Ang Meng Lee v Ng Siam Khui and Another
[2008] SGHC 223

Case Number : Suit 563/2005

Decision Date : 28 November 2008

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Alvin Chang Jit Hua and Prakash Mulani (M & A Law Corporation) for the plaintiff; Chiah Kok Khun, Hui Choon Wai and Tan Hsuan Boon (Wee Swee Teow & Co) for the defendants

Parties : Ang Meng Lee — Ng Siam Khui; See Tji Kiong alias Zaina Siman

Trusts

28 November 2008 Judgment reserved

Lai Siu Chiu J:

1 This was a claim by a sister-in-law Ang Meng Lee ("the plaintiff") against her brother-in-law See Tji Kiong @ Zaina Siman ("the second defendant") and his wife Ng Siam Khui ("the first defendant") for the sale proceeds of a prime property situated at No 20B, Nassim Road, Singapore ("the property"), which property the plaintiff alleged was held in trust for her by the first defendant. (Hereinafter the two defendants will be referred to collectively as "the couple" or "the defendants").

The facts

2 The plaintiff married See Chi Kang @ Edison Jonathan ("Jonathan") @ Usman Siman in 1979. Jonathan is the second defendant's older brother. The Siman family ("the family") is from Indonesia. Save for the plaintiff (who is a Singaporean) and Jonathan, the family's members reside in Jakarta, Indonesia although they would visit Singapore from time to time. The plaintiff and Jonathan live in Singapore and are shareholders of a Singapore company called Biru & Sons Pte Ltd ("the company"). The business was managed by the plaintiff and Jonathan even though prior to his demise (in 1989), the second defendant's father See Leng Seng ("SLS") was a director. After SLS's passing, the plaintiff was appointed a director of the company. Thenceforth, the plaintiff and Jonathan wholly owned and controlled the company.

3 SLS was a wealthy man who had amongst his business interests a Jakarta company called PT Biru & Sons Pte Ltd ("PT Biru") which from 1993 onwards, was managed by a younger brother of the second defendant called Aman. SLS had six sons altogether.

4 The property was purchased in July 1989 for $3m according to the first defendant but the plaintiff's affidavit of evidence-in-chief ("AEIC") claimed the purchase price was $3.15m. (Although the Option stated the consideration was $3.268m including $150,000 for furniture, the Transfer stated the sale price as $3m). The option to purchase was dated 17 April 1989 and it was exercised by the plaintiff and the first defendant on 2 May 1989. The purchase of the property was completed on 19 July 1989 with a term loan of $2.4m from Tat Lee Finance Ltd ("TLF") whilst the difference of $600,000 was paid in cash (the source of that cash was a bone of contention between the plaintiff and the first defendant). The Transfer was to the plaintiff and the first defendant was as tenants-in-common in equal shares.

5 The property was sold with an existing tenancy that the vendor had signed with the Embassy of the Republic of Turkey ("the tenant") who paid in advance an annual rent then of $192,000 or $16,000 per month. The tenant renewed the tenancy agreement whenever it expired until the last tenancy agreement dated 6 February 2001, which was for a three year term terminating on 2 March 2004 at a yearly advance rental of $300,000 or $25,000 a month. The tenant vacated the property on 29 February 2004. Thereafter the property was not tenanted until its sale by public auction on 22 February 2005.

6 Over the years, from the time of its purchase until its sale, the property was mortgaged to three financial institutions. The plaintiff redeemed the mortgage of TLF (which was varied in October 1990) sometime on or about 30 April 1994. The property had been mortgaged in December 1993 to International Bank of Singapore ("IBS"), a subsidiary of Overseas Union Bank, to secure facilities of US$1.8m ("the IBS loan") granted to PT Biru. The plaintiff agreed to the arrangement since PT Biru was the family's business of which Jonathan was a shareholder. In her written testimony, the plaintiff deposed that she did not make any contribution toward repayment of the IBS loan save for some interest payments in 1998. She paid the interest at the request of PT Biru and she was repaid by the setoff of debts owed by the company to PT Biru.

7 In early 2001, PT Biru redeemed the IBS loan and replaced it with a loan from Citibank NA of US$4,646,375 ("the Citibank loan"). Citibank's facility letter dated 7 December 2000 was addressed to the couple and to Arifin Siman ("Arifin"), the youngest of the Siman brothers but not to the plaintiff. Apparently, she had refused to be a borrower. The Citibank loan was secured by a mortgage on the property dated 9 March 2001 executed by the plaintiff and the first defendant. The plaintiff agreed to the mortgage for the same reason in [6] even though (according to her) the Citibank loan was to finance the business interests of the defendants and Arifin.

8 The first defendant on the other hand, alleged that a condition of the three parties' agreement that the plaintiff would not be named a borrower was that the plaintiff would honour (which the plaintiff denied) the common understanding that rental from the property would be used to service the Citibank loan.

9 The plaintiff alleged that the defendants and Arifin failed to make repayments on the Citibank loan in 2000 and 2001 prompting a notice from Citibank dated 26 September 2002 to all three borrowers making a demand for payment of outstanding interest of ¥2,516,581 and US$16,560 by 10 October 2002. Citibank further gave notice that if the outstanding interest was not paid by the deadline given, the borrowers would be considered to be in default of the Citibank loan which they would have to repay in full by 24 October 2002.

10 The plaintiff who claimed to be shocked by the turn of events said she was forced to pay Citibank $300,000 on 28 June 2001 followed by another $66,988 on 10 October 2002, in order to avoid foreclosure of the property by Citibank. She alleged that despite her efforts, the three borrowers defaulted again on the Citibank loan, despite her repeated requests to them to make good their default.

11 The couple on the other hand, alleged that they realised that the plaintiff could not be relied on to service the Citibank loan with the rental from the property. Hence, on 10 January 2003, the first defendant instructed her solicitors to write to the tenant giving notice that half the yearly rental due for the period 2 March 2003 to 1 March 2004 and thereafter, should be paid to the first defendant by a cheque in her favour for $150,000.

12 When the tenant inquired in its letter dated 9 April 2003 (at 1AB 1398) how the cheques should

be issued (since the word 'landlord' in the tenancy agreement referred to both the plaintiff and the first defendant), the plaintiff herself replied to the tenant on 11 April 2003 (1AB1401) to say:

> Kindly be advised to issue the cheque in two names, namely, Mdm Ng Siam Khui and Mdm Ang Meng Lee. Our representative, Mr Edison Jonathan will be glad to collect the cheque personally on our behalf.

13 When the tenant sent a reminder to the first defendant on 29 April 2003 (1AB1405) (copied to the plaintiff), the plaintiff hand-delivered a letter dated 9 May 2003 (1AB1416) to the tenant where she wrote:

> We refer to your letter dated 29 April 2003 to Mdm Ng Siam Khui.
>
> Further to my letter dated 9 April 2003, I hereby would like to revoke my instruction to issue the cheque in two names. As both Mdm Ng and myself do not have a joint bank account, we feel that it is more workable to have two cheques issued separately to both of us, each for the amount of $150,000/-…

14 Citibank continued to chase for outstanding interest. On 7 November 2003, Citibank's solicitors sent a letter of demand to the three borrowers and a separate letter of the same date to the plaintiff and the first defendant as mortgagors. This was followed by another demand letter dated 1 December 2003 to the three borrowers as well as to the two mortgagors.

