Chiang Shirley *v* Chiang Dong Pheng
[2015] SGHC 98

Case Number : Suit No 524 of 2011

Decision Date : 10 April 2015

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Plaintiff in person; Ernest Balasubramaniam and Jispal Singh s/o Harban Singh (UniLegal LLC) for the defendant.

Parties : Chiang Shirley — Chiang Dong Pheng

Probate and Administration – executors – appointment to office

Probate and Administration – executors – acts before grant

10 April 2015 Judgment reserved.

Judith Prakash J:

Introduction

1 In this involved and strenuously fought out matter, a sister is challenging her brother's right and suitability to be the executor and trustee of their mother's estate. As this is a family dispute, the sad fact is that it covers years of disagreement, hurt feelings and actions taken by one or another sibling in respect of their parents and each other which have engendered deep-felt animosity. Thus, to decide the issues in the case, there would have to be a rather thorough exploration of family history and issues of the kind that most people prefer to keep securely locked away from public view.

2 This action concerns the estate ("the Estate") of Mrs Chiang Chia Liang nee Ho Fan Ching Florence ("Mdm Ho"). Mdm Ho and her husband, the late Mr Chiang Chia Liang ("Mr Chiang") had three children. The first child, a daughter, Dr Currie Chiang ("Dr Chiang") is an ophthalmologist by profession. The second child, another daughter and a trained accountant, is Shirley Chiang, the plaintiff in this action. The youngest child and only son is Chiang Dong Pheng, the defendant in this action.

3 Under Mdm Ho's will, the defendant was appointed to be the executor of the will and trustee of the Estate. The plaintiff contends that the defendant is unfit to be executor and would like the court to remove him and appoint her as executrix in his place.

Background

General details about the Chiang family

4 Mr Chiang was an engineer from Taiwan who became a successful businessman with companies in the chemical business in Singapore and Malaysia. Mdm Ho and his children were officers of these companies at various times. As Mr Chiang grew older and played less part in the business, the defendant took over his role. He has worked for the family company, Standard Chemical Corporation Pte Ltd ("SCC"), for over 30 years and has been its managing director since 1988. The defendant is

also the managing director of the family's property company, Chiang Properties Pte Ltd ("CPPL").

5 Mdm Ho was a housewife and mother. She did not run any of the Chiang family companies but she managed the family's finances and acquired various properties for the family. She looked out for opportunities to invest and increase the wealth of the family. She was a very capable woman and managed almost all the family's investment properties, keeping them tenanted and collecting rental.

6 Sometime in the 1980s, Mr Chiang, while remaining married to Mdm Ho, moved out of the family residence and set up a new home with his mistress, one Ms Wen Jen Jiao ("Ms Wen"). A son was born out of this relationship. Mr Chiang bought two apartments in Singapore in the name of Ms Wen and resided in one of these with her and their son. According to the defendant, Mdm Ho, although understandably very upset, accepted the situation and concentrated thereafter on protecting the family wealth by making sure all money and other assets were kept out of Mr Chiang's reach for fear that he might otherwise be pressured into transferring the same to Ms Wen.

7 Between them, Mr Chiang and Mdm Ho owned eight houses and apartments in Singapore. They are the following:

Properties in the joint names of Mr Chiang and Mdm Ho

(a) 5 Harlyn Road ("5 Harlyn");

(b) 68 Oriole Crescent ("68 Oriole");

(c) 70 Oriole Crescent ("70 Oriole"); and

(d) 72 Oriole Crescent ("72 Oriole").

Properties in the sole name of Mr Chiang

(e) 33 Merryn Road ("33 Merryn"); and

(f) 17C Dublin Road ("17C Dublin");

Properties in the sole name of Mdm Ho

(g) 17B Dublin Road; and

(h) 151 Cavenagh Road, #08-165 ("151 Cavenagh").

The Chiang family home was 5 Harlyn. Mdm Ho remained there after Mr Chiang moved out. The other properties were bought as investments and, accordingly, were kept tenanted as much as possible.

Events from 1998 to 2009

8 In 1998, Mr Chiang had a terrible fall. Thereafter, his health deteriorated. Sometime in 2002, Mr Chiang moved to live with the defendant in the latter's home at 27 Merryn Road. At that time the plaintiff lived next door at 27A Merryn Road.

9 In March 2002, Mdm Ho, the defendant and Dr Chiang made an application ("OS 936") under the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) for an order in respect of the person and estate of Mr Chiang. Medical evidence was produced that Mr Chiang was suffering from dementia

and did not understand what was happening around him and was not able to look after himself and his affairs. The defendant initially objected to the application but subsequently wanted to become a member of the Committee. On 14 August 2002, an order was made in OS 936 appointing Mdm Ho and all her children to be the committee of the person and estate of Mr Chiang ("the Committee"). The order specifically empowered the Committee to do the following:

(a) To operate Mr Chiang's current account No 01-4xxx with Overseas Union Bank;

(b) To execute, on behalf of and in the name of Mr Chiang, certain documents which he had to sign to apply for replacement share certificates in his name;

(c) To execute, on behalf of Mr Chiang, all documents relating to utilisation of his CPF savings; and

(d) Generally, to manage his personal and real property.

10 Mr Chiang died on 26 June 2009. By his will, which he had made in June 1994, Mr Chiang made the following appointments and gifts:

(a) He appointed Ms Ong Chai Hong ("Ms Ong"), a former employee of SCC, to be the executrix and trustee of his will.

(b) He bequeathed his shares in SCC to his wife and children as follows:

(i) 50 shares to Mdm Ho;

(ii) 700 shares to the defendant;

(iii) 2,140 shares to Dr Chiang; and

(iv) 2,140 shares to the plaintiff.

(c) In respect of his real properties, he made the following specific gifts:

(i) 17C Dublin was given to Mdm Ho; and

(ii) 33 Merryn was given to Ms Wen.

(d) Finally, he gave all his other real and personal property to Mdm Ho and his three children in equal shares.

11 Mdm Ho died some two months later on 18 August 2009. By her will made on 27 May 2004, she made the following appointments and bequests:

(a) She appointed the defendant to be the sole executor and trustee of her will.

(b) She gave her children the following houses:

(i) To the defendant, 5 Harlyn and 70 Oriole;

(ii) To Dr Chiang, 72 Oriole; and

(iii) To the plaintiff, 68 Oriole.

Each of these gifts was expressed to be "of all my interest … absolutely".

(c) She gave all her other property to her trustee to call in and sell and convert into money and thereafter to apply the proceeds in the following manner and priority:

(i) To pay all her debts and funeral expenses;

(ii) To pay "all outstanding loans secured by" 70 Oriole and 72 Oriole; and

(iii) To divide and distribute the residue after the aforesaid payments equally among her three children.

12 A number of events took place after Mdm Ho's death in which the plaintiff and either one or both of her siblings were involved which led to an intensification of the strained relationship between the plaintiff and her siblings. I will deal with these when I discuss the issues in the case in more detail. In the meantime, I turn to the various legal proceedings and applications that the parties have been involved in prior to this litigation.

Initial actions

13 No steps were taken by the defendant in the months following Mdm Ho's death to apply for probate of her will. The plaintiff was not happy with this inaction. On 6 April 2010 and 2 July 2010, her solicitors wrote to the defendant's solicitors for information relating to the Estate and the status of the probate proceedings. No reply having been received to either letter, on 15 July 2010, the plaintiff gave the defendant notice that if he did not commence probate proceedings within 14 days she was going to make an application to court. There was no response to this letter either.

14 In early September 2010, the plaintiff filed caveats against the grant of probate in the Estate in both the Supreme Court and the Subordinate Courts. Subsequently, on 27 September 2010, she filed a Citation to Accept or Refuse Grant of Probate ("the Citation"). The Citation was served on the defendant personally.

15 She followed this up by starting Originating Summons No 1088 of 2010 on 21 October 2010 ("OS 1088"). This application was for an order that the defendant produce the will of Mdm Ho and deposit the same in the Civil Registry of the Supreme Court. In the affidavit supporting the application, the plaintiff complained that the defendant had done nothing in the 14 months since Mdm Ho's death. He had not entered an appearance to the Citation and had not taken probate action. The plaintiff stated that she had been advised that the defendant was deemed to have renounced his right to probate under s 4 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("the Probate Act") and that she was therefore entitled to apply for a grant of Letters of Administration with Will Annexed under s 13 of the Probate Act. For this purpose she wanted the will to be produced and deposited in the Civil Registry of the Supreme Court.

16 On 11 November 2010, the defendant filed Probate No 309 of 2010 ("P 309") in the Supreme Court. This was his application for probate to be granted to him in respect of Mdm Ho's will. Some two weeks later, he filed an appearance to contest the plaintiff's Citation proceedings and also filed a warning for the removal of the caveats lodged by the plaintiff.

17 On 18 January 2011, the plaintiff withdrew OS 1088 and was ordered to pay costs to the

defendant. However, on 15 April 2011, the plaintiff filed an application in P 309 seeking an order that she be jointly appointed with the defendant as the personal representative and trustee of the Estate. The application was not successful. Instead, on 28 June 2011, the plaintiff was directed that if she wanted to proceed with her quest to join or replace the defendant as trustee of the Estate, she would have to issue a Citation against the defendant within four weeks and thereafter would have to commence a writ action against him within eight weeks.

Suit 820 of 2012

18 Suit No 820 of 2012 ("S 820") was an action started by Mdm Ong who had obtained grant of probate in respect of Mr Chiang's estate ("the Chiang Estate") on 20 October 2010. There were five defendants to S 820: the three Chiang siblings in their personal capacities, Chiang Dong Pheng as personal representative of the Estate, and Ms Wen. The action was taken out in order to determine the assets belonging to the Chiang Estate. The orders sought by Mdm Ong were:

(a) An order for certain shares and deposits to be included in the Amended Schedule of Assets to be filed with the court;

(b) An order for Chiang Dong Pheng and the Estate to disclose how much each of them and Mr Chiang had contributed to a deposit identified as "Deposit A" and following from that a declaration regarding the amount in Deposit A to be attributed to the Chiang Estate;

(c) An order for Chiang Dong Pheng and the Estate to disclose how much each of them and Mr Chiang had contributed to a deposit identified as "Deposit B" and following from that a declaration regarding the amount in Deposit B to be attributed to the Chiang Estate;

(d) Various orders in relation to the debts owing by the Chiang Estate to CPPL and in relation to loans recovered by banks from Deposit A and Deposit B; and

(e) A declaration regarding the validity of cl 5 of the will of Mr Chiang.

This action came on for hearing in 2014 and part way through the trial the parties came to a settlement and a consent judgment was entered on 2 July 2014. The Chiang Estate was represented throughout by Aequitas Law Corporation ("Aequitas").

The present proceedings

19 The present proceedings were started by the plaintiff on 28 July 2011 as a consequence of the earlier order in P 309. The main reliefs claimed by the plaintiff are as follows:

1. A declaration that the Defendant, as personal representative and trustee, has acted in breach of fiduciary duty and trust in the administration of the Estate of [Mdm Ho] (the Deceased).

2. A declaration that the Defendant is liable to account to [the Estate] for all monies diverted into his personal POSB account or any other interim accounts and to retransfer the said monies to the Estate.

3. The Defendant to provide an accounting of all estate monies in respect of all receipts and expenses charged against estate funds in interim accounts as from date of demise of the Deceased which is 18 August 2009.

4. A declaration that each and every one of the transfers out of [Mr Chiang's] POSB Account 009-5xxx into the joint account of the Defendant and the Deceased made after 14 August 2002 were made in breach of trust by the Defendant.

5. A declaration that the Defendant be liable to account for all monies transferred out of [Mr Chiang's] POSB Account into his joint account with the Deceased from 14 August 2002 to 26 June 2009.

6. A declaration that the Plaintiff is entitled to trace and has a beneficial interest in all transfers made into the joint account of the Defendant and the Deceased from [Mr Chiang's] POSB Account 009-xxx as from 14 August 2002.

7. A declaration that the Defendant be liable to account for all estate funds used to make interest repayments to UOB.

8. The key to the Cisco Safe Box No 5xxx located at Bukit Merah.

…

11. Loss and Damages to be assessed.

…

13. Withdrawal of the Defendant's probate proceedings P309/2010M.

…

15. Grant to the [plaintiff] of Letters of Administration of the [Estate].

…

20 The plaintiff has represented herself since the start of this litigation. She has drafted and filed all her own pleadings and affidavits. When the case came to trial, she conducted the cross-examination of the defendant and his witnesses herself. Due to the fact that the plaintiff is not a lawyer, although she obviously spent a lot of time researching the law and preparing her case, there were occasions on which irrelevant matters were brought up in court. Some of these matters have also been brought up in her closing submissions. In order to be fair to the defendant therefore, I think it important to emphasise that in dealing with this case and considering the plaintiff's allegations, I will only deal with and consider those allegations that were pleaded in the statement of claim. Any unpleaded allegations would not be relevant in determining whether the plaintiff is entitled to the relief that she has claimed.

21 Moving to the statement of claim, the plaintiff amended this twice. The second amendment was filed on 4 January 2012. The essence of the plaintiff's case resides in her allegation in para 3 that it is inappropriate for the defendant to be appointed sole executor of the Estate because: (i) he has acted in breach of fiduciary duty and trust; (ii) he is in conflict of interest in the administration of the Estate; and (iii) he has failed to administer the Estate on a timely basis and in the best interest of all beneficiaries.

22 The rest of the statement of claim which follows the heading "PARTICULARS" is an elaboration of her specific complaints about the defendant's behaviour. I summarise those complaints contained in

paras 4 to 19 of the statement of claim as follows:

(a) The defendant has diverted funds belonging to the Estate into his own personal Post Office Savings Bank ("POSB") Account;

(b) The plaintiff was not informed of the banking of the Estate's funds into any interim account and the defendant was in breach of his duty to inform and consult beneficiaries in relation to the diversion;

(c) The defendant transferred moneys out of Mr Chiang's POSB Account 009-xxx into a joint account in the names of himself and Mdm Ho in breach of a High Court order;

(d) There is a conflict of interest in respect of the review of transfers out of the joint accounts of the defendant and Mdm Ho to Mr Chiang's bank account;

(e) The defendant closed two joint accounts which he held with Mdm Ho before probate had been obtained;

(f) The defendant showed no interest in taking out probate until the plaintiff commenced OS 1088 to compel him to deposit the will;

(g) The defendant failed to provide information to the beneficiaries and to prepare and provide timely and accurate accounts;

(h) There was an inordinate delay in taking out probate with no acceptable reason being given for the delay;

(i) There was a loss in value of investments as a result of lack of review;

(j) The defendant failed to consult the plaintiff as a beneficiary and failed to act in accordance with his own written assertion in regard to the renewal of the tenancy of 68 Oriole;

(k) The plaintiff lost an opportunity to sell her home at 27A Merryn Road due to the defendant's delay in handing over 68 Oriole to her;

(l) The defendant has used moneys belonging to the Estate to make interest repayments in respect of a loan which was ostensibly made to CPPL but which was used by the defendant as collateral for a loan to another company;

(m) Two of the family companies under the directorship of the defendant are doing badly;

(n) The defendant and Dr Chiang have denied having any documents in relation to a huge piece of land in China in which the plaintiff has an interest as a beneficiary of the Chiang Estate and the Estate;

(o) The defendant had acted as "*executor de son tort*" in the Chiang Estate even though that estate had its own executor; and

(p) The defendant had failed to provide the plaintiff with an updated Schedule of Assets of the Estate even though the plaintiff had advised him that his draft Schedule of Assets dated September 2009 was incomplete.

