IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 132

Suit No 1294 of 2018

Between

Letchimy d/o Palanisamy Nadasan Majeed (alias Khadijah Nadasan)

… *Plaintiff*

And

Maha Devi d/o Palanisamy Nadasan (administrator of the estate of Devi d/o Gurusamy, deceased)

… *Defendant*

EX TEMPORE JUDGMENT

[Equity] — [Estoppel] — [Proprietary estoppel]
[Civil Procedure] — [Pleadings]
[Probate And Administration] — [Intestate succession]

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v
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[2020] SGHC 132

High Court — Suit No 1294 of 2018
Tan Siong Thye J
28, 29, 31 January, 3–7, 12, 13 February, 29 June 2020

29 June 2020

Tan Siong Thye J (delivering the judgment of the court *ex tempore*):

Introduction

1 This Suit centres around the distribution of a Housing and Development Board ("HDB") flat at Block 18 Bedok South Road #11-81 Singapore 460018 (the "Property"). The Property was owned solely by Devi d/o N Gurusamy (the "deceased") until her unfortunate and sudden death on 17 October 2017. The deceased is survived by six children (the "Siblings"), including the plaintiff and the defendant. The deceased had passed away intestate as she did not have a will. The assets belonging to the deceased's estate were distributed in equal shares to her beneficiaries, save for the Property that is in dispute.

2 The plaintiff seeks for the Property to be transferred to her sole name or, in the alternative, for the value of the Property as the deceased had represented

to her that the plaintiff was to inherit the Property upon her demise (the "representation"). The defendant, on the other hand, argues that the Property should be sold and the proceeds of sale be distributed equally to the beneficiaries of the deceased's estate, including the plaintiff, as that was what the deceased had wanted. The defendant further asserts that there is no will and, thus, the Property has to be distributed in accordance with the Intestate Succession Act (Cap 146, 2013 Rev Ed) (the "ISA"). The defendant was granted letters of administration and she is the administrator of the deceased's estate.

My decision

The issues

3 These are the issues for my consideration:

(a) Has the plaintiff pleaded proprietary estoppel?

(b) Can proprietary estoppel override the ISA?

(c) Can the representation, assuming it is true, constitute a valid representation under the principle of proprietary estoppel?

(d) Did the deceased make the representation to the plaintiff?

(e) Can the court accept the testimonies of the plaintiff's three witnesses?

(f) Did the plaintiff rely on the representation and act to her detriment?

Has the plaintiff pleaded proprietary estoppel?

4 I note at the outset that the defendant raises an objection that the plaintiff "did not plead the remedy of estoppel in her Statement of Claim or Reply",[1] thereby putting the defendant at a "disadvantage and prejudiced as a result".[2] Although I had made similar observations during the hearings, the plaintiff did not seek to amend the pleadings.

5 In this regard, the observations of the Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [43]–[44] are relevant:

> 43 The Judge was of the view that the words 'proprietary estoppel' did not have to be *specifically* pleaded. We agree, except that if such a cause of action is to be relied on, the pleadings should at the very least disclose the material facts which would support such a claim, so as to give the opponent fair notice of the *substance* of such a case, especially in a claim based on proprietary estoppel. In *Chng Bee Kheng v Chng Eng Chye* [2013] 2 SLR 715, Chan Seng Onn J said at [94] as follows:
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> > Even though Mr Yeo did not object to this defect in pleading and proceeded to submit on the basis that the Defendant's case was founded on estoppel by representation, promissory estoppel, proprietary estoppel and estoppel by convention, I am of the view that the Defendant has to plead his case accurately. The different types of estoppel may have similar undertones, but, as will be seen below, their constituent elements are dissimilar, and the facts relevant to the elements would accordingly differ and must be pleaded specifically. For instance, while Mr Bull argued that there was promissory estoppel, he described the alleged 'promises' as 'representations'. There is a distinction

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1 Defendant's Closing Submissions, p 40 at para 117.

