Chng Weng Wah
v
Goh Bak Heng

[2016] SGCA 09

Court of Appeal — Civil Appeal No 6 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Tay Yong Kwang J
10 July 2015

Equity — Remedies — Account

Equity — Defences — Laches

16 February 2016 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This is an appeal from the decision of the Judicial Commissioner ("the Judge") in Suit No 387 of 2013 ("S 387/2013"), where the appellant-trustee, Chng Weng Wah ("Chng"), was ordered to, *inter alia*, give an account to the respondent-beneficiary, Goh Bak Heng ("Goh") in respect of certain shares, or such money or funds representing the sale proceeds of those shares. Chng was also ordered to pay Goh all sums, if any, found to be due to Goh on the taking of the account.

2 In the present appeal, Chng does not seek to challenge the Judge's finding that he held the shares on bare trust for Goh. Before us, Chng argued

that the Judge had erred on two grounds. First, it was submitted that Chng had already provided a *full account* of the shares and the sale proceeds thereof to Goh. Secondly, Chng contended that Goh should be barred from making the present claim on the basis that the doctrine of laches applies.

3 In response, Goh submitted that the reconstructed accounts by Chng were relatively incomplete and that there remained a number of outstanding discrepancies. As regards the doctrine of laches, Goh argued that it was extremely rare for laches to defeat a claim by a beneficiary to recover trust property where the trust had arisen in a non-commercial relationship. Goh further submitted that Chng has failed to show a causal link between the effluxion of time and the alleged prejudice suffered in making out his defence.

Background facts

The parties

4 Goh and Chng first got to know each other way back in 1980 when they were both serving in the Navy. Upon leaving the Navy, Goh set up a sole proprietorship referred to as Serial System Marketing, which was subsequently incorporated and listed on the Singapore Stock Exchange in 1997 as Serial System Ltd ("Serial System"). Goh was a founding director and shareholder of Serial System. He was also its first chief executive officer ("CEO"). Like Goh, Chng was also a founding director and shareholder of Serial System. Chng took over as CEO of Serial System from Goh sometime after its listing in 1997. It appears from the evidence that Chng left Serial System in 2001 after a highly publicised falling out with Goh over a tussle for control of Serial System. Goh took on the role as CEO of Serial System after Chng's departure.

5 For the avoidance of doubt, we should state that the present dispute does not involve the affairs of Serial System. Nevertheless, the facts discussed in the preceding paragraph are relevant for the purpose of understanding the dynamics of the relationship between Chng and Goh.

The investment

6 The present dispute concerns a joint investment involving the purchase of shares in a Taiwanese company, MediaTek Inc ("MTK"). We note that the parties had entered into other joint investments previously and their arrangement was that the profits would be split proportionately. Therefore, the investment in the MTK shares was only one of many joint investments which the parties had entered into.

7 Sometime in July 1997, the parties incorporated an investment vehicle called C&G Investment Pte Ltd ("C&G"). The parties contributed equal amounts of money to C&G, which was then used to facilitate the joint investments they had undertaken with each other. It was also around this time when the founder and chairman of MTK, Tsai Ming Kai ("Tsai"), offered approximately 1.2m MTK shares to Chng. It turned out that 600,000 of these shares were purchased by Serial Semiconductor Co Limited, which was then a subsidiary of Serial System. Chng then suggested to Goh that they purchase the remaining 601,750 shares as a joint investment. Goh agreed to the proposal and both parties then injected equal sums of money into C&G. It is not in dispute that NT$8,556,875 was paid for the purchase of 601,750 MTK shares.

8 There were, at that point in time, legal restrictions on the foreign ownership of Taiwan-incorporated companies. As a result, the MTK shares which Chng and Goh bought as joint investment were registered in the name of

Kerry Hsu Wen Hung ("Kerry"), the wife of a business associate of the parties, Eric Cheng ("Eric"). The arrangement was for Kerry to help facilitate any transactions involving the MTK shares. Approval for foreign ownership of the shares in question was eventually obtained from the relevant administration bureau sometime in 1998 and 1999. The MTK shares were thereafter transferred from Kerry to Chng. It appears from the evidence that the MTK shares remained with Chng throughout, up to the point in time when they were eventually disposed of.

9 The above background facts were not disputed by the parties. The main factual dispute in the present case concerns the transactions that took place between 1999 and 2000. For ease of reference, we will deal with the relevant facts in the course of analysing the legal issues arising out of the present appeal. In brief, Chng takes the position that half of the MTK shares, which belonged to Goh, were progressively sold over a few tranches and that Chng was no longer holding on to any MTK shares on behalf of Goh. Whatever MTK shares still held by Chng belong to himself. As regards Goh's shares in MTK which had already been sold on Goh's instructions, Chng's position is that he had accounted for and paid the proceeds to Goh. On this basis, Chng submits that he no longer owes any duty to account to Goh.

10 On the other hand, while Goh does not dispute some of the sale transactions that were put forward by Chng, he takes the view that not *all* of his MTK shares have been accounted for. To that end, he appears to take the position that Chng is still holding on to some MTK shares on his behalf. As regards the sale proceeds, Goh contends that there exists some uncertainty as to whether he had been fully paid for the sale of his MTK shares.

The decision below

11 In the Judgment, the Judge framed the issues as follows (at [12]):

(a) Whether Chng held half of the MTK shares on trust for Goh?

(b) Whether Goh was entitled to an account from Chng of that half of the MTK shares allegedly held on trust for Goh by Chng and/or the sale proceeds of any alleged sale of such MTK shares?

(c) Whether Goh was barred from making his claim for an account of those shares, or the proceeds thereof, pursuant to the doctrine of laches?

12 In relation to the first issue, the Judge found (at [24]) that Chng did hold half of the MTK shares on trust for Goh. The Judge held that Chng, as trustee, owed Goh certain duties with regard to those MTK shares, although these duties were not extensive given that the trust was an oral trust with no express terms. Nevertheless, the Judge took the view that Chng would owe Goh, at minimum, a duty to account for the MTK shares, and for the sale proceeds of those MTK shares.

13 The Judge approached the second issue from two angles. He first addressed the question of whether all of Goh's MTK shares had been sold and accounted for by Chng. In this respect, the Judge was of the view that there appeared to be some uncertainty as to whether Goh had sold all of his MTK shares in the manner as claimed by Chng. The Judge referred extensively to the documentary evidence adduced by the parties and highlighted a number of discrepancies in the calculations set out therein. We will further elaborate on the Judge's findings on this issue in the course of the analysis below. In summary,

the Judge found, on a balance of probabilities, that Goh still held some MTK shares on behalf of Goh, which Chng had to account for. The Judge further caveated that this finding was based on the evidence adduced by the parties, and that it would be an entirely separate matter altogether should Chng be able to produce further evidence to show otherwise when he gives an account to Goh.