15 Citibank commenced proceedings in Originating Summons No. 253 of 2004 ("the OS") on 26 February 2004 against the plaintiff and the first defendant for repossession of the property. In April 2004, the plaintiff secured an offer of $11m from a buyer but the first defendant refused to sign the Option prepared by the plaintiff's solicitors when the same was forwarded to her. The first defendant's refusal was due to the fact that cl 17 of the Option provided that the sale proceeds would be apportioned 3:1in favour of the plaintiff and the first defendant respectively. By then, the defendants had paid considerable sums to service the IBS and Citibank loans.

16 However, the defendants did not want to lose the property because of its sentimental value, having been bought with the sale proceeds of another property at No. 19 Second Avenue ("the Second Avenue property"), which was a gift from SLS. Accordingly, the first defendant decided to buy over the plaintiff's half share. Through her solicitors, the first defendant offered the plaintiff on 22 June 2004 (as the purchase price) half the amount owing to Citibank with a further sum of $2m and a deposit of $200,000. The plaintiff rejected the offer as too low. The first defendant's solicitors then proposed to the plaintiff on 24 June 2004 that a limited company Prime Land Pte Ltd buy the property for $11m; the plaintiff again refused.

17 At the request of the first defendant's solicitors, Citibank had adjourned hearing of the OS to 25 June 2004. The OS was finally heard and granted on 6 August 2004. Citibank obtained an order for sale of the property and an order that the plaintiff and the first defendant pay the sum of $6,729,120.80 not including interest and costs.

18 The defendants still did not want to lose the property. They persuaded Citibank to postpone the auction of the property. Citibank required the defendants to deposit a sum of $1.12m into their personal account with Citibank to show they were financially able to buy over the plaintiff's share.

19 The defendants approached Arifin's wife Poh Ai Lian ("Poh") to join them in making an offer to buy the property for $10.2m. Pending negotiations with the plaintiff on the defendants' new offer and

having received the defendants' deposit of $1.12m, Citibank agreed to postpone the auction, first to 3 November and subsequently to 10 December, 2004, provided that the sale and purchase agreement was executed on 25 October 2004.

20 The plaintiff refused the defendants' revised offer of $10.2m. In para 32(a) of her AEIC, the plaintiff did not refer to Poh as her sister-in-law, but merely said:

> On or about 21 September 2004, the first and or second defendant asked Citibank to withhold an auction sale of the property fixed for 23 September 2004, to allow the first defendant and one Mdm Poh Ai Lian to purchase the property from Citibank by way of a private treaty at the price of $10.2m. Although I was informed of the same, I did not agree to the sale as the proposed sale price was below the market value of the property of $11m which I had managed to obtain from another buyer as detailed above.

21 On 25 October 2004, the plaintiff failed to attend at the office of Citibank's solicitors to sign the sale and purchase agreement. Citibank's solicitors scheduled another meeting on 3 November 2004 for the documents to be signed. The plaintiff's solicitors notified Citibank's solicitors that morning that the plaintiff would not be attending the afternoon meeting, resulting in its cancellation.

22 On 3 November 2004, Citibank appropriated the defendants' deposit of $1.12m in partial repayment of the outstanding sum in [17].

23 The defendants subsequently found a buyer for the property at $12m prompting Citibank to postpone the auction until 10 December 2004. Unfortunately, the sale at $12m did not materialise. Citibank gave notice on 27 December 2004 to all parties that it would proceed to sell the property by way of auction. The property was finally sold on 22 February 2005 for $9.8m which sale was completed on 3 May 2005.

24 After deducting the outstanding amount on the Citibank loan plus legal and other expenses, there was a surplus of $3,109,198.15 of the sale proceeds of $9.8m which sum Citibank paid into court on 12 July 2005.

The pleadings

25 On 5 August 2005, the plaintiff commenced this suit. In her statement of claim, the plaintiff asserted that she paid the purchase price of the property with cash of $600,000 and a loan of $2.4m from TLF. She added (in para 3) that the property was purchased in joint names of herself and the first defendant for the sake of 'convenience' and in order that the plaintiff would have a better chance of obtaining the TLF loan. Rental from the tenant was assigned to TLF until sometime in March 1992.

26 The plaintiff alleged that she paid all the monthly mortgage instalments under the TLF loan until the mortgage was redeemed in full in mid-1994; there was no contribution from the first defendant. Further, she alone managed and maintained the property at all times. After redemption of the TLF mortgage and loan, the plaintiff averred that the property was mortgaged to IBS in 1994 to secure a loan of US$1.8m to PT Biru. Since she was neither a borrower of the IBS loan nor a shareholder or director of PT Biru, the plaintiff asserted she made no contribution towards the IBS loan.

27 The IBS loan was subsequently replaced by the Citibank loan which was used by the defendants and Arifin. The plaintiff asserted she was not a borrower of the Citibank loan although she executed a mortgage to secure the same. She alleged that the defendants defaulted on the Citibank

loan and she was forced to pay Citibank $366,988.49 on their behalf. The defendants subsequently defaulted again on the Citibank loan which ultimately led to Citibank's repossession of the property and its sale.

28 The plaintiff alleged that as a result of the first defendant's refusal to sell the property at $11m to the buyer she had procured, and the subsequent delay in Citibank's sale of the property due to the defendants' actions in [23], she had suffered loss and damage.

29 The plaintiff asserted that the first defendant held a half share of the property in trust for her and further alleged that the defendants were her fiduciaries when they used the property to secure the Citibank loan for their own benefit, knowing she was in a vulnerable position who could be and was abused by the defendants. The plaintiff contended that the defendants owed her a duty:

(a) to act in good faith and in her best interest, and

(b) to act in a manner which would not cause her loss and/or damage.

30 It was then alleged that the defendants breached their fiduciary duty and or trust to the plaintiff in not making the Citibank loan repayments promptly. Had they done so, the property would not have been sold in an auction and the plaintiff would still have possession and/or beneficial ownership of the property the market value of which was $11m. The plaintiff alleged that the defendants were liable to compensate her for the loss and damages she had suffered. In addition, the plaintiff claimed the sum ($366,988.49) she paid Citibank in [27].

31 The plaintiff prayed for a declaration that the first defendant held a half share of the property in trust for her absolutely. Consequently, the plaintiff was entitled to the whole sum paid into court by Citibank as well as half ($150,000) of the rental that the first defendant had taken.

32 The defendants filed a joint lengthy defence and counterclaim. Not surprisingly, they denied and put the plaintiff to strict proof of, her allegations. The defendants contended that the property was purchased with the sale proceeds of the Second Avenue property which was a gift from the second defendant's father. The defendants emphasised that the plaintiff and the first defendant were joint owners of both properties as tenants-in-common. The defendants averred that there was no reason why the plaintiff would have a better chance of securing the TLF loan with the first defendant as a joint owner.

33 The defendants averred that the TLF loan was transferred to IBS as the IBS loan was higher and at the time PT Biru, the plaintiff and/or the company needed funds. The second defendant averred that he was not responsible for the management of the company's business and his shareholding in PT Biru was exactly the same as Jonathan's. Further, the plaintiff benefited from the IBS loan to PT Biru. The defendants asserted that from 1992 to 1998, the plaintiff applied the rental collected from the tenant towards servicing the interest and/or the TLF loan and/or the IBS loan to PT Biru.

34 The defendants contended it was the common understanding between the plaintiff and the first defendant that the rental would be applied towards servicing any loans taken out on the property. The defendants alleged that the plaintiff subsequently failed to service the IBS loan and/or the interest on the IBS loan. To avoid the recall of the IBS loan and the consequent sale of the property, the first defendant had no alternative but to service the IBS loan from 1998 to 2001 through loans from the second defendant. The couple paid a total of ¥132,284,236 (equivalent to S$1,996.830.54 at S$1.5095 to ¥100 as of 19 August 2005) towards servicing the IBS loan and the interest. The

couple particularised their payments commencing from 27 November 1998 and ending on 16 February 2001.