2 Defendant's Closing Submissions, p 40 at para 118.

> between the two as a representation refers to a representation of fact and is not promissory in nature.
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> 44 Accordingly, ***proprietary estoppel should be pleaded expressly and the facts relevant to each element should be pleaded specifically. The defendant should not be left to guess at what the plaintiff was really asserting.*** This is particularly important in an area of law where there are fine distinctions between a purchase money resulting trust, a common intention constructive trust, promissory estoppel and proprietary estoppel. …
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> [emphasis in original in italics; emphasis added in bold italics]

6 The plaintiff's Statement of Claim (Amendment No 1) ("SOC") included various references to "representations", "reliance" and "detriment".[3] However, she has failed to expressly plead estoppel in her SOC, much less proprietary estoppel. It is unsatisfactory that in the course of the proceedings the plaintiff's counsel was alerted that the SOC did not expressly plead proprietary estoppel and yet, he chose not to amend the SOC as he submitted that the SOC had pleaded proprietary estoppel. The defendant's Defence (Amendment No 2) rebutted the SOC on a factual basis and did not address the proprietary estoppel as it was not apparent to the defendant that the plaintiff was pursuing her claim based on proprietary estoppel. With respect, I disagree with the plaintiff's counsel as the SOC did not expressly state that the plaintiff was pursuing her claim based on proprietary estoppel and not an oral will. Thus, the defendant was prejudiced. Therefore, the plaintiff should not be allowed to pursue her claim based on proprietary estoppel. As proprietary estoppel is the central and only plank of the plaintiff's claim and an oral will is unenforceable, this Suit is dismissed on this ground alone.

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[3] Plaintiff's Statement of Claim (Amendment No 1) ("SOC") at paras 16–22.

7 Nevertheless, on the assumption that the SOC discloses proprietary estoppel, I shall deal with the relevant issues.

Can proprietary estoppel override the ISA?

8 It is not disputed that the deceased left no will and, therefore, the deceased's estate, including the Property, will have to be distributed in accordance with the ISA. Section 7 Rule 3 of the ISA reads:

> Subject to the rights of the surviving spouse, if any, the estate (both as to the undistributed portion and the reversionary interest) of an intestate who leaves issue shall be distributed by equal portions per stirpes to and amongst the children of the person dying intestate and such persons as legally represent those children, in case any of those children be then dead.

9 Hence, the Property will have to be distributed equally amongst the beneficiaries of the deceased, including the plaintiff and the defendant, and for those two children who had died their shares will be given to their respective estates.

10 The plaintiff claims that the deceased told her orally that she would give her the Property upon her demise. This may suggest that an oral will was made. However, the Wills Act (Cap 352, 1996 Rev Ed) (the "Wills Act") clearly sets out the formalities required for a will to be valid. Generally, reference can be had to s 6 of the Wills Act, which provides:

> **6.**—(1) No will shall be valid unless it is in writing and executed in the manner mentioned in subsection (2).
>
> (2) Every will shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and the signature shall be made or acknowledged by the testator as the signature to his will or codicil in the presence of two or more witnesses present at the same time, and those witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

…

11 Thus, the oral will is invalid and not recognised under the law. In the present circumstances, the absence of a will would result in the Property being distributed in accordance with the ISA. As stated by Lee Seiu Kin J in *Tan Pwee Eng v Tan Pwee Hwa* [2011] 1 SLR 113 at [15]:

> … The formalities required of a valid will are clearly set out in the Wills Act. If those formalities are not met, and unless the testator falls within any statutory exception, the will is not valid. … There may well be circumstances in which the requirements of the Wills Act prevent the disposal of the estate of a deceased person in accordance with his or her last wishes. However the problem lies in ascertaining what exactly are those last wishes and the legislature has taken the position that obtains in the Wills Act. This policy has been in force for a very long time, the primary objective of which is to guard against fraud. In so far as this may be said to operate harshly at times, I would state that any such possibility may, to some extent, be ameliorated by the Intestate Succession Act (Cap 146, 1985 Rev Ed) which provides for distribution to the children or other relatives of a person who dies intestate as a result of the invalidity of his will.

12 This is the legal position and would have been the end of the matter. Cognizant of this, the plaintiff seeks to circumvent the application of the ISA by creatively arguing that she is entitled to the Property, or its value, based on proprietary estoppel. In this respect, the starting point is that the ISA does not expressly or impliedly state it is subject to proprietary estoppel. As such, proprietary estoppel cannot override the ISA, for as stated by Tan Lee Meng J in *Joshua Steven v Joshua Deborah Steven and others* [2004] 4 SLR(R) 403 at [15]:

> … it is trite that a party cannot rely on estoppel in defiance of a statute. In *Kok Hoong v Leong Cheong Kweng Mines, Ltd* [1964] 1 All ER 300 at 305, Viscount Radcliffe explained that there are:

> … rules that preclude a court from allowing an estoppel, if to do so would be to act in the face of a statute and to give recognition through the admission of one of the parties to a state of affairs which the law has positively declared not to subsist.