14 After having dealt with the MTK shares, the Judge went on to consider the question of whether Goh had received all the sale proceeds from the sale of those MTK shares belonging to Goh. As with the MTK shares, the Judge held that Chng had failed to satisfy the court that Goh had received all the monies due to him. It was also highlighted that Chng had taken the position that he could not say for sure that Goh had received all the proceeds that were due to him from the sale of Goh's MTK shares, although Chng said this was due to the lack of evidence brought about by the prolonged lapse of time. In this regard, the Judge took the view that Chng's arguments on the non-availability of evidence was better dealt with under the issue of laches.

15 As regards the application of the doctrine of laches, the Judge began by dealing with the preliminary issue of whether there was a need to show a *causal link* between a plaintiff's delay in the bringing of proceedings and any alleged prejudice suffered by the defendant in making out his defence. He referred to the English High Court decision of *Nelson v Rye and another* [1996] 2 All ER 186 for the proposition that causation was *one of the factors* to be considered in deciding whether the doctrine of laches should apply. It is, however, not an immutable requirement that has to be satisfied before the defendant can establish the applicability of the doctrine of laches. The Judge further observed that the concept of causation was related to detrimental reliance, which had been

elaborated upon by Lord Neuberger in the House of Lords decision of *Fisher v Brooker* [2009] 1 WLR 1764 (at 1781):

> … Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion. …

16 On the facts of the present case, the Judge was not persuaded that the doctrine of laches should apply. Although he found that Goh did not have a good reason for the delay in bringing proceedings against Chng, the delay did not amount to acquiescence; neither did it result in Chng suffering prejudice. The Judge further held that although there was a substantial lapse of time, Goh did not, in any way, encourage Chng to think that Goh no longer took an interest in the matters concerning the MTK shares. Further, as trustee for Goh, Chng should not be allowed to renege on his positive duties to account to Goh as the beneficiary of the trust. The Judge was also persuaded by Goh's submission that Chng had failed to show any *causal link* between the delay in bringing proceedings and Chng's inability to gather evidence for his defence. The Judge further observed that the subject matter of the dispute related to shares in only one company (*ie*, MTK), and the proceeds from the sale of such shares. In this regard, Chng did not have to concern himself with multiple beneficiaries, assets located in multiple jurisdictions, or assets that were constantly changing from one form to another, which might make the assets difficult to account for with the passage of time. The Judge also observed that Chng had failed to adduce sufficient documentary evidence to support his case that the missing items of evidence were truly not available to him. The Judge therefore held that it would not be unjust for Goh to require an account from Chng with regard to the MTK shares and any proceeds arising from the sale of the MTK shares.

17 In the light of the foregoing, the Judge made the following orders (at [84]):

> (a) Chng is to give an account of the MTK shares or such money or funds representing the proceeds of sale of the MTK shares as have been possessed or received by Chng or by any person on his behalf, and of Chng's dealings with investments of such money or funds and of his application and disposition thereof and of the dividends, interests, and profits thereof within two months of the date of the Judgment.
>
> (b) Chng is to pay Goh all sums (if any) found to be due to Goh on the taking of the account under (a) above.
>
> (c) Liberty to apply, in particular in the case that Chng encounters difficulty in complying with the two-month deadline under (a) above due to delays caused by third parties and not attributable to any fault of Chng.

18 The Judge also expressly clarified (at [85]) that he did not make any finding that: (a) the MTK shares owned by Goh have not all been disposed of by Goh as alleged by Chng; or (b) that Goh has not received the proceeds of any alleged sale of his MTK shares. The Judge observed that Chng had to give an account as ordered before any conclusions to that end could possibly be arrived at.

The issues

19 As discussed above, Chng does not seek to challenge the finding that he had held the MTK shares on trust for Goh. Therefore, the issues that remain to be resolved in the present appeal are the following:

(a) whether Goh was entitled to an account from Chng as regards the MTK shares held by Chng on Goh's behalf and/or the sale proceeds arising out of any sale of those shares; and

(b) whether Goh was barred from making his claim pursuant to the doctrine of laches.

We will elaborate on the parties' submissions as and where appropriate in the course of our analysis below.

Whether Goh was entitled to an account from Chng

The applicable legal principles

20 The accounting procedure under the law of equity is often used for a variety of purposes. In a case involving a violation of fiduciary duties, the court may order an account of profits in order to disgorge profits wrongfully gained by the defendant. There are also accounting procedures that are specific to the type of instrument in question, such as, for instance, mortgage accounts, where a mortgagee in possession is made to account to the mortgagor or any other party having an interest in the equity of redemption. In the present case, we are concerned only with the accounting of funds, specifically that of a *general* or *common* account.

21 Where a party has custody of a fund which it is obliged to administer for the benefit of another, such as in the case of a trust, one of the methods by which equity polices the due administration of the funds is by holding the fiduciary to account. The procedure for the accounting of funds may be further broken down into two separate categories:

(a) general or common accounts, where no misconduct has been alleged; and

(b) accounts on the footing of wilful default, which involves a breach of duty on the part of the fiduciary.

On the facts of the present case, it is not disputed that Goh is seeking a *common* account of the MTK shares that were held on his behalf by Chng. There are, at the moment, no specific allegations that Chng has acted in breach of his duties so as to trigger an account on the footing of wilful default. We therefore confine our analysis to that of a *common* account.

22 The claim for a common account may be divided into the following three stages (see John McGhee gen ed, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity 2015*") at para 20–014):

(a) whether the claimant has a right to an account;

(b) the taking of the account; and

(c) any consequential relief.

For the avoidance of doubt, we are, in the present case, only concerned with the first stage, *ie*, whether Goh is entitled to an account from Chng.

23 In determining whether a claimant has a right to an account, the court has to first ascertain whether the defendant has received property in circumstances sufficient to import an equitable obligation to handle the property for the benefit of another: *Associated Alloys Ltd v ACN 001 452 106 Pty Ltd* (2000) 171 ALR 568 at 585. The burden is on the claimant to prove this. For

the avoidance of doubt, we would add that the claimant does not have to establish any mishandling of the property, or breach of trust, on the part of the defendant before a duty to account can arise.