23 The defendant responded by not only filing a defence but also by making a counterclaim. In the defence proper, the defendant denied the plaintiff's various allegations and gave his explanation for the various steps that he had taken which he asserted had been either in compliance with directions from Mdm Ho or had been in the best interests of the Estate. He also made certain allegations regarding the plaintiff's motivation and alleged ill intentions and certain actions that she had taken.

24 The defendant's counterclaim is based on his averment in para 26 of the same that, at various dates from the deaths of her parents, the plaintiff has taken various actions and steps which are detrimental to the Estate. Such matters have caused unnecessary delay, expense and distress to the defendant as executor of the Estate and to the defendant and Dr Chiang as beneficiaries of the estates of Mr Chiang and Mdm Ho. This averment is supported by the following pleaded "PARTICULARS":

(a) Instigating a legal action in Taiwan by contacting and informing Ms Wen of Mr Chiang's death;

(b) Making various unfounded police reports against the defendant alleging matters which the defendant was fully aware of but claimed to be ignorant of;

(c) Contacting various banks and making false allegations against the defendant thereby affecting his reputation and good name and adversely affecting the banking relationships of SCC, CPPL and Dr Chiang;

(d) Making repeated unfounded allegations against the defendant's good name and reputation with tenants thereby causing embarrassment to the defendant and confusion over the management and collection of rentals of various properties belonging to the Estate;

(e) Intentionally making allegations to the solicitor and executor of the Chiang Estate which the plaintiff knows to be unfounded regarding the Chiang Estate and thereby delaying the distribution of that estate; and

(f) Taking possession of No 68 Oriole without accounting for rent which should be $16,000 per month together with loss and damage to the property due to the plaintiff's failure to maintain it.

25 As reliefs for the plaintiff's alleged actions, the defendant wants damages to be assessed and an order prohibiting the plaintiff from taking any steps or interfering in any way with the issue of grant of probate to the defendant for the Estate. He also wants costs on an indemnity basis.

26 The plaintiff has filed a Reply and Defence in Counterclaim but it is not necessary to set this out in any detail.

The law relating to the passing over of executors

27 The Probate Act governs the grant of probate and letters of administration in respect of the estate in Singapore of a deceased person. Under Singapore law, which is derived from English common law, non-Muslim persons domiciled in Singapore are free to direct how their estates should be managed and distributed after their deaths by making a will. In this will, the testator may nominate a person to be the executor of his will. Whilst such nomination will usually be given effect to, it is not a foregone conclusion that the person nominated by the testator will eventually become the administrator of the estate. There are certain situations in which the court may appoint someone else to administer the estate.

28 In this regard, s 8(1) of the Probate Act states:

> **8. —(1)** Probate *may be* granted to any executor appointed by a will.
>
> [emphasis added]

29 It is generally accepted that this wording reposes a discretion in the court as to whether it will grant probate to the person named in the will (see: *Halsbury's Law of Singapore*, vol 15, para 190.021 ("*Halsbury's*") at p 263). Under O 71 r 4(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"), the court has the duty to make "all enquiries which [it] may see fit to make" before allowing any grant to be issued. The extent of the court's power to refuse to issue a grant to the named executor seems, however, to still be in issue. It may be contended (and this seems to be implied by para 190.022 of *Halsbury's*) that the discretion is circumscribed by the circumstances set out in s 13(1) of the Probate Act which deals with various situations in which the executor appointed by the will cannot take up the appointment. These include legal incapacity which may be due to infancy or mental or physical incapacity (situations which are covered by O 71 rr 27 and 29) and the fact that the named executor has pre-deceased the testator. There is also s 55 of the Probate Act which empowers the court to grant probate to someone other than the named executor if that person fails to apply for a grant within six months of the death of the testator.

30 It would appear, however, that leading commentators consider that the court's discretion to pass over a named executor is not limited to the situations set out in ss 13 and 55. I also note that under s 32 of the Probate Act, any probate may be revoked "for any sufficient cause". It would seem incongruent with this provision if the court were not to have the power to pass over a named executor equally "for sufficient cause".

31 A local textbook by G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2012) ("*Raman on Probate*") considers that executors may be passed over and sets out, at pp 119–120, the "normal situations" in which this may happen as being:

(1) bad character, financial position or ineptitude for business of an applicant;

(2) the fact that he had an interest incompatible with the proper administration of the estate;

(3) his minor interest in the estate;

(4) that he is personally objectionable to other persons entitled to share in the estate.

These matters are not expressly stated in the Probate Act but derive from old English authority. *Halsbury's* at para 190.035 seems to agree with the first category set out above, noting that a murderer may not be permitted to take a grant on the grounds of public policy and that a person who has committed manslaughter is also prohibited from obtaining a grant to the estate of the person whom he has killed. *Halsbury's* relies on early twentieth century English cases for these propositions.

32 The English authorities may not, however, be applicable in Singapore. In England the equivalent legislation is more specific about the power of the court to pass over the named executor. The relevant legislation refers to "special circumstances" which make it appear to the High Court "to be necessary or expedient" to appoint as administrator someone other than the person nominated in the will (s 116 of the Supreme Court Act 1981 (c 54) (UK)). Academic commentators confirm that the wording of this section has the same effect as earlier legislation (specifically s 73 of the Court of Probate Act 1857 ("CPA UK")) which also included a reference to "special circumstances" and cases

decided under the earlier sections are still good law in England. In the earlier cases, which include those cited in the Singapore texts, persons were passed over as executors on account of their bad character, attempts to avoid tax and delay a proper investigation of the deceased's affairs and to waste time, neglect of their duties, imprisonment, ill health or unsoundness of mind, to name a few disqualifications (see: *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 19th Ed, 2008) ("*Williams on Probate*"), at p 377).

33 In view of the differences in the wording of the English and Singapore legislation, it is strongly arguable that the discretion to pass over a named executor is more circumscribed in Singapore than it is in England. This indeed was the position adopted in a case decided by the Straits Settlements' Court of Appeal in 1937. In *In the Estate of Hameed Nachial alias Hameed Nachia otherwise spelt Hameed Nachia Deceased* [1937] SSLR 33 ("*Hameed Nachia*"), Mills J noted specifically that the CPA UK did not apply to the Colony of Singapore ("the Colony") while Thomas CJ, who presided, also drew a distinction between the CPA UK and the Probate and Administration Ordinance (Cap 51) ("the Ordinance") which governed the grant of probate in the Colony. Thomas CJ noted that in England the CPA UK had introduced certain exceptions to the right of a named executor to be granted probate but he emphasised that the language of the CPA UK had *not* been reproduced in the Ordinance.

34 The Ordinance is a predecessor of the Probate Act and it contained a s 7 which provided that probate "may be granted" to any executor appointed by a will. This language is the same as that of s 8 of the Probate Act. The majority judges in *Hameed Nachia* took the view that having regard to the difference between the wording of s 7 and that of the CPA UK, the grounds for passing over a nominated executor were only those that were expressly stated in the Ordinance, for example, under ss 20 and 21 dealing with infants and lunatics respectively, and the five situations mentioned in s 54 thereof. If the reasoning set out in *Hameed Nachia* is applied to the Probate Act, it would mean that in Singapore the court does not have the power to pass over a named executor due to the existence of the "special circumstances" cited in *Williams on Probate* but can only do so in the situations provided for in s 13 (dealing with various situations in which executors cannot act including infancy, lunacy and death) and s 55 of the Probate Act, the current equivalent of s 54 of the Ordinance.

35 Section 55(1) of the Probate Act reads (as far as material):

> **55.** —(1) In the following cases:
>
> (*a*) where, after the expiration of 6 months from the death of a deceased person, no application has been made for probate or letters of administration to his estate;
>
> (*b*) where any such application, though made within the said 6 months, has not within that period been proceeded with, or has been withdrawn or refused;
>
> …
>
> letters of administration with or without the will annexed may be granted to the Public Trustee, or to such other person as the court thinks fit.

36 The sub-sections cited above track the language of s 54(*a*) and (*b*) of the Ordinance and thus have been part of our law for a long time. The meaning of s 54 of the Ordinance was considered in *Hameed Nachia* and the facts of that case being somewhat similar to the facts here make that decision relevant for my consideration.

37 In *Hameed Nachia*, the testatrix died on 30 May 1935. No application for probate having been

filed by either the named executors or by any other person within six months from the date of death, the Solicitor-General filed a petition on 6 March 1936 for letters of administration to be granted to a trustee company. The next day, one of the appointed executors filed a petition for probate stating that the delay was due to his having been resident in India from the date of the deceased's death to the middle of January 1936. The issue before the Court of Appeal was whether s 54(*a*) of the Ordinance allowed for the Solicitor-General's petition.

38 The majority of the Court of Appeal held that s 54(*a*) of the Ordinance should be construed such that an executor loses his right to automatic appointment if he or she neglects to apply for probate within six months of the death of the testator, and it does not matter if an application is subsequently filed and is pending at the time of the hearing. However, this did not mean that the executor would necessarily be passed over; if the executor had filed an application for probate by the time that the application under s 54 was made by another party, the court's discretion whether to pass over the named executor would still have to be exercised judicially. In this regard, while Thomas CJ only found that the trial judge had properly exercised his discretion to pass over the executor, Cussen J laid down some useful guiding principles in determining how the court's discretion under s 54 of the Ordinance should be exercised (at p 47):

> It remains only to consider how this discretion should be exercised and its exercise in this particular case. I agree with the learned Judge that this discretion is quite unfettered save that of course it must be exercised judicially.
>
> And, in my opinion, the position of the executor, even when he has brought himself within the authority of this section, must still be considered. He cannot be passed over arbitrarily; there is not an open, free choice as between him and the other applicants or persons under consideration. There must be reasonable grounds, judicially considered, for passing him over in favour of the Official Assignee or any other person.
>
> *The paramount consideration is always the interests of the trusts of the Will. If there is evidence from which the Court, in its discretion, may properly conclude that it would be undesirable and unsafe to entrust the administration of the estate to the executor, then the executor may be passed over*.
>
> It may also be pointed out that it appears from the judgment of Huggard CJ in [*In the Estate of Vanena Katha Pillay Marican, Deceased* [1934] MLJ 205] that he considered that, where there is jurisdiction under s 54, *unsuitability or dilatoriness are grounds on which an executor may be passed over*.
>
> [emphasis added]

It should be noted that the trial judge had found the executor to be unsuitable after observing the executor's demeanour in the witness box. The trial judge noted the executor was evasive and had given contradictory answers when he was cross-examined.

39 From the decision of *Hameed Nachia*, it would appear that in the present case, the court's discretion to pass over the defendant as the named executor arises because his failure to make an application for a grant of probate within six months from Mdm Ho's death has brought the case within s 55(*a*). The discretion has not arisen simply because of the inclusion of the words "may be granted" in s 8 of the Probate Act. As full argument was not addressed to me on the scope of s 8 in a situation in which s 55(*a*) does not apply, I do not express a concluded view on the matter. My inclination is to consider myself bound by *Hameed Nachia* but it may be open for parties in future cases to question

whether that decision is indeed binding on the High Court.

40 As can be seen from the summary of the "Particulars" in the statement of claim, the plaintiff here is trying to establish that circumstances exist which should move the court to disqualify the defendant from acting as the executor of the Estate. I will consider those circumstances in the exercise of my discretion under s 55 of the Probate Act. In doing so, the test laid down by Cussen J, that is, whether there is evidence establishing that it will be undesirable and unsafe to entrust the administration of the Estate to the defendant, will be applied. I will also consider whether there are any circumstances in this case which could qualify as "special circumstances" as found by the English authorities because the underlying rationale for allowing such "special circumstances" to determine whether an executor should be passed over must be the court's determination that the existence of such circumstances make it undesirable and unsafe to entrust the administration of the Estate to the named executor.

41 I should mention that in *Hameed Nachia*, the first instance judge (the "trial judge") decided that the named executor should be passed over. None of the members of the Court of Appeal were inclined to interfere with this holding. From the judgment of Cussen J, it appears that the trial judge had expressed the view that there were ample reasons for passing the executor over, that the interest of the beneficiaries would be gravely imperilled if he were given control of the estate and that it appeared to the trial judge that the executor was likely to show carelessness, incompetence and negligence which would result in "appalling loss and hardship" to the beneficiaries. Also, his interest was opposed to that of the infant beneficiaries in that he had said that he did not know that their mother, Fatima, was his father's wife whereas other evidence showed that the executor and the rest of the family were well aware that these infants were entitled to benefit under the will.

Renunciation

42 The plaintiff has another string to her bow: this is the contention that the defendant had constructively renounced his right to, and is therefore precluded from, applying for grant of probate. As this contention is self-contained, I shall deal with it first.

43 Under s 4(1) of the Probate Act, a person who has an interest in the estate of a deceased person may cause to be issued a citation directed to the executor appointed by the deceased's will calling upon the person cited to accept or renounce that right. Under sub-s 2, any person so cited may enter an appearance to the citation but if he defaults in doing so, he is deemed to have renounced his right. Following from this, under s 13(1)(*b*) of the same Act, where the executor appointed by will has renounced the right to act as such, letters of administration with the will annexed may be granted to such person as the court considers the fittest to administer the estate. Such citation must be in one of the forms in Form 181 and the procedure applicable is set out in O 71 r 42.

44 Order 71 r 42 reads so far as is material:

> **Citation to accept or refuse a grant** (O.71, r.42)
>
> **42**. —(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
>
> …
>
> (4) A person cited who is willing to accept or take a grant may apply ex parte by summons to

the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance in Form 180 and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may –

(a) in the case of a citation under paragraph (1), apply to the Registrar for an order for a grant to himself;

…

(6) An application under paragraph (5) must be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

45 On 27 September 2010, the plaintiff filed a Citation in the High Court calling upon the defendant to, within eight days after service of the Citation on him, enter an appearance and accept or refuse probate and execution of the will of Mdm Ho. The Citation did not recite the rule it was taken out under, but it is plain from the plaintiff's description of herself as a beneficiary and legatee that it was taken out under r 42(1). The Citation was served on the defendant on 5 October 2010. This meant that the defendant had until 13 October 2010 to enter appearance. The defendant, however, did not enter his appearance to the Citation by that date. Instead, about a month later, on 11 November 2010, he filed his application for grant of probate. The defendant only entered appearance to the Citation on 9 December 2010. The plaintiff submitted that, by failing to enter appearance within the specified time, the defendant had renounced probate and was no longer entitled to it. It is plain from a reading of r 42(4) that the defendant did not comply with the rule because he should have entered appearance before applying for the grant and should then have filed an affidavit showing that he had entered an appearance and stating that he had not been served by the plaintiff with notice of any application for a grant to herself.

