IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 103

Suit No 1196 of 2018

Between

Lim Young Ching (Lin Yanzheng)

… *Plaintiff*

And

Lim Tai Ching (Lin Taizheng)

… *Defendant*

JUDGMENT

[Gifts] — [Inter vivos]
[Trusts] — [Express trusts]

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v
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19 May 2020 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 Lim Young Ching ("the Plaintiff") and Lim Tai Ching ("the Defendant") are siblings with the Plaintiff being the older brother. In Suit No 1196 of 2018, ("this Suit") the Plaintiff is claiming from his younger brother both movable and immovable properties that were part of the estate of their late mother. The siblings' father Lim Seng Giap ("the Father") passed away on 12 September 2010 while their mother Chew Ah Moy ("the Deceased") passed away intestate on 9 February 2013. The siblings were the only children of the Father and the Deceased. The Plaintiff is now 48 years old while the Defendant is four years younger. The Defendant is far better educated than the Plaintiff being an engineer with post-graduate qualifications while the Plaintiff holds an "O" levels certificate.

2 In this Suit, the Plaintiff alleges that substantial cash sums that he handed over the years to the Deceased prior to her demise are held by the Defendant. He requires the Defendant to account for those monies as well as to give the Plaintiff his 49.5% share in a Housing & Development Board ("HDB") flat situated at Block 22, Ghim Moh Link #39-204, Singapore 271022 ("the Flat"), which the Plaintiff requests to be sold. The Flat previously belonged to the Deceased and is currently occupied by the Defendant and his family.

The facts

3 Whilst the parties broadly agreed on the general sequence of events (*ie*, the chronology of major events that led to the present dispute), the Plaintiff and the Defendant offered very different slants in their respective affidavits of evidence-in-chief ("AEIC(s)"). In this section, I will canvass the salient facts whilst going through the parties' contrasting characterisations of the various key events.

The Plaintiff's characterisation of key events in his AEIC

4 The basis of the Plaintiff's claim goes back to 2008 when the siblings' parents lived at another HDB flat situated at Block 12A, Ghim Moh Road #14-28, Singapore 271012 ("the old flat"). The HDB acquired the old flat for selective en-bloc redevelopment and in its place, the HDB offered the parents the Flat. Payment for the Flat's purchase price of S$342,086.05 was made as follows:

Item	Amount
Proceeds from the sale to HDB of the old flat	S$254,004

Cash contribution from the Plaintiff	S$12,833.35
Contributions withdrawn from the Deceased's CPF account	S$21,684
The Defendant's CPF withdrawals	S$54,564.70

The total sum paid was S$343,086.05 (which was S$1,000 more than the purchase price of the Flat). The purchase of the Flat was completed on 19 October 2011. In addition to his contribution towards the purchase price of the Flat, the Plaintiff claimed he paid in November 2011 another S$82,385 towards the interior design and renovation cost of the Flat. As will be made clear, the Flat was at the heart of the disagreement between the parties.

5 The Father passed away in 2010. Upon his death, the Father's share in the old flat passed to the Deceased presumably, under the right of survivorship in a joint tenancy. The Deceased and the Defendant moved into the Flat in or about December 2011.

6 According to the Plaintiff, he went to work in foreign exchange companies in Russia starting from 1995. Over the years, the Plaintiff continued working in the foreign exchange industry, first in Russia, then in Japan (Tokyo), Indonesia, Cambodia, Myanmar and finally in Vietnam where he is currently based.

7 It was while he was working in Vietnam in 2006 that the Plaintiff met one Tran Thi Ngo Thanh, a Vietnamese lady who was his girlfriend at that point. They returned to Singapore together in 2007 and got married. With his wife, the

Plaintiff has had a daughter and a son. The Plaintiff deposed in his AEIC[1] that his family of three (including his daughter who was born in November 2007) lived at the old flat for about a year with his parents and the Defendant prior to the Father's demise. According to the Defendant, the Plaintiff's wife and the Deceased had a big fight one day and the Deceased chased out the Plaintiff's family.[2] The Defendant testified the Plaintiff had to rent a flat to house his family. The Plaintiff's son was born in January 2013 after he acquired his own HDB flat in 2009.

8 While working overseas, the Plaintiff claimed he made and lost a lot of money. When he made money, he said he would pass to the Deceased 30% of his salaries for safekeeping, starting in 2008. The first sum the Plaintiff handed to the Deceased was S$100,000 followed by S$28,000 which the Plaintiff deposed was used by his parents to repay the outstanding HDB loan on the old flat. It was also the Plaintiff's case that he doted on his younger brother so much that he gave the Defendant S$30,000 to help the latter buy a motor vehicle without the need to take out a car loan.

9 On 9 April 2008, the Plaintiff won S$1m ("the lottery winnings") from S$500 worth of 4D lottery tickets that he bought. He received the cheque for S$1m issued by Singapore Pools the next day and immediately deposited it into his POSB account number xxx-xxxxx-9 ("the Plaintiff's POSB account"). Upon the cheque's clearance, he said he transferred S$800,000 therefrom to the Deceased's DBS account on 12 April 2008. However the evidence produced in court showed that the Deceased placed into four deposits in her DBS joint fixed

[1] At para 11.

[2] See transcripts at p 313 on 21 Nov 2019.

deposit account number xxx-xxxxxx-17 ("the DBS joint fixed deposit account"), which she held jointly with the Defendant, only S$700,000, comprising three deposits of S$200,000 each and one deposit of S$100,000. The Plaintiff deposed in his AEIC that he did not know what the Deceased did with the remaining S$100,000 from the S$800,000 he gave to her, and postulated that she might have placed it "in another bank account, as she thought fit and proper".

10 In March 2009, the Plaintiff purchased a HDB flat at Block 7, Ghim Moh Road #13-267, Singapore 270007 ("the Plaintiff's Flat") at a price of S$594,527.60; completion of the purchase was scheduled for July 2009. The Plaintiff requested the Deceased to return his money to enable him to pay for the Plaintiff's Flat. The Deceased liquidated her various fixed deposits and transferred S$595,000 to the Plaintiff's POSB account.

11 The Plaintiff deposed he would give to the Deceased sums of money amounting to either "$10,000 or $20,000 or $30,000" in cash to hold on trust and left it to her to decide what she would do with his money. Although he deposed he did not keep track of the various sums of money he passed to the Deceased over the years until her demise, the Plaintiff nevertheless claimed he could recall roughly how much he had passed to her over the years. He deposed[3] that as recent as two months before her demise, *ie*, December 2012, he "remembered" handing over to the Deceased cash of S$100,000. In his AEIC, the Plaintiff termed those monies that he handed over to the Deceased for safekeeping as "entrusted monies".

[3] At para 56(c) of his AEIC.

12 The Plaintiff also had his own bank account (with HSBC) which he maintained from 2008 until he closed it in June 2010.

13 The result of the imprecise number of times (and the amounts) that the Plaintiff claimed he handed cash to the Deceased was that the Plaintiff's AEIC contained sentences such as:

(a) "This S$50,000[4] [in the DBS joint fixed deposit account] *could have been* monies given by me to my late mother." [emphasis added]

(b) "…giving smaller sum of $10,000 or $20,000 or $30,000 in physical cash to my late mother to hold upon trust, *she could have put* such monies of $50,000 and $100,000 in fixed deposits at fixed deposits unknown to me, which she withdrew and deposited into the said POSB sole account number XXXXXX10 and then placed them into fixed deposits…"[5] [emphasis added]

(c) "*It was possible* that I had the $100,000 in one lump sum as stated in paragraphs 39 to 41 above."[6] [emphasis added]

14 The Plaintiff deposed in his AEIC that besides the DBS joint fixed deposit account, the Deceased maintained a joint (alternate mandate) POSB savings account with the Defendant ("the POSB joint alternate account") as well as a separate POSB account in her sole name ("the Deceased's POSB sole account"). He dwelt at length on all three accounts.

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[4] Referring to the Deceased's DBS fixed deposit of $50,000 dated 1 March 2008 in his para 22.

