:

- (a) primary legislation;
- (b) subsidiary legislation;
- (c) statements made by Cabinet ministers; and
- (d) judicial decisions.

The relevant sources in this case are statements made by Cabinet ministers and primary legislation (*ie*, the Women’s Charter).

106 In this regard, I find support for the view that such sham marriages were always against public policy in the second reading of the Immigration

(Amendment) Bill 2012 (Bill 16 of 2012) (“Immigration (Amendment) Bill 2012”) by the then-Second Minister for Home Affairs, Mr S Iswaran (*Singapore Parliamentary Debates, Official Report* (13 August 2012) vol 89). The then-Second Minister for Home Affairs had stated:

... Currently, *there is no specific law* against marriages of convenience, or “sham marriages” as some may call them. ...

... [M]ost marriages between Singaporeans and foreigners are genuine but there is a small number who use marriage as a ruse so that the *purported foreign “spouse”* can stay and work in Singapore. ...

[emphasis added]

107 In response to questions posed by Members of Parliament, the then-Second Minister for Home Affairs had also stated:

... Over the last five years, we have detected an average of about four or five [sham marriage] cases a year, which does not sound like a lot. But as Mr Hri Kumar pointed out in his speech, it is also a case of how such cases come to light, the manner of the investigation and the manner of the evidence being procured. But even in that context, for the first six months of this year, we have detected 12 [sham marriage] cases. So there is a significant rise, and it is probably symptomatic of a larger trend. *We want to introduce new laws to send a strong deterrent message* to individuals who contemplate entering into marriages of convenience for obtaining an immigration facility ...

...

Mr [Desmond] Lee has also asked why the prosecution does not continue to prosecute marriages of convenience under the Prevention of Corruption Act. There were legal impediments to charge marriage of convenience cases under the Prevention of Corruption Act primarily because you cannot always prove corruption in the context of a marriage of convenience, which is why this amendment provides for a specific offence under the Immigration Act.

[emphasis added]

108 With the benefit of these statements made by the then-Second Minister

for Home Affairs, it is apparent that s 57C of Immigration Act did not represent a *new* public policy against sham marriages in Singapore. The purpose of s 57C of the Immigration Act was to create a more specific and targeted offence against such sham marriages, in furtherance of a public policy against these immigration-advantage sham marriages which had always existed.

(3) Penal provisions pre-dating s 57C of the Immigration Act

109 Prior to the commencement of s 57C of the Immigration Act, such sham marriages were criminalised, albeit indirectly, through two other statutory provisions, both of which were in force at the time the Marriage in this case was solemnised. As explained in *Mehra Radhika* at [32]:

Prior to the enactment of s 57C, transacting a marriage of convenience was not an offence *per se*, but acts associated with a marriage of convenience were frequently prosecuted under one of two pieces of legislation: s 5(b)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) or s 57(1)(k) of the [Immigration] Act. These two provisions were generic provisions, in that they respectively targeted all types of corrupt acts and all false declarations made for the purpose of obtaining an immigration advantage. ...

110 The first provision referred to is s 5 of the PCA, which states:

**Punishment for corruption**

**5.** Any person who shall by himself or by or in conjunction with any other person —

- (a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
- (b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of —

- (i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or

...

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

111 Parties to a sham marriage (*ie*, the Deceased and the Defendant in this case, as well as any middleman) could be prosecuted under s 5 of the PCA, a generic provision which targets all corrupt acts (Tan Boon Gin, *The Law on Corruption in Singapore: Cases and Materials* (Academy Publishing, 2007) at pp 32–33). The cases in or around 2007 involving charges under s 5 of the PCA include *Public Prosecutor v Ng Ai Hong* [2007] SGDC 68 and *Liu Ying v Public Prosecutor* [2007] SGDC 352 (“*Liu Ying*”). I agree with the remarks made by the District Judge in *Liu Ying* at [11]:

In the present case, the accused had offered bribes to [the middleman] on 9 occasions to arrange a marriage of convenience ... in order to facilitate the obtaining of extensions of her social visit pass from the [Immigration and Checkpoints Authority (“ICA”)] to prolong her stay in Singapore. *This goes against public policy and would subvert the policies of the ICA.* In *Ng Ai Hong v PP* ... the trial court held that such transactions were aimed at subverting the policies of the ICA regarding the grant of permanent stay to foreigners to reside in Singapore. The court also held that there is a legitimate expectation by members of the public that Government bodies such as the ICA carry out their duty judiciously and fairly. The prosecution in that case submitted that the ICA has a reciprocal expectation that applicants for Permanent Residence under the Family Ties Scheme declare information that is true and reflective of the genuine state of relations between applicants and their desire to live as a family in Singapore. The court stated that *fraudulently entered marriages of convenience with the view to only seek permanent residency in Singapore go against the very fabric of such legitimate expectation and is clearly a wrong against society.* ... [emphasis added]

112 The second provision that was used to prosecute couples of such sham

marriages is s 57(1)(k) of the Immigration Act, which states:

**Offences**

**57.—(1)** Any person who —

...

