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Case Note

LACHES UNLEASHED

How (Not) to Bar a Claim for a Common Account

Chng Weng Wah v Goh Bak Heng
[2016] 2 SLR 464

In *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464, the defendant trustee successfully relied on laches to bar the plaintiff beneficiary's claim for a common account. Such reliance is problematic. First, since a beneficiary is not obliged to seek a common account within any period of time, any delay should (by itself) not prejudice him in any way. Secondly, barring the common account does not tell the beneficiary what happens to his equitable interest. Thirdly, recourse to laches is unnecessary and potentially confusing since there are straightforward provisions in the Rules of Court that enable a defendant to defeat the claim for an account.

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I. Summary of facts

1 *Chng Weng Wah v Goh Bak Heng*[1] ("*Chng Weng Wah*") concerned a failed claim for an account. The plaintiff beneficiary, G, brought an action in 2013 against the defendant trustee, C, to seek a common account of certain shares that were held on trust. In 1997, G and C jointly purchased some shares in a Taiwanese company ("MTK"), by contributing equal sums of money. All the MTK shares were subsequently registered under C's name. It was agreed that in 1999, C held approximately 1.1 million MTK shares, half of which were on an oral express trust for G, thereby giving rise to a duty to account for these shares.[2]

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1 [2016] 2 SLR 464.

2 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [25].

2 Going through the evidence, the Court of Appeal was satisfied that G had instructed C to sell all the shares that G was beneficially entitled to in a series of transactions between 1999 and 2000.[3] In other words, the sale proceeds, being the authorised substitute for the MTK shares, subsequently became the subject matter of the oral express trust. On the issue of the sale proceeds, even though the Court of Appeal would have been prepared to find that G had received all the sale proceeds, that is, that C had provided a complete account to G, the Court of Appeal thought that it was unnecessary to make a conclusive finding on this issue given its finding that the doctrine of laches was applicable on the facts.[4] The trial judge's finding that the accounts were *not* settled between C and G therefore stood.

3 The Court of Appeal next proceeded to the issue of laches, noting that between 2002 and 2003, there was correspondence between the solicitors acting for G and C on the status of the MTK shares and the sale proceeds.[5] However, no further action was taken by G after 2003, and G commenced his suit only in 2013. The ten-year period was, in the Court of Appeal's view, a rather significant delay by any measure;[6] there was a direct causal link between this delay and the prejudice suffered by C in the form of inability to furnish formal documentation. This made G's seeking of the account unconscionable.[7] As a result, the Court of Appeal dismissed G's action on the ground that the doctrine of laches applied.

II. Analysis

4 This case note deals with three issues. First, it will be argued that the defence of laches should very rarely, if at all, succeed to bar a claim of this nature, since a beneficiary under a bare trust is generally not under an obligation to call for a conveyance of the trust property to him within any fixed period of time. Without such an obligation there cannot be a "substantial delay" in enforcing the right to a common account during the lifetime of the trust. If this element cannot be satisfied, whether the Court of Appeal was truly applying the doctrine of laches in *Chng Weng Wah* is open to serious doubt.

5 Secondly, applying laches to bar a claim for a common account raises the question of the status of the beneficiary's equitable interest under the trust. The common account is merely a procedure to ensure

3 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [31]–[36].
4 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [43].
5 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [48]–[51].
6 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [52].
7 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [57]–[59].

the due administration of a trust. Barring this procedure arguably leaves the underlying right under the trust intact, which makes it uncertain how such a right may be subsequently enforced.

6 Thirdly, it will be suggested that recourse to the equitable doctrine of laches is not necessary in a case of this nature. The court already has a general statutory power under O 43 r 1(4) of the Rules of Court[8] to refuse to order a common account, as well as a more specific power under O 43 r 7(1) to refuse to order an account due to undue delay in the prosecution of accounts. Invoking these more straightforward powers would avoid the doctrinal difficulties of applying laches. These three issues will be explored in greater detail below.