46 The defendant submitted that he had not renounced his right to a grant by failing to enter appearance to the Citation within eight days. He argued that s 4 of the Probate Act read with O 71 r 41(6) makes it clear that an appearance that is entered after service of a Citation, even after eight days, can be accepted as long as the citor has not applied under r 42(5) for a grant to herself. In this case, the plaintiff did not apply for a grant to herself before 11 November 2010. Therefore, it did not lie in the mouth of the plaintiff to argue that the defendant was precluded from entering an appearance to the Citation after eight days. The plaintiff was aware that the defendant had acted as executor and she had received letters from the defendant's solicitors regarding the Schedule of Assets. Shortly after she filed the Citation, the defendant's solicitors had informed her that the defendant intended to apply for the grant. The plaintiff therefore had no basis, whatsoever, to assume that the defendant intended to renounce his right as executor of the will.

47 In my opinion, the defendant is right in contending that the plaintiff knew that he wished to accept the appointment and administer the Estate. Shortly after Mdm Ho's death, the defendant began to intermeddle in the Estate. On 24 August 2009, he closed a joint account which he had with Mdm Ho and into which rentals from her properties were deposited. He transferred the balance from the joint account into a new account in his own name. His reason for these actions was that he did not want the income of the Estate to be frozen before the grant was issued. Thereafter, he took steps to have rental income paid into his new account which he operated as an Estate account. He also attempted to deal with the renewal of the tenancy of 68 Oriole on the basis that he was the executor named in the will. The plaintiff was aware of all this and knew very well that the defendant

was purporting to exercise the powers of an executor even though he had not applied for probate yet. On 29 October 2010, the defendant's lawyers wrote to the plaintiff's lawyers stating that as the Singapore affairs of Mr Chiang had been settled, they were filing the application for probate to be granted to the defendant. If the plaintiff had not known prior to that date that the defendant wanted to be executor, she knew it on that date. Yet the plaintiff did not, as she could have, filed an application under s 55 for probate to be granted to her because the defendant had not filed his application within time and had not yet entered appearance to the Citation.

48 As I have pointed out, the defendant did not follow the Rules in relation to entry of appearance and filing of his probate application. These failures on his part constituted irregularities only, not illegalities. The defendant was still able to file his probate action, and he did so before any other probate application was filed. In all the circumstances, I conclude that the defendant did not actually, or constructively, renounce his right to probate. Notwithstanding that there was no renunciation, by his very failure to apply for probate within six months of Mdm Ho's death, the defendant brought himself within the bounds of s 55 of the Probate Act and, as Cussen J put it, "lost his favoured position at the expiration of the period and his right to a grant [became] subject to the discretion given to the Court by this section" (*Hameed Nachial* at p 46).

Discussion and analysis of the grounds on which the plaintiff contends the defendant should be passed over

49 The focus of this part of the judgment is on whether the various grounds put forward by the plaintiff establish that it would be undesirable and unsafe to entrust the administration of the Estate to the defendant. In her submissions, the plaintiff has referred to the duties of a trustee and argued that various actions taken by the defendant are in breach of his duties as a trustee and he should be removed as such. This is not quite the right way of looking at the matter as what is being considered is not the removal of a trustee but whether the defendant should be confirmed in that position.

50 The plaintiff's position is that the defendant owed the Estate "fiduciary duties as trustee and personal representative" and these duties included the following:

(a) not to mix Estate money with his own money or with money from other estates;

(b) not to convert for his own use any of the funds of the Estate before distribution;

(c) to avoid any potential conflict of interest and not to act for his own personal benefit;

(d) to comply with all court orders, practice directions and Rules of Court;

(e) to properly and completely list all assets of the Estate;

(f) to take up probate application and effect distribution on a timely basis;

(g) to provide accurate, complete and timely accounts of the Estate;

(h) to consult and give effect to the wishes of beneficiaries;

(i) to be even-handed and act fairly towards all beneficiaries; and

(j) to act honestly and reasonably.

51 I will consider which of the alleged duties, if any, were owed by the defendant at the same time

as I consider the plaintiff's grounds for contending that the defendant should be passed over. These grounds are set out in her statement of claim and repeated at [22] above.

Diversion of Estate funds

52 The plaintiff's complaint in para 4 of the statement of claim was that the defendant had diverted funds belonging to the Estate into his own personal POSB Account xxx93-6 and, shortly after her death, tenants of properties owned by Mdm Ho were instructed to pay rental into that bank account. The defendant had acted in breach of duty to inform and consult all beneficiaries if funds were so diverted and was liable to account to the Estate for moneys so diverted. He had also caused the Estate to be deprived of interest.

53 The defendant denied having diverted all the Estate's funds. He stated that the plaintiff informed the banks of Mdm Ho's death knowing that this would cause the bank accounts to be frozen and that payments made to the accounts would be rejected. This would cause loss to the Estate. On 24 August 2009, POSB sent an officer to Mdm Ho's wake to verify her death. Thereafter, deposits for rental were not accepted. As an interim measure, until an estate account could be opened, tenants were informed to bank their cheques into an interim account. This was done purely for expediency and no money was used for the personal benefit of the defendant. The account opened by the defendant was POSB Account xxx93-6. I shall hereafter refer to it as "the Interim Account".

54 In court, the defendant produced evidence that all bank accounts in the sole name of Mdm Ho remained in existence. He had not closed them. He relied on the evidence given by an officer of the POSB that, upon the death of an account holder, although money could be received into the account, no money could be withdrawn from such account until the grant of probate had been obtained.

55 The defendant's own evidence was that the rents for 68, 70 and 72 Oriole were due at the same time and he received a complaint that there had been difficulties with one payment because Mdm Ho's accounts were frozen. He decided to act quickly to avoid complaints from the other tenants. Therefore, he established the Interim Account, a new account in his sole name, to be used as an interim estate account. Thereafter, the tenants were instructed to pay rental into the Interim Account.

56 Further, the defendant and Mdm Ho had a joint account with the POSB, Account No xxx46-8 ("Account 46-8") which could be operated by the defendant acting alone. Account 46-8 contained money belonging to Mdm Ho. It also contained funds which had been transferred into Account 46-8 from a POSB account in the name of Mr Chiang, *viz*, Account xxx99-0 ("CCL's Account"). On 24 August 2009, the defendant transferred the balance in Account 46-8, the sum of $1,236,233.17, into the Interim Account. He then closed Account 46-8. He was able to do this because he was a joint account holder.

57 The plaintiff submitted that there was no necessity for the establishment of the Interim Account because rental accruing due to the Estate could have been banked into any of Mdm Ho's personal accounts. She contended that the defendant was not entitled to put the Estate's money into the Interim Account because that was his own account and not an account belonging to the Estate. The defendant should not have closed Account 46-8 before obtaining the grant of probate. Instead, it was his duty to list this bank account in the Schedule of Assets of the Estate. The defendant's actions were a breach of the defendant's duty to act honestly and in good faith.

58 The defendant explained that he had opened the Interim Account purely for expediency and that no money from it was used for his personal benefit. He had taken action because he was the

person who had been managing all the Chiang family properties and finances on his parents' instructions. The Interim Account received the Estate's funds and was used to pay the expenses of the Estate. Further, all payments were by cheque or by GIRO and supported by vouchers. All the bank statements and vouchers had been disclosed to the plaintiff. Further, a complete account of transactions in CCL's Account had been prepared and audited by Messrs Lau Chin Huat & Co (Certified Public Accountants) ("LCH & Co") and copies of the same together with supporting invoices had been given to the Chiang Estate.

59 As I see it, in relation to the administration of the Estate and the handling of money due to it prior to the grant of probate, the defendant had three options. First, he could have banked payments to the Estate into Account 46-8 or any of Mdm Ho's sole accounts. This course, however, would have meant that there would be no money in his hands to fund the expenses of the Estate and, if he wanted to prevent the Estate from incurring indebtedness, he would have had to pay the same from his own funds. His second alternative was to leave all Mdm Ho's accounts, including Account 46-8, as they were and start a new account to receive future payments to the Estate and fund future expenses of the Estate. The disadvantage of this course would be that there might not be enough money in the new account to fund the expenses. The third alternative was to do what he did, which was to transfer the funds in Account 46-8, the only account that he could operate after Mdm Ho's death, to a new account in his name which he could operate as an estate account. The advantage of this course was that it put funds in his hands to deal with the Estate's liabilities. However, he had the obligation not to intermingle these Estate funds with his own money and he also had to keep proper accounts of the receipts and expenditure which were made into and from the Interim Account.

60 The defendant did furnish the plaintiff with accounts of the Interim Account. The plaintiff called her husband, Mr Lim Tong Huat, as an expert witness to give evidence on these accounts. Whilst Mr Lim cannot be accorded the status of an independent expert in view of his intimate connection with the plaintiff, some parts of his evidence can be used. In court, Mr Lim accepted that the exact credit balance from Account 46-8 had been transferred to the Interim Account by the defendant. The plaintiff, however, was not willing to make a similar concession and would not agree that all funds from Account 46-8 had gone into the Interim Account. She persisted in her belief that funds had been transferred into some other account of the defendant and converted by him. This was stubborn and unreasonable and does not show the plaintiff in a good light.

61 I have concluded that the defendant was not in breach of any duty when he closed Account 46-8 and transferred the balance into the Interim Account. I accept that he did this in order to have funds to administer the Estate and to have a bank account into which amounts paid to the Estate after Mdm Ho's death could be deposited and withdrawn as and when necessary for the purposes of settling the liabilities of the Estate. He did not intend to convert the moneys in the account. The defendant has kept accounts of all payments into and out of the Interim Account, and the plaintiff has not been able to show any discrepancy in these accounts. The plaintiff has made allegations of wrongful payments made by the defendant using Estate funds. Those allegations, if established, would constitute a separate ground on which the defendant could possibly be found to be unsuitable to be appointed executor. I will deal with those allegations later.

62 The defendant could have handled the matter of Account 46-8 differently but the plaintiff's complaints in regard to the closure of the account are technicalities only and do not relate to substance. The defendant was not obliged to inform the beneficiaries before closing Account 46-8 or to obtain their consent to this action. The defendant has at all times recognised that the money in Account 46-8 belonged to the Estate and that having intermeddled with it, he has a duty to account for it.

Transfer of money from CCL's Account

Transfer of money from CCL's Account

63 In para 5 of the statement of claim, the plaintiff pleaded that the defendant had transferred money from CCL's Account into Account 46-8. These transfers started in 2002 after the formation of the Committee and continued until shortly after Mdm Ho's death. In November 2004, the balance in CCL's Account was $986,426.96 but on 24 August 2009 it was only $78,147.09. The plaintiff had informed Ms Ong, as the executor of the Chiang Estate, of the withdrawals. On 6 May 2011, the defendant returned $600,000 to the Chiang Estate.

64 The plaintiff alleged that the defendant had acted in contempt of court and in breach of trust in effecting the transfer of money from CCL's Account into Account 46-8. She asserted she had suffered loss as a beneficiary of the Chiang Estate and no longer had access to the money in CCL's Account which belonged to all three children/beneficiaries of Mr Chiang and not to the defendant alone. She further asserted that there was a further $308,279.87 which had to be returned to the Chiang Estate.

65 In his defence, the defendant set out the matters relating to the appointment of the Committee. He stated that after the appointment of the Committee, Mdm Ho controlled all the financial affairs of the Chiang family and directed the defendant to deal with the Chiang family wealth according to her wishes. The plaintiff had full knowledge of this. Mdm Ho directed the defendant to transfer money from CCL's Account to Account 46-8 in order to avoid any dissipation or claim by any third party such as Ms Wen. The defendant pleaded that all moneys in CCL's Account had been accounted for and returned to the Chiang Estate. The matters raised by the plaintiff were irrelevant to the issue of grant of probate in relation to the Estate as such matters concerned only the Chiang Estate which had no issue with the transfers.

66 In her closing submissions, the plaintiff asserted that the defendant had mixed the funds of the Estate with funds from CCL's Account and, in doing so, had breached his duty to properly account for Estate moneys.

67 This might be the appropriate point to say something about the dynamics of the Chiang family. The defendant was the youngest child but only son. It appears that his parents reposed a great deal of confidence in him and entrusted much of the running of the family businesses and their finances to him. The daughters were shareholders and directors of the family companies but were not involved in their operations. Dr Chiang had her own career as an ophthalmologist. She seems to have been on good terms with her brother throughout and is now aligned with him in this litigation. The plaintiff, the middle child, trained as an accountant and worked in a bank for a few years but has not practised accountancy or undertaken business for a long time. She has been at odds with her siblings for some years and has taken certain actions in relation to Mr Chiang which they did not agree with. The plaintiff was removed as a director of SCC in 2004 although she was reinstated some years later. The defendant asserted that during the lifetime of his parents, the plaintiff did not provide care for them and was estranged from the family. It is notable that when the decision was taken in 2002 to apply for the appointment of the Committee, Mdm Ho, Dr Chiang and the defendant acted together. The plaintiff was left out. Subsequently, after an initial opposition, the plaintiff became part of the Committee. The defendant asserted that thereafter the plaintiff did not participate in any matter relating to Mr Chiang and everything was handled by him on the instructions of Mdm Ho. It is clear from this assertion that the defendant never consulted Dr Chiang or the plaintiff on matters relating to Mr Chiang's financial affairs. The animosity between the plaintiff and her siblings is still in evidence. The plaintiff must shoulder her share of the blame for this situation because she has made complaints to various authorities about her siblings as a result of which they have been subject to various investigations.

68 Whilst Dr Chiang may have been content for Mdm Ho and the defendant to deal with Mr Chiang's affairs, in law, it was not correct for the two of them to take matters into their own hands and act without consulting the other members of the Committee. The Committee was appointed as a whole and the members therefore had to act jointly rather than severally. It was not correct for Mdm Ho and the defendant to transfer funds from CCL's Account into Account 46-8 which was in their joint names. The money should either have been left where it was or transferred into an account in the names of all the members of the Committee and stated to be held on trust for Mr Chiang. That way, there would have been no danger of intermingling Mr Chiang's funds with money belonging to any other family member, including Mdm Ho and the defendant. I accept the defendant's evidence that he made these transfers on the instructions of Mdm Ho. That does not totally excuse him, however. As an adult and member of the Committee, he was in a fiduciary position and could not simply comply with his mother's wishes. He should have consulted the other members of the Committee and taken legal advice. However, the plaintiff not being the legal representative of the Chiang Estate is not in a position to ask for any relief in relation to these transfers.

69 The defendant has returned money to the Chiang Estate. Whether the amount returned is correct is not a matter for decision in this action. There is, as far as I am aware, no claim by the Chiang Estate against the Estate for any more money. It is worth noting that in the Judgment recording the settlement of S 820, it has been expressly provided that the plaintiff here shall not make any claim against the defendant here in respect of the withdrawal of moneys from CCL's Account prior to the death of Mr Chiang. Thus, the plaintiff can no longer complain that as a beneficiary of the Chiang Estate she has been adversely affected by those withdrawals.

