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

**[2019] SGHC 113**

Suit No 159 of 2016

Between

Lilyana Alwi

*… Plaintiff*

And

John Arifin

*… Defendant*

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# JUDGMENT

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[Trusts] — [Express trusts] — [Certainties]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Trusts] — [Breach of trust]
[Equity] — [Fraud]

## TABLE OF CONTENTS

# Lilyana Alwi
# v
# John Arifin

**[2019] SGHC 113**

High Court — Suit No 159 of 2016
Woo Bih Li J
14-17, 21, 30 August 2018; 15 October 2018

2 May 2019 Judgment reserved.

**Woo Bih Li J:**

## Introduction

1 The plaintiff, Lilyana Alwi, commenced Suit No 159 of 2016 on 18 February 2016 against the defendant, John Arifin, seeking:

(a) a declaration that she was the sole beneficiary of moneys held in certain joint accounts with the defendant, together with other orders to give effect to this declaration;[1] and

(b) that the defendant account as trustee for alleged breaches of trust and/or fiduciary duties.[2]

2 The plaintiff also sought the return of several pieces of jewellery ("the

1 Statement of Claim ("SOC") at para 30(i)

2 SOC at para 30(v)

Jewellery") which were allegedly handed over to the defendant to be held on trust for her sometime in 1998.

3 The two issues are distinct and I will discuss them separately.

**Background**

4 The plaintiff is an 86-year-old Indonesian citizen[3] who resides in Jakarta.[4] She has three sons from her marriage with the late Hasan Arifin ("Mr Arifin"), who was an Indonesian businessman: the defendant, Peter Arifin ("Peter") and David Arifin ("David"). The defendant is the eldest son and is a Singapore citizen.

5 A central figure in the dispute between the parties is Mr Arifin. Mr Arifin was in the business of reselling electronics. He would purchase electronics from overseas for resale in Indonesia. As with any business, he had his ups and downs but it appears that for the most part his business did well until his later years. He was able to purchase multiple properties in Singapore and Indonesia and managed to send all three of his sons to universities in the United States ("US").[5]

6 Although parties referred to various account numbers, there are two main joint accounts in the names of the plaintiff and defendant which are the subject of the present proceedings. One of the joint accounts in question is opened with Citibank Singapore Ltd ("Citibank") while the other is opened with the Australia and New Zealand Banking Group Ltd ("ANZ"): [6]

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3 4AB 1250.

4 NE 14 Aug 18, p 10 at lines 9-16.

5 Plaintiff's AEIC at paras 9-10.

| Bank | Account No. |
|---|---|
| Citibank | xxxxxxxx17 |
| ANZ | xxxxxxxx87 |

7 Both the plaintiff and the defendant did not dispute that the funds in the joint accounts originated from the sale of a property in Simprug, Indonesia ("the Simprug Property") in 2007 although they differ over the exact ownership of the Simprug Property. The funds were transferred into a Citibank account xxxxxxxx17 ("the Initial Citibank Joint Account") on 10 July 2007 by the buyer of the Simprug Property.[7] Several other similar joint accounts were opened over the years with other banks into which moneys from the Initial Citibank Joint Account were transferred. However, they have since been closed and are not relevant for the purposes of the present proceedings. I will refer to the various joint accounts, including the ones which have been closed, collectively as the "Joint Accounts". The plaintiff claimed that she was a joint owner of the Simprug Property.[8] The defendant maintained that it was owned entirely by Mr Arifin.[9]

8 The plaintiff claimed that she is the sole beneficial owner of the moneys in the Joint Accounts and that she is entitled to the entire credit balance in the Joint Accounts.

9 Second, the plaintiff alleged that there was an express trust agreement

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6 Defence and Counterclaim (Amendment No 1) at paras 2-4.

7 Plaintiff's AEIC at para 28.

8 Plaintiff's closing submissions at para 15.

9 Defendant's closing submissions at para 64.

between her and the defendant which was formed orally ("the Express Trust Agreement"). According to the plaintiff, she had discussed the opening of joint accounts with Mr Arifin, following which she approached the defendant and his wife Anna Ho ("Mdm Ho") for assistance. It was during this process that the Express Trust Agreement was formed.[10] Under this agreement, the plaintiff would remit the sales proceeds of the Simprug Property into a joint account with the defendant in Singapore to be held on trust for her.[11] The defendant would help to manage the moneys in the joint account and would, as trustee, owe fiduciary duties including:[12]

(a) to hold the moneys solely for the benefit of the plaintiff, and to act only on her instructions in relation to the same;

(b) to act in good faith and in the best interests of the plaintiff; and

(c) not to place or allow himself to be placed in a situation or position whereby any of his duties and obligations to the plaintiff conflict or may conflict with his own personal interests.

10 The plaintiff relied primarily on the defendant's conduct in relation to the Joint Accounts to prove the existence of the Express Trust Agreement.[13] The plaintiff also relied on an email where the defendant stated that he was assisting the plaintiff in "[investing]… and [looking] after [her] account".[14]

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10 Plaintiff's closing submissions at para 42.

11 Statement of claim para 7; Plaintiff's AEIC at para 25.

12 Statement of claim at para 12.

13 Plaintiff's closing submissions at para 43.

14 Plaintiff's closing submissions at para 43(b)(ii).

11 The plaintiff claimed that the following payments were made in breach of fiduciary duties owed to the plaintiff by the defendant:[15]

(a) payment of US$19,000 to Trina Arifin ("Trina"), a daughter of the defendant, on 31 January 2008;

(b) payment of US$16,000 to Trina on 23 April 2008;

(c) payment of S$335,000 to the defendant allegedly for the setting up of an "Arifin Fund" for the benefit of the plaintiff's grandchildren. On this sum, the defendant explained that it was derived from two payments of US$95,000 on 17 April 2008 and £76,726.05 on 28 May 2008, which were equivalent to about S$335,304.44 (based on agreed upon exchange rates).[16] More will be said below about these two payments;

(d) payment of S$60,000 to the defendant on 7 January 2014, allegedly for the repayment of loans and reimbursement of medical expenses incurred on behalf of the plaintiff; and

(e) cumulative withdrawals of S$43,525.25 for alleged cumulative credit card payments of the plaintiff.

12 The plaintiff also claimed that a sum of S$128,581.99 remained unaccounted for in the Joint Accounts and that the defendant should provide an account for the same.[17]

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15 Plaintiff's closing submissions at para 82; Exhibit P1.

16 DCBD at p 15.

17 Plaintiff's closing submissions at para 135; Exhibit P1.

13 The defendant denied that the plaintiff is the sole beneficiary of the moneys in the Joint Accounts. He also denied the existence of the Express Trust Agreement. The defendant's position is that he is entitled to half of the moneys in the Joint Accounts as Mr Arifin had told him that the moneys in the Initial Citibank Joint Account were for him and the plaintiff.[18] The defendant also relied on the fact that he is a joint account holder of the Joint Accounts to claim half of the moneys.[19]

14 After the commencement of the present action, the plaintiff applied to be allowed to withdraw half of the moneys in the Joint Accounts on the basis that she was entitled to at least half. Surprisingly, the defendant resisted this application. The plaintiff's application was dismissed by an assistant registrar. On her appeal, I allowed the plaintiff to withdraw half of the moneys in the Joint Accounts.[20] What was left to be determined was the ownership of the remaining moneys.

15 The defendant did not dispute the six payments mentioned at [11] above. He alleged that the plaintiff had authorised them.[21] The defendant relied on a few statements of account which purportedly evidenced a running account with Mr Arifin. I will elaborate on these statements later.

16 Apart from these statements, there was another document titled "Surat Keterangan" prepared by the defendant. It was signed by Mr Arifin and the plaintiff on 17 August 2007. I will also elaborate on this document later.

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18 Defendant's closing submissions at para 16; NE 17 Aug 18, p 46 at lines 5-9.

19 Defence and counterclaim at para 69.

20 Minute sheet dated 27 July 2016.

21 Defendant's closing submissions at paras 14, 94, 116-117, 128-129

17 The defendant also denied that there was an unaccounted sum of S$128,581.99. He said that the plaintiff had used different exchange rates at different times to derive the unaccounted sum when actually there was no unaccounted sum.[22]

18 Turning to the issue of the Jewellery, the plaintiff's case was that the Jewellery was handed over to the defendant in Singapore to be held on trust in 1998 during riots in Indonesia.[23]

19 The defendant's position was that they were not handed to him at all, let alone for safekeeping, but rather the Jewellery was handed to his wife as gifts to his wife and daughters.[24]

**Issues to be determined**

20 The issues to be determined are:

(a) the ownership of the moneys in the Joint Accounts, which requires a consideration of: (i) the ownership of the Simprug Property; and (ii) the extent of the plaintiff's interest in the moneys in the Initial Citibank Joint Account;

(b) whether the plaintiff was able to establish the Express Trust Agreement;

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22 Defendant's closing submissions at para 48(b), 123-127.

