

Ong Wui Swoon v Ong Wui Teck
[2012] SGHC 216

Case Number : Suit No 385 of 2011/S
Decision Date : 30 October 2012
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Carolyn Tan Beng Hui and Au Thye Chuen (Tan & Au LLP) for the plaintiff; Soh Gim Chuan (Soh Wong & Yap) for the defendant.
Parties : Ong Wui Swoon — Ong Wui Teck

Probate and Administration

30 October 2012

Judgment reserved.

Woo Bih Li J:

1 The plaintiff Ong Wui Swoon (“the Plaintiff”) and the defendant Ong Wui Teck (“the Defendant”) are siblings. The Plaintiff alleged that the Defendant failed in his duty as an administrator of their late father Ong Thiat Gan’s estate (“the Estate”) to render an accurate account of its assets. She therefore sued the Defendant, asking him to not only render another account of all the Estate’s assets, but also to pay damages for his alleged breach of duty. The Plaintiff also asserted a beneficial interest in the sale proceeds of a private property, which she claimed the Defendant held on trust for their father.

The facts

Family background

2 The Defendant is the eldest son of Ong Thiat Gan (“the Father”) and Chew Chen Chin (“the Mother”). There were five other children. In descending order of position, their names are Ong Wui Tee, Ong Wui Jin, the Plaintiff, Ong Wui Leng, and Ong Wui Yong (collectively “the Ong Family”). Ong Wui Tee committed suicide in 1990.

3 The Father died intestate on 14 February 1984.

4 A schedule of the Estate’s assets (“the Estate Duty Schedule”) was subsequently prepared ostensibly by the Mother and the Defendant. On 13 May 1986, the Deputy Commissioner of Estate Duties certified the payment of estate duty in respect of the Estate’s assets as stated in the Estate Duty Schedule. Later, on 22 December 1986, the Grant of Letters of Administration was issued by the High Court. The Mother and the Defendant were appointed joint administrators of the Estate.

5 Both parties did not dispute that under the rules of intestate distribution then in force, the Mother as the surviving spouse was entitled to half of the Estate’s assets, and the six children were entitled to the other half equally. Each of the six children was therefore the beneficiary of one-twelfth of the Estate.

6 As for the Mother, she passed away on 8 January 2005, leaving a will dated 3 January 2005

which named the Defendant as its sole executor. The validity of this will was contested by the other four surviving children of the Mother. Hence, the Defendant filed District Court Suit No 2260 of 2005/H ("the 2005 DC Suit") to uphold the validity of the will. The will was upheld by the District Court in 2007. Appeals from the judgment in the 2005 DC Suit to the High Court (District Court Appeal No 1 of 2008/F) and the Court of Appeal (Civil Appeal No 4 of 2009/Q) were dismissed.

Procedural history

7 The dispute in this action centres primarily on the assets of the Estate.

8 The action was originally commenced as Magistrate's Court Suit No 10516 of 2010/B ("the 2010 MC Suit"). The Plaintiff successfully applied (in Originating Summons No 15 of 2011/B) to transfer the proceedings to the High Court.

9 At the High Court, the Plaintiff applied for summary judgment (in Summons No 2818 of 2011/C) against the Defendant for him, as one of the Estate's administrators, to render an account of all the Estate's assets. (This was one of the reliefs claimed in the amended Statement of Claim.) An Assistant Registrar granted the application on 1 August 2011 and ordered the Defendant to give a statement of accounts by 15 August 2011 ("the Summary Judgment").

10 On 8 August 2011, the Defendant tendered what he claimed to be an accurate account of all the Estate's assets ("the August 2011 Account") to the High Court and the Plaintiff. [\[note: 1\]](#)

The residential properties

11 Before I proceed further, I would elaborate on three residential properties which were mentioned in this dispute.

12 The first property is a Housing and Development Board ("HDB") flat located at Block 72, Marine Drive, #22-65, Singapore 440072 ("the Marine Drive flat"). According to the Defendant, it was owned by the Father and the Mother in joint tenancy until the Father died, and, subsequently, solely by the Mother until her death. [\[note: 2\]](#) The Defendant also told the Court that the Marine Drive flat had recently been sold, but no further details were provided. [\[note: 3\]](#)

13 The second property is a private apartment located at 30B Sea Avenue, Singapore 424251 ("the Sea Avenue property"). It was bought in 1983 for a stated price of \$330,000. [\[note: 4\]](#) This property was transferred to the Defendant upon completion of that purchase.

14 The Defendant claimed that the true purchase price of the Sea Avenue property was \$323,000 as a result of a vendor's rebate of \$7,000 (because the actual size of the Sea Avenue property was smaller than the vendor had represented). [\[note: 5\]](#) Apart from the Defendant's oral testimony, only two pieces of (circumstantial) evidence of this rebate were presented to the Court. The first was a handwritten squib "S\$323,000" on a letter of inquiry dated 23 May 1984 from the Inland Revenue Department to the Defendant. [\[note: 6\]](#) The second was the Notes of Evidence of the 2005 DC Suit, which showed the Defendant's brother Ong Wui Jin testifying under oath that the Sea Avenue property cost \$323,000. [\[note: 7\]](#)

15 On 6 June 2002, the Sea Avenue property was sold by the Defendant for \$575,000. [\[note: 8\]](#)

16 The third property is a private property located at 114 Pemimpin Place, Singapore 576111 ("the Pemimpin Place property"). On 10 December 1998, it was bought and transferred to the Defendant's wife, Doreen Tay, for a stated price of \$888,000. [\[note: 9\]](#) Apparently, the Defendant and his wife reside there.

The Plaintiff's claims

17 Dissatisfied with the alleged incompleteness and inaccuracy of the August 2011 Account given by the Defendant and having received no distribution from the Estate, the Plaintiff sought an account from the Defendant of all the Estate's assets, as well as damages for the Defendant's breach of duty as an administrator of the Estate. [\[note: 10\]](#)

18 The Plaintiff also claimed that the Sea Avenue property was held by the Defendant on trust for the Father from the time of purchase in 1983, and subsequently for the benefit of the Estate upon the Father's death. [\[note: 11\]](#)

19 It was further asserted that the Defendant, in breach of trust, "converted" to his own use the rental collected from the Sea Avenue property and the sale proceeds of said property. [\[note: 12\]](#)

20 The Plaintiff lastly alleged that the sale proceeds of the Sea Avenue property could be traced into the purchase of the Pemimpin Place property. She therefore claimed a beneficial interest in the Pemimpin Place property too. [\[note: 13\]](#)

The Defendant's response

21 The Defendant maintained that the August 2011 Account was accurate.

22 He denied that he had wrongfully and in breach of trust converted the Estate's assets, since the balance of the Estate was "negative" and there was thus nothing to convert. In fact, the Defendant said that he remained in deficit as a result of not being able to get reimbursement for the testamentary and administration expenses he incurred on behalf of the Estate. [\[note: 14\]](#)

23 The Defendant also argued that the Sea Avenue property was never held on trust for the Father, and that this must have been so since the latter did not intend to contravene the HDB and Central Provident Fund ("CPF") rules. [\[note: 15\]](#) There was consequently no breach of trust to complain about.

24 Finally, the Defendant said that there was no question of the Plaintiff having any beneficial interest in the Pemimpin Place property, since he had not used the sale proceeds of the Sea Avenue property towards the purchase of the Pemimpin Place property (an asset in which the Defendant himself had no beneficial interest at all). [\[note: 16\]](#)

The preliminary issues of limitation, laches and acquiescence

25 The Defendant raised a preliminary argument to the Plaintiff's claims. As the Plaintiff had commenced the present action some 27 years after the Father's death, the Defendant contended that a statutory limitation period barred the Plaintiff's claims. For the same reason, the doctrines of laches and/or acquiescence should apply as well. [\[note: 17\]](#)

26 The Plaintiff argued however that limitation did not apply because she could not, even with reasonable diligence, have found out about the Defendant's fraudulent breach of trust until the occasion of the Defendant's oral testimony in the 2005 DC Suit. [\[note: 18\]](#) She also argued that the Defendant was, for a similar reason, not entitled to rely on the doctrines of laches and acquiescence.

27 After careful consideration, it is my view that the defences of limitation, laches or acquiescence could not avail the Defendant of any relief, but not for the reasons the Plaintiff put forth. As I will explain at [42]-[44] below, I do not need in this case to inquire into the merits of the arguments raised by each party. Since submissions were made by both sides, however, I will pass brief remarks on their arguments. I then set out my reasons as to why, in the circumstances, the Defendant's contentions on limitation, laches and acquiescence were moot.