…

13 In the circumstances, the proprietary estoppel, which is a common law equitable remedy, cannot override the ISA, which is the applicable law in Singapore.

14 However, a claim founded on proprietary estoppel can be a legitimate course of action against the estate of the deceased independent of the ISA provided the facts can support it and it is not inconsistent with the ISA. For instance, if the claimant's equitable interest pursuant to the proprietary estoppel is crystallised into a judgment debt against the deceased's estate (see *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [40]–[44]).

Can the representation, assuming it is true, constitute a valid representation under the principle of proprietary estoppel?

15 The plaintiff alleges that the deceased told her that the Property was to be given to her upon her demise. However, in this case, the representation that the deceased would want the plaintiff to inherit her Property was not intended to be acted upon, as the facts, even if proven, disclose a representation akin to an oral will that did not require the plaintiff to act on it to her detriment, as opposed to a representation to be acted upon to the detriment of the representee under proprietary estoppel. In my view, this oral will cannot be a representation envisaged under the principle of proprietary estoppel. The facts of this case, therefore, are distinguishable from the cases cited by the plaintiff.

16 In *Thorner v Major and others* [2009] 1 WLR 776, the House of Lords (the "HL") found that the appellant, David Thorner ("David"), did substantial work on the farm of his father's cousin, Peter Thorner ("Peter"). Peter assured David that he would inherit the farm and David acted in reliance on this assurance. Peter died intestate. The HL found that there was proprietary estoppel and allowed David to keep the farm. In *Habberfield v Habberfield* [2018] EWHC 317 (Ch), the English High Court found that the constituents of proprietary estoppel had been proven. Thus, the court overrode the will of the father who bequeathed the family farm to his wife. Similarly, in *Culliford v Thorpe* [2018] EWHC 426 (Ch), the English High Court also found that proprietary estoppel was made out and granted the property to the cohabiter when the representor died intestate. In all these English cases, the representations or promises were intended to be acted upon and the respective recipients in these cases did act on the representations to their detriment, which attracted the intervention of equity for a fair and just outcome.

17 On the ground that the representation as alleged by the plaintiff, if proven, is not a representation to be acted upon under proprietary estoppel, the plaintiff's claim must be dismissed. Nevertheless, I turn to analyse whether the facts disclose proprietary estoppel.

The law on proprietary estoppel

18 In order to establish a claim based on proprietary estoppel, three elements must be fulfilled, namely: (a) a representation or an assurance was made that a claimant would have an interest in the property; (b) the claimant relied on the representation; and (c) as a result, the claimant suffered a detriment (see *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 at [94]).

This has been well summarised in the following observations of Sundaresh Menon JC (as he then was) in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170]:

> **Proprietary estoppel – the law**
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> 170 It is settled law that to successfully found an estoppel, three elements must be shown. These are a representation on the part of the party against whom the estoppel is sought to be raised, and reliance and detriment on the part of the party seeking to raise the estoppel. In relation to an estoppel concerning land, Prof Tan Sook Yee in *Principles of Singapore Land Law* (Butterworths Asia, 2nd Ed, 2001) … succinctly summarises the position thus at pp 97–98.
>
> > The principle of proprietary estoppel may be summed up as follows: where an owner of land permits the claimant to have, or encourages him in his belief that he has, some right or interest in the land, and the claimant acts on this belief to his detriment then the owner of the land cannot insist on his strict legal rights if that would be inconsistent with the claimant's belief. The claimant may have an equity based on estoppel. The connection with constructive trusts imposed to prevent fraud or unconscionable dealings is evident, as both doctrines deal with unconscionable behaviour. But although the source is unconscionable behaviour and the requirements seem almost the same, there are differences. For a start, the constructive trust in this context is based either on an intention to create a trust, but the formalities are not complied with, or on a common intention that the other party is to have an interest in the property, which is acted upon to the detriment of the alleged beneficiary. In either case there is an intention that the other party is to have an equitable interest in the land. In proprietary estoppel, the main emphasis is that the landowner has to have acted in an unconscionable manner taking the entire set of circumstances into account. There is no clear intention that the other party is to have an equitable interest in the land. The other important difference lies in the remedies. In a constructive trust the beneficiary claims, and if his claim is successful, he has an equitable interest in the property. While in a case where proprietary estoppel has been successful the relief is at the discretion of the court.