(k) by making a false statement obtains or attempts to obtain an entry or a re-entry permit, pass, Singapore visa or certificate for himself or for any other person;

...

shall be guilty of an offence and —

...

(vi) ... shall be liable on conviction to a fine not exceeding \$4,000 or to imprisonment for a term not exceeding 12 months or to both;

113 The relevant act that is prosecuted under s 57(1)(k) of the Immigration Act is that of a false declaration for the purpose of obtaining an immigration advantage. Typically, the facts would involve a false statement made on a prescribed form of the Immigration and Checkpoints Authority (“ICA”) by one party to the sham marriage. The falsehood would usually pertain to the foreign spouse’s address, which would reflect that of her spouse instead of her actual address (see, for example, *Public Prosecutor v Jiang Yan* [2009] SGDC 348). The Defendant’s counsel in her oral submissions argued that s 57(1)(k) was only brought into effect on 19 December 2012,<sup>105</sup> the same date as for s 57C. That submission must be rejected. Section 57(1)(k) pre-dated s 57C and the amendment on 19 December 2012 was merely editorial. Prosecutions have routinely been brought under the former provision before the latter provision’s

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<sup>105</sup> DOCS at para 34.

introduction (see, for example, *Hong Weng Shing Andrew @ Liow Andrew v Public Prosecutor* [2002] SGDC 83, involving false declarations regarding capacity to marry).

114 Given the findings of fact I have made, the Deceased and the Defendant would have, at least on a *prima facie* basis, breached some of these offences cited above. As this is not a criminal trial, I need not say any further.

- (4) An immigration-advantage sham marriage corrupts the sanctity of marriage and is inconsistent with the Women’s Charter

115 An immigration-advantage sham marriage does not *merely* contravene public policy. This type of sham marriage corrupts the very sanctity of marriage as the fundamental purpose underpinning the marriage is to obtain an immigration benefit fraudulently. This view is grounded in the provisions of the Women’s Charter, specifically s 46(1), which states:

**Rights and duties**

**46.—(1)** Upon the solemnization of marriage, the husband and wife shall be *mutually bound to co-operate with each other in safeguarding the interests of the union* and in caring and providing for the children. [emphasis added]

In an immigration-advantage sham marriage, the parties have evinced an intention to subvert the exhortation contained in s 46(1) of the Women’s Charter.

116 Furthermore, the long title of the Women’s Charter states that it is “an Act to provide for monogamous marriages”, which in turn is defined in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) (“Interpretation Act”) to mean “a marriage which is ... contracted as a voluntary *union of one man and one*

*woman to the exclusion of all others during the continuance of the marriage*” [emphasis added]. An immigration-advantage sham marriage is inconsistent with the fundamental assumption in the Women’s Charter that marriage should carry with it all the duties and obligations that parties are “mutually bound to co-operate” in upholding.

117 Therefore, that there was a general public policy against immigration-advantage sham marriages is also supported by the provisions of the Women’s Charter.

*Soon Ah See*

118 *Soon Ah See* was a recent case decided by Edmund Leow JC in 2016. The deceased died in 2013, leaving more than \$170,000 in his CPF accounts. He had nominated his sisters, the plaintiffs, as the beneficiaries of his CPF moneys in 2009. When the plaintiffs visited the CPF Board after the deceased’s death, they discovered that his nomination had been automatically revoked. Unknown to them, the deceased had married the defendant in 2011. The plaintiffs were convinced that this was a sham marriage and therefore initiated an action to prevent the defendant from obtaining a share of the deceased’s CPF moneys.

119 Leow JC found that the marriage between the deceased and the defendant was a sham marriage, entered into so the defendant could live and work in Singapore (*ie*, an immigration-advantage sham marriage).

120 He next considered the issue of whether the marriage was void under the Women’s Charter. The plaintiffs in that case referred to s 22 of the Women’s Charter, which provides that every marriage solemnised in Singapore shall be

void unless it is solemnised on the authority of a “valid marriage licence” issued by the Registrar of Marriages. In *Tan Ah Thee* at [45], Prakash J had stated:

... The reference to a “valid marriage licence” ... must be read as meaning a marriage licence issued by the Registrar of Marriages when he was correctly satisfied that all the requirements of s 17(2) had been met. He would have been so satisfied if the statutory declaration made by each of the parties to the proposed marriage correctly stated that there was no lawful impediment to the marriage. *If the deponent of the statutory declaration was wrong in declaring that there was **no lawful impediment** to the proposed marriage, then that wrongful declaration would, in my view, have the effect of invalidating the marriage licence because the licence would have been issued on an incorrect basis, the Registrar’s satisfaction having been procured by a wrongful declaration.* [emphasis added in italics and bold italics]

121 The plaintiffs contended that when parties enter into a marriage “with ulterior intent and motive, or without any intention to enter into a genuine marriage, then this would constitute a lawful impediment” (*Soon Ah See* at [39]). I note that this argument is quite different from one that alleges that a sham marriage is a lawful impediment because it is contrary to public policy, breaches other penal provisions and constitutes a fraud against the authorities.