A. *Was it really laches?*

7 The case note will begin by considering the nature of the accounting process. Elliott lamented in his doctoral thesis that the accounting relation in equity "is no longer as well understood as its prevalence and great age warrant".[9] However, the fundamental principles of the accounting process are tolerably clear and were accurately summarised by the Court of Appeal in *Chng Weng Wah*:[10]

> 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 …:
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> (a) general or common accounts, where no misconduct has been alleged; and
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> (b) accounts on the footing of wilful default, which involves a breach of duty on the part of the fiduciary. …
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> The claim for a common account may be divided into … three stages …:
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> (a) whether the claimant has a right to an account;
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> (b) the taking of the account; and
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> (c) any consequential relief. …
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> In determining whether a claimant has a right to an account, the court has to first ascertain whether the defendant has received property in

8 Cap 322, R 5, 2014 Rev Ed.

9 Steven B Elliott, *Compensation Claims against Trustees* (unpublished DPhil thesis) (University of Oxford, 2002) at p 9.

10 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [21]–[24].

> circumstances sufficient to import an equitable obligation to handle the property for the benefit of another … The burden is on the claimant to prove this. …
>
> Thereafter, the defendant bears the burden of establishing that it has been released from the duty to account by a settlement. …

8 According to Elliott:[11]

> … [t]he [common] account forms a record of the administration of money and non-monetary assets received in an accountable capacity. The statement of this account tells the [beneficiary], amongst other things, which assets were committed to the fund, what transformations the fund has undergone as investments have been bought and sold, what administrative disbursements have been made, and ultimately how the fund has been distributed.

In short, the taking of a common account reveals to the beneficiary the state of the trust fund, which allows him to police the due administration of the trust.

9 Next, the nature of the trust involved will be considered. The trust in *Chng Weng Wah* was initially an oral express trust over the MTK shares.[12] After the shares were sold, the sale proceeds, being the authorised substitute for the MTK shares, became the subject matter of the same express trust. The trial judge found that this oral express trust was a bare trust, and this finding was not challenged by the trustee on appeal.[13]

10 A bare trust is a trust where the trustee is simply a repository of the trust property with no active duties to perform.[14] The only duty that a bare trustee has to perform is to convey the trust property to the beneficiary upon his request.[15] In the recent seminal decision of *AIB Group (UK) plc v Mark Redler*[16] ("*AIB v Redler*") by the UK Supreme Court, Lord Toulson distinguished between the range of duties that a trustee may be subject to, such as a custodial stewardship duty,

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11 Steven B Elliott, *Compensation Claims against Trustees* (unpublished DPhil thesis) (University of Oxford, 2002) at p 89.

12 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [12].

13 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [2].

14 David Hayton, Paul Matthews & Charles Mitchell, *Underhill and Hayton: Law of Trusts and Trustees* (Lexis Nexis, 17th Ed, 2006) at p 76. This characteristic of a bare trust has been endorsed in Singapore: see *Ching Chew Weng Paul v Ching Pui Sim* [2010] 2 SLR 76 at [83].

15 *Christie v Ovington* (1873) 1 ChD 279 at 281, cited in *Parker and Mellows: The Modern Law of Trusts* (A J Oakley ed) (Sweet & Maxwell, 9th Ed, 2008) at p 41. See also *Tan Chin Hoon v Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased)* [2016] 1 SLR 1150 at [301].

16 [2015] AC 1503.

a management stewardship duty, a duty of undivided loyalty *etc*, in order to demonstrate that the breach of different types of duties may result in different remedial consequences.[17] While some aspects of *AIB v Redler* have sparked rife academic debate, this particular aspect of *AIB v Redler* does not seem to be controversial.