23 Plaintiff's closing submissions at para 7.

24 Defendant's closing submissions at para 140.

(c) whether the defendant had breached his fiduciary duties in respect of the six disputed payments and the alleged unaccounted sum; and

(d) whether the plaintiff handed the Jewellery to the defendant to be held on trust for the plaintiff.

## Ownership of the moneys in the Joint Accounts

### *Ownership of the Simprug Property*

21 As both the plaintiff and the defendant did not dispute that the moneys deposited into the Initial Citibank Joint Account (from which all moneys in the Joint Accounts were derived) represented about 80% of the proceeds of the sale of the Simprug Property in 2007,[25] it is important to determine whether the plaintiff held any interest in the Simprug Property.

22 While the plaintiff accepted that Mr Arifin held the legal title to the Simprug Property,[26] she took the position that she was a joint owner of the Simprug Property for the following reasons:

(a) Mr Arifin intended for his legal rights to the Simprug Property to be bequeathed to the plaintiff upon his death. This was evidenced by documents purporting to be Mr Arifin's final will dated 11 October 2006 ("the Final Will") and a draft will dated 11 October 2006 ("the Draft Will");[27]

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25 Defendant's AEIC at p 257.

26 Setting down bundle, p 57 at para 1.

27 Plaintiff's closing submissions at para 19-22; 1AB 153-182.

(b) the Simprug Property was purchased during her marriage to Mr Arifin and they had lived in it;[28]

(c) the plaintiff was actively consulted and involved in the sale process of the Simprug Property in 2007;[29] and

(d) the plaintiff's consent to the sale was required under Indonesian law.[30]

23 I do not think that the evidence shows that the plaintiff had any legal or beneficial interest in the Simprug Property at the time it was sold in 2007.

24 I do not think that much weight can be placed on the Final Will in determining whether the plaintiff was a joint owner of the Simprug Property. As I understood it, the plaintiff's submission was that the signature of a notary on the Final Will to signify that he had witnessed the signatures of Mr Arifin and the witnesses to the Final Will meant that it must have been signed by Mr Arifin.[31] I do not agree. The fact that the notary signed to indicate that he had witnessed the signatures of Mr Arifin and the witnesses is not enough if the signatures themselves are clearly not present on the document which was the case. In addition, there was evidence in the form of a certificate from the Indonesian Ministry of Law and Human Rights stating that Mr Arifin died intestate without having registered any will in Indonesia.[32] Neither party challenged the authenticity of this certificate.

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28 Plaintiff's closing submissions at para 17.

29 Plaintiff's closing submissions at para 18.

30 Plaintiff's closing submissions at para 16.

31 Plaintiff's closing submissions at para 21.

32 4 AB 1236-1237.

25 Even if Mr Arifin had signed the Final Will, the fact that he intended the plaintiff to inherit his interest in the Simprug Property could not confer upon her any immediate legal or beneficial interest in the Simprug Property: s 19 Wills Act (Cap 352, 1996 Rev Ed). On this point, no evidence was given on Indonesian law and thus I assume that Indonesian law is similar to Singapore law.

26 Also, the Final Will would have contradicted the plaintiff's position that she was a joint owner of the Simprug Property as it states that the Simprug Property would be bequeathed to the plaintiff, without specifying that the bequest referred only to Mr Arifin's alleged half-share.[33]

27 I also do not see how the plaintiff's marriage to Mr Arifin at the time of the acquisition of the Simprug Property could support the plaintiff's argument that she was its joint owner. This was especially so since the plaintiff conceded in both her pleadings and a letter from her lawyers to the defendant's lawyers dated 13 July 2015 that Mr Arifin was the owner of the Simprug Property.[34]

28 As regards the sale of the Simprug Property, even if the plaintiff had been actively consulted and involved in the sales process, or had to consent to the sale of the Simprug Property, I do not think that these would prove that she was a joint owner. In the sale and purchase agreement for the Simprug Property dated 16 July 2007 ("the S&P Agreement"), the parties to the transaction were Mr Arifin and the buyer. While the plaintiff signed the S&P Agreement, her signature was found under the heading "approval from Wife", and she was not reflected as a party to the sale of the Simprug Property.[35] No evidence was led

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33 1 AB at p 178.

34 Setting down bundle, p 57 at para 1; 5AB 1588-1589.

at trial to show that the requirement for the plaintiff's approval meant that she was the joint owner of the Simprug Property.

29 In my view, the plaintiff has not proven on a balance of probabilities that she was a joint owner of the Simprug Property. I conclude that the entire legal and beneficial interest in the Simprug Property was owned by Mr Arifin.

***The extent of the plaintiff's interest in the moneys in the Initial Citibank Joint Account***

30 The evidence was that the sum of US$849,581.36 (representing 80% of the sales proceeds from the Simprug Property) was paid by the buyer directly into the Initial Citibank Joint Account.[36]

31 Having determined that the Simprug Property was owned by Mr Arifin, I have to consider his intention when he caused the sales proceeds to be paid into the Initial Citibank Joint Account in the names of the plaintiff and defendant. Should the court be unable to discern a clear intention on the part of Mr Arifin, the presumption of resulting trust or the presumption of advancement would then be applied. The following passage from *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [116] (cited by the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [52]) sets out of the approach to be adopted:

> If the court could discern a clear intention on the part of the deceased… then there should be no need to apply any presumption of a resulting trust to aid the fact-finding or decision-making process. Only when the court is not able to find any clear intention or if the evidence is inconclusive either

[35] 2AB at pp 657-664.

[36] Plaintiff's AEIC at para 28; Defendant's AEIC at para 40.

> way as to what the deceased's real intention might be, then in this rather limited and exceptional situation (where the evidence is so finely balanced on either side) should the court apply the evidential presumption of a resulting trust to tilt the balance…

32 I mention the presumption of advancement as well because the plaintiff and defendant were the wife and eldest son of Mr Arifin respectively. Since the plaintiff and defendant were Mr Arifin's wife and child respectively, the presumption of advancement would apply to displace the presumption of resulting trust which would otherwise have applied: *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [57], [68] and [77].

33 The plaintiff's position was that Mr Arifin intended to give the entire proceeds from the sale of the Simprug Property to her.[37] The plaintiff raised several arguments in this regard:

(a) the Final Will evinced Mr Arifin's intention for the plaintiff to benefit from the proceeds of the sale of the Simprug Property;[38]

(b) Mr Arifin had told Peter, his second son, that the sales proceeds from the Simprug Property were a gift to the plaintiff;[39]

(c) given Mr Arifin's age and health when the Simprug Property was sold in 2007, it was not unreasonable for him to think of providing for the plaintiff should he pass away;[40] and

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37 Plaintiff's closing submissions at para 4.

38 Plaintiff's closing submissions at para 24(c).

39 Plaintiff's AEIC at para 18.

40 Plaintiff's closing submissions at para 24(d).

(d) the defendant's admissions at trial and in emails to his brother David Arifin ("David") that he had no beneficial interest in the moneys in the Joint Accounts.[41]

34 The defendant's claim to half the moneys in the Initial Citibank Joint Account was based on a conversation which he allegedly had with Mr Arifin whereby the latter had told him that the money was "for you both".[42] The defendant also relied on his status as a joint holder of the Initial Citibank Joint Account with the liberty, as an authorised signatory, to withdraw all the moneys in the account unilaterally. According to him, the rule of equality applied in this case and he was entitled to half of the moneys.[43]

35 I am of the view that the evidence established on a balance of probabilities that Mr Arifin intended to give the moneys in the Initial Citibank Joint Account to the plaintiff and did not mean to benefit the defendant.

36 In arriving at my decision, I place little weight on the contents of the Draft Will and Final Will in the light of the serious concerns I had with their reliability (see above at [24]). I also place no weight on the plaintiff's contention that Mr Arifin had told Peter about his intention to give the moneys in the Initial Citibank Joint Account to the plaintiff as Peter was not called as a witness (even though he was at times present in court).

37 I come now to the rest of the evidence. First, causing the proceeds from the sale of the Simprug Property to be paid into the Initial Citibank Joint

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41 4AB 1338; NE 17 Aug 2018, p 48 at lines 25-31.

42 NE 17 Aug 18, p 45 at lines 8-10.

43 Defendant's closing submissions at para 84.

Account in the names of the plaintiff and defendant was a deliberate and considered move on Mr Arifin's part. Mr Arifin was by all accounts a savvy businessman.[44] He would have been aware that in doing so he was potentially giving up any claim he had to the moneys, yet he proceeded with this course of action.

38 Apparently, Mr Arifin maintained other bank accounts in Indonesia and Singapore.[45] If indeed he did not intend to give the proceeds of sale of the Simprug Property to the plaintiff (or the defendant), it would have been easier for him to cause the proceeds to be paid into one of his personal bank accounts. Yet, he decided otherwise. It was apparent from the evidence that the Initial Citibank Joint Account was set-up according to his wishes although he may have left it to the plaintiff and the defendant to decide which bank to open the joint account with. Mr Arifin then procured the payment of part of the sales proceeds of the Simprug Property in Indonesia by the buyer into the Initial Citibank Joint Account. To my mind, this was strong evidence of Mr Arifin's intention that the moneys were to be given to the plaintiff.