122 In any event, Leow JC was not persuaded that an intention to enter into a sham marriage qualified as a lawful impediment. Leow JC endorsed Prakash J’s statement in *Tan Ah Thee* that “the law desists from identifying what are the ‘proper’ motives of marriage and does not allow the parties’ private motives to undermine the validity of the marriage” (*Soon Ah See* at [40]).

123 Leow JC also noted that “it cannot be open to two individuals to enter into a marriage and then say, perhaps months or even years down the road, that the marriage was void all along merely because they did not have the requisite intention to enter into a genuine marriage” (*Soon Ah See* at [43]). I generally



agree with this statement. However, such marriages are not the type of sham marriages that I am concerned with in this case.

124 Leow JC further observed that “prior to the introduction of s 57C of the Immigration Act, there was no clear parliamentary intention that such sham marriages should be void” (*Soon Ah See* at [48]). As I have explained above, I would respectfully differ and find that there was such a public policy against immigration-advantage sham marriages.

125 Leow JC also mentioned that during the second reading of the Immigration (Amendment) Bill 2012 by the then-Second Minister for Home Affairs, “there was no suggestion that the validity of marriages would be affected by the criminalisation of marriages of convenience to obtain an immigration advantage” (*Soon Ah See* at [48]). The lack of express reference to whether a sham marriage before 1 October 2016 is valid can, at best, support the view that the issue was not considered by Parliament. But Parliament had enacted s 11A of the Women’s Charter to invalidate all immigration-advantage sham marriages. The logical inference must, therefore, be that such marriages that were criminalised prior to 1 October 2016 cannot be valid.

126 Therefore, with the greatest of respect, I disagree with the reasons provided by Leow JC to justify why a sham marriage before 1 October 2016 is not void under the Women’s Charter. As I shall further explain, the Marriage, being an immigration-advantage sham marriage as borne out by the facts in this case, is a void marriage, notwithstanding that it was solemnised in 2007 before s 57C of the Immigration Act and s 11A of the Women’s Charter came into force. Before I discuss these reasons, I shall briefly refer to some academic commentaries which may be relevant.

*Academic commentaries*

127 The first commentary is by Associate Professor Chen Siyuan in “Sham Marriages, Ancillary Powers, and Moral Discourse: Toh Seok Kheng v. Huang Huiqun; ADP v. ADQ” (2011) *Research Collection School of Law* 1–10. In this commentary, Assoc Prof Chen proffered reasons for why a sham marriage should be void and how this could be justified. He acknowledged that s 105 of the Women’s Charter “quite categorically” rules out any other ground for making a marriage void. However, he then suggested that the court could have recourse to its inherent powers to render a sham marriage void. Assoc Prof Chen suggested that the invoking of the court’s inherent powers could be justified as follows:

[W]e may have to pitch the endeavour (of justifying why a sham marriage should be void) at a higher level of abstraction and consider the general tenor and purpose of the Women’s Charter. It is perhaps not fanciful to suggest that the Women’s Charter is ultimately about protecting the rights of women and children – and a wide spectrum at that. Such protection, it seems, must be motivated by a recognition of the importance of families in Singapore. If so, upholding sham marriages as valid marriages (even if done indirectly) serves neither of those two broad purposes. ...

128 Assoc Prof Chen’s view is contrary to that of Professor Leong Wai Kum in “Clarity in the Law of Valid, Void and Voidable Non-Muslim Marriages” (2009) 21 SAcLJ 575. In this case note, Prof Leong opined at para 21:

It is crucial that there be certainty as to when a solemnisation of marriage is successful or, in the alternative, is a nullity. The premise is that only failure of compliance with, first, the statutory requirements of the process of solemnisation, or second, the statutory requirements of the parties possessing capacity to marry, renders the solemnisation invalid. ...

129 While I share the concerns raised by Assoc Prof Chen, I am of the view that the court’s inherent powers should not be readily invoked, especially if an

immigration-advantage sham marriage can be declared void on some ground stated in s 105 of the Women’s Charter. In this case, the provisions that are particularly relevant are ss 22 and 17 of the Women’s Charter, and s 22 is expressly referred to in s 105 of the Women’s Charter.

***Sections 22 and 17(2)(d) of the Women’s Charter***

130 To recapitulate, s 22 of the Women’s Charter, which embodies one of the grounds on which a marriage is void under s 105 of the Women’s Charter, states:

**Requirements for valid marriage**

**22.—(1)** Every marriage solemnized in Singapore shall be void unless it is solemnized —

- (a) on the authority of a *valid marriage licence* issued by the Registrar or a valid special marriage licence granted by the Minister; and
- (b) by the Registrar or a person who has been granted a licence to solemnize marriages.