70 The defendant's actions in relation to CCL's Account cannot be regarded as a breach of any duty in relation to the Estate. They may, however, affect my assessment of his suitability to be appointed as the executor of the Estate. In this respect, I accept that his motives were to protect the Chiang family against loss of Mr Chiang's assets and that Mdm Ho was very concerned about this due to Mr Chiang's relationship with Ms Wen. I also note that Dr Chiang testified that the plaintiff had been present at family meetings during which Mdm Ho had told her children that she was carrying out transfers from CCL's Account in order to safeguard the funds from third parties.

Conflict of interest

71 The plaintiff complains that the defendant is in a conflict of interest position in relation to:

(a) the moneys withdrawn from CCL's Account and deposited into Account 46-8; and

(b) the deposit of rental income from 68 Oriole into Account 46-8 instead of into an account that was in the names of Mr Chiang and Mdm Ho who were the joint owners of 68 Oriole until Mr Chiang's death.

She contends that since these transfers and deposits were effected by the defendant, he would not be able to carry out an objective review to ascertain how much money has been erroneously put into Account 46-8. An independent reviewer is needed for this job.

72 The defendant denied that there was a conflict of interest. He averred that the plaintiff knew all along that all money belonging to Mr Chiang and which arose from the Chiang family properties were handled by Mdm Ho. The rental income was used to repay loans taken out by Mr Chiang and Mdm Ho for the family businesses. The plaintiff was aware of this as a director and shareholder of the companies. Further, separate accountancy professionals had audited the accounts of the Estate and those of the Chiang Estate. These professionals have not raised any objections to the way in which

the rentals have been dealt with.

73 The defendant has procured an independent professional review of the amounts transferred from CCL's Account to Account 46-8. This review was accepted by the accountants of the Chiang Estate. Further, Mdm Ho was a joint owner of 68 Oriole. Thus, during her lifetime she was entitled to decide how to use the income of that property and could direct the defendant to pay the rental into Account 46-8. The only person who could challenge that decision was Mr Chiang/his legal representative. No such challenge has been mounted. Further, the evidence was that even before the appointment of the Committee, Mdm Ho had managed the rental income of the family properties. On an overall consideration of the circumstances, I am satisfied that the defendant is not in a conflict of interest position in relation to the matters stated in [71] above.

Closure of bank accounts

74 The plaintiff averred in her statement of claim that two joint accounts which Mdm Ho had with the defendant had been wrongfully closed shortly after Mdm Ho's death. One of these accounts was Account 46-8. I have already dealt with that account and need say no more about it. As for the other account named by the plaintiff, POSB Account xxx48-1, the defendant produced the passbook for this account in court. This showed that the account was held by Mdm Ho solely and that it was not closed after her death. The account was still in existence. Accordingly, there was no merit in the plaintiff's allegation in relation to POSB Account xxx48-1.

Delay in taking out probate

75 In para 8 of the statement of claim, the plaintiff complained about the defendant's delay in applying for probate and how she had to serve a Citation on him and also take out proceedings to compel him to deposit Mdm Ho's will in the Registry of the Supreme Court. She also pleaded that his application for probate was irregular and that he had constructively renounced his rights to probate. In para 10 of the statement of claim, the plaintiff pleaded that there was no acceptable reason for the inordinate delay in applying for probate. She renewed this complaint in her closing submissions alleging that the real reason for the delay was to avoid the distribution of assets to her.

76 I have dealt with the points on irregularity and constructive renunciation above. It remains for me to consider whether the dilatoriness of the defendant renders him unsuitable for appointment. This would depend on the reason for the delay.

77 The defendant submitted that there was no inordinate delay in applying for grant of probate. In his affidavit of evidence-in-chief, he explained that he thought it would be premature to proceed with administration of the Estate until all matters and assets due from the Chiang Estate had been got in for a proper and complete account. There were complications here such as a suit in respect of the Chiang Estate started in Taiwan by Ms Wen ("the Taiwanese action"). However, in the meantime, he had done a great deal of preparatory work such as writing to the banks and stock exchange and obtaining valuations of the Estate's real assets. He stated that because of "the complexity of relationship, distrust and disharmony" that existed, he had been advised that the most prudent thing to do was to wait for probate to the Chiang Estate to be granted before he proceeded in respect of the Estate.

78 The desire to wait for the Chiang Estate to be settled was the explanation given in these proceedings. In November 2010, when the defendant filed the probate application, he had to give a reason for his delay. He did not give the same explanation then. Instead, he said he was "ignorant of the law". I consider that to be a disingenuous explanation. The defendant was legally advised at all

material times and could not have been ignorant of the requirement to file for probate within six months of Mdm Ho's death.

79 I also think that desiring to wait for a grant to the Chiang Estate to be made was not a very good reason for delaying the application here. There was work to be done for the Estate, especially in regard to the collection of rents and the handling of tenants. Quite soon after Mdm Ho's death, the defendant was confronted with the need to open an account to handle payments to and from the Estate. It would, therefore, have been more prudent for him to apply as soon as he could for the grant so that the period of intermeddling with the Estate would have been shortened. Further, even though administration of the Estate could not be fully completed until the Chiang Estate had been distributed, the defendant would have had an earlier start at gathering and controlling the assets Mdm Ho owned in her own right and not by virtue of inheritance from Mr Chiang.

80 On the other hand, although the defendant was slow in applying for the grant, he was not slow in taking control of Mdm Ho's assets to the extent that he could and in dealing with them as best he could prior to the application for the grant. He did encounter some difficulty with the tenant of 68 Oriole because of the absence of the grant, but apart from that there was no evidence that the assets of the Estate were in any way prejudiced by reason of the delay. I note that Dr Chiang had no complaint about the delay.

81 On an overall consideration, I think that I must weigh delay as one of the factors when assessing the defendant's suitability. From the beginning, he was intent on being the executor – the delay was not due to any reluctance or disinclination to take on the task. He was aware from the various letters that the plaintiff's solicitors sent him that she was anxious about the administration of the Estate but he simply ignored these letters and did not explain his reasons for not acting immediately. This may be an indication of the defendant's unhelpful attitude towards the plaintiff. Though I accept that the plaintiff is an extremely pushy person who is capable of unremitting nagging, as a beneficiary of the Estate it is not unreasonable for her to expect some efficiency in its administration. Further, as I have mentioned above, the reason for the delay was not compelling.

Failure to provide information and accounts

82 This complaint, detailed in para 9 of the statement of claim, was that despite repeated requests for various information, the defendant had only supplied accounting and bank statements on 28 June 2011 and, upon review, the same were found to be inadequate. The plaintiff was unable to ascertain if the defendant had made refunds to the Estate after her discovery of his transfer or diversion of funds belonging to the Estate. Further, the plaintiff had to spend $25,000 to get a set of Estate accounts for review and information.

83 In closing, the plaintiff submitted that Mdm Ho had had bank accounts in the Hong Kong branches of ANZ Bank and HSBC that the defendant had not disclosed. She asserted that he had not included all the assets of Mdm Ho in the Schedule of Assets and he wanted to hide her bank accounts. As a trustee, he was required to provide information requested by the beneficiaries and he had not done so in relation to these accounts. She also complained that he had persistently refused to furnish Estate accounts or bank statements until a summons was taken out to compel him to do so. The first set of accounts was only furnished on 28 June 2011, after seven letters were sent by the plaintiff's former solicitors, and just before the hearing of Summons No 1663 of 2011. The second set of accounts was listed in the defendant's list of documents after another summons hearing on 16 March 2012, and the third set of accounts was ordered on 27 August 2012, after hearing of Summons 2620 of 2012. Although the court had ordered up-to-date accounts, only accounts up to May 2013 had been furnished. As for bank statements, these had been ordered but the statements furnished

were only up to 7 March 2012.

84 The plaintiff complained that the defendant had persistently refused to furnish accounts. In his affidavit he had averred that he had no obligation to disclose the accounts until after the grant of probate had been issued. His solicitors had said earlier (21 January 2011) that no disclosure needed to be made by the defendant as no distribution had been made. Further, the accounts prepared by LCH & Co only provided a summary of receipts and expenses related to properties owned by Mdm Ho and two properties belonging to CCL's estate. They were not proper or complete estate accounts that captured all receipts and payments made.

85 The plaintiff cited textbook authority to the effect that a trustee has a duty to keep clear and distinct accounts of the property he administers and to be constantly ready with his accounts. Apart from *Lewin On Trusts* (Sweet & Maxwell, 18th Ed, 2008) ("*Lewin On Trusts*") at para 23-22, she also relied on *Equity & Trusts* by Michael Haley & Lara McMurtry (Sweet & Maxwell, 4th Ed, 2014) ("*Haley & McMurtry*") for this proposition. Para 13.13 of the latter text states that every beneficiary is entitled to inspect the trust accounts and that if the beneficiary wants a copy of the accounts, the beneficiary has to pay for them. The beneficiary may challenge the accounts and the trustee is then under a duty to correct any errors detected in the accounts.

8 6 *Haley & McMurtry* at para 13.15 also deals with the duty of a trustee to provide information and documents to the beneficiaries as to the current state of the trust properties and any dealings that have occurred in relation to it. They opine that the trust document that a beneficiary is entitled to see is essentially one that is in the possession of the trustee in his capacity as trustee and which contains information about the trust.

8 7 *Lewin on Trusts* provides a slightly different perspective. It states the law as it stands after the review carried out by the Privy Council in *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709 ("*Schmidt*"). The text (at para 23-18) distils eight principles of which the following are relevant here. First, a beneficiary has a right to seek disclosure of trust documents and this right is best approached as an aspect of the court's inherent jurisdiction to supervise and, where appropriate, intervene in the administration of trust. The court has a discretion to decide, among other things, what classes of documents should be disclosed, either completely or in redacted form, and what safeguard should be imposed to limit the use which may be made of documents or information disclosed under the order of court. It should be noted that in *Schmidt* the Privy Council stated that no beneficiary has any entitlement as of right to disclosure of anything that can be plausibly be described as a trust document. *Lewin On Trusts* comments at para 23-23 that even before *Schmidt* courts had accepted that there was a *prima facie* right only, and no absolute entitlement to disclosure of trust documents including trust accounts.

88 The defendant submitted that he had acted reasonably in providing documents and statements sought by the plaintiff. He stated that the plaintiff had not provided any authority for the contention that he had to provide for accounts on demand. His position was that his obligation to provide a full account of the Estate to the beneficiaries would only arise at the time of the distribution of the Estate to them. In this regard, he relied on the following paragraph from *Raman on Probate* at p 167:

> The personal representative's duty *at the end of the administration of the estate* would be to render proper accounts. In fact, the duty to render proper accounts to any beneficiary who demands the same lies on the personal representative *throughout the administration of the estate*. If called upon to render accounts he is obliged to provide them. It is a requirement *before he winds up the administration* that he submits accounts for the beneficiaries' perusal and approval prior to distribution. This is not based on any allegations of breach of trust that the

beneficiary may make but arises from the fiduciary relationship between the trustee and the beneficiaries. [emphasis added]

I would point out that the foregoing statement of the law does not fully support the defendant's position. *Raman on Probate* indicates plainly that although at the end of administration of an estate a personal representative would have to render proper accounts, such personal representative is obliged to render accounts during the administration of the estate if he is called upon by the beneficiary to provide them. The duty in the case of a personal representative is a continuing duty, much like the duty imposed on a trustee as adverted to in earlier paragraphs of this judgment.

89 Whilst both trustees and personal representatives have a duty to maintain accounts and generally to provide them at the beneficiary's request, this does not mean that any beneficiary can keep on demanding accounts and information without giving the trustee/personal representative some respite. In my view, it is common sense that there must be reasonable intervals between the demands and a trustee/personal representative should not be considered to be in breach of trust simply because he does not always supply the documents and information immediately upon the beneficiary's demand. Whether the trustee/personal representative has complied with his duty to supply documents and information is a fact-sensitive exercise in every case.

90 In the present case, the defendant took the position that his obligation to provide a full account of the Estate would only arise at the time of distribution of the Estate. However, he also said that he had kept proper accounts of the income and expenses of the Estate since Mdm Ho's death and had appointed accountants, the said firm of LCH & Co, to ensure that the Estate accounts were kept in order. He also appointed estate agents to rent out the properties belonging to the Estate. Further, the accounting documents that he had given the plaintiff should be considered a reasonable discharge of his duty.

91 The defendant's evidence was that three sets of accounts had been prepared and audited, and given to and received by the plaintiff. The first set of accounts consisted of a schedule of receipts and expenses for 68, 70 and 72 Oriole, 151 Cavenagh, 33 Merryn, and 17B and 17C Dublin. This was accompanied by various bank statements and sent to the plaintiff on 28 June 2011. On 8 July 2011, the plaintiff was sent copies of invoices and statements of accounts. Subsequently, the defendant sent the plaintiff the accounts from 1 September 2011 to 31 August 2012, and later the accounts from 1 September 2012 to 31 May 2013. Mr Lau, of LCH & Co who testified, confirmed that all transactions in relation to the properties belonging to the Estate were accounted for and there were receipts to prove these transactions. The defendant himself testified that the accountants had pointed out to him that he had included some items as Estate expenses which should not be charged to the Estate due to lack of proper receipt documentation. He stated that he had accepted LCH & Co's opinion and had repaid the Estate the items that had been wrongly debited. He tendered the relevant bank slips showing such repayment.

92 This action was started on 28 July 2011. By then the plaintiff had already received one set of accounts concerning the properties belonging to the Estate and its bank accounts. Thereafter, the plaintiff received the accounts for the period 1 September 2011 to 31 August 2012 and the accounts for the period 1 September 2012 to 31 May 2013. Contrary to the plaintiff's assertions, these sets of accounts were not furnished in response to her chamber applications. As far as Summons No 1045 of 2012 was concerned, that was a summons for general discovery in this action and not a summons for the accounts after 28 June 2011. Summons No 2620 of 2012 was a summons for specific documents filed in May 2012 and it was dismissed when it came up for hearing. I am satisfied that the defendant did not breach his duty to provide accounts even though he considered that he was not bound to do so until distribution. The plaintiff had sufficient information in her hands to analyse the transactions

and complain about those that she thought should not have been charged to the Estate. In fact, some of the subsequent amendments to the statement of claim arose out of the plaintiff's examination of the accounts. I will deal with those complaints later. The fact remains that she was kept apprised of what had occurred albeit not as frequently as she might have liked.

93 The plaintiff complained that there were certain bank accounts belonging to Mdm Ho that had not been disclosed. I am satisfied from the evidence in the case that the defendant has disclosed all Mdm Ho's bank accounts. As for her complaint that she had to spend $25,000 to get a set of the Estate accounts for review and information, it is not clear exactly what she spent this money on. Certainly she did not pay it to the defendant in exchange for the accounts. If she spent the money on employing someone to review the accounts, then that expense had to be borne by her. She did not cite any basis on which she could recover it from the Estate or the defendant.

