

16. EQUITY AND TRUSTS

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I. Express trust

16.1 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd*¹ (“*Ivanishvili*”) is a landmark trust case which makes major contributions to the law on trustee’s duties in a settlor reserved power trust, anti-*Bartlett* clauses and constraints on the trustee’s right to amend the trust deed. An appeal has been allowed in part by the Court of Appeal in *Credit Suisse Trust Limited v Ivanishvili, Bidzina*.² The Court of Appeal’s decision will be considered in next year’s review. The present review of this case focuses on the decision of Patricia Bergin J. Mr Bidzina Ivanishvili (“Plaintiff”), his wife and their three children, were the beneficiaries of the Mandalay Trust (“Trust”). It was proposed to the Plaintiff that he place his funds with the defendant, Credit Suisse Trust Ltd (“Defendant”).³ The Plaintiff agreed to place over US\$1bn on trust with the Defendant for purposes of inheritance planning and asset holding.⁴

16.2 With regard to the set-up of the trust, the relevant executed documents of the Trust included: (a) a declaration of the trust (“Trust Deed”);⁵ (b) a signed letter of appointment recording that the Plaintiff wished to be appointed the initial investment manager to the Trust;⁶ (c) “Memorandum of Wishes Concerning the Mandalay Trust”,⁷ signed by the Defendant, identifying the Plaintiff as the principal beneficiary.

1 [2023] 5 SLR 59.

2 [2024] 2 SLR 164.

3 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [1].

4 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [2].

5 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [87].

6 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [108].

7 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [100].

16.3 Initially, the Trust was set up with two underlying companies that were held by nominees and ultimately owned by the Defendant: Meadowsweet Assets Ltd (“Meadowsweet”) and Soothsayer Ltd (“Soothsayer”).⁸ The Defendant owned shares in these companies in its capacity as trustee. Eventually, in 2006, the Trust acquired a third company, Lynden Management Ltd.⁹ It is important to note that the Defendant also provided directors to these companies by way of two wholly owned entities, Tanah Merah Ltd and Bukit Merah Ltd.

16.4 Meadowsweet banked with Credit Suisse AG Geneva Branch (“Bank”), while Soothsayer held accounts with the Bank’s Singapore Branch.¹⁰ Patrice Lescaudron (“Mr Lescaudron”), the relationship manager of the Bank in respect of Meadowsweet’s account, was appointed in June 2006.¹¹ It was ultimately discovered that, over a nine-year period following his appointment, Mr Lescaudron misappropriated millions of dollars from the Trust, executing this through embezzlement, purchase of securities at above market price, unauthorised payments and other means of fraud.¹²

16.5 The Defendant admitted to acting in breach of its duty as trustee to safeguard the Trust assets, accepting that it ought to have taken reasonable steps to address the issue of unauthorised transfers from Meadowsweet’s accounts.¹³ Further, it accepted that if a direct enquiry had been made with the Plaintiff, that would have led to the removal of Mr Lescaudron as relationship manager.¹⁴

16.6 Notwithstanding this admission, the Defendant asserted that the Trust was a reserved powers trust, and the provisions of the Trust excluded liability for losses beyond certain moneys misappropriated from the Trust (these misappropriated moneys were part of a prior settlement between the Trust and the Defendant).¹⁵ Additionally, it submitted that the Plaintiff’s role in acting as Investment manager in a reserved powers trust protected the Defendant from liability.¹⁶ In addition, there was an anti-*Bartlett* clause to provide the trustee with protection from liability

8 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [2].

9 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [66].

10 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [69].

11 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [163] and [164].

12 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [3] and [4].

13 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [31].

14 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [33].

15 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [47]–[50] and [131].

16 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [417]–[419] and [427]–[429].

where the settlor has control of the investments which were owned by the corporate entities.

16.7 The court considered the Defendant's position on the general nature of a reserved powers trust which it characterised as being "all or nothing" (*ie*, if a settlor/beneficiary reserves powers of investment to himself or herself, then the trustee would have no powers of investment and no liability in respect of any loss resulting from the investment of the trust assets).¹⁷ The court noted that this excluded any room for sharing of investment responsibilities between the trustee and settlor/beneficiary.¹⁸ The court held that this "all or nothing" approach was not a prerequisite to a reserved powers trust. Instead, the court recognised that Singapore recognised the concept of a shared arrangement with trustees and beneficiaries having investment powers over different parts of the trust assets, citing s 90(5) of the Trustees Act 1967¹⁹ which allows for the reservation of "all or any powers of investment or asset management".²⁰ In this case, the court held that under the present reserved powers trust, different parts of the Trust assets were concurrently managed by both the Plaintiff and Defendant. The Plaintiff (and not the Defendant) was responsible for those parts of the assets managed by the Plaintiff.²¹

16.8 The relationship manager, Mr Lescaudron, was appointed in June 2006. Not long after, the court found that he was making unauthorised payments away from the Trust.²² The court held that by that time (March 2008), that any individual or professional trustee acting honestly and in good faith in its duty to safeguard the Trust Assets could not justifiably continue to allow Mr Lescaudron to have access to the Trust assets.²³ As such, failure to preclude such access was a breach of the Defendant's trustee duty to safeguard assets.²⁴

16.9 In relation to the anti-*Bartlett* clause, Bergin IJ held:²⁵

The anti-*Bartlett* clauses protect the defendant from liability for any losses suffered in respect of the assets the investment of which the plaintiff was managing. They do not protect the defendant from liability for losses suffered

17 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [435].

18 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [435].

19 2020 Rev Ed.

20 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [436].

21 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [482]–[485].

22 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [165], [166], [182] and [524].

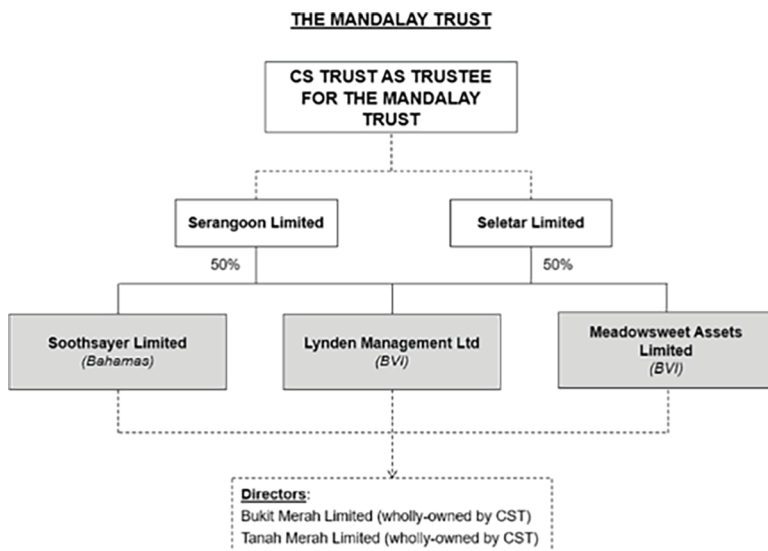
23 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [524].

24 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [524].

25 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [537].

in respect of the assets the investment of which the defendant was managing through Meadowsweet and/or Soothsayer.

16.10 This holding appeared to be an implicit acceptance of the Plaintiff’s argument that the Defendant had not remained “aloof” from Meadowsweet and Soothsayer because the Defendant provided directors to Meadowsweet and Soothsayer via two wholly owned companies, Tanah Merah