11 In the context of a bare trust, it is clear that at the very least, the trustee owes a custodial stewardship duty to the beneficiary, that is, a duty to "preserve the assets of the trust except insofar as the terms of the trust permit the trustee to do otherwise".[18] Therefore, until the trust is brought to an end by the conveyance of the trust property to the beneficiary upon the latter's request, the trustee also comes under a continuous duty to account for the trust property or its lawful substitutes.[19] It should also be added that the beneficiary does not have to establish any wrongdoing before he is entitled to ask for a common account.[20]

12 Moving on to the doctrine of laches, the Court of Appeal in *Chng Weng Wah* endorsed the following passage in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd*,[21] which has consistently been approved of in a number of Court of Appeal decisions in Singapore:[22]

> 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* … [emphasis added]

Apart from the twin requirements of a "substantial lapse of time" and circumstances rendering it "practically unjust to give a remedy", the Court of Appeal in *Chng Weng Wah* further added that the inquiry should be approached in a "broad manner" since the basis for equitable

17 *AIB Group (UK) plc v Mark Redler* [2015] AC 1503 at [51]–[55].
18 *AIB Group (UK) plc v Mark Redler* [2015] AC 1503 at [53].
19 *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd* (2000) 202 CLR 588, cited with approval in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [23].
20 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [23].
21 [2009] 4 SLR(R) 769.
22 *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46]. See *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]–[38] and *Dynasty Line Ltd v Sukamto Sia* [2014] 3 SLR 277 at [58].

intervention by way of the doctrine of laches is ultimately found in unconscionability.[23]

13 The difficulty with applying laches to a claim for a common account in the context of a bare trust lies in the difficulty of attributing significance to the fact of a "substantial lapse of time" in bringing the claim. This is because a beneficiary entitled to property under a bare trust is generally not under an obligation to make the request for the trustee to convey the trust property to him within any specified period of time. A short example should make this point clear. If *S* transfers his rights to a parcel of shares to *T* to hold on a bare trust for *B*, *B* remains the equitable owner of the shares a day later, a decade later, or even a century later. *B*'s beneficial interest is not subject to any limitation period, there being no requirement to constantly police the trust. It would be quite remarkable to suggest that *T* might after a certain period of time be allowed to disregard *B*'s beneficial interest and keep the trust property for himself absolutely.

14 Some authorities indirectly support this proposition. For example, most resulting trusts over familial homes in Singapore are in essence bare trusts, since these trusts do not generally involve the performance of any active trusteeship duties. A substantial lapse of time in bringing a claim to the beneficial interest clearly does not prejudice the beneficiary under the resulting (bare) trust. For instance, in *Chan Yuen Lan v See Fong Mun*[24] the Court of Appeal allowed a claim by a beneficiary for a declaration of the extent of his equitable interest some 30 years after the resulting trust crystallised. No issue of laches arose in that case.

15 If a beneficiary has the power to bring a bare trust to an end at any time, and the right to a common account exists for the entire duration of a bare trust until it is conclusively settled, then it *must* follow that a beneficiary is similarly at liberty to enforce his right to a common account at any time within the duration of the bare trust. In such a case, it appears meaningless to talk about a "substantial lapse of time", unless it may be shown that the beneficiary is under a corresponding duty to seek a common account at some earlier point in time. The difficulty here lies in trying to pinpoint when such a duty (assuming it exists) arises since the right to obtain a common account is not premised on the trustee's wrongdoing.[25] The better view to take is probably that such an exercise is bound to fail simply because no such duty exists in the first place.

23 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44].
24 [2014] 3 SLR 1048.
25 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [23].

16 If it is correct that the "substantial lapse of time" is analytically inert in *Chng Weng Wah*, then the logical conclusion is that what rendered it "practically unjust to give a remedy" in that case must have been some other factor or combination of factors. On the facts of *Chng Weng Wah*, it is submitted that the true operative factor that attracted the application of laches was the delay between the parties' *dispute* in 2002 over the status of the account and the commencement of the suit in 2013. The Court of Appeal held:[26]

> Indeed, the long silence [following the exchange of correspondence between 2002 and 2003], bearing in mind the state of their relationship then, is most telling. It would have been reasonable for [the trustee] to believe that that matter is over.

