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16. EQUITY AND TRUSTS

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I. Express trust

16.1 *OOPA Pte Ltd v Bui Sy Phong*[1] dealt with the complex interplay between equity and company law. The plaintiff company, OOPA Pte Ltd ("OOPA"), was a Singapore company set up for the purpose of holding a Vietnamese operating company, OnOnPay Vietnamese Mobile Services JSC ("OnOnPay"). This was a start-up venture to provide Vietnamese mobile subscribers the opportunity to top up mobile airtime and an e-wallet application for small retailers in Vietnam. Bui Sy Phong, the defendant, was the prime mover who set up this structure and secured investors for this venture. Bui was a major shareholder of OOPA and OnOnPay and director of OOPA. The other directors of OOPA represented the other investors of this start-up business. Unfortunately, the start-up business was unsuccessful. However, another business venture appeared to be viable, that is, a procurement and supply business for small retailers in Vietnam which was known as the Central Supply Business ("CSB"). Bui then set up a Singapore company, Telio Pte Ltd ("Telio"), as a holding company for a Vietnamese company, Telio Vietnam Co Ltd, to pursue this business opportunity. Bui was the sole shareholder of Telio at the time of incorporation. The other directors of OOPA found out about Telio when Telio obtained funding from a major venture capital firm and discussions ensued in relation to transferring Telio's shareholding to OOPA. When this failed to happen, OOPA sued Bui, asserting Bui held Telio's shares "as agent and/or nominee and/or constructive trustee" for OOPA. The term "nominee" was meant to convey that Bui held the shares of Telio as an express trustee for OOPA. OOPA further claimed that Bui had wrongfully diverted the CSB to Telio in breach of fiduciary duty. In response, Bui contended that OnOnPay,

1 [2021] SGHC 142.

not OOPA, was the proper plaintiff. Bui also averred that CSB was his idea and belonged to him personally.

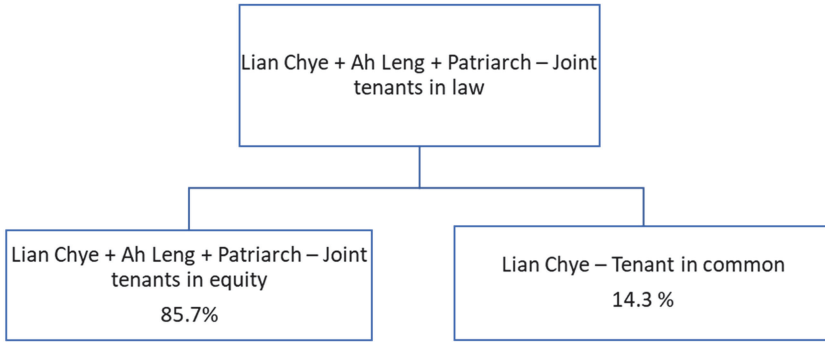
16.2 This part of the review will focus on express trust principles articulated in the judgment. In determining the express trust argument, Philip Jeyaretnam JC considered whether three certainties were present. The learned judge found that the company secretary of OOPA had incorporated Telio and the common intention was that Bui incorporated Telio on behalf of OOPA for the purposes of pursuing the CSB. Bui understood that he would have to transfer his shares in Telio to OOPA in due course. Jeyaretnam JC held that certainty of intention, subject matter and objects were present in this case. Hence, the learned judge found that Bui held the shares in Telio on an express trust for OOPA.

II. Resulting trust

16.3 *Koh Lian Chye v Koh Ai Leng*[2] is yet another family property dispute. In this case, a Housing and Development Board ("HDB") shophouse was registered jointly in the names of brothers, Koh Lian Chye and Koh Ah Leng, and their late father, Koh Cheng Kang ("the patriarch"). The HDB shophouse was purchased with a bank loan where all three parties were joint borrowers and mortgagors. Lian Chye also used some of his Central Provident Fund ("CPF") moneys towards the purchase price. When the patriarch passed away, Lian Chye asserted that he had sole beneficial interest over the property by way of a resulting trust. Lian Chye's case was that there was a common intention constructive trust founded upon the parties' agreement that he was the sole beneficial owner. In contrast, Ah Leng asserted that the sole beneficial interest belonged to a partnership, Koh Seng Hin, in which Ah Leng and the patriarch were partners running a provision shop. Belinda Ang Saw Ean JAD rejected both Lian Chye's and Ah Leng's respective cases that they were the sole beneficial owner. The learned judge held that the joint tenants, the patriarch, Lian Chye and Ah Leng, held the property on a purchase price resulting trust for the patriarch (85.7%) and Lian Chye (14.3%) according to their financial contributions. In relation to the late patriarch's share, Ang JAD found there was a presumption of advancement that the patriarch had intended to give his shares to his two sons. But since there was no evidence as to the proportion in which the patriarch intended to apportion his beneficial interest, it would be fair to apply the maxim "equality is equity". Thus, the resultant interest of property was Lian Chye at 57.15% and Ah Leng at 42.85%.

2 [2021] SGCA 69.

16.4 With respect, it is suggested that while the result of the case is correct, the analysis should have proceeded as follows. First, Lian Chye had paid 14.3 % of the purchase price and did not intend for that part of the purchase price to benefit the patriarch and Ah Leng; a resulting trust in that proportion arose in Lian Chye's favour. Second, the remainder of the 85.7 % was held on a joint tenancy in equity between the patriarch, Lian Chye and Ah Leng. A pictorial representation of the position is found below:



16.5 Since the patriarch was presumed to have intended to give his shares to his two sons, there was no resulting trust in his favour and the joint tenancy remained intact even though the patriarch paid for the purchase price in relation to the 85.7%. When the patriarch passed away, his share disappeared, leaving Lian Chye and Ah Leng the remaining joint tenants of the 85.7% of the share of the property. While the quantum of shares of Ah Leng and Lian Chye in the property remain the same under this analysis, it is suggested that this reasoning process resolves the thorny question that both the High Court and Court of Appeal had to grapple with, that is, what was the proportion of shares the patriarch intended to give his sons? Further, this proposed analysis obviates the need to rely on the maxim "equality is equity".

16.6 A possible objection to the alternative analysis proposed here is that a joint tenancy may not exist in equity. There is a line in the judgment where Ang JAD stated: "In the case of a joint tenancy over property, it should be noted that the right of survivorship operates *only* on the legal interest and *not* the beneficial interest" [emphasis in original].[3] This seems to suggest that, conceptually, it is not possible to have a joint tenancy in equity.[4] However, this point has not been seriously

3 *Koh Lian Chye v Koh Ai Leng* [2021] SGCA 69 at [24].
4 See *Soemarto Sulistio v Stukan Yetty Fang* [2021] SGHC(A) 5 at [18].

argued in depth in Singapore especially with reference to authorities[5] and textbooks[6] from England, which suggests that a joint tenancy in equity is uncontroversial. In fact, the structure of co-ownership law in England via the Trusts of Land and Appointment of Trustees Act 1996[7] ("TOLATA 1996") envisages that the concept of joint tenancy may exist in equity. Under the TOLATA 1996, all forms of co-ownership must exist as a joint tenancy at law with a maximum of four joint tenants on the basis of a statutorily imposed trust. However, the joint tenants may be holding the property for themselves as tenants in common or joint tenancy in equity. It should be noted that it is possible for four joint tenants in law to hold the property on a joint tenancy in equity for more than four people. Martin Dixon explains in *Modern Land Law*:[8]

> The number of co-owners in equity is not limited, be they joint tenants or tenants in common. If the land is purported to be conveyed to more than four people, it is the first four named in the conveyance who become the joint tenant trustees of the land, with all five or six, and so on, owning in equity as either joint tenants or tenants in common as the case may be.

16.7 *Lim Choo Hin v Lim Sai Ing Peggy*[9] ("*Lim Choo Hin*") involved the questions of, *inter alia*, (a) when a resulting trust may arise independently of a presumption of resulting trust; and (b) the interpretation of ss 51(8)–51(10) of the Housing and Development Act[10] ("HDA") (*in pari materia* with ss 58(9)–58(11) of the prevailing Housing and Development Act 1959),[11] which regulate trusts over HDB properties.

16.8 In this case, an application was filed by appellant Lim Choo Hin ("LCH") seeking a declaration that a property held by her father Lim Guan Heong ("LGH") and her respondent sister Lim Sai Ing Peggy ("LSI") as joint tenants at the time of LGH's passing was subsequently held on trust by LSI for the estate of LGH. LGH was the sole registered proprietor of the property at the time of purchase in 1976. In 1981, LSI became registered as a joint tenant of the property. LCH also became registered as a joint tenant of the property in 2001 but subsequently removed her name from the property of her own accord because she wanted to become eligible to

5 See *Stephen John Culliford v Jocelyn Thorpe* [2018] EWHC 426 (Ch) at [66] and *In re Densham* [1975] 1 WLR 1519.

6 Ben McFarlane, Nicholas Hopkins & Sarah Nield, *Land Law* (Oxford University Press, 1st Ed, 2017) at p 155; Martin George & Antonia Layard, *Thompson's Modern Land Law* (Oxford University Press, 7th Ed, 2017) at p 306; Kevin Gray & Susan Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) at p 946–947.

7 c 47 (UK).

8 Martin Dixon, *Modern Land Law* (Routledge, 12th Ed, 2021) at p 139.

9 [2022] 1 SLR 873.

10 Cap 129, 2004 Rev Ed.

11 2020 Rev Ed.

acquire a HDB flat of her own.[12] Upon LGH's death on 4 September 2015, legal title to the property devolved to LSI under the right of survivorship and notwithstanding a will which LGH had executed on 27 April 2015.[13]

16.9 At first instance, the High Court in *Lim Choo Hin v Lim Sai Ing Peggy*[14] dismissed LCH's application on the basis that the documentary evidence – in particular, a stamp on the title deed to the property stating "BY GIFT" – unequivocally showed the LGH had intended to confer his beneficial interest to himself and LSI by way of *inter vivos* gift, and there was therefore no need for the court to engage in any analysis relating to the presumption of resulting trust or the presumption of advancement.[15]

16.10 On appeal, the High Court's decision was overturned by the Appellate Division of the High Court ("High Court (Appellate Division)"). The appellate court emphasised that whilst a gratuitous transfer of property would normally give rise to a presumption of resulting trust in the transferor's favour, the court was not obliged to rely on such a presumption if there was direct evidence that might adequately reveal the intention of the transferor. Therefore, "a resulting trust may arise independently of the presumption of resulting trust as long as it can be shown that the transfer was not intended to benefit the transferee".[16] In a sense, this was a resulting trust which arose from the actual intention of the transferor that he did not intend to benefit the transferee. It was only in the rather limited and exceptional situation when the court was not able to find any clear intention or if the evidence was inconclusive either way as to what the transferor's real intention might be that the court should apply the presumption.[17] This was then a true "presumed" resulting trust.

16.11 On the facts, the appellate court found that the High Court erred in its finding as the title deed and transfer instrument could "hardly be said to be conclusive of [LGH's] actual intent or state of mind as at the time when the [transfer] was effected".[18] Furthermore, Singapore courts have found that a property could be held on trust for the transferor even

12 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [2].
13 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [2].
14 [2021] SGHC 52.
15 *Lim Choo Hin v Lim Sai Ing Peggy* [2021] SGHC 52 at [38], [40], [42] and [44]; *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [3].
16 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [8].
17 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [8].
18 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [11].

in the face of transfer documents suggesting the transfer was intended as gift.[19]

16.12 In this case, the High Court (Appellate Division) was of the view that it was important to consider circumstantial evidence to determine LGH's intentions given that he was no longer alive and no longer able to provide direct evidence on his own.[20] Such circumstantial evidence included: the lack of evidence that LGH had been advised on the legal implications of the transfer to LSI in 1981 or that he had even read or understood the words "BY GIFT" on the title deed stamp;[21] LGH's conduct showing that he continued to exercise control over the property as if he was its sole owner (for instance, demanding for rent from his children, including both LSI and LCH);[22] lack of evidence that LGH shared a particularly close relationship with LSI (rather, evidence suggested that he was a traditional patriarch who favoured his only son);[23] uncontroverted evidence that LSI was the only one of LGH's children who was eligible to become owner of the property at the material time in 1981;[24] and LSI's conduct suggesting that she did not believe that she owned an interest in the property.[25]

16.13 Upon considering the evidence in its totality, the High Court (Appellate Division) was satisfied that on a balance of probabilities, LGH did not intend to gift any beneficial interest in the property to LSI.[26] It was therefore unnecessary for the court to apply the presumption of resulting trust or invoke the presumption of advancement, both of which would only operate where there was no evidence from which to prove or infer the intention of the transferor.[27]

16.14 A further argument raised by LSI was that even if she held the Property on trust for the estate of LGH, such a trust would be void under ss 51(8) and/or 51(9) of the HDA[28] which provided that:

> (8) No trust in respect of any protected property shall be *created* by the owner thereof without the prior written approval of the Board.

19 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [11]; *Lee Nellie v Wong Lai Kay* [1990] 1 SLR(R) 215.
20 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [12].
21 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [14].
22 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [16].
23 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [18].
24 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [19].
25 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [20]–[21].
26 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [23].
27 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [23].
28 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [5].

> (9) Every trust which purports to be *created* in respect of any protected property without the prior written approval of the Board shall be null and void.
>
> [emphasis added]

16.15 The High Court (Appellate Division) distinguished the present case from that in *Lim Kieuh Huat v Lim Teck Leng*[29] ("*Lim Kieuh Huat*"). In *Lim Kieuh Huat*, the appellants had financed the purchase of a HDB flat but deliberately registered the flat in the sole name of their son to circumvent the HDB resale levy requirements whilst retaining beneficial ownership of the flat. The Court of Appeal in *Lim Kieuh Huat* found that although the parties had abstained from adopting the language of an express trust, their arrangement in effect entailed the "creation" of an express trust and thereby contravened ss 51(8) and 51(9) of the HDA. However, in the present case, the court found that there was no evidence of any intention on LGH's part to create an express trust by bifurcating the legal and beneficial interest in the property and retain the beneficial interest whilst conferring only the legal interest on the respondent. The trust in LGH's favour was in the nature of a resulting trust, not an express trust; therefore, the court held that ss 51(8) and 51(9) of the HDA were inapplicable to the case at hand.

16.16 The court went further to consider whether the resulting trust in LGH's favour contravened s 51(10) of the HDA which provided that "[n]o person shall *become entitled* to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising" [emphasis added by the High Court (Appellate Division)]. The court found that the resulting trust in this case did not contravene s 51(10) of the HDA as s 51(10) did not extend to situations where the person in whose favour the trust arose *already* had an interest in the flat in question.[30] In the case at hand, LGH had already possessed an interest in the property *before* the registration of LSI as a joint tenant of the property in 1981. Therefore, LGH could not be said to have "*become* entitled" [emphasis added] to an interest in the property by virtue of the resulting trust in his favour such that s 51(10) applied.[31]

16.17 Thus, the High Court (Appellate Division) held that LSI held the property on resulting trust for LGH's estate and ordered that LSI (a) deliver up possession of the property to LGH's estate such that it would be sold; (b) sign and execute all documents, instruments and/or applications as may be necessary to effect such sale and/or transfer as may be directed by the estate; and (c) be accountable to the estate as trustee

29 [2021] 1 SLR 1328.
30 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [28].
31 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [28].

from the date of LGH's demise for all benefits and income arising from the property as well as for all loss or damages to LGH's estate occasioned by LSI's breach of duty as trustee.[32]

16.18 The ultimate holding of the High Court (Appellate Division) in *Lim Choo Hin* is undoubtedly correct. However, the analysis in relation to completed gifts and resulting trust is controversial. On the facts, the registration documents in relation to the property showed that there was a completed gift to LSI. Therefore, before a resulting trust could operate, the gift had to be set aside.[33] In other words, since the relevant conveyance evidences a gift, there is no room for the application of the doctrine of resulting trust to be implied unless and until the conveyance is set aside or rectified; until that event, the declaration contained in the document speaks for itself.

16.19 *Chye Seng Kait v Chye Seng Fong*[34] raises interesting questions in relation to resulting trusts and joint bank accounts. In this case, the Chye patriarch died in 2015 leaving several joint bank accounts. The patriarch had a joint bank account in OCBC with his wife which had a balance of $200,000, a joint bank account in OCBC with his youngest daughter, June, which had a balance of $40,000 and another joint bank account in DBS with June which had a balance of $70,000. One of the sons brought a claim against the executor of the estate alleging that the joint bank accounts with June were estate assets because a resulting trust arose over these accounts in favour of the patriarch. It was undisputed that the moneys in the bank account were provided by the patriarch. Vinodh Coomaraswamy J's reasoning process was that there was a resulting trust in favour of father because the presumption of advancement was rebutted on the facts of the present case. First, the learned judge found that the father had exercised full and complete dominion over the joint bank accounts. Second, June was financially independent and was a senior vice president of a public listed company. Finally, June had acknowledged during cross-examination that the accounts belonged to the father. Therefore, the learned judge held that the father was the full owner of the joint accounts during his lifetime. However, Coomaraswamy J went on

32 *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 at [33].

33 For the law on setting aside a gift in equity, see *Pitt v Holt* [2013] 2 AC 108 (noted in Stephen Watterson, "Reversing Mistaken Voluntary Dispositions" (2013) 72 Camb LJ 501; Richard Nolan, "Fiduciaries and their Flawed Decisions" (2013) 129 LQR 469; and Yip Man "Further Reflections on the Hastings-Bass Rule, Rescission for Mistake and Rectification" (2014) J Eq 46). See generally Tang Hang Wu, "Restitution for Mistaken Gifts" (2004) 20 JCL 1.

34 [2021] 5 SLR 608.

to hold that cl 2 of the father's will made an absolute gift of the two joint accounts to June. Clause 2 provided as follows:[35]

> I hereby declare that any immovable property held by me jointly with the co-owner as joint tenants shall belong to the surviving joint tenant absolutely by virtue of the right of survivorship. I further declare that any account held by me with any other person(s) jointly in any financial institution shall also belong to such joint account holder(s) absolutely by virtue of the right of survivorship.

16.20 The learned judge held that cl 2 had the effect of making an absolute gift of the joint bank accounts to June. Another alternative method of reaching the same conclusion is that cl 2 of the will evidenced an intention to benefit June; hence, a resulting trust in favour of the father did not even arise in the first place.

16.21 *Tay Nguang Kee Serene v Tay Yak Ping*[36] is another family property dispute case. The plaintiff ("Serene") alleged, *inter alia*, that the *en bloc* sale proceeds ("the Sale Proceeds") of a property ("Pacific Mansion Property") registered in the joint names of the defendants – her younger brother ("Yak Ping") and her father (who had lost mental capacity by the time of the suit) – was held on resulting trust for her.[37] It was not disputed that the Pacific Mansion Property was mostly paid from the *en bloc* sale proceeds of another apartment ("Valley Apartment") save for a sum of $44,000 which was paid from Yak Ping's CPF account. The issues to be determined were (a) whether the purchase of Valley Apartment was paid for using the proceeds of Serene Leather, a business which Serene claimed she started and which she solely owned; (b) whether Serene Leather was solely owned by Serene; (c) whether the Sale Proceeds of the Pacific Mansion Property were held on trust for Serene; and (d) whether Serene's claim was barred by the Limitation Act[38] or the doctrine of laches.[39]

16.22 On the evidence, Chan Seng Onn J was satisfied that the proceeds of Serene Leather were used to purchase Valley Apartment.[40] Amongst other things, Chan J rejected Yak Ping's argument that the proper inference to be drawn from a testamentary disposition was that the person making the will was the outright owner of the property rather than a resulting trustee.[41] In this case, the mother of Serene and Yak Ping had made a will distributing the mother's share in Valley Apartment to Yak Ping and two other children of hers. Chan J took the view that the court in *Quek*

35 *Chye Seng Kait v Chye Seng Fong* [2021] 5 SLR 608 at [36].
36 [2021] SGHC 194.
37 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [2] and [3].
38 Cap 163, 1996 Rev Ed.
39 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [15].
40 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [16]–[48].
41 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [44] and [47].

Hung Heong v Tan Bee Hoon[42] did not set out any such presumption or rule that the testator purporting to dispose of property named in the will was the outright owner of the property. Chan J further opined that the person making the will could well be a mere trustee of the property who was mistaken as regards the beneficial ownership of the property or, in exceptional cases, even mischievous.[43] Ultimately, whether a resulting trust is formed and whether it may be rebutted is a fact-sensitive inquiry. In this case, there was evidence that Serene's and Yak Ping's mother regarded Valley Apartment as having been purchased by Serene. Chan J therefore did not consider that the mother's will (purporting to dispose of Valley Apartment) undermined Serene's case that Valley Apartment was purchased using proceeds from Serene Leather.[44]

16.23 Chan J also found on the evidence that Serene Leather was solely owned by Serene and all proceeds of Serene Leather belonged to Serene.[45] Chan J was of the view that the addition of Serene's siblings (including Yak Ping) and her father as partners of Serene Leather did not give them ownership of Serene Leather as it was never Serene's intention to do so.[46] Amongst other things, their minimal involvement in Serene Leather further showed that they were merely nominee partners.[47] Serene's parents' treatment of the sale proceeds from Serene Leather also showed that the family acknowledged that sale proceeds of Serene Leather kept in the family safe were Serene's solely and were merely being safekept for her by her parents.[48]

16.24 In light of the above findings, and applying the principle held in *Chan Yuen Lan v See Fong Mun*[49] ("*Chan Yuen Lan*"), Chan J found that Valley Apartment was held by Yak Ping and his father on resulting trust for Serene. The was because the sale proceeds of Serene Leather, a business solely owned by Serene, were used to pay the purchase price of Valley Apartment. Flowing from this, the subsequent *en bloc* sale proceeds of Valley Apartment were held by the defendants on resulting trust for Serene.[50] On the facts, Chan J held that 96.07% of the purchase price of the Pacific Manson Property was paid from the sale proceeds of Valley Apartment. Accordingly, Chan J found that 96.07% of the Sale

42 [2014] SGHC 17.
43 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [46].
44 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [47].
45 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [58].
46 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [55].
47 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [56].
48 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [57].
49 [2014] 3 SLR 1048 at [38], [44] and [53].
50 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [63].

Proceeds were held on resulting trust for Serene.[51] Chan J also ordered Serene to reimburse Yak Ping the sum of $23,299.65 which comprised Serene's 96.07% share of the initial stamp duty paid out of Yak Ping's CPF account and the accrued interest on that amount.[52]

16.25 Finally, Chan J rejected the defendants' final defences that Serene's claim was barred by s 22(2) of the Limitation Act and/or doctrine of laches.[53]

16.26 In response to the defence of limitation, Serene sought to rely on the exception under s 22(1)(*b*) of the Limitation Act on the ground that her claim was based on a resulting trust. Despite Serene's failure to plead her reliance on s 22(1)(*b*) in her reply to the Defence, Chan J found that Serene was not precluded from relying on that statutory provision. Chan J recognised that it was good practice for a plaintiff to specifically plead in his or her reply (and preferably in the statement of claim if possible) the facts relevant to defeat the defence of limitation.[54] However, relying on the Court of Appeal's decision in *BOM v BOK*,[55] Chan J was of the view that it was merely a technicality that Serene did not sufficiently identify s 22(1)(*b*) of the Limitation Act. Serene's case in response to the limitation period was sufficiently clear where the essence of her claim was that there was a resulting trust, and there was no surprise or irreparable prejudice to the defendants by allowing Serene to rely on s 22(1)(*b*).[56] Applying s 22(1)(*b*) of the Limitation Act and *Lim Ah Leh v Heng Fock Lin*,[57] where it was held that there would be no limitation bar where the defendant held property on resulting trust for the plaintiff, Chan J held that Serene's claim was not time barred.[58]

16.27 The defendants further argued that the doctrine of laches applied to bar Serene's claim where she only sued after a substantial time lapse towards the end of 2019. The defendants argued that there was prejudice to the defence since their father was mentally incapacitated and unable to give rebuttal evidence, their mother had passed away, relevant documents were lost and there would be a windfall to Serene from her own delay in bringing the claim.[59]

51 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [64].
52 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [65].
53 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [66].
54 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [68].
55 [2019] 1 SLR 349.
56 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [69].
57 [2018] SGHC 156.
58 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [74]–[75].
59 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [76].

16.28 Chan J opined that the basis for equitable intervention by way of the doctrine of laches was ultimately found in unconscionability. The inquiry depended on the particular facts of each case and ought to be approached in a broad manner, as opposed to trying to fit the circumstances of each case within the confines of a preconceived formula derived from earlier cases.[60] Chan J also reiterated that the defendant bore the burden of proving that the doctrine of laches applied.[61]

16.29 On the facts, Chan J held that there was no undue delay in Serene's bringing of the claim in 2019.[62] Chan J also found that there was no prejudice as alleged by the defendants given that their mother had passed away years ago in 1996, and the loss of their father's mental capacity and lack of documentation similarly presented difficulties to Serene in satisfying her burden of proof, which in any case was not caused by any undue delay or fault on the part of Serene.[63] In Chan J's judgment, he did not think it was unconscionable to allow Serene relief. On the contrary, given credible evidence in Serene's favour, it would be unconscionable to deny Serene relief on the ground of laches.[64] Accordingly, it was held that Serene's claim was not barred by the doctrine of laches.[65]

III. Constructive trust

16.30 *Lim Sze Wei v Lim Chuan Wei*[66] is an interesting case on the interplay between joint tenancies and survivorship. The defendant, Lim Chuan Wei, was the eldest child and was registered as joint tenant of two properties with his parents, located in Ang Mo Kio and Sunrise.[67] Both parents subsequently passed away. Under their wills, the parents had bequeathed their interests in the two properties to the youngest child ("Luke").[68] Luke and his sister ("Geri") were appointed joint executors of their mother's estate. Luke was also appointed the sole executor of their father's estate.[69] Luke and Geri, in their capacities as executors of the estates, commenced an action claiming that in respect of one of the properties ("the AMK Property), the parents' estates owned it in totality,

60 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [79].
61 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [79].
62 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [80]–[84].
63 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [85].
64 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [85].
65 *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194 at [86].
66 [2021] SGHC 267.
67 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [1].
68 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [1] and [4].
69 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [4].

and in respect of the other ("the Sunrise Property"), the parents' estates owned two-thirds of it.[70]

16.31 Notably, it was not disputed that the joint tenancy for both the properties was never severed. The central issue before the High Court was whether the *beneficial* interest in the properties was held (a) on a joint tenancy so that both properties passed to Chuan Wei legally and beneficially as the survivor; or (b) under a tenancy in common, and if so in what proportion, with the result that the parents could pass their beneficial interests in the properties to Luke in accordance with their respective wills.[71]

16.32 On the evidence, the High Court held that the parents did not understand or intend at the time when the properties were purchased that their interests in them would go to Chuan Wei automatically upon their deaths. The High Court found that the legal interest in the properties were held in joint tenancy only because that was the "default" position (as opposed to a deliberate and informed choice of the parents).[72] Therefore, the High Court found that in equity, the properties were purchased by the parents as tenants in common; thus, such beneficial interests as they had in the properties could be bequeathed by them under their wills.[73]

16.33 In order to determine the proportion of the beneficial interests in the two properties, the High Court referred to the six-step framework set out in *Chan Yuen Lan*.[74] With regard to the AMK Property, the High Court found on the evidence that the entirety of the beneficial interest in the AMK Property was held entirely by the parents notwithstanding the joint tenancy of the legal estate.[75] However, the High Court accepted Chuan Wei's claim that he had contributed a total of $120,000 to the AMK Property and ordered that such sum was justly accountable to Chuan Wei.[76]

16.34 With regard to the Sunrise Property, the High Court found on the evidence that the parents and Chuan Wei had the common intention to hold the Sunrise Property in the proportion of one-third each from the time of the original purchase.[77] The High Court found that the parents and Chuan Wei, who were named joint tenants, had owned the Sunrise

70 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [17].
71 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [7].
72 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [54].
73 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [54].
74 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160]. See para 15.24 above.
75 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [58]–[66].
76 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [66].
77 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [69] and [70].

Property in equity as tenants in common in equal shares.[78] The High Court further held that the sum of $271,000 (paid by Chuan Wei towards the mortgage of the Sunrise Property) was to be subject to the remedy of equitable accounting and returned to Chuan Wei out of the sale process of Sunrise Property as reimbursement for his payments towards the discharge of the mortgage of the Sunrise Property.[79]

IV. Proprietary estoppel

16.35 *Letchimy d/o Palanisamy Nadasan Majeed v Maha Devi d/o Palanisamy Nadasan*[80] is a short but significant judgment on proprietary estoppel. The claimant alleged that her late mother represented to him on various occasions that the claimant would inherit her HDB flat upon the mother's demise. The case against the late mother's estate was dismissed at trial on the grounds that the claimant had not properly pleaded the facts supporting detrimental reliance and the evidence did not make out the requisite representation. On appeal, the trial judge's holding was upheld by the Court of Appeal. The significant aspect of this judgment is the Court of Appeal's observations on the elements of a proprietary estoppel. Steven Chong JCA, disagreeing with the trial judge, held that there was no legal requirement for the representation to have been intended to be acted upon. Silence, inaction and acquiescence on the part of the owner leading the claimant to believe that he or she has some right or interest in the property may ground a claim in proprietary estoppel. Hence, as Chong JCA pointed out, "[t]here is no separate requirement for 'intention'".[81] Further, Chong JCA held that "purely oral promises which are meant to take effect only upon the representor's death"[82] can be sufficient to support a claim for proprietary estoppel if accompanied with the necessary reliance and detriment. The trial judge had dismissed this claim on the basis that the oral representation was akin to an unenforceable oral will. Chong JCA held that this was an incorrect characterisation of the issue and that this point did not preclude a claim in proprietary estoppel.

78 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [76].
79 *Lim Sze Wei v Lim Chuan Wei* [2021] SGHC 267 at [74] and [76].
80 [2021] 1 SLR 970.
81 *Letchimy d/o Palanisamy Nadasan Majeed v Maha Devi d/o Palanisamy Nadasan* [2021] 1 SLR 970 at [15].
82 *Letchimy d/o Palanisamy Nadasan Majeed v Maha Devi d/o Palanisamy Nadasan* [2021] 1 SLR 970 at [16].

V. Retirement of trustees

16.36 *Chan Yun Cheong v Chan Chi Cheong*[83] is a decision wherein the Court of Appeal provided clarification on the retirement procedure of trustees. In this case, the appellant Chan Yun Cheong and the respondent Chan Chi Cheong were two out of three trustees of a trust arising out of the will of their late grandfather which was executed in 1947.[84]

16.37 The respondent sought to retire as a trustee pursuant to s 40 of the Trustees Act[85] ("TA") by writing to the third trustee and the appellant with an unsigned copy of a draft deed of retirement, informing them of the respondent's intention to retire and seeking their consent to his retirement.[86] Section 40 of the TA provided that such retirement could only be effective if it was done by deed and the remaining trustees consented, also by deed, to his discharge. The appellant did not sign the draft deed.

16.38 Instead, the appellant sought to resign too. The appellant wrote a resignation letter to the respondent and the third trustee stating that he (the appellant) thereby resigned as trustee with immediate effect and that his resignation was prompted by his inability to effectively discharge his duties as a trustee due to certain areas of concern.[87] The appellant claimed that his mode of retirement was authorised by cl 3 of the will which provided:[88]

> … Upon the death or retirement of any Trustee, the person appointed as his successor in office shall nevertheless be my male descendant through a male line.
>
> If any of my Trustees disagree with the others or have to attend to other business, he is at liberty to resign and the vacancy thereby created shall be filled accordingly.

16.39 Both the appellant and the respondent claimed to have validly retired and no longer held the position of trustee. It was common ground that if either of them had validly retired the other would be unable to retire from the trust unless a replacement trustee could be found.[89]

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83 [2021] 2 SLR 67.
84 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [2] and [5].
85 Cap 337, 2005 Rev Ed.
86 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [7].
87 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [7].
88 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [8].
89 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [2].

16.40 At first instance,[90] the High Court judge held that a trustee seeking to retire had to comply with s 40 of the TA unless the trust instrument expressed a contrary intention. On an objective reading of cl 3 of the will, nothing in that clause implied that the testator intended to void the application of s 40 of the TA; s 40 thus applied.[91] Given that the appellant had not met the conditions prescribed by s 40 of the TA, he was still a trustee.[92]

16.41 The High Court then considered the respondent's resignation. It held that s 14 of the Supreme Court of Judicature Act[93] ("SCJA") and/or s 18 of the SCJA and O 92 r 4 of the Rules of Court[94] ("ROC") provided the court with the power to order the appellant to execute the respondent's deed of retirement.[95] The exercise of this power, in the High Court's view, was justified as the appellant had acted unfairly, illogically and unreasonably by refusing to consent to the respondent's retirement.[96] The High Court therefore ordered the appellant to sign the deed of retirement within 14 days, failing which the Registrar of the Supreme Court was directed to execute the deed on the appellant's behalf.[97]

16.42 The appellant appealed the entirety of the High Court's decision.

16.43 On appeal, the Court of Appeal held that the High Court had erred in compelling the appellant to consent to the respondent's deed of resignation. The Court of Appeal agreed with the appellant that the court had no legal basis upon which it could compel him to consent to the respondent's deed of resignation.[98] In particular, s 14 of the SCJA does not grant the court the power to compel a co-trustee to consent to a trustee's retirement.[99] Furthermore, whilst s 18 read with Item 14 of the SCJA is wide ranging and can *theoretically* encompass the power to compel a co-trustee to consent to a trustee's retirement, the High Court had cited no authority to show that this power had ever been exercised to compel consent in a situation in which it was clear that the decision to give consent was wholly discretionary.[100] The High Court also cited no authority and gave no explanation for imposing a "reasonableness

90 *Chan Chi Cheong v Chan Yun Cheong* [2020] SGHC 43.
91 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [15]; see also *Chan Chi Cheong v Chan Yun Cheong* [2020] SGHC 43 at [32] and [35]–[42].
92 *Chan Chi Cheong v Chan Yun Cheong* [2020] SGHC 43 at [51].
93 Cap 322, 2007 Rev Ed.
94 2014 Rev Ed.
95 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [18].
96 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [18].
97 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [18].
98 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [25].
99 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [26]–[32].
100 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [34].

test".[101] Finally, for the inherent powers under O 92 r 4 of the ROC, the Court of Appeal held that the two conditions in *Cheong Wei Chang v Lee Hsien Loong*[102] had not been met since compelling consent is contrary to the proper statutory interpretation of s 40 of the TA and there was no exceptional circumstance in this case which required compelling of consent.[103] Therefore, the Court of Appeal set aside the High Court's orders compelling the appellant to consent to the respondent's deed of resignation.

16.44 The Court of Appeal held that in general, the conditions in s 40 of the TA do not have to be met if a trustee can use a retirement mode provided by the trust instrument. Nevertheless, the trustee must still meet the condition in s 38(1)(*c*) of the TA and any conditions stipulated in the trust instrument as being necessary to invoke the express power to retire.[104] Section 38(1)(*c*) sets out the condition that a trustee may only be discharged from the trust if there are at least two trustees or a trust corporation remaining.[105]

16.45 In this case, the Court of Appeal was of the view that the appellant and respondent would have validly retired if they had fulfilled the substantive and procedural requirements of the express power to retire as found in cl 3 of the will.[106] On a proper interpretation of cl 3, the Court of Appeal found that the testator intended that for the trustee retirement procedure, any of his trustees could retire if he wished to *and there was a replacement trustee* (who was the testator's male descendant through a male line).[107] The Court of Appeal also found that the testator did not intend to incorporate the trustee retirement requirements in s 40 of the TA in the trust document.[108] Section 40 of the TA dealt with the retirement of trustee *without* a new appointment, which was wholly separate from the express power to retire under cl 3, which involved retirement with a replacement trustee.[109] Accordingly, the substantive conditions in s 40 (in particular, the requirement that the retiring trustee must obtain the co-trustees' consent) could not apply to cl 3.[110]

101 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [34].
102 [2019] 3 SLR 326.
103 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [37] and [38].
104 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [43]–[48].
105 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [46].
106 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [49].
107 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [55] and [59].
108 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [60].
109 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [60].
110 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [60].

16.46 As the will did not set out a resignation procedure that was applicable on the facts, the Court of Appeal inferred that the testator was content for the method of resignation to be prescribed by the law in force when the will was executed in 1947, that is, under s 37(1) of the then Trustees Ordinance[111] (which is substantially similar to s 37(1) of the TA). Section 37(1) provided for, amongst other situations, a situation similar to that contemplated in cl 3 where an existing trustee wished to retire but could only do so if a replacement trustee was appointed. In that case, the continuing trustee(s) could by writing under his or their hands appoint the replacement trustee to the trust. Accordingly, the court inferred, *inter alia*, that the testator had to be taken to have been aware of the law in force in Singapore where his will was executed and had intended to operate and to have drafted his will with that in mind.

16.47 Accordingly, in order to retire in accordance with cl 3 of the will, the appellant should have found a male descendant of the testator (from a male line) to act as his replacement and requested the respondent and the third trustee to appoint such replacement as trustee by writing under their hands in accordance with s 37(1) of the TA.[112] If he was unable to find a qualified and acceptable relative to act as replacement trustee, then the appellant could not have recourse to the retirement option provided by cl 3. In that event, the only way for the appellant to retire would be in accordance with s 40 of the TA which would mean that all the conditions of that section would have to be met.[113]

16.48 In light of the above, the Court of Appeal found that the appellant and the respondent's purported resignations were not valid and both remained trustees of the trust.

VI. Equitable remedy of accounting

16.49 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy*[114] involves the issue of when the court should make an order for payment, after making an order for an account to be taken. In this case, the first defendant was the human resource and finance manager in charge of the plaintiff's finance department, and was solely entrusted with the responsibility of preparing cheques for payment of dividends to the plaintiff's two shareholders, Ng Sin Kwee and his wife, Lee Suan Ho.[115] On the plaintiff's application, the first defendant was ordered to furnish an account of the

111 Cap 59, 1936 Rev Ed.
112 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [68].
113 *Chan Yun Cheong v Chan Chi Cheong* [2021] 2 SLR 67 at [68].
114 [2021] SGHC 263.
115 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [2] and [100].

sums of money in respect of the four dividend cheques, which proceeds had gone to the first defendant directly or indirectly.[116] In the taking of accounts proceedings, the first defendant acknowledged that the cheque proceeds totalling $631,285.62 had gone to her. However, she contended that the court should not, at this juncture, order the first defendant to *pay* such sum to the plaintiff.[117]

16.50 The first defendant argued that (a) Ng had allegedly given her secret instructions to make out the cheques as she did ("the Secret Instructions"), which instructions were attributable to the plaintiff ("Exim");[118] and (b) she had allegedly paid Ng the $631,285.62 (or thereabout) from her own cash ("the Cash Payments").[119] In order to resist an order for payment being made against her, the first defendant raised further subsidiary points, namely: (a) the court should not make an order for payment until the plaintiff had explained alleged inconsistencies in its case;[120] (b) the evidence relied upon by the plaintiff which was obtained by an alleged "hacking" of the first defendant's personal files should be excluded as a matter of discretion;[121] (c) adverse inference should be drawn against the plaintiff for alleged incomplete discovery;[122] and (d) the plaintiff had no *locus standi* to sue the first defendant for cheque proceeds[123] (collectively "the Subsidiary Points").

16.51 In determining the issue of whether an order for payment should be made at this stage or whether such an order should await a full trial of all the claims in the suit, the High Court considered whether there was some preliminary question to be tried such that an order for payment should not be made at this stage pursuant to O 43 r 1 of the ROC.[124] On the evidence, the High Court found that the first defendant's allegations as to the Secret Instructions[125] and the Cash Payments[126] were not made out. The court also rejected the Subsidiary Points raised by the first defendant and/or that they were grounds to resist an order for payment. There was therefore no preliminary question to be tried such that the court should not make an order for payment then.[127]

116 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [3]–[8] and [13].
117 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [14].
118 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [14(a)].
119 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [14(b)].
120 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [66].
121 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [80].
122 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [83].
123 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [90].
124 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [15]–[17].
125 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [19]–[31].
126 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [34]–[64].
127 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [102].

16.52 The High Court further held that payment ought to be ordered: the first defendant was a fiduciary to the plaintiff;[128] the first defendant caused the payments to be made; and the first defendant was found to have taken the cheque proceeds for herself when the plaintiff intended them to be paid to its shareholders, Ng and Lee, as dividend payments.[129] The court thus ordered the first defendant to pay the sum of $631,285.62 to the plaintiff forthwith and to pay to the plaintiff the costs of the taking of accounts, to be fixed or taxed, if not agreed.[130]

128 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [100].
129 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [101]–[102].
130 *Exim & Mfr Holdings Pte Ltd v Tan Yee Ling Ivy* [2021] SGHC 263 at [102].