[5] At para 38.

[6] At para 56(c).

15 By the Plaintiff's reckoning, the Deceased had at her death the following fixed deposits in the DBS joint fixed deposit account:

Deposit No	**Period of deposit**	**Withdrawal date**	**Interest rate**	**Principal & interest (in S$)**	**Remarks**
190606	20/06/2012–20/06/2013	21/05/2013	0.05	50,000 18.75	Premature Withdrawal
190607	20/06/2012–20/06/2013	21/05/2013	0.05	100,000 37.50	Premature Withdrawal
120405	13/10/2012–13/04/2013	-	0.25	100,000 124.66	-
131108	14/11/2012–13/05/2013	-	0.25	49,999 61.99	-
151109	16/11/2012–16/05/2013	-	0.25	49,999 61.99	-
120405	13/04/2013–14/10/2013	21/05/2013	0.00	100,124.66	Premature Withdrawal
131108	14/05/2013–14/11/2013	21/05/2013	0.00	50,060.99	Premature Withdrawal
151109	16/05/2013–16/11/2013	21/05/2013	0.00	50,060.99	Premature Withdrawal

Total				550,244.64 304.89	

In his AEIC,[7] the Plaintiff said the total deposits were S$350,302.89 (inclusive of interest thrown away). At another paragraph of his AEIC,[8] the Plaintiff deposed that as at 31 December 2010, the Deceased held five deposits, of which the principal amount totalled S$349,998.00 which she held in trust for him. At yet another paragraph of his AEIC,[9] the Plaintiff asserted that the total entrusted funds with the Deceased should be S$550,302.89.

16 The Plaintiff further claimed that as at the date of her demise, the POSB joint alternate account had a balance of S$140,183.80; he claimed he was entitled to 50% of this balance, amounting to S$70,091.90. As for the Deceased's POSB sole account, the balance was S$20,352.11 of which he claimed S$10,176.06.

17 As for the Flat, the Plaintiff claimed that the manner of holding of the HDB lease by way of a tenancy in common with 99% held by the Deceased and 1% held by the Defendant showed that the Deceased did not intend that whatever she possessed or inherited from the Father, or the money she held on trust for him, should devolve to the Defendant.

18 As the Deceased died intestate and the Plaintiff was often away from Singapore traveling to Cambodia and Vietnam, he renounced his right and

[7] At para 56(b).

[8] At para 44.

[9] At para 56(d).

entitlement to letters of administration of the Deceased's estate on 4 July 2013 with the result that the Defendant became the sole administrator of her estate.

19 The Defendant applied to the State Courts on 4 July 2013 for letters of administration to the Deceased's estate. The grant of letters of administration was issued to the Defendant on 24 July 2013. The only asset declared for the Deceased's estate was the Flat with the value stated to be S$594,000.

20 The Plaintiff deposed that on 21 December 2013, he transferred to the Defendant, in consideration of natural love and affection, his (the Plaintiff's) interest in the Flat (amounting to 49.5%) that devolved to him from the 99% interest the Deceased had in the Flat. The Plaintiff's version of events was that he had reached an oral agreement with the Defendant in or about December 2013. Under this agreement, the Plaintiff would transfer to the Defendant free of consideration the Plaintiff's share in the Flat. Subsequently, when the Plaintiff requested, the Defendant would sell the Flat and divide the net sale proceeds equally between them, in accordance with the Intestate Succession Act (Cap 146, 2013 Rev Ed).

21 The Plaintiff alleged that the Defendant gave the following reasons for the transfer of the Plaintiff's interest in the Flat to him to be free of consideration:

(a) the Defendant needed the Flat as he was getting married (which he did on 10 November 2013);

(b) the Defendant did not have sufficient funds and/or CPF monies to purchase a HDB flat;

(c) even if the Defendant had sufficient funds to purchase the Plaintiff's interest in the Flat, the Defendant would still have to pay stamp duty; and

(d) as the Flat was a family home, it would be better for the siblings to hold it in memory of their late parents for a while before it was sold in the open market.

The Plaintiff also deposed that the Flat could not be sold in the open market after the letters of administration of the Deceased's estate were extracted as the minimum occupation period (five years) had not yet been fulfilled.

22 The Defendant on the other hand asserted that he paid the Plaintiff S$325,000 on or about 16 June 2013 to buy over the Plaintiff's 49.5% interest in the Flat. This sum comprised S$294,030, representing 49.5% of the estimated value of the Flat, and an extra S$30,970 which was for the Defendant to show his appreciation for the Plaintiff's financial support over the years. This was not the only aspect where the Defendant's account of events materially deviated from that of the Plaintiff's. In fact, in his AEIC, the Defendant's version of other major events was completely different from that given by the Plaintiff, as can be seen from the paragraphs set out below.

The Defendant's characterisation of key events in his AEIC

23 According to the Defendant, when the Plaintiff started working in Russia in 1995, he would only return to Singapore every two or three years and would voluntarily give the Deceased about US$20,000 each time – the Deceased never asked the Plaintiff for this money. Sometime in 2000, the Plaintiff ran into some financial trouble in Russia. The Plaintiff asked the Father for help as he would not have been able to return to Singapore if he did not resolve his financial

issues. The Father thus used about S$200,000 of his pension money (from working as a police officer for almost 30 years until 1998) to bail out the Plaintiff who subsequently returned to Singapore.

24 Between 2001 and 2004, the Plaintiff conducted business in Russia remotely, from Singapore. Then in 2004, the Plaintiff ventured into business in Vietnam. He returned to Singapore occasionally and would hand to the Deceased sums of between S$5,000 and S$20,000 without being asked; the money was meant for housekeeping expenses.

25 As for the purchase of the Flat, the Defendant deposed in his AEIC that the Deceased included his name as purchaser as she intended for him to inherit the property upon her demise. This was around the time the Father passed on, in 2010. The Plaintiff's Flat had already been purchased by then.

26 When he, the Plaintiff and the Deceased visited the HDB's office in 2011 and they wanted to include the Defendant's name as co-owner, the Defendant was unaware of the differences between a joint tenancy and a tenancy in common. The HDB officer who was attending to them did not explain the differences either. The Plaintiff immediately told the HDB officer that 99% of the Flat would be held by the Deceased and 1% by the Defendant. Consequently, the Flat came to be held by the Deceased and the Defendant as tenants in common in the aforementioned ratio. The Defendant's usage of his CPF contributions of S$54,564.70 towards the purchase price of the Flat was disproportionate in comparison; his contribution amounted to about 16% (S$54,565.70 ÷ S$342,086.05) of the price of the Flat, whereas he owned only 1% of the Flat.

27 After the passing of the Deceased and her funeral, the Defendant contacted the HDB to inquire about transferring the Deceased's share in the Flat to himself. To his surprise, a HDB officer, one Mr Seah Bin Seng ("Mr Seah"), informed him that he would not inherit the Deceased's share as the lease was a tenancy in common. The Defendant was told to engage a lawyer to obtain either letters of administration (if there was no will) or a grant of probate (if there was a will) of the Deceased's estate. Mr Seah also informed the Defendant that the Flat would have to be divided equally with the Plaintiff in the event of intestacy.

28 The Defendant appointed a lawyer to apply for letters of administration of the Deceased's estate. He deposed that in order to save costs, he agreed with the Plaintiff that only the Flat would be listed as an asset of the Deceased's estate and they would distribute the rest of her assets amongst themselves (gold and monies in the Deceased's POSB sole account), which they did. Further discussions the Defendant held with the Plaintiff resulted in the following oral agreement:

(a) the Defendant would be the sole administrator of the Deceased's estate; and

(b) the Plaintiff would renounce all his rights and title to letters of administration of the Deceased's estate.

29 As regards the Flat, the Defendant told the Plaintiff that they could either:

(a) sell the Flat in the open market and divide the sale proceedings equally between them; or

(b) transfer the Flat to the Defendant as the Deceased intended in exchange for the Defendant's payment of S$325,000.