94 As for the plaintiff's complaint regarding the bank account in Hong Kong, it is correct that in court the defendant initially said that Mdm Ho had had an account with HSBC in Hong Kong. At the resumed hearing, some four months later, the defendant changed his position. He said that there was no account with HSBC in Hong Kong and that the account he had been thinking of was actually held with the Shanghai Commercial Bank Ltd in Hong Kong. He pointed out that he had disclosed statements from this bank dated 17 August and 17 September 2009, in his Bundle D. These statements had been sent to Mdm Ho by the Shanghai Commercial Bank Ltd in respect of her fixed deposits of approximately £89,564.75 and HK$527,786.80 with that bank. The defendant's counsel then showed me statements dated 2012 from the same bank showing that the fixed deposits had continued to be rolled over every three months since Mdm Ho's death. On the evidence, I am satisfied that the defendant has disclosed the Estate's assets in Hong Kong and that he is not concealing any bank account belonging to the Estate.

Loss in value of investments

95 Para 11 of the statement of claim contains the plaintiff's complaint that as a result of the defendant's delay in applying for probate, many of Mdm Ho's structured foreign currency bank deposits would have fallen in value as a result of the appreciation of the Singapore dollar. This allegation was not dealt with in the plaintiff's closing submissions. It would appear that the plaintiff is not proceeding with it.

Defendant's alleged indebtedness to CPPL

96 Para 14 of the statement of claim is headed "Defendant is indebted to [CPPL] for more than $4m/Using Estate Funds to make interest repayment on this loan". It contains the plaintiff's allegation that the defendant took a loan of about $4m which had been advanced to CPPL and placed it in an account in RHB Labuan as collateral for a loan which had been advanced to another family company, StanChem Sdn Bhd ("StanChem"). She alleged that he was in conflict of interest because he was a shareholder of CPPL. Further, the accounts of the Estate given to the plaintiff on 28 June 2011 showed that the rental of 70 Oriole had been used to pay interest on this loan. That was wrongful as the rental belonged to the Estate and the defendant had therefore acted in breach of trust in converting Estate funds to pay interest on a loan that was his sole responsibility. Although 70 Oriole was willed to him, he could not use Estate funds for his own interest payments before grant of probate and distribution of the assets.

97 The defendant denied para 14 of the statement of claim and asserted that the plaintiff, as a director and shareholder of the relevant companies, knew that the allegation was not true. The alleged loans were not taken out by the defendant personally and the plaintiff was fully aware of this.

98 In her closing submissions, the plaintiff made no mention of her allegation that the defendant had, for his own benefit, misused the loan extended to CPPL. She also did not repeat her assertion that he had been in a conflict of interest position in relation to the use of the CPPL loan. Instead, she concentrated on the assertion that the defendant had misused the Estate's funds by using the rental from 70 Oriole to pay interest on the loan.

99 I am satisfied from the evidence that the plaintiff's allegations in relation to "misuse" of the loan to CPPL were mischievous allegations. I accept the defendant's evidence that on Mr Chiang's initiative a loan was originally taken in 1996 by CPPL. The proceeds of this loan were put in a fixed deposit in Labuan in the names of Mr Chiang, Mdm Ho, Dr Chiang and the defendant and this deposit and another one were used as security for loans taken from another bank to finance a project undertaken by StanChem. In 1999, the defendant refinanced the StanChem loan by substituting himself as the borrower with the security being provided by the same fixed deposits in the names of his parents and the three siblings. The plaintiff testified that she only became aware in October 2010 of the fact that the loan was for StanChem and not the defendant. I am satisfied that that was not true. The plaintiff signed several letters and audit confirmations as a director of StanChem. These indicate that she must have known as long ago as 1999 that the relevant loan was meant for StanChem and not the defendant personally. The plaintiff asserted that she had signed these letters "blindly". I do not accept that. The plaintiff has shown herself to be a person who concerns herself with every petty detail. She would not have signed anything blindly. I agree with the defendant's submission that it was completely unjustified of the plaintiff to allege in her statement of claim and in her evidence that the defendant had misused CPPL's loan facility for his own benefit. This allegation showed that the plaintiff is not adverse to distorting facts and ignoring her own knowledge in order to achieve her aim of demonstrating the defendant's unsuitability to be the executor of the Estate.

100 I turn to the issue of the alleged misuse of the rental from 70 Oriole. The original loan to CPPL was secured by mortgages over both 70 and 72 Oriole which were then owned jointly by Mr Chiang and Mdm Ho. Subsequently, the mortgage over 72 Oriole was completely redeemed. The mortgage over 70 Oriole remained and the rental from that property was used to pay the interest on the loan to CPPL. The defendant explained that his parents paid the interest personally because Mr Chiang had directed that the proceeds of the loan be put in the fixed deposit in Labuan in the names of the family members. I accept this explanation. Further, the will of Mdm Ho recognises this personal obligation in relation to 70 Oriole (a property of which she became the sole owner on Mr Chiang's death) by providing that the mortgage is to be redeemed from the residual assets of the Estate. The plaintiff herself acknowledged this direction in the will.

101 I agree that on these facts the plaintiff's most significant complaint seems to be that the interest on the loan secured by 70 Oriole was paid from the rental of that property instead of by CPPL, the borrower. The defendant argued that he could use the rental of 70 Oriole to pay the interest either because it formed part of the residuary estate or because he could apply it to this purpose first and later, if there were sufficient funds, recover the interest paid from the Estate on the basis that as specific devisee of 70 Oriole, he was entitled to receive all rental earned after Mdm Ho's death, less expenses relating to that property.

102 The question that arises is whether the Estate should bear the interest on the loan extended to CPPL. The answer to this question depends on what Mdm Ho intended her Estate to pay. This is a question of construction of the will. Clause 6(b) of Mdm Ho's Hwill directs the executor to "pay all outstanding loan secured by … 70 Oriole". The defendant submitted that Mdm Ho had intended that her Estate bear both principal and interest on the loan borrowed from the United Overseas Bank ("UOB") and secured by 70 Oriole. This was a matter of the plain meaning of the language in the will because a loan generally carries interest and the mortgage in this case secured both interest and

principal. In directing the executor to pay "all outstanding loans", Mdm Ho obviously meant both the principal and interest. If the expression "all outstanding loans" was considered to be ambiguous, the defendant submitted that the court should apply "the armchair principle" and use extrinsic facts to determine the intention of the testator to resolve the ambiguity.

103 As explained in *Law of Succession* by GE Dal Pont and KF Mackie (LexisNexis Butterworths, 2013) at para 8.39, the armchair principle means that in construing a will the court is entitled to put itself in the position of the testatrix and to consider all material facts and circumstances known to the testatrix with reference to which she is to be taken to have used the words in the will, and then to declare what is the intention evidenced by the words the testatrix used with reference to those facts and circumstances which ought to have been in the mind of the testatrix when she used the words in the will. The textbook took this formulation from an old (1873) English case and explained that the armchair principle allowed admission of evidence of the testatrix's general knowledge and habits.

104 Applying this principle, there is no doubt on the evidence that Mdm Ho was aware that although UOB extended the loan to CPPL, the purpose of the loan had nothing to do with CPPL itself. Instead, the proceeds were put in a deposit in the names of the family members and used to secure a loan by another bank to StanChem. All this was done on the direction of Mr Chiang. I accept the evidence that Mdm Ho used her own income to pay interest on this loan instead of requiring CPPL to pay such interest. Mdm Ho also recognised a personal obligation to repay this loan because she directed it be repaid out of her residuary estate. Thus, she did not expect CPPL to repay the loan. In these circumstances, I am satisfied that on the true construction of the will, Mdm Ho intended that both principal and interest on the loan be paid from her residuary estate. It was not wrong for the defendant to use the rental of 70 Oriole to meet the interest payments. If the residual estate is solvent after payment of all liabilities, the defendant would be able to recover any interest payment he has made out of the rental of 70 Oriole accrued since the death of Mdm Ho.

105 Of course, the executor of the Estate must redeem the loan as soon as reasonably practicable so that the Estate does not have to bear excessive interest. Redemption of the loan can only be done when the executor has probate of the Estate and can realise its assets. It is premature at this stage to decide when it would be reasonably practicable to redeem the loan.

68 Oriole

106 Paras 12 and 13 of the statement of claim contain the plaintiff's lengthy complaints about the way in which 68 Oriole was handled after Mdm Ho's death. In August 2009, the property was rented out. That tenancy was due to expire on 14 January 2011. I will detail what happened thereafter before setting out the plaintiff's complaints.

107 In September 2009, the defendant informed the property agent, Mr Alvin Tan ("Mr Tan"), who was handling the tenancies of various properties belonging to the Estate, including 68 Oriole, that Mdm Ho had died and that he had been appointed executor by her will and had applied to court for grant of probate. He advised Mr Tan that in future rental should be paid into the Interim Account. Thereafter, there was some correspondence regarding the payment of rental for 68 Oriole as the tenant wanted to be sure that he was paying the right person.

108 On 15 July 2010, the plaintiff's solicitors wrote to the defendant to inform him that the plaintiff intended to live in 68 Oriole in the future and that, therefore, the tenancy should not be renewed upon expiry. On 27 October 2010, Mr Tan informed the defendant that the tenant of 68 Oriole wanted to extend the lease for another two years. The tenant had also complained that a lady had gone down to the premises claiming to be the new owner of the house and had tried to get into the house.

The lady refused to leave her name and said that the tenant must vacate at the end of the lease. The tenant was perturbed by this incident. The defendant asked Mr Tan to negotiate for a new rate to reflect the market rate. On 29 October 2010, the defendant's solicitors informed the plaintiff's solicitors that the tenant of 68 Oriole was alarmed and anxious due to the plaintiff's recent visit to the premises. They wanted the plaintiff to be advised not to cause concern or annoyance to the tenant as he was entitled to quiet enjoyment of the premises. The letter went on to state:

> … Our client will not take any steps to renew the tenancy. If your client does not want to extend the tenancy when it comes up for renewal, please let us know so that this will be conveyed to the tenant in the proper manner. However, if the tenancy does provide a contractual right for renewal, our client will seek your client's instruction and act accordingly. Your client will be responsible for any legal implication caused to our client as a result of complying with your client's decision not to renew the tenancy.

109 Thereafter, there were some negotiations between Mr Tan and the tenant regarding renewal. The tenant was willing to pay rental of $10,500 per month and Mr Tan prepared a draft tenancy agreement reflecting that rate in early December 2010. In response to the defendant's enquiry, on 21 December 2010, Mr Tan informed him that the prevailing rental rates in the vicinity of 68 Oriole were between $9,000 and $13,800 per month. On 27 December 2010, the defendant stated that he wanted a rent of $12,500 per month. The tenant counter-offered $11,000 per month but, by 14 January 2011, no reply had been received from the defendant.

110 On 15 January 2011, Mr Tan received a call from the tenant asking him to contact the plaintiff who had dropped a letter with several attachments into the tenant's letterbox. In this letter, the plaintiff asked the tenant to vacate the premises immediately as she said the defendant had assured her that the tenancy would not be renewed. On 16 January 2011, the plaintiff wrote to the defendant's solicitors stating that she had found out the previous day that 68 Oriole was still tenanted and wanted to know why the defendant had not followed her instructions on the matter. She indicated that the proper rental for the premises would be $20,000 per month. The plaintiff also said that she had received a good offer for her own house and had planned to move into 68 Oriole in the near future. Because of the defendant's inordinate delay in taking out probate she had to forego this offer. She forbade the defendant to manage the property and asked him to hand over the title deeds and the keys to her immediately. She wanted the house to be vacated within seven days and threatened to take action against the defendant if this was not done. On 20 January 2011, the defendant issued a notice of termination of lease to the tenant. The latter moved out on 15 March 2011. A few days earlier, the defendant's solicitors had informed the plaintiff that the defendant agreed to the plaintiff taking possession of 68 Oriole as long as she accepted all risks of the property and the obligation to maintain it.

111 On 8 April 2011, the defendant's solicitors wrote to the plaintiff's solicitors complaining, *inter alia*, that the plaintiff had entered the property and changed the front door locks. When the defendant went to the property he could not gain access to the house. He then put a combination lock on the front metal gates. Shortly thereafter, the plaintiff scaled the gates in order to have access to the property. Correspondence followed and after the plaintiff had signed a form of indemnity in favour of the defendant, she was given possession of the property. She has since undertaken renovation and repair works to 68 Oriole.

112 The plaintiff's complaints in paras 12 and 13 of the statement of claim in relation to 68 Oriole can be summarised as follows:

(a) Despite being notified three times by the plaintiff between 15 July and 21 December 2010,

that the plaintiff intended to live in 68 Oriole and therefore the tenancy should not be renewed, the defendant engaged the tenant in negotiations for renewal of the tenancy until the plaintiff found out what was going on on 15 January 2011.

(b) The plaintiff had found out that the tenant had been instructed to bank the rental into the Interim Account. Despite offering to do so, the defendant had not handed over the rental, less outgoings, to the plaintiff. Nor had the defendant furnished the schedule of expenses charged against the rental during the period from 18 August 2009 to 14 March 2011. The gross amount of rental collected during the period was $141,261.06.

(c) The plaintiff had suffered loss of use of 68 Oriole due to the defendant's inordinate delay in taking out probate and his attempts to renew the lease after it expired on 14 January 2011.

(d) The plaintiff has had to expend her own money in maintaining 68 Oriole and wishes to undertake renovations of the property which is in disrepair but is unable to do so due to the delay in administration of the Estate.

(e) Believing that the defendant would not renew the tenancy of 68 Oriole and that she could move in there on its expiry, the plaintiff entered negotiations to sell her home at 27A Merryn Road. Due to the continued occupancy of 68 Oriole after 14 January 2011, the plaintiff had to abort the negotiations for sale of her home and the buyer lost interest. The plaintiff is losing potential rental income of $12,000 a month for 27A Merryn Road as she is not able to move into 68 Oriole until it is transferred to her.

113 Not surprisingly, the defendant takes a completely different view of the respective parties' rights in relation to 68 Oriole. He asserts that until grant of probate has been issued and distribution effected, the plaintiff is not entitled to receive the sum of $141,261.06. Further any delay has been caused by the plaintiff's own actions. He also denies the plaintiff's allegations of fact. The plaintiff's allegations of loss are purely speculative. He says the court records will show that the defendant was prepared to allow the plaintiff to reserve whatever rights of action she claimed to have against the defendant in a bid to allow the grant to be issued without delay but the plaintiff did not accept this proposal. The plaintiff is therefore the author of her own misfortune.

114 Before I discuss the merits of the plaintiff's allegations, it is necessary to discuss the law on the consequences of a specific devise or bequest. The gift of 68 Oriole to the plaintiff is a specific devise. The first consequence of the gift being classified as specific devise is that the rents accruing on the property from the date of Mdm Ho's death are part of the gift (see *Theobald on Wills* (17th Ed, Sweet & Maxwell 2010) at para 38-001). However, on her death, 68 Oriole, like all Mdm Ho's other property, vested in the defendant as the named executor (see s 35(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed). It did not vest in the plaintiff although in equity the property was in the plaintiff (see *Snell's Equity* (32nd Ed, London 2010) at para 33-003). The defendant therefore had the right to collect the rent and pay the expenses of 68 Oriole out of the rent. The second consequence of a gift being a specific devise (and of a property that is free of mortgage) is that the gift (including the rents accruing after death) cannot be used to meet the debts of the testatrix until the residuary estate and any general legacies have been exhausted. However, although it is practically the last class of assets to be used to pay the deceased's death, it is still available for that purpose and therefore in practical terms the administration of the Estate will usually be quite far advanced before it is clear whether the property contained in a specific devise is needed to pay debts. As 68 Oriole is vested in the defendant, the plaintiff is not entitled to possession of the property without the consent of the defendant.