39 On the other hand, even though the defendant was a joint holder of the Initial Citibank Joint Account, it was clear from the evidence that he himself did not think that he had a beneficial interest in the moneys therein.

40 First, it appears to me that the defendant's claim that Mr Arifin had told him that the moneys in the Initial Citibank Joint Account were for him and the plaintiff was no more than an afterthought. In the Defence and Counterclaim (Amendment No 1), the defendant stated only that Mr Arifin had never informed

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44 NE 16 Aug 18, p 83 at lines 3-10.

45 1AB 113; Defendant's AEIC at para 6.

him that the moneys deposited into the Initial Citibank Joint Account were a gift solely to the plaintiff.[46] It was only subsequently in his affidavit of evidence-in-chief ("AEIC") that the defendant first raised the claim that Mr Arifin told him that the moneys were for him and the plaintiff.[47]

41 Second, the defendant also admitted at trial that he had no beneficial interest in the moneys in the Initial Citibank Joint Account when the sales proceeds of the Simprug Property were first remitted into the account by the buyer.[48] This clearly contradicted his position that he was told by Mr Arifin that the money was for both him and the plaintiff.

42 Third, in an email from the defendant to his brother David dated 18 February 2014, the defendant stated:

> "[I]t is [the plaintiff's] money and she can do what she likes…"

43 While the defendant attempted to explain that this was not an admission as to the plaintiff's ownership of the moneys in the Joint Accounts from the time they were first set up,[49] I do not find his explanation to be credible. The defendant testified that after Mr Arifin passed away on 15 December 2010,[50] he had told the plaintiff that he was giving his share of the moneys in the Joint Accounts to her for her medical expenses and travel. This would explain his statement in the email that the moneys in the Joint Accounts belonged to the plaintiff.[51] However, the difficulty for the defendant was that the email did not

46 Defence and Counterclaim (Amendment No 1) at para 16.

47 Defendant's AEIC at para 50.

48 NE 17 Aug 2018, p 43 at lines 29-32, p 44 at lines 1-5.

49 NE 30 Aug 2018, p 39 at lines 8-28.

50 4AB 1236-1237.

51 NE 30 Aug 2018, p 39 at lines 8-13

say that the plaintiff could use half of the moneys only for her medical expenses and travel as agreed between the two of them. Instead the email said that the moneys were the plaintiff's and that she could do what she liked with them.

44 Furthermore, the defendant's explanation was contradicted by the defendant's own admission at trial that he had no beneficial interest in the moneys in the Initial Citibank Joint Account when they were first remitted from the sale of the Simprug Property.[52] The defendant seemed not to understand that if he did not have any beneficial interest at all then he had no share to give up in the first place. The defendant's pleadings also do not say that he was still claiming a share because the gift from him to the plaintiff subsequently was for specific purposes only, *ie*, medical expenses and travel. As mentioned, in his pleadings the defendant also relied instead on the mere fact that he was and is a joint holder of the Initial Citibank Joint Account with the liberty, as an authorised signatory, to withdraw all the moneys in the account unilaterally .[53]

45 Further, the defendant's conduct in relation to the moneys in the Joint Accounts was inconsistent with him being beneficially entitled to half. On the defendant's own evidence, he had sought the agreement of Mr Arifin and the plaintiff for two payments of US$95,000 and £76726.05 from the Joint Accounts.[54] This was to pay for the tuition fees of the defendant's children in the US.[55] While the plaintiff challenged the reason for both of these payments, the point is that it seems strange that the defendant would have had to ask for the agreement of the plaintiff and Mr Arifin to make these payments if it were

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52 NE 17 Aug 2018, p 43 at lines 29-32, p 44 at lines 1-5.

53 Defence and Counterclaim (Amendment No 1) at para 11.

54 NE 21 Aug 2018, p 34 at lines 10-15.

55 NE 17 Aug 2018, p 18 at lines 8-17.

true that he was beneficially entitled to half the moneys therein. Also, there was no evidence that the defendant ever used the moneys in the Joint Accounts for his personal expenses. In my view, this strongly suggested that the defendant himself never believed that he had any beneficial interest in the moneys in the Joint Accounts. Indeed, in cross-examination the defendant admitted that his motivation in claiming half of the moneys in the Joint Accounts was because he was afraid that the plaintiff would squander the moneys.[56] Despite any noble intentions the defendant might have had, this could not confer upon him a beneficial interest in the moneys in the Joint Accounts where none existed before.

46 I am satisfied on a balance of probabilities that Mr Arifin intended to give the moneys in the Initial Citibank Joint Account to the plaintiff absolutely. In the light of this finding, the defendant's remaining argument that the rule of equality applies fails. The rule has no room to apply on the present facts where it is possible to ascertain the respective shares of the plaintiff and defendant in the Initial Citibank Joint Account.

47 The presumption of advancement does not affect the above conclusion.

48 As I mentioned above at [32], since the plaintiff and the defendant were the wife and eldest son of Mr Arifin respectively, the presumption of advancement would apply in place of the presumption of resulting trust (which would have been a presumption in favour of Mr Arifin himself).

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[56] NE 17 Aug 2017, pp 47-48.

49 The defendant did not make any submission on whether the presumption of advancement in favour of the plaintiff was rebutted. He accepted that the plaintiff was entitled to at least half of the moneys in the Joint Accounts.

50 The only evidence led at trial which might be used to rebut the presumption of advancement in favour of the plaintiff was that the plaintiff had authorised payments from the Joint Accounts to repay loans advanced previously to Mr Arifin.[57]

51 I was of the view that the presumption of advancement in favour of the plaintiff was not rebutted solely by this fact. The fact that the recipient of property allows the property or the fruit of that property to be used according to the donor's wishes does not necessarily rebut the presumption of advancement. In *Commissioner of Stamp Duties v Byrnes* [1911] 1 AC 386 (cited in *Chin Kim Yon v Chin Kheng Hai* [2016] SGHC 2 at [31]), a father transferred properties to his two adult sons but continued to receive rents derived from the properties. The Privy Council held that the presumption of advancement was not rebutted, explaining at 392:

> In the present case, having regard to the state of the family and the relations subsisting between Mr. Byrnes and his two sons who were living at home, it seems very natural that the sons receiving advances should yet feel a delicacy in taking the fruits during their father's lifetime.

52 Given that the source of the moneys came from the Simprug Property owned by Mr Arifin and his position as patriarch of the family, it was only natural that the plaintiff would consent to using moneys from the Joint Accounts to make payments on behalf of Mr Arifin. The present case can be distinguished from situations in which the presumption of advancement was found to be

[57] 2AB 674.

rebutted. In *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795, the joint accounts in question, while opened in the name of the father and son, were controlled entirely by the former and the latter was never given the opportunity to operate the account at all (at [51]). Here, Mr Arifin was never a holder of the Initial Citibank Joint Account. Also, there was evidence that the plaintiff could use the moneys as she thought fit; the plaintiff possessed a credit card linked to the Initial Citibank Joint Account which she used for her personal expenses.[58]

53 The issue then was whether the plaintiff had rebutted the presumption of advancement in favour of the defendant and the result that would follow if such a finding were made.

54 Given that I found above at [35]-[46] that Mr Arifin did not intend to benefit the defendant in causing the proceeds of the sale of the Simprug Property to be paid into the Initial Citibank Joint Account, it follows that for the same reasons the presumption of advancement in favour of the defendant is rebutted.

55 The facts of this case presented a novel situation as a rebuttal of the presumption of advancement in favour of the defendant did not necessarily mean that the defendant held half of the moneys in the joint account on resulting trust for Mr Arifin's estate. It was possible that the plaintiff would be beneficially entitled to all of the moneys.

56 Based on the evidence already discussed above, I am of the view that the plaintiff was beneficially entitled to all the moneys. This includes the remaining moneys in the Joint Accounts. I add that the defendant did not

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[58] 2AB 674; NE 30 Aug 18, p 78 at lines 7-19.

contend that half of the moneys belonged to Mr Arifin's estate. The dispute was whether the plaintiff was entitled to all or the defendant was entitled to half.

**The Express Trust Agreement**

57 The next issue was whether an express trust was constituted over the moneys in the Initial Citibank Joint Account.

58 The plaintiff's position was that there was an express trust constituted by the Express Trust Agreement, which was entered into with the defendant before the moneys from the sale of the Simprug Property were remitted to the Initial Citibank Joint Account on 10 July 2007.[59] Paragraph 7 of the Statement of Claim pleaded that the terms of the Express Trust Agreement were:

(a) the plaintiff would remit the sales proceeds from the Simprug Property to a bank account in Singapore opened under the joint names of the plaintiff and the defendant, to be held on trust for the plaintiff;

(b) the defendant would manage the money; and

(c) the bank account would be opened as an "And/Or" account.