(collectively "the Proposal")

30 Before 17 June 2013, the Plaintiff reverted to the Defendant to accept para (b) of the Proposal but only on the condition that the Defendant was married. If the Defendant was not married by then, the Plaintiff required the Flat to be sold. The Defendant agreed as he and his girlfriend had already planned to get married in mid-2013 but postponed the wedding because of the demise of the Deceased. The Defendant then arrived at a second oral agreement with the Plaintiff in that regard. He paid the Plaintiff S$325,000 instead of half the declared value of the Deceased's share of the Flat, *ie*, 49.5% of the Flat's value amounting to S$294,030 (S$594,000 x 0.495) on 16 June 2013 because the Defendant wanted to compensate the Plaintiff for whatever monetary contributions the Plaintiff had made towards the Flat. The source of the Defendant's payment was "fixed deposit bank accounts held jointly by [the Deceased] and [the Defendant]", which monies devolved to him upon her passing – it was unclear, at the portion of the Defendant's AEIC where he asserted this, whether this was a reference to the DBS joint fixed deposit account (see [9] above).

31 On 6 August 2013, after the Defendant obtained the grant of letters of administration of the Deceased on 18 July 2013, he contacted Mr Seah of the HDB office to inquire as to the steps to be taken to transfer the Flat to his name. With Mr Seah's guidance, the Defendant applied for the transfer for which HDB granted its approval on 24 October 2013.

32 On 21 December 2013, both siblings attended at HDB's office to sign the transfer documents. With Mr Seah's assistance, the Defendant drafted for the Plaintiff's signature the following document:

> I, LIM YOUNG CHING (LIN YANZHENG), NRIC No. xxxxxxxxx, hereby give up my shares of the estate Blk 22 Ghim Moh Link #39-204 Singapore 271022 to LIM TAI CHING (LIN TAIZHENG), NRIC No. xxxxxxxxx.

The Plaintiff raised no objections to signing either the transfer or the above document.

33 Thereafter, the siblings pursued their respective careers while meeting regularly (they were close) until the Plaintiff began experiencing financial problems. The Defendant became aware of the Plaintiff's financial troubles sometime in February 2016. The Defendant understood from the Plaintiff that the Plaintiff's business in Cambodia was doing badly and his family was in financial difficulties. The Plaintiff said he wanted to venture into Myanmar for which he needed a sum of S$450,000 which he wanted to borrow from the Defendant. The Defendant told the Plaintiff he did not have such a huge sum to lend to him, whereupon the Plaintiff suggested that the Defendant sell the Flat. The Defendant reminded the Plaintiff that the Flat had been passed down to him (*ie*, the Defendant), and he had no intention of selling it. The Plaintiff then suggested that the Defendant mortgage the Flat.

34 The Defendant felt obliged to assist the Plaintiff even though he was reluctant to mortgage the Flat. However, when he made inquiries, he found out that HDB flats cannot be mortgaged. He thus informed the Plaintiff that he could not lend him S$450,000. The Plaintiff then asked if the Defendant could lend him some money from the latter's savings. The Defendant's wife was then due to deliver their daughter in May 2016 and although he needed money for his

wife's delivery and the baby's expenses, he nevertheless agreed to and did lend the Plaintiff S$71,300 in five tranches between March 2016 and January 2017.

35 After the Defendant had transferred the first four tranches of money to the Plaintiff, which amounted to S$65,000, the Plaintiff again requested for money. Between October 2016 and January 2017, the Plaintiff informed the Defendant of his difficulties in doing business in Myanmar. He requested the Defendant to lend him more money so that he could send some money to his family. The Defendant refused as his savings were depleted and he had to ensure that his family's needs were covered.

36 However, the Defendant still wanted to help the Plaintiff. He did so by selling the Deceased's jewellery on two occasions in January 2017 for S$6,250. He then transferred S$6,300 to the Plaintiff on 8 January 2017; that was the last of the five advances he made to the Plaintiff totalling S$71,300.

37 The Plaintiff did not stop there. He sent the Defendant multiple WhatsApp messages between 3 May and 11 May 2017, which the Defendant exhibited in his AEIC. In these messages, the Plaintiff asked the Defendant to lend him even more money.

38 Specifically, on 11 May 2017, the Plaintiff again raised the issue of selling the Flat. He informed the Defendant that he was in financial trouble and had incurred debts of S$450,000. That day, beyond asking the Defendant for more money, the Plaintiff in fact changed his tune: he claimed that he had a share in the Flat and he wanted to take back what was his. On that basis, he demanded that the Flat be sold. The Defendant rejected the Plaintiff's request, reminding him of the oral agreements that they had as set out at [28(b)] and [29(b)] above.

39 As an alternative to selling the Flat, the Plaintiff proposed that the Defendant give to the Plaintiff's wife a monthly sum of S$2,500 for household expenses. The Defendant declined the proposal as he could not see how that arrangement would help to pay the Plaintiff's debts. Moreover, in May 2017, the Defendant's wife had stopped working and he was the sole breadwinner in his family. According to the Defendant, the Plaintiff then gave him an ultimatum: the Defendant was either to allow the Plaintiff to move into the Flat, or he was to find money amounting to half the current value of the Flat (as at May 2017) and give it to the Plaintiff. The Defendant did not reply to this ultimatum – neither option was acceptable to him.

40 As a result, the Plaintiff became increasingly unhappy and continued to press the Defendant to sell the Flat. Things between the siblings came to a head on 22 May 2017 when the Plaintiff visited the Flat that night to try to resolve matters with the Defendant. The Plaintiff allegedly raised his voice and became increasingly agitated. The Defendant feared the Plaintiff may resort to violence. The Defendant thus ultimately relented that day and offered to sell the Flat to assist the Plaintiff with his debts. He agreed to try to sell the Flat by Chinese New Year 2018.

41 The Defendant qualified his agreement to sell the Flat with two conditions. First, he insisted that *he* would decide when he would sell the Flat and it would certainly not be at a loss. By then, the Flat was worth about S$900,000, and selling it would have netted the Plaintiff around S$450,000 (half of the sale price, as per his demands), which would have enabled the Plaintiff to clear his debts. Second, the Defendant would sell the Flat only after he had found a flat for his family to move to. The Defendant's conditions were captured in his WhatsApp messages to the Plaintiff on 23 May 2017

42 Unfortunately, the Defendant's agreement to sell the Flat made the Plaintiff even more eager to get it sold. He kept hounding the Defendant by sending WhatsApp messages, chasing him to make the sale. The Defendant was in no hurry to sell the Flat, and insisted on his conditions, as stated above, being met prior to any sale. The Plaintiff chased the Defendant on the following occasions:

(a) The Plaintiff sent a Whatsapp message to the Defendant on 10 June 2017 asking about whether there had been progress with the sale. The Defendant responded by saying he would sell no earlier than in 2018, and the Plaintiff should inform his creditor(s) who lent him money.

(b) That response earned the Defendant some respite from the Plaintiff who did not chase the Defendant again until 5 July 2017 via a WhatsApp message. The Defendant did not reply to this message.

(c) On 10 July, the Plaintiff asked again whether there was progress with the sale. The Defendant replied saying he had received offers below the market price of about S$980,000 at that point in time. He also had difficulty finding a suitably priced alternative flat for his family. In response, the Plaintiff accused the Defendant of "delay tactics".

43 A further exchange of WhatsApp messages between the siblings from July 2017 to September 2017 did not resolve the impasse or differences between the siblings. During this period, the Defendant gradually got tired of the Plaintiff's antics – despite the Defendant's best efforts in searching for a suitable buyer for the Flat, and despite having done the above with his brother's interests in mind, the Plaintiff simply accused the Defendant of "wanting to take his share of the Flat".