Why was the "long silence" most telling? After the dispute initially arose over the status of the account, the subsequent inaction and acquiescence on the beneficiary's part over a period of ten years led the trustee to reasonably believe that the account had been considered settled. This certainly made it "practically unjust to give a remedy" since the beneficiary's actions could be "regarded as equivalent to a waiver thereof" of any irregularity, and it did put the trustee "in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted".[27] However, if this was indeed the true operative factor which led to the application of laches, then it would seem that the beneficiary's claim for a common account was barred because of his delay in bringing an action after the dispute arose in 2002. In other words, the beneficiary was, by virtue of his own unconscionable conduct, prevented in this action from denying that the account was not in fact settled.[28]

17 This interpretation has the advantage of being reconcilable with the Court of Appeal's subsequent finding that the trustee had *not* "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".[29] However, this method of reconciliation comes at the somewhat awkward expense of suggesting

26 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [51].

27 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44].

28 A similar point seemed to have been made by Sundaresh Menon JC (as he then was) in *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [10], where his Honour inferred that:

> … the utter lack of any steps having been taken by any of the beneficiaries to assert their claims for such a long period of time [of 50 years] *renders it highly improbable that these rights had not been settled.* [emphasis added]

29 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [43]. The Court of Appeal made it clear that it would not reverse this aspect of the trial judge's finding in the absence of proper arguments by the parties' respective counsel.

that the court was not really concerned with laches at all in *Chng Weng Wah*, but was concerned with some other doctrine, such as waiver, acquiescence, or some form of estoppel. Nevertheless, it is submitted that this interpretation is the better one to take because of the difficulty of identifying for the purposes of applying laches any meaningful starting point to determine whether there was a "substantial lapse of time".

B. What happens to the oral express trust?

18 The next difficulty with applying laches to a common account lies in the fact that the common account is not a claim to any remedy but "merely the first step in a process which enables [the beneficiary] to identify and quantify any deficit in the trust fund and seek the appropriate means by which it may be made good".[30] By applying laches to a claim for a common account, the Court of Appeal appeared to have prevented the bare trust from being duly administered, but it left open the question as to the status of the beneficiary's equitable interest under the bare trust, that is, the beneficiary's right to have the legal title of the trust property conveyed to him.

19 Some hints as to the status of the trust may be gleaned from the Court of Appeal's reliance[31] on a passage in *Hetul Navinchandra Patel v Ashwin Motichand Shah*,[32] ("*Patel v Shah*") suggesting that once laches is found to apply due to the plaintiff's unconscionable conduct, the effect is that "a defendant trustee [is released] from the equitable trust obligation, which binds his conscience as the holder of the legal title for the benefit of others".[33] With respect, these two cases involve a crucial difference. The claim in *Patel v Shah* was directly "for the recovery of trust property",[34] whereas the claim in *Chng Weng Wah* was for a common account which, as explained by Lord Millett NPJ in *Hall v Libertarian Investments Ltd*,[35] is different because it is merely "the first step in a process" and "does not in itself provide the plaintiff with a remedy".[36]

20 Leaving aside for the moment issues of *res judicata*, issue estoppel, abuse of process and the like, it seems theoretically possible for the plaintiff in *Chng Weng Wah* to bring a subsequent claim to recover

30 *Hall v Libertarian Investments Ltd* [2013] HKCFA 93 at [168], *per* Lord Millett NPJ.
31 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [58].
32 [2005] EWCA Civ 157.
33 *Hetul Navinchandra Patel v Ashwin Motichand Shah* [2005] EWCA Civ 157 at [33], *per* Mummery LJ.
34 As recognised in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [58].
35 [2013] HKCFA 93.
36 *Hall v Libertarian Investments Ltd* [2013] HKCFA 93 at [168].

the trust property, given that the *ratio decidendi* of the Court of Appeal decision is, simply, that the claim for a common account is barred, and not that the trustee is released from the equitable trust obligation which bound his conscience. Although such an absurd outcome surely could not have been intended by the Court of Appeal, it cannot be denied that the claim in *Chng Weng Wah* remained one essential step removed from Mummery LJ's conclusion in *Patel v Shah*, which is not in itself without problems.