The defence based on the Limitation Act

28 Before I discuss the statutory provisions, I would note as a matter of definition that "trust" as defined in the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") includes the duties incident to the office of a personal representative, and "trustee" includes a personal representative (s 2(1) of the Limitation Act, read with s 3 of the Trustees Act (Cap 337, 2005 Rev Ed)). As an administrator of the Estate, the Defendant was a "trustee" for the purposes of the Limitation Act.

29 In response to the Plaintiff's claims for, *inter alia*, an account of the Estate's assets and an interest in the Pemimpin Place property as the asset into which the sale proceeds of the Sea Avenue property could be traced, the Defendant relied on the statutory time bar provided in s 23 of the Limitation Act. [\[note: 19\]](#) That section reads as follows:

Limitations of actions claiming personal estate of deceased person

23. Subject to section 22(1), no action—

(a) in respect of any claim to the personal estate of a deceased person or to any share or interest in the estate, whether under a will or on intestacy, shall be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued; and

(b) to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.

30 Section 23 is expressly stated as being subject to s 22(1) of the same Act, and this exception was pleaded by the Plaintiff. [\[note: 20\]](#) Section 22(1) provides that:

Limitations of actions in respect of trust property

22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of

the trustee, or previously received by the trustee and converted to his use.

31 Notwithstanding that both parties appeared to accept the application of s 23 to the Plaintiff's claims, this was not so obvious to me. For example, as regards the claim to trace the proceeds of the sale of the Sea Avenue property, it is arguable that the Defendant should have pleaded s 21 of the Limitation Act (that section is titled "Limitation of actions to recover money secured by mortgage or charge or to recover proceeds of sale of land"). Then, as against the Plaintiff's claim for an account of the Estate's assets, s 6(2) of the Limitation Act seemed to be the more suitable provision applicable. Section 6(2) reads as follows:

6.—(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

32 Therefore, while I do not wish to express any definitive view on this matter, it seems that the time bar provided in s 23 of the Limitation Act may not apply to *all* actions in relation to the administration of a deceased person's estate. That section may apply *only* to actions brought *in respect of a claim to the personal estate of a deceased person or any share or interest thereof*.

33 In this regard, I refer to the views expressed by Chadwick LJ in *Re Loftus* [2007] 1 WLR 591 ("*Loftus*"). The plaintiffs there had claimed, *inter alia*, for an account of the administration of the estate to be rendered by the defendant administratrix. The trial judge accepted that this claim fell within s 22(a) of the UK Limitation Act 1980 (c 58) ("UK Limitation Act 1980"), which is *in pari materia* with s 23(a) of our Limitation Act (see [29] above).

34 On appeal, however, Chadwick LJ (with whom the other members of the court agreed) held that this was an incorrect position for the trial judge to have taken (*Loftus* at [19] and [32]):

19 ... I find it difficult to understand why a claim against an administrator for an account of the assets an unadministered estate [*sic*] which have come into his or her hands (and for payment of the amount found due on the taking of that account) should not fall within section 21(1) of the 1980 Act—read with section 23 of the Act. And, if the claim does fall within section 21(1) of the Act, it will not be within section 22.

...

32 *In my view there can be no doubt that the claims against Mrs Gaul to an account and payment are claims in respect of property, real and personal, which came into her hands as administratrix of the deceased's estate; that those claims fall within section 21(1)(b) of the 1980 Act—either directly or indirectly, by reason of section 23 of that Act; and that having regard to the opening words of section 21, "No period of limitation prescribed by [the 1980 Act] shall apply" to those claims. Further, because they are claims within section 21(1)(b) of the Act, they are not claims to which section 22 of the Act has any application.*

[emphasis added]

35 Sections 21(1), 22 and 23 of the UK Limitation Act 1980 read as follows:

21.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party

or privy; or

(b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

22. Subject to section 21(1) and (2) of this Act—

(a) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy) shall be brought after the expiration of twelve years from the date on which the right to receive the share or interest accrued; and

(b) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

23. An action for an account shall not be brought after the expiration of any time limit under this Act which is applicable to the claim which is the basis of the duty to account.

36 I will make only two observations on these provisions cited immediately above. First, s 21(1)(b) of the UK Limitation Act 1980 is *in pari materia* with s 22(1)(b) of our Limitation Act (see [30] above).

37 Second, s 23 of the UK Limitation Act 1980 is phrased and intended to operate in a different way from s 6(2) of our Limitation Act (see [31] above). The former provision allows for a *varying* limitation period depending on the claim which is the basis of the duty to account. Less charmingly put, the limitation period in the UK for an action for an account is “parasitic” on the limitation period relating to some other independent cause of action (Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 6th Ed, 2010) at para 17.002). The latter provision, however, lays down a *fixed* limitation period of six years for an action for an account. This difference in the Singapore and UK positions appears not to have been noticed by the contributors to *Halsbury’s Laws of Singapore* (see vol 9(4) (LexisNexis, 2012 Reissue) at para 110.950) where they assert the UK position instead of the Singapore one.

3 8 *Loftus* is law in the UK that, in the context of estate administration, the limitation period applicable to an action for an account and for payment of amounts found due upon the taking of the account is *not* that laid down in respect of claims to the personal estate of a deceased person. Rather, such an action for an account and payment is seen as a claim to trust property in the possession of the personal representative. In Singapore, the situation is less clear since the action for an account *by itself* may already be caught by s 6(2) of our Limitation Act. There is an important question as to how ss 6(2), 22(1) and 23(a) of our Limitation Act operate *inter se* in actions for an account in the context of estate administration (see, *eg*, the Straits Settlements case of *Re Yap Teck Hee* (1940) 9 MLJ 122 at 125-126, where the court in an estate administration suit dealt with the arguments on limitation by looking at the substance and not the form of the claimed relief). However, as this issue was not argued before me and is, in any event, moot as explained later below at [42]-[44], I will say no more.

Laches and acquiescence

39 In addition to the Limitation Act, the Defendant also pleaded the equitable doctrines of laches and acquiescence. If a defence based on the Limitation Act fails, this does not end the inquiry. Section 32 of the Limitation Act states that nothing in that Act “shall affect any equitable jurisdiction

to refuse relief on the ground of acquiescence, laches or otherwise". It has been repeatedly held that s 32 preserves a defendant's right to raise a defence of laches or acquiescence, notwithstanding the operation of any provision in the Limitation Act (see, eg, *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [27]-[31] ("*Tan Kow Quee*").

40 In the circumstances, however, the arguments on laches and acquiescence could be disposed of without inquiring into their merits (see [42]-[44] below). If I had found it necessary to so inquire, however, it was arguable that the Plaintiff's claims were barred by laches. First, the period between the Father's death and the commencement of the instant proceedings was some 27 years. That is without doubt a long period of time. One of the factors in *Tan Kow Quee* supporting the defence of laches there was the deceased having passed away some 50 years before the action was instituted.

41 Second, it was relevant that, during the interim delay of 27 years, one of the administrators of the Estate (*viz*, the Mother) had passed away. Given that the Plaintiff already believed *prior* to the Mother's death, rightly or wrongly, that there was at least one significant Estate asset (*ie*, the Sea Avenue property) left undistributed in the hands of the Defendant (see [122] and [125] below), it was unclear why the Plaintiff had not brought proceedings against the Defendant any sooner to claim either for an account of the administration of the Estate or for the Sea Avenue property itself (or its sale proceeds).

The failure to appeal against the Summary Judgment is dispositive

42 As I have mentioned, however, I am content to dispose of both parties' arguments on limitation, laches and acquiescence on another ground.

43 It will be remembered that the Summary Judgment was given on 1 August 2011 (see [9] above). That required the Defendant to produce a statement of accounts of the Estate's assets. The Defendant did not challenge the Summary Judgment by way of an appeal. For this reason, the Plaintiff pointed out that the Defendant's liability to account was not in dispute. [\[note: 21\]](#)

44 In my view, the Defendant's failure to appeal against the Summary Judgment is dispositive of the issue, and obviates the need in this case to examine the merits of any argument on limitation, laches or acquiescence. The Summary Judgment is an Order of Court requiring compliance with the orders made therein, until and unless it is subsequently set aside by another ruling. There was no appeal by the Defendant against the Summary Judgment. Indeed, he even sought to comply with the Summary Judgment by producing the August 2011 Account. It is therefore no longer open to the Defendant to argue the defences of limitation, laches or acquiescence.

The disputed matters in this case

45 Having dealt with the preliminary issue of the defences of limitation, laches and acquiescence, I now focus on the substantive matters which were contested by each side.

The Defendant's admission of liability for non-distribution

46 It was not disputed by both parties that, after the Father died in 1984, the Defendant told the Plaintiff that the Estate was "negative", meaning that its liabilities exceeded its assets.