24 Thereafter, the defendant bears the burden of establishing that it has been released from the duty to account by a settlement. In this regard, we find it useful to refer to the following summary set out in *Snell's Equity 2015* (at para 20–016):

> ***(2) Settled accounts.*** It is a good defence to a claim for an account for the defendant to prove that they have been released from their duty to account by a settlement. If the accounts have been settled then the claim will be defeated unless the beneficiary can show that the settlement was obtained by fraud or imposition, or that it contains sufficient errors of sufficient magnitude to warrant setting it aside and taking the accounts from the beginning. If the claimant can only prove errors of a lesser number or magnitude then they will be granted liberty to surcharge and falsify. By this order the master is only directed to rectify specific errors in the settled account, the onus falling on the claimant.

The process of establishing settled accounts requires the defendant to prove that there has been a general settlement of every pending transaction between the parties (see Hon Peter W Young AO, Clyde Croft & Megan Louise Smith, *On Equity* (Thomson Reuters (Professional) Australia, 2009) at para 16.1340, referring to *Hickson v Aylward* (1828) 3 Molloy (Ir) 1 at 15).

Analysis

25 Given that Chng does not seek to challenge the Judge's finding that he held half of the MTK shares on trust for Goh, the only issue that remains is whether Chng no longer owes a duty to account as a result of there being settled accounts between the parties. As highlighted above, Chng bears the burden of establishing that the account between the parties has been settled. In the present

appeal, Chng seeks to discharge this burden by referring to a number of documents, including the email correspondence between the parties, to prove that he has already rendered complete accounts to Goh. Chng takes the view that all of Goh's MTK shares have been sold in accordance with his instructions and that the sale proceeds have been duly paid to Goh. On the other hand, Goh seeks to rely on a number of discrepancies in the calculations to show that Chng has *not* rendered a complete account of Goh's MTK shares and the sale proceeds arising out of various sale transactions involving those shares.

26 The Judge dealt with the issue of whether all of Goh's MTK shares have been sold and accounted for by Chng, before going on to consider the issue of whether Goh had received all the sale proceeds from the alleged sale of his portion of the MTK shares. It seems to us that this is a practical and sensible way forward and we will accordingly adopt the same approach. In order to track the transfers and sales of Goh's MTK shares throughout the relevant period of time, it will be necessary to approach the issue in a chronological manner, starting from the time the parties made the joint investment to acquire the MTK shares, up to the point in time when Goh's half portion of the MTK shares was purportedly disposed of completely.

27 At the juncture, it is noted that the Judge had, in the course of the Judgment, placed significant emphasis on a document referred to as Exhibit P1 ("P1"). A brief explanation of how P1 came into being will be useful. On the third day of the trial, Chng produced Exhibit D3 ("D3"), a tabulation of the MTK shares held by Chng, which sets out, *inter alia*, the details of any transfer of shares or the issuance of any stock dividends. D3 appeared to have been prepared by Tsai's secretary on 26 June 2013, at the request of Chng to Tsai shortly after Goh had commenced legal proceedings against Chng. Counsel for

Goh took the view that there were mistakes in the dates reflected in D3 and proceeded to amend the dates in a new document, P1. Thereafter, counsel for Chng confirmed during the trial that the amended dates in P1 were accurate. The Judge, therefore, relied on P1 in arriving at his decision. In our view, the dates set out in D3 were not, strictly speaking, inaccurate in so far as they were merely set out in the Taiwan *minguo* calendar format, as opposed to the Gregorian calendar. Nevertheless, given that both parties do not have any dispute over the accuracy of P1, we will refer to P1 for the purposes of our analysis below.

28 The initial number of MTK shares purchased by the parties for the sum of NT$8,556,875 was 601,750. Sometime in May 1999, 44,610 MTK shares were issued as stock dividends. This increased the number of MTK shares held by the parties to 646,360. This is reflected in P1 as the opening balance of total MTK shares held by Chng as at 1 August 1999.

29 On 10 August 1999, a further 484,770 MTK shares were issued by MTK as stock dividends. The number of MTK shares held by the parties thus swelled to 1,131,130, with 565,565 shares belonging to each of them. Both parties do not have any dispute as regards the calculation up to this juncture.

30 Chng, however, takes the view that the total number of MTK shares held by the parties as at 20 August 1999 was only 1,098,812. This is based on a Filofax entry which bears the signature of both parties. There appears to be an inconsistency in so far as the total number of MTK shares, as reflected in P1, was 1,131,130 as at 10 August 1999. This means that between those two dates, something happened which caused the MTK shares held by them to be reduced by 32,318 shares. In this regard, Chng submits that the figures set out in the

Filofax entry must be accurate as it was generated contemporaneously and he would have had no reason to falsify the figures then. Parties' relations then were warm and friendly. Chng, nevertheless, concedes that due to the passage of time, he was unable to recall what had caused the shortfall of 32,318 MTK shares. As both parties signed the Filofax entry, indicating their agreement to what was stated therein, Chng contends that the shortfall of 32,318 shares would be inconsequential. The parties would most likely have understood the reason for that. However, this shortfall was specifically relied upon by the Judge as one of the discrepancies lending weight to the conclusion that it was uncertain whether Chng had accounted to Goh in respect of all the MTK shares of the parties (see [54] of the Judgment).

31 According to the Filofax entry, a transfer of MTK shares had taken place between the parties on 20 August 1999. Goh sold 164,821 MTK shares to Chng, which resulted in Goh owning only 384,584 MTK shares and Chng owning 714,227 MTK shares. It appears that both parties had demonstrated their acceptance of the aforementioned calculations by signing on the Filofax entry. While we note that Goh has, in the course of the hearing below, refused to accept that he had transferred 164,821 MTK shares to Chng, we find it difficult to accept his position since he signed the Filofax entry. No documentary evidence to the contrary was adduced by Goh to substantiate his claim that the calculations set out in the Filofax entry were erroneous. In fact, Goh's argument that the alleged sale of 164,821 MTK shares from Goh to Chng could not have taken place given that it was not reflected in P1 was, in our view, inconsequential for the following reason. It will be recalled that D3 (from which P1 was derived) was prepared by Tsai's secretary and appears to reflect only the transactions (*eg*, sale of MTK shares, issuance of stock dividends) that had taken place *vis-à-vis external parties*. In other words, D3 does not set out the

proportions in which the parties were holding the MTK shares at any point in time. Therefore, any internal accounting between the parties, such as the alleged sale of 164,821 MTK shares from Goh to Chng, would *not* be reflected in D3. Looking at the evidence as a whole, we are inclined to accept Chng's evidence that the sale had, in fact, taken place between the parties. The fact that both parties had placed their signatures on the Filofax entry was an indication that they had no issues with the calculations set out therein. To that end, we are of the view that the Judge had placed too great an emphasis on the shortfall of 32,318 MTK shares which occurred between 10 August and 20 August 1999. On the contrary, it would be reasonable to assume that Goh would not have signed on the Filofax entry if he had any issues with the calculations reflected therein.