35 Despite the couple's efforts, the IBS loan was recalled and in order to save the property from being auctioned off, the defendants arranged for the Citibank loan to take over the IBS loan. When the Citibank loan replaced the IBS loan, it was again the common understanding between the plaintiff and the first defendant that the rental from the tenant which the plaintiff collected would be applied towards the instalment payments and/or interest on the Citibank loan. However, in breach of the common understanding, the plaintiff again failed to apply the rental towards servicing the Citibank loan save for one payment of $300,000 in 2001 and another payment of US$37,154.39 on or about 11 October 2002, although she continued to collect the rent.

36 The couple averred that they paid $189,665.68 to Citibank (between 2 May 2002 and 4 July 2003) to avoid the recall of the Citibank loan and to prevent any consequent sale of the property. Citibank nevertheless recalled the Citibank loan in 2004 and obtained an order for sale of the property. When the couple requested Citibank to postpone the auction of the property, the defendants were forced to place a deposit of $1.12m with Citibank before it would agree to their request. The deposit was unilaterally appropriated by Citibank towards repayment of the Citibank loan on 3 November 2004 when negotiations broke down.

37 The couple alleged that it was because of the plaintiff's breach of the common understanding in [34] that the first defendant advised the tenant to pay half the rental directly to the first defendant and which was done for 2003.

38 If not for the plaintiff's breach of trust and/or fiduciary duty (which included pocketing the first defendant's share of the rental from 1998 to 2000 and from 2002 to 2004), the couple alleged that they would not have had to incur expenses of $3,306,496.22 made up of:

Period/date	Paid to		Amount
1998-2001	IBS	(¥132,284,236)	S$1,996,830.54
2002-2004	Citibank		S$189,665.68
3.11.2004	Citibank		S$1,120,000.00

They counterclaimed the amount from the plaintiff.

39 The couple also alleged that the plaintiff had been unjustly enriched by the said sum of $3,306,496.22.

40 It was further alleged that the plaintiff held the first defendant's half share of the rental from 3 March 1992 to 3 March 2002 totalling $1,435,800 on a resulting trust for the first defendant.

41 In the alternative, if (which the first defendant denied) the plaintiff did not apply the sale proceeds of the Second Avenue property towards the purchase of the property, then the first defendant averred that the plaintiff was in breach of trust and/or fiduciary duties owed to the first

defendant and was liable to the first defendant in damages and/or equitable damages in respect of the breach.

42 In the further alternative, the first defendant alleged that the couple had a proprietary interest over the property by reason of their payment of $3,306,496.22. They alleged that the plaintiff acquiesced in and accepted the benefit of their payments in [38] while the couple, in reliance on the fact that the first defendant was a tenant-in-common of half of the estate in the property, had made the payments to their detriment. The plaintiff never informed the defendants that half the proceeds of the Second Avenue property were not used to purchase the property and she was therefore estopped from raising this plea.

43 Besides their counterclaim for the sum of $3,306,496.22, the couple counterclaimed for half the rental from the plaintiff on a resulting trust and prayed for a declaration that the first defendant was entitled to and the plaintiff held as a constructive trustee for her, a half share of the sale proceeds of the Second Avenue property. A further declaration was sought that the plaintiff held the sale proceeds paid into court on constructive trust for the couple and/or for the first defendant on an equitable lien as security for the repayment of the sum of $3,306,496.22.

44 There was a further claim by the defendants that they were entitled to be subrogated to the position of the banks *vis a vis* the sale proceeds of the property.

45 It would not be necessary to comment on the plaintiff's Reply and Defence to the Counterclaim (Amendment No. 2) in any great detail as essentially the plaintiff denied all the couple's allegations. The plaintiff asserted that the sale of the Second Avenue property was unrelated to the purchase of the property and denied she had used the sale proceeds of the former for the latter, nor was she under a duty to do so. She contended that the sale proceeds of the Second Avenue property were used for the benefit of SLS in 1989 while $518,061.05 therefrom was applied towards the purchase by the couple of No 29 Jalan Tanjong ("the Jalan Tanjong property") in 1995, at the first defendant's request. The plaintiff further denied there was a common understanding to apply the rent of the property to service the loans secured against the property. She also asserted that the first defendant's claim for the sale proceeds of the Second Avenue property was time-barred.

46 The Reply and Defence to the Counterclaim (Amendment No. 2) was filed by the plaintiff on 11 April 2008 after an application to court made on the first day of trial. This was after the parties had exchanged their affidavits of evidence-in-chief ("AEICs") on 28 March 2008 and after the plaintiff (by her own admission) had read the first defendant's testimony.

The evidence

47 The plaintiff was the only witness for her case but she was in the witness stand for two days for cross-examination. The couple had six witnesses *viz* themselves, the second defendant's brother Aman Siman ("Aman"), Aman's wife Merry Salim and two staff who worked for the second defendant in Jakarta.

(i) The plaintiff's case

48 In her AEIC, the plaintiff made no reference to the Second Avenue property at all. Unlike the first defendant's lengthy AEIC, the plaintiff's written testimony was all of 13 pages with the remaining 607 pages being taken up by exhibits. In para 7 of her AEIC, the plaintiff's explanation for the purchase of the property in her name and the first defendant's name was as follows:

> The purchase of the property was made in both my and the 1st defendant's joint names for the sake of convenience, and in order that I would have a better chance of securing a mortgage loan from TLF. Further, my husband and I had decided to purchase the Property as our investment, but as he was not a Singapore citizen, he could not jointly own the Property with me. In order to secure his own interest in the Property, my husband decided to include the 1st defendant (who was his sister-in-law) as a joint owner, to prevent me from disposing of the Property without his knowledge.

49 Counsel for the defendants pointed out that in 1989, the first defendant was 30 years old and a housewife. He (and the court) questioned the plaintiff (at N/E 14-15) how having the first defendant as a joint purchaser helped to improve the plaintiff's chances of obtaining the TLF loan. The plaintiff's unconvincing answer was that the second defendant could have become a guarantor if needed (although the need did not arise) if his wife was a purchaser. Pressed further, the plaintiff claimed it was too late to remove the first defendant's name as joint purchaser as by then, the option for the property had been exercised.

50 As for the second reason for joining the first defendant as a part owner (which unlike the first reason was not in her pleadings), the plaintiff prevaricated when questioned why Jonathan would trust his sister-in-law more than his own wife. Her explanation was illogical -- her husband felt that including the first defendant (who is a Singaporean) as a purchaser would prevent the plaintiff from disposing of the property without his knowledge. Since he paid for the property, the plaintiff said she obliged and she did not question her husband's reasoning. She agreed however that she and the first defendant could collude to sell the property without Jonathan's knowledge.

51 Further cross-examination revealed that the plaintiff had over the years, purchased various properties in her sole name without the need to add the first defendant as joint owner, notwithstanding that her purchases were funded by Jonathan (with bank loans). The properties were: her home at No.9 Lorong Marzuki, No 3 Sea Avenue ("the Sea Avenue property"), No 22 Victoria Park, No 20 Lorong 30, Geylang ("the Geylang Road property") and No. 35 Lorong 34 Geylang. (In re-examination, the plaintiff sought to put a new slant on her evidence by saying that the property was the most valuable of all her purchases so her husband wanted the first defendant's name included as a safeguard. This new evidence did nothing to advance her claim on sole-ownership).