47 The evidence as to precisely when the Defendant told the Plaintiff this was unclear. According to the Plaintiff, it was said some time after the Father's death but before she was chased out of the Marine Drive flat by the Defendant in 1989. [\[note: 22\]](#) The Defendant denied she was chased out,

however, and stated that the Plaintiff moved out because she could not get along with Ong Wui Tee, who had mild mental depression then. The Defendant insisted that this was for the Plaintiff's own safety. [\[note: 23\]](#)

48 The Defendant also did not say exactly when he told the Plaintiff that the Estate was "negative". In his affidavit of evidence-in-chief ("AEIC"), he stated that after the grant of letters of administration to the Mother and himself, they discovered that they were unable to realise the Father's shares in some private companies and consequently, the Estate was "negative". [\[note: 24\]](#)

49 The Defendant also said that he thought the balance "negative" at that time because "after deducting the assets not available for intestate distribution ... the remaining assets realised [were] not ... enough to cover the liabilities and testamentary and administrative expenses incurred". [\[note: 25\]](#)

50 In his AEIC, the Defendant stated that "whatever was realised was only enough to pay the estate duty". [\[note: 26\]](#)

51 Subsequently, in the 2005 DC Suit, the Defendant gave the following evidence under oath (as recorded in the Notes of Evidence in that Suit on 1 September 2006, pp 57-59): [\[note: 27\]](#)

Q: Have you fulfilled duties to sibling in administration of [the Estate]?

A: Yes.

Q: How have you fulfilled duties?

A: I am co-administrator. Mother main administrator.

...

Q: How did you administer father's estate?

A: Went through lawyer.

Q: What did you do in administering estate?

A: Gathered all his assets and liabilities and gave it to lawyer.

Q: *You did not distribute the assets to your siblings and mother?*

A: *Mother took everything.*

Q: *You did not therefore fulfill duty as administrator to your siblings?*

A: *It is true. I am controlled by my mother.*

Q: *You took oath as administrator but are in breach by failing to distribute?*

A: *I admit that. I listen to my mother. Mother has to survive. All children working except minor.*

Q: *Law requires you to distribute half to mother and other half to siblings?*

A: Yes.

Q: *You are in breach of Intestate Succession Act rules of distribution?*

A: Yes.

...

Q: *You failed to distribute net value to beneficiaries?*

A: Yes.

Q: *They have a claim against you?*

A: *They have a right.*

[emphasis added]

52 To the Plaintiff, these answers constituted an admission by the Defendant that the latter had breached his duties as an administrator of the Estate by failing to distribute the Estate's assets to the beneficiaries. This led the Plaintiff to file a Magistrate's Complaint ("MAG-3392-2006") on 17 October 2006. [\[note: 28\]](#)

53 However, MAG-3392-2006 was closed without any findings made by the Magistrate. [\[note: 29\]](#)

54 On the other hand, the Defendant insisted that the purported admission of liability in the 2005 DC Suit arose: [\[note: 30\]](#)

from a mistaken belief that my father's CPF was meant for intestate distribution ... [C]larification was subsequently given during DC 2260/2005/H itself that my father had nominated my mother for his CPF, which hence became unavailable for intestate distribution. *My admission ... was made on the premise of joint and several liability, by virtue of the CPF going to my mother instead of the estate, if such was not in accordance with the rules of distribution under the Intestate Succession Act, and not that I admitted to breach of trust by converting and taking assets for my own use.*

[emphasis added]

55 What I understood the Defendant to be saying was this: he had admitted to breaching his duties as an estate administrator *only because* he had (mistakenly) thought that the Father's CPF monies—which went to the Mother—were to be distributed amongst *all* the beneficiaries. After the Defendant found out that those monies were given lawfully to the Mother in her capacity as the Father's CPF nominee, the Defendant ceased to have any liability since (in his view) there was no breach in the first place. However, the Defendant was unclear or unforthcoming as to when he actually discovered the above information and why he did not discover it earlier. [\[note: 31\]](#) I do not accept his explanation for his admission. I am of the view that he did admit in the 2005 DC Suit that he was in breach of his duties as an administrator of the Estate and he was using the Mother as an excuse.

Did the Estate have money to send Ong Wui Yong for an overseas education?

56 In the course of cross-examination, the Defendant was asked to explain one particular incident relating to the outgoings of the Estate. This was the matter of Ong Wui Yong's educational expenses. Ong Wui Yong is the youngest sibling.

57 The Defendant claimed that all the members of the Ong Family attended a family meeting in 1988. At the meeting, the matter of funding Ong Wui Yong's university education in the United States was raised. [\[note: 32\]](#)

58 The meeting agreed that the residual funds of the Estate would be used to finance Ong Wui Yong's education in the United States, *in lieu of reimbursement to the Defendant for the testamentary and administration expenses incurred by the Defendant*. This was the Defendant's position in the August 2011 Account, his AEIC, [\[note: 33\]](#) and in his oral testimony. [\[note: 34\]](#)

59 However, the Defendant had also said that the balance of the Estate was "negative" (see above at [46]-[49]). He now appeared to throw this statement into doubt by his own testimony that *the Estate had money to pay for Ong Wui Yong's overseas education*.

60 After much "clarification" from the Defendant, I understood the Defendant to be saying this: it was the Defendant's altruism which led him to forego any reimbursement from the Estate for the testamentary and administrative expenses he had incurred on behalf of the Estate. Instead, some of the Estate's funds would be channelled to finance Ong Wui Yong's overseas education. The Defendant had listed the testamentary and administrative expenses in the August 2011 Account and this contributed to the final negative figure in the August 2011 Account (see [65]-[66] below). However, the August 2011 Account did *not* refer to payment of expenses for Ong Wui Yong's overseas education.

61 The Plaintiff, on the other hand, denied that the 1988 meeting even took place. She was therefore not aware that the Estate's funds had been used to finance Ong Wui Yong's overseas education. [\[note: 35\]](#)

62 The burden of proof was on the Defendant to establish that the family had reached the alleged agreement. In the absence of further evidence and the absence of documentary evidence to show that the Estate's funds had been used to finance Ong Wui Yong's overseas education, I reject the Defendant's assertions.

The Defendant's accounts of the Estate's assets

63 I come now to one of the main points of contention between the parties. The Plaintiff alleged that the Defendant's accounts of the Estate's assets, as presented in the Estate Duty Schedule and the August 2011 Account (collectively "the Accounts"), were incomplete and inaccurate. Her allegation was based on certain documents in a file which she claimed to have retrieved from Ong Wui Jin in July 2011 ("the Estate file"), after she threatened that sibling with legal action if he did not hand it to her. [\[note: 36\]](#)

64 I will look at the relevant documents later. I first reproduce the Estate Duty Schedule here, as follows:

ASSETS		
a)	58,556 shares with Kenwell & Co Pte Ltd @ \$1.00 each	\$58,556.00
b)	22,357 shares with Mecman Engineering Consultants Pte Ltd	\$13,904.00
c)	4,400 shares with Kenwell Freight Express (S) Pte Ltd @ \$1.07 each	\$4,708.00
d)	350 shares in OCBC @ \$11.12½ each	\$3,893.75
e)	Blk 72 Marine Drive #22-65 Section 10C(1)(a)	Exempt
f)	Fixed deposit receipt No 210217 with Asia Commercial Bank Ltd	\$2,475.00
g)	Fixed deposit receipt No 205447 with Asia Commercial Bank	\$77,525.00
h)	S/A No [xxx] with OUB Ltd	\$2,264.01
i)	Central Provident Fund	\$52,177.34
j)	Motor car EE 2226 S	\$20,000.00
Property in respect of which the Grant is not to be made:		
Account 'B'		
Malaysia		
k)	100 shares with United Plantation @ \$5.30 each	\$530.00
l)	1,900 shares with Malaysian Resources Corp Bhd @ \$2.27½ each	\$4,322.50
Account 'C'		
m)	Gift to Ong Wui Teck	\$85,000.00
		<hr/>
		\$319,904.60
Deduct	Exemption under Section 10C(1)(b)	
	All other property	\$100,000.00
		<hr/>
		\$219,904.60
Less	Debts \$77,416.01	
	Funeral expenses \$1,000.00	\$78,416.01
		<hr/>
Net value:		\$141,488.59

65 The August 2011 Account was similar to the Estate Duty Schedule, the most noticeable change being the addition of two extra columns. It is reproduced here, as follows:

	Per Estate Duty Unrealised / Not Realised Affidavit/ Schedule available for intestate distribution	
Assets		
a) 58,556 shares with Kenwell & Co Pte Ltd @ \$1.00 each	\$58,556.00	
b) 22,357 shares with Mecman Engineering Consultants Pte Ltd	\$13,904.00	
c) 4,400 shares with Kenwell Freight Express (S) Pte Ltd @ \$1.07 each	\$4,708.00	
d) 350 shares in OCBC @ \$11.13 each	\$3,893.75	\$3,893.75
e) Blk 72 Marine Drive #22-65 Exempt (held jointly with mother) Section 10C(1)(a)		
f) Fixed deposit receipt No. 210217 with Asia Commercial Bank Ltd	\$2,475.00	\$2,475.00
g) Fixed deposit receipt No. 205447 with Asia Commercial Bank	\$77,525.00	\$77,525.00
h) S/A No. [xxx] with OUB Ltd	\$2,264.01	\$2,264.01
i) CPF (Mother as nominee)	\$52,177.34	\$52,177.34
j) Motor car EE 2226 S (not sold; used as family car)	\$20,000.00	\$20,000.00
Property in respect of which the Grant is not to be made:		
Account 'B'		
Malaysia		
k) 100 shares with United Plantation @ \$5.30 each	\$530.00	\$530.00
l) 1,900 shares with Malaysian Resources Corp Bhd @ \$2.275 each	\$4,322.50	\$4,322.50
Account 'C'		
m) Gift to Ong Wui Teck	\$85,000.00	\$85,000.00
Computation difference by Estate Duty Dept	\$598.50	
	<hr/>	<hr/>
	\$319,904.60	\$86,157.76

Deduct	Exemption under \$100,000.00 Section 10C(1)(b) All other property	
Liabilities		
Less	Debts – bank \$77,416.01 overdraft	\$77,416.01
	Funeral Expenses (as allowed by Estate Duty Dept) \$1,000.00	\$1,000.00
	<hr/>	<hr/>
	\$141,488.59	\$7,741.75
Less	Testamentary, probate administration expenses	
	Estate duty \$8,398.61	
	Income tax liability \$7,727.77	
	Legal & professional fees \$4,200.00	
	\$2,000.00	
	Funeral expenses (over and above amount allowed by Estate Duty Dept) \$7,000.00	
	Expenses on father's medical/hospital bills/alternative medical treatment, other incidental & miscellaneous expenses	
		-\$21,584.63
		negative value

66 Presumably, the Defendant was also relying on the negative figure finally arrived at in the August 2011 Account to support his contention that the balance of the Estate was “negative” (see [46]-[49] above).

Were the Accounts complete and accurate?

67 As mentioned, the Plaintiff argued that the August 2011 Account was incomplete and inaccurate.

68 Before I deal with each of the various assets which she claimed were owned by the Estate and unaccounted for, I should point out that the Plaintiff engaged a certified public accountant Mr Ong Boon Lee (“the Accountant”) to comment on the August 2011 Account. A report dated 18 April 2012 was subsequently prepared by the Accountant (“the Report”). [\[note: 37\]](#)

69 The Report provided the following information:

- (a) the amounts received by the Estate for its shares in Mecman Engineering Consultants Pte Ltd ("Mecman") and Kenwell Freight Express (S) Pte Ltd ("Kenwell Freight") were \$5,365.68 (22,357 shares at \$0.24 per share) and \$4,708 (4,400 shares at \$1.07 per share) respectively;
- (b) the estimated scrap value of a car owned by the Father was \$6,000. I add that the car was a Mercedes Benz 200 with the licence plate number EE 2226 S ("the Car"); and
- (c) the share prices of certain Malaysian companies as at 23 March 2012 were:
 - (i) United Plantations Bhd at \$10.33 (RM 24.80/2.4) per share;
 - (ii) Malaysian Resources Corp Bhd at \$0.79 (RM 1.9/2.4) per share.

These amounts and valuations were not challenged by the Defendant.

70 The Report also mentioned that the Defendant had admitted on 9 September 2010 (in the 2010 MC Suit; see above at [8]) that the Sea Avenue property, which was purchased with a gift of \$85,000 from the Father, was held in trust for the Estate. It went on to say that the \$85,000 was 25.76% of the purchase price of \$330,000 and as the Sea Avenue property had been sold for \$575,000, the Estate's share of those proceeds was 25.76% of \$575,000, or \$148,120.

71 I would say at the outset that as regards the statement in the Report about the Defendant having admitted in the 2010 MC Suit that the Sea Avenue property was held on trust for the Estate, the Accountant had simply adopted the Plaintiff's allegation. [\[note: 38\]](#) He did not appear to have checked the veracity of the allegation for himself because, as I will elaborate below, the evidence on which the Plaintiff was relying did not amount to such an admission by the Defendant. Indeed, the Defendant was rejecting any suggestion of such a trust.

72 The Report was therefore not helpful on the Sea Avenue property which was the most valuable asset in issue. With that, I turn now to the assets which the Plaintiff claimed belong to the Estate or which were otherwise stated in the Accounts.

(1) Shares in Kenwell Freight and Mecman

73 The Plaintiff claimed that the Estate's shares in Kenwell Freight and Mecman were wrongly stated as being unrealised in the August 2011 Account.

74 The Defendant admitted that the Estate's shares in Kenwell Freight and Mecman were realised sometime in 1988 ("the Realised Shares"). [\[note: 39\]](#)

75 According to written correspondence in June 1988 between the Estate and Kenwell Freight, Kenwell Freight agreed to repurchase the Estate's 4,400 shares in Kenwell Freight at \$1.07 per share, making a total of \$4,708. [\[note: 40\]](#) Similarly, letters in June and July 1988 showed that Mecman agreed to buy the Estate's 22,357 shares in Mecman at \$0.24 per share, making a total of \$5,365.68. [\[note: 41\]](#) Presumably, this was how the Accountant had derived the same figures as stated in the Report.

76 The sale proceeds from the Realised Shares therefore amounted to \$10,073.68 ("the Shares

Sale Proceeds”).

77 However, the Defendant claimed that \$5,000 of the Shares Sale Proceeds had been used to repay one Mr Eu Siak Fu, a creditor of the Father. [\[note: 42\]](#) Nevertheless, the Defendant was not able to provide any evidence, apart from his own testimony, of the payments to Mr Eu.

78 Mr Eu was not listed as a creditor of the Estate in the Estate Duty Schedule. The Defendant, when cross-examined on this, first said that Mr Eu had not approached the Estate “prior to [the] grant of probate [*sic*]”. [\[note: 43\]](#) When counsel then asked why an amended schedule was not filed subsequently in order to reduce the quantum of estate duty, the Defendant replied that he could not recall but the sum was “not significant enough to do that [since] the legal fees would have been much more”. [\[note: 44\]](#) In any event, the Defendant did not disclose in the August 2011 Account that he had received the Shares Sale Proceeds or that he had used these proceeds. Instead, as mentioned above, he had stated that the shares in question were unrealised for intestate distribution. This was misleading. I do not accept the Defendant’s explanation about the payment of \$5,000 to Mr Eu.

79 The Defendant also said that some of the Shares Sale Proceeds went towards paying for Ong Wui Yong’s relocation to the United States for his studies. [\[note: 45\]](#) However, the Defendant did not satisfactorily establish that part of the Shares Sale Proceeds was used to pay for Ong Wui Yong’s overseas educational expenses (see also above at [62]).

(2) Oversea-Chinese Banking Corporation Limited (“OCBC”) shares

80 In the course of cross-examination, the Defendant was asked about the shares in OCBC held by the Estate (“the OCBC Shares”). The August 2011 Account showed the OCBC Shares to be “realised”.

81 The Defendant said that the OCBC Shares had been transferred into the Mother’s name *in her capacity as an administrator of the Estate*. [\[note: 46\]](#)

82 When questioned further, the Defendant gave an explanation which I understood to be to the following effect. As the Mother had satisfied the Estate’s estate duty liabilities from her own funds, the Estate transferred the OCBC Shares to her as a form of reimbursement. However, this explanation only came out in the course of his cross-examination. [\[note: 47\]](#)

83 There was another point which was related to the “reimbursement” of the Mother. The Defendant appeared to be saying that he had placed the OCBC Shares under the “realised” column in the August 2011 Account, not because the OCBC Shares had actually been sold in the market for money, but because they were used to reimburse the Mother in kind for her having paid the Estate’s estate duty liabilities or part thereof. [\[note: 48\]](#)

84 Yet there was no other evidence to establish that the Mother had in fact paid any estate duty for the Estate and, if so, how much. I reject the Defendant’s explanation that the Mother had paid any estate duty for the Estate.

(3) Tay Cheng Weng & Co (Pte) Ltd (“TCWC Pte Ltd”) shares

85 The Plaintiff alleged that the Estate’s 15,000 shares in TCWC Pte Ltd were unaccounted for. [\[note: 49\]](#) However, as I will explain, it appeared in the end that those shares *had* been accounted for.