115 Having regard to the law as stated above, my conclusions on the plaintiff's complaints as set out in [111] above are as follows:

(a) The defendant was entitled to negotiate renewal of the tenancy of 68 Oriole with the tenant although he was aware that the plaintiff wanted to live there. The defendant was also entitled to take the position that until it was clear what liabilities of the Estate were, he should continue to obtain income so as to meet such liabilities if necessary. However, the defendant should have explained this clearly to the plaintiff instead of keeping quiet and leaving her to find out about the negotiations through her own efforts.

(b) The defendant was not obliged to pay over the rental collected after Mdm Ho's death to the plaintiff on her demand. He will only be obliged to pay that over to her when the administration of the Estate is completed and at that stage he would have to give her a proper accounting of the collection and expenditure of rental in respect of 68 Oriole. There was nothing wrong with the tenant being instructed to pay rental into the Interim Account.

(c) The plaintiff's claim for loss of use of 68 Oriole is not sustainable. When Mdm Ho died, the property was subject to an existing tenancy which would not expire until 14 January 2011. Even if the defendant had applied for probate within six months after Mdm Ho's death, the earliest the premises would have been vacant was 15 January 2011. There is no evidence that the administration of the Estate would have been completed by then, especially bearing in mind the Taiwanese action and S 820 started by Ms Ong. The plaintiff has not been able to prove that it would have been reasonable and practicable for the defendant to transfer the title and possession of 68 Oriole to her on 15 January 2011.

(d) The plaintiff's complaint of having to spend her own money in maintaining 68 Oriole arises from her opposition to the tenancy being renewed and from her insistence that the property be handed over to her. This is not a complaint that can be upheld. Secondly, the delay in administration of the Estate since 15 January 2011 has been caused in large part by the existence of this litigation and therefore the delay has been unavoidable.

(e) The plaintiff's negotiations to sell her home at 27A Merryn Road were undertaken of her own volition and without any representation on the part of the defendant that he would not renew the tenancy and that he would allow her to move in. All that the defendant told her was that he would consider not renewing it but that depended on whether the tenant had a right to ask for an extension. It would have been better had the defendant told the plaintiff straight out that he was not going to give her possession of the premises until the Estate was settled but he cannot be held responsible for her intemperate actions in trying to sell or rent out her home. The plaintiff's submission that the defendant is liable to pay her damages for loss of opportunity to sell 27A Merryn Road is unsustainable in law and in fact.

116 The plaintiff acted most intemperately in respect of 68 Oriole. She took the view that it belonged to her and that it was for her to decide whether the tenant should stay or not. She harassed the tenant twice by making unsolicited visits to the premises and informing the tenant that she was the owner and did not intend to allow renewal of the lease. After the tenant moved out, she also trespassed on to the property by entering and changing the locks. The defendant could have made his position clear; his fault was in refusing to engage directly with the plaintiff as he did not want to be confrontational. This is somewhat understandable as the plaintiff would not have taken any decision lying down but would have harassed the defendant to accept her point of view. However, sometimes it is best to be blunt and deal with the fall out immediately. The plaintiff's fault, however, was greater in that she completely disregarded the defendant's rights and duties as

executor and, without any basis, took the view that because 68 Oriole was bequeathed to her, she was entitled to full ownership rights immediately and acted accordingly.

117 The plaintiff did argue that because the defendant subsequently gave her possession of 68 Oriole in return for an indemnity, there had been an "assent" which she described as an act by a personal representing vesting the property in the person beneficially entitled. The plaintiff is mistaken. Handing over possession in return for an indemnity is simply a practical way of dealing with the property pending full administration, bearing in mind the plaintiff's determination to enjoy her gift. It is not an "assent" in the technical sense of that term and has not resulted in 68 Oriole being vested in the plaintiff. In any event, the defendant only agreed to hand possession to the plaintiff sometime after the tenancy had expired.

118 I have dealt above with the allegations that the plaintiff made in the statement of claim in relation to 68 Oriole. She made some other points in her submissions which I should deal with.

119 The plaintiff asserted that the defendant had not acted with an even hand in that he had made a claim for rental for 68 Oriole while he himself was not paying rent for staying in 5 Harlyn. In October and November 2011, after the plaintiff took possession of 68 Oriole, the defendant wrote several letters to her urging her to rent out the premises for the benefit of the Estate. Thereafter, his counterclaim was amended to include a counterclaim against her for taking possession of 68 Oriole without accounting for rent which he put at $16,000 a month based on the plaintiff's earlier estimation of an appropriate rental. The plaintiff complained that while the defendant had made this claim, both he and Dr Chiang took the position that the defendant was entitled to occupy 5 Harlyn without paying rent.

120 The plaintiff noted that the defendant's position in court was that 5 Harlyn had been Mdm Ho's matrimonial home and had never been rented out. As the family home, it was in a different position from 68 Oriole which had been used as an investment property for the generation of income. The plaintiff did not accept this distinction. In her submissions, however, the plaintiff asserted that in view of the defendant's admission in court that the other assets of the Estate were sufficient to settle its debts, neither 68 Oriole nor 5 Harlyn needed to be rented out. She accepted that the defendant as the specific devisee of 5 Harlyn was entitled to live there and need not rent out that property. She asserted that in the same way that the defendant could live in 5 Harlyn, she could occupy 68 Oriole and that since the defendant was not paying rent to the Estate for his occupation of 5 Harlyn he should not expect the plaintiff to pay rent to the Estate for 68 Oriole. She submitted that the defendant had not acted with an even hand in making a claim against the plaintiff for rent when he himself did not pay rent in similar circumstances.

121 In this respect, the plaintiff has a point. While at the time the hearing of this action started there were possible claims against the Estate, there was no evidence from the defendant that the residuary assets of the Estate were insufficient to pay its debts even if these claims were proved. It should be noted that when subsequently S 820 was settled, there was no order for any payment to be made by the Estate to the Chiang Estate. In court, the defendant admitted that in s 820 there was no claim made by the Chiang Estate against the Estate. Similarly, no evidence was put before me of any claimed or proven liability of the Estate to the Taiwanese action. If the Estate is solvent, then the gifts to the plaintiff and the defendant and any profits arising from them cannot be used to pay the debts of the Estate. These would have to be settled out of the residuary estate.

122 The defendant explained that as executor he considered that there may be, at the end of the administration, expenses that would have to be settled by the beneficiaries. The defendant may have been taking a very conservative view of the situation in assessing that the beneficiaries might be

liable to contribute to debts from the gifts made to them. He was entitled to do this. He was also entitled to point out to the plaintiff that if the residuary estate was insufficient, recourse would have to be made to the specific gifts and the profits from them. If that happened, the plaintiff might have to reimburse the Estate with the money that could have been earned had she rented out 68 Oriole. In his letter of 20 September 2011 to the plaintiff, the defendant said that he wished to highlight to "all stakeholders that every member has to make an effort to increase the value of the estate while grant of probate is still been [*sic*] worked out". If that was the defendant's view, he should have also arranged for 5 Harlyn to be rented out. The fact that 5 Harlyn was the matrimonial home was irrelevant once Mdm Ho died. It then became an asset of the Estate on the same basis that 68 Oriole was. Both properties could be used to increase the value of the Estate if it was feared that there would not be enough in the residuary estate to meet the liabilities of the Estate. The defendant's reason for not renting out 5 Harlyn was only a historical one; that historical reason could not apply in the new circumstances. The defendant should have behaved as he wanted the plaintiff wanted to behave. He applied a different standard to the property given to the plaintiff than he did to the property given to him.

Family companies run by the defendant

123 In para 15 of the statement of claim, the plaintiff alleged that two family companies run by the defendant were doing badly: StanChem had an accumulated loss of over RM21m over ten years and SCC, from a profit of over $5m in 2009 had suffered a loss of $671,509 in 2010. The plaintiff, however, did not expand on these allegations in her final submissions and therefore I need say no more about them.

Suzhou land

124 The allegation in para 16 of the statement of claim is that the defendant had stated that he had no information on a piece of land in Suzhou, China ("the Suzhou land"), although in fact Mdm Ho had 50% share in this parcel and Mr Chiang had 1% share in the same. Contrary to the defendant's assertions, there were documents relating to the Suzhou land in a CISCO safe deposit box ("CISCO box") in Bukit Merah. The keys to the CISCO box are held by the defendant and Dr Chiang, and the defendant had refused to hand the keys to the plaintiff. He had failed to respond to the plaintiff's request to see these documents which the plaintiff believed to be the title deeds to this valuable piece of Chinese real estate.

125 In her submissions, the plaintiff acknowledged that all items found in Mdm Ho's room on the date of her death were subsequently placed in the CISCO box in the presence of all the beneficiaries. There were only two keys for the CISCO box and it was decided, by a toss of a coin, that one key would be kept by the defendant and the other by Dr Chiang. The plaintiff subsequently wrote many letters to ask for an audit of the items in the CISCO box. She was particularly interested in item 14 which she said were the title deeds of the Suzhou land. In October 2011, the defendant accompanied by a lawyer who represented the Chiang Estate made copies of item 14. The defendant had paid several visits to the CISCO box on his own and the plaintiff did not know if any items had been removed from the CISCO box. The plaintiff's complaint therefore was that she had never been given access to the CISCO box despite her requests and that the defendant was concealing documents which showed the interest of the Estate in the valuable Suzhou land.

126 The defendant responded that the document alleged to be the title deeds was in fact not a title deed but related to the Chiang ancestral home in China occupied by Mr Chiang's brother and family. Photographs with the description of the items in the CISCO box were signed by the plaintiff and she was therefore fully aware that there were no title deeds in the CISCO box. He produced a

copy of the inventory list which the plaintiff had signed together with photographs of the items which had been put in the CISCO box.

127 At the trial, the defendant testified that the Suzhou land had been owned by a Chinese company in which his father had a small share. His evidence was that this property was acquired or repossessed by the Government of China and that Mdm Ho herself had travelled to China several times to either get the land back or get some compensation for it but had been unsuccessful in her attempts. She had gone to China with Dr Chiang. He also testified that the documents in the CISCO box had nothing to do with the Suzhou land. The documents relating to the Suzhou land were in a file which the plaintiff had "stolen" from 5 Harlyn.

128 The plaintiff stated in court that the file that she had taken from 5 Harlyn had subsequently been returned to Aequitas and that the documents found in it had been copied and put in her Bundle A2 between pages 446 and 478. The plaintiff actually said, referring to page 446 of that bundle, "This is the one that I stole" and she had returned it to Aequitas but had the rest of the file.

129 Looking at the Agreed Bundle of Documents, Bundle A2, I see that the documents between pages 446 and 500 are in the Chinese language. There are documents between pages 501 and 522 which are in English and are apparently translations of the Chinese documents but they are not certified by any official translator. Taking the translations at face value, some of them appear to be in respect of pieces of land but it is really not clear what premises these are. One has an area of 776.8 square metres, another has an area of 768.23 square metres and the third has an area of 479.68 square metres. I have no idea whether these are parts of the same piece of land or three separate pieces. There is no evidence that either Mr Chiang or Mdm Ho owned these properties directly or through any company which they controlled. The plaintiff has failed to substantiate her allegations whilst putting herself in a bad light in that she admitted taking the file of documents from 5 Harlyn, something she had no right to do. It should be noted that in her closing submissions the plaintiff said that she had taken files from 5 Harlyn in order to check the signature of Mr Chiang against that on a promissory note which had been produced by Ms Wen. Even assuming that that was the plaintiff's sole motivation in taking the files, she had no right to remove anything from 5 Harlyn, *a fortiori* to do so for the purpose of meddling in the Chiang Estate.

130 In court, when the plaintiff was confronted with the fact that Aequitas had inspected the contents of the CISCO box and had not found the title deeds that the plaintiff had referred to and that the photographs of the items placed in the CISCO box did not show any title deeds, she admitted that she had no direct evidence of the existence of such a property.

131 Further, the plaintiff has no right to inspect the contents of the CISCO box. She has a copy of the inventory of the items in the CISCO box and even if the defendant has taken items out of the CISCO box since that inventory was made, that should not cause the plaintiff any concern because he will have to account for all these items at the end of the day. All in all, the plaintiff has not made out any misconduct on the part of the defendant in relation to the Suzhou land or the CISCO box. The plaintiff is not entitled to a key to the CISCO box either. She admitted that there were only two keys and the siblings had agreed to possession being decided by a toss of the coin. The plaintiff lost the toss and cannot complain now. I should state, however, that the defendant should have kept both keys himself as the appointed executor.

The defendant's actions in relation to the Chiang Estate

132 In para 17 of the statement of claim, the plaintiff alleged that the defendant had acted as "*executor de son tort*" in relation to the Chiang Estate although Ms Ong had been appointed executor

of that estate. The particulars of this allegation were that the defendant had represented to the tenant of 17C Dublin (the property belonging to the Chiang Estate) that he was in charge of this property and that he had banked rental from the property into his personal account. Further, on 20 February 2010, he had effected a renewal of the lease of 17C Dublin. The defendant denied these allegations in his defence, except for the fact that he had managed 17C Dublin for 20 years on behalf of the family. The plaintiff did not deal with this allegation in her closing submissions and I therefore presume that she is not pursuing it.

Dr Chiang's conviction

133 In para 18 of the statement of claim, the plaintiff pleads that in December 2010 she had invited the other beneficiary, Dr Chiang, to co-administer the Estate or renounce her rights to co-administration. However, unknown to the plaintiff at that time, Dr Chiang had been charged "for tax evasion" and was subsequently found guilty and sentenced to six months' jail. Dr Chiang did not respond to this invitation.

134 Dr Chiang's conviction is not relevant to the plaintiff's claim against the defendant. The defendant had nothing to do with the conduct of Dr Chiang which led to her conviction. The only reason for this pleading would appear to be to establish that Dr Chiang was not a suitable co-administratrix. In fact, in the first version of her statement of claim, the plaintiff had asked for an order that Dr Chiang would not be allowed to co-administer the Estate on this basis. Although the plaintiff deleted the request for this order when she amended the statement of claim, she did not similarly delete para 18. It should be noted that in court Dr Chiang confirmed that she had no desire to administer or co-administer the Estate and was content to leave this task to the defendant. Accordingly, this paragraph of the statement of claim does not have to be considered in relation to the plaintiff's allegations against the defendant.

Schedule of Assets of the Estate

135 In late 2009, the defendant sent the plaintiff and Dr Chiang a draft Schedule of Assets in respect of the Estate. Paragraph 20 of the statement of claim complained that although the plaintiff had told the defendant in April 2010 that this draft Schedule of Assets omitted certain assets, the defendant had not thereafter sent her a complete and amended Schedule of Assets. The draft Schedule of Assets had not included the Suzhou land, the POSB joint accounts which the defendant had with Mdm Ho, a UOB Account, substantial sums of money in a bank in Hong Kong and the items in the CISCO box.