59 The plaintiff argued that the trust was evidenced by the following conduct of the parties:

(a) the defendant never withdrew moneys for his own personal use without the plaintiff's approval;[60]

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59 Plaintiff's AEIC at para 22-28.

60 Plaintiff's closing submissions at para 43(a).

(b) the defendant being named as an account holder although he had no beneficial interest in the moneys and his wife Mdm Ho had explained to the plaintiff any transactions which took place;[61]

(c) the defendant kept extensive records of transactions in the Joint Accounts and purportedly obtained the plaintiff's acknowledgement or consent to various transactions;[62] and

(d) the defendant's emails, including one where he states that he is assisting the plaintiff in "[investing]… and [looking] after [her] account".[63]

60 I set out the requirements for an express trust to be constituted. Three certainties must be present for the creation of an express trust: (a) certainty of intention; (b) certainty of subject matter; and (c) certainty of the objects of the trust (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [51].

61 The defendant denied that he had entered into the Express Trust Agreement with the plaintiff.[64]

62 In the alternative, the defendant took the position that both certainty of intention and certainty of subject matter were not present on the facts. The defendant submitted that there was no evidence showing that the plaintiff intended for him to owe legally enforceable duties rather than duties of a moral nature. The defendant also claimed that the trust purported to be created by the

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61 Plaintiff's closing submissions at para 43(c).

62 Plaintiff's closing submissions at para 43(e).

63 Plaintiff's closing submissions at para 43(b).

64 Defendant's closing submissions at para 48(a).

Express Trust Agreement was a trust over future property and thus void for uncertainty of subject matter.[65]

63 It seems to me that the key issue is whether the plaintiff has successfully proved the existence of the alleged oral agreement with the defendant which constituted the express trust.

64 In my view, the plaintiff has not established the existence of the alleged oral agreement constituting the express trust in her favour on a balance of probabilities.

65 I will refer first to the plaintiff's pleadings, opening statement and evidence.

66 As mentioned, one of the pleaded terms of the Express Trust Agreement was that the joint bank account would be opened as an "And/Or" account.

67 Yet, in para 25 of her AEIC, the plaintiff alleged that she subsequently learned that the Initial Citibank Joint Account was opened as an "And/Or" account. At the time the account was opened, she was not aware of the implications of an "And/Or" account. This contradicted her pleading and also cast doubt on her credibility about the existence of the Express Trust Agreement.

68 Second, the plaintiff's pleadings and AEIC stated that one of the express terms was that the money deposited into the Initial Citibank Joint Account was to be held on trust for the plaintiff. Yet it became clear during cross-examination that the plaintiff did not understand the concept of a trustee:[66]

[65] Defendant's closing submissions at paras 72-75.

> Q: I'm putting it to you that [the defendant] was not the trustee of the monies. He was a joint owner of the monies.
>
> A: When you said "trustee", does it mean that he has the right to collect the money?
>
> Q: No, "trustee" means he has no right ---
>
> …
>
> A: Does it mean to say the---to have the right to collect money?

69 Given that the plaintiff's case here was that she specifically agreed with the defendant that a trust would be created, the fact that she was unsure of the concept of a trustee at trial cast further doubt on her account that such an oral agreement was reached with the defendant.

70 Third, the plaintiff's position in her pleadings and AEIC was that she would remit the proceeds from the Simprug Property to the Initial Citibank Joint Account.[67] However, she was not the beneficial owner of the property. At most, she knew that Mr Arifin would remit, or cause to be remitted, the sales proceeds into the Initial Citibank Joint Account.

71 Fourth, the plaintiff never mentioned the Express Trust Agreement in any of her emails to the defendant, or in any of her discussions with either or both of Peter or David..[68] There was mention that the money was hers or for her use but nothing suggesting that the defendant had orally agreed to hold the plaintiff's money as a trustee.

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66 NE 15 Aug 18, p 46 at lines 11-16.

67 Plaintiff's AEIC at para 25(a); Statement of claim at para 7(a).

68 4AB 1504-1505, 1513,

72 Furthermore, the conduct which the plaintiff relies on to prove the existence of the Express Trust Agreement, even when considered in totality, does not discharge her burden of proof as to the existence of that agreement.

73 First, I do not see how the fact that the defendant never withdrew any moneys from the Joint Accounts without the plaintiff's approval demonstrates that he was a trustee over the moneys in the joint account. At best, this would go towards proving that the defendant did not have a beneficial interest over the moneys in the joint account. It does not support the plaintiff's contention of an express trust over the moneys in the Joint Accounts with the defendant as trustee.

74 Second, the fact that the defendant was named as an account holder despite not having any beneficial interest in the moneys does not prove that there was an express trust over the moneys in the Initial Citibank Joint Account. There are many plausible reasons as to why someone is named as a joint account holder which do not involve him being a trustee over the moneys in the joint account.

75 Third, I am not satisfied that the defendant's habit of keeping records of transactions in the Joint Accounts and obtaining the plaintiff's acknowledgement or consent to transactions proved the existence of the express trust. The defendant testified that he started to compile records in 2004 in response to the growing unhappiness in the family about the distribution of wealth.[69] Further, it was apparent that the defendant and Mdm Ho had a habit of keeping records of their financial transactions. For example, they were able to produce records relating to their overdraft facility which Mr Arifin drew on

[69] NE 17 Aug 18, p 9 at lines 21-31, p 10 at lines 7-11.

going back to 1985.[70] As for obtaining the plaintiff's consent for transactions, I do not think that this fact goes so far as to prove the existence of an express trust. It is equally consistent with the point that the moneys in the account belonged to the plaintiff.

76 Fourth, I do not think that the defendant's emails go so far as to prove the existence of an express trust. The "management" of the plaintiff's moneys need not have taken place pursuant to an express trust. Another possible legal relationship that comes to mind is an agency relationship (which was not pleaded). One important requirement of an express trust is that the settlor must have intended for the trustee to owe "legally enforceable duties rather than duties of a merely social or moral nature" (John McGhee, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015 at para [22-013]). The defendant's emails do not demonstrate the existence of such a legally enforceable duty. The available evidence suggested that dealings between the defendant on one hand and the plaintiff and Mr Arifin on the other were often conducted informally. The defendant incurred expenses on behalf of the plaintiff and Mr Arifin and allowed Mr Arifin to draw on his overdraft facility over the years, all without any written agreement or promise of being paid back.[71] In a similar manner, Mr Arifin assisted the defendant in the down payment for the Eber Gardens property.[72] Against this backdrop, I do not think that the defendant's emails prove the existence of the alleged trust on a balance of probabilities.

77 Furthermore, it is worth reiterating that the plaintiff never mentioned the defendant's express oral agreement to hold the money in any joint bank account

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70 1AB 67, 69, 72, 74, 75, 76, 80, 81, 83, 84, 85, 86.

71 DCBD at pp 4-12.

72 DCBD at p 4.

on trust for the plaintiff in any email from her or in any discussion with Peter or David.

78 Since the plaintiff has failed to discharge her burden to prove the existence of the Express Trust Agreement, it follows that it is unnecessary to consider the defendant's alternative arguments on whether the purported trust would have been void for uncertainty of intention or subject matter.

**The six disputed payments and the alleged unaccounted sum**

79 My finding that the plaintiff has failed to discharge her burden of proving the Express Trust Agreement is sufficient to dispose of her claim against the defendant for breach of trust and/or fiduciary duty. Nevertheless, for completeness, I consider whether her claim against the defendant would be made out if the Express Trust Agreement were proved.

80 After the defendant had provided certain figures to the plaintiff before the trial, the plaintiff produced a table showing entries and withdrawals from the Joint Accounts between July 2007 and 14 February 2014. This was marked as Exhibit P1. In her closing submissions, she focused her allegations for an accounting of unauthorised withdrawals on the six sums mentioned at [11].[73]

81 Even if there was an express trust constituted by the alleged Express Trust Agreement, I am of the view that, on a balance of probabilities, there was no breach of trust and/or fiduciary duty owed to the plaintiff as the payments in question were authorised and not procured by any fraud upon the plaintiff. The defendant also sufficiently accounted for the moneys in the Joint Accounts.

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[73] Plaintiff's closing submissions at para 82, 186.

82 It would be helpful at this stage to come back to the documents which both parties relied on in relation to the question whether there were outstanding loans between the defendant on the one hand and Mr Arifin on the other. The defendant relied on three documents which were purportedly statements of account:

(a) The first was prepared by Mdm Ho in 2004 ("the 2004 Statement"). It was signed by Mr Arifin on 18 April 2004 and the plaintiff on 17 August 2004.