86 An important point was made by the Defendant in this regard. He submitted in closing that TCWC Pte Ltd was actually the former name of Kenwell & Co (Pte) Ltd ("Kenwell") (this is not the same company as Kenwell Freight referred to at [69(a)] above). [\[note: 50\]](#) The Plaintiff did not state a contrary position in her closing submissions in reply. I note further that the TCWC Pte Ltd share certificates in evidence showed a typewritten notation "Kenwell & Co. (Pte) Ltd" at the top of each certificate. [\[note: 51\]](#) In the absence of further evidence, I accept that TCWC Pte Ltd and Kenwell are one and the same company.

87 The number of shares owned by the Estate in Kenwell/TCWC Pte Ltd, as represented by all the Kenwell and TCWC Pte Ltd share certificates in evidence, totalled 58,556 ("the Kenwell Shares"). [\[note: 52\]](#) This matched the number of Kenwell shares already disclosed in the Accounts. I would point out also that when Plaintiff's counsel cross-examined the Defendant, she took no issue with him on the 15,000 TCWC Pte Ltd shares allegedly unaccounted for.

88 I therefore conclude that the Estate's shareholding in Kenwell was fully disclosed in the Accounts.

89 The Defendant admitted that he had not realised the Kenwell Shares and distributed the proceeds among the beneficiaries. [\[note: 53\]](#) However, there was documentary evidence that this company was wound up by an order of court on 13 December 2002, with the Official Receiver appointed as liquidator. [\[note: 54\]](#) In the circumstances, I accept that these shares have no realisable value.

(4) Haw Par (London) Limited shares

90 The Plaintiff discovered from the Estate file copies of two share certificates showing the Father as the registered shareholder of a total of 2,000 shares in Haw Par (London) Limited. [\[note: 55\]](#) These shares were not disclosed in the Accounts.

91 On this particular non-disclosure, the Defendant gave the reason that he did not have the Estate file which was left with the Mother and he had only received copies of documents therein from the Plaintiff recently. [\[note: 56\]](#) The Plaintiff's position was that she in turn had to obtain that file from another brother Ong Wui Jin after threatening that sibling with legal action if he did not hand the file over to her (see [63] above). After she obtained it, she disclosed it to the Defendant.

92 The Defendant also said that Haw Par (London) Limited was delisted. [\[note: 57\]](#) No useful elaboration was given. Is it an existing company? Was it liquidated and, if so, was it a voluntary or compulsory liquidation? Were any distributions or payments made to the shareholders? The Plaintiff also did not appear to have made her own investigations or bothered to seek further information even though the share certificates stated Barbinder & Co Pte, in Singapore, to be the share registrars.

(5) United Plantations Bhd ("UP") shares

93 While 100 UP shares were disclosed in the Accounts, the corresponding share certificates (if any) were not presented to the Court in evidence. However, the Plaintiff did discover from the Estate file a share certificate for what appeared to be 24 bonus UP shares belonging to the Estate. [\[note: 58\]](#)

94 The Defendant protested during cross-examination that there was a reason he had not accounted for these 24 bonus UP shares: he had no knowledge of these shares for the same reason

stated above at [91], *ie*, he did not have the Estate file with him. In any event, he suggested that it was not economical to take steps in Malaysia to claim the UP shares. [\[note: 59\]](#) He was not challenged on this second point.

95 The documentary evidence, however, showed that even excluding the 24 bonus UP shares, the Estate's shareholding in UP had *prima facie* not been properly accounted for. There was a letter from UP dated 8 August 1987 which stated that, based on the Estate's shareholding in UP at the time, the Estate was entitled to 24 bonus UP shares ("the UP Letter"). [\[note: 60\]](#) As this was a one-for-five bonus share issue, the logical conclusion is that the Estate held 120 ordinary UP shares then. Indeed, this seemed to be confirmed by a Statement of Bonus Share Certificate(s) Issued (accompanying the UP Letter) which stated on its face that the Father—and thus the Estate—owned 120 ordinary UP shares. [\[note: 61\]](#) Clearly, this was at variance with the Accounts showing the Estate's shareholding in UP to be only 100 shares. The Defendant was never asked about, and therefore did not explain, this apparent discrepancy.

(6) *Malaysian Resources Corp Bhd ("MRC") shares*

96 Indeed, the Defendant's excuse for not taking further steps to claim the UP shares applied also to the 1,900 MRC shares disclosed in the Accounts. [\[note: 62\]](#) Again, the corresponding MRC share certificates (if any) were not produced in evidence. However, the Plaintiff was not complaining about non-disclosure of the 1,900 MRC shares and it was not clear what she wanted the Defendant to do in respect of the Estate's shares in both UP and MRC.

(7) *Other shares*

97 The Plaintiff also relied on a bill dated 14 May 1984 from Wee's Secretarial Service addressed to the Mother and the Defendant ("the WSS Bill"). [\[note: 63\]](#) The WSS Bill included an item for "attending to completion of transfer deeds and forwarding for registration through stockbrokers". The Plaintiff said that this suggested the Estate held more shares than were accounted for but she did not elaborate.

98 On the other hand, the Defendant claimed that the impugned item of the WSS Bill was for services rendered by one Mr Wee Aik Ann to the Father *prior* to the Father's death. [\[note: 64\]](#) This had nothing to do with any transfer of shares from the Father's name to the administrators *subsequent* to the Father's decease.

99 In my view, the evidence for the Plaintiff was inconclusive as to the existence of any other shares the Estate might hold or have held.

(8) *The Car*

100 The Estate's assets included the Car (see [69(b)]).

101 The Plaintiff claimed that the Car was improperly valued at \$20,000 in the Estate Duty Schedule, relying on an estimated valuation of \$23,000 as stated in a vehicle insurance policy dated 4 January 1985. [\[note: 65\]](#) In my view, the difference in valuation is immaterial since the Car was not sold in 1985, as I will elaborate below.

102 The Defendant explained that after the Father's death, the Car was used as a family car by

various members of the Ong Family. [\[note: 66\]](#)

103 The Plaintiff did not dispute the Defendant's account that the Car was used by her family members after the Father's death. In fact, she admitted that the Car had been driven by her brothers (although she did not state the final outcome of the Car). [\[note: 67\]](#) Nevertheless, it was still incumbent on the Defendant to explain what happened to the Car eventually. The August 2011 Account merely stated that the Car was used as a family car. The Defendant said in his AEIC that Ong Wui Leng "finally scrapped it", [\[note: 68\]](#) but did not elaborate anywhere as to whether any money was received for the Car. On the other hand, the Report attributed \$6,000 as the scrap value of the Car (see [69(b)] above).

(9) Missing United Overseas Bank ("UOB") account

104 The Plaintiff also pointed out that the Accounts did not reflect the existence of a UOB savings account numbered [xxx] in the name of the Estate ("the UOB Account").

105 The Plaintiff learned about the UOB Account from a letter dated 3 September 2011 from UOB to the Estate which was sent to the Marine Drive flat. [\[note: 69\]](#) The letter stated that the UOB Account was closed on 3 September 2011. At that time, it was overdrawn.

106 The Defendant did not deny the existence of the UOB Account although he said that he did not remember it. [\[note: 70\]](#)

(10) Insurance commissions

107 The Plaintiff claimed that the Defendant converted certain insurance commissions which belonged to the Estate. [\[note: 71\]](#) No evidence was adduced in support of this allegation. [\[note: 72\]](#)

108 On the contrary, the Defendant had a ready explanation on this matter. [\[note: 73\]](#) He said that the Father was originally the insurance agent who had acquired these insurance accounts. When the Father fell ill and was unable to service these insurance accounts, the Father asked him to take over the accounts.

109 The Defendant therefore contended that the commissions were paid out by the insurer to the Defendant in his role as the agent servicing the insurance accounts. Consequently, these commissions belonged to him and not the Estate. In the absence of more evidence from the Plaintiff, I accepted the evidence from the Defendant.

(11) Fixed deposits and bank account in credit

110 As disclosed in the Accounts, the Estate also held two fixed deposits with Asia Commercial Bank ("the ACB Fixed Deposits") and one bank account with Overseas Union Bank ("the OUB Bank Account"), all standing to its credit. There was no elaboration by either side about these assets.

(12) The Sea Avenue property

111 I turn now to the matter of the Sea Avenue property. According to the Plaintiff, the Accounts were incomplete because they did not include the Sea Avenue property as part of the Estate's assets. Her claim that the Sea Avenue property was held on trust by the Defendant for the Father rested on five grounds, namely, that:

- (a) the Father had provided \$85,000 of the purchase price of the Sea Avenue property;
- (b) the Father had paid for the renovation of the Sea Avenue property and a renovation contractor had referred to the Father as the owner thereof;
- (c) the male children of the Ong Family had stayed at the Sea Avenue property;
- (d) the Father had told the Ong Family of his purchase of an investment property; and
- (e) the Defendant had admitted in the 2010 MC Suit that he held the Sea Avenue property on trust for the Father.