...

[emphasis added]

131 As stated in *Tan Ah Thee* at [45], the reference to a “valid marriage licence” in s 22 of the Women’s Charter must be read as meaning a marriage licence issued by the Registrar of Marriages when he was correctly satisfied that all the requirements of s 17(2) have been met. For the purposes of this case, the relevant requirement is that under s 17(2)(d):

**Registrar to issue marriage licence on proof of conditions by statutory declaration**

...

**17.—(2)** The Registrar shall not issue a marriage licence until he has been satisfied by statutory declaration made by each of the parties to the proposed marriage —

...

(d) that there is no *lawful impediment* to the marriage;

[emphasis added]

*Whether a lawful impediment must be identified with reference to a specific prohibition in the Women’s Charter*

132 Therefore, the issue before the court is whether an intention to enter into an immigration-advantage sham marriage constitutes a lawful impediment to the proposed marriage. The first matter to be considered is whether a lawful impediment *must* be identified with reference to a specific prohibition in the Women’s Charter. In *Tan Ah Thee* at [50], Prakash J suggested that a lawful impediment can be identified “notwithstanding the absence of a specific provision so promulgating”. This was in the context of a discussion of the decision in *Lim Ying v Hiok Kian Ming Eric* [1991] 2 SLR(R) 525 (“*Lim Ying*”). In *Lim Ying*, the respondent was a female-born transsexual. Following sex reassignment surgery, his sex was re-recorded on his NRIC as male. He later married the petitioner. The petitioner claimed that she had no knowledge that the respondent was a transsexual and applied for a judgment of nullity.

133 When *Lim Ying* was decided, s 12 of the Women’s Charter, which pertains to avoidance of marriages between persons of the same sex, had yet to be enacted. K S Rajah JC held that the sex of a person was to be determined by the sex assigned to him *at birth*, and not the sex shown on the NRIC (this has since been legislatively overturned by s 12(2) of the Women’s Charter). Given that both the petitioner and the respondent were of the same sex, the marriage

was void.

134 Prakash J observed in *Tan Ah Thee* that Rajah JC did not expressly refer to s 105 of the Women’s Charter and whether a judgment of nullity could be made on the basis of a ground that was not specified in s 105. Nevertheless, Prakash J explained that *Lim Ying* could be decided on the ground that the fact that the parties were of the same gender was a lawful impediment to the relationship. Prakash J explained at [50]:

... As Rajah JC reasoned, it is clear that *the Charter was promulgated on the basis that marriage is a legal relationship that can only be entered into between a male and a female*. He noted that the preamble to the Charter states that it is “[a]n Act to provide for monogamous marriages”. In the Interpretation Act (Cap 1, 1985 Rev Ed), “monogamous marriage” was then, and still is, defined as “a marriage which is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage”. Furthermore, there are numerous references to “husband” and “wife” in the Charter and those terms are gender specific. Hence, it is unarguable that even as it stood in 1992 when *Lim Ying* was decided, it was a fundamental assumption underlying and informing the provisions of the Charter that a marriage had to be between a male and a female. *Thus, persons of the same gender could not marry under the Charter and being of the same gender constituted a “lawful impediment” to the marriage.* ... [emphasis added]

135 Prakash J’s rationalisation of *Lim Ying* is entirely consistent with the ordinary meaning of s 17(2) of the Women’s Charter, which does not require the lawful impediment to be based on a *specific* provision in the Women’s Charter.

136 For completeness, I note that during the Select Committee proceedings on the Women’s Charter Bill in 1960, the Chairman of the Select Committee, Sir George Oehlers, had commented that s 17(2) “ought to be amended to make

it clear that the only impediments are those laid down by the Women's Charter, and nothing more" (*Report of the Select Committee on the Women's Charter Bill* (Legislative Assembly 16 of 1960, 19 May 1960) at p 193). However, this statement arose from a discussion about whether impediments imposed by any given religion could affect the validity of a marriage. In my view, it did not mean that the impediments must be expressly identified in the Women's Charter. In any event, s 17(2), as it was eventually passed, did not state that the impediments must be expressly identified in the Women's Charter. It is trite that if the ordinary meaning of a provision is not ambiguous or obscure, then the court is not permitted to use extraneous material to depart from it (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [54]).

*Whether an intention to enter into an immigration-advantage sham marriage is a lawful impediment to a proposed marriage*

137 The next issue is whether an intention to enter into an immigration-advantage sham marriage is a lawful impediment to a proposed marriage. In my view, where the sole purpose of the marriage was to assist one party to obtain PR in exchange for gratification and the parties never had any intention to enter into a genuine marital relationship, this constitutes a lawful impediment to a proposed marriage. Therefore, the wrongful declaration that there is no lawful impediment to the proposed marriage invalidates the marriage licence issued and the marriage is void. I accept that a lawful impediment that is not expressly identified in the Women's Charter should not be easily found. The threshold to be crossed ought to be a high one, in the interests of certainty. Nevertheless, for the following reasons, I am of the view that the threshold has been crossed for immigration-advantage sham marriages.