52 It was also adduced from the plaintiff during cross-examination that before the writ of summons was filed, she had ample opportunity to do so but did not assert her sole ownership of the property. The occasions included:

(a) the first defendant's execution of a Warrant to Act on 19 May 1994 (at 1AB469) to recover arrears of rent;

(b) the first defendant's instructions to her solicitors to write to the tenant on 10 January 2003 to collect her half share of the rent;

(c) the first defendant's solicitors making an offer to the plaintiff's solicitors in June 2004 to buy over the plaintiff's half share of the property;

(d) the plaintiff's own letter to the tenant dated 9 May 2003 (at 1AB 1416) where she requested the tenant to issue two separate cheques to her and the first defendant for the payment of the rent;

(e) the first defendant's solicitors' letter dated 28 June 2004 (at 1AB1682) advising the

plaintiff's solicitors that the sale proceeds of the property should be shared equally between the plaintiff, the second defendant's mother and his brothers save for Jonathan.

In relation to (a) above, the first defendant had executed a power of attorney in the plaintiff's favour on 24 May 1994 (at 1AB 470) authorising the plaintiff to represent the first defendant in recovering the arrears of rent from the tenant and to acknowledge receipt of the tenant's payment of $211,200 to settle the arrears of rent for the period 3 March 1994 to 2 March 1995.

53 When she was confronted with (d) above, the plaintiff's excuse was that it did not occur to her to set the record straight; she added that she did not inform her solicitors either that she was the sole owner of the property. When counsel for the defendants pressed the issue, the plaintiff explained she did not want to sour her relationship with the first defendant by asserting that she (the plaintiff) was the sole owner of the property. Instead, the plaintiff relied on a letter that the first defendant had written to the revenue authorities (IRAS) on 22 August 1998 stating that the first defendant had no interest in the property. However, after comparing that letter with letters/reminders from IRAS to the first defendant dated 22 May 1998, 19 September 1998 and 20 November 1998 (at 1AB845, 1AB879 and 1AB878), the plaintiff agreed that the first defendant's aforementioned letter could not have been sent to IRAS.

54 As noted earlier [48], the plaintiff's voluminous AEIC comprised mainly of documents with very little text. The bulk of her exhibits consisted of documents that evidenced her upkeep, maintenance and management of the property going as far back as 1991. Queried on such careful record-keeping by the court (at N/E 65), the plaintiff's explanation was that she was a person who liked to preserve documents. She denied counsel's suggestion during cross-examination, that it was because she was accountable to the first defendant as co-owner on how she (the plaintiff) had managed the property and its rental income. In this regard, the plaintiff produced two more letters from OUB/IBS after she had testified, necessitating her being recalled for further cross-examination on the documents. Both letters were addressed to PT Biru, one was dated 5 June 1999 (exhibit P1) while the other was dated 18 December 1997 (exhibit P2). Questioned why the documents (originals) were in her possession, the plaintiff said (N/E 278-279) they were handed to her by Aman, she did not know why as they did not relate to her loan so she chucked them aside. She disagreed it was because she had been entrusted by the family to take care of all banking matters in Singapore. It appeared from P1 that Jonathan provided, as a shareholder of PT Biru (together with his brothers Aman, Abidin and the second defendant), a continuing joint and several guarantee for the IBS loan.

55 The defendants had previously administered Interrogatories to the plaintiff on what she did with the sale proceeds of the Second Avenue property. The plaintiff's Answers were to the effect that $352,923.54 went to pay the medical expenses of SLS and $518,061.05 went to pay for the first defendant's purchase of the Jalan Tanjong property [45].

56 SLS had suffered from cancer in 1989 before he passed away in July 1999. The plaintiff produced a whole host of medical bills from National University Hospital (in her Answers to Interrogatories) but conceded she had no evidence to prove she had actually paid them on her father-in-law's behalf. Neither could the plaintiff explain the large sums of cash that SLS gave her when he was terminally ill. It was the defendants' contention that those moneys must have been used to pay for his medical expenses as SLS had stayed with the plaintiff.

57 As for the Jalan Tanjong property (which was procured by Jonathan), the option was dated 16 May 1995 and the joint purchase (by the first defendant and Poh Ai Lian) was completed on 22 August 1995, six years after the sale and purchase transactions relating to the Second Avenue property and the property. The plaintiff could not give any satisfactory explanation why the first

defendant would allow her to keep the latter's share of the sale proceeds of the Second Avenue property for so long. She maintained that she had utilised those sale proceeds for the cash flow of the company.

58 I turn now to consider in detail the plaintiff's evidence adduced in the course of cross-examination, particularly on the source of funding for the purchase of the property as well as on the loans from the three banks that were secured by mortgages over the property.

59 Throughout the trial, the plaintiff maintained that she alone funded the purchase of the property. However, she could not dispute that the two mortgages of Kwangtung Provincial Bank ("KPB") over the Second Avenue property which secured facilities totalling $800,000 to the company were redeemed from the sale proceeds of that property. Her assertion that the down payment of $600,000 came from the funds of the company (because the cheques issued in payment came from the company's account with KPB) was not supported by any evidence on the source of those funds. It bears mentioning that on completion of the sale of the Second Avenue property, all the proceeds (less the loan of KPB) were paid to the plaintiff. Further up to 1992, she had assigned to the bank for the TLF loan, the rent of the property to service the mortgage instalments; half of the rent ostensibly belonged to the first defendant.

60 In June 1993, TLF agreed at the plaintiff's request, to reduce the monthly mortgage instalments on the TLF loan from $30,943 to $17,294 (see its letter at 1AB 381) with effect from July 1993. At that time, the annual rent of the property had been increased (from $192,000) to $211,200 which averaged out to $17,600 per month. The plaintiff did her sums well and ended up not having to service the TLF loan at all; it was taken care of by the rent leaving her with even a small surplus of $306/- for the property's upkeep.

61 It was the evidence before the court that the TLF loan was redeemed on the same day that the property was mortgaged to IBS for separate loans to PT Biru and to the plaintiff. The plaintiff had also agreed (at N/E 115) that the Citibank loan replaced the IBS loan, contrary to her AIEC (para 21) where she claimed (see [7]) that the Citibank loan was used for the business interests of the couple and Arifin. The defendants had produced in court the entire set of statements relating to the Citibank loan which the plaintiff did not/could not challenge.

62 The plaintiff however insisted that she had paid the redemption sum for the TLF loan when IBS became the mortgagee. Counsel for the defendants then drew the plaintiff's attention to the company's statements with Bank of China ("BOC") for April/May 1994 which showed that three days after she paid TLF the redemption sum of $866,704.59 on 30 April 1994, a sum of $850,000 was credited to the company's BOC account. The plaintiff claimed she could not remember the source of the credit.

63 The plaintiff was referred to an undated fax produced by the first defendant (see exhibit D1) which the company had sent to PT Biru marked for Aman's attention which stated:

Amount owing by PT Biru & Sons Ltd as at 30.4.94 S$1,135,908.21

Amount owing to Tat Lee Finance as at 30.4.94 S$ 866,704.59

Total amount owing as at 30.4.94	S$2,002,612.80
Total amount drawn from International Bank of Singapore on 3rd May 1994	US$1,250,000.00
EXCHANGE RATE at 1.5535	S$1,941,875.00
Credit balance transferred from property account	S$57,026.38
S$2,002,612.80 minus S$1,998.901.38	= S$3,711.42 debit balance.