19 I shall deal with each of these elements in turn.

Did the deceased make the representation to the plaintiff?

20 The plaintiff asserts that, over the years, the deceased had frequently "represented to and assured" her that the Property would pass to the plaintiff upon the deceased's death.[4] Specifically, she claims that in 2006 and in 2013, the deceased had told her that she and her family "should continue living at the Property"[5] and that the Property had been "written" to her.[6] According to her, the deceased had made such representations to assure the plaintiff that she could live in the Property. This was because the plaintiff had to sell her own flat (the "Tampines flat") in 2006 to pay for her late husband's medical treatment as he was suffering from cancer and had to undergo bone marrow transplant. Further, the deceased had also objected to the plaintiff's family renting a separate flat because she "always intended to leave the Property to the [plaintiff] and her family."[7]

21 In order to bolster her claim, the plaintiff relies on the evidence of three witnesses as follows:

(a) Firstly, N Selvarajoo ("Selvarajoo"), the deceased's son and the parties' brother. Selvarajoo testified that he had visited the deceased in the hospital, asking her to sell the Property and to live with him. The

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4 Plaintiff's SOC at para 13.

5 Plaintiff's SOC at para 12.

6 Transcript dated 31 January 2020, p 75 line 25 to p 76 line 10.

7 Plaintiff's Closing Submissions, p 12 at para 19.

deceased, however, refused to do so as she intended to pass the Property to the plaintiff.

(b) Secondly, Kalaichelvi d/o Suppiah ("Kalaichelvi"), Selvarajoo's wife. Kalaichelvi testified that in June, July and August 2017, the deceased had told her that the Property would be passed to the plaintiff. This was because the plaintiff was the only sibling without her own house.

(c) Lastly, Saangeetha Martin Rubin ("Saangeetha"), the deceased's granddaughter and the defendant's daughter. Saangeetha testified that the deceased had told her in October 2017 that the Property had already been "written under" the plaintiff. In Saangeetha's view, this was to be understood as an indication that the Property would pass to the plaintiff upon the deceased's death.

22 In contrast, the defendant argues that the deceased had made clear that the Property was to be shared equally amongst the Siblings. According to her, she had previously suggested to the deceased that the Property should be given to the plaintiff. The deceased, however, disagreed as she wanted the Property to be shared equally amongst the Siblings and for the plaintiff to purchase her own flat.[8] Further, the defendant argues that the fact that the deceased had not made a will bequeathing the Property to the plaintiff was evidence of the fact that she did not intend to do so.[9]

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8 Defendant's AEIC, p 27 at paras 65–66.

9 Defendant's AEIC, p 28 at para 68–69.

23 In support of her claim, the defendant relies on the evidence of several witnesses as follows:

(a) Firstly, N Sushila ("Sushila"), the deceased's fifth child and the parties' sister. Sushila testified that it was the deceased's wish that the Property be shared amongst the Siblings.[10] Further, she observed that the deceased had been the closest to the defendant such that the defendant would have been the most likely person to whom the Property was given.[11]

(b) Secondly, Pushpaveni d/o P Nadasan ("Pushpaveni"), the deceased's sixth child and the parties' sister. Pushpaveni testified that in or about 2015, the deceased had informed her and the defendant that she had no intention of giving the Property to the plaintiff.[12]

(c) Thirdly, N Mareeammaa ("Mareeammaa"), the deceased's eldest daughter and the parties' sister. Mareeammaa testified that the deceased had intended for the Property to be shared equally among her children and grandchildren, in the same manner that her other assets had been split.[13]

(d) Lastly, Martin Rubin ("Martin"), the defendant's ex-husband. Martin testified that after the death of the plaintiff's husband in 2013, he had suggested to the deceased that the Property should be given to the

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10 N Sushila AEIC, p 7 at para 30.