138 In this regard, I respectfully depart from the decision of Leow JC in

*Soon Ah See* and the decision of Prakash J in *Toh Seok Kheng*, in so far as Prakash J reached the conclusion that such sham marriages were valid. However, I note that the issue of whether an intention to enter into such a sham marriage constitutes a lawful impediment does not appear to have been an issue in *Toh Seok Kheng*. The reasons for my finding that an intention to enter into an immigration-advantage sham marriage constitutes a lawful impediment are as follows.

139 Firstly, as I have elaborated above at [97]–[117] in my discussion of *Toh Seok Kheng*, there has always been a general public policy against such sham marriages, even before s 57C of the Immigration Act and s 11A of the Women’s Charter were enacted. I would depart from *Toh Seok Kheng* in so far as it stands for the proposition that such a public policy did not exist and ought to be reserved to Parliament for “articulation, delineation and enactment” (*Toh Seok Kheng* at [15]). I take the contrary view for reasons, which to recapitulate, are as follows:

- (a) The then-Second Minister for Home Affairs had expressly stated during the second reading of the Immigration (Amendment) Bill 2012 that while s 57C of the Immigration Act created a new substantive offence that directly targeted sham marriages, there were other laws which were used to address sham marriages prior to s 57C. As I have pointed out, these were s 5 of the PCA and s 57(1)(k) of the Immigration Act. Therefore, s 57C of the Immigration Act did not introduce a *new* public policy against sham marriages. It only introduced a specific and targeted offence against sham marriages. Unlike in *Toh Seok Kheng*, I am unable to make a distinction between a general public policy against sham marriages (which Prakash J found to *not* exist) and a specific

immigration policy against parties who marry in order for one party to obtain immigration/residency benefits and the other to obtain monetary gratification (a public policy which Prakash J accepted existed) (*Toh Seok Kheng* at [15]–[16]). If one is only concerned with immigration-advantage sham marriages specifically, there would be no need to draw fine distinctions between the existence of the general and specific public policies referred to in *Toh Seok Kheng*. Parties may enter into marriages for so-called improper motives, or intend to conduct their respective lives as though they were unmarried. But this case is not concerned with such marriages and whether such marriages contravene public policy.

(b) A public policy against sham marriages arises naturally from the values or purposes embodied in the Women’s Charter. While Prakash J had said in *Teo Seok Kheng* at [10] that “[t]he idea that marriage has a special moral status and involves established moral obligations is ... philosophically contentious”, these values or purposes are expressly stated in the Women’s Charter. In my view, it is proper for the courts to have regard to the relevant provisions in order to determine whether a public policy against immigration-advantage sham marriages exists. This is consistent with the Court of Appeal’s decision in *UKM* at [139].

(i) For example, the long title of the Women’s Charter states that it is “an Act to provide for monogamous marriages”, which in turn is defined in s 2(1) of the Interpretation Act to mean “a marriage which is ... contracted as a voluntary *union of one man and one woman to the exclusion of all others during the continuance of the marriage*”. An immigration-advantage sham marriage, like in this case, is entered into solely for the purpose



of applying for PR and not with the intention to form a “*union of one man and one woman to the exclusion of all others during the continuance of the marriage*”.

(ii) Furthermore, s 46(1) of the Women’s Charter “sets out society’s aspirations of how marriage partners should behave”, and enshrines a legal expectation that husbands and wives are to take their marriage seriously as a permanent union which should be safeguarded (see *UKM* at [189], citing Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) at para 4.1).

140 Secondly, an immigration-advantage sham marriage would have been in *prima facie* breach of penal provisions even in 2007. I have identified s 5 of the PCA and s 57(1)(k) of the Immigration Act as provisions under which parties to such sham marriages have been prosecuted under. I should also highlight that an immigration-advantage sham marriage might possibly also constitute an offence of cheating *vis-à-vis* the Registrar of Marriages and ICA as defined under s 415 of the Penal Code (Cap 224, 2008 Rev Ed) and punishable under the relevant punishment provisions. Section 415 reads:

**415.** Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to “cheat”.

141 Thirdly, flowing from the two points above, it is unquestionable that had the Registrar of Marriages been aware that the marriage between the Deceased

and the Defendant was a sham and that they never intended to live as husband and wife but went through a marriage ceremony as a charade so as to enable the Defendant to obtain PR, he would not have issued a marriage licence. The parties to such a sham marriage would have, therefore, intended to defraud and deceive the Registrar of Marriages. In such cases, the institution of marriage is essentially being used for a fraudulent purpose.