32 Apart from that, we find it useful to also refer to a subsequent email that was sent by Chng to Goh on 26 April 2000, where Chng provided a brief breakdown of Goh's holdings at that point in time:

> Some wrong calculation [referring to an earlier email where Chng had made a calculation error] …
>
> 13th Dec 99 yu [*sic*] sold 80 lots (300 NT$) , hence yr balance =304 584.
>
> 17th April yu [*sic*] sold 100lots(500NT$) , balance = 204 584
>
> 200 lots on std by to be sold …now, Kerry will update yu [*sic*] .If sold, yr holding is left with 4584 only .

From this email, it can be inferred that prior to the sale of 80,000 MTK shares on 13 December 1999 (which will be dealt with below), Goh's holdings amounted to 384,584 MTK shares (*ie*, the sum of 80,000 and 304,584 MTK shares). This corresponds with the Filofax entry which stated that Goh had 384,584 MTK shares after selling 164,821 MTK shares to Chng. If the sale of 164,821 MTK shares from Goh to Chng had not taken place, the opening

balance in the email dated 26 April 2000 would *not* have reflected 384,584 MTK shares (*ie*, it would have reflected the original number of MTK shares held by Goh). It bears noting that Goh does not appear to challenge the veracity of the figures set out in the email dated 26 April 2000.

33 On the basis of P1, a sale of 300,000 MTK shares by Chng took place on 1 December 1999. On 9 December 1999, Chng sent an email to Goh, informing him of the sale of 300,000 MTK shares "at close to NT 300". Chng offered Goh a choice as to how much of that quantity he would wish to take as being a sale of the shares which belonged to Goh:

> … I strongly suggest that you consider selling … Let me know how many you want from this 300 lot …
>
> It's yr call , max is half -half each for this 300 lot .I need some money too …
>
> The money can be in next week. 14% of our share are held in MEdiatek till IPO day …

Goh replied on 10 December 1999, stating that he only wished to sell 80,000 MTK shares. This was acknowledged by Chng in an email dated 13 December 1999, where Chng informed Goh that he would advise the "actual amount after tax". Looking at the evidence as a whole, both parties do not appear to dispute the fact that Goh had sold 80,000 MTK shares, and that this formed part of Chng's sale of 300,000 MTK shares on 1 December 1999 (as reflected in P1). The only dispute that remains is in relation to the *proceeds* of the sale, which we will discuss further below.

34 The next transaction took place in April 2000, where Goh appeared to have sold a further 100,000 MTK shares. In the course of the hearing below, the main dispute between the parties concerned the question of whether Goh's sale of 100,000 MTK shares was attributed out of Chng's earlier sale of 300,000

MTK shares on 1 December 1999. In our judgment, the aforementioned question was not directly relevant to the issue of whether Chng had provided a complete account of the MTK shares to Goh, in so far as both parties do *not* dispute that Goh had, in fact, sold 100,000 MTK shares then. From the evidence, it appears that the market price for MTK shares had moved up from NTD300 in December 1999 to NTD500 in April 2000. In other words, the price of MTK shares had increased by approximately NTD200 over the course of five months. In this respect, regardless of whether Chng had attributed Goh's sale of 100,000 MTK shares to his earlier sale of 300,000 MTK shares on 1 December 1999, both parties do not dispute the fact that Goh's sale of 100,000 MTK shares was calculated based on the *prevailing market price* of 500NTD in April 2000. This was reflected in Chng's email dated 26 April 2000, where the price of NTD500 was appended in brackets next to Goh's sale of 100,000 shares on 17 April 2000 (see [32] above). With reference to P1, it is observed that there was no separate sale of 100,000 MTK shares in April 2000. Therefore, in the absence of any evidence to the contrary, we are inclined to accept Chng's claim that the subsequent sale of 100,000 MTK shares by Goh was attributed and marked against Chng's earlier sale of 300,000 MTK shares on 1 December 1999. This in effect meant that Chng had bought over 100,000 of Goh's MTK shares at NTD500. Presumably the market was then rising and Chng had thought it worthwhile to buy and take over those shares from Goh. In our view, the only issue arising out of Goh's sale of 100,000 MTK shares was whether Goh had received the proceeds from the sale, and *not* the mechanism by which Chng had effected the sale request.

35 Moving on, the final major transaction appeared to have taken place sometime in the later part of April 2000. In the email sent on 26 April 2000, Chng informed Goh that after the sale of 100,000 MTK shares on 17 April 2000

at the price of NTD500 per share, Goh had 204,584 MTK shares remaining. Chng also advised Goh that 200,000 MTK shares were on "std [*sic*] by to be sold" and that if Goh went ahead with the sale, he would only have 4,584 MTK shares remaining. Goh replied on the same day as follows:

> Thank you for the update,since it left only 4584shares after selling the 200lots,must well sell it all. I presume the calculation is correct this time because I don't have record.

Chng responded by way of an email on the next day, reproduced as follows:

> Is final …I just got it from Kerry .Yu can check . …I will tall [*sic*] Kerry to selling everthing …for yu.

36 In the course of the hearing below, Goh refused to accept that he had sold all his remaining MTK shares. He took the view that P1 did not record any sale of 204,584 MTK shares. In our view, Goh's refusal was not supported by the documentary evidence, and was also, to a certain extent, overly pedantic. With reference to P1, a sale transaction involving 200,000 MTK shares was recorded on 4 May 2000. This was consistent with the email exchange set out in the preceding paragraph, where Goh had agreed to sell his remaining MTK shares. In fact, in the absence of any evidence to the contrary, it was reasonable to assume that Chng had acted on Goh's instructions to "sell it all". In this regard, as with the case of the sale of the 100,000 MTK shares in April 2000, the only remaining issue was whether Goh had received the proceeds from the sale of his remaining MTK shares. The fact that P1 only reflected a sale of 200,000 MTK shares could well be a lapse. We cannot see any sensible reasons for Goh to want to retain this small portion of 4,584 shares. Looking at the evidence as a whole, we are unable to agree with the Judge's observation that Chng's submissions were "speculations inferred from various emails which *yield different interpretations*" [emphasis added]. In our view, it was reasonably

clear from the email exchange between Chng and Goh that the latter had sold *all his remaining MTK shares*. The only question was whether Goh had been paid in full for the sale of those 4,584 MTK shares.