(b) The second was an unsigned document prepared by Mdm Ho, which purportedly updated the 2004 Statement to 12 November 2004. ("the November 2004 Draft Statement").[74]

(c) The third was a document prepared by Mdm Ho. This was signed by Mr Arifin, the plaintiff, the defendant and Mdm Ho on 11 June 2008 ("the 2008 Statement").[75]

83 On the other hand, the plaintiff relied on the "Surat Keterangan" prepared by the defendant and which was signed by Mr Arifin and the plaintiff on 17 August 2007. This document purportedly set out the quantum of gifts from Mr Arifin and the plaintiff to their sons, but the plaintiff relied on it to show that, contrary to the defendant's allegation, there was a sum of S$500,000 due from the defendant to Mr Arifin which was not reflected in any of the statements of account.[76]

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74 DCBD at pp 4-12.

75 DCBD at p 15.

76 Plaintiff's closing submissions at para 108-110.

84 Initially, in her pleadings, the plaintiff did not admit that the signatures on the 2008 Statement, which purported to be her signature and that of Mr Arifin's, were authentic. In the plaintiff's opening statement at para 32, she acknowledged that her signature appears on the 2004 Statement and the 2008 Statement as well. Her position was that she had signed the documents on the basis that Mr Arifin (who was already not in the best of health from the mid-2000s) had already signed the same. At trial, she also accepted that she and Mr Arifin did sign the 2008 Statement. As for the "Surat Keterangan", the plaintiff accepted that she had signed this document. This was not surprising since she was relying on it.

85 The plaintiff challenged the accuracy of all the statements which the defendant was relying on, claiming that they were prepared to give a misleading account of the transactions between the defendant and Mr Arifin.[77]

86 In respect of the 2008 Statement, the plaintiff also suggested that the agreement thereunder was vitiated on two grounds:[78]

(a) the plaintiff did not have a clear understanding of the 2008 Statement and merely signed it because Mr Arifin did so; and

(b) Mr Arifin was suffering from dementia.

87 Significantly, these challenges were not mentioned in the plaintiff's pleadings. As mentioned, her position then was only that she did not admit that the relevant signatures on the 2008 Statement were hers or Mr Arifin's.[79] Yet,

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77 Plaintiff's closing submissions at para 99, 121.

78 Plaintiff's closing submissions at para 60.

79 Reply and Defence to Counterclaim (Amendment No 1) at para 22(b).

she admitted that they had signed the "Surat Keterangan". It was obvious that at the time of her pleadings she was picking and choosing which document to admit to, depending on whether she perceived the document to be to her advantage. This was not a wise strategy as it reflected poorly on her credibility.

88 Furthermore, there was no mention of Mr Arifin having suffered from dementia in her pleadings, her AEIC or her opening statement. It will be recalled that in her opening statement, she only mentioned that Mr Arifin was already not in the best of health from the mid-2000s. The plaintiff mentioned Mr Arifin's dementia only during cross-examination.

89 It is clear to me that there was a running account between the defendant and Mr Arifin. The defendant was able to produce numerous documents evincing payments made to and for Mr Arifin.[80] To the extent that the plaintiff denied that there was a running account, her objections appeared to be targeted instead at the accuracy of the defendant's accounting in the statements and not whether such a running account did in fact exist.

90 According to Mdm Ho, she had misplaced the 2004 Statement by the time the 2008 Statement was being prepared; the 2008 Statement was thus prepared by taking a rough estimate of the moneys owed by Mr Arifin as at 1992 and then applying a yearly interest rate of 3% per annum.[81]

91 The 2004 November Draft Statement was produced by the plaintiff presumably during discovery.

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80 1AB 67-105.

81 NE 30 Aug 18, p 94 at lines 3-20; DCBD at p 15.

92 As I understood it, the plaintiff raised three main objections to the accounting in the 2004 Statement and the 2004 November Draft Statement in her submissions:

(a) First, the defendant made Mr Arifin pay all the interest charges arising from an overdraft facility obtained by the defendant and Mdm Ho. While Mr Arifin had drawn on the overdraft facility, the defendant and Mdm Ho had also used the overdraft facility for their own purposes. There were also other interest charges unaccounted for.[82]

(b) Second, they failed to take into account the money paid by Mr Arifin for a property at #17-01 Hawaii Towers, 73 Meyer Road, Singapore 437898 ("the Hawaii Towers Property") which was transferred from Mr Arifin to the defendant. Apparently, Mr Arifin had paid S$500,000 towards the purchase of this property before the property was transferred to the defendant.[83] The balance of the purchase price was paid by the defendant and Mdm Ho when Mr Arifin's fortunes declined. According to the plaintiff, the 2004 Statement and 2004 November Draft Statement ought to have included this sum of S$500,000 as a loan from Mr Arifin to the defendant from around 1982.[84] There is some dispute over the exact time at which the Hawaii Towers Property was transferred but it is not relevant for present purposes.

(c) Third, they accounted for a S$327,000 payment from Mr Arifin for the defendant as having been made only in 2004, when in fact it was made in 1990.[85] It is not in dispute that this payment was made by Mr

82 Plaintiff's closing submissions at para 111-112.

83 NE 16 Aug 18, p 93 at line 32, p 94 at lines 1-3.

84 Plaintiff's closing submissions at para 110.

Arifin in 1990 to assist the defendant in making the down payment for a property located at 7A Eber Gardens, 1-15 Eber Road, Singapore 239759 ("the Eber Gardens Property").[86] The plaintiff's point was that the payment should have been attributed to the correct year so that it would either negate or reduce any interest which Mr Arifin had allegedly agreed to pay to the defendant.

93 For the 2008 Statement, the plaintiff's objection was that it was based erroneously on the premise that there was a starting sum of S$280,000 due from Mr Arifin to the defendant as at 1992. If the issues identified in [92] were properly addressed, there would not have been such a sum owed.[87]

94 It may be that some of the plaintiff's objections to the accounting in the 2004 Statement have merit:

(a) the interest charges on the overdraft facility should not have been completely attributed to Mr Arifin; and

(b) the S$327,000 down payment for the Eber Gardens property ought to have been considered a credit in Mr Arifin's favour in 1990, when it was paid, rather than in 2004. This would have reduced the interest Mr Arifin was liable for on the balance owed by him to the defendant.

95 On the other hand, the defendant's response was that he and Mdm Ho had frequently tried to reduce the balance on the overdraft account by putting in

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85 Plaintiff's closing submissions at para 101.

86 Defendant's closing submissions at para 15.

87 Plaintiff's closing submissions at para 126.

their own moneys whenever they could. As for the money paid by Mr Arifin towards the purchase of the Hawaii Towers Property, this was a gift to the defendant.

96 I do not think that any accounting inaccuracies in the documents which the defendant was relying on, or in the "Surat Keterangan", assist the plaintiff in the present proceedings.

97 In my view, the 2004 Statement, 2004 November Draft Statement and 2008 Statement have to be viewed in the context of the relationship between the defendant and Mr Arifin. It is clear to me that the dealings, between father and son, were carried out with some informality. There were significant incoming and outgoing funds over the years with neither party ever insisting on a strict accounting. For instance, the defendant and Mdm Ho allowed their overdraft facility with Citibank to be used for Mr Arifin's purposes without a written agreement from him that he would pay back what he had used.[88]

98 It was undisputed that Mr Arifin was the patriarch of the family. The impression from the evidence was that he was a fairly shrewd businessman.[89] Aside from the plaintiff's evidence that Mr Arifin was suffering from dementia (which I do not accept), there was no suggestion that Mr Arifin would not have understood what he was signing. Accordingly, it would have been open to him to decline to agree to any statement of account produced to him. For example, he could have insisted that what he had paid for the Hawaii Towers Property be included in the 2004 and 2008 Statements if it was not meant to be a gift.

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88 1 AB 67, 69, 72, 74, 75, 76, 80, 81, 83, 84, 85, 86.

89 NE 16 Aug 18, p 83 at lines 3-10.

99 The English language translation of the "Surat Keterangan" is "explanation letter". In my view, it was prepared by the defendant for the plaintiff and Mr Arifin to sign to explain the gifts which the parents had made to each of the three sons and the financial assistance rendered by the defendant (and Mdm Ho) to the parents. Apparently, there was already discord among the three sons as Peter and David had perceived that the parents had favoured the defendant.[90]

100 The question of the Hawaii Towers Property was only brought up in the "Surat Keterangan"[91] and even then, I do not think that it assists the plaintiff's case. The plaintiff argued that the "Surat Keterangan" showed that the sum of S$500,000 ought to be reflected as a loan from Mr Arifin to the defendant.[92] The key portion of the "Surat Keterangan" states:[93]

> [Mr Arifin] paid roughly S$500,000 [for the Hawaii Tower Property] from 1983 to 1985…
>
> We've taken as much as [S]$280,000 from John and Anna. But, we've given S$500,000. So all this time, we've given John and Anna S$220,000 (S$500,000 – S$280,000).

101 To my mind, the "Surat Keterangan" makes it clear that of the sum of S$500,000 paid by Mr Arifin towards the purchase of the Hawaii Tower Property, or at least S$220,000, was never intended to form part of the running account between him and the defendant. The "Surat Keterangan" unequivocally states that Mr Arifin and the plaintiff gave the sum of S$220,000 to the defendant. It would defeat the very purpose of the gift if the sum of S$220,000

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90 NE 17 Aug 18, p 22 at lines 1-12.