142 In my view, having considered the three points above, it would be a perverse and unjust outcome if an intention to enter into a sham marriage does not constitute a lawful impediment to a proposed marriage. This would be entirely contrary to public policy, wholly inconsistent with existing penal provisions and would condone a fraud against the authorities. More importantly, this immigration-advantage sham marriage corrupts the institution of marriage which is sacrosanct. Therefore, it is not right that such sham marriages would be valid simply because they were entered into before 2016.

143 The Defendant contends that such a ruling would lead to “complications” to other statutes.<sup>106</sup> However, such concerns are not warranted.

(a) The Defendant states that a legitimate child may lose his “legitimacy” if his parents’ marriage is found to be a sham marriage. However, if the parties had indeed intended to have a child and to raise a child together, then that would clearly fall outside the definition of a sham marriage. This is because the parties would have contemplated that their marriage would result in a genuine marital relationship, taking it outside the definition of an immigration-related sham marriage.

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<sup>106</sup> DSA at pp 6 and 7.

(b) The Defendant also points out that under s 73 of the CLPA, a nomination by the policyholder of his spouse and/or children on his life insurance policy automatically creates a statutory trust in favour of the nominees. If the marriage is found to be a sham marriage, this statutory trust would no longer be valid and creditors of the deceased would be entitled to the moneys payable under the policy. However, if the marriage is, indeed, a sham marriage, there is no reason why the policyholder will nominate his purported spouse to be the beneficiary of his life insurance policy.

144 Therefore, I hold that the Marriage in this case, which was solemnised on 20 January 2007, is a void marriage under the Women’s Charter.

***Summary of findings on the second issue***

145 Parliament’s intention in enacting s 11A of the Women’s Charter *cannot* have been to affirm the validity of all immigration-advantage sham marriages that took place before that provision’s commencement date. That must be so, as couples of immigration-advantage sham marriages were prosecuted under the relevant statutes – notably, s 57(1)(k) of the Immigration Act and s 5(b)(i) of the PCA, and later s 57C of the Immigration Act. This demonstrates a general public policy against immigration-advantage sham marriages even prior to the enactment of s 11A of the Women’s Charter.

146 The existence of a general public policy against immigration-advantage sham marriages also means that an intention to enter into an immigration-advantage sham marriage constitutes a lawful impediment to a proposed marriage within the meaning of s 17(2)(d) of the Women’s Charter. A wrongful declaration that there was no lawful impediment thereby invalidates the

marriage licence, and renders a marriage void under s 22 read with s 105 of the Women's Charter.

### **Issue 3: The Defendant's status under various statutes**

147 The final issue is whether the Defendant is a “surviving spouse” under s 7 of the ISA and a “wife” under s 73 of the CLPA. This would determine whether the Defendant is entitled to the Deceased's estate (pursuant to s 7 of the ISA), CPF moneys (pursuant to s 25 of the CPF Act) and life insurance proceeds (pursuant to s 73 of the CLPA). As I have found that the marriage is void, it follows that the Defendant does *not* fall within the definition of these terms.

#### ***Whether the Defendant is a “surviving spouse” under s 7 of the ISA***

148 The ISA is a relatively short piece of legislation which, as stated in the long title, “make[s] provision for the distribution of intestate estates”. Of particular relevance in this case are the distribution rules set out in s 7 of the ISA.

149 The Deceased died intestate with neither a will nor CPF nomination made. He also did not have any children and his parents were no longer alive at the time of his passing. Therefore, the relevant rule for distribution is Rule 1 of s 7 of the ISA, which provides that the “surviving spouse ... shall be entitled to the whole of the estate”. As I have found that the marriage is void, it follows that the Defendant is not a “surviving spouse” under the ISA.

150 For completeness, I note that this result ties in neatly with the legislative intent embodied in the intestacy distribution rules set out in s 7 of the ISA. This reinforces the argument that a sham marriage, as defined in this case, is a void

marriage under the Women's Charter.

*The legislative intent of s 7 of the ISA*

151 The legislative intent of s 7 of the ISA was to *modernise* the rules of intestate distribution to give equal rights to both spouses, as discernible from the second reading of the Intestate Succession Bill 1966 (Bill 47 of 1966) (*Singapore Parliamentary Debates, Official Report* (12 December 1966) vol 25 at cols 563–565). The then-Minister for Law and National Development, Mr E W Barker, had observed that the law relating to intestate distribution in Singapore, prior to the enactment of the ISA, was contained in the Statute of Distributions 1670 (22 & 23 Car II c 10) (UK), a 17th century statute in England (“Statute of Distributions”). The then-Minister for Law and National Development had stated that the rules contained in the Statute of Distributions were outmoded, and had in fact been repealed in England. For example, under the Statute of Distributions, if a woman died intestate leaving a husband, he would be entitled to the whole of her estate. However, if a man died intestate leaving a wife, she would only be entitled to one-half of the estate. Therefore, the legislative intent of s 7 of the ISA was to *modernise* the rules of intestate distribution to give equal rights to both spouses.