37 Moving on to the issue concerning the sale proceeds, the Judge had arrived at the view that it was "unclear from the evidence" (at [59]) that Goh had received all the sale proceeds from the alleged sales of the MTK shares such that Chng no longer owes any duty to give an account to Goh. The Judge's findings on this specific issue were relatively brief and we find it useful to set out the Judge's reasoning in full (at [59]–[60]):

> 59 On the issue of whether [Goh] has received all the sale proceeds from the alleged sales of the MTK Shares such that [Chng] no longer owes any duty to give an account to [Goh], this is also unclear from the evidence before me. While I do not think that [Goh] is allowed to make bare and self-serving assertions that he does not know whether monies he received from [Chng] and/or Kerry were payments for any sale of the MTK Shares without providing evidence to that effect, that itself does not mean that [Chng] has discharged his duties to account to [Goh]. [Chng] also has to satisfy the court that [Goh] has received all monies due to [Goh], at the very least, under [Chng's] own case. This, [Chng] could not do. The most obvious example would be [Chng's] alleged purchase of 164,821 MTK Shares which was based on the Filofax entry. There has been no evidence produced by [Chng] that [Goh] has been paid for those shares.
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> 60 In fact, [Chng's] own case is that he cannot say for sure that [Goh] has received what he was due because there is a lack of evidence. Of course, [Chng] raises the point that [Goh] should have access to information which can shed light on this issue but has not come forward with such information. [Chng] also submits that evidence which could have proved his case was now unavailable due to [Goh's] delay in bringing the action. These points will be addressed below when I deal with the issue of laches.

It is observed that the Judge did not make specific findings on the sale proceeds arising out of each and every alleged transaction that had taken place (as compared to the analysis on the sale of the MTK shares, which was relatively

more detailed). To this end, the Judge only cited the sale of 164,821 MTK shares from Goh to Chng with reference to the Filofax entry as the "most obvious example" of how Chng had failed to discharge the burden of proving that Goh had received all proceeds from the multiple sale transactions.

38 In our judgment, a distinction has to be drawn between the case of a trustee having to establish that he no longer owes a duty to account as a result of there being settled accounts between the parties and the case of a trustee having to give an *actual account* in the course of defending a claim for an account. The Judge appeared to have considered only the latter approach in determining whether Chng still owes a duty to account for the MTK shares and the sale proceeds to Goh. As we have observed above (at [22]), the claim for a common account may be divided into three stages, namely: (a) whether the claimant has a right to an account; (b) the taking of the account; and (c) any consequential relief. While it is accepted that a trustee may, at the first stage of the claim, be able to prove that he or she no longer owes a duty to account by *providing an actual account* in the course of legal proceedings, that is only but one method by which the trustee is able to resist a claim for an account. For instance, if a trustee is able to produce a document evincing both parties' agreement that accounts have been settled conclusively, in the absence of any other evidence to the contrary, that should suffice and the trustee should not be made to go through the laborious, and if we may add, unnecessary, process of providing an actual account in the course of defending the action. Imposing a requirement for the trustee to provide an actual account at the first stage of the proceedings in each and every case will effectively render the three-stage process explained above nugatory. In other words, the first two stages will effectively be merged into one if the only way by which a trustee is able to

defeat a claim for an account by the beneficiary is to *render an actual account* in the course of the legal proceedings.

39 While it is acknowledged that, unlike the example given in the preceding paragraph, Chng has not managed to produce any documentary evidence to show that parties had agreed that accounts have been settled, that does not necessarily lead to the conclusion that Chng has to provide an actual account in the course of defending the present claim by Goh. Based on the evidence that has been led (such as the correspondence between the parties), the court may be able to draw an inference, on a balance of probabilities, that settled accounts have *already been provided* (*ie*, at some earlier point in time). In the circumstances, a trustee does not necessarily have to provide full accounts in order to defeat a claim for an account by a beneficiary. Nevertheless, in the absence of proper arguments by both parties on this specific issue, we are not prepared to reverse the Judge's findings in this regard.

40 We acknowledge that while Chng has managed to refer to a specific transfer of sale proceeds into Goh's bank account (as reflected in Goh's bank statements) for almost every transaction referred to above, he could not do so in relation to the alleged sale of 164,821 MTK shares from Goh to Chng. In this regard, the Judge had correctly observed that there was no evidence produced by Chng to support the fact that Goh had been paid for those 164,821 shares. In fact, this was the basis upon which the Judge (at [59]) arrived at the conclusion that Chng had not rendered complete accounts as regards the sale proceeds arising out of the alleged transactions.

41 As we have explained above (at [39]), we would have been prepared to make the finding that, on a balance of probabilities, Goh had received all sale

proceeds due to him. It was reasonably clear from the correspondence between the parties that Chng would provide updates to Goh as regards the sale transactions that had been effected from time to time. Apart from that, Goh's personal secretary, Magadalene Chin ("Magadalene"), would also write to either Chng or Kerry to clarify the specific details concerning the payment of the sale proceeds. For present purposes, we will refer to a number of emails that were exchanged between Magadalene and Kerry regarding the payment specifics. For instance, on 17 April 2000, Magadalene sent an email to Kerry enclosing Goh's bank account details:

> Hi! Kerry
>
> As requested, I append [Goh's] personal banking details for your necessary action:
>
> | | | |
> |---|---|---|
> | Name | : | [Goh] |
> | Bank's Name | : | The Development Bank of Singapore Ltd |
> | Bank's Address | : | Shenton Way Branch, Singapore |
> | Bank A/C No | : | [bank account number] |

Goh was also copied on the email. The precursor to this email was probably an earlier email sent by Chng to Kerry, where he gave directions for her to "TT the money direct to [Goh]" once the MTK shares were sold.

42 It will be recalled that Goh had sold all his remaining MTK shares sometime in the later part of April 2000 (see [35] above). The actual sale appeared to have taken place on 4 May 2000 with reference to the transaction date set out in P1. On 13 June 2000, Magadalene sent an email to Kerry, requesting a copy of the telegraphic transfer advice:

> Hi! Kerry
>
> Thank you very much for the arrangement on the sale of [Goh's] shares. *[Goh] has received the cheque from [Chng] pertaining to*

> *the TT that you have made. Is it possible to fax a copy of the TT advice to Derek's fax at 2860061 for his perusal and record please?*
>
> …
>
> [emphasis added]

It appears that Magadalene subsequently sent an email to Kerry's personal secretary, Frances Chou, to follow up on the request for a copy of the telegraphic transfer advice. Therefore, although Goh has repeatedly claimed, in the course of the trial, that he was not aware of any payment of the sale proceeds which were deposited into his bank account, with reference to the brief summary of the correspondence set out above, it was reasonably clear that his personal secretary, Magadalene, was following up on the specific details concerning the payment of the sale proceeds. It appears that Goh also wanted a copy of the telegraphic transfer advice for his "perusal and record" (in relation to the sale of all his remaining MTK shares in April 2000). In the circumstances, Goh would, in all likelihood, have sought clarification from Chng if any payment of the sale proceeds had not been effected. It also bears noting that the transactions involved relatively significant sums of money and it was highly unlikely that Goh would have kept silent if any payment had been omitted by Chng.