91 2AB 676-677.

92 Plaintiff's closing submissions at para 110.

93 2AB 677.

were to be offset from any outstanding loan balance owed to the defendant by Mr Arifin.

102 One issue, it seems, is whether the remaining sum of S$280,000 should be included as a loan from Mr Arifin to the defendant (or offset from loans due to the defendant from Mr Arifin). Perhaps. But when the 2008 Statement was signed about a year later, no mention was made therein that the defendant had to repay S$280,000 to Mr Arifin. Instead, the 2008 started with an outstanding balance of S$280,000 owing from both Mr Arifin and the plaintiff to the defendant and Mdm Ho as at 1992. Then it added 3% interest each year.[94] It then listed out certain payments as having been paid to discharge what was owing by Mr Arifin and the plaintiff with a balance due of S$66,378.36. It then stated that the balance was waived. It appeared that this statement was meant to show that the positions between Mr Arifin and the plaintiff on the one hand and the defendant and Mdm Ho on the other had been squared off.

103 The next issue was whether the 2008 Statement was vitiated for the reasons raised by the plaintiff.

104 I do not think that the plaintiff has proven on a balance of probabilities that the 2008 Statement was vitiated.

105 As regards the plaintiff's claim that she was unable to understand the 2008 Statement, I do not think that the plaintiff was incapable of understanding the 2008 Statement or that she merely followed Mr Arifin's lead in signing it.[95]

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94 DCBD at p 15.

95 Plaintiff's closing submissions at para 60.

106 The plaintiff claimed that she primarily conversed in Chinese and Bahasa Indonesia and only had a limited ability to understand English. It seemed to me that the plaintiff possessed a basic grasp of the English language which was not as weak as she would have the court believe.[96] When her granddaughter Corinne Arifin (Peter's daughter) sent an email in the English language to her, the plaintiff replied in a mixture of English and Chinese.[97] More importantly, she appeared to have some understanding of figures. A letter from the plaintiff's lawyers to the defendant's lawyers dated 13 July 2015 stated that the plaintiff managed her own bank accounts in Indonesia.[98] Mdm Ho also gave undisputed evidence that the plaintiff would review the credit card statements for a credit card linked to the Initial Citibank Joint Account.[99]

107 As regards the plaintiff's belated evidence that Mr Arifin was suffering from dementia at the time the 2008 Statement was signed,[100] the plaintiff was unable to adduce any other evidence to corroborate her claim. Even David, who was supposed to be the person instigating the plaintiff to take action against the defendant and who was her witness, testified that he was unaware that Mr Arifin had suffered from dementia.[101] The plaintiff's evidence also did not explain why the plaintiff would have signed the 2008 Statement if she had harboured any doubts as to Mr Arifin's mental capacity. While the plaintiff explained that she trusted the defendant and was used to following Mr Arifin's lead, she would not have followed Mr Arifin's lead if indeed he was suffering from dementia.

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96 4AB 1519.

97 4AB 1519

98 5AB 1588-1589.

99 NE 30 Aug 18, p 78 at lines 7-19.

100 NE 15 Aug 18, p 42 at line 4.

101 NE 16 Aug 18, p 85 at lines 11-22.

Furthermore, she did not suggest that the defendant had pressured, unduly influenced or misled her into signing it. It bears repeating that in her pleadings, the plaintiff's position in respect of the 2008 Statement was that she did not admit that she and Mr Arifin had signed it.

108 As an aside, the plaintiff's submissions made much of the fact that the defendant did not refer to the signed 2004 and 2008 Statements in correspondence exchanged between both parties' lawyers prior to the commencement of proceedings or in his initial Defence filed on 11 March 2016. It appeared that the plaintiff was suggesting that the defendant's failure to do so affected his credibility.[102] However, the plaintiff's submission was short on elaboration and it was unclear why the defendant's credibility should be damaged by this fact. It was not as if the plaintiff was unaware of the existence of any statement of account. The defendant had previously made reference to signed statements in an email to the plaintiff dated 14 June 2014.[103] Also, the plaintiff was even the party who had kept the November 2004 Draft Statement in her possession.[104] Eventually, the authenticity of the signatures of Mr Arifin and the plaintiff on the 2004 and the 2008 Statements was not disputed. In the circumstances, I give minimal weight to this contention of the plaintiff.

109 I will now deal with the six disputed payments and the alleged unaccounted sum in turn.

110 For the two payments to Trina, the plaintiff argued that they were unauthorised because she was not aware of and/or did not agree to them. The

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102 Plaintiff's closing submissions at para 161.

103 4AB 1534-1535.

104 Defendant's closing submissions at p 64.

plaintiff claimed that the payments were not effected in the same way as other transfers which she had previously authorised. In undisputed transactions, the plaintiff would have signed on the transfer form to effect the remittance and made handwritten annotations in Chinese as to the nature and purpose of the payment.[105] The plaintiff produced four fund transfer forms for other payments from the Joint Accounts which had been effected in this way.[106] For the two payments in question, the defendant was the one who signed on the transfer forms to effect the payments, with the plaintiff only later signing on the carbon copies of the transfer forms without making any handwritten annotation in Chinese.[107]

111 The defendant's position was that the two payments to Trina were gifts from the plaintiff.[108] The defendant relied on the fact that the plaintiff signed the carbon copies of the transfer forms to indicate that she had authorised the payments although he was the person who signed the original transfer forms and effected the payments.[109]

112 To my mind, the fact that these two payments in question were not handled in the same way as the four which the plaintiff relied on does not necessarily mean that they were unauthorised. The absence of any annotation in Chinese was equivocal. The plaintiff must have known that the purpose of her countersigning on the carbon copies was to signify her agreement to the

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105 Plaintiff's closing submissions at para 84.

106 2AB 672-673; 3AB 1234; 4 AB 1302.

107 2AB 774-775.

108 Defendant's closing submissions at paras 129-130.

109 2AB 774-775.

payments. If she was unaware of the purpose, she would not have countersigned.

113 More importantly, the 2008 Statement reflected the two payments to Trina as repayments of loans due from Mr Arifin to the defendant. Any misapprehension the plaintiff was labouring under with regard to the two payments would have been cleared up by the time the 2008 Statement was signed on 11 June 2008.[110]

114 In the circumstances, I find that the plaintiff has not proven on a balance of probabilities that both payments to Trina were unauthorised and/or she was unaware of them and that they were procured through breach of trust and/or fiduciary duties.

115 I now turn to the alleged payment of S$335,000 to the defendant. As mentioned at [11(c)], the defendant explained that this sum comprised two payments to the defendant of US$95,000 on 17 April 2008 and £76,726.05 on 28 May 2008. The plaintiff's case was that the payments were procured because the defendant fraudulently misrepresented to her that the payments were to set up an "Arifin Fund", which was to benefit all of the plaintiff's grandchildren. This misrepresentation induced the plaintiff to sign the transfer forms authorising the payments to the defendant. The defendant then proceeded to use the moneys for the overseas education of his two daughters only.[111]

116 The defendant denied that he had told the plaintiff about an "Arifin Fund" when she agreed to the payments of these two sums. However, he agreed

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110 DCBD p 15.

111 Plaintiff's closing submissions at para 46-61.

that he had heard this fund being mentioned although it was unclear from his evidence as to how the fund came to be discussed

117 The defendant's position was that the payments of US$95,000 and £76,726.05 on 17 April 2008 and 28 May 2008 respectively were to repay the defendant for loans extended to Mr Arifin. The transfer form for the payment of US$95,000, which showed that the plaintiff had signed to effect the transfer, was also produced by the defendant.[112] The transfer form for the payment of £76,726.05 was not produced but both parties do not dispute that this payment was made either to the defendant or for his purposes.[113] Even if the defendant had mentioned an "Arifin Fund" to the plaintiff when these two payments were made, the 2008 Statement signed shortly thereafter in June 2008 stated clearly that they were payments for loans owing by Mr Arifin to the defendant. It seemed clear that these two payments were to be treated as such. This was accepted by Mr Arifin and the plaintiff when they signed the statement. It was no longer open to the plaintiff to suggest otherwise some years later.[114]

118 The plaintiff's closing submissions mentioned that the 2008 Statement did not show a payment of S$335,000 to the defendant as it showed the two payments of US$95,000 and £76,726.05 instead.[115] In my view, this does not help the plaintiff. These two sums approximated the S$335,000. If this point was truly contested, then it should have been explored in greater detail in the cross-examination of the defendant. Yet it was not. It was too late for the

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112 2AB 781;

113 NE 21 Aug 18, p 31 at lines 13-16.

114 DCBD at p 15.

115 Plaintiff's closing submissions at para 58.

plaintiff's lawyers to do in closing submissions what they should have done in cross-examination.