112 I will look at each of these grounds separately.

(A) The \$85,000

113 The Estate Duty Schedule disclosed a purported gift of \$85,000 from the Father to the Defendant.

114 The Plaintiff said that, rather than being a gift, the \$85,000 was to facilitate the Father's investment purchase of a private property. The Father would own the private property beneficially, and the Defendant would be the registered owner. This arrangement was necessary because the Marine Drive flat—an HDB property—was in the joint names of the Father and the Mother, and the Father was prohibited by the HDB rules from owning both an HDB property and a private property. [\[note: 74\]](#) However, the Plaintiff admitted that she had no firsthand knowledge of the \$85,000 at all. [\[note: 75\]](#) Her entire argument—that the \$85,000 was the Father's investment monies—hinged on her brother Ong Wui Jin's testimony in the 2005 DC Suit (see above at [6]). [\[note: 76\]](#) It is pertinent to note that apparently the Plaintiff, *until hearing Ong Wui Jin in the 2005 DC Suit, did not know that a sum of \$85,000 had been provided by the Father to the Defendant for purchasing the Sea Avenue property.* [\[note: 77\]](#)

115 On the other hand, the Defendant averred that this \$85,000 was a gift to him to enable him to purchase a private property in his own right. He suggested that he had nothing to hide, and this was evidenced by his having disclosed the gift in the Estate Duty Schedule. [\[note: 78\]](#)

116 The Defendant also seemed to suggest that it was because the HDB rules did not allow the Father to acquire a private property while also owning an HDB property that the Father decided not to acquire a private property. [\[note: 79\]](#) Furthermore, the Defendant was adamant that the Father would not have circumvented any legal restrictions through the use of a trust arrangement. [\[note: 80\]](#)

117 The Defendant then pointed out that the entire purchase price for the Sea Avenue property was more than \$85,000. It was \$323,000 (see above at [14]). This was not disputed by the Plaintiff. The Defendant stated that he had used his own money to pay for the balance of the purchase price, including the payment of instalments on a loan taken out to finance the purchase of the Sea Avenue property. [\[note: 81\]](#)

118 Furthermore, it was not clear whether the Plaintiff was claiming that the Defendant had held the entire Sea Avenue property or only a part thereof in trust for the Father, given the fact that the

Plaintiff was not alleging that the Father had paid the entire purchase price. [\[note: 82\]](#)

119 I am of the view that the fact of the Father having provided \$85,000 to the Defendant was equivocal.

(B) The Father had paid for the renovation of the Sea Avenue property and a renovation contractor had referred to the Father as the owner thereof

120 I will quickly dispose of the Plaintiff's reliance on a letter of quotation from a renovation contractor Design & Interior Contractor ("Design") dated 18 November 1983 to the Father. [\[note: 83\]](#) In that letter, Design had written, "With reference to our meeting with your Mrs. and your son *at your flat* No 30-B, Sea Avenue ..." (emphasis added). The Plaintiff alleged that the words emphasised showed that the Father was the beneficial owner of the Sea Avenue property. However, the writer of the letter was not called by the Plaintiff to give evidence. In my view, the letter was not admissible in evidence. Even if it was admissible, it carried little weight to establish that the Father was in fact the true owner. Design might well have written the letter that way because the Father was the one communicating with it, and it might be that Design had simply assumed that the Sea Avenue property belonged to the Father.

121 As for the Father having paid for the renovation of the Sea Avenue property, the Plaintiff relied on a copy of a receipt from Design dated 23 December 1983 which acknowledged part payment of \$2,000 by the Father for renovations to the Sea Avenue property. [\[note: 84\]](#) However, there was no evidence as to the *total* cost of the renovations. As it was, there was a copy of another receipt for \$4,000 from Design dated 16 March 1984 in favour of the Defendant for renovations to the Sea Avenue property too. [\[note: 85\]](#) In my view, the Father's part payment of \$2,000 was equivocal.

(C) The male children of the Ong Family had stayed at the Sea Avenue property

122 The Plaintiff said that the male children of the Ong Family had stayed at the Sea Avenue property after it was purchased in the name of the Defendant. [\[note: 86\]](#) She suggested that this supported her allegation that the Father had bought the property as an investment. She claimed that it had also been his intention for his sons to stay there as they could then easily look after their mother at the Marine Drive flat (which was located near the Sea Avenue property). [\[note: 87\]](#)

123 The Defendant said that he had allowed Ong Wui Jin to stay at the Sea Avenue property from 1983 to 1986. [\[note: 88\]](#) He appeared to accept that other brothers had stayed there too. He explained that that was the Father's wish and having received \$85,000 from the latter, he was hardly in a position to dictate terms to the Father. [\[note: 89\]](#)

124 Again, the fact that the male children had stayed at the Sea Avenue property did not advance the Plaintiff's primary contention (about a trust for the Father) much.

(D) The Father had told the Ong Family that he had purchased an investment property

125 The Plaintiff said that the Father had told the family of his investment in the Sea Avenue property. [\[note: 90\]](#) He wanted to buy the Sea Avenue property because, as mentioned above, it would facilitate his sons going to the Marine Drive flat to take care of the Mother.

126 The Defendant did not agree that the Father had said he had invested in the Sea Avenue

property. He suggested that the Father, at his late stage of life then, would not have thought of buying an investment property on a trust arrangement, but rather be thinking of making a bequeath. [\[note: 91\]](#)

127 Unfortunately for the Plaintiff, she did not call on any other sibling to give evidence in the present trial to support her contention about what the Father had allegedly said about investing in a property near the Marine Drive flat. Her allegation was therefore uncorroborated.

(E) The Defendant's "admission" in the 2010 MC Suit

128 The Plaintiff pointed to something the Defendant said as a litigant-in-person in the 2010 MC Suit (recorded in the Notes of Evidence of 9 September 2010 at p 9) as evidence that there was a trust of the Sea Avenue property. The Defendant had stated then that: [\[note: 92\]](#)

\$85,000 was given to me because my father wanted me to purchase a property. Only in my own name. I was the eldest. *CPF does not allow Defendant [ie, Ong Wui Teck] to buy property to be held on trust.*

[emphasis added]

129 On this basis, the Plaintiff said that the Defendant had admitted holding the Sea Avenue property on trust.

130 I note that the evidence mentioned in [128] above referred to CPF legislation and not HDB legislation. That is immaterial for present purposes. It is clear to me that the Defendant had not made the alleged admission and was, instead, denying the trust. He was merely stating what he thought was the legal position at the time—that if CPF monies were used to purchase a property, then that property could not be held on trust by the purchaser. [\[note: 93\]](#)

(F) Factors against the trust allegation

131 Unfortunately for the Plaintiff, there were other factors which militated against her allegation that the Sea Avenue property was held in trust in favour of the Father.

132 First, I have already mentioned that no other sibling gave evidence in the present trial to corroborate her evidence about such a trust. I add that no other sibling was claiming such a trust. For completeness, I note that Ong Wui Jin had testified in the 2005 DC Suit that the Sea Avenue property was an investment. [\[note: 94\]](#) Nevertheless, I was not inclined to take that prior testimony into consideration. He was not called to give evidence in this trial, nor did it appear that the Plaintiff was relying much on his testimony in the 2005 DC Suit in asserting a trust of the Sea Avenue property (apart from the matter of the \$85,000; see [114] above).

133 Second, the Plaintiff's allegations about: (a) what the Father had said about having bought an investment property, and (b) her brothers staying at the Sea Avenue property near the Mother so as to take care of her, were not found in her AEIC. This suggested that such oral evidence was a belated embellishment of the truth.

134 Third, if the Sea Avenue property was held by the Defendant on trust for the Father, why did she take so long to present this claim for an interest in the same property? The fact that the Defendant had said that the Estate was "negative" was not a sufficient reason for the delay in the

context of making a claim for the Sea Avenue property, as opposed to other assets of the Estate of which the Plaintiff might not have been fully aware. Surely she would have asked him to elaborate on the negative value then if the Sea Avenue property was really the Father's, but she did not.

135 Fourth, the Mother survived the Father for more than 20 years. While the Plaintiff stressed that the Mother could not speak or write English, she did not dispute that the Mother was literate in the Chinese language. Neither did she dispute the Defendant's suggestion that the Mother was a capable person. The Defendant had suggested that while the Mother was alive, she as the matriarch would have settled the problems between the siblings. [\[note: 95\]](#) If the Sea Avenue property was held by the Defendant on trust for the Father and the family members were aware of this, surely the Mother would have ensured that the Defendant make arrangements to give his siblings their fair share of the Sea Avenue property whether or not she knew that the property was sold on 6 June 2002 (which was before she passed away in 2005). It was doubtful that the Mother would have made the gift of \$50,000 to the Defendant under her will if he was keeping the Sea Avenue property all to himself when he was not supposed to.