64 Although the fax emanated from the company, the plaintiff denied (at N/E 78) she was the sender and declined to say who else could have sent the fax. However, she agreed that the fax seemed to suggest that PT Biru drew down on the IBS loan to pay its trade debts to the company on 3 May 1994 and that was also the day $850,000 was credited to the company's BOC account. She denied counsel's suggestion that the sum came from the IBS loan. The plaintiff's AEIC (at paras 16 and 17) had given the impression that the IBS loan had nothing to do with the company when in fact US$1m of the IBS loan (which was for US$2.8m with US$1.8m going to PT Biru) was used to redeem the TLF mortgage on the property, according to the term loan facility letter of IBS dated 3 December 1993 (at 1AB395). Questioned on her omission, the plaintiff initially claimed (at N/E 89) that it was because the company did not receive the US$1m from IBS to repay its loan. Pressed for an answer by the court (N/E 91), the plaintiff finally claimed it had slipped her mind.

65 The plaintiff's AEIC had also failed to disclose that the company on its own had taken a short term facility of US$1.6m from IBS according to a letter from IBS dated 8 February 1994 (1AB409), which was secured by a first legal mortgage on the property. Questioned again by counsel for the defendants on the (wrong) impression conveyed by para 16 of her AEIC that the IBS loan was PT Biru's concern and not the company's, the plaintiff changed her testimony (at N/E 93) to say she only wanted to give the impression that she had nothing to do with PT Biru's loan and not her own loan with IBS. (The plaintiff's facilities with IBS were revised upwards to S$4.8m in March 1997, secured by three mortgages *viz* first legal mortgages on the Geylang Road and Sea Avenue properties and a second legal mortgage on the property).

66 The plaintiff was then confronted with a letter signed by Aman (at 1AB519) from PT Biru to IBS authorising IBS to transfer US$500,000 from PT Biru's account with IBS to the plaintiff's own account with IBS. The plaintiff made a half-hearted attempt at denial before admitting the transaction. There was also a money market confirmation on 8 January 1998 (at 1AB804) by IBS which showed that PT Biru had drawn down on its loan in ¥$81,501,304 equivalent to US$600,000 to settle the plaintiff's loan with IBS. Counsel for the defendants pointed out that the accounts of PT Biru and the plaintiff were treated as "related accounts" by IBS in its account closing document (at 1AB1927) but the plaintiff disagreed. She said IBS got it "all jumbled up".

67 After IBS was taken over by Overseas Union Bank (OUB), it was OUB that made a demand on PT Biru for repayment of the IBS loan on 20 March 2000 (1AB 979) in the amount of ¥479,291,204.00 (which was then equivalent to US$4.5m at ¥105.29 to US$1.00) and US$345,000. The plaintiff disagreed with the suggestion of counsel for the defendants that the original IBS loan facility of US$2.8m increased so drastically because her loan was included therein. She accepted (based on her own AEIC) that she made no repayments on the IBS loan in relation to PT Biru but changed her

testimony in court (at N/E 107) and claimed that she repaid the IBS loan by using, not the rent from the property as counsel suggested to her, but the sale proceeds ($1.55m) of the Sea Avenue property.

68 However, the letter to the plaintiff from OUB dated 17 January 2001 (2AB46-47) contradicted her claim. It was there stated that the plaintiff redeemed only the mortgage of the Sea Avenue property from the sale proceeds leaving the first legal mortgage and second legal mortgage of the Geylang Road property and the property respectively, to secure the remaining facilities she still had with OUB (reduced from $2.205m to $875,000). In the same letter, OUB indicated it would discharge the second legal mortgage on the property without any reduction in her banking facilities, when the first legal mortgage on the property was discharged, upon full settlement of the banking facilities extended to PT Biru.

69 Despite her testimony, the plaintiff could not have redeemed the first legal mortgage of the property using the sale proceeds of the Sea Avenue property because the redemption sum for OUB's mortgage was $1.339m leaving the plaintiff with a balance of only $211,000 of the sale proceeds ($1.55m less $1.339m). This could be seen from her solicitors' (Allen & Gledhill's) letter dated 2 February 2001 (2AB51) to the purchaser's solicitors Drew & Napier and her solicitors' letter to OUB dated 9 February 2001 (2AB52-53)confirming the redemption sum was $1.339m for Sea Avenue. The plaintiff's own Answers to Interrogatories filed on 9 April 2008 contradicted her evidence. Queried by the court on which piece of evidence was correct, the plaintiff did not confirm either way, taking refuge in the excuse that she was confused. Although her AEIC stated she made no payments towards the IBS loan save for some interest payments, the plaintiff changed her evidence in court (N/E 118) and claimed she must have made some repayments of the loan itself since the sums she paid were quite huge yet in the next breath she said she could not recall how much she had paid to IBS.

70 Although she admitted receiving the second defendant's note dated 14 June 2001 (at 1AB 1122) addressed to Jonathan as Kang (his Chinese name Tji Kang) requesting her to apply the property's rent to service the Citibank loan, the plaintiff denied she acceded to the request. She claimed (at N/E 121) that the second defendant was asking for the rent as a loan (which he denied), to be paid into his Citibank account. On 28 June 2001, the plaintiff paid $300,000 to Citibank which sum was credited to PT Biru's account.

71 Despite her professed concern that the property would be foreclosed if the couple and Arifin defaulted on the Citibank loan, the plaintiff admitted that she did not make any loan repayments herself, for the reason that she could not be paying the borrowers' loan "indefinitely".

72 The plaintiff's excuse for not asserting her sole-ownership of the property to the first defendant's solicitors when they wrote their letter in June 2004 [52(c)] was that she had no intention of selling the property. This was untrue as her own solicitors wrote to the solicitors for an intending purchaser, Tan Rajah & Cheah ("TRC") on 16 April 2004 (at 1AB1633) forwarding a draft option for the sale of the property. Confronted with the document, the plaintiff changed tack and said she meant it was not her intention to sell the property at the price offered by the first defendant. It is noteworthy that the first two paragraphs of her solicitors' letter acknowledged that the property was jointly owned. The letter states:

> We act for the *vendors* of the above property and we understand that you act for the intending purchaser.
>
> We are instructed by *our clients* to forward herewith the draft Option to Purchase for your

attention…. (emphasis added).

73 Despite her denials, the fact that the plaintiff made no reference to the Jalan Tanjong property in her original pleadings (in the Reply and Defence to Counterclaim before amendment) or in her AEIC lent credence to the couple's contention (which was put to the plaintiff in cross-examination) that she raised the matter as an afterthought – it surfaced for the very first time on 11 April 2008 in her amended Reply and Defence to the Counterclaim.

(ii) The defendants' case

74 It was the first defendant's case that the cash consideration of $600,000 for the purchase of the property was funded by the sale proceeds of the Second Avenue property which was bought in or about 1978. In 1977, the second defendant had told SLS that the family should look for a property in a better location than No. 28 Lorong 4, Geylang where the family was staying. SLS agreed and that was how the Second Avenue property came to be purchased in the name of the second defendant's grandfather See Sieng Chin ("the grandfather").

75 On 21 January 1981, the grandfather transferred the Second Avenue property to the plaintiff and to the first defendant as tenants-in-common in equal shares. It was a gift to the two daughters-in-law from SLS since he not the plaintiff or the first defendant, paid the consideration of $300,000 to the grandfather. The Second Avenue property was mortgaged to KPB on 4 September 1981 for banking facilities of $600.000. This was followed by a second mortgage to KPB on 23 February 1983 for additional banking facilities of $200,000. The facilities were used solely by the company.