136 The plaintiff repeated these allegations in her submissions. Further, she noted there that when the defendant applied for grant of probate he did not file the requisite Schedule of Assets.

137 The defendant acknowledged that he had failed to file a Schedule of Assets with his application for the grant. However, he submitted that this failure was at best a procedural irregularity under P 309 and was not directly relevant to this action. He said he would take steps to address this irregularity as soon as possible. In the defendant's reply closing submissions dated 17 July 2014, it was stated that the defendant was now at liberty to include all definitely known assets of the Estate in the Schedule of Assets and would do so as soon as possible.

138 It would therefore appear that up to July 2014 the defendant had not filed the Schedule of Assets. His submission was that his failure to do so did not evidence his lack of ability to carry out his duties as the executor of the Estate. In court, his lawyer explained that after he had filed for probate, the matter had gone into litigation. That is correct. However, given that up to last year, five

years had passed since Mdm Ho's death and the defendant was actively dealing with the Estate from her death, he should have been in a position to at least produce a revised Schedule of Assets including all the assets of the Estate that he had discovered by the time of the trial.

139 The defendant should have filed a Schedule of Assets when he applied for probate. Whilst it may be only an irregularity that he did not do so then, it is not satisfactory that more than five years after Mdm Ho's death this has not been accomplished.

Other grounds raised by the plaintiff

140 The plaintiff made a number of allegations about the defendant's conduct which were not contained in the statement of claim. Most of them must be disregarded. However there is one allegation which is closely connected to the plaintiff's pleaded concerns about the Interim Account that I think must be explored. This is the plaintiff's allegation that the defendant used money in the Interim Account to pay for expenses or items that had nothing to do with the Estate.

141 The plaintiff submitted that the defendant had misused the Estate's funds to pay for his personal expenses and those of Dr Chiang as well as to pay for the expenses unrelated to the administration of the Estate. She submitted that a review of the Estate's expenses, as shown by the bank statements she had obtained to court orders and the defendant's answers to Interrogatories and further and better particulars requested, revealed that Estate funds had been wrongly used to pay the following:

(a) Central Provident Fund ("CPF") levies on two maids used by the defendant at two locations.

(b) Aequitas' fees paid in respect of administration of the Chiang Estate for the defendant and Dr Chiang.

(c) Chien Yeh Law Offices' fees in relation to the release of Ms Wen from the mortgage of the Taiwan property bequeathed to Ms Wen by Mr Chiang.

(d) Costs of repairs and property taxes paid in respect of properties belonging to the Chiang Estate, including 33 Merryn and 17C Dublin.

(e) The reimbursement of $600,000 to the Chiang Estate.

I will deal with these in turn.

CPF levies

142 The plaintiff noted that in his opening statement the defendant had stated that he had reimbursed the Estate in respect of payments it had made for the defendant's maids' levies. On cross-examination, however, the defendant admitted that he had not yet reimbursed the Estate for his maids' levies which had been charged to the Estate from 2009 to 2012. It was only after this admission that, on 28 November 2013, the defendant deposited $9,381 into the Interim Account as refund of the levies. I should point out here that levies were paid for two maids who had looked after Mr Chiang and Mdm Ho prior to their deaths. However, the maids continued to be employed by the defendant after August 2009 and it was the levies paid from September 2009 onwards that the plaintiff was objecting to.

143 In the defendant's closing submissions, he pointed to his evidence that the levies had been mistakenly deducted from the Interim Account but that he had intended, and instructed his accountants, to pay the levies back to that account. The defendant said it was only after giving this evidence that he found out that his accountants had failed to carry out his instructions and he therefore made the reimbursement on 28 November 2013.

144 I am not very happy with his explanation. The deduction of the levies from the Interim Account was effected by GIRO. GIRO payments can only be made from a bank account when the holder of that account signs the necessary GIRO authorisation form. Obviously, the defendant must have put the GIRO arrangements in place. He should not have done so. It was one thing for the defendant to use his parents' funds to pay the maids' levies while his parents were alive and looking after them. Once his parents died, he would have had to reconsider whether he needed to continue employing the maids and, if so, whether the expenses could still come from the Estate. The defendant did not put forward any reason why the Estate needed the maids' services. In the absence of such reason, if he wanted to continue their employment, he would have to bear all the expenses himself. I consider that it was wrong for the defendant to use the Interim Account for this purpose and it was also lax of him, when the mistake was pointed out, not to ensure that the reimbursement was made immediately.

Fees paid to Aequitas

145 A total sum of $15,000 was paid on 29 January 2011 from the Interim Account to Aequitas in their capacity as solicitors for the Chiang Estate. As noted in the defendant's closing submissions, the defendant had explained that Aequitas had written to each of the defendant, Dr Chiang and the Estate, seeking a deposit of $5,000 from each party in order to appoint lawyers in Taiwan to represent the Chiang Estate and the beneficiaries of Mr Chiang against the claims made by Ms Wen in the Taiwanese action. The defendant explained that if the Chiang Estate had succeeded in its defence to Ms Wen's claims, the property in Taiwan would become part of the residuary assets of the Chiang Estate and, as such, would flow to the Estate (Mdm Ho being the beneficiary of the residue of the Chiang Estate) and would in turn pass to the beneficiaries of the Estate. The defendant submitted that since the beneficiaries of the Chiang Estate were in effect the same as the beneficiaries of the Estate, he took the initiative to bear part of the expenses meant for the benefit of the beneficiaries of the Chiang Estate from the Interim Account. Overall, it would be the beneficiaries of the Estate who stood to gain. The defendant admitted that he had not paid the plaintiff's $5,000 deposit to Aequitas but said that sum had already been reimbursed to her by Aequitas.

146 The letter from Aequitas dated 11 November 2009 was produced in court. It states that Ms Ong should not be out of pocket for expenses that would be incurred to carry out her role as executor and trustee of the Chiang Estate (those costs would include the expenses of defending the Taiwanese action). Accordingly, she proposed that the beneficiaries of the Chiang Estate, namely, the defendant, Dr Chiang, the plaintiff and the Estate as well as Ms Wen, should each contribute an initial sum of $5,000 to Mdm Ong's initial costs and expenses. This amount would be reimbursed later from the assets of the Chiang Estate. It was in respect of this request that the defendant used $15,000 from the Interim Account to pay the shares of the Estate, Dr Chiang and himself. He did this in February 2011, by which time the plaintiff had already paid her $5,000.

147 I consider that the defendant was not justified in using the Interim Account to pay the $5,000 requested from him and Dr Chiang. Whilst the administration of the Chiang Estate would ultimately benefit the Estate, like the plaintiff, he and Dr Chiang were direct beneficiaries of Mr Chiang's will and were not inheriting simply because of their interests in the Estate. That was why each of them was asked separately to contribute $5,000 and there was no reason why each of them could not have

paid that contribution. If the defendant wanted to use funds from the Estate because the three children were the beneficiaries of the Estate, then he should have done so on behalf of all of them and, since the plaintiff had already paid her share, he could have reimbursed the $5,000 to her at the same time as he paid Aequitas on behalf of himself and Dr Chiang. The defendant did not act with an even hand in this instance.

Payment to Taiwanese lawyers

148 The plaintiff's complaint is that the defendant had used money from the Interim Account to pay Taiwanese lawyers to defend himself and Dr Chiang in the Taiwanese action which related to a property in Taiwan which Mr Chiang had given to Ms Wen while he was alive. Apparently, there was a mortgage over the property in favour of Mr Chiang, and Ms Wen was seeking the cancellation of that mortgage. The plaintiff alleged that the Estate was not a party to the action and therefore its funds were wrongly used.

149 The defendant's explanation in his closing submissions was that he paid $3,234.65 from the Interim Account on behalf of the Estate, Dr Chiang and himself to Chieh Yeh Law offices in Taiwan to defend the Taiwanese action. The defendant explained that all three of them (*ie*, including the Estate) and the plaintiff had been named as parties in the Taiwanese action and therefore had to be represented. He asserted that if Ms Wen had lost her claim, the Estate would have benefited and as a direct result the three siblings would benefit as well. Although the plaintiff's legal costs in Taiwan had not been paid from the Interim Account, the plaintiff also stood to benefit from the action.

150 There were a few documents in the bundles which related to this payment and the Taiwanese action. They paint a slightly different picture from that given by the defendant. It appears from the defendant's lawyers' correspondence with the Taiwanese lawyer that Ms Wen had sued all the children of Mr Chiang. Therefore, the defendants to the Taiwanese action were the plaintiff here and her two siblings as well as Ms Wen's own son. The Estate was not a defendant to the action. Further, a Power of Attorney was given by the defendant here and Dr Chiang to the Taiwanese lawyers to act for them in connection with the Taiwanese suit. This Power of Attorney was signed by the defendant here on behalf of himself alone; he did not sign it on behalf of the Estate. This conclusion is supported by the defendant's instruction to his Singapore lawyers to appoint the Taiwanese lawyers to represent himself and Dr Chiang.

151 In the circumstances, as the Estate was not a party to the Taiwanese action, the defendant should not have used Estate funds to pay the Taiwanese lawyers.

Expenses in respect of properties belonging to the Chiang Estate

152 The defendant paid $58,705.33 from the Interim Account in order to settle bills relating to the repair of 33 Merryn and 17C Dublin, both of which properties belonged to the Chiang Estate. His explanation was that there had been an urgent need to repair these properties because the tenants had complained about their condition. The defendant wanted to ensure that the properties remained profitably rented out and, as the Chiang Estate had had no funds, he used the Interim Account to make payment. He believed that the Estate would be reimbursed when the Chiang Estate was settled and, further, that income accruing from these properties would ultimately benefit the Estate.

153 I accept the defendant's explanation. Technically speaking, these repairs were the responsibility of the Chiang Estate. However, 17C Dublin was devised to Mdm Ho and therefore on distribution of the Chiang Estate she would have received both the property and its income (net of expenses). It was in the interest of the Estate, therefore, to repair 17C Dublin and maintain its

income and the defendant cannot be faulted for advancing money from the Estate for this purpose. The situation with regard to 33 Merryn was different in that it had been devised to Ms Wen. The Estate therefore would not benefit from repairing it. However, the defendant may have been under the mistaken impression that the Estate would be entitled to the rental earned by 33 Merryn between the date of Mr Chiang's death and distribution of the Chiang Estate because it had a quarter share in his residual estate. Being familiar with the defendant's attitude in this case and the stand taken by him in relation to 68 Oriole, I am inclined to believe that he had such a mistaken impression. I therefore accept that the defendant acted in good faith in making these payments and should not be criticised for them.

Payment of $600,000 to the Chiang Estate

154 The defendant paid the Chiang Estate the sum of $600,000 because he had transferred this money out of CCL's Account after his death and should not have done so. He therefore reimbursed it to the Chiang Estate. The plaintiff's complaint in her closing submissions was that "only $600,000 withdrawn after father's demise has been returned to the [Chiang Estate]". Whilst the plaintiff was not really contesting the correctness of this payment, she made the point that he had not reimbursed the Chiang Estate with the amounts withdrawn before Mr Chiang's death. Strictly speaking, that is a matter to be taken up by Ms Ong with the defendant and for the Chiang Estate to consider whether it should make such a claim since Mdm Ho and her three children are the residuary beneficiaries of the Chiang Estate. Therefore, I need say no more about it.

Decisions on the plaintiff's claims for relief

155 The plaintiff's statement of claim contains the whole list of reliefs that she has prayed for. I have enumerated the main prayers in [19] above. In view of the findings that I have made in the foregoing paragraphs, I can deal expeditiously with most of these. I will need, however, to deal in a little more detail with some of them. Using the numbering in the statement of claim, I hold as follows:

(a) Prayer 1: There will not be a declaration that the defendant has acted in breach of fiduciary duty and administration of the Estate because although the defendant did misapply some money belonging to the Estate, he has reimbursed the Estate with all funds which he misapplied and, further, when he did so he considered that he was justified because the money was used for the purposes of the beneficiaries of the Estate and could be accounted for subsequently.

(b) Prayer 2: While it is clear that the defendant must account for all money taken from Account 46-8 and deposited into the Interim Account, the defendant is well aware of his duty in that respect and has been carrying it out and there is no need to make a declaration to that effect.

(c) Prayer 3: The defendant has provided accounts of all money belonging to the Estate up to 31 May 2013 and such behaviour shows his recognition of his duty to provide accounts. As long as the defendant continues to provide accounts at yearly intervals until the finalisation of the Estate, there should be no reason to make any peremptory order against him in that respect.

(d) Prayers 4 and 5: The plaintiff cannot ask for a declaration that the transfers from CCL's Account into Account 46-8 were wrongful as she is not a legal representative of the Chiang Estate. For the same reason, she cannot ask for an order that the defendant do account for the money transferred out of CCL's Account.

(e) Prayer 6: There is no legal basis for any declaration that the plaintiff is entitled to trace and has a beneficial interest in the transfers that were made from CCL's Account to Account 46-8.

(f) Prayer 7: The plaintiff's prayer that the defendant be declared liable to account for funds from the Estate used to make interest payments to UOB cannot sustained as it was proper to use the Estate's funds for this purpose.

(g) Prayer 8: The plaintiff is not entitled to hold the key to the CISCO box.

(h) Prayers 9 and 10: These are not complete prayers and need not be dealt with.

(i) Prayers 11 and 12: I have found that the plaintiff is not entitled to claim loss and damage from the defendant so prayer 11 cannot be granted and prayer 12 asking for interest is also inapplicable.

156 The last three prayers in the statement of claim (prayers 13,14 and 15) deal with the plaintiff's main aim: the removal of the defendant as executor and her appointment as his replacement. The plaintiff made many allegations against the defendant. Most of these were unjustified. However, I have made some findings which may have an adverse effect on my assessment of his ability to administer the Estate. These are:

(a) The defendant intermingled money from CCL's Account with the money in Account 46-8 ([68]–[70]);

(b) The defendant had been dilatory in applying for grant of probate ([78]–[79]);

(c) The defendant applied a different standard to the issue of renting out 68 Oriole than he did to the issue of renting out 5 Harlyn ([120]–[122]);

(d) The defendant had not filed a Schedule of Assets as late as five years from Mdm Ho's death ([137]–[139]);

(e) The defendant had wrongfully used the Interim Account to pay levies for his domestic maids after his parents' death ([143]–[144]);

(f) The defendant had wrongfully used the Interim Account to pay Aequitas on behalf of Dr Chiang, the Estate and himself, but not on behalf of the plaintiff ([145]–[147]); and

(g) The defendant had wrongfully used the Interim Account to pay Dr Chiang's and his legal fees in the Taiwanese action since the Estate was not a party to that action ([150]–[151]).