11 N Sushila AEIC, p 7 at para 29.

12 Pushpaveni AEIC, p 9 at para 24(8).

13 N Mareeammaa AEIC, p 5 at para 17.

plaintiff as she had no house of her own. The deceased, however, said nothing in response.[14] Further, he claimed that the defendant had been the closest to the deceased, such that the former would have been informed of any decision to give the Property to the plaintiff.[15]

24 It is clear that the parties have taken diametrically opposed positions, each with her own views of what the deceased had intended or said. The only person who can verify the truth is the deceased herself. Unfortunately, this is not possible. Nevertheless, the court has a duty to decide who is telling the truth.

25 The burden is on the plaintiff to prove, on a balance of probabilities, that the deceased told her that the Property will be given to her upon the deceased's demise. Thus, for this *ex tempore* judgment I shall focus on the plaintiff's evidence. The plaintiff's case is purely based on oral evidence as there is no documentary evidence to substantiate her claim. Before I comment on the plaintiff's three witnesses who testified to support her claim that the deceased told them that she wanted to give the Property to the plaintiff, I shall first examine the independent and objective circumstantial evidence that will reveal where the truth lies. I find that the circumstantial evidence, which is significantly cogent, rebuts the plaintiff's case and corroborates the defendant's claim that the deceased wanted the Property to be shared equally amongst all her children for a number of reasons.

26 Firstly, it is undisputed that on or about 3 April 2013, approximately one month after the demise of the plaintiff's husband, the deceased had gone to the

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14 Martin Rubin AEIC, p 4 at para 11.

15 Martin Rubin AEIC, p 5 at para 15.

HDB Bedok Branch Office (the "HDB Office") to include the plaintiff as an occupier of the Property. The status of the plaintiff as a mere occupier remained unchanged, up until the deceased's death. This piece of evidence is vital and discredits the plaintiff's claim that the deceased wanted to give her the Property. It is highly significant that the deceased had added the plaintiff only as an *occupier* and not a *co-owner*. If the deceased had intended all along for the plaintiff to inherit the Property she would not have informed the HDB that the plaintiff was an occupier. Instead she would have stated that the plaintiff was a co-owner. But this was not the case here.

27 The plaintiff asserts that the deceased had "mistakenly believed that she had added the [plaintiff] as co-owner of the Property, and that this was her true intention in visiting the [HDB Office]."[16] The plaintiff's explanation for the mistaken belief was that the deceased was illiterate, speaking "only Tamil and conversational Malay".[17] The plaintiff, however, produced no iota of evidence to support this bare assertion which remains speculative and a conjecture and, therefore, is inadmissible and should not be given any weight. She could not provide personal evidence as she was not present during the deceased's visit to the HDB Office. She also failed to call as witness any HDB officer who attended to the deceased during this visit. I have to accept the evidence at face value that the HDB recorded the deceased's intention correctly, *ie*, the plaintiff was an occupier in the eyes of the deceased and not a co-owner.

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16 Plaintiff's SOC at para 14.

17 Plaintiff's SOC at para 14.

28 Secondly, the plaintiff testified that she intends to purchase the Property at a reasonable price five years after the deceased's death, as she needs the time to raise funds, and by then her teenage sons would have grown up. She said that the proceeds of the sale could then be distributed equally amongst the Siblings. She maintains this position till today in court. This is wholly inconsistent with her claim in this Suit. If she, indeed, believes that she inherited the Property solely from the deceased, there is no need for her to share the proceeds of the sale of the Property equally amongst her siblings unless she believes that her claim that the deceased wanted her to have the Property is not true.

29 Thirdly, prior to the commencement of this Suit, the plaintiff had approached the Community Justice Centre on 4 January 2018 to apply for a Primary Justice Project ("PJP") lawyer to advise her in relation to the Property. Mr Jeyaraj Indra Raj of Harold Seet & Indra Raj was assigned to act for her. In the case notes of the PJP Registration Form, it was stated that: "[siblings] want [Property] to be sold 1 to 2 yrs' [*sic*] time but [plaintiff] wants to sell now as, if sister is administrator she has right to order [plaintiff] to pay rent."[18]

30 This indicates that her concern at that time was that she could be forced to pay rent if the Property was not sold immediately. However, this is fundamentally at odds with her claim in this Suit, for if she was solely entitled to the Property there would be no reason for her to even have to pay rent. Moreover, it is worth noting that even though her position on 4 January 2018 is starkly different from her position in court, as stated at [28] above, what is consistent is her insistence on purchasing or selling the Property with no

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[18] Agreed Bundle of Documents, p 32.

mention that it belongs to her. In court, the plaintiff tried to explain her inconsistency by claiming that she did not read what was written in the PJP Registration Form and was not aware of the inaccuracy. If she truly inherited the Property as she claimed that the deceased wanted her to have it, then the Property is hers and she can decide when to sell it or whether to stay in the Property and she need not have to share the sale proceeds with her siblings unless she so chooses.