119 In my view, the plaintiff has not proven that the defendant is liable for the payment of S$335,000.

120 The next disputed payment was a sum of S$60,000 for the alleged repayment of loans and reimbursement of medical expenses incurred on behalf of the plaintiff or Mr Arifin. The plaintiff made multiple arguments in respect of this payment to demonstrate that there was a breach of trust:

(a) First, that the payment was obtained through fraudulent misrepresentation that there were moneys owed by Mr Arifin to the defendant.[116]

(b) Second, that there was no agreement that medical expenses incurred by Mr Arifin and the plaintiff but paid for by the defendant were to be repaid at a subsequent date.[117]

(c) Third, that in any case, the defendant had waived his claim to the repayment pursuant to the 2008 Statement.[118]

121 The S$60,000 payment was thus obtained in breach of trust and/or fiduciary duties by the defendant.

122 The defendant's position was that the S$60,000 payment on 7 January 2014 was for the reimbursement of medical and travel expenses incurred on

116 SOC at para 13(b).

117 Plaintiff's closing submissions at para 72.

118 Plaintiff's closing submissions at para 67.

behalf of the plaintiff and/or Mr Arifin.[119] The defendant produced a breakdown of such expenses prepared by Mdm Ho which was signed by the plaintiff on 21 May 2014.[120] The breakdown showed that the defendant had incurred a total of S$80,781.95 in medical and insurance costs on behalf of the plaintiff and Mr Arifin.[121] According to the defendant, the original sum was estimated to be about S$100,000 but he and Mdm Ho compromised with the plaintiff and accepted a reduced sum of S$60,000.[122]

123 The defendant's case at trial was not on all fours with his pleadings and the documentary evidence. In the Defence and Counterclaim (Amendment No 1), the defendant took the position that the S$60,000 was for the "repayments of *loans* / reimbursement of medical expenses, medical insurance and travel expenses" [emphasis added].[123] This was different from the defendant's AEIC where he claimed that the payment was only for the reimbursement of medical and travel expenses. This would have been separate from the outstanding loan balance of S$66,378.36 which was waived in the 2008 Statement.[124] The transfer form, which was signed by the plaintiff to effect the payment had a handwritten annotation by Mdm Ho on it which stated that the payment of S$60,000 was to repay the balance of loans.[125] There was no mention on the transfer form that the payment was also for the reimbursement of medical and travel expenses. It seemed that the defendant was unclear as to what reason to give when the

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119 Defendant's closing submissions at para 117.

120 4AB 1518; Defendant's closing submissions at p 65.

121 4AB 1518.

122 NE 21 Aug 18, p 18 at lines 1-13.

123 Defence and Counterclaim (Amendment No 1) at paras 35, 38.

124 Defendant's AEIC at paras 83-87.

125 Defendant's AEIC at p 236.

plaintiff was asked to pay the S$60,000. I add that it appears from the evidence that it was Mdm Ho who asked the plaintiff to make this payment.

124 The circumstances as to how this payment of S$60,000 came about should be considered.

125 It appeared that the decision to seek repayment from the plaintiff, whether for the repayment of loans or reimbursement of medical and travel expenses, arose from the plaintiff's intention in around late 2013 to let Peter have US$10,000 to buy a watch.[126] The defendant was unhappy with this because previously, a sum of S$50,000 was given to Peter to expand his business, but instead he lent the sum to someone else.[127] According to the defendant, the sum was not recovered from that person although the plaintiff appeared to think that it was mostly repaid. Hence, Mdm Ho insisted that the plaintiff first make some reimbursement to the defendant before letting Peter have some more money.[128]

126 It may be that initially the plaintiff was asked to repay S$60,000 since the defendant had waived a sum of about S$66,378.36 under the 2008 Statement.[129] That would explain why the handwritten notation by Mdm Ho in the transfer form stated that the S$60,000 was for repayment of loans.

127 It is likely that thereafter, the defendant or Mdm Ho thought that they should use the medical expenses of Mr Arifin and the plaintiff, which the defendant had paid for, to justify the payment of S$60,000. Hence Mdm Ho

126 Defendant's AEIC at para 81-82.

127 NE 17 Aug 18, p 38 at lines 14-26.

128 NE 21 Aug 18, p 17 at lines 20-32, p 18 at lines 1-4.

129 DCBD at p 15.

prepared a short breakdown of such expenses for the plaintiff to sign, which she did on 21 May 2014, a few months after the payment of S$60,000 on 7 January 2014 to the defendant.[130]

128 A more detailed list of medical and travel expenses was also prepared, either by the defendant or Mdm Ho, to justify why they had required the plaintiff to pay the S$60,000.[131]

129 The plaintiff did not dispute the background circumstances as to why she was required to pay the S$60,000 (*ie*, the unhappiness of the defendant and Mdm Ho with her intention to let Peter have some money).

130 Her case was that there was no more loan outstanding in January 2014 and that the defendant had paid for medical expenses for Mr Arifin and her out of filial piety. The defendant had never expected to be repaid.[132]

131 Be that as it may, it was still open to Mdm Ho to ask the plaintiff to repay loans (or interest) which had been waived or to reimburse the defendant for the medical expenses he had paid before the plaintiff let Peter have some money. I am of the view that the plaintiff acceded to that request. That is why she countersigned the transfer form for S$60,000 and later she also signed the list of medical expenses on 21 May 2014. I add that the plaintiff retained an unsigned and undated copy of that list of medical expenses which she produced for the trial. The defendant (or Mdm Ho), kept the one which was signed and dated.

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130 4AB 1518.

131 1AB 46-47.

132 Plaintiff's closing submissions at para 72.

132 As the plaintiff had paid the S$60,000, it was too late for her to change her mind and say that she was not legally obliged to do so. The defendant was not seeking to enforce her agreement as the plaintiff had already made the payment.

133 For the cumulative withdrawals of S$43,525.25, the plaintiff's case as I understood it was not so much that the withdrawals were unauthorised, but rather that the defendant failed to provide a satisfactory account in his capacity as a trustee.[133]

134 The defendant's position was that the withdrawals were for the plaintiff's credit card payments. The defendant produced a table of personal expenses of the plaintiff prepared by Mdm Ho. This was signed by the plaintiff, also on 21 May 2014.[134] The defendant also referred to the monthly statements of the Initial Citibank Joint Account which were cross-referenced with the items in the table of personal expenses.[135]

135 The vast majority of the withdrawals totalling S$43,525.25, as reflected in the table of personal expenses, tallied with the monthly statements of the Initial Citibank Joint Account for a credit card issued in the plaintiff's name.[136] There were some minor inconsistencies between the table of personal expenses and the monthly statements as regards the dates and quantum of some payments but they are not material.

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133 Plaintiff's closing submissions at para 136.

134 4AB 1517.

135 Defendant's closing submissions at para 131.

136 Defendant's closing submissions at para 131.

136 Additionally, the plaintiff had retained possession of an unsigned and undated copy of the table of her personal expenses prepared by Mdm Ho. The plaintiff produced this document in the course of the proceedings.[137] Given that the sum of S$43,525.25 was reflected in both the table of personal expenses and the monthly statements of the Initial Citibank Joint Account as being for the plaintiff's credit card payments, it is unclear why she chose to maintain her position that the defendant had not properly accounted for the sum.

137 In the circumstances, I am satisfied that the defendant has sufficiently accounted for the withdrawal of S$43,525.25 as being for the plaintiff's credit card payments.

138 Finally, for the alleged unaccounted sum of S$128,581.99, the plaintiff's position was similarly that the defendant had not sufficiently accounted for the use of moneys in the Joint Accounts.[138] This figure was reflected in Exhibit P1. The plaintiff derived this sum by first referring to the sales proceeds received from the sale of the Simprug Property when they were transferred into the Initial Citibank Joint Account in July 2007. She then used an exchange rate to convert this money into Singapore currency. She then referred to various credit and debit items in various foreign currencies and in Singapore currency as well. For those where foreign currencies were used, various exchange rates were used to derive the equivalent amount in Singapore currency.

139 The defendant's position was that the sum which the plaintiff claimed was unaccounted for was attributable to the varying foreign exchange rates.[139]

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137 1AB 44; Plaintiff's list of documents at No 5; Defendant's closing submissions at p 65.

138 Plaintiff's closing submissions at para 135.

139 Defendant's closing submissions at para 124.

140 It seems to me that the plaintiff's calculations failed to factor in the effect of foreign exchange rates. When the sales proceeds of US$849,581.36 from the Simprug Property were transferred into the Initial Citibank Joint Account, the USD-SGD exchange rate was 1.5115. By February 2014, the Singapore Dollar had strengthened significantly, and the USD-SGD exchange rate was 1.2646 (a drop of roughly 16.3%). Apparently, the plaintiff had converted the existing balance in US$ into Singapore currency using a lower exchange rate and hence the sum appeared unaccounted for.

**The Jewellery**

141 The plaintiff bore the legal burden of proving on a balance of probabilities that the Jewellery was held on trust by the defendant for her. In my view, the plaintiff has not made out her claim.