43 Therefore, looking at the evidence as a whole, we would have been prepared to arrive at the finding that Chng had, in fact, provided a complete account as regards both the MTK shares and the sale proceeds at the point in time when both parties were still communicating with each other (*ie*, before the highly publicised falling out between the parties over the management of Serial System). Nevertheless, as we have explained above (at [39]), we are not inclined to reverse the Judge's finding on this issue in the absence of proper arguments by both parties as to whether a trustee was required to provide an actual account

in the course of legal proceedings in order to defeat a beneficiary's claim for an account. In any event, we do *not* have to make a conclusive finding as regards the first issue, given that we are of the view that the doctrine of laches is *applicable in the present case*, an issue to which we shall now turn.

Whether the doctrine of laches applies

The applicable legal principles

44 The doctrine of laches has been summarised in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46] (and cited with approval by this court in *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]–[38] and *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [58]) as follows:

> Laches is a doctrine of equity. It is properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted (*Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 at [23]; *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [32]). This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced (*Re Estate of Tan Kow Quee* at [38]). …

It bears emphasising that, as was observed by Sundaresh Menon JC (as he then was) in *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [33], the basis for equitable intervention by way of the doctrine of laches is ultimately found in unconscionability. The inquiry should be approached in a broad manner, as

opposed to trying to fit the circumstances of each case within the confines of a preconceived formula derived from earlier cases. The inquiry depends mainly on the particular facts of each case, and to that end, the citation of earlier case authorities with points of similarity will, in most circumstances, be of limited assistance. Finally, it is acknowledged that the defendant bears the burden of proving that the doctrine of laches applies.

Analysis

45 In the present appeal, the prejudice relied upon by Chng in support of his argument that the doctrine of laches applies is that the relevant evidence has either been destroyed or lost due to the lengthy delay on the part of Goh in the commencement of legal proceedings. He points out that Goh had brought the claim more than 12 years after the sale of the MTK shares and that the delay had severely prejudiced his defence in so far as the bank records and other material evidence are no longer available. Apart from that, Chng also argues that the Judge had erred in relying on acquiescence as a primary factor in determining whether the doctrine of laches was applicable, and that the Judge had also failed to consider whether there was unconscionability based on the entire circumstances of the case.

46 In response, Goh argues that cases where laches will defeat a claim by a beneficiary against a trustee for recovery of trust property where the trust has arisen in a non-commercial relationship are extremely rare. Goh submits that the Judge was correct in finding that there was no causal link between the effluxion of time and the alleged prejudice suffered by Chng. He further argues that Chng has the positive duty to retain the necessary records to account to Goh for the MTK shares and that Chng had himself to blame if he had prejudiced his own defence by failing to do so. Finally, Goh also submits that he had given

consistent and legitimate reasons for not commencing legal proceedings earlier, and that he did not, in any way, encourage Chng to think that he had no longer any interest in the MTK shares.

47 We begin our analysis on the defence of laches by considering the length of delay before the action was instituted. It is not disputed by the parties that the final transaction involving the sale of Goh's remaining shares took place sometime in April or May 2000. In an email sent by Goh on 26 April 2000 at 6.32pm, he had stated (and here we quote him again):

> Thank you for the update,since it left only 4584shares after selling the 200lots,must well sell it all.I presume the calculation is correct this time because I don't have record.

Chng replied the next day to confirm that the calculation was final as he had just obtained the numbers from Kerry. He also informed Goh that he would tell Kerry to "sell everything … for y[o]u", which was presumably a reference to Goh's remaining MTK shares at that point in time. The email exchange between Chng and Goh is also consistent with the summary of transactions set out in P1, where a sale transaction of 200,000 MTK shares was recorded on 4 May 2000. Therefore, the length of delay came up to almost 13 years, given that Goh had only commenced legal proceedings against Chng on 29 April 2013.

48 We note Goh's attempt to rely on an exchange of letters between the solicitors for the parties which took place in 2002 and 2003. To understand the context of Goh's arguments in this regard, we provide a brief summary of the relevant correspondence that was referred to during the course of the hearing. Back in 2002, both parties were in a dispute concerning the account of rental for properties in China and Malaysia. The MTK shares were first highlighted in a letter sent by Goh's solicitors on 9 November 2002:

> Holding of Shares on Trust
>
> We are further instructed that your client is currently holding on trust for our client the shares to a Taiwan company named Media Tech.
>
> Accordingly, our client wishes to be given an update on the status of the said shares.

This was followed by a response from Chng's solicitors on 13 November 2002, where it was stated that:

> As for the alleged shares in the Taiwanese company, our client is not aware of any company known as Media Tech. Our client accordingly denies your client's allegations.

In a subsequent letter from Goh's solicitors dated 22 January 2003, it was clarified that the company in question was named "MTK". It was again alleged that Chng was holding the MTK shares on trust for Goh. Chng did not respond and Goh's solicitors sent a further letter dated 9 April 2003, seeking an update on the status of the MTK shares held by Chng.

49 Chng's solicitors finally replied on 11 April 2013 as follows:

> Your client first alleged shares in a Taiwanese company called Media Tech. The allegation now turns to MTK. Without any admission of liability and without prejudice to our client's position, please let us know the proof, if any, that your client is relying to support his allegation.

The final letter in that series of correspondence between the parties was sent by Goh's solicitors on 25 April 2003, wherein it was stated that:

> We are instructed that your client is well aware of the full particulars of the shares held on trust.
>
> Please let us know whether your client admits to the holding of the said shares on trust for our client.

50 Based on the exchange of letters above, Goh seeks to argue that he had not sat by idly without attempting to enforce his rights, and that the length of delay was shorter (assuming that the calculation of the delay should only start from 25 April 2003). We do not accept Goh's arguments for the following reasons.

51 First, as can be seen from the extracts of the letters set out above, it is reasonably apparent that Chng (or rather, Chng's solicitors) was merely being difficult (presumably reflecting the parties' animosity towards each other) and that nothing came out of the exchange of correspondence between the parties. Goh was merely restating his allegations without any attempt to provide further evidence to back his claim and bring the discussion forward. No evidence was led as to whether there was any further exchange of correspondence between the parties after the letter from Goh's solicitors dated 25 April 2003. It is, however, not in dispute that thereafter Goh did *not* commence legal proceedings against Chng. In the circumstances, we do not see what weight could be placed on the exchange of correspondence between 2002 and 2003. Indeed, the long silence thereafter, bearing in mind the state of their relationship then, is most telling. It would have been reasonable for Chng to believe that that matter is over.