31 Lastly, the plaintiff's instructions to her various lawyers as expressed in her letters demonstrate that she did not believe that she had inherited the Property solely. Following the deceased's death, the following events occurred:

(a) The plaintiff instructed Mr Jeyaraj Indra Raj to send a letter dated 31 January 2018 (the "HSIR letter") to the defendant's lawyers indicating that she too intended to be one of the administrators of the estate. At that date, the defendant had filed an application for the grant of letters of administration, for the sole purpose of selling the Property and to distribute the proceeds to the beneficiaries of the estate.[19]

(b) Following the HSIR letter, the plaintiff instructed her second set of lawyers, Carson Law Chambers, to send a letter dated 4 May 2018 (the "Carson Law letter") to the defendant's lawyers. In the Carson Law letter, the plaintiff strongly noted her intention of being added as a joint administrator of the estate alongside the defendant.

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19 Defendant's Closing Submissions, p 9 paras 22–23.

(c) Following the Carson Law letter, the plaintiff then instructed her current lawyers, August Law Corporation, to send a letter dated 13 December 2018 (the "August Law letter") to the defendant's lawyers. In this August Law letter, the plaintiff objected to the appointment of the defendant as an administrator of the deceased's estate, demanding her retirement or revocation of appointment as administrator.

32 Throughout all of these correspondences, there was no mention whatsoever of her present claim of entitlement to the Property, nor any mention of any representation from the deceased. Her explanation was that: [20]

> [S]he was advised by previous solicitors that without any will, her chance of getting the Property [was] very low. Therefore, she made the decision to buy over the shares of her siblings so that she could fulfil her late mother's wishes.

However, the plaintiff continues to maintain this position even at the trial when her present solicitors brought this Suit on the ground of proprietary estoppel. The implication is that the plaintiff did not mention to her previous solicitors that she inherited the Property as claimed. Instead, the PJP process, the HSIR letter, the Carson Law letter and the August Law letter reveal that she only wanted to become an administrator of the estate, so that she could control the process and prevent the defendant from ordering her to pay rent. If she has indeed the sole inheritance of the Property she could decide what she wanted to do with the Property freely and would have instructed her solicitors to stake her claim to the Property.

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[20] Plaintiff's Reply Submissions, p 20 para 48.

33 For the above reasons, the plaintiff's assertions that the deceased had told her that the Property would be given to her upon the deceased's demise cannot be believed. Furthermore, the plaintiff also relied on hearsay evidence to substantiate her claim. For instance, the plaintiff said Padmalatchi, the wife of her late brother, Sidambam, said that the deceased told her that the Property was to be given to the plaintiff upon her demise.[21] Padmalatchi was not called as a witness.

34 I shall now explain why I was not convinced by the oral testimonies of the plaintiff's three witnesses, namely, Selvarajoo, Kalaichelvi and Saangeetha, who claimed that the deceased told them separately that the Property would be given to the plaintiff upon her demise.

Can the court accept the testimonies of the plaintiff's three witnesses?

35 The plaintiff's and the defendant's witnesses made bare assertions without any supporting or documentary evidence to advance the claims of the respective parties. Coincidentally, when the deceased purportedly told them separately that she wanted the Property to be given to the plaintiff after her demise, no person witnessed it. Furthermore, they did not inform the plaintiff immediately or soon after. These revelations only came about around or after the time of the demise of the deceased. Therefore, the court has to exercise caution when reviewing their testimonies.

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[21] Transcript dated 31 January 2020, p 59 lines 26–30.

36 Selvarajoo did not want the Property to be sold as he believed in keeping it in remembrance of his parents' legacy. For that he was prepared to forgo his share of the Property to the plaintiff who seemed to want to retain it. He was also grateful to the plaintiff who allowed him and his family to stay at her Tampines flat before it was sold.