142 The plaintiff claimed that she had handed the Jewellery to the defendant sometime in 1998 during the racial riots in Jakarta, Indonesia.[140] The Jewellery was handed personally to the plaintiff for safekeeping with Mdm Ho present.[141] The plaintiff refused the defendant's offer to photograph the Jewellery as she trusted him.[142] The plaintiff also claimed that she had asked Peter to obtain the return of the Jewellery from the plaintiff when Peter was in Singapore, but could not remember when this took place.[143] Further, the plaintiff claimed that there was no reasonable explanation for preferring Mdm Ho and her daughters over her other daughters-in-law or grandchildren.[144]

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140 Plaintiff's closing submissions at para 149.

141 NE 15 Aug 18, p 29 at lines 5-10.

142 NE 15 Aug 18, p 29 at lines 5-10.

143 NE 15 Aug 18, p 28 at lines 18-31.

144 Plaintiff's closing submissions at para 156.

143 The defendant denied having been handed the Jewellery by the plaintiff at all, let alone for safekeeping. He alleged that the Jewellery was handed to Mdm Ho as gifts for her and her daughters.[145]

144 Mdm Ho's evidence was that the Jewellery was given to her as gifts by the plaintiff on various occasions after 6 September 2000 and that she had subsequently passed some of the Jewellery to her daughters Tricia Arifin ("Tricia") and Trina.[146] The plaintiff was aware of this.[147] Mdm Ho also testified that the Jewellery was not kept at home but rather in a box elsewhere.[148] Mdm Ho further said that she would have returned the Jewellery if the plaintiff had asked her to do.[149]

145 Mdm Ho also said that in late 2014, the plaintiff had contacted the defendant to ask for the return of the Jewellery. The defendant passed the call to Mdm Ho who said she reminded the plaintiff that she had given the Jewellery to her whereupon the plaintiff slammed the telephone down. There was no further request by the plaintiff for the Jewellery. Mdm Ho was not challenged on this piece of evidence.[150]

146 The plaintiff argued that the conduct of the defendant and Mdm Ho was inconsistent with the Jewellery having been given as gifts:

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145 NE 30 Aug 18, p 25 at lines 9-26.

146 Mdm Ho's AEIC at para 40, 48-50.

147 Mdm Ho's AEIC at para 48-50.

148 NE 30 Aug 18, p 123 at lines 29-30.

149 NE 30 Aug 18, p 119 at lines 13-17.

150 NE 30 Aug 18, p 119 at lines 4-10.

(a) the defendant and Mdm Ho failed to adduce any documentary evidence to indicate that the Jewellery was given as gifts;[151]

(b) Mdm Ho could not recall the dates when the Jewellery was given to her, but was able to recall conversations in 1985 with Mr Arifin on the purchase price for the Hawaii Towers apartment;[152]

(c) the defendant's original pleaded position was that the Jewellery was given to Mdm Ho as a gift. In his AEIC, the defendant claimed that the Jewellery was given as gifts to Mdm Ho and his daughters;[153]

(d) Mdm Ho mentioned during cross-examination that she would have returned the Jewellery if the plaintiff had made the request to her instead of the defendant;[154] and

(e) the Jewellery was kept in a box that was not in the defendant's home. [155]

147 The fact of the matter is that the plaintiff failed to adduce any evidence other than her bare assertion that the Jewellery was handed over to the defendant on trust. Peter, who was present in court at times, was also not called as a witness in these proceedings even though his evidence might have been relevant.

148 Further, the plaintiff was inconsistent about a key aspect of her case, namely whether the Jewellery was handed over to the defendant or Mdm Ho. In

151 Plaintiff's closing submissions at para 154.

152 Plaintiff's closing submissions at para 155.

153 Plaintiff's closing submissions at para 152.

154 Plaintiff's closing submissions at para 157.

155 Plaintiff's closing submissions at para 159.

the plaintiff's Reply and Defence to Counterclaim (Amendment No 1), she stated that the Jewellery was handed over to the defendant.[156] However, during cross-examination, the plaintiff said that the Jewellery was handed over to Mdm Ho:[157]

> Q: And how many years after 1998 did you first request for these items?
>
> A: That was a few years ago. That was the time when his wife say that actually given the jewelleries to her. but I told her that the --- I did not give the jewelleries to her. *I merely give the jewelleries to her for safekeeping*. [emphasis added]
>
> …
>
> Court: Sorry? "I merely told her I gave her the jewellery for safekeeping" is it?
>
> A: Yes, your Honour…
>
> …
>
> Q: Okay. Do you remember getting this ring --- whether it was a gift or not, do you remember getting this ring and handing it over to Anna?
>
> A: Give it to who?
>
> Q: To Anna.
>
> A: I did not. I brought the whole bag over and I did not do so intentionally to give it to her.

149 The fact that the defendant and Mdm Ho could not produce any documentary evidence or recall the dates on which the Jewellery was given cannot absolve the plaintiff of the deficiencies in her case.

150 I note that there was some inconsistency between the defendant's pleaded position and his AEIC. The defendant's pleaded position was that the Jewellery was given to Mdm Ho.[158] In the defendant's AEIC, he stated that the

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156 Plaintiff's Reply and Defence to Counterclaim (Amendment No 1) at para 33(b).

157 NE 15 Aug 18, p 29 at lines 19-26, p 30 at lines 11-16.

Jewellery was given to Mdm Ho and his daughters.[159] I am of the view that this inconsistency is not material. Mdm Ho's evidence was that the Jewellery was given to her and she in turn passed some pieces to her daughters Tricia and Trina with the plaintiff's knowledge.[160] Seen in this light, the inconsistency of the defendant was not material. He was consistent that the Jewellery was not given to him.

151 I also do not think that the other arguments raised by the plaintiff are sufficient to establish that the Jewellery was handed over to the defendant on trust. It is speculative to infer from Mdm Ho's statement of a willingness to return the Jewellery to the plaintiff, if the request were made to her, that the Jewellery was held on trust by the defendant.

152 While Mdm Ho said that the Jewellery was located in a "box" outside of her home,[161] it was unclear what this referred to; for example, a safe deposit box. The plaintiff's counsel did not pursue this point further in cross-examination. The fact that it was kept in a box was equivocal. It does not necessarily mean that the Jewellery was segregated from other jewellery of Mdm Ho to identify the Jewellery as not belonging to Mdm Ho.

153 There was also evidence from an email dated 23 June 2014 from the plaintiff to David stating that the plaintiff gave two diamond rings to Michelle Arifin and Kelly Arifin, who are David's daughters.[162] So, Mdm Ho was not the only beneficiary of the plaintiff's generosity.

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158 Defence and Counterclaim (Amendment No 1) at para 65.

159 Defendant's AEIC at para 134.

160 NE 30 Aug 18, p 123 at lines 18-26.

161 NE 30 Aug 18, p 123 at lines 29-30.

154 I add that apparently, there were some family meetings to resolve differences before the plaintiff commenced legal action. There were also emails between the defendant on the one hand and the plaintiff and David on the other hand. Some of the emails touched upon the plaintiff's moneys. None mentioned the Jewellery. Even when the plaintiff's lawyers demanded the moneys in the Joint Account, they did not ask for the return of the Jewellery. This claim was included only when legal action was commenced. This suggested that initially the plaintiff herself did not think that she was entitled to demand the return of the Jewellery and was inconsistent with her claim that the defendant was holding the same on trust for her all along.

155 At the end of the day, it was the plaintiff who bore the burden of proving her case on a balance of probabilities. On the evidence presented before the Court, I am of the view that she failed to discharged her burden. Accordingly, the plaintiff's claim for the return of the Jewellery fails.

156 Nevertheless, it is a pity that Mdm Ho's position was that she decided not to return the Jewellery because the plaintiff had not made the request (for return) to her directly. It was a poor excuse not to do so. On the other hand, open offers were made by the defendant on terms which included the procuring of the return of the Jewellery to the plaintiff but they came with conditions which were not acceptable to the plaintiff.

157 While it is tempting to order the return of the Jewellery to the plaintiff in the circumstances, the parties (and Mdm Ho) are entitled to insist on their legal rights.

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[162] 4AB 1530-1531.

**Conclusion**

158 I declare that the plaintiff is beneficially entitled to the credit balance in the Joint Accounts. In addition, the defendant is to take all necessary and appropriate steps to enable the plaintiff to withdraw the balance, including writing to the relevant banks within 14 days from the date of this judgment to relinquish all claims to the credit balance and inform the banks that they are to act on the sole instruction of the plaintiff. If he fails to do so, the Registrar of the Supreme Court may do so on his behalf.

159 The rest of the plaintiff's claims are dismissed. I also dismiss the defendant's counterclaim in respect of half of the moneys in the Joint Accounts.

160 I will hear parties on costs.

Woo Bih Li
Judge

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(KhattarWong LLP) for the plaintiff;
Narayanan Sreenivasan *SC* and Tan Kai Ning Claire
(Straits Law Practice LLC) for the defendant.