152 The guiding principles underpinning the new rules contained in s 7 of the ISA were not expressly articulated by the then-Minister for Law and National Development. However, in England, the new law, as reflected in the Administration of Estates Act 1925 (c 23) (UK), was based on the *presumed intention or wishes* of the deceased person, as opposed to *historical precedent* (C H Sherrin and R C Bonehill, *The Law and Practice of Intestate Succession* (Sweet & Maxwell, 3rd Ed, 2004) at p 19). In fact, what had transpired was that

the new English law was based upon an actual examination of a large number of wills, in order to ascertain the wishes of the majority of testators. As explained by Professor Gareth Miller in *The Machinery of Succession* (Professional Books Limited, 1977) at p 92:

This reflects the now generally held view that, since the legislature is in effect making a will for the deceased, the rules of intestate succession should coincide as far as possible with the probable wishes of the majority of people who die intestate. In some countries, although this general approach has been adopted, the legislature has in some respects acted on the basis of policy considerations rather than on the basis of the probable wishes of the intestate.

153 There is no indication that Singapore’s new rules on intestate distribution had departed from this general approach based on the presumed intentions of the testator. Therefore, with this principle in mind, Parliament could not have intended for a party to a sham marriage to fall within the definition of a “surviving spouse” for the purposes of the ISA. This is because the *presumed* intention of the deceased must have been for his entire estate to be left to his parents and siblings, and not to a “spouse” in name with whom he had no genuine marital relationship.

154 If a sham marriage is a valid marriage, as a matter of logic, it ought to follow that the widow would be a “surviving spouse” and entitled to rely on the intestacy distribution rules. However, if a sham marriage is a void marriage, as I have found, then the widow is not a “surviving spouse” and this is consistent with the legislative intent underpinning the ISA.

***Whether the Defendant is a “surviving spouse” under s 25 of the CPF Act***

155 The term “spouse” appears frequently in the CPF Act. In this case, the relevant provision is s 25 of the CPF Act, which concerns how CPF moneys are

payable on the death of a CPF member. The Deceased did not make any CPF nomination. Therefore, the relevant subsection is s 25(2)(a) of the CPF Act, which reads:

**Moneys payable on death of member**

...

25.-(2) Subject to subsection (2A), where, at the time of the death of a member of the Fund, *no person has been nominated by him* under subsection (1), the total amount payable on his death out of the Fund shall be paid to the Public Trustee for disposal in accordance with —

- (a) the *Intestate Succession Act* (Cap. 146), if the member is not a Muslim at the time of his death;
- or

[emphasis added]

156 Strictly speaking, s 25 of the CPF Act does *not* contain the term “surviving spouse”. This term becomes relevant because s 25(2)(a) of the CPF Act provides that if the deceased has not made a nomination, it is the ISA that shall determine how the deceased’s CPF moneys are to be payable. As per Rule 1 of s 7 of the ISA, it is the “surviving spouse” who will be entitled to all the CPF moneys if there are no children and no surviving parent. This follows the general rule as regards how the deceased’s estate is to be distributed if there are no children and no surviving parent, which has been discussed above.

157 As I have found that the marriage is void, and that the Defendant is not a “surviving spouse” under s 7 of the ISA, it follows that the Defendant will not be entitled to rely on s 25 of the CPF Act to claim the Deceased’s CPF moneys.

*Whether a sham marriage is a “marriage” under s 25(5)(a) of the CPF Act*

158 A related issue is whether a sham marriage is a “marriage” under

s 25(5)(a) of the CPF Act, which reads:

(5) Any nomination made by a member of the Fund under subsection (1) shall be revoked —

(a) *by his marriage*, whether the marriage was contracted before, on or after 15th May 1980; or

...

[emphasis added]

159 Essentially, s 25(5)(a) of the CPF Act provides that where a CPF member has made a valid nomination, this will be automatically revoked as a matter of law upon his marriage.

160 In *Soon Ah See*, Leow JC held that a sham marriage did not fall within the definition of a “marriage” under s 25(5)(a) of the CPF Act. Therefore, it would *not* have the effect of invalidating a valid CPF nomination (*Soon Ah See* at [52]). This was notwithstanding his earlier finding that a sham marriage is a valid marriage under the Women’s Charter.

161 With respect, if a sham marriage is a valid marriage under the Women’s Charter, then it ought to follow that it will have the effect of automatically revoking a member’s prior CPF nomination, as with all other valid marriages. In contrast, if a sham marriage as defined in this case is a void marriage, then it is void *ab initio* and it is treated as though it never took place (*ADP v ADQ* [2012] 2 SLR 143 at [50]). Therefore, it would follow that a sham marriage will not have the effect of automatically revoking a valid CPF nomination.