37 I notice that all the three witnesses were the plaintiff's sympathisers as they realised that the plaintiff was the only sibling who did not have her own flat, and so they were prepared to support the plaintiff's claim. However, from the evidential perspective I have explained why the plaintiff's claim cannot be believed. It is, therefore, unwise to accept the testimonies of the plaintiff's witnesses, who are not close to the deceased, without independent corroborative evidence.

38 Selvarajoo lives in Batam and does not come to Singapore often. Hence, he admitted that he did not visit the deceased often when she was alive. Thus, he was not close to the deceased yet he claimed that the deceased told him in 2015 that she wanted to give the Property to the plaintiff upon her demise.

39 Selvarajoo's wife, Kalaichelvi, may have claimed that she visited the deceased more often than Selvarajoo but there is no corroborative evidence that she was close to the deceased, her mother-in-law. Kalaichelvi alleged that in June, July and August 2017, the year the deceased died, the deceased told her that she wanted to give the Property to the plaintiff.

40 Saangeetha, the granddaughter of the deceased, who was not on good terms with her mother, the defendant, made a vague claim that the deceased told her that if she was to pass away the Property had already been "written under"

to the plaintiff. This cannot be true as I have explained above that the deceased informed the HDB that the plaintiff was an occupier and not a co-owner of the Property. Furthermore, Saangeetha claimed that the deceased coincidentally told her this on 15 October 2017, two days before she died.

41 It appears strange that the three witnesses, who alleged that the deceased told them separately that she wanted the plaintiff to have the Property, did not inform the plaintiff of this earlier. Selvarajoo only informed the plaintiff when the deceased was admitted to the hospital in 2017, a short time before the deceased's demise. Kalaichelvi and Saangeetha came forward only when the plaintiff sought a claim on the Property after the demise of the deceased. Hence, the plaintiff could not have acted on what the deceased had told these witnesses before her demise.

42 It seems that the deceased was closest to the defendant. The defendant had even at one time suggested to the deceased that the Property should be given to the plaintiff as she did not have a flat of her own, but the deceased insisted that the Property be shared equally amongst the Siblings. I am more inclined to accept the defendant's version of the events.

43 Accordingly, I find that the plaintiff fails, on a balance of probabilities, to establish that there was a representation made by the deceased. Even if there was such a representation, the representation is akin to an oral will that does not require the plaintiff to act on it to her detriment (see [17] above). Therefore, her claim based on proprietary estoppel fails.

Did the plaintiff rely on the representation and act to her detriment?

44 In any event, even if there was a valid representation made by the deceased, I find that the plaintiff is unable to satisfy the other requirements for proprietary estoppel.

45 The plaintiff had not placed any reliance on the alleged representation. According to the plaintiff, she had consistently provided the deceased with a monthly sum of $200.00 to $600.00, which the deceased used for her household expenses. There is, however, no evidence to support such a claim. In my view, the deceased was self-sufficient as she had a steady income working as a cleaner, she received contributions from her children, she had Central Provident Fund monies and her own savings. In any case, even if the plaintiff had contributed, she was fulfilling her role as a filial daughter in taking care of the deceased.[22] It should be noted that the Siblings had all collectively contributed to taking care of the deceased as her filial children.

46 The plaintiff also further claims that she had given the deceased a cash gift of $10,000.00 from the sale proceeds of her Tampines flat, as well as a sum of $20,000.00 at the same time. In relation to the $10,000.00, there is no documentary evidence to support the plaintiff's claim. Indeed, beyond the plaintiff's bare assertions, there is nothing to show that such a gift had been made. In relation to the $20,000.00, the plaintiff adduced the deceased's bank book, which contained an entry that the deceased had, indeed, received $20,000.00 on 13 June 2006. However, there are no bank records, or any other evidence to show that this sum of $20,000.00 was received from the plaintiff.

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22 Defendant's Closing Submissions, p 66 para 187.

Even if these two sums were given to the deceased, the plaintiff gave to the deceased because the latter was her mother and the monies were given out of love and affection and not because the deceased promised to give her the Property upon her demise.

47 Moreover, the plaintiff and her family had also been staying in the Property from 1998 to 2006 even though they had their own flat, *ie*, the Tampines flat, which was rented out from time to time.[23] The plaintiff continued staying in the Property after her Tampines flat was sold to pay for her late husband's medical expenses. The plaintiff received about $166,000.00 from the sale of her Tampines flat. She used the proceeds to pay for her late husband's medical expenses, credit card bills, *etc*. She admitted that with the balance of the sale proceeds she could not afford to buy another flat. She continued to stay with the deceased who also helped her to look after her two young children when she went out to work as a private tutor.