44 On the night of 24 September 2017, the Plaintiff met the Defendant at the void deck of the Flat's block. The Defendant claimed the Plaintiff was insistent and demanded that he sell the Flat. When the Defendant refused, the Plaintiff became even more agitated. Despite being reminded by the Defendant that he had been transferred S$325,000 by the Defendant in exchange for his share of the Flat, the Plaintiff repeatedly insisted that half of the Flat still belonged to him. The parties did not reach an agreement that night. After the Plaintiff left, the Defendant received a WhatsApp message from him stating he would look for the Defendant the following day.

45 The Plaintiff returned to the Flat on the night of 25 September 2017 but the Defendant refused to open the door to allow him entry. The Defendant's conduct infuriated the Plaintiff who shouted at the Defendant and caused a ruckus, prompting the Defendant to call the police. The Plaintiff only left the scene after the police arrived. The Defendant lodged a police report against the Plaintiff on 1 November 2017[10] as he felt threatened by the Plaintiff.

46 After first sending two letters of demand to the Defendant dated 10 October 2017 and 20 October 2017 respectively (the first of which the Defendant ignored on his lawyers' advice), the Plaintiff issued the Writ of Summons on 25 November 2018.

The pleadings

47 The Plaintiff's lengthy Statement of Claim (Amendment No 1) was almost a repeat of his AEIC and it serves little purpose to set out his pleadings.

[10] See the Defendant's exhibit LTC-1 at pp 115-116 of his AEIC.

In his AEIC, he referred repeatedly to the Statement of Claim as well as the Defence and Counterclaim.

48 The Defence also mirrored the Defendant's AEIC but not to the extent of the Plaintiff's AEIC and the Statement of Claim. The Defendant largely denied the Plaintiff's allegations and put him to strict proof in respect of his many claims, in particular the alleged oral agreement set out at [20] above. Apart from admitting that the Plaintiff won a lottery of S$1m, the Defendant denied the Plaintiff's other allegations. The Defendant:

(a) asserted that he is not obliged to account to the Plaintiff for any monies held in any joint bank accounts of the Defendant and the Deceased;

(b) averred that the Plaintiff was well aware that the monies in the Deceased's POSB sole account had been divided between the Plaintiff and the Defendant after the death of the Deceased;

(c) denied that any monies held in any joint bank accounts of the Defendant and the Deceased were held on trust for the Plaintiff;

(d) pointed out that any monies given by the Plaintiff to the Deceased were gifts from the Plaintiff and that included the renovations of the Flat that the Plaintiff paid for.

49 The Defendant averred that in making a claim for half of 99% of the Flat after transferring his legal interest in the same to the Defendant, the Plaintiff was in effect stating that he remained the beneficial owner of a 49.5% interest in the Flat and that this interest was held by the Defendant on trust for him. The Defendant relied on ss 51(8) and 51(9) of the Housing & Development Board

Act (Cap 129, 2004 Rev Ed) ("HDA") to deny the existence of such a trust, and to argue that such a trust would be null and void.

50 The Defendant admitted that the Plaintiff was entitled under the estate of the Deceased to a half share of 99% of the Flat but contended that he had purchased the Plaintiff's half share for S$325,000.

51 The Defendant counterclaimed from the Plaintiff the sum of S$71,300 referred to earlier at [34].

The evidence at trial

52 The Plaintiff and the Defendant were the only witnesses for their respective cases.

The Plaintiff's case

53 The main points of the Plaintiff's AEIC have been set out earlier at [4] to [21] above. I turn to the evidence that was adduced from him during cross-examination.

54 Notwithstanding the fact that he only had an "O" levels certificate, the Plaintiff testified that he started working at 23 years of age as a forex consultant in Russia after the country started to open its economy in 1989. Apparently, he was recruited by a Hong Kong company and went to Russia to train the people there on how to trade in foreign exchange.

55 The Plaintiff clarified he was not looking for a return of the S$28,000 he paid to HDB to redeem the outstanding loan on the old flat, nor the renovation cost of the Flat. He corrected his AEIC to say he could not remember small

sums of money he gave to the Deceased but he could remember if the sums were S$20,000 and above.[11]

56 Although he acknowledged he did not keep track of the sums of money he handed to the Deceased over the years, the Plaintiff testified that did not mean he did not know how much he had given her as he could easily trace from his bank statements. The Plaintiff's attention was drawn (by counsel for the Defendant) to para 14 of his AEIC which states:

> The first sum of monies given to the Deceased on trust was a sum of $100,000 followed by payment of $28,000 towards the outstanding HDB grant due and owing by the Deceased and the Plaintiff's late father.

The Plaintiff conceded he had no evidence to support his claim that he had given S$100,000 to the Deceased.

57 The Plaintiff said he did not require the Deceased to account for the small sums he handed to her, such as those amounting to S$5,000, but he expected her to account for big amounts like S$100,000, S$200,000 as well as the lottery winnings, although she was free to do what she liked with the interest she earned on the big amounts.[12]

58 The Plaintiff had deposed that he had handed S$100,000 to the Deceased in November 2010 for safekeeping after the demise of the Father. As with the first S$100,000 he claimed he gave to the Deceased (see [56] above), the Plaintiff had no evidence for the purported gift of this amount. Similarly, the Plaintiff had no evidence that he transferred S$800,000 to the Deceased from

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[11] Transcripts at pp 30–31 on 19 Nov 2019.

[12] Transcripts at p 45 on 19 Nov 2019.

his lottery winnings instead of the S$700,000 that was reflected in the DBS joint fixed deposit account statements that he himself produced. His contention that the S$100,000 went into the Deceased's other bank accounts was not substantiated. Equally, the Plaintiff had no evidence to substantiate his claim that he periodically handed to the Deceased sums of "$10,000 or $20,000 or $30,000" to hold on trust for him.[13] He claimed the monies came from *cash* withdrawn from his HSBC account as there was no evidence of bank transfers from that account.

59 Further, as regards the sum of S$100,000 purportedly given to the Deceased in November 2010, in the course of cross-examination, the Plaintiff shifted from his position in his AEIC. There,[14] he deposed that the Deceased could deposit his monies "as she fancied"; however, in court,[15] he testified that he told her to place the money in fixed deposit accounts.

60 When questioned by counsel for the Defendant as well as the court[16] on why he did not deposit his money into his own bank accounts instead of passing them to his mother, the Plaintiff explained as follows:

> A: I need cash. Sometimes I need cash to -- to -- to do my transaction.
>
> Q: Please listen to the question again. Is there any reason you did not put these monies in your own bank account?
>
> A: There are monies in my own bank account.
>
> …

[13] At para 38 of his AEIC.

[14] At para 43.

[15] Transcripts at p 97 on 19 Nov 2019.

[16] Transcripts at pp 120-121 on 20 Nov 2019.

COURT:	It is very simple. Why didn't you put the money in your own bank account? You said you have your own bank accounts?
A:	That's excess money, your Honour.
COURT:	I don't understand the meaning of "excess". All right. So you have too much money, you have to park it in somebody's else's, your mother's account.
A:	I need cash to --
COURT:	What has it go got to do with it, cash? So?
A:	I need cash to facilitate my business, sometimes I need cash to change to US dollars -- US dollars to Singapore dollars, because I am doing forex.he needed cash to facilitate his business, sometimes he needed to change his money into US currency or *vice versa* since he was in the forex business.

The answer made no sense. Upon being pressed by the court,[17] the Plaintiff explained the Deceased always told him to save money and that he could not control his spending. Hence, even though he had his own bank account, he gave his money to the Deceased for safekeeping.

61 During cross-examination, counsel for the Defendant also dispelled the Plaintiff's speculation set out in [13(a)] above. Counsel pointed out that the sum of S$50,000, which had been placed in the DBS joint fixed deposit account when the account had been opened in the joint names of the Deceased and the Defendant, was the Defendant's money. The money was withdrawn for the purchase of the Defendant's first car in August 2009, along with the Plaintiff's contribution of S$30,000. During cross-examination,[18] the Defendant disclosed that the Volkwagen vehicle he had purchased cost S$77,800. Apparently, in

[17] Transcripts at pp 121-122 on 20 Nov 2019.