76 In March 1988, the couple decided (after consulting SLS, the plaintiff and Jonathan) to sell the Second Avenue property and use the sale proceeds to purchase another property for investment. A buyer was found in Neptune Orient Lines Limited ("NOL") in December 1988 at a price of $1.7m. The sale to NOL was completed in March 1989. The completion account as set out by TRC in its letter dated 1 April 1989 (1AB124) to the plaintiff and the first defendant contained the following significant numbers:-

Sale price		$1,700,000.00
Add: Refund of property tax paid		828.00
Payment to Tan Rajah & Cheah to account of costs		2,000.00
		1,702,828.00
Less (i) 10% deposit (paid to the plaintiff by 2 cheques)		170,000.00
(ii) mortgage redemption sum paid to KPB		750,000.00
(iii) Conveyancing fees, stamp fees etc		5,703.50
	Balance	$777,124.50

77 The first defendant had authorised TRC in a letter dated 28 March 1989 (1AB112) to pay her half share of the sale proceeds to the plaintiff. Consequently, the first defendant did not receive her half share of $777,124.50. Neither did she ask the plaintiff for the amount as it was the common understanding that the balance sale proceeds would be used to purchase another property in Singapore for the family.

78 As the plaintiff had utilised the sale proceeds of the Second Avenue property to redeem the two KPB mortgages (which secured facilities extended to the company), the first defendant contended that the sale proceeds should actually have been $1,695,124.50 of which she was entitled to half amounting to $847,562.25. The first defendant's computation was as follows:

Sale price	$1,700,000.00
Add: Refund of property tax	836.00
Less: Conveyancing fees, stamp fees etc	5,703.50
	1,695,124.50 ÷ 2

The first defendant contended that the plaintiff held her half share of $847,562.25 on trust for her.

79 Since the Option for the property was procured on 17 April 1988 which was shortly after completion of the sale of the Second Avenue property, the first defendant contended that the proximity of the two transactions lent weight to her evidence that it was always understood that the sale proceeds of the Second Avenue property would be used for the purchase of another property meant as an investment for the family.

80 The first defendant deposed in her AEIC that it was always the common understanding that:

(a) properties held in the names of the plaintiff or herself would if required be used as collateral to raise funds for the family business;

(b) rentals from any tenancies obtained from jointly owned properties would be utilised to service loans of such properties being used as collateral; and

(c) the plaintiff and Jonathan would implement the family's wishes and they would take charge of all aspects of the jointly owned properties including outgoings, liaising with the authorities, professionals and tenants.

81 Prior to 1995, the first defendant visited Singapore once or twice a year. After 1995, she visited Singapore more often as her children were studying in Singapore. Due to the fact that the defendants as well as other members of the Siman family did not reside in Singapore, the couple entrusted most of their affairs in Singapore to the plaintiff and Jonathan, more so as the first defendant was educated in the Chinese medium whereas the plaintiff was conversion in English. For the same reason, the first defendant relied on the plaintiff to explain to her documents written in English. The first defendant would sign documents after the plaintiff had first signed them. However, unless the plaintiff specifically drew her attention to any specific documents, the first defendant

would not be aware of their contents and/or significance. It was only after 1998 that the first defendant realised that her trust and faith in the plaintiff was misplaced.

82 It was after the commencement of these proceedings that the first defendant learnt that the down-payments for the property's purchase were made by cheques of KPB. At least one such cheque for $276,800 (dated 2 May 1989) came from the company's account with KPB. However, there was no evidence that the moneys in the KPB account did not come from the sale proceeds of the Second Avenue property, all of which were paid to the plaintiff.

83 In furtherance of the common understanding in [80], the first defendant said she gave the plaintiff the power of attorney in [52] to enable the plaintiff to collect the rent and to credit the payment to the IBS loan account to service the mortgage instalments. When the IBS loan was replaced by the Citibank loan, the same common understanding prevailed. The plaintiff breached that common understanding when she failed to utilise the rent to service the mortgage instalments on first, the IBS loan and subsequently the Citibank loan (save for two payments of $300,000 and US$37,154.39 [equivalent to S$66,988.49]) in June 2001 and October 2002 respectively.

84 In the closing submissions of the defendants, their counsel had computed the rent and excess sale proceeds from the Second Avenue property that the plaintiff had failed to account as follows:

Rent collected from 1989 to 3 March 1994	$1,136,482.19
Excess from Second Avenue property sale proceeds	$1,095,124.50
Less	
TLF instalments from 1989 to 30.4.94	($1,627,261.00)
Rent assigned to TLF from 1989 to 1992	($ 502,882.19)
Balance	$ 101,463.41

85 During cross-examination, the first defendant explained (at N/E 260) that although she was angry that the plaintiff had failed to apply the rent from 1998 towards repayment of the bank loans, she made no demand in 1998 of the plaintiff for half of the rent as the plaintiff and Jonathan were then cash-strapped (due to the 1997 financial crisis) and it was not the first defendant's intention to drive them to the wall. As they were one family, the first defendant could not possibly leave them in the lurch. Moreover, the property was left behind by their father-in-law and morally out of family obligations, she could not insist on getting her share of the rent. However, she stopped servicing the Citibank loan in 2003 because she did not want to be taken for a fool anymore by the plaintiff, who had in 1992 stopped using the rent to service the Citibank loan. Had the annual rent of $300,000 been applied towards servicing the Citibank loan, it would have almost covered the annual repayment of the loan set at US$185,055 by Citibank in its offer letter dated 7 December 2000 (at 1AB1022).

86 The first defendant disputed the plaintiff's claim that she used the sale proceeds of the Second Avenue property to defray their father-in-law's medical expenses. The first defendant pointed out that SLS was a wealthy man and he would request PT Biru to remit moneys to Singapore if he had

insufficient funds. The first defendant testified that the plaintiff had never mentioned to her or to other family members that the sale proceeds of the Second Avenue property had been used to pay the medical bills of SLS.

87 The Jalan Tanjong property was purchased only in 1995 as a home for the children of the first defendant/Poh Ai Lian when they came to Singapore to study. The first defendant testified that the Jalan Tanjong property was purchased with a loan from IBS which the second defendant serviced by remitting moneys from Indonesia.

88 When he took the stand, Aman referred to the letter of IBS in exhibit P2 [53] where the (restructured) facility of US$4.753m included US$553,000 which Aman said related to the 15 year term loan for the Jalan Tanjong property. Similarly, the second defendant pointed out that the other letter of IBS in exhibit P1 [54] for the facility to PT Biru (US$4,709,167) included the revised term loan of US$509,167 for the Jalan Tanjong property. The second defendant testified that he had reimbursed the plaintiff for the initial down-payment she made on the couple's behalf for the Jalan Tanjong property, which was sold in 2005/2006.

89 Counsel for the plaintiff (NE355-357) had challenged Aman's testimony that the second defendant had remitted moneys from Jakarta to service the IBS loan on behalf of PT Biru since end 1998. Aman (DW3) explained that in the riots that took place in Jakarta on 14 May 1998 (which led to President Suharto's resignation), his office (at PT Biru) was burnt and the records were destroyed. He could only rely on the records of the second defendant to evidence remittances to Singapore. When shown the plaintiff's OUB statements which (her counsel said) showed the plaintiff had repaid her own loan from IBS, Aman replied he had no knowledge of how many accounts the plaintiff maintained with IBS/OUB nor their status, he relied on information from IBS/OUB and he maintained he drew down on the IBS loan to repay the plaintiff's own outstanding loan.

90 The second defendant fortunately was able to corroborate Aman's testimony *vis a vis* his remittances from Indonesia. The second defendant holds the A & W franchise in Indonesia (since 1984) under the name PT Biru Fast Foods Nusantara ("Nusantara") and called his accounting and finance manager Man Alexander Davis Lay (DW5) as well as a former clerk Surjani (DW6) to confirm (at N/E 384/385) that the second defendant would instruct Surjani to take cash from his/the first defendant's personal bank account, pay an Indonesian bank offering the cheapest exchange rate for Japanese Yen and remit moneys to IBS/OUB in Singapore. Remittance forms were also exhibited in Surjani's AEIC. According to Surjani, the second defendant made 59 remittances to IBS totalling ¥132,952,776.00 equivalent to S$2,006,922.15 at S$1.50995 to ¥100 (as of 19 August 2005).