48 The plaintiff had also suffered no detriment as a result of any alleged representation made by the deceased. She cannot argue that she had suffered as a result of paying for household appliances (such as the refrigerator and the rented air purifier), minor improvement works (such as the changing of the louvre windows and front grille gate) and contributions to household expenses. These had all been as much for the plaintiff and her family as they were for the deceased.

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[23] Defendant's Closing Submissions, p 59 para 162.

49 Further, the plaintiff and her family had lived rent-free in the Property.[24] This also allowed her to rent out the Tampines flat that she co-owned with her late husband from 1998 to 2006. The savings therein combined with the additional income earned would have significantly outweighed any expenses that she had incurred.

Summary of findings

50 In summary, the plaintiff has failed to expressly plead proprietary estoppel in her SOC and this has prejudiced the defendant.

51 The deceased had passed away intestate as she did not have a will. Thus, the ISA governs the distribution of the assets belonging to the deceased's estate. The proprietary estoppel, which is a common law equitable remedy, cannot override the ISA, as it is the law of the land. The cases cited by the plaintiff do not apply here. This is because the representation in this case is akin to an oral will as it did not require the plaintiff to act on it. Hence, the representation in this instant case does not meet the requirement of proprietary estoppel in which the representation or promise, if proven, requires the representee, *ie*, the recipient of the representation or promise, to act and rely on it to her detriment.

52 In any case, none of the elements of proprietary estoppel are established. Firstly, on the evidence I am not satisfied that the plaintiff had proven her case, on a balance or probabilities, that there was a representation by the deceased that the Property would pass to her upon the deceased's demise. The

[24] Defendant's Closing Submissions, paras 52–54.

independent and circumstantial evidence stands cogently and substantially against the existence of such a representation.

53 The deceased had specifically listed the plaintiff as an occupier and not a co-owner of the Property to the HDB. The plaintiff had never mentioned that she was entitled to the Property before and soon after the demise of the deceased. She also did not inform her lawyers to claim the Property as an inheritance from the deceased until the commencement of this Suit. The plaintiff maintains that she intends to purchase the Property in five years' time and attempts to avoid paying rent for living in the Property. These are not actions consistent with one who believes she has a right over the Property. Furthermore, I find the evidence of the plaintiff's three witnesses unreliable.

54 Secondly, assuming there was a representation as alleged, the plaintiff had never relied on it. The purported giving of monies to the deceased after the sale of her Tampines flat was not done in reliance of the representation. Even if she had made contributions to the deceased, these were done to fulfil her filial duties to the deceased. In fact, the plaintiff should be grateful to the deceased for allowing her and her family to reside in the Property rent-free and for helping to look after her family especially after the death of the plaintiff's husband in 2013.

55 Lastly, the plaintiff did not suffer any detriment. The purchases that she made for the household were as much for her and her family's own use as they were for the deceased. She had in fact benefitted from living rent-free in the Property for a very long period.

Conclusion

56 This is an unfortunate family squabble that should have been resolved amicably. The Siblings could have saved substantial legal costs instead of taking the dispute to court over an asset that is less than $300,000 in value. It appears that the plaintiff wanted to buy over the Property but she does not have the financial means to do so now. She believes that a period of five years after the demise of the deceased she would be able to purchase it at a reasonable price and her sons would have started working. The defendant and the other siblings are not confident that she is able to keep to her promise because of her financial situation.

57 I have found that her allegations that the deceased wanted to give the Property to her after her demise cannot be established. Thus, it appears that this Suit was commenced to buy time for the plaintiff and to frustrate the defendant's role as the administrator of the deceased's estate.

58 For the above reasons, I dismiss the plaintiff's case. I find that, on a balance of probabilities, the plaintiff has not established her case. If there is a need, I shall supplement my grounds of decision. I order costs against the plaintiff, to be agreed or taxed.

Tan Siong Thye
Judge

Tan Wen Cheng Adrian and Low Zhi Yu Janus (August Law Corporation) for the plaintiff;
K Mathialahan (Guna & Associates) for the defendant.