[18] Transcripts at p 255 on 20 Nov 2019.

exchange for the Plaintiff's contribution of S$30,000, the Defendant would deposit S$1,000 monthly into the POSB joint alternate account,[19] which he maintained with the Deceased, until October 2011.

62 When questioned on whether his late parents had any savings of their own, the Plaintiff said the Deceased had no savings (from her job as a night-shift factory worker at Creative Technologies where she worked for two to three years)[20]; she spent her earnings on the siblings when they were schooling. As for the Father, he was a policeman who retired with only a pension of about S$80,000 to S$90,000.[21] Counsel for the Defendant inquired of the Plaintiff as to, if that was truly the case, how the Father managed to send him S$150,000 when he got into trouble in Russia. The Plaintiff claimed that the S$150,000 came from his funds, presumably with the Deceased, since he did not pass any money to the Father.

63 In general, it was difficult at times to know the Plaintiff's case as his position shifted constantly whenever it suited his purpose. At times the Plaintiff would say he was not looking to claim back interest earned by the Deceased on the fixed deposits she held; at other times he said he would claim those amounts because "it's not used".[22]

64 The Defendant produced the passbook for his late parents' joint POSB account[23] for the period from 28 October to 31 December 2012, which was

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[19] Transcripts at p 264 on 20 Nov 2019.

[20] Transcripts at p 235 on 20 Nov 2019.

[21] Transcripts at p 125 on 20 Nov 2019.

[22] Transcripts at p 81 on 19 Nov 2019.

[23] Exhibit D-1.

shortly after the Father's demise; the balance was S$4,618.22 as of 31 December 2012. There were no substantial sums in any of the entries.[24] In fact, it appeared to the court therefrom that the purpose of that joint account was to service the outgoings of the Flat or the old flat (property tax, town council and conservancy charges) as the case may be. The Defendant's own POSB account showed only a credit balance of about S$15,000 at the time of the demise of the Deceased.

65 Interestingly, the Plaintiff's re-examination revealed that despite his repeated claims (in his AEIC and on the witness stand) that he gifted the Defendant S$30,000 to buy the latter's first car, that sum was actually a loan which the Defendant repaid every month by transferring S$1,000 to S$2,000 to the POSB joint alternate account. These were sums which were to be held by the Deceased for the Plaintiff.

The Defendant's case

66 In many respects, the Defendant's testimony was diametrically opposed to the Plaintiff's evidence. Similar to the Plaintiff's evidence, I have canvassed the Defendant's evidence in his AEIC at [22] to [45] above. Herein, I focus on the evidence at trial.

67 On the witness stand, the Defendant affirmed the position in his AEIC (see [23] above) that the Plaintiff, while working abroad, would only return to Singapore once every two to three years and hand over to the Deceased each time US$20,000, equivalent to S$35,000 at the material time.

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[24] At 2AB8.

68 Counsel for the Plaintiff spent considerable time cross-examining the Defendant on his late parents' POSB accounts.[25] Despite the explanation from both the Defendant and his counsel that neither the Defendant nor DBS could provide records of bank statements of any POSB and/or DBS accounts going back more than seven years, the Plaintiff had persisted in his request for statement(s) of the DBS joint fixed deposit account for the period from April to June 2008.

69 The Plaintiff had made the request earlier in the proceedings[26] that appeared to the court to be a fishing expedition in the hope that he would find something to buttress his case. Yet, his counsel was not satisfied with the explanation given by DBS in its letter dated 5 July 2019[27] to the Defendant's solicitors that the bank required the Deceased's two account numbers before it could accede to the Defendant's request. The Defendant informed the court that he was unable to assist DBS as he no longer had any account numbers of the Deceased's bank accounts.

70 The Defendant had spent two years (2004–2006) working in China for a Singapore IT company. His take-home salary there of S$3,600 enabled him to build up a nest egg (80%–85% of his salary) due to the cheaper cost of living in China coupled with the favourable exchange rate *vis-à-vis* the Chinese Yuan and the Singapore dollar.

71 In cross-examination, the Defendant expanded on what transpired at the office of the HDB for the completion of the Flat. When the Plaintiff suggested

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[25] Transcripts at pp 240-242 on 20 Nov 2019.

[26] Transcripts at pp 106-107 on 19 Nov 2019.

[27] Exhibit D-2.

that the percentages of ownership in the Flat should be 1% in his favour and 99% for the Deceased as tenants in common, Mr Seah (the HDB officer) did not explain the significance of the arrangement to him. Instead, Mr Seah informed the Defendant that owning 1% in the Flat meant that the Defendant would give up his right to apply for a build-to-order ("BTO") flat which he and his wife-to-be had intended to apply for. In re-examination,[28] the Defendant testified that like a joint tenancy, he thought the survivor of a tenancy in common would inherit the entire flat. He further thought that if he needed to apply for a BTO flat later, he merely had to transfer back to the Deceased the 1% that he held in the Flat. At the time of completion, it did not matter to him that he was holding only a 1% share in the Flat as he intended to live with the Deceased.

72 As for the estate of the Deceased, the Defendant disclosed that whatever balance there was in the POSB joint alternate account that he held with her was meant to go to him. Whatever monies held by the Deceased in the Deceased's POSB sold account were meant to be divided equally between him and the Plaintiff, which had been done.

73 As for indicating the value of the Flat as S$594,000 in the schedule of assets of the Deceased's estate, the Defendant testified that around June 2013, he could not find any comparable sales of five room HDB flats similar to the Flat in the Ghim Moh area when he checked HDB's website. Hence, he searched areas like Dover, Clementi and Ghim Moh, took the highest and lowest prices of four room flats he could find and averaged them out to arrive at S$594,000.

[28] Transcripts at p 369 on 21 Nov 2019.

74 Counsel for the Plaintiff then drew the Defendant's attention to the Plaintiff's AEIC where he had exhibited[29] a list of prices of four HDB five room resale flats for the period from October 2017 to October 2018. Three flats were located at Ghim Moh Link while one was at Dover Crescent. The prices ranged from S$738,000 (for the Dover Crescent flat) to S$975,000. The Plaintiff had also exhibited[30] a separate bare list without headings and sources that seemed to show that a five room flat at Block 7, Ghim Moh Road (where he lives) was transacted at S$868,000 in February 2013. Apart from the fact that the flat appeared to be located between the 19th to 21st floors, there were no details provided as to the condition of the flat. The court cannot, without more, accept such a bare list as evidence, let alone conclusive evidence that the Flat was worth S$868,000 in 2013.

75 The court pointed out to the Plaintiff's counsel that he and the Plaintiff were wrong to say the Flat was valued at S$594,000. When the Defendant paid the Plaintiff, on 17 June 2013, S$325,000 for his 49.5% share, the Flat was in effect valued at S$656,666 (S$325,000 ÷ 49.5 x 100%).

The issues

76 Based on the pleadings and the evidence adduced in court, the court accepts the Defendant's submissions that the following issues arise for the court's determination:

(a) How much money did the Plaintiff pass to the Deceased?

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[29] At p 262.

[30] At p 261 of his AEIC.

(b) Were the sums the Plaintiff passed to the Deceased held on trust for him or gifts to her, from a son to his mother?

(c) Were the sums in the POSB joint alternate account and the DBS joint fixed deposit account of the Defendant and the Deceased meant to go to the Defendant under the right of survivorship or were they meant to form part of the Deceased's estate?

(d) Was the Defendant's payment to the Plaintiff of S$325,000 in June 2013 meant as consideration for the Plaintiff's 49.5% share in the Flat?

(e) Do the oral agreements in [28] and [29] amount to the creation of a trust in the Flat in favour of the Plaintiff?

(f) If a trust was indeed created, would ss 51(8), 51(9) and 51(10) of the HDA render the trust void?

(g) Is the Defendant entitled to his counterclaim from the Plaintiff?

The findings

(a) How much money did the Plaintiff pass to the Deceased?