91 In cross-examination, the second defendant's attention was drawn to remittance forms exhibited in his AEIC which showed moneys remitted from Indonesia were ordered by PT Biru and not by him as he claimed. The second defendant explained he initially thought OUB would only recognise PT Biru as the borrower and hence he made remittances in the name of PT Biru. Later, when OUB got to know it was the second defendant who was making the remittances, the second defendant used his own name as the remitter. The second defendant denied counsel's suggestion that he made the remittances because he was liable to IBS as a guarantor for PT Biru. (In re-examination of the second defendant, it was pointed out that Jonathan was also a personal guarantor of the IBS loan).

92 The second defendant (and Aman) was able to shed some light on exhibit D1. He explained the statement of account stated therein between the company and PT Biru came about when PT Biru switched loans from TLF to IBS in 1994. PT Biru drew down on the IBS loan to settle the accounts between the two entities leaving a small credit balance of $3,711.42 in favour of the company.

93 Counsel for the plaintiff had put to the second defendant that the plaintiff was the sole owner of the property. The second defendant's response (at NE302) was that if indeed that was so, it defied logic that he would pay close to S$2m over a period of 26 months on 39 occasions to service the IBS loan not to mention making further payments on the Citibank loan, if his wife had no share in the property. The second defendant pointed out that he derived no benefit whatsoever from the IBS loan as he had nothing to do with managing the business of PT Biru which from 1993, was under the sole charge of Aman. He was preoccupied with running Nusantara [90] (which currently has 140 outlets in 14 Indonesian cities), although he (like Jonathan) remained a shareholder of PT Biru.

94 The second defendant realised on hindsight (see N/E 310) how clever the plaintiff had been and how she had made fools of him and the first defendant. He pointed out that she was not a party to the IBS loan and refused to have her name added as a borrower for the Citibank loan. Although she contended both loans had nothing to do with her, she and/or the company reaped the benefits of both loans and she appropriated the rent of the property as well.

95 It would not be necessary to review the testimony of Aman's wife Merry Salim (DW 4) as nothing turns on her evidence. She had however confirmed the common understanding of the family's members set out in [80] above.

96 Before I proceed further, I should at this juncture point out that the reason for the IBS and the Citibank loans being in foreign currencies (United States dollars and Japanese Yen) was due to government measures taken in May 1995 to cool the then overheated property market. The government had banned foreigners (individuals as well as companies) from obtaining Singapore dollar loans from local banks to buy residential properties.

The issue

97 The only issue for the court's determination is, did the first defendant have a half share interest in the property in accordance with her status as a tenant in common as the defendants asserted or, was she holding the half share on trust for the plaintiff as the latter contended?

The law

98 The defendants had referred to s 46 of the Land Titles Act Cap 157 Revised 2004 edition ("the LTA") for her rights as a tenant in common; the section states:

> **Estate of proprietor paramount**
>
> 46. — (1) Notwithstanding —
>
> (a) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority;
>
> (b) any failure to observe the procedural requirements of this Act; and
>
> (c) any lack of good faith on the part of the person through whom he claims,
>
> any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, shall hold that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register…

99 In the course of the trial, I had pointed out to counsel for the plaintiff that the burden was on his client to disprove the first defendant's tenancy in common at law. The law recognised the first defendant's ownership and rights as a tenant in common, pursuant to s 46 of the LTA. It was incumbent on the plaintiff to defeat the first defendant's legal status by proving that the latter held her half share on trust for the plaintiff absolutely.

100 Counsel for the plaintiff had cited an extract (para 110.556) from *Halsbury's Laws of Singapore* 2003 LexisNexis Singapore Volume 9(2) which reads:

> A purchase money resulting trust operates by effect of a presumption. The purchaser of property who purchases it in the name of another is in the absence of clear evidence of gift or obligation to transfer presumed to have intended to retain the beneficial interest for himself. The law accordingly construes what appears to be absolute ownership as mere legal ownership and makes the legal owner hold the beneficial interest for the purchaser. The same result obtains when the purchase is in the name of the purchaser and another, as joint tenants or tenants in common, when the purchaser has not given clear indication that a gift or performance of obligation was intended.

to support his submission that the first defendant was a trustee of the plaintiff.

101 In so doing, counsel overlooked another extract from *Halsbury's of Laws* [100] that followed immediately after the above passage. Paragraph 110.557 states:

> The presumed resulting trust which arises from the provision of the purchase money or voluntary conveyance in the absence of words of gift or of performance of obligation is a rebuttable presumption. The law does not prescribe a closed list of rebuttal evidence.

102 Further, the case of *Tay Yok Swee v United Overseas Bank & Ors* [1994] 2 SLR 217 cited by the defendants is relevant. There, the Court of Appeal held that where (as in this case) there was clear evidence that parties held a property as tenants in common in specified shares, any implication of a trust was rebutted.

103 To overcome the hurdle of the first defendant's legal ownership of half of the property, the plaintiff would have to prove that she and she alone funded the entire purchase price ($3m). It is my view on the evidence that the plaintiff failed to discharge the requisite burden of proof.

104 Each side had pleaded that the other party was its fiduciary and trustee and had breached its duties in both capacities. On the part of the defendants, they alleged that the plaintiff was the first defendant's fiduciary by reason of the common understanding they had on how the rent of the property was to be applied. The defendants had also pleaded that the plaintiff was a trustee and that she held her interest in the half share of the net sale proceeds up to an amount of $3,306,496.22 (see [43] *supra*) on a constructive trust for them.

105 According to *Halsbury's Laws of England* (4th edition reissue volume 16 page 806 para 903) a constructive trust arises when, although there is no express trust affecting specific property, equity considers that the legal owner should be treated as a trustee of an interest in it for another.

The findings

106 I had in the earlier part of this judgment, taken great pains to review the evidence adduced in court particularly from the plaintiff as well as from the defendants. The veracity of the protagonists

to a large part (apart from their demeanour in the stand) was determined by comparing their testimonies particularly in cross-examination, with the documentary evidence before the court. This was necessary since the events leading to the claim and counterclaim went back more than 20 years to the time of the purchase of the Second Avenue property.

107 I found that the plaintiff's closing submissions which reiterated her AEIC (that she paid the cash outlay of $600,000, funded the balance by the TLF loan of $2.4m and repaid the TLF loan) completely ignored the contrary evidence adduced from the plaintiff during cross-examination and in the banking documents that were before the court.

108 The plaintiff's claim that she did not use the sale proceeds of the Second Avenue property in the purchase because part thereof ($352,923.54) was used by SLS for his medical expenses was not substantiated by one iota of evidence of such payment having been made by her on his behalf. Merely producing the bills of the National University Hospital would not suffice; there was nothing to show that the plaintiff actually paid those bills. SLS was a wealthy man who stayed with the plaintiff when he sought treatment for his cancer in 1998; in all likelihood he paid his own medical bills.

109 The plaintiff's other contention that $518,061.05 of the Second Avenue property's sale proceeds went towards the purchase of the Jalan Tanjong property was inherently incredible as:

(i) the Jalan Tanjong property was acquired six years after the sale of the Second Avenue property and she could offer no satisfactory explanation why the first defendant would allow her to retain the latter's share of the sale proceeds for so long;

(ii) her own exhibits (P1 and P2) showed that part of the IBS loan was used to fund the purchase of the Jalan Tanjong property.