C. Why not apply under O 43?

21 The doctrinal difficulties discussed above ought never to have arisen. The defendant's decision to rely on the doctrine of laches to bar the plaintiff's claim for a common account in *Chng Weng Wah* may come as a surprise to some. Since the claim was brought in the High Court at first instance, the claim would presumably[37] have been (or if it were not, it certainly ought to have been)[38] made under O 43 r 1. If the taking of a common account reveals a deficit, the beneficiary may bring a separate action against the errant trustee for an account on the footing of wilful default, which enables the trust account to be falsified or surcharged in accordance with settled equitable principles to make good the deficit.[39]

22 It used to be that under the common law, once a duty to account had been established, the court did not have a discretion as to whether to order a common account or not.[40] However, after the Judicature Acts of 1873[41] and 1875[42] fused the administration of common law and equity in England, the Rules of Supreme Court (which commenced in 1883) gave the English courts such a discretion.[43] This discretion also exists in Hong Kong.[44] In Singapore, the same discretion may be found in O 43 r 1(4) of the Rules of Court:

> (4) On the hearing of the application, the Court *may*, unless satisfied by the defendant by affidavit or otherwise that there is some

37 This procedural detail was not explicitly stated in the Court of Appeal judgment, and it is not possible to peruse the High Court judgment because it is sealed.

38 Order 1 r 2 states that the Rules of Court (Cap 322, R 5, 2014 Rev Ed) "shall have effect in relation to *all* proceedings in the Supreme Court" [emphasis added].

39 See generally *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) ch 20 and *Hall v Libertarian Investments Ltd* [2013] HKCFA 93 at [167]–[170], *per* Lord Millett NPJ.

40 Steven B Elliott, *Compensation Claims against Trustees* (unpublished DPhil thesis) (University of Oxford, 2002) at p 93.

41 Supreme Court of Judicature Act 1873 (c 66) (UK).

42 Supreme Court of Judicature Act 1875 (c 77) (UK).

43 *Campbell v Gillespie* [1900] 1 Ch 225 at 228.

44 *Hall v Libertarian Investments* [2013] HKCFA 93 at [167].

> preliminary question to be tried, *order that an account be taken* and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order. [emphasis added]

23 An illustration of the court's exercise of this discretion may be seen in *Campbell v Gillespie*.[45] In that case, the defendant trustee had the trust accounts audited and passed these accounts to the plaintiff beneficiary's solicitor. The plaintiff and her solicitor were apparently satisfied with the accounts furnished. There was, however, no formal deed of settlement extinguishing the trustee's duty to account entered into. Two years later, the defendant in good faith (but, in Cozens-Hardy J's words, "most unwisely") sent the account books of the trust for destruction, rendering it almost impossible for the defendant to render full accounts under an ordinary decree. Shortly after, the plaintiff claimed a general account. Cozens-Hardy J exercised his discretion and declined to make an order for a general account, holding that to do so "would be to enable the plaintiff to blackmail the defendant".[46]

24 It is submitted that it is possible for this discretion to be similarly exercised in *Chng Weng Wah*. The principle that emerges from *Campbell v Gillespie* seems to be that, in the absence of bad faith, an account will not be ordered if it would not be practical or reasonable to expect the defendant to comply with such an order. Hence, if the lack of records due to subsequent destruction of those records in good faith justifies the exercise of the court's discretion to refuse an account, then surely the failure to keep formal documentation right from the very beginning in reliance of the parties' cordial relationship in good faith should *a fortiori* also justify the exercise of the court's discretion. Indeed, the Court of Appeal in *Chng Weng Wah* specifically found that "the nature of the parties' relationship [before they fell out] resulted in a situation where limited formal documentation was kept" and, given that "memories fade over time", the defendant would likely "encounter difficulties trying to rebuild proper transactional records from the patchy evidence available".[47]