77 The Plaintiff's case was that the first time he handed money to the Deceased was in a sum of S$100,000 followed by S$28,000 (at [56] above). There were no details furnished as to when he gave the Deceased the S$100,000 and no evidence whatsoever was produced in support of the claim. As for the S$28,000, after flip-flopping a few times, the Plaintiff eventually informed the court that he was not making a claim for this amount.

78 Next, the Plaintiff claimed he gave S$800,000 to the Deceased from his lottery winnings on 12 April 2008. However, the DBS joint fixed deposit account at [9] above showed that the Deceased placed into four fixed deposits on 12 April 2008 a total of S$700,000. Apart from his say-so, there was no evidence that the Plaintiff handed to the Deceased S$800,000 instead of S$700,000. There would have been no reason for the Deceased not to have placed into a fixed deposit the extra S$100,000 the Plaintiff claimed to have given to her if that was true.

79 Then, there was the Plaintiff's claim that he handed the Deceased another S$100,000 shortly after the Father's demise (see [58] above), again without any supporting evidence.

80 The Defendant on his part had denied the Plaintiff's two claims in [77] and [79] with the result that the Plaintiff must discharge the burden to prove he had passed an additional S$200,000 to the Deceased on top of the S$700,000 reflected in the DBS joint fixed deposit account. He has not done so.

81 Consequently, it is this court's finding that the only evidence before the court shows that the Plaintiff handed to the Deceased S$700,000.

(b) Were the sums the Plaintiff passed to the Deceased held on trust for him or gifts to her, from a son to his mother?

82 It was the Plaintiff's evidence[31] that the reason he requested the Defendant to assist the Deceased in opening fixed deposit accounts was due to the fact that the Deceased was illiterate – she could not sign her signature but affixed her thumbprint to bank documents. That being the case, it is hard to

[31] Transcripts at p 57 on 19 Nov 2019.

believe that the Plaintiff could have told her, when he passed her money, that she was to hold the sums on trust for him. Would she have understood if he had? I believe it is highly unlikely that she would have or did.

83 In any event, the necessary three elements to create a trust at law (as submitted by the Defendant relying on T H Tey, *Trusts, Trustees and Equitable Remedies* (LexisNexis, 2010) at pp 101–102, and which the court accepts)[32] are certainty:

(a) of intention to create a trust;

(b) of the property in respect of which the trust is to be created; and

(c) of the beneficiaries of the trust.

84 Since there was no written agreement, if any trust existed in this case, it would have been made orally by the Plaintiff. Looking at the evidence as a whole, it would be difficult to ascertain how a trust could have been established. In the (amended) Statement of Claim[33] the Plaintiff stated that the monies he started handing to the Deceased from 2008 onwards were to be held on trust for him and partly for her enjoyment.

85 In the course of his testimony, the Plaintiff changed his case and the quantum of his claim several times. At first, he wanted to recover the S$28,000 he claimed he paid to redeem the mortgage on the old flat. He then changed his mind and said it was a gift to the Deceased.

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[32] See the Defendant's closing submissions at para 51 citing extracts from T H Tey, *Trusts, Trustees and Equitable Remedies* (LexisNexis, 2010) at pp 101–102.

[33] At para 6(b)(1).

86 In court, he said (see [57]) that he did not expect the Deceased to account for small sums such as S$5,000 or S$4,014.80[34] and she could do what she liked with the interest she earned from the fixed deposit sums, but at a later stage (see [63]), he said he wanted to claim back the interest as it was not used.

87 At [13], I had commented on the imprecision of the Plaintiff's claim. Then, at [15], I had set out the three amounts which the Plaintiff claimed the Deceased had in fixed deposits (the two sums differed) and then what the Plaintiff claimed she held on trust for him namely S$550,302.89. The result is that the court has no idea what was/were the actual amount(s) the Plaintiff claims he "entrusted" to the Deceased. For this reason as well as the court's observations in [13] and [85], the court was not impressed with the Plaintiff's veracity. The Defendant's evidence was to be preferred.

88 Assuming *arguendo*, that there was indeed a trust created over the large sums (more than S$100,000 according to the Plaintiff) that the Plaintiff had handed over to the Deceased for safekeeping, the undisputed evidence showed that the total sum was likely only S$700,000. It is common ground that the Deceased returned to the Plaintiff S$595,000 for the purchase of the Plaintiff's Flat. In addition, taking the Plaintiff's evidence (at [62]) at face value, that it was his own money (S$150,000) that the Father remitted to him in Russia to get him out of trouble, the two sums total S$745,000 (S$595,000 + S$150,000). The Deceased had effectively returned to the Plaintiff all the money that she allegedly safe-kept for him.

[34] At para 31 of his AEIC.

89 There is no conclusive evidence of how much the Plaintiff handed over to the Deceased over the years in small amounts whenever he returned from Russia (which the court accepts was once every two to three years as the Defendant testified and not once every year as the Plaintiff claimed). Even if the sums were as substantial as S$35,000, it is the court's finding that those sums were gifts from a son to his mother, to help her pay for the family's upkeep as well as to meet the outgoings of the old flat and, subsequently, the Flat.

90 The Plaintiff's position was that he was the sole source of the Deceased's fixed deposits. That stand ignores the fact that the Father worked for more than 30 years in the police force and retired with a pension. Accepting the Plaintiff's own evidence[35] that the Father's last drawn salary before retirement was S$3,000, his pension would have been two thirds of that salary. Surely it would have been more than likely than not that the Father had S$300,000 in savings as the Defendant testified,[36] rather than S$80,000 to S$90,000 as the Plaintiff claimed at [62]. When the Father passed on, the Deceased inherited his savings. Since it was the Plaintiff's case that the Father remitted the Plaintiff's monies to him in Russia to bail out the Plaintiff when he was in trouble, that meant that the Father's savings were intact. As the Father's pension came with medical benefits[37] for himself and the Deceased, it also meant that the Father did not have to spend his savings on medical fees/expenses. It logically follows that not all the sums the Deceased left to her estate are attributable to the Plaintiff as the source.

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[35] Transcripts at p 234 on 20 Nov 2019.

[36] Transcripts at p 240 on 20 Nov 2019 and para 15 of the Defendant's AEIC.

[37] Transcripts at p 234 on 20 Nov 2019.

(c) Were the sums in the POSB joint alternate account and the DBS joint fixed deposit account meant to go to the Defendant under the right of survivorship or were they meant to form part of the Deceased's estate?

91 To determine this issue, the court turns its attention to a case cited by the Defendant – that of *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") where the Court of Appeal dealt with the presumptions of resulting trust and advancement.

92 Although the facts of that case concerned immovable properties held under joint tenancies by the appellant wife and her late husband, the principles set out in the case are no less relevant in cases of joint tenancies between parents and their children.

93 The Court of Appeal dealt with parent-child relationships or parties in *loco parentis* giving rise to the presumption of advancement commencing from [62] onwards of the judgment. It then went on to say at [68]:

> At this point, it should briefly be mentioned that, despite the majority view in *Pecore* ([56] supra) that the presumption of advancement in parent-child relationships should not apply to independent adult children, we do not see any reason to confine the application of the presumption in the same manner. Indeed, we are more inclined to the view of Abella J in *Pecore*, which regarded the presumption of advancement as emerging no less from affection than from dependency and thus would logically apply to all gratuitous transfers from parents to any of their children, regardless of the age of the child or dependency of the child on the parent (see [90]–[103] of *Pecore)*…

94 The Court of Appeal in *Lau Siew Kim* approved and followed its earlier decision in *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 ("*Low Gim Siah*"). In that case, the Court of Appeal had to determine whether monies held in six bank accounts jointly by the deceased and one of his sons, LGB, would go to LGB as the joint account holder under the right of survivorship, or LGB held those monies on a resulting trust for the

estate. The Court of Appeal held that on the facts, the presumption of advancement was rebutted and the monies in the bank accounts were held on a resulting trust for the deceased's estate. At [47], Chan Sek Keong CJ said:

> …The proper principle to apply in relation to rebutting the presumption of advancement was that the more readily the presumption may be inferred from the relationship, the greater was the evidence needed to rebut it and, conversely, the less readily the presumption was inferable, the lesser was the evidence needed to rebut it…

95 Applying the principles extracted from *Lau Siew Kim* and *Low Gim Siah*, the court finds that the evidence in this case clearly points to the Deceased's intention to leave the monies in the POSB joint alternate account and the DBS joint fixed deposit account to her younger son, the Defendant. Unlike the Plaintiff who was married and living elsewhere with his family, the Defendant was unmarried and lived with the Deceased. The Defendant also placed his own monies in the aforementioned accounts. Separately, he and the Deceased maintained POSB accounts in their individual names. The burden was on the Plaintiff to rebut such evidence pointing to the Deceased's intention to allow the Defendant, as her joint account holder, to retain the benefit of the funds in the said accounts upon her demise. The Plaintiff failed to discharge that burden of proof.