162 This result is consistent with Parliament’s intent in introducing s 25(5)(a). As noted by Leow JC in *Soon Ah See*, s 25(5)(a) was introduced to prevent a situation where the immediate family of the deceased is left without



financial provision due to the inadvertent failure of the deceased to update his CPF nomination. However, a party to a sham marriage could not be said to be part of his immediate family (*Soon Ah See* at [52]).

163 Instead of finding that a sham marriage is a void marriage, Leow JC read down the meaning of “marriage” in s 25(5)(a) of the CPF Act. Conversely, in my judgment, a sham marriage is a void marriage and since it is void *ab initio*, it will not have the legal effect of automatically revoking a valid CPF nomination. Although this issue is not relevant in this case as the Deceased did not make a CPF nomination, it further reinforces the argument that a sham marriage is a void marriage as it attacks the very foundation of the marriage.

***Whether the Defendant is a “wife” under s 73 of the CLPA***

164 The next issue is whether the Defendant is a “wife” under s 73 of the CLPA and therefore entitled to claim the proceeds under any of the Deceased’s life insurance policies. Section 73(1) of the CLPA reads:

**Moneys payable under policy of assurance not to form part of the estate of the insured**

**73.—(1)** A policy of assurance effected by any man on his own life and *expressed*, before the date of commencement of section 10 of the Insurance (Amendment) Act 2009, *to be for the benefit of his wife or of his children or of his wife and children or any of them*, ... shall create a trust in favour of the objects therein named, and the moneys payable ... shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts. [emphasis added]

165 Essentially, under s 73 of the CLPA, a nomination by the policyholder of his spouse and/or children on his life insurance policy automatically creates a statutory trust in favour of the nominees. The moneys payable under this

policy will not form part of the estate of the insured or be subject to his or her debts.

166 Since I have found that the sham marriage is a void marriage, it will follow that the Defendant is not a “wife” under s 73 of the CLPA and will not be entitled to rely on this provision to claim the proceeds of any life insurance policy. In any event, I also note that there was no policy before me that was “expressed ... to be for the benefit of his wife”. Indeed, the Defendant was not even mentioned in any policy document. Section 73 will, therefore, not be brought into operation and there is no trust constituted in favour of the Defendant.

***Summary of findings on the third issue***

167 The Defendant is neither a “surviving spouse” under s 7 of the ISA nor a “wife” under s 73 of the CLPA.

**Summary of findings on all issues**

168 I reiterate that this judgment is only concerned with immigration-advantage sham marriages. In summary, I make the following findings.

169 Firstly, the Marriage was an immigration-advantage sham marriage. The Deceased had agreed to marry the Defendant to help her obtain PR status and he was paid a sum of money in return. In coming to this decision, I find that the couple did not live as husband and wife after the purported Marriage, that there was no financial support from the Deceased to the Defendant, and that there was no evidence of phone and electronic communication between them or photographs of the couple (other than their wedding photographs). Furthermore,

the objective evidence shows that the Defendant regarded himself as single. I place significant weight on the evidence of PW4, who was the most objective, credible and reliable witness. She had testified that the Deceased had informed her that the Marriage was a sham and that he was paid to enter into the Marriage in order to help the Defendant obtain PR status.

170 Secondly, I find that the Marriage is void. An immigration-advantage sham marriage is void under the Women's Charter. Although s 11A of the Women's Charter does not apply because the Marriage was solemnised before its operative date, it does not follow that immigration-advantage sham marriages before that date are valid. In this regard, I find that an intention to enter into an immigration-advantage sham marriage constitutes a "lawful impediment" to the proposed marriage. Immigration-advantage sham marriages contravene public policy and infringe penal laws such as s 5 of the PCA and ss 57C and 57(1)(k) of the Immigration Act.

171 Thirdly, it follows from my finding that the Marriage is void that the Defendant is not a "surviving spouse" under s 7 of the ISA or a "wife" under s 73 of the CLPA.

172 Given my findings above, I need not deal with the Plaintiffs' additional argument regarding the forfeiture rule.

### **Conclusion**

173 For the reasons given above, I make the following orders:

- (a) I grant the First Declaration that the Marriage between the Deceased and the Defendant was a sham marriage.

(b) I grant the Second Declaration that the Deceased's CPF moneys and all his other assets are to be distributed among the Deceased's immediate family members according to the prevailing laws, rules and regulations to the exclusion of the Defendant. For the avoidance of doubt, the entitlement of the Deceased's immediate family members will have to be subjected to the applicable bankruptcy provisions, if any, as the Deceased was an undischarged bankrupt.

174 As the Plaintiffs have succeeded in their claim, they are entitled to costs. The costs are to be taxed if not agreed by the parties.

Tan Siong Thye  
Judge

Kelvin Lee Ming Hui and Ong Xin Ying Samantha (WNLEX LLC)  
for the plaintiffs;  
George Reny Margaret and Melvyn Low Kok Keong (Belinda Ang  
Tang & Partners LLC) for the defendant.

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