52 Second, even if we were to accept Goh's argument that the calculation should only start on 25 April 2003, the length of delay would still be ten years, given that Goh only commenced legal proceedings against Chng on 29 April 2013. This was, by any measure, a rather significant delay on the facts of the present case.

53 Moving on, we are also satisfied that the delay on the part of Goh in commencing legal proceedings did, in fact, prejudice Chng in terms of the evidence available. We find it useful to first set out the Judge's observations on Chng's apparent lack of diligence in showing that he had been prejudiced as a result of Goh's delay in bringing proceedings against him (at [82]):

> … I was not impressed by [Chng's] lack of documentary evidence in relation to UOB informing him that his bank statements were no longer available. I accept [Goh's] submission that it would be unlikely for UOB to have only informed [Chng] of this through the phone when [Chng] had made a written request. Further, there was no evidence that [Chng] attempted to locate other documentary evidence such as cheque images apart from bare assertions that such documentary evidence were no longer available. It is observed here that MTK remains an ongoing entity. It is listed on the Taiwan Stock Exchange and with the ongoing support and resources of professional transfer agents. [Chng] should have at least attempted to seek records of the sale of the MTK Shares from the transfer agent, Chinatrust Commercial Bank, instead of simply relying on D3 which was sent by MK Tsai's secretary. [Chng] would have a far stronger case if he had done all these things, and was able to show to the court's satisfaction that all these missing items of evidence were truly not available to him.

It appears that Chng had, in the course of the present appeal, sought to introduce fresh evidence to remedy the shortcomings highlighted by the Judge in the extract above. No submissions were, however, made on whether such fresh evidence ought to be received on appeal. In the circumstances, we were not inclined to take into account the fresh evidence that was put forward by Chng in the present appeal.

54 While it is acknowledged that the Judge could not be faulted for being dissatisfied with the way Chng's case was run at first instance (at least on the issue concerning the applicability of the doctrine of laches), we are of the view that the Judge had placed too great an emphasis on the state of the *documentary*

evidence and failed to consider the fact that had the documents been available, Chng (and other potential witnesses, including Goh) may very well not be in a position to *recall* the exact sequence of events that had taken place or to make sense of the documentary evidence available. It must be recognised that during the period of time when the transactions had taken place, both parties were still working with each other on a basis of trust. It will be recalled that this was before the highly publicised falling out between Chng and Goh over a tussle for the control of Serial System, which eventually led to Chng's departure from Serial System in 2001. The nature of the relationship between the parties then (*ie*, when the joint investments between the parties were still ongoing) had resulted in a situation where limited formal documentation was kept. Most of the transactions were carried out by way of emails exchanged between the parties (including Kerry and the parties' respective secretaries) and it appears that no proper documentation, such as ledgers or receipts, was maintained at that point in time. In this context, greater weight will have to be placed on the fact that any attempt to reconstruct a complete account of the transactions at this juncture (*ie*, after the lapse of a significant period of time) will invariably involve the *personal recollection* of the parties. In fact, as we have observed above, internal transactions such as the sale of MTK shares from Goh to Chng (which was one of the transactions relied upon by the Judge in arriving at the finding that Chng had *not* provided complete accounts to Goh) will likely *not* be recorded in any formal documentation maintained by an external entity, such as the bank or the share transfer agent. It will be recalled that both parties had placed their signatures on a *handwritten* Filofax entry to record the sale of MTK shares from Goh to Chng. As mentioned earlier, in relation to such internal sales, no *actual* transfer of MTK shares involving the share transfer agent would have taken place at that point in time. This probably explains why the transfer was not reflected in D3. Therefore, in determining whether Chng would have

been prejudiced by Goh's delay in commencing proceedings, it is important to keep in mind the way in which both parties had carried out their joint investments.

55 As regards Goh's argument that Chng had the positive duty to retain the necessary records and that he had himself prejudiced his own defence by failing to do so, one must take into account the nature of the relationship between the parties as well as the manner in which they had conducted their affairs, which was on the basis of trust. Informality was the order of the day and Goh did not, at any point in time, insist on formal ledgers or transfer forms be kept in order to record the transactions that had taken place between them. For instance, Goh had sent the following email to Chng on 26 April 2000:

> Thank you for the update,since it left only 4584shares after selling the 200lots,must well sell it all.*I presume the calculation is correct this time because I don't have record.* [emphasis added]

In our judgment, it was unfair for Goh to belatedly insist on formal documentation to have been kept when that was clearly not the way parties had conducted their joint investments together. It must be acknowledged that different types of trust relationships result in differing standards being imposed as regards the duty to maintain proper documentation. In the case of a professional trustee, it would be reasonable to expect that a proper ledger will have to be maintained at all times. Formal transfer forms and receipts will also have to be kept in order to maintain a proper record of the transactions that had taken place. This stands in contrast to the personal relationship in the present case, where both parties had dealt with each other on a relatively informal basis due to their being close buddies then. The lack of proper documentation was apparent in the way both parties had to refer to a handwritten Filofax entry, a string of emails and transactional records in the bank statements in order to

recount the events that had taken place then. We find it useful to also refer to the Judge's finding that the duties owed by Chng were "not extensive given that the trust was an oral trust with no express terms" (at [24]). It is, however, also important to take into account the *nature of their relationship* (including the method by which it was established) in considering Goh's argument that Chng had prejudiced himself by failing to maintain proper documentation.

56 The question of whether there was any *causal link* between the prejudice suffered and the delay in the commencement of legal proceedings must be viewed in that light. The fact that greater emphasis has to be placed on the recollection of the parties involved necessarily means that there exists a *direct* causal link between the delay and the prejudice suffered. In this regard, our common experience tells us that memories fade over time and Chng will likely encounter difficulties trying to rebuild proper transactional records from the patchy evidence available. As regards Goh's argument that there was no causation in the present case because Chng had conceded that the documentation available was lost after his departure from Serial System in 2001, we are not able to appreciate how that follows. On the contrary, this state of affairs strengthens the case for laches to apply because greater emphasis would all the more have to be placed on Chng's ability to recall the relevant transactions that had taken place.

57 We also note that the Judge was cognisant of the fact that the relevant events had occurred almost 14 years ago and that the parties would have limited recollection of what happened then. Indeed, the Judge made the following observations right at the outset of his analysis (at [13]):

> It is pertinent to note that the events concerning the alleged trust took place almost 14 years ago, and *I did not find it surprising at all that neither [Goh] nor [Chng] could recall in detail*

> *much of what happened*. In that connection, more weight was placed on the documentary evidence (especially contemporaneous documents) that was produced by the parties. [emphasis added]

In this regard, while greater weight has to be placed on the documentary evidence in ascertaining *whether Chng had provided a complete account to Goh*, the fact that limited documentary evidence was available (due to the nature of the relationship between the parties) suggests that greater emphasis needs to be placed on the ability of the parties to recall the events that had taken place in determining *whether Goh's claim should be barred on account of the inordinate delay*.