(G) The Court's conclusion on the Sea Avenue property

136 In my view, the Plaintiff has come too late with too little evidence. She has failed to establish that the Defendant held the Sea Avenue property, or part thereof, in trust for the Father.

137 I add that the Plaintiff did not adduce any evidence that the rent or sale proceeds from the Sea Avenue property were used to purchase the Pemimpin Place property in the name of the Defendant's wife. Indeed, the Pemimpin Place property was transferred to the Defendant's wife by the vendors on 10 December 1998, [\[note: 96\]](#) before the Sea Avenue property was sold on 6 June 2002. Therefore, the Plaintiff's claim of a beneficial interest in the Pemimpin Place property must also fail.

Summary of this Court's decision

138 In summary, I find that the Defendant has not given a proper account of the assets of the Estate in the August 2011 Account. It is not open to him to argue that he was unable to do so because he did not have the Estate file which was at the Marine Drive flat (of which he was allegedly locked out) or that the Estate file had been taken or kept by one of his brothers, *ie*, Ong Wui Jin. [\[note: 97\]](#) He made no attempt to try and get that file. Indeed, as mentioned above at [63], it was the Plaintiff who managed to obtain that file after she demanded the same from Ong Wui Jin and threatened him that she would take legal action to obtain the file if he refused to hand it over to her. Apparently she made discovery of the file to the Defendant after she obtained it, while the Defendant was content to use his non-possession of the file as an excuse whenever the August 2011 Account was shown to be inaccurate or incomplete.

139 From the Accounts and the evidence, I find that:

- (a) the Shares Sale Proceeds, *ie*, \$10,073.68 (see [74]-[76] above) are still part of the Estate's assets;
- (b) the OCBC Shares, while perhaps currently registered in the Mother's name, are to be treated as part of the Estate's assets. No evidence of the current value of the OCBC Shares was given by either side. Neither did they elaborate on any benefit such as dividends, bonus shares or rights derived from the OCBC Shares;
- (c) the Haw Par (London) Limited shares are part of the Estate's assets and may have a

value;

(d) the UP shares and the MRC shares are part of the Estate's assets. In particular, taking into account the bonus shares issued by UP in 1987, the Estate's shareholding in UP may be at least 144 shares, *ie*, 120 ordinary shares plus 24 bonus shares;

(e) the Kenwell Shares have no realisable value;

(f) the Plaintiff has failed to establish that the Estate owns other shares;

(g) the scrap value of the Car is part of the Estate's assets;

(h) as the UOB Account was overdrawn and closed, it is no longer a part of the Estate's assets;

(i) the insurance commissions are not part of the Estate's assets;

(j) the ACB Fixed Deposits and the OUB Bank Account are part of the Estate's assets; and

(k) the Sea Avenue property is not part of the Estate's assets.

140 I should also mention in passing that both sides have not presented their cases well even though each had the benefit of solicitors acting for him/her.

141 The Defendant seemed to think that he could do what he liked and give whatever explanation he liked.

142 The Plaintiff was similarly content to make allegations without elaboration and investigation on her part. She was also not clear as to what she wanted. For example:

(a) she made mere references to the OCBC Shares without checking how much benefit had been derived from these shares. Her counsel did not even ask the Defendant to account for any benefit which had accrued over the years;

(b) she did not conduct her own investigations into the Haw Par (London) Limited shares to find out what their present status was or what had happened to them since the death of the Father;

(c) she did not say what she wanted the Defendant to do in respect of the UP shares and the MRC shares which were shares in Malaysian companies. Was she prepared for expenses to be incurred for the Defendant to follow up on them? What would the expenses amount to etc? What about the benefits which had possibly accrued to these shares over the years? Such questions were not asked of the Defendant; and

(d) she did not clarify whether she was accepting that the credit balances held by the Estate had been used to pay the Estate's debts or expenses as stated in the Accounts or not.

143 In light of the unsatisfactory circumstances, I will order an inquiry before the Registrar of the Supreme Court to:

(a) determine, according to the guidelines stated at [145]-[147] below, the total number of shares owned by the Estate (and for which the Defendant is liable to account) in:

- (i) OCBC;
- (ii) Haw Par (London) Limited;
- (iii) UP; and
- (iv) MRC,

bearing in mind that benefits in kind may have accrued to these shares (such as scrip dividends and shares arising from a bonus or rights issue) since the Father's death in 1984;

(b) subject to the determination in (a), determine the value of all the Estate's assets as stated above at [139], bearing in mind in the case of shares that other benefits (such as cash dividends) may have accrued to them and for which the Defendant is liable to account (in which case the guidelines stated at [145] below are to apply). For the avoidance of doubt, I will allow parties to also review the value of the Car as scrapped if either side so wishes; and

(c) subject to the determination in (b), determine the total value of the Estate available for distribution to the beneficiaries, after taking into account the debts, expenses and permitted deductions of the Estate. For the avoidance of doubt, the Plaintiff is precluded from adducing further evidence on items (e), (f), (h), (i) and (k) of [139] or to establish any other assets not mentioned in [139]. Further, as the Plaintiff did not dispute the alleged debts of the Estate (stated in the Accounts to be about \$77,000) or the funeral, testamentary, probate and administration expenses claimed in the August 2011 Account to have been incurred by the Estate (amounting to some \$30,000), the Defendant does not have to adduce evidence to establish the same. On the other hand, and for the avoidance of doubt, the Defendant is precluded from establishing any further debts or expenses of the Estate (except amounts expended to collect the Estate's assets) and also from adducing further evidence about the Estate's assets being used to pay the educational expenses of Ong Wui Yong.

144 In my view, while the Summary Judgment only ordered the Defendant to give a statement of accounts and did not elaborate any further, the Defendant would be liable as an administrator of the Estate not only to account for those assets which he himself listed in the August 2011 Account as belonging to the Estate (subject to my findings above), *but also to account for those assets which were actually received by the Estate or by him for the Estate, as well as assets which would have been received by the Estate without any further action on the Defendant's part at the relevant time.* The Defendant would *not* be liable, however, to account for assets which he would have received for the Estate if not for his wilful default. This was because the Plaintiff never charged the Defendant with wilful default here, nor did she claim for an account on the footing of wilful default (see *Mayer v Murray* (1878) 8 Ch D 424 at 426-427; *Ong Jane Rebecca v Lim Lie Hoa* [2005] SGCA 4 at [59]-[61]).

145 The OCBC Shares provide an illustration of what I have said in the previous paragraph. These shares were listed in the Accounts as belonging to the Estate. Even if the OCBC Shares are now registered in the Mother's name (and this should not be too difficult to ascertain), the Defendant is still bound to account for these shares, since I do not accept his oral testimony of how the OCBC Shares had been used to reimburse the Mother for paying the Estate's estate duty liabilities (see [84] above). Any bonus share issues or scrip or cash dividends relating to the OCBC Shares would also have to be accounted for by the Defendant, since these bonus shares or dividends would have accrued without any further action on the Defendant's part at the relevant time. If the Estate or the Defendant did not receive any of these assets (for example, because the relevant documentation was

sent to the wrong address), the Defendant is to take steps to recover them if it is cost-effective to do so.

146 As for any rights issue with respect to the OCBC Shares, if the evidence before the Registrar shows that a rights issue was taken up, then the Defendant is to account for the shares acquired pursuant to the rights issue, but he is entitled to an offset against the consideration paid for the shares. *However*, if the Plaintiff cannot establish that any particular rights issue was taken up with respect to the OCBC Shares, the Defendant is *not* required to account for the shares which would have been acquired pursuant to that rights issue. An extra expenditure of monies is needed to take up a rights issue. It was not argued that the Defendant had a duty or obligation to take up any rights issue, much less that the Defendant had breached any duty or was negligent in not taking up any rights issue. In summary, the Defendant is not to be treated as having subscribed to a rights issue, if the Plaintiff cannot establish to the satisfaction of the Registrar that that rights issue was taken up. The Defendant was *not* being asked to account on the footing of wilful default here.

147 I have explained in some detail how the Registrar is to determine the total number of shares owned by the Estate in OCBC and which are to be accounted for in the inquiry. The guidelines apply *mutatis mutandis* to the Estate's shares in Haw Par (London) Limited, UP and MRC.

148 Notwithstanding anything in [145]-[147], however, the Registrar may disregard the value of any of the Estate's shares, *eg*, shares in UP and MRC, from the determination in [143(c)] if the cost of collecting those shares would exceed the value of the said shares.