96 When the court questioned the Plaintiff (see [60] above) on why he did not put the money that he passed to the Deceased into his own HSBC account, his answer (which followed several answers that were incoherent did not assist him at all; see [60] above) that it was because he was a spendthrift made no sense. Even if he could not control his spending, he could have opened joint or fixed deposit accounts (based on alternative mandates) with the Deceased and let her keep the passbook(s), the ATM card(s) and/or fixed deposit receipts (if applicable). That would have been some measure of control over the Plaintiff's

spending. He would not have been able to withdraw funds if he did not have access to the passbooks or the ATM card(s).

(d) Was the Defendant's payment to the Plaintiff of S$325,000 on 16 June 2013 meant as consideration for the Plaintiff's 49.5% share in the Flat?

Burden of proof on this issue

97 Preliminarily, the Plaintiff relied on *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471[38] ("*SCT Technologies*") to submit that the burden of proof was not on the Plaintiff but on the Defendant to prove that the S$325,000 paid to the Plaintiff was for the Plaintiff's half share in the Flat.[39]

98 The court does not view the Court of Appeal's decision in *SCT Technologies* as of any assistance for the Plaintiff's argument that the burden of proof should be reversed in this case as can be seen from the facts set out in the decision. There, the appellant sued the respondent to recover a fixed sum owing under three partially unpaid invoices. The respondent's defence was that the claimed amount had been paid in full relying on bank statements that recorded certain payments that had been made to the appellant. However, the bank statements did not record the purpose for which the payments were made and none of the bank statements recorded payments of amounts which mirrored the total value of any of the three invoices dollar for dollar.

99 The Court of Appeal reversed the High Court's finding that the burden of proof was on the appellant to prove the purpose of the undisputed payments.

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[38] At para 65 of his closing submissions.

[39] Based on the Defendant's pleaded case at para 10(e) of the Defence.

It held that the burden remained on the respondent to prove that the bank statements showed it had paid the appellant's three invoices which it failed to discharge.

100 In this case, it is common ground that the Defendant paid and the Plaintiff received S$325,000 on 16 June 2013. What is in issue and which the court has to determine is, what was the purpose of that payment – whose version of the purpose of the payment should the court accept? There is no reversal of the burden of proof to the Defendant in such a scenario.

101 On the evidence, I am persuaded by the Defendant's case on this issue. I accept that the S$325,000 was intended to be consideration for the Plaintiff's share in the Flat. It was highly improbable, given the circumstances, that that payment would have been intended as repayment to the Plaintiff for sums he allegedly handed to the Deceased prior to her passing.

Evidence showing that the S$325,000 payment was intended to be consideration for the Plaintiff's 49.5% share in the Flat

102 It is the court's finding on a balance of probabilities that the S$325,000 payment to the Plaintiff was made by the Defendant to buy over the Plaintiff's 49.5% share in the Flat. As a starting point, and as mentioned at [95] above, the presumption of advancement applied in favour of the Defendant to whatever sums left by the Deceased in the DBS joint fixed deposit account and POSB joint alternate account (including the alleged S$350,000) held with the Defendant. The Defendant had the right to these monies. Even if the Defendant had decided not to return the Plaintiff whatever balance monies the Deceased held which purportedly originated from the Plaintiff, it does not change the legal position – the right of survivorship allows the Defendant to retain the monies

his late mother left in their joint accounts. They were his to deal with, and he chose to use them to purchase the Plaintiff's 49.5% share in the Flat.

103 Pursuant to the oral agreement reached between the siblings (at [30]) upon the Plaintiff's acceptance of para (b) of the Proposal (see [29(b)] above), the Defendant paid the Plaintiff the sum of S$325,000 in exchange for the latter's share in the Flat. The circumstances support the Defendant's claim that such an agreement existed. There was relative temporal proximity between the transfer of the S$325,000 (in June 2013) and the transfer of the Plaintiff's share in the Flat (the paperwork for which was done between August and December 2013). There is thus evidence of a nexus between the sum of S$325,000 and the transfer of the share in the Flat. In contrast, not a shred of evidence has been adduced showing that the transfer of S$325,000 had anything to do with repayment for the sums the Plaintiff purportedly handed the Deceased. There were no WhatsApp or text messages to this effect.

104 In fact, there is no evidence that there was still any outstanding sum owed to the Plaintiff by the Deceased that would call for any repayment. As mentioned at [88], the court is of the view that the only clear evidence adduced showed that the Plaintiff gave S$700,000 to the Deceased. By mid-2013, he had in effect been repaid S$745,000. The sum of S$325,000 could therefore not have been partial repayment (as the Plaintiff claimed) of the Plaintiff's monies.

105 The Plaintiff now belatedly asserts that the sum of S$325,000 is an undervalue for the Plaintiff's half share. This assertion does not aid him for two reasons. First, the Plaintiff's claim on the value of the Flat is unbelievable. It is noteworthy that at the material time, the Plaintiff did not complain, did not ask the Defendant for the basis of the Flat's valuation being S$594,000 and did not ask for a proper valuation to be carried out to ascertain its true or correct value.

He was happy to accept S$325,000 from the Defendant and he should not be allowed to resile from that position. Indeed, in any event, the court had earlier (at [74]) commented that there was no reliable evidence that the Flat was worth S$868,000 (or any other value) in mid-2013. Second, even if the court accepts that the Flat was worth more, it does not change the fact that the S$325,000 would still have been a part payment reflecting a portion of the value of the Flat, pursuant to the oral agreement (at [30]). A different Flat value does not change the nature of or intention behind the payment.

106 To reinforce his contention that the S$325,000 was a refund of his money, the Plaintiff then pointed to the fact that the transfer of his share in the Flat to the Defendant was stated to be for "natural love and affection". The short answer to this argument is that the transfer for "natural love and affection" meant no *ad varolem* stamp fees were payable on the Transfer instrument. The siblings simply wanted to save money. The label of "natural love and affection" did *not* mean that the sum of S$325,000 was not consideration for the Plaintiff's share in the Flat.

107 The Plaintiff's submissions also placed great emphasis[40] on the WhatsApp message from the Defendant to the Plaintiff on 14 May 2017[41] that suggested (according to the Plaintiff) that the Defendant admitted he would give the Plaintiff his "share" in the Flat. The suggestion is that the sum of S$325,000 could not have been consideration for the Plaintiff's share of the Flat given that the Defendant subsequently admitted that the Plaintiff still held a share in the same. What the court notes is that the Plaintiff was pressing the Defendant

[40] At para 62 of the Plaintiff's closing submissions.

[41] At para 94 of the Plaintiff's AEIC.

relentlessly between May and September 2017 for money to the tune of S$450,000. It seems to the court that, in order to stop the Plaintiff from hounding him further, the Defendant (foolishly I would add) agreed to give the Plaintiff his "share". Consequently, I do not set great store on the Defendant's alleged "admission".