58 Finally, we note that Goh has also attempted to rely on the following extract from *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 32nd Ed, 2010) ("*Snell's Equity 2010*") at para 5–019 in support of the argument that laches ought not to apply in the present case:

> Despite the enlarged scope of the Limitation Act 1980, there are many equitable claims to which these principles apply [referring to the doctrine of laches]. They include a claim to redeem a mortgage of pure personalty, or to set aside a purchase of trust property by a trustee of it, or a claim based on breach of fiduciary duty not involving a breach of trust. *They can even include a claim by a beneficiary against trustees of the recovery of trust property, although the circumstances in which laches will bar such relief* ***otherwise than where the trust has arisen in the course of a normal commercial relationship*** *are extremely rare.* [emphasis added in italics and bold italics]

We are unable to accept Goh's argument for the following reasons. First, in relying on the extract set out above, Goh has failed to give adequate consideration to the qualifier that the principle does *not* apply to a trust that has "arisen in the course of a normal commercial relationship". In this regard, we find it useful to refer to the English decision of *Hetul Navinchandra Patel and*

others v Ashwin Motichand Shah and others [2005] EWCA Civ 157 ("*Patel v Shah*") where Mummery LJ, in delivering the judgment of the English Court of Appeal, made the following instructive observations on the scope of the principle (at [33]):

> The effect of conduct by the claimants, which may properly be described as unconscionable, is to release a defendant trustee from the equitable trust obligation, which binds his conscience as the holder of the legal title for the benefit of others. In the case of *an ordinary trust by way of gift to trustees for the benefit of the beneficiaries, where the beneficiary is not required or expected to do more than receive what has been given for his benefit, it will obviously be extremely rare for laches and delay on the part of the beneficiary to make it unconscionable for that beneficiary to assert his claim to the beneficial interest, or for the trustee to claim that he has been released from the equitable obligations that bind his conscience.* [emphasis added]

Therefore, the principle that laches and delay will generally not be a bar to a claim by a beneficiary against trustees for the recovery of trust property was developed in the context of "an ordinary trust by way of gift to trustees for the benefit of the beneficiaries". It was not intended to cover trusts which arise in the course of a normal commercial relationship. In fact, the court in *Patel v Shah* had arrived at the view that the doctrine of laches could apply to bar the plaintiffs' claim for the recovery of trust property for the following reasons (at [34]):

> *The general commercial setting of the particular facts of this case make it, in my view, a different kind of case from that of a beneficiary under a gift trust.* As Lord Justice Keene pointed out in the course of argument, the persons investing in the purchase of the various properties held from time to time by the defendants were in substance trading in land. They were buying and selling properties *with a view to making a quick profit.* It was a *collaborative commercial venture*, in which those participating in it were expected to work together in making their contributions to achieve the aim of the joint ventures, the aim in the case of each acquisition being the same. The creation of resulting trusts arising on the purchases by the defendants of properties in their name, with contributions made by

> predecessors of the claimants and others, was, as Mr Justice Sullivan pointed out in oral argument, not the aim of the joint ventures. The trusts were a by-product or incidental equitable consequence, a vehicle for accomplishing the commercial aim. [emphasis added]

Returning to the facts of the present case, it could not be disputed that the trust relationship between Chng and Goh had arisen out of a commercial setting. Although it is recognised that both parties had conducted their relationship on the basis of trust and informality, it is clear that the joint acquisition of the MTK shares was carried out with a view to profit. This was not a case involving a gift trust that had arisen in a donative context. Goh's reliance on the extract from *Snell's Equity 2010* is therefore misplaced.

59 Secondly, we are of the view that a distinction ought to be drawn between a case where there are no factual disputes as regards the beneficiary's entitlement to the trust property and a case where such disputes exist. The principle that laches will not be applicable in a claim by a beneficiary against trustees for the recovery of trust property should not be extended to the latter scenario, especially where the factual disputes had arisen due to the loss of evidence over time. In this regard, we find it useful to refer to the Australian decision of *Orr v Ford and another* [1988-1989] 167 CLR 316, where it was observed in the joint judgment of Wilson, Toohey and Gaudron JJ as follows (at 330):

> The substance of the respondents' case in relation to laches was that of prejudice in defending the appellant's claim by reason that evidence which might earlier have been available was lost to them. Prejudice is a consideration properly to be taken into account in relation to laches, although the respondents were not able to point to any authority where such a consideration had defeated the claim of a beneficiary to specific property the subject of an express trust. *However, where entitlement depends on factual matters which are fairly open to dispute we see no reason why prejudice occasioned by the loss of evidence*

> *as a result of delay on the part of the claimant might not be raised in answer to such a claim.* [emphasis added]

Deane J also made the following observations (at 341):

> Ordinarily, it is difficult to envisage circumstances, falling short of waiver, release, election or estoppel, in which the laches of a beneficiary would produce a situation in which it was inequitable and unreasonable to grant relief in proceedings for the enforcement of an express trust in relation to trust property which remained in the possession of the trustee (or his personal representative). There are, however, at least two categories of cases where that is not so. *The first is where there is or has been dispute or mistake about the existence of the trust or the identity of extent of the trust property.* … [emphasis added]

Therefore, on the facts of the present case, the delay in the commencement of legal proceedings had resulted in the loss of evidence, primarily the ability of Chng to recall the events that had taken place. As a result, there are factual disputes concerning Goh's entitlement to any MTK shares or sale proceeds that may still be in Chng's possession. This is not a case involving a straightforward claim for an ascertained property in the trustee's possession. In the circumstances, we are of the judgment that the principle relied upon by Goh should not be extended to the present case. In the final analysis, we find that it is unconscionable for Goh to now seek an account from Chng after such an inordinate delay, especially when both parties had conducted their joint investment on a relatively informal basis with limited documentation.

Conclusion

60 For the reasons set out above, we hold that Goh's claim for an account of the MTK shares and the sale proceeds is barred on the basis that the doctrine of laches applies. The appeal is therefore allowed with costs, here and below. There will also be the usual consequential orders.

Sundaresh Menon	Chao Hick Tin	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge

Harry Elias SC, Andy Lem Jit Min and Farrah Joelle Isaac (Harry Elias Partnership LLP) for the appellant;
David Chan Ming Onn, Noraisha De Silva and Tan Su Hui (Shook Lin & Bok LLP) for the respondent.
