

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

**[2021] SGHC 153**

Suit No 644 of 2020

Between

Goh Rosaline

*... Plaintiff*

And

- (1) Goh Nellie
- (2) Goh Lian Chyu
- (3) Low Diau Ai
- (4) Goh Boon Hui Roney (Wu  
Wenhui Roney)
- (5) Jenny Goh Boon Min
- (6) Goh Boon Mei, Joanie (Wu  
Wenmei, Joanie)

*... Defendants*

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**JUDGMENT**

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[Tort] — [Trespass]

[Tort] — [Conspiracy]

[Land] — [Interest in land] — [Tenancy in common]

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**Goh Rosaline**  
**v**  
**Goh Nellie and others**

**[2021] SGHC 153**

General Division of the High Court — Suit No 644 of 2020  
Philip Jeyaretnam JC  
8–11, 15, 22 June 2021

28 June 2021

**Philip Jeyaretnam JC:**

**Introduction**

1 “Beat me beat me,”<sup>1</sup> called the nephew as he staggered backwards. Dwarfed a moment before by her nephew’s sturdy frame, his old aunt now towered over him. “Ferocious. Dog bite, bite, bite,”<sup>2</sup> she commanded her Labrador, which disobediently slumped to the ground.<sup>3</sup> Such was the drama taking place on 17 June 2018 at the grandmother’s old home, duly recorded for posterity on an audio recording.

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<sup>1</sup> Transcript of audio recording, 3 AB 937.

<sup>2</sup> Transcript of audio recording, 3 AB 938.

<sup>3</sup> Inference drawn from viewing video recording made of the Labrador taken about thirty minutes later, video on CD-ROM at 5 AB 1643 and transcribed at 5 AB 1587.

2       How had it come to this? It is a long saga that started when the aunt, the nephew and his father each received a one-eleventh share in the family home as tenants in common, with a restriction on sale in the absence of unanimous consent of the named beneficiaries.<sup>4</sup> Tenants in common have an undivided interest in land, meaning that each tenant in common is entitled to possession of the entirety of the land. The aunt refused to agree to a sale, and insisted on returning to the family home to live there.<sup>5</sup> The confrontation that fateful day presents the court with three principal questions. Was the aunt ousted from the home? If so, was she entitled to recover the rent she incurred elsewhere? Did those who took the side of her brother commit conspiracy with him to injure her?

3       The aunt, who is the plaintiff in this matter, has refused to have her interest transferred from the estate into her name. The consequence is that she is still relying on the will and not directly on her rights as a registered tenant in common, from which counsel concluded that the State Courts had no jurisdiction, and so her claim for damages of \$71,083 was filed in this court.

## **Facts**

### ***The parties***

4       The plaintiff, Rosaline Goh, is the youngest daughter and penultimate child of Mdm Low Gek Huay (“Mdm Low”), who passed away in 2002. Mdm Low left the family home at 61 Kovan Road (“61 Kovan”) in equal shares to all ten of her children plus one of her grandchildren, Roney Goh, who is the fourth

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<sup>4</sup> 1 AB 24; Goh Nellie’s Affidavit of Evidence-in-Chief (“AEIC”) (“Nellie’s AEIC”) at para 15.

<sup>5</sup> Nellie’s AEIC at para 14.

defendant.<sup>6</sup> The first defendant, Nellie Goh, is one of her older sisters, and is the administrator of Mdm Low's estate, having been elected at a beneficiaries' meeting in 2005.<sup>7</sup> The estate has an administrator because the named executors declined their role. Nellie was the second administrator because the first volunteer, the youngest of the siblings, found it too stressful.<sup>8</sup> His name is Goh Lian Teck, and he gave evidence for the first defendant.

5 The second defendant, Goh Lian Chyu, is the oldest brother. He has lived at 61 Kovan for more than 60 years. The third defendant, Low Djau Ai, is his wife. The fourth, fifth and sixth defendants are their children, Roney, Jenny and Joanie, who have long since moved out of 61 Kovan but were present on 17 June 2018.

### ***Background to the dispute***

6 Mdm Low's testamentary arrangements in respect of 61 Kovan have already been described at [4] above. She also owned 59 Kovan Road ("59 Kovan"), which she had developed prior to her death. As recorded in her will, Djau Ai, her daughter-in-law, advanced monies for its development. 59 Kovan had nine residential units plus the management office. Mdm Low left three of the residential units to Djau Ai, and one to each of Rosaline, Nellie and Lian Chyu. The remaining units were given to the other sons, leaving out those daughters, like Shirley Goh and Judy Goh, who were married.<sup>9</sup> Shirley and Judy, as well as another brother, Goh Lian Hing, gave evidence for Rosaline.

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<sup>6</sup> 1 AB 24.

<sup>7</sup> Nellie's AEIC at para 8.

<sup>8</sup> Nellie's AEIC at para 7; Goh Lian Teck's AEIC at para 4.

<sup>9</sup> 1 AB 24–25.

7 Rosaline had at times kept dogs at 61 Kovan during her mother's lifetime.<sup>10</sup> Mdm Low appears to have been a kind-hearted person, who wanted nothing more than for all her children to live in harmony. Generally, during her mother's lifetime, Rosaline's dogs did not enter the house itself but stayed in the compound. There was one exception, a small dog that looked like Lassie, of whom Mdm Low was fond. Mdm Low invited poorer relatives to stay at 61 Kovan, and, at times during its heyday, there were close to 20 occupants. Having been built more than 60 years ago by Mdm Low and her husband, and not altered or added to since, it has two floors with a small bathroom on the first floor and a larger one on the second.

8 Rosaline moved out of 61 Kovan before her mother passed away, but continued to spend some of her time there. Nellie moved out in 2005. This left Lian Chyu and Djau Ai in 61 Kovan, together with a helper. Their children, Roney, Jenny and Joanie had all married and moved out.<sup>11</sup>

9 Rosaline has had keys to her bedroom and to the doors leading to it since 2007,<sup>12</sup> and seems to have come and gone as she pleased.<sup>13</sup> When she was not there, which could be for long periods of time, she kept her bedroom door locked. It appears that in addition to her bedroom at 61 Kovan, her apartment on the ground floor of 59 Kovan next door and an HDB flat, Rosaline also rented a house at 3 Leith Park.<sup>14</sup> That is where she stayed in the years preceding 2017.

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<sup>10</sup> Goh Rosaline's AEIC ("Rosaline's AEIC") at para 9.

<sup>11</sup> Goh Boon Hui Roney's AEIC ("Roney's AEIC") at para 5; Jenny Goh Boon Min's AEIC ("Jenny's AEIC") at para 6; Goh Boon Mei, Joanie's AEIC ("Joanie's AEIC") at para 6.

<sup>12</sup> Goh Lian Chyu's AEIC ("Lian Chyu's AEIC") at para 36(a).

<sup>13</sup> Lian Chyu's AEIC at para 36(c).

<sup>14</sup> Rosaline's AEIC at para 21.

*Events in 2017*

10 In 2017, she decided that “she could no longer comfortably afford to pay rent on 3 Leith Park” and “that it would be prudent ... to recommence residence rent-free at 61 Kovan”.<sup>15</sup>

11 Together with her sisters Shirley and Judy, Rosaline went to 61 Kovan on 14 April 2017 to inform Lian Chyu and Djau Ai that she intended to move in with her dogs, a Labrador and a golden retriever.<sup>16</sup> Rosaline followed up with a solicitors’ letter on 21 April 2017.<sup>17</sup>

12 Lian Chyu replied on 30 April 2017, stating that Rosaline was “welcome to stay at 61 Kovan” but “[h]er ferocious dogs are not allowed to come into this shared premise as I fear for the safety of myself, my family, and especially that of my young grandchildren”.<sup>18</sup>

13 Rosaline’s solicitors replied on 28 July 2017, giving notice that in view of Lian Chyu’s position Rosaline would renew her lease at 3 Leith Park for another year, and demanded that Lian Chyu and Djau Ai pay that rental, namely \$3,000 per month.<sup>19</sup> Rosaline executed this lease renewal on or around 29 July 2017 (the “2017 Tenancy Agreement”).<sup>20</sup>

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<sup>15</sup> Rosaline’s AEIC at para 22.

<sup>16</sup> Rosaline’s AEIC at paras 25–26.

<sup>17</sup> 2 AB 667.

<sup>18</sup> 2 AB 668.

<sup>19</sup> 2 AB 669.

<sup>20</sup> Rosaline’s AEIC at para 32.

*Events in 2018*

14 There things stood for a year. On 30 May 2018, Rosaline emailed Lian Chyu to say she would visit him on 7 June 2018, again together with Shirley and Judy. She repeated the demand that he pay her rent for the past year and explained that she wanted to discuss “whether there is the need to renew the rental for another year”.<sup>21</sup>

15 The three of them proceeded to visit 61 Kovan on 7 June 2018.<sup>22</sup> Lian Chyu and Djau Ai were present, as was Jenny. The visit was recorded on video by both Judy and Jenny.<sup>23</sup> Rosaline handed Lian Chyu her letter and he threw it away. Regardless of that, he obviously knew that Rosaline intended to bring back her dogs. He was upset at and agitated by this prospect.<sup>24</sup>

16 A week later, on 14 June 2018, the three sisters came back to prepare for Rosaline’s moving in on 17 June 2018.<sup>25</sup> Lian Chyu and Djau Ai happened to be out. As the Labrador was not able to climb the stairs to sleep in Rosaline’s bedroom, she had brought an enclosure with her that she set up in the backyard of the home, in a covered area designated as a garage and in part used for that purpose by Lian Chyu.<sup>26</sup> While the sisters were still there, Lian Chyu returned.<sup>27</sup> Upset, he dismantled the enclosure, all while Judy used her smartphone to

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<sup>21</sup> 2 AB 678.

<sup>22</sup> Rosaline’s AEIC at paras 35–38.

<sup>23</sup> 5 AB 1643.

<sup>24</sup> Rosaline’s AEIC at para 37; Lian Chyu’s AEIC at paras 41–42.

<sup>25</sup> Rosaline’s AEIC at para 39.

<sup>26</sup> Rosaline’s AEIC at paras 39–40.

<sup>27</sup> Rosaline’s AEIC at para 41.



videorecord him.<sup>28</sup> Rosaline reminded him she was moving in with her dogs on 17 June 2018, to which he replied that he was not interested and that she should not come.<sup>29</sup>

17 Rosaline returned as she had said she would on 17 June 2018.<sup>30</sup> It was a Sunday. This time she brought her two dogs, but was not accompanied by her sisters. She felt her brother had summoned reinforcements. His son Roney and daughters Jenny and Joanie were there. I have described some of their interactions in the opening paragraph to this judgment. Lian Chyu called the police, who, no doubt with the interests of civil order in mind, told Rosaline to “settle [her] stuff and go”.<sup>31</sup> Rosaline left, but not without first warning Lian Chyu that she would sue both him and Djau Ai.<sup>32</sup> Rosaline went on to execute an agreement for a fresh lease at 3 Leith Park on 15 July 2018 (the “2018 Tenancy Agreement”).

18 Rosaline subsequently successfully moved into 61 Kovan around July 2019 with her dogs.<sup>33</sup>

### ***Procedural history***

19 There are many more judgments and orders given by this court in relation to Rosaline and her siblings than are convenient to narrate here. The principal ones that have relevance to these proceedings are the following:

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<sup>28</sup> Rosaline’s AEIC at para 41.

<sup>29</sup> Rosaline’s AEIC at para 43.

<sup>30</sup> Rosaline’s AEIC at para 44.

<sup>31</sup> 3 AB 950.

<sup>32</sup> 3 AB 950.

<sup>33</sup> Rosaline’s AEIC at paras 60–75.

(a) An order dated 8 August 2005 that Rosaline has the beneficial right to occupy 61 Kovan as a residence rent-free, with the proviso that if she “chooses to exercise her right of occupation, she must in fact personally reside” there.<sup>34</sup>

(b) A judgment dated 22 November 2006 declining to order a sale of 61 Kovan on Nellie’s application as administrator because four of the children including Rosaline objected to the sale, and Mdm Low’s will prohibited sale in the absence of unanimous consent of the eleven beneficiaries (reported at *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453).

(c) An order dated 28 February 2007 that, in relation to her exercise of her right of residence, Rosaline be given a set of keys to all doors at 61 Kovan leading to her bedroom and that she should pay her proportionate share of property tax, utilities and other outgoings.<sup>35</sup>

(d) An order dated 9 April 2009 dismissing Rosaline’s application for exclusive use of the study at 61 Kovan, with permission to create a separate entrance there for herself, build a kennel outside the study and keep three dogs.<sup>36</sup>

(e) A decision dated 27 May 2019 that, while making no formal declaration, held that Rosaline “as a lawful occupant, no greater or lesser than [Lian Chyu and Djau Ai], is entitled to such pets as do [Lian Chyu

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<sup>34</sup> 1 AB 308.

<sup>35</sup> 2 AB 395.

<sup>36</sup> Order made on SUM 685/2009 in OS 618/2005.

and Djau Ai] as the proper authorities may allow” (*Goh Rosaline v Goh Lian Chyu and another* [2019] SGHC 133 at [5]).

### **The parties’ cases**

20 Rosaline’s case against Nellie is that as administrator of the estate Nellie owed a duty to her to ensure that she could exercise her right of residence in 61 Kovan, including a duty to take legal action on behalf of the estate against Lian Chyu.<sup>37</sup> Against Lian Chyu and Roney, she asserted that they had breached a contractual licence said to have been granted to her by the estate of Mdm Low.<sup>38</sup> Against Lian Chyu alone, she claimed damages for trespass by ouster, relying on her equitable right to be registered as a tenant in common.<sup>39</sup> Lastly, against all but Nellie she claimed a conspiracy to injure her by unlawful means.<sup>40</sup>

21 In terms of the quantum claimed, Rosaline claims the rent paid under both the 2017 and 2018 Tenancy Agreements (amounting to \$71,083) against Nellie, Lian Chu and Djau Ai,<sup>41</sup> but only the rent paid under the 2018 Tenancy Agreement (amounting to \$34,939) against Roney, Jenny and Joanie.<sup>42</sup>

22 Nellie denied being under any duty to ensure that Rosaline could exercise her right of residence,<sup>43</sup> but also listed all the steps that she did take to

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<sup>37</sup> Statement of Claim dated 16 July 2020 (“SOC”) at para 28.

<sup>38</sup> SOC at para 29.

<sup>39</sup> SOC at paras 30–32.

<sup>40</sup> SOC at para 33.

<sup>41</sup> SOC at prayers (a), (b), (d) and (e).

<sup>42</sup> SOC at prayers (c) and (e).

<sup>43</sup> Defence of the 1<sup>st</sup> defendant dated 17 August 2020 (“Defence of the 1<sup>st</sup> defendant”) at para 14.

try to mediate or establish other measures of protection such as installation of CCTV at 61 Kovan.<sup>44</sup>

23 As for Lian Chyu and Djau Ai, the nub of their defence was that they were genuinely concerned about Rosaline's dogs, including how they would defecate in the compound, and salivate heavily within the house itself. They also expressed concerns about the size of the dogs.<sup>45</sup>

24 Roney, Jenny and Joanie denied that they participated in any conspiracy. They claimed that they were at 61 Kovan on 17 June 2018 only because it was a Sunday, and did not know that Rosaline was going to be present.<sup>46</sup> Roney complained about being pushed,<sup>47</sup> and all three claimed Rosaline intimidated them by asking the dogs to bite them.<sup>48</sup>

### **Issues to be determined**

25 This is a court of law, and it is no part of my task to judge parties' conduct except to the extent it concerns the claims and defences. Most of the facts are clear from documents, including court records, or from the extensive audio and video recordings. I will however have to make some findings of fact concerning the events of 17 June 2018. I will then evaluate those facts, along with the events occurring in 2017, against the requirements for the claims, in

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<sup>44</sup> Defence of the 1<sup>st</sup> defendant at paras 19–21.

<sup>45</sup> Defence of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (Amendment No 1) dated 8 September 2020 at para 5.

<sup>46</sup> Defence of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants (Amendment No 1) dated 10 September 2020 ("Defence of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants") at para 10(b).

<sup>47</sup> Defence of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants at para 10(c).

<sup>48</sup> Defence of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants at para 10(d).

particular those in trespass and conspiracy. I will consider the issues in the following order:

- (a) What happened on 17 June 2018?
- (b) Did Nellie as administrator owe Rosaline a duty to ensure that she could exercise her right of residence at 61 Kovan?
- (c) Were Lian Chyu and Roney bound by a contractual licence in relation to Rosaline?
- (d) Did Lian Chyu commit trespass by ouster?
- (e) Was there a conspiracy among Lian Chyu, Djau Ai and their children to injure Rosaline?
- (f) If any of the claims are made out, is Rosaline entitled to the damages claimed?

### **Issue 1: The events of 17 June 2018**

26 The first question that is in dispute is whether Roney, Jenny and Joanie knew that Rosaline was coming to 61 Kovan with her dogs beforehand, and so went there to support their parents. They all testified that it was a coincidence and that they just happened to be there because it was a Sunday.<sup>49</sup> I find that they did in fact know that Rosaline was coming and so made sure, at the least, that they arrived early that Sunday. I make this finding for two reasons. First, as Rosaline entered the premises, Roney, without any greeting to his aunt, started to record her on video, using his smartphone. This is consistent with his anticipating her arrival, and being well-prepared for it. Secondly, Jenny was at

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<sup>49</sup> Roney's AEIC at para 13; Jenny's AEIC at para 22; Joanie's AEIC at para 10.

61 Kovan on 7 June 2018 when it was repeatedly mentioned that Rosaline would be bringing her dogs. It is only natural, and I make this finding by inference, that Joanie knew too, either from her parents or from her siblings.

27 The next question is whether Rosaline “charged” at Roney, as he testified repeatedly under cross-examination. I find that she did not charge at him. Instead, annoyed by his video recording while standing close by, she pushed him slightly. He exaggerated the force of her push, and even had the presence of mind to verbalise an accusation as he staggered backwards.<sup>50</sup> I make this finding on the basis of the audio recording, as well as after hearing their respective descriptions of the incident when they gave evidence before me. Their relative sizes lent support to Rosaline’s version of events – had she truly charged at him I have no doubt that it would have been her who was felled by the impact rather than her nephew.

28 The third question is whether Rosaline tried to set her dogs on them. I accept her explanation that she was speaking sarcastically when she commanded her Labrador to bite them. This is supported by hearing the tone of her voice on the audio recording,<sup>51</sup> as well as by the video recordings of the dog,<sup>52</sup> which was, at the least, in too poor a condition to attack anyone, even if so minded. To be clear, it showed no sign whatsoever of any inclination to do so. The video recordings fully supported the conclusion that the dogs were friendly and no danger to anyone. I accept too that none of those present that day at 61 Kovan genuinely feared that either dog would bite them.

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<sup>50</sup> 3 AB 937.

<sup>51</sup> AB s/n 146.

<sup>52</sup> AB s/n 151 and 152.

29 The fourth question relates to hygiene. Here, I find on the basis of the video evidence that the Labrador in particular salivated excessively, and also panted very loudly, in a disturbing manner.<sup>53</sup> The saliva dripped in a constant stream, puddling on the floor wherever the dog went. It was in no condition to climb the stairs and remained within the shared living area on the ground floor of the house. This is not the poor Labrador's fault, but simply the result of its apparently poor condition. During the trial, it emerged that the dog passed away about 14 months later.

30 The fifth question relates to whether and to what extent Rosaline cleaned up after her dogs on that day. I find that the quantity of saliva pooling on the floor was not easy to clean, and certainly not quickly. Rosaline can be heard on the audio recording assuring the others that she will clean up,<sup>54</sup> but it would have been hard for her to do so effectively. I add that Jenny is heard remarking on the audio recording that "the maid [had] already clean[ed] up the floor".<sup>55</sup> I accept that Rosaline intended to clean up after her dogs, but I also accept that the quantity of pooling saliva and the length of time it went uncleaned meant that it was genuinely alarming for the other occupants of the shared living areas.

## **Issue 2: Nellie's duty as administrator**

31 An administrator's principal duty is to distribute the estate as soon as possible. Nellie has done her best to do so. She successfully transferred the apartment at 59 Kovan to Rosaline, but Rosaline has refused to take legal title to her share in 61 Kovan.<sup>56</sup> Perhaps Nellie should have gone to court to enforce

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<sup>53</sup> AB s/n 151 and 152.

<sup>54</sup> 3 AB 948.

<sup>55</sup> 3 AB 948.

<sup>56</sup> Rosaline's AEIC at para 8; Nellie's AEIC at para 11.

the distribution rather than remaining stuck as administrator. There is no basis however for Rosaline's claim that as administrator Nellie owes her a duty to implement her desire to live at 61 Kovan with her dogs. Nellie is under no duty, as administrator or otherwise, to ensure that their elder brother, Lian Chyu, behave in any particular way. She is neither her brother's nor her sister's keeper.

32 Having heard her evidence, I concluded that Nellie is a natural peacemaker and conflict-avoider, taking after her mother in this respect. Unfortunately, this has resulted in her being in the middle of this battle of wills between elder brother and younger sister.

33 During oral closing submissions, Rosaline's counsel accepted that he could not identify specific acts or omissions on Nellie's part that could be said to be in breach of her duty as administrator. This should have been obvious before proceedings commenced. There is no merit at all in the claim against her.

### **Issue 3: The contractual licence**

34 I accept that the grant by will of a right of residence in real property owned by the deceased, may create, upon probate of the will, a licence in favour of the beneficiary. This was the analysis in the Northern Irish case of *The Official Solicitor as Controller AD Interim for NS (A Patient) v MS* [2018] NICH 20 (at [55]). However, that was a case where the beneficiary was only given a right of residence with no other interest. In the case of Mdm Low's will, Rosaline was given a one-eleventh share of 61 Kovan.<sup>57</sup> While the will goes on to mention that 61 Kovan "shall be used as a residence by my children abovenamed",<sup>58</sup> their right of residence flows from their rights as tenants in

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<sup>57</sup> 1 AB 24.

<sup>58</sup> 1 AB 24.



common under the gift. Moreover, any contractual licence would be one granted by the estate to the person or persons having the right of residence under the terms of the will. There is no room nor need to introduce the concept of a contractual licence.

#### **Issue 4: Trespass by ouster**

35 This claim is made only against Lian Chyu. Tenants in common have an undivided interest in land. Each is entitled to the whole of the property. Strictly, no tenant in common has the right to exclude any other from any part of the property. Thus, each of the siblings, as tenants in common, could choose to live there. How they would share the sleeping areas, the limited bathroom space, the kitchen and the garden would be no different from the accommodations and compromises that people make all the time, all over the world, in order to live together and enjoy the camaraderie and security of a home.

36 It follows that it is wrong in law for any tenant in common to take possession of the property exclusively, preventing the rest from deriving benefit from it, including by their co-occupation, if so desired. This is what is described as ouster. Ouster may be actual or constructive. In this case, Rosaline relies on constructive ouster. As described in the Queensland case of *Paroz & ors v Paroz* [2010] QSC 203, at [31]:

The conduct which seems to underlie the doctrine of constructive ouster is conduct by the party in occupation which manifests a denial of the rights of the other co-owners.

37 This description is consistent with the approach taken in *Tan Chwee Chye and others v P V R M Kulandayan Chettiar* [2006] 1 SLR(R) 229, at [23] to [26], where unusually the co-owner in possession was seeking to argue that

it had ousted the deceased co-owner so as to prove a claim in adverse possession.

38 In my view, constructive ouster will include wholly unreasonable conduct of one tenant in occupation that effectively prevents another tenant from also residing there. In the case of residential premises, and especially where the tenants in common are family members, the court must have regard to the subjective feelings of the occupants, including likes and dislikes. The court must consider objectively whether, having regard to the subjective characteristics of the occupants themselves, the impugned conduct amounts to an ouster.

39 It is not a question of who has acted more reasonably. The law does not set out rules concerning who in any household must give way to the other or who must be more reasonable. This applies as much to choice of pets as to anything else. Some people like dogs, others do not. It is important to assess whether any concern, interest or preference relied upon by either party is genuinely held, and has not been feigned for the purpose of making coliving difficult for the other occupant.

40 Before turning to the question whether Lian Chyu's conduct amounted to constructive ouster, I deal first with the question of Rosaline's standing to sue, which was contested by Lian Chyu. As she has refused to accept transfer of legal title to her tenancy in common from Nellie, she presently only holds the beneficial interest to one-eleventh of 61 Kovan. To get around this, Rosalind joined Nellie as a defendant, so as to ensure that all necessary parties are before the court. That effectively deals with the question of standing. A further point was taken by Lian Chyu's counsel to the effect that Nellie did not even have a beneficial interest in one-eleventh of 61 Kovan. I rejected this argument, which

was based on a category error. The case law cited concerned the position of a residuary legatee in relation to assets of an estate (not themselves subject to specific bequests) prior to ascertainment of the residue. The law relating to the position of a residuary legatee has no bearing on the position of the recipient of a specific bequest, which is what 61 Kovan was. Moreover, long before these proceedings commenced, the estate was ready to distribute 61 Kovan, and had actually done so for all those beneficiaries who did not refuse distribution.

41 Turning back to the merits, Lian Chyu's objections have always centred on Rosaline's dogs. He has never denied her personal right of residence. Even in respect of the dogs, it has not truly been a blanket objection to them. In his email of 2 May 2017 he called them "ferocious" but assured Rosaline that she was welcome to stay.<sup>59</sup> Her solicitors' reply responded by describing their breeds and asserting that they were friendly and obedient, but did not offer any steps that Rosaline might take to meet Lian Chyu's concerns.<sup>60</sup>

42 Mostly, Lian Chyu has expressed concerns about specifics, such as her bringing the dogs into the shared living areas within the house, their excessive salivation and her delay in clearing this up. He also said that he was concerned that they might be allowed to defecate in the compound, and that if they did so Rosaline would not clear up immediately, attracting flies. I find that these concerns are genuine. From my observations of him in the witness box and as captured on the video recordings taken by Judy and Jenny on 7 June 2018, he seems to have been traumatised by Rosaline's long history of allowing her dogs to come into the shared living areas, as well as allowing them to defecate in the compound and not cleaning up after them quickly.

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<sup>59</sup> 2 AB 668.

<sup>60</sup> 2 AB 669.

43 I also consider that Lian Chyu's actions have mostly been restrained and proportionate. When Rosaline placed the enclosure at the garage where he parked his car, he seemed genuinely upset by where it had been placed. Rosaline's choice of location seemed a provocation. In response, he did not destroy it or dispose of it, but dismantled it and kept it to one side.

44 By contrast, I find that Rosaline did not do very much to address her brother's concerns. For example, she could have given assurances about where the dogs would defecate, and how she would ensure that excrement would be cleared. Indeed, she should also have given serious consideration to whether she should insist on bringing the dogs into the house itself, as opposed to keeping them in the general compound.

45 I hold that Rosaline has failed to show that Lian Chyu's conduct toward her rose to the point of denying her right to reside at 61 Kovan. Brother and sister simply differed on the extent to which her dogs should have the run of the house, and what measures she should take in relation to them. I reject her contention that Lian Chyu has fastened on the issue of the dogs as an excuse to make it intolerable for Rosaline to live at 61 Kovan.

46 I therefore conclude that there has been no trespass by ouster, whether in 2017 or 2018.

47 I make one final observation under this issue. For the past fourteen years, Rosaline has had exclusive use of one room on the second floor.<sup>61</sup> She has kept that room locked, and gone to it whenever she has pleased, without hindrance

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<sup>61</sup> Lian Chyu's AEIC at para 36(a).

from Lian Chyu.<sup>62</sup> This remained the case during the years 2017 and 2018, when she claims to have been ousted from 61 Kovan. Throughout this time, and to date, she has not paid anything at all toward property tax or other outgoings of 61 Kovan. The relevance of this point is that the court, as described at [19(c)] above, gave Rosaline use of one bedroom in connection with her exercising her right of residence. It follows logically that in keeping her bedroom as she did she was affirming that she was indeed in residence. It is not open to her to claim she has been ousted. This is an additional reason why her claim for trespass by ouster fails.

### **Issue 5: Conspiracy**

48 Rosaline claims that Lian Chyu, Djau Ai and their children conspired to cause her injury by unlawful means. It is a prerequisite that the conspirators in an alleged conspiracy combine to do an unlawful act with the intention of injuring the claimant. I therefore turn to consider what the evidence shows.

49 In relation to Djau Ai, there is really no evidence at all that she has taken any steps to hinder Rosaline's residence or even shown any animosity toward her. In fact, having heard her evidence before me and reviewed the audio and video recordings, I find that she did her utmost to avoid getting drawn into the conflict that Rosaline had with Lian Chyu. Rosaline's counsel in closing could not identify any act of Djau Ai that was directed at Rosaline. A wife is no more her husband's keeper than a sister her brother's. As with Nellie, Rosaline must have known from the start that there was no basis to sue Djau Ai.

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<sup>62</sup> Lian Chyu's AEIC at para 36(c).

50 Turning to the children, I have accepted that their presence at 61 Kovan on 17 June 2018 was not simply because it was a Sunday (see [26] above). I find that they came that day because they wanted to support their father when Rosaline arrived. Roney especially, but also his sisters, took an active role. Roney play-acted when Rosaline gave him a small push when he was standing close to her. They must have known that their aunt was merely being sarcastic whenever she told her Labrador to bite them, and in their pleading made too much of those words. At the same time, I have no doubt that they were deeply concerned and worried about the effect of Rosaline's actions on their aged father. They had genuine concerns for his health and well-being arising from Rosaline's insistence on bringing her dogs and allowing them within the house.

51 The claim of unlawful means conspiracy depends upon there having been an intention to injure Rosaline, presumably by causing her to pay rental on 3 Leith Park for another year. I do not accept that they had any intention to injure her. I accept that their intention was simply to support their father and avoid any situation that might endanger his health.

52 Turning to the requirement of unlawful acts, the alleged unlawful act on their part identified by Rosaline was Roney's making up that she assaulted him, in which he was supported by his sisters, and which they all repeated to the police.<sup>63</sup> Making false statements to the police is wrong and can in principle constitute an unlawful act for the purpose of establishing an unlawful means conspiracy. However, what Rosaline relies on is not a formal police report but what they said to the police officer attending at 61 Kovan on that day. I accept

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<sup>63</sup> Plaintiff's Opening Statement para 43.

that her nephew and nieces were genuinely agitated by the events of that day. I have also held that there was contact in the form of a small push. Even though they may have embellished the story as they spoke to the police officer, I am not able to find that this constituted an unlawful act for the purpose of establishing an unlawful means conspiracy.

### **Issue 6: Damages**

53 Turning to the question of damages, my conclusions on liability mean that I do not need to consider it. However, I will make one observation.

54 In relation to trespass by ouster, damages may take the form either of an occupation rent (also known as mesne profits) for the ousting tenant's use of the property to the wrongful exclusion of others or alternatively compensation for loss suffered by the ousted tenant in common. Where, as here, the latter is sought, it must be shown that the loss resulted from the ouster.

55 In my view, Rosaline did not need to rent 3 Leith Park in order to accommodate her dogs, if they could not stay with her at 61 Kovan. This is because she could have stayed in her bedroom at 61 Kovan while her dogs stayed at her apartment next door, at 59 Kovan. There is a side gate between the two compounds that she uses. Her explanation in the witness box that her dogs did not like the compound at 59 Kovan because there were more mosquitos on that side of the fence was not believable.

### **Costs**

56 Counsel submitted on costs in their written closing submissions and again during oral closing. Costs must follow the event, and I hold that Rosaline is to pay costs to Nellie, to Lian Chyu and Djau Ai, and to Roney, Jenny and

Joanie. The trial took six days, and the claims raised some points of law that are not often encountered.

57 In relation to Nellie, she would have been correctly joined as a nominal party, but Rosaline, without any basis to do so, made substantive claims against her. I would have considered carefully any argument for indemnity costs, but when addressing me on costs Nellie's counsel was instructed to seek only standard costs, and to do so at the lower end of the scale. This was a further expression of her already demonstrated non-confrontational character. I fix costs to Nellie at \$60,000, as well as reasonable disbursements to be fixed by me if not agreed.

58 For Lian Chyu and Djau Ai, I have observed that there was never any basis to include Djau Ai in these proceedings. Lian Chyu had to defend against the most claims of any of the defendants. I fix costs at \$90,000, as well as reasonable disbursements to be fixed by me if not agreed.

59 For Roney, Jenny and Joanie, I fix costs at \$60,000, as well as reasonable disbursements to be fixed by me if not agreed.

### **Conclusion**

60 I dismiss the claims in their entirety and award costs to the defendants as set out at [57] to [59] above.

61 Three years have passed since that fateful day in June 2018, and almost two years since Rosaline returned to fulltime residence at 61 Kovan with her two dogs. Soon after, the old Labrador passed on, and she continues in residence with her golden retriever. I can only express the hope that the siblings' halcyon



days, when 61 Kovan under their mother's charge resounded with laughter and good cheer, may yet find some echo in their silver years.

Philip Jeyaretnam JC  
Judicial Commissioner

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A Shahiran Anis Bin Mohamed Ibrahim and Tai Kai Xuan Marcus  
(Asia Law Corporation) for the second and third defendants;  
Gopalakrishnan Dinakaran and Tan Wei Chieh (Prestige Legal LLP)  
for the fourth, fifth and sixth defendants.

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