The significance of the transfer of the sum of S$25,000 to the Plaintiff

108 The Plaintiff's closing submissions[42] and reply submissions[43] made much of the fact that the Defendant did not attempt in his AEIC or oral testimony to explain the S$25,000 that he transferred to the Plaintiff on 12 June 2013.[44] That amount, together with the subsequent S$325,000 that the Defendant transferred to the Plaintiff, equated the sum of S$350,000 that the Defendant withdrew from the five fixed deposits the Deceased had at the date of her demise. The Defendant transferred the sum of S$350,000 to his own POSB account on 21 May 2013. The Defendant then transferred both sums to the Plaintiff – the S$25,000 on 12 June 2013, and the $325,000 on 16 June 2013. The Defendant had admitted[45] that his payment of S$325,000 to the Plaintiff came from the Deceased's fixed deposits.

109 The Plaintiff claimed that the total sum of S$350,000 was part of the refund to him of his monies entrusted to the Deceased. In particular, the Plaintiff described the S$25,000 payment to him by the Defendant as "an elephant in the room" that the Defendant had failed to address in his AEIC or in his closing and

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[42] At paras 50-52.

[43] At paras 14-16 .

[44] At paras 68 and 73 of the Plaintiff's AEIC.

[45] At para 64 of his AEIC.

reply submissions. All that the Defendant did was to deny[46] that the S$350,000 he paid the Plaintiff was repayment of the funds entrusted by the Plaintiff to the Deceased. On the other hand, the Plaintiff was not cross-examined or challenged on his testimony regarding the sum. Hence, citing the principle in *Browne v Dunn* (1893) 6 R 67, the Plaintiff submitted that his testimony on the S$25,000 being part repayment of his monies was neither challenged nor contradicted and must therefore be accepted.

110 In the court's view, the Plaintiff's repeated emphasis on this point is tenuous and does not advance his case on the issue of the nature of the S$325,000 payment. There are three critical reasons why.

111 First, and most critically, the Plaintiff would be unjustly enriched if he were to be awarded judgment in relation to the sum of S$350,000. I earlier found that there is no sum outstanding from the Deceased to the Plaintiff (see [104] above). As noted, the Plaintiff has only succeeded in proving that he passed the Deceased S$700,000; he also acknowledged that he received S$745,000 from the Deceased and the Father (see [88] above). Adding the sum of S$350,000, the Plaintiff would have received $1,095,000, far more than any amount he has proven to have given the Deceased. In fact, this exceeds even the amount the Plaintiff *claims* to have given the Deceased on his own case (which was S$800,000 + S$100,000 + $100,000 = $1m; see [77] to [79] above).

112 Second, while the Plaintiff has not been seriously challenged in cross-examination on this point, the Defendant has, at the least, denied that the S$25,000, as part of the larger sum of S$350,000, was intended to be repayment

[46] Transcripts at p 359 on 21 Nov 2019.

to the Plaintiff. That being the case, there are but bare assertions emanating from both sides, and the burden of proof remains on the Plaintiff, who alleges the fact, to prove his case. The Plaintiff must prove a nexus between the S$25,000 and the funds allegedly entrusted to the Deceased by him, *ie*, that the former was intended to be part repayment of the latter. The court struggles to see any evidence to this effect.

113 Third, assuming *arguendo* that I accept the Plaintiff's assertion that the S$25,000 was a repayment to him for sums he had passed to the Deceased, this would at best suffice as proof of a further S$25,000 amount owed (by the Deceased to the Plaintiff). It does not necessarily follow that the sum of S$325,000 must likewise have been intended as a repayment; the circumstances suggest they were urelated transfers. The transfers were on different days in June 2013. If they were meant to, together, be a lump sum repayment to the Plaintiff amounting to S$350,000, I struggle to understand why they were not transferred together in a single transaction. At that point, the Defendant had the entire S$350,000 sum in his own bank account. He could have easily transferred the entire sum in one tranche; he did not.

114 On the evidence, therefore, it is clear on multiple counts that the S$325,000 was in fact not repayment to the Plaintiff, but consideration for the Plaintiff's share in the Flat.

(e) Do the oral agreements between the parties at [28] and [29] amount to the creation of a trust in the Flat in favour of the Plaintiff?

115 In light of [103] and [104], the court finds that there was no trust created in favour of the Plaintiff. I would add that the Plaintiff, in his closing submissions, sought to say that the Plaintiff was not asserting a trust over his share that of the Flat but only a contractual right that when the Defendant sells

the Flat, he is contractually obliged to pay the Plaintiff his 49.5% share. This submission is untruthful as in the Statement of Claim, at para (a)(iii) of the reliefs, the Plaintiff has prayed for:

> an order that the defendant to sell the HDB Flat within seven (7) days from the date of Judgment;

The Plaintiff wants the court to grant him an order to force the Defendant to sell the Flat and pay him his alleged share – the court will not do so.

(f) If a trust was indeed created, would ss 51(8), 51(9) and 51(10) of the HDA render the trust void?

116 If the court's finding in [115] is erroneous and there was indeed a trust created in favour of the Plaintiff by the oral agreement referred to in [30], the provisions in s 51 of the HDA would render the trust void. The relevant subsections of s 51 read as follows:

> (8) No trust in respect of any protected property [ie a HDB flat] shall be created by the owner thereof without the prior written approval of the Board.
>
> (9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.
>
> (10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

117 The two cases cited by the Plaintiff on s 51 of the HDA, namely *Teo Ai Hua (alias Teo Jimmy) and another v Teo Mui Mui* [2011] 3 SLR 935, and *Philip Antony Jeyaretnam and another v Kulandaivelu Malayaperumal and others* [2020] 3 SLR 738 are not relevant.

118 The Plaintiff has also quoted out of context the extract from *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (at [10]) set out at para 25 of his reply submissions. He cited the following extract:

> …It becomes clear when one has regard to that statement that Parliament's intention was *not* to prevent any interest in an HDB flat arising under a resulting trust or a constructive trust regardless of the circumstances, but rather to prevent any entitlement to own an HDB flat arising in favour of a person by virtue of the law implying a resulting or constructive trust, where that person would otherwise have been ineligible to acquire such an interest. In my judgment, having regard to the mischief underlying the section, the provision was not intended to have any application where the parties concerned were already entitled to some interest in the property and therefore no issue could arise as to their eligibility to such entitlement. In such circumstances, the parties concerned would not be claiming to *become* entitled to own an interest in the flat by virtue of the implied trust and there would be no concern of their bypassing the eligibility criteria set by the HDB from time to time.

It is clear from the extract he cited that his ownership of the Plaintiff's Flat would have rendered him ineligible to have any interest in the Flat under the provisions of the HDA.

119 The court in *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 said very much the same thing (at [18]).

(g) Is the Defendant entitled to his counterclaim from the Plaintiff?

120 The Defendant's evidence on his transfer of S$71,300 to the Plaintiff via five tranches (see [34] above) has not been seriously challenged. The Plaintiff's case was essentially that the S$71,300 was not a loan, but instead part repayment of the "entrusted fund[s] to be given to him" which had been held in the DBS

joint fixed deposit account.[47] As I have found above that any sums due to the Plaintiff from the DBS joint fixed deposit account would already have been effectively repaid in full (see [88] above), the Plaintiff's assertion in this regard must fail.

121 Further, the court believes and accepts the Defendant's testimony that whatever monies the Deceased left behind in the Deceased's POSB sole account have been divided equally between the Plaintiff and the Defendant; such was also the case with her jewellery. The Defendant sold *his* share of her jewellery to lend S$6,300 to the Plaintiff in January 2017 (see [36]). That being the case, the five transfers totalling S$71,300 from the Defendant to the Plaintiff, properly construed, were loans which the Plaintiff is obliged to repay.

122 In the light of the above findings, the court dismisses the Plaintiff's claim and awards judgment to the Defendant for S$71,300 on his counterclaim. The Defendant is awarded one set of costs for the Plaintiff's claim and his counterclaim but with full disbursements.

Lai Siu Chiu
Senior Judge

[47] Transcripts at p 364 on 21 Nov 2019.

Lau See-Jin Jeffrey (Lau & Company) for the plaintiff;
Justin James Zehnder & Kertar Singh s/o Guljar Singh
(Kertar & Sandhu LLC) for the defendant.