110 On a balance of probabilities, I find that it was more likely than not, that the plaintiff utilised the sale proceeds of the Second Avenue property in the purchase of the property. She never accounted to the first defendant for the net proceeds which figure should be $1,695,124.50 as shown in [77] for the reason that the first defendant should not have to bear any part of the company's redemption sum for the TLF loan.

111 Equally, based on the documentation for the IBS loan, it was highly unlikely that the plaintiff discharged the TLF loan or her personal loan with IBS. I accept the testimony of the second defendant and Aman that PT Biru in effect paid TLF the sum of $866,704.59 to redeem the mortgage on the property by crediting the plaintiff's BOC account with $850,000 and it repaid US$1m of the plaintiff's loan with TLF from the IBS loan, in compliance with the plaintiff's condition for agreeing to the IBS loan. There was also the setoff in accounts between the company and PT Biru (which included the sum of $866,704.59) as evidenced in the fax at exhibit D1 [63], on which I was not convinced that the plaintiff was not the sender.

112 It bears remembering that the mortgage sum of $866,704.59 was the balance of the TLF loan of $2.4m which the plaintiff had partly repaid by first, assigning the rent to TLF up to 1992 and subsequently, by using the rent to service the mortgage instalments directly.

113 It is also my finding that there was indeed a common understanding among members of the family that properties owned by the family would be used as security for loans should any of the family members require financial assistance. Consequently, the plaintiff breached that common understanding when she failed to service the IBS loan after 1998 and when she failed to service the Citibank loan at all.

114 It is undisputed that the plaintiff never once asserted her claim to sole ownership of the property before the property was sold by Citibank and the balance sale proceeds paid into court on 12 July 2005. Indeed, her own actions in [13] and [72] indicated that she accepted that the first defendant was a joint owner of the property. It is noteworthy that by 6 August 2004, when Citibank obtained an order for sale of the property, the plaintiff and the first defendant had jointly owned the property for 15 years.

115 The plaintiff's explanation in [48] that the property was bought in joint names with the first defendant for convenience was illogical while her second reason (in her oral testimony) that it was to protect Jonathan's interest was patently untrue, in the light of the fact that she purchased in her sole name, a number of properties including her current residence, all of which were funded by Jonathan [51].

116 The plaintiff came across as an intelligent but devious woman for whom the couple particularly the first defendant, was no match. The plaintiff had no compunctions of making use of the family's wealth for her personal advantage but did not appreciate the fact that her father-in-law's generosity in giving her a half share in the Second Avenue property, enabled her to purchase the property at a time when she was in no position to fund the purchase herself. She serviced the mortgage instalments of the TLF loan diligently because the company (which she owned jointly with Jonathan) was the borrower and mortgagor. Once PT Biru stepped into the company's shoes as the borrower for the IBS loan, her attitude changed completely. Her selfishness took over and she regarded it as no longer her business or that of the company, to see to it that the mortgage instalments were serviced – she refused to use the rent of the property to service the mortgage instalments. It did not even matter to her that her own husband was a guarantor of the IBS loan. As far as she was concerned, PT Biru was responsible, even though her personal loan/the TLF loan was paid by PT Biru from the IBS loan.

117 The plaintiff's selfishness carried over to the Citibank loan where she adopted the same stance as she did for the IBS loan. She refused to use the rent to service the mortgage instalments even though she had agreed to do so as a condition for not being made a borrower of the Citibank loan.

118 My earlier analysis of her testimony showed that the plaintiff was an untruthful witness who prevaricated and changed her evidence to suit the occasion. Her documents were selective, she produced only those that would advance her case that she paid for all the outgoings, maintenance and upkeep of the property while her banking documents were those of her own accounts or the company's, reflecting her payments of instalments for the mortgages on the property. However, the plaintiff could not explain why she would keep banking records so assiduously, even letters from IBS/OUB going as far back as 1997 (P2) when they were not even addressed to her or to the company. As the defendants submitted, the only reason must be that it was the plaintiff's duty to account to the first defendant as a joint owner of the property and/or to PT Biru, because of the common understanding that the family could use the property as security by whosoever needed bank financing.

119 The defendants in contrast to the plaintiff were honest and forthright in their testimony. There was no hesitation or prevarication on their part. Their only fault was their absolute faith in the plaintiff that she would take care of their and the family's interests until they realised, a little late in the day, that she had betrayed them and was unworthy of their trust.

120 For 15 years, the plaintiff did not assert her sole ownership to the property. After Citibank paid the balance sale proceeds ($3,109,198.15) of the property into court, greed overcame her and for the first time, she laid her claim to the sum, on the basis that the first defendant notwithstanding

having a legal title as a tenant in common, was holding a half share for the plaintiff as the plaintiff's trustee. The plaintiff's claim is completely unmeritorious and I hereby dismiss it with costs.

121 It bears remembering that the plaintiff's claims against the defendants for breach of trust and breach of fiduciary duties lie in equity. It is axiomatic that:

(a) he who comes into equity must do equity;

(b) equity act on the conscience, and

(c) he who seeks equity must do equity.

On all three maxims, the plaintiff's reprehensible conduct precludes her from being granted relief, bearing in mind that equitable remedies are discretionary.

122 Before I turn to the defendants' counterclaim, I need to address the defence of time-bar under s 21(1) The Limitation Act Cap 163 Revised 1996 edition ("The LTA"), raised in the plaintiff's Reply and Defence to the Counterclaim. The section states:

> **Limitation of actions to recover money secured by mortgage or charge to recover proceeds of sale of land**.
>
> (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of 12 years from the date when the right to receive the money accrued.

123 However, s 22 of the LTA states:

> **Limitations of actions in respect of trust property**
>
> (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.
>
> (3) The right of action referred to in subsection (2) shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

124 Pursuant to s 22(1)(b) of the LTA, the defendants' action for breach of trust against the plaintiff is not time-barred. If, as the plaintiff claimed, she used the sale proceeds of the Second Avenue property for the cash flow of the company instead of using it for the purchase of the property as was intended by the family/the defendants, she had breached her duties to the first defendant. The

defendants were unaware of her actions until after the commencement of these proceedings. Hence, under s 22(2) of the LTA, the defendants' right of action did not accrue until after 5 August 2005, the date of the filing of the writ of summons and is therefore not time-barred.

125 I find on the evidence that the defendants have discharged their burden of proof on their counterclaim. The plaintiff holds half the rent of the property (less the sum of $150,000 paid to the first defendant and less the sums of $300,000 and US$37,154.39 paid to Citibank) on a resulting trust for the first defendant and is accountable to the first defendant for the balance of the rent collected from 1992 to 2003. The plaintiff is further accountable to the first defendant for half the sale proceeds of the Second Avenue property as a constructive trustee.

126 In relation to the defendants' payments totalling $3,306,496.22 made towards the IBS and Citibank loans, the defendants are entitled to a proprietary interest in the property and to trace the sum to the sale proceeds thereof. Consequently, the sum of $3,109.198.15 plus interest accrued thereon paid into court by Citibank on 12 July 2005 [24] in Originating Summons No. 253 of 2004 shall be paid out to the defendants' solicitors towards the final judgment sum of $3,306,496.22.

127 In the light of my findings, it would not be necessary for me to deal with the defendants' claim based on subrogation [44].

128 There will be interlocutory judgment on the defendants' counterclaim on breach of trust and breach of fiduciary duties. An inquiry shall be held by the Registrar (with costs of the inquiry reserved to him) to ascertain the first defendant's entitlement to rent from the property and to the sale proceeds of the Second Avenue property. The defendants shall have their costs on the counterclaim.

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