25 Quite apart from the general discretion to refuse to order an account even where there is a duty to account, it would appear that in Singapore there is an *even more* straightforward provision in the Rules of Court to dispose of the plaintiff's application. Where there is "undue delay in the prosecution of any accounts", O 43 r 7(1) of the Rules of Court expressly empowers the court to stay the proceedings unless the party applying for the account is able to explain the delay:

45 [1900] 1 Ch 225.
46 *Campbell v Gillespie* [1900] 1 Ch 225 at 229.
47 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [54].

> (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

Since the Court of Appeal in *Chng Weng Wah* had unequivocally found that the beneficiary's delay of ten years (from the moment of dispute) in bringing his claim was "a rather significant delay" by any measure, it would seem that the "undue delay" requirement contained in O 43 r 7(1) would be satisfied on the facts, thereby triggering the court's power contained in that rule to stay the proceedings in the absence of good reasons for the delay.

26 Given the presence of these statutory powers contained in the Rules of Court that could have been invoked to defeat the plaintiff's claim for a common account, it is therefore curious that the defendant had instead chosen to rely on the equitable doctrine of laches. Usually, if two or more different doctrines may be concurrently invoked and the outcome is the same, it should not matter which doctrine is relied upon although the more straightforward doctrine is often preferred. However, as has been argued above, relying on laches to bar a claim for a common account raises difficult conceptual questions, and it is submitted that the course of action adopted by the defendant in *Chng Weng Wah* is best avoided in a future case.

III. Conclusion

27 The plaintiff's claim in *Chng Weng Wah* was for an account of the shares held on bare trust for him, a trust that was not denied by the defendant. A rather interesting feature of this case was that, even though the plaintiff's claim was eventually held to be barred by laches, the Court of Appeal nevertheless went through the evidence carefully in its judgment and made detailed findings of fact as to the nature of each and every transaction (date of sale, quantity of shares sold, price *per* share) leading to the eventual disposal and conversion of all of the plaintiff's shares into sale proceeds.[48] In other words, the plaintiff did, albeit *indirectly*, and notwithstanding the dismissal of his claim, successfully obtain the common account that he applied for. Yet, without any further recourse to obtain the proceeds of sale allegedly owed to him, this pyrrhic victory remains of cold comfort to the plaintiff.

48 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [31]–[36].

28 The defendant's reliance on the doctrine of laches in *Chng Weng Wah* instead of the more straightforward provisions contained in O 43 of the Rules of Court makes the case exceptionally challenging to analyse, especially since he ultimately succeeded on the defence before the Court of Appeal. To avoid this situation in the future, it is suggested that a defendant in a case with similar facts should consider obtaining recourse under O 43 of the Rules of Court rather than relying on the equitable doctrine of laches.

29 While the theoretical basis of *Chng Weng Wah* may be open to further interpretation, it is submitted that the outcome of the case is completely unassailable. In the absence of good reasons for the delay, court resources should not be expanded on adjudicating stale claims. It is clearly unfair and unreasonable to expect a defendant to be able to furnish documentary or oral evidence to defend a claim where the plaintiff's own conduct has led him to reasonably conclude that the matter is over. However, what is less clear in such a case is whether the doctrine of laches is the best way to resist a plaintiff's claim.

30 Finally, it seemed that the Court of Appeal was deeply influenced by a crucial e-mail sent by the plaintiff's secretary to a third party acknowledging plaintiff's receipt of a cheque from the defendant,[49] to the extent that it was *prepared* to find that the defendant had already provided complete accounts.[50] One could only conclude with the full benefit of hindsight that, had *that* particular aspect of the first instance judgment been challenged, *Chng Weng Wah* would probably have been an utterly unexceptional case.

49 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [42].
50 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [43].