149 The costs of the inquiry and interest are also to be determined by the Registrar.

150 Although the Plaintiff has not expressly claimed a distribution of her share of the Estate's assets, I am of the view in the circumstances that this is implied from her claim for an accounting. Having been ordered in the Summary Judgment to give an account, the Defendant becomes liable to pay any amount found due from him; *Doss v Doss* (1843) 3 Moo Ind App 175 at 196-197; 18 ER 464 at 472. It would be a waste of effort if the Defendant was only required to render an account without him also having to pay any amount subsequently found due from him. In the future, however, it may be preferable to avoid any argument if one were to plead expressly for all the reliefs being sought and also to claim such further or other relief as the court may order.

151 If, therefore, after the inquiry the Registrar should determine that the total value of the Estate available for distribution is positive, I order the Defendant to distribute to the Plaintiff her share of the Estate, *ie*, one-twelfth of the Estate in kind or in cash. The Registrar may decide whether, in the interests of facilitating such a distribution, any of the assets of the Estate are to be realised and converted to money.

152 Given my order for an inquiry as stated above and for the Defendant to distribute to the Plaintiff her share of the Estate, I make no other order as to the Plaintiff's vague claim for damages or her allegation of the Defendant having converted the Estate's assets.

153 I grant the parties liberty to apply.

154 I will hear parties on the costs of the trial.

155 Bearing in mind the small number of shares in OCBC, Haw Par (London) Limited, UP and MRC that the Estate started off with and considering the rest of the Estate's assets and its liabilities (as disclosed in the Accounts), the Plaintiff may, upon her own further investigation in this respect, find it

impractical to incur more time and costs in even pursuing the inquiry in the first place. However, that is for her to decide. I urge the parties to try to reconcile their differences before causing more damage to themselves and making a bad relationship worse.

[\[note: 1\]](#) Bundle of Affidavits, vol 2 at pp 859-863.

[\[note: 2\]](#) Notes of Evidence ("NE"), 26/6/12 at p 133.

[\[note: 3\]](#) NE, 26/6/12 at pp 121-122.

[\[note: 4\]](#) Agreed Bundle ("AB") at p 193.

[\[note: 5\]](#) NE, 26/6/12 at p 135.

[\[note: 6\]](#) AB at p 132.

[\[note: 7\]](#) Bundle of Affidavits, vol 1 at p 435.

[\[note: 8\]](#) AB at pp 183-184.

[\[note: 9\]](#) AB at pp 170-171.

[\[note: 10\]](#) Plaintiff's Statement of Claim (Amendment No 2) ("SOC") at pp 8-9.

[\[note: 11\]](#) SOC at p 9.

[\[note: 12\]](#) SOC at para 7(a).

[\[note: 13\]](#) SOC at para 7(b) and p 9.

[\[note: 14\]](#) Defendant's Defence (Amendment No 2) ("Defence") at para 23.

[\[note: 15\]](#) Defence at paras 14 and 20.

[\[note: 16\]](#) Defence at para 19.

[\[note: 17\]](#) Defence at paras 27, 40-41 and 43.

[\[note: 18\]](#) SOC at paras 8(a)-(b).

[\[note: 19\]](#) Defendant's Closing Submissions at para 44.

[\[note: 20\]](#) Plaintiff's Closing Submissions at para 17.

[\[note: 21\]](#) Plaintiff's Closing Submissions at para 9.

[\[note: 22\]](#) NE, 25/6/12 at pp 19 and 46.

[\[note: 23\]](#) NE, 26/6/12 at pp 33-34.

[\[note: 24\]](#) Defendant's AEIC at para 96.

[\[note: 25\]](#) Defendant's AEIC at para 5.

[\[note: 26\]](#) Defendant's AEIC at para 11.

[\[note: 27\]](#) Bundle of Affidavits, vol 1 at pp 75-77.

[\[note: 28\]](#) Bundle of Affidavits, vol 2 at p 905.

[\[note: 29\]](#) Bundle of Affidavits, vol 2 at p 906.

[\[note: 30\]](#) Defendant's AEIC at para 55.

[\[note: 31\]](#) NE, 26/6/12 at pp 50-52.

[\[note: 32\]](#) NE, 26/6/12 at pp 61-62 and 84.

[\[note: 33\]](#) Defendant's AEIC at paras 83 and 117.

[\[note: 34\]](#) NE, 26/6/12 at p 85.

[\[note: 35\]](#) NE, 25/6/12 at pp 41-43.

[\[note: 36\]](#) NE, 25/6/12 at pp 44-45.

[\[note: 37\]](#) Bundle of Affidavits, vol 2 at pp 654-662.

[\[note: 38\]](#) NE, 26/6/12 at pp 5-7 and 9.

[\[note: 39\]](#) NE, 26/6/12 at p 66.

[\[note: 40\]](#) AB at pp 26-27.

[\[note: 41\]](#) AB at pp 13-14.

[\[note: 42\]](#) NE, 26/6/12 at pp 67-70; Defendant's AEIC at para 100.

[\[note: 43\]](#) NE, 26/6/12 at p 68.

[\[note: 44\]](#) NE, 26/6/12 at p 68.

[\[note: 45\]](#) NE, 26/6/12 at p 67; Defendant's AEIC at para 100.

[\[note: 46\]](#) NE, 26/6/12 at pp 73 and 76.

[\[note: 47\]](#) NE, 26/6/12 at p 76.

[\[note: 48\]](#) NE, 26/6/12 at pp 80-81.

[\[note: 49\]](#) Plaintiff's Opening Statement at para 31.

[\[note: 50\]](#) Defendant's Closing Submissions at para 26.

[\[note: 51\]](#) AB at pp 29-30.

[\[note: 52\]](#) AB at pp 22-25 and 28-30.

[\[note: 53\]](#) NE, 26/6/12 at pp 87-89.

[\[note: 54\]](#) Bundle of Affidavits, vol 2 at p 892.

[\[note: 55\]](#) AB at pp 3 and 5.

[\[note: 56\]](#) NE, 26/6/12 at p 153.

[\[note: 57\]](#) NE, 26/6/12 at p 152.

[\[note: 58\]](#) AB at p 148.

[\[note: 59\]](#) NE, 26/6/12 at pp 152-153.

[\[note: 60\]](#) AB at p 150.

[\[note: 61\]](#) AB at p 149.

[\[note: 62\]](#) NE, 26/6/12 at p 153.

[\[note: 63\]](#) AB at p 46.

[\[note: 64\]](#) NE, 26/6/12 at pp 56-57 and 79-80.

[\[note: 65\]](#) AB at p 82.

[\[note: 66\]](#) Defendant's AEIC at para 105.

[\[note: 67\]](#) NE, 25/6/12 at p 19.

[\[note: 68\]](#) Defendant's AEIC at para 105.

[\[note: 69\]](#) AB at p 190.

[\[note: 70\]](#) NE, 26/6/12 at p 93.

[\[note: 71\]](#) SOC at para 7(d).

[\[note: 72\]](#) NE, 26/6/12 at p 112.

[\[note: 73\]](#) NE, 26/6/12 at p 110; Defendant's AEIC at para 138.

[\[note: 74\]](#) Plaintiff's Closing Submissions at para 51.

[\[note: 75\]](#) NE, 25/6/12 at pp 5-7 and 9.

[\[note: 76\]](#) NE, 25/6/12 at pp 38-39.

[\[note: 77\]](#) NE, 26/6/12 at p 12.

[\[note: 78\]](#) Defendant's Closing Submissions at para 12.

[\[note: 79\]](#) NE, 26/6/12 at pp 134-135.

[\[note: 80\]](#) NE, 26/6/12 at p 145.

[\[note: 81\]](#) NE, 26/6/12 at pp 135-140.

[\[note: 82\]](#) NE, 26/6/12 at pp 12-16.

[\[note: 83\]](#) AB at p 39.

[\[note: 84\]](#) AB at p 43.

[\[note: 85\]](#) AB at p 44.

[\[note: 86\]](#) NE, 26/6/12 at p 17.

[\[note: 87\]](#) NE, 25/6/12 at p 12; NE, 26/6/12 at p 25.

[\[note: 88\]](#) NE, 26/6/12 at p 150.

[\[note: 89\]](#) Defendant's Closing Submissions at para 19.

[\[note: 90\]](#) NE, 25/6/12 at pp 12 and 48; NE, 26/6/12 at pp 17, 19, 22 and 25.

[\[note: 91\]](#) NE, 26/6/12 at pp 137-138 and 145-146.

[\[note: 92\]](#) Bundle of Affidavits, vol 2 at p 598.

[\[note: 93\]](#) NE, 26/6/12 at pp 132-133 and 141-142; Defendant's AEIC at para 127.

[\[note: 94\]](#) Bundle of Affidavits, vol 1 at pp 433-441.

[\[note: 95\]](#) NE, 26/6/12 at p 48.

[\[note: 96\]](#) AB at pp 170-171.

[\[note: 97\]](#) NE, 26/6/12 at pp 121-122.

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