157 The question is whether these matters taken together warrant the passing over of the defendant. As I have pointed out, there is some excuse for the defendant's actions in relation to the moneys in CCL's Account and, although the plaintiff was dilatory in filing for grant of probate, he did take charge of the Estate from the outset and did not neglect it. However, his tendency to use moneys from the Estate for his personal liabilities (maids and legal fees) and his unwillingness or inability to distinguish between the use of money for the administration of the Estate and his personal use may support a finding that it would be undesirable and unsafe to entrust the administration of the Estate to him. Further, he showed a disturbing tendency to treat the plaintiff differently from himself and Dr Chiang. On the other hand, the defendant has accepted the criticism of his use of the funds

and returned them to the Estate. He has kept complete accounts of the transactions involving the Interim Account and has supplied the plaintiff with these. This is an important point as it means any misapplication of funds can be immediately identified and remedied. Also, the defendant accommodated the plaintiff's request for possession of 68 Oriole. It may be argued that with proper advice he would be able to administer the Estate properly.

158 It may be instructive at this point to consider the decisions of the Malaysian and Singapore Courts of Appeal in a case involving basically the same parties and the same estate which was fought in both jurisdictions. The decision of the Malaysian Court of Appeal is set out in *Damayanti Kantilal Doshi v Jigarlal Kantilal Doshi* [1998] 4 MLJ 268 ("*Doshi (Malaysia)*"). The executors appointed by the will in that case appealed the decision of the Johor Bahru High Court to revoke the probate granted to them. The Malaysian Court of Appeal dismissed the appeal, holding that four of the complaints constituted "sufficient cause" for interference. The complaints related to:

(a) the executors' failure to extract the grant of probate seven years after the grant ("First Complaint");

(b) the executors' failure to render accounts or periodic accounts ("Second Complaint");

(c) the executors' failure to take steps to prevent the dissipation of assets ("Third Complaint"); and

(d) the open and active hostility between the executors and the respondents who were all beneficiaries under the will ("Fourth Complaint").

159 The Malaysian Court of Appeal did not find any dishonesty on the part of the executors, though it was of the opinion that their conduct was deliberate in respect of the First Complaint, and that they ought to have done more as "responsible executrix and executor having the welfare and interests of the beneficiaries" in respect of the Third Complaint. It would be noted that the Second and Third Complaints are not germane to the present case and that the period of delay here is very much shorter than that encompassed by the First Complaint. What is of particular relevance to me is the Malaysian Court of Appeal's finding on the Fourth Complaint. The relevant paragraphs are set out below:

> From the facts adduced and the various suits filed in various courts by the respective parties, it is undoubtedly clear that as between the appellants in particular the second appellant and the first and second respondents, there exists not just animosity or disagreement between them but that their relationship can safely be said to be one of open and active hostility. *That relationship is such that it would be nigh impossible for the second appellant to fairly and impartially discharge his duties towards the respondents/beneficiaries*.
>
> This hostility has manifested itself in the endless litigations commenced by both parties against each other and these actions have produced a number of interlocutory orders that were sought and obtained in the form of injunctions, discoveries and appointment of receivers. This [*sic*] in turn have led to allegations of non-compliance with court orders which culminated in actions for contempt. There has not been any denial that estate funds were being utilised to finance the spate of cases which may not see the light at the end of the tunnel. On the criminal side, the first respondent was initially accused of the murder of the deceased. This murder charge was subsequently withdrawn and substituted with a charge of voluntarily causing grievous hurt. The first respondent contends that the second and third appellants were responsible for making false allegations against him, resulting in the criminal proceedings. If this is not clear evidence of direct

and open hostility, we do not know what is.

While it is true that friction or hostility between the parties per se may not be a good reason for the removal of the appellants as the executrix and the executor, *such hostility if grounded in the manner in which the estate is being administered or not being administered, is a matter that ought not to be disregarded*. In this respect Lord Blackburn in *Letterstedt (Now Vicomtesse Montmort) v Broers & Anor* [1884] 9 AC 371 at p 389 said:

> It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded.

160 When the parties in *Doshi (Malaysia)* had a similar fight over administration of the deceased's estate in Singapore, the outcome was very different. The Court of Appeal in *Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi (executrix of the estate of Kantilal Prabhulal Doshi, deceased)* [2000] 3 SLR(R) 290 ("*Doshi (Singapore)*") had to consider what constituted "sufficient cause" under s 32 of the Probate Act which states that probate may be revoked or amended for "any sufficient cause". The Court of Appeal at [12] adopted the interpretation in a number of Malaysian cases:

> … The [Probate Act] does not define what constitutes 'sufficient cause'. However, 'sufficient cause' has been explained in the authorities to mean 'undue and improper administration of the estate in total disregard of the interests of the beneficiaries': *Fazil Rahman v Machiappa Chettiar* [1963] MLJ 309 at 210, and *Re Khoo Boo Gong, deceased* [1981] 2 MLJ 68 at 69; *Tan Khay Seng v Tan Kay Choon* [1990] 1 MLJ 51. There must be *evidence of misconduct or fraud* on the part of the executors or *immediate danger of loss*, and the test is an objective one. [emphasis added]

161 In *Doshi (Singapore)*, the Court of Appeal accepted the findings of the Malaysian courts that the executors had not properly discharged their duties as executors in respect of the assets of the estate in Malaysia, and that there was sufficient cause for the revocation of the executor's grant of probate in Malaysia. However, the Court of Appeal stressed that the court's exercise of the power under s 13(2) of the Probate Act is a discretionary one. The Court of Appeal then declined to exercise its jurisdiction to revoke the letters of administration here on the ground that there was no suitable party to take over the administration of the estate in Singapore. I am in a similar dilemma.

162 On an overall assessment of the situation, despite the hostility between the plaintiff and the defendant, I have concluded that I should not exercise my discretion under s 55 of the Probate Act to pass over the defendant as the named executor. Apart from the matters I have mentioned in [157] above which serve to explain or ameliorate the defendant's conduct to some extent, he is not a person of bad character. He has made mistakes but he has recognised these and reimbursed the Estate. His overall concern is to administer the Estate on behalf of his mother who reposed trust in him for at least the last 30 years of her life. It is important that he was the person who handled all Mdm Ho's financial affairs for a substantial period before her death. His situation is different from that of the executor in *Hameed Nachia* in that although he delayed in the formal application for probate, he did take up the reins of the Estate from the very beginning. In doing so, he simply continued to do what he had been doing while his mother was alive. Unlike the named executor in *Hameed Nachia*, the defendant also recognises the claims of the plaintiff as beneficiary. The cases are clear that the selection of an executor by a testatrix is entitled to be given great weight.

163 I am also influenced by the fact that there is no one else who has applied for probate who is

suitable to administer the Estate. Dr Chiang is not interested and, for the reasons that I give below, I find it would not be in the interests of the Estate to grant its administration to the plaintiff.

The plaintiff's suitability

164 The defendant submitted that the plaintiff is not suitable to act as the administrator of the Estate because:

(a) she is an extremely vindictive and difficult person who will stop at nothing to achieve her ends;

(b) she had extended her relentless attacks on CPPL by informing IRAS of irregularities in the company's affairs when there were none and this resulted in the books and documents of CPPL being seized by IRAS;

(c) she filed a police report against the defendant for "threatening her with law suits" and another one for "criminal breach of trust" in relation to the use of funds from CCL's Account;

(d) on the expiry of the lease of 68 Oriole, the plaintiff "drove outside 68 Oriole Crescent, stalking the property" and then filed a police report that there was a "stranger" living in the premises instead of ascertaining from the defendant whether the tenant had vacated;

(e) the plaintiff lodged a police report against Dr Chiang three days after Mdm Ho's death because she wished to pursue "the matter that my sister had accused me of causing our mother's death";

(f) the plaintiff sent two letters of complaint to the Singapore Medical Council against Dr Chiang complaining that Dr Chiang had wrongfully prescribed Plavix for her mother. I should note here that on 8 April 2010 the Singapore Medical Council informed the plaintiff that the Complaints Committee had enquired into her complaint. It had concluded that there was no evidence of professional misconduct on the part of Dr Chiang and decided to dismiss the complaint; and

(g) the plaintiff had no qualms about stealing files belonging to Mr Chiang from 5 Harlyn without informing the defendant or Ms Ong and in calling in a locksmith to break the padlocks of the gate and change the locks of the front door to 68 Oriole without informing the defendant.

165 The defendant also submitted that if the plaintiff should become the executor, there was a real risk that the relationship between her and Dr Chiang and the defendant would worsen even further. It was also likely that there would be further litigation in the event of the plaintiff being appointed. This would not be in the interests of the Estate.

166 In response, the plaintiff submitted that she had acted reasonably in requesting the Singapore Medical Council to investigate her report against Dr Chiang regarding the prescription of Plavix for Mdm Ho in view of accusations that Dr Chiang had made against the plaintiff in relation to Mdm Ho's death and of the findings of the autopsy and toxicology reports. I note here that it is somewhat odd to justify a serious complaint like the one made by the plaintiff on the basis that Dr Chiang had made unwarranted accusations against the plaintiff. The plaintiff is now a mature woman and should not take tit-for-tat action.

167 The plaintiff said that she had taken Mr Chiang's files from 5 Harlyn for a purpose and had

subsequently returned all but one file. Further, the plaintiff had made efforts at reconciliation with her siblings. She had put forward a draft set of terms of settlement but unfortunately no settlement had resulted. She averred that she had shown no animosity or unfairness or made groundless attacks on her siblings. It was the defendant and Dr Chiang who were not fair and hostile to her. The litigation here was started because the defendant had not properly administered the Estate and not out of vindictiveness. The plaintiff, unfortunately, seems to me to have no insight into her own motives and no appreciation of how her actions appear to third parties.

168 Having considered all the evidence, I have concluded that it would not be in the interest of the due administration of the Estate to appoint the plaintiff as administrator. The relationship between her and her siblings is so bad that the chances of further litigation are extremely high: they would be suspicious of every action she takes and would take every opportunity to criticise her as she herself has done in respect of the administration by the defendant. The plaintiff also, from what I have observed, is not an objective person. Once she has an idea in her head, she pursues the same until the bitter end, disregarding any evidence or argument that might cast doubt on the soundness of that idea. The plaintiff is also willing to deny knowledge of matters she would clearly have been aware of for years and even to deny that she is the author of letters concerning the defendant and the estate when the information in such letters could not have been possessed by a third party. The plaintiff has a tendency to put her own interests first as shown by her behaviour in relation to 68 Oriole. She is also rather self-righteous. All that does not bode well for the efficient and speedy and objective administration of the Estate if she were to be appointed administrator.

The defendant's counterclaim

169 The defendant's counterclaim against the plaintiff is in three parts. The first part is a claim for damages on the basis that the plaintiff brought a frivolous claim against him. The second part is the claim that she is liable to him for loss of rental in respect of 68 Oriole. The third part is a claim for an order prohibiting the plaintiff from interfering in any way with the issue of grant of probate for the Estate.

170 I will deal with the second part first. I have held that any rental from 68 Oriole which accrued after Mdm Ho's death belongs to the plaintiff subject to deductions for expenses incurred in maintaining 68 Oriole. The defendant as executor of the Estate would have no claim on the rental unless the Estate is insolvent and the rental is needed to pay its debts. There is, as stated earlier, no evidence that the Estate is in this position. The defendant's claim is premature. When the Estate is being wound up, if it then appears that recourse has to be had to the income from the specific devises in order to pay the debts of the Estate, he will be able to make a claim against the plaintiff for her share of the same. At that stage, of course, he and Dr Chiang, as the other specific devisees, would have to make their contributions to the Estate's debts as well.

171 I turn now to the first part of the counterclaim. The basis of this counterclaim is that the plaintiff abused the process of the court because she brought an action based on false allegations. The defendant submitted that the plaintiff had embarked on this litigation without basis. There were days of speculative oral evidence from the plaintiff and her alleged expert and the litigation became more prolix with extended and unnecessary cross-examination of the defendant. The conduct of the trial showed no *bona fide* claim by the defendant.

172 As can be seen from my analysis in the foregoing portions of this judgment, while many of the plaintiff's complaints were unjustified, she did have some grounds for challenging the defendant's suitability to be the executor. The most significant of these was the defendant's delay in filing for probate when the Estate required firm management from the beginning. Had the defendant responded

to the plaintiff's various queries in 2010 by filing immediately for probate, this action would not have been started.

173 Further, as I have pointed out above, the defendant did act incorrectly in relation to certain expenditure that he had made from the Interim Account. I have decided on balance that it would not be correct to pass over the defendant as executor. However, the plaintiff's claim was not totally frivolous and I do not think it would be correct to award the defendant damages. The defendant asserted that if she had not brought the action he would have, upon extracting the grant of probate, paid off the loan secured by 70 Oriole and saved interest. This is not a very convincing argument. If the defendant was so concerned about the interest, he would have applied immediately for a grant.

174 As regards the third part of the counterclaim, in view of my other findings, it would be appropriate to order the plaintiff to refrain from interfering with the issue of grant of probate for the Estate and to remove the caveats that she has lodged.

Costs

175 The defendant submitted that if the plaintiff's claims were dismissed, she should be held liable for costs on an indemnity basis. His justification was that he should not be required to use the Estate's funds to cover the costs that could not be recovered on the standard basis. If he had to do so, it would mean that the residuary assets to be distributed to the defendant and Dr Chiang would be adversely affected.

176 In response, the plaintiff cited the following passage from *Raman on Probate* at p 140:

> **E. Costs**
>
> Ordinarily, costs should follow the event. However, in probate actions, there is a permutation to this rule.
>
> Costs in probate actions are based strictly on the jurisdiction or reasonableness of bringing such actions.
>
> > Executors and administrators, in the absence of gross misconduct, are entitled to their full costs of the suit as between solicitor and client out of the estate, properly incurred by them. The general principle is that the estate must bear the expenses incidental to the proper performance of the duties of the person representatives as personal representatives.
>
> Even where the defendant has been unsuccessful in opposing probate, costs may be ordered to be paid out to him from the estate. In a case where the defendants opposed the granting of probate alleging unsoundness of mind of the testator at the time he made his will, costs were ordered to be paid out to them from the estate as the court held that there was a reasonable case for inquiry. It is only in cases where the party has been unreasonable that he will be ordered to pay costs himself.

177 Having considered all the circumstances, there is no doubt that many of the plaintiff's complaints were unjustified. The plaintiff also prolonged the proceedings unnecessarily in the way that she conducted cross-examination of the defendant and by calling her husband and daughter as witnesses when they had little, if anything, to contribute to the proceedings. However, the defendant also behaved wrongly and his attitude towards the plaintiff did not help very much. I note that if any costs come out of the residue of the Estate, Dr Chiang would be adversely affected. She took no part

in the proceedings, except to testify, and should not be penalised. Overall, I think the fairest approach would be to order that the defendant's costs of this action be taxed on a solicitor and client basis and that the plaintiff bear 75% of the costs as taxed with the defendant bearing the remaining 25%. The costs should not be recovered from the Estate.

Conclusion

178 For the reasons given above, the claim is dismissed. Except that the plaintiff is ordered to refrain from interfering in any way with the issue of grant of probate to the defendant in respect of the Estate and to forthwith remove all caveats in respect of the Estate, the counterclaim is dismissed. The plaintiff shall pay to the defendant 75% of the costs of defending the action (including the costs of prosecuting the counterclaim as it is inextricably tied up with the claim) as taxed on the solicitor and client basis. The remaining 25% shall be borne by the defendant who shall not be entitled to recover the same from the Estate.