IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 253

District Court Appeal No 38 of 2019

Between

Lim Beng Kiat

… *Appellant*

And

Mohammad Sarman bin Saidi

… *Respondent*

JUDGMENT

[Contract] — [Formation]
[Trusts] — [Resulting Trusts]
[Equity] — [Remedies] — [Substitutive compensation]

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v
Mohammad Sarman bin Saidi

[2020] SGHC 253

High Court — District Court Appeal No 38 of 2019
Chan Seng Onn J
17, 30 September 2020

19 November 2020 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The present appeal arises against the decision of the District Judge ("DJ") in District Court Suit No 2228 of 2015 (the "Suit"). The DJ's grounds of decision may be found in *Lim Beng Kiat v Mohammad Sarman bin Saidi* [2020] SGDC 46 (the "GD"). As the facts of the case have been thoroughly set out in the GD, I will reiterate only the facts pertinent to the present appeal.

2 The appellant, Lim Beng Kiat, was a director of Kim Hup Chor Construction Pte Ltd (the "Company"). He is the plaintiff in the Suit. The respondent, Mohammad Sarman bin Saidi, is the defendant in the Suit. The respondent joined the Company as an employee in February 2007. His employment with the Company concluded on 18 May 2015.

3 The appellant brought two claims against the respondent in the Suit: the first is for the sum of $8,647 (the "Monies"); the second is for a second-hand car bearing licence registration number SKH1791X (the "Car").

4 As regards the Monies, the parties' cases at trial are as follows.

(a) The appellant's case at trial is that he had advanced personal loans to the respondent by way of making payments to various licensed moneylenders on the respondent's behalf.[1] According to the appellant, these payments were made pursuant to an "understanding of the parties" that the respondent would repay the loans to him upon demand.[2] However, the respondent never repaid the Monies, even after his employment with the Company concluded. The appellant accordingly claimed for the Monies, as well as interest on the same from the date of the Writ of Summons until the date that the Monies are returned to him.[3]

(b) The respondent denies that it was the understanding between him and the appellant that the Monies would be repaid upon demand. His case is that he approached the appellant in or about November 2010, requesting the appellant to pay for his loans on "a goodwill basis". The respondent cited his contributions towards the large profits made by the Company in 2010, and on this basis requested the appellant's help.[4] According to the respondent, the appellant agreed to this request.

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1 Statement of Claim (Amendment No 2) ("SoC") at para 4; Grounds of Decision ("GD") at [6].

2 SoC at para 6; GD at [8].

3 GD at [10].

4 Defence at para 7.

5 In respect of the Car, the parties' cases are as follows.

(a) The appellant's case at trial is that he provided the respondent the Car "for use in connection with the discharge of [the respondent's] duties as an employee of the Company".[5] The respondent had entered into a hire purchase agreement for the purchase of the Car (the "HPA"). The appellant stood as guarantor under the HPA, and paid for the "deposit, transfer fee, road tax, insurance, and all hire purchase rentals" under the HPA.[6] When the respondent left the Company, he did not return the Car despite there being, according to the appellant, an "understanding" that the Car would be returned to him upon cessation of the respondent's employment.[7] As relief, the appellant sought delivery up of the Car and transfer of title to the Car to him. Alternatively, he sought the sums of $77,420.00 (being the total hire purchase price of the Car) and $4,527.00 (being the transfer fee), all insurance and road tax charges for the Car. He also claimed interest. These were his prayers as *per* the Statement of Claim (Amendment No 2). Subsequently (*ie*, after the trial and in the course of this appeal), the appellant amended his prayers for relief in the Statement of Claim (Amendment No 3) –[8] I will address these changes and their significance shortly (see [8] below).

(b) The respondent argues that the appellant volunteered to be guarantor under the HPA. He avers that the Car was meant to be a gift

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5 SoC at para 3; GD at [11].

6 SoC at para 3; GD at [11].

7 SoC at para 5; GD at [12].

8 ROA Vol 2 at pp 20 to 24.

to him from the Company "in consideration of [his] birthday which fell on 31st January 2013".[9] Pursuant to this gift, the Company agreed to make the relevant payments under the HPA, including the initial deposit, transfer fee, road tax, insurance, and all hire purchase payments. This was contingent on the respondent remaining in the employ of the Company. The respondent denies that the appellant made the aforementioned payments under the HPA – even if the appellant did so, such payments were made "on behalf of the [Company]".[10]

The decision below

6 The DJ dismissed both of the appellant's claims.

(a) The DJ found that there was no agreement between the appellant and the respondent for the latter to return the former the Monies. The Monies were not loans advanced by the appellant to the respondent that were payable on demand.[11] There is no evidence of the existence of such loans.

(b) The DJ found that the presumption of resulting trust arose over the Car in favour of the appellant, because the appellant provided the purchase monies under the HPA, and that this presumption was not rebutted.[12] However, the DJ did not award the appellant any remedy, due to the absence of evidence that the proceeds from the sale of the Car still existed. The DJ regarded this as a problem with the process of *tracing*

9 Defence at para 4.

10 Defence at para 6.

11 GD at [43] and [44].

12 GD at [73].

the proceeds of sale.[13] The DJ also saw no basis to impose a remedial constructive trust.[14] The DJ hence dismissed the claim for the Car.[15]

7 The appellant appeals against both aspects of the DJ's decision.[16] The Notice of Appeal was filed on 11 December 2019. By and large, and unless otherwise indicated, the parties' positions on appeal mirror their respective cases at trial. Neither side has sought to introduce any new evidence on appeal.

8 For completeness, I also note that in HC/SUM 1595/2020, which was heard on 16 June 2020, I allowed the appellant's application to amend the Statement of Claim (Amendment No 2).[17] The key amendments in this regard concerned the reliefs sought. The amended prayers for relief are, in material part, as follows.[18]

> …
>
> a. A declaration that the Defendant holds the [Car] on trust for the Plaintiff or, alternatively, for the Plaintiff and the Defendant in such shares as the Court shall determine;
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> b. If the Plaintiff is not found to hold the entire beneficial interest in the [Car], then a declaration that the Plaintiff is entitled to the remedy of equitable accounting to recover the amounts paid by the Plaintiff towards the [Car] in excess of the amount paid by the Plaintiff representing his beneficial interest in the [Car];
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> c. A monetary award for the value of the [Car] to be assessed and to be paid by the Defendant to the Plaintiff on the grounds that the Defendant had disposed of the [Car] in breach

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13 GD at [77] to [83].

14 GD at [86].

15 GD at [87].

16 ROA Vol 2 at page 4.

17 Minute Sheet, HC/SUM 1595/2020, dated 16 June 2020.

18 ROA Vol 2 at p 23; Statement of Claim (Amendment No 3) ("Amended SoC") at p 4.

> of his fiduciary duties and/or in breach of the trust and/or the ground that the Defendant had not returned the Vehicle despite the Plaintiff's letter of demand dated 30 June 2015.
>
> d. In the alternative to (c) above, an order that the Defendant is to account to the Plaintiff for the sums received from the sale of the [Car] and an order that the Defendant is to pay all such sums found to be due from the Defendant to the Plaintiff upon the taking of the said account on the ground of the Defendant's breach of fiduciary duties and/or breach of trust and/or that it would be unconscionable for the Defendant to retain the proceeds of the sale of the [Car] …

9 Having considered the parties' arguments, I allow the appeal in part, specifically as regards the Car, and enter interlocutory judgment in favour of the appellant in this respect. I dismiss the part of the appeal concerning the Monies.

Salient facts pertaining to the Monies and the Car

10 Apart from the background to the case as delineated above, I highlight a few further salient facts that, in my view, are relevant to the present appeal.

11 The parties agree that the appellant provided the Monies totalling $8,647, which were used to repay various licensed moneylenders on the respondent's behalf. The Monies were provided in eight separate tranches and paid out between 19 November 2010 and 20 November 2010. These payments have been tabulated accurately in [6] of the GD, and the parties do not dispute that such payments were made. I briefly summarise the payments as follows:

(a) three payments were made on 19 November 2010, amounting to a total of $4,150; and

(b) five payments were made on 20 November 2010, amounting to a total of $4,497.

12 The parties also do not dispute that the appellant had paid a total of at least $65,552 towards the purchase price of the Car. This was paid out in the form of:[19]

(a) a cash deposit amounting to $24,000;[20] and

(b) 28 monthly instalments of $1,484 between 7 February 2013 and 18 May 2015, amounting to a total of $41,552.[21]

13 The remaining payments relating to the car, amounting to $11,868 in total, were paid by the respondent. He made these payments after 18 May 2015, *ie*, after the conclusion of his employment with the Company. The Car remained in the respondent's exclusive possession until he eventually sold it.[22]

Issues

14 The three main issues are as follows:

(a) whether there was a loan agreement between the appellant and the respondent as regards the Monies;

(b) whether a resulting trust in favour of the appellant arose over the Car; and

(c) what the appropriate remedy is with respect to the Car.

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19 GD at [25(g)].

20 AB at page 37.

21 AB at page 61.

22 GD at [25(i)].

I address the issues in the aforementioned order. To the extent that other issues have been identified by the parties, these are subsumed under the issues listed above.

My decision on the Monies

15 The DJ correctly held that the burden is on the appellant to prove that an agreement existed between him and the respondent for the latter to return him the Monies on demand.[23] It is the appellant who alleges this fact.

16 This issue is relatively straightforward and is to be resolved in favour of the respondent. I see no reason to overturn the DJ's findings in this respect, *ie*, that there was no agreement between the appellant and the respondent for the latter to return the former the Monies (see [6(a)] above). There is simply no evidence supporting the appellant's case.

17 First, the appellant does not allege the existence of any written loan agreement. Indeed, there is no evidence of such a documented agreement in the record. His case is therefore that there was an *oral* loan agreement.

18 Second, the DJ correctly highlighted an admission made by the appellant on the stand: this was that *prior* to the Monies being paid to the relevant licensed moneylenders, he never had any conversation with the respondent to the effect that the Monies were to be *loans*.[24] In other words, there could not have been any *consensus ad idem* prior to the execution of the alleged oral loan agreement by the appellant.

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23 GD at [30].

24 GD at [33]; NEs, Day 1, page 11 line 29 to page 13 line 3.

19 Third, the appellant alleges that he had a conversation with the respondent regarding the alleged oral loan agreement *after* the Monies were paid.[25] However, several points (some of which were recognised by the DJ) hamstring the appellant's argument.

(a) In the first place, the *ex post facto* nature of the oral loan agreement, as alleged, brings into question its very existence. If the appellant truly did not intend to gratuitously pay out the Monies, one would expect him to have taken up the issue with the respondent *prior* to the making of such payments. The appellant did not do so, and only alleges that there was a conversation between him and the respondent *after* the Monies were paid.

(b) The evidence supporting the existence of such a conversation between the parties (after the Monies were paid) is scant. There is no record of subsequent text messages or emails evincing the existence of such a conversation. The existence and details of the alleged conversation are also not mentioned in the appellant's affidavit evidence. The following portions of the cross-examination of the appellant at trial are telling, and damaging for the appellant's case:[26]

> A: I mentioned to Sarman, that was each time after repayment. I would keep the receipt and I did tell him I told him to repay me when he had the money.
>
> Q: Why is this – this aspect of your evidence not in your affidavit?
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> A: No one asked me.

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25 NEs, Day 1, pages 30 to 32.

26 ROA Vol 2 at p 137; NEs, Day 1, page 12 line 24 to page 13 line 3.

> Q: No one asked you what?
>
> A: What is your question now?
>
> Q: My earlier question to you was that, why is this aspect of the evidence you've just mentioned in Court not in your affidavit and you said, "No one asked me".
>
> A: At that time my lawyer did not ask me.

From the above exchange, two points are relevant. First, the evidence concerning the existence of such a conversation between the parties only surfaced in the appellant's *oral testimony*. This, in my view, suggests that it was an afterthought. Such a conversation, if it did occur, would be a key plank of the appellant's case on the Monies, and ought to have been mentioned in his affidavit evidence given its importance. The appellant's failure to do so shows up the veracity of his testimony in this regard. Second, even at trial, the appellant was unable to furnish *any details* of the alleged conversation, *ie*, what exactly the parties said. This speaks to the conclusion that such a conversation never occurred. If it did occur, one would expect the appellant to have readily provided the details of the same at the earliest instance. He did not.

(c) There is also no evidence that the respondent *accepted* the appellant's proposition that the Monies were to assume the nature of loans.[27] Thus, even if the alleged conversation between the appellant and respondent did take place *after* the Monies were paid, there would still be insufficient basis to find that the parties reached *consensus ad idem*. At most, this would have been a unilateral view of the state of affairs on

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27 GD at [35].

the appellant's part – but unilateral thinking cannot give rise to a binding contract.

(d) The appellant's conduct between November 2010 (when the Monies were paid) and May 2015 (when the respondent's employment was terminated) is telling. He never once pursued the matter with the respondent, and never chased for payment. There is no evidence (*eg*, text messages) to this effect. The appellant indeed accepts that he did not "[request] for the return of the [Monies] from [the respondent], as [he] did not want [the respondent] to feel pressured".[28] Whatever the appellant's reasons may have purportedly been for not pursuing the issue, his silence is damaging for his case and militates against the existence of any oral loan agreement between the parties.

(e) This trend of silence over the Monies continued in the appellant's letter of demand dated 30 June 2015 ("the Letter of Demand").[29] Whilst matters pertaining to the Car were raised (see [31] below), the Monies were not mentioned. As correctly pointed out by the DJ, "[i]f the Monies were indeed personal loans… one would have expected [the appellant] to [have made] a prompt demand for the Monies as well".[30]

(f) The Monies only surfaced in the suit in the appellant's first amendment to the Statement of Claim.[31] Viewed alongside the rest of

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28 GD at [41].

29 GD at [25(l)]; ROA Vol 2 at page 99.

30 GD at [42].

31 GD at [42].

the evidence (or the lack thereof), this speaks to the claim for the Monies being an afterthought on the appellant's part.

20 Finally, I agree with the DJ's observation that the appellant's retention of the receipts of the payments he made to the licensed moneylenders has no bearing on the issue.[32] People retain receipts for a variety of reasons. Such receipts alone do not speak to there being any *consensus ad idem* between the parties.

21 I accordingly uphold the DJ's findings with respect to the Monies. I dismiss this portion of the appellant's appeal.

My decision on the Car

22 The most pertinent facts in respect of this issue are that (a) the appellant, not the Company or the respondent, paid for the bulk of the purchase price and outgoings of the Car; and (b) the respondent was given possession of the Car in the course of his employment with the Company. These facts lead to several legal and factual conclusions, which ultimately resolve the issue of the Car in favour of the appellant.

Whether the beneficial interest in the Car resided with the appellant

The presumption of resulting trust

23 I am persuaded that a presumption of resulting trust over the Car arose in favour of the appellant. Such a trust has often been referred to as a "purchase money trust", and for good reason. The presumption of resulting trust operates

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[32] GD at [43].

where an individual makes a voluntary payment for the purchase of a property that is then vested in the other person or in both of them jointly. Thus, in the seminal decision of *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*") decision, Lord Browne-Wilkinson stated the following (at 708A):

> … where A makes a voluntary payment to B or *pays (wholly or in part) for the purchase of property which is vested* either *in B alone* or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is *held on trust for A* (if he is the *sole provider of the money*) or in the case of a *joint purchase by A and B in shares proportionate to their contributions*…
>
> [emphasis added]

24 Lord Browne-Wilkinson's observations have been accepted locally (see for example the recent decision of *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 ("*Yang Chia-Yin*") at [55]; see also *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [34]). The rule is sound in principle; the court in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [38] and [44] stated that the presumption of resulting trust is equity's response to the *lack of intention on the part of the transferor to benefit the transferee*. As a result, each party holds a beneficial interest in the property and/or monies equivalent to their respective financial contributions to the same (*Chan Yuen Lan* at [53]).

25 Here, and as noted above at [12], the appellant paid at least $65,552 in total towards the purchase price and/or outgoings of the Car. The respondent has not disputed this. It is critical that these monies paid towards the Car came *from the appellant, not the Company*. I emphasised this to parties during the hearing of the appeal. This was recognised by the DJ to be an *undisputed fact*

upon an analysis of the evidence;[33] it is a finding that the respondent has not shown to be obviously incorrect. Apart from suggesting in the Defence that it was the Company, not the appellant, that made the payments for the Car, the respondent has raised no evidence in support of his allegation. Accordingly, the entity in whom the beneficial interest in the Car was vested was the appellant, *not* the Company, since the purchase monies flowed from him.

26 On this note, counsel for the respondent emphasised during oral submissions that the *formal title* to the Car resided in the respondent, *ie*, the Car was registered in the respondent's name. This does not assist the respondent, because such formal title represents but the *bare legal interest* in the Car. The *beneficial* interest in the Car nonetheless resided with the appellant. Indeed, it is clear from Lord Browne-Wilkinson's espousal in *Westdeutsche* (see [23] above) that the vesting of formal title to property in a transferee is commonplace in situations involving the presumption of resulting trust; it does not defeat the value-furnishing transferor's beneficial interest. This stems from the trite notion in the law of trusts that the legal and beneficial interests in property may be bifurcated.

27 The appellant was never divested of his beneficial interest in the Car. The presumption of resulting trust can be displaced either by evidence of the transferor's intention to make a gift to the transferee (*Chan Yuen Lan* at [160(d)]), the presumption of advancement (*Chan Yuen Lan* at [160(e)]), or a common intention, either at or subsequent to the acquisition, to hold the beneficial interest in a proportion other than that which corresponds with the

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[33] GD at [25].

parties' respective contributions (*Chan Yuen Lan* at [160(b)] and [160(f)]). However, none of these apply in this case.

Whether the Car was a gift

28 It must be borne in mind that while the legal burden of proving his case rested on the appellant at trial, it is the respondent who averred the existence of a gift – the DJ correctly recognised this at [45] of the GD. It is trite that he who asserts a fact must prove that fact. I am not persuaded that the respondent has done so.

29 In emphasising that the Car was registered in the respondent's name, counsel for the respondent also suggested that this was evidence of the appellant having bestowed a gift (of the Car) upon the respondent. This appears to be the only aspect of the evidence that the respondent can point to in support of his case. It however does not suffice as proof of a gift and fails to consider the context in which the appellant granted the respondent access to and use of the Car.

30 The Car was meant for the respondent's use *in the course of the latter's employment* with the Company. It was in the course of such employment that the appellant gave the respondent access to the Car. This is the appellant's consistent evidence. The respondent does not dispute that he acquired possession of the Car under these circumstances, and that he *did use* the Car for work purposes during his employment. That the *formal* title to the Car was vested in the respondent is quite beside the point; this arrangement may conceivably have been put in place for a myriad of other reasons, such as for

insurance purposes. This would make sense given that the respondent was the regular user of the Car on a daily basis – the parties do not dispute this.[34]

31 The behaviour of the parties following the termination of the respondent's employment with the Company supports the conclusion that there was no gift. Ten days after the respondent's employment was terminated, the Company demanded, via a letter, the return of "all [the Company's] properties… [and] documentation" within seven days. The Company also indicated that legal action would be considered if the respondent failed to comply.[35] About a month later, on 30 June 2015, the appellant sent the Letter of Demand to the respondent, setting out the alleged understanding between them that the Car would be returned to the Appellant.[36] These pieces of evidence may not, *ipso facto*, be dispositive of the issue, but *in context* support the notion that the arrangement had always been for the respondent to return the Car to the appellant and/or the Company. The Company and the appellant constantly asserted their rights and behaved in a manner consistent with the appellant having beneficial ownership of the Car.

32 Pertinently, the respondent has also not been able to deal with the significance of the purchase price of the Car. The Car, at the time of purchase, was worth $77,420.[37] The appellant paid the deposit, amounting to $24,000, as well as 28 monthly instalments until 18 May 2015 amounting to $41,552 in total.[38] These are not negligible sums of money. Why would the appellant have

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34 GD at [25].

35 GD at [25(k)].

36 GD at [25(l)].

37 AB at page 37.

38 GD at [25].

furnished such valuable consideration? The respondent has offered no persuasive reason for why the appellant would gratuitously make a gift of such significant value. In the Defence, the respondent only cites his birthday as the appellant's alleged motivation for gifting him the Car.[39] But there is no concrete evidence, contemporaneous or otherwise, to this effect, such as text messages or any other recorded correspondence. It is simply the respondent's bare words against the appellant's. In fact, as recognised by the DJ, the appellant *never* gave the respondent any birthday gifts in the course of the latter's employment (GD at [46]).[40] For the appellant to then inexplicably make a gift of such exorbitant value would be rather surprising, in my view.

33 Finally, and as recognised by the DJ (at [45] and [46] of the GD), the respondent's own case undermines the notion that the Car was a gift. The respondent's case is that the appellant agreed to pay all the outgoings in respect of the Car in so far as the respondent remained in the employment of the Company; in other words, upon termination of the respondent's employment, the alleged agreement was for the respondent to foot the remainder of the bill (which he eventually did). This is inconsistent with the idea that there was an *unconditional birthday gift* comprising the entirety of the Car from the appellant to the respondent. It would indeed be very strange if the purported "birthday gift" was conditional on the respondent's continued employment in the Company. This speaks to there being no such gift of this nature at all.

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39 Defence at para 4.

40 NEs, Day 2, page 67, lines 13 to 20.

34 Thus, and in the light of the prevailing circumstances, I do not accept that the respondent has proved the existence of a gift. I uphold the DJ's findings in this regard.[41]

The presumption of advancement

35 Similarly, the presumption of advancement has no relevance – this is not the respondent's defence. His defence is a positive one – that a gift was made from the appellant to the respondent. This is quite different from arguing that the presumption of advancement applies.

36 In any event, the parties do not share any relationship falling within any of the recognised categories to which the presumption of advancement applies (such relationships typically being intimate familial relationships, where the transferor's intention to gratuitously benefit the transferee may be reasonably presumed).

Common intention

37 The last manner of displacing the presumption of resulting trust – that of common intention – is also irrelevant. This is not the respondent's case, and there is, in any event, no evidence demonstrating such a common intention to hold the beneficial interest in the Car in a manner that is different from the parties' respective financial contributions.

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[41] GD at [45] to [46].

Conclusion on beneficial interest

38 I therefore find that the presumption of resulting trust that arose in favour of the appellant has not been displaced. The beneficial interest in the Car always resided with the appellant. The respondent was accordingly the custodian of the Car and held the Car on trust for the appellant.

39 With my conclusion as stated above, there is no need to consider the rest of the issues in relation to the Car. The other issues considered by the DJ – in particular the issue of whether there was an express agreement between the appellant and the respondent for the latter to return the Car following the termination of the latter's employment – are peripheral and have no bearing whatsoever on the outcome. What is pivotal is that the appellant, having paid all the initial purchase monies for the Car, including the 28 monthly HPA instalments for the car until 18 May 2015 and who was the guarantor for the loan repayments under the HPA, *never intended to divest himself of the beneficial interest in the same*. He never intended to benefit the respondent, apart from allowing the respondent to *use* the Car in the course of his employment. This is the clinching point in the inquiry.

40 Given that the respondent held the Car on trust for the appellant, his failure to account for the Car upon demand for the return of the Car after his employment was terminated was a failure to account for trust property under his custodianship. This is a breach of trust, specifically a breach of the respondent's duty of custodial stewardship: see *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Winsta Holding*") at [100] and [107].

41 I turn then to address the issue of the appropriate remedy for the respondent's breach of trust.

The appropriate remedy

42 The DJ ostensibly took issue with respect to "tracing" in deciding not to award the appellant a remedy in respect of the Car.[42] With respect, the DJ's concerns in this regard are unfounded.

43 Tracing is the *process* by which an injured party, one who possesses a beneficial interest in property, attempts to assert a *proprietary* remedy over monies or property into which his beneficial interest has passed. This may be done, for example, by proving that the property in which he had a beneficial interest was converted into a different form, perhaps by being sold by the trustee in breach of trust. Tracing allows the injured party, in such a case, to assert a *proprietary interest* over the proceeds of sale of the property that *he* was rightly entitled to: see *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 at [633]; *Bhavika Manohar Godhwani v Manohar Hargun Godhwani and others* [2020] SGHC 147 at [68]. Such a proprietary remedy, in some cases, is preferable given that it may afford the injured party priority over the relevant monies/assets as against third parties. It also ensures compensation for an injured beneficiary where the errant trustee is insolvent and thereby unable to personally account for the value of the property disposed of in breach of trust.

44 The failure or inability to trace the proceeds of sale of property that was mishandled in breach of trust may preclude a proprietary remedy. What it does

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42 GD at [74] to [83].

not do is extinguish an injured party's right to a *personal* remedy for breach of trust. An errant trustee always owes a duty to the beneficiaries of the trust to *personally* account for trust property (save certain exceptional cases, which are irrelevant here). Successful tracing may be a requisite element for a claim in *restitution*, but that is quite different from a claim in breach of trust, which is not *dependent* on tracing (see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 at [262]).

45 In this case, the appellant did plead (in both the Statement of Claim (Amendment No 2) and the Statement of Claim (Amendment No 3)) that the respondent held the Car on trust for him.[43] The respondent's failure to return the Car on demand, and going further to sell it, was a clear breach of trust, and a failure to account for trust property. Such a breach entitles the appellant to elect between personal or proprietary remedies. The appellant's pleadings in the Statement of Claim (Amendment No 2) are in my view sufficient to encompass such relief, *ie*, the purchase price of the Car and/or other relief that the court deems fit; he did not limit himself to a claim for a proprietary remedy at the exclusion of a personal remedy.[44] The Statement of Claim (Amendment No 3) makes matters even clearer and puts the issue beyond doubt – therein, the appellant claims "[a] monetary award for the value of [the Car] to be assessed and to be paid by the [respondent] to the [appellant] on the grounds [of]… breach of the trust".[45] This clearly countenances a *personal* monetary remedy.

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43 SoC at para 6; Amended SoC at para 8A and p 4.

44 SoC at Reliefs, paras (b) and (e).

45 ROA Vol 2 at p 23; Amended SoC at p 4.

46 Accordingly, the appellant is entitled to a *personal* remedy against the respondent, *ie*, substitutive compensation, for the latter's breach of trust. The Court of Appeal has recently reiterated the long-standing rule that, as a matter of course, substitutive compensation, *ie*, a monetary award, will be available to a party that suffers loss from a breach of the duty of custodial stewardship of a trustee: *Winsta Holding* ([40] *supra*) at [107]. It is irrelevant that the proceeds from the sale of the Car cannot be clearly identified – this only precludes the appellant from asserting a *proprietary* remedy over such proceeds. The respondent remains *personally* liable to compensate the appellant for the value of the trust property (*ie*, the Car) that he, as trustee, had custodial stewardship over and failed to account for. The sole question that remains pertains to the quantum of such compensation.

47 I add that given my analysis and conclusions above, there is no need for me to consider whether it would be appropriate to impose a remedial constructive trust in the present case.[46]

Quantum

48 In my view, it would be appropriate in this case to award the appellant, as substitutive monetary compensation, the open market value of the Car to be assessed as at the date of the appellant's demand for the return of the Car. After determining the open market value, two further sums must be deducted:

(a) the *outstanding* HPA loan balance as at the date of the appellant's demand; and

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[46] GD at [84] to [86].

(b) any instalment sum paid by the respondent towards the HPA *before* the date of the appellant's demand.

This reflects the net quantum of the appellant's beneficial interest in the Car as at the date of the respondent's breach of trust. When assessed this way, there is no need to be concerned with the subsequent depreciation of the Car, the loss of use of the Car, the amount of any further HPA instalments paid by the respondent *after* the respondent's failure to return the Car pursuant to the appellant's request and the amount of sale proceeds of the Car pocketed by the respondent when he sold it.

49 In other words, and to be absolutely clear, both the open market value of the Car *and* the outstanding HPA loan balance to be deducted are to be assessed as of the date of the Letter of Demand for the return of the Car by the appellant. The date of the Letter of Demand on which the appellant, as beneficiary under the resulting trust, demanded for the return of the trust property is 30 June 2015. The respondent's failure or refusal to return the Car on the appellant's demand constituted a breach of trust that crystallised *at that point in time*. The calculation for the compensation awarded to the appellant must hence be construed from that reference point. I also briefly explain the basis for imposing the two deductions mentioned in the preceding paragraph.

(a) The HPA loan *balance* must be deducted (as mentioned at [48(a)] above) because if the Car had been returned to the appellant on 30 June 2015 (*ie*, if the respondent had *not* acted in breach of trust) and sold off by the appellant immediately based on the open market value of the Car, the sum that the appellant would have obtained from the sale of the Car would have been *sans* the outstanding HPA loan balance. The appellant would have had to repay the outstanding loan balance.

(b) Further, if there are any HPA instalments paid by the respondent ***before*** the date of the Letter of Demand, this is to be accounted for by subtracting from the sum assessed. These instalments are to be treated as "loans" to the appellant and paid by the respondent to the hire purchase company on behalf of the appellant, which the appellant must repay the respondent, hence the deduction mentioned at [48(b)] above.

Conclusion

50 I therefore allow the appeal in part.

(a) I dismiss the appeal as regards the Monies.

(b) I enter interlocutory judgment for the appellant with respect to the Car. The respondent is to pay the appellant damages to be assessed by the DJ in accordance with [48] and [49] above.

51 The parties are advised to jointly appoint an independent valuer, if they cannot agree on the open market value of the Car. This will expedite and reduce the cost of the assessment of damages.

52 Costs awarded below are set aside. All the costs below and the costs of the appeal are reserved to the DJ hearing the assessment of damages.

Chan Seng Onn
Judge

Ashok Kumar Rai (Cairnhill Law LLC) for the appellant;
Kanagavijayan Nadarajan (Kana & Co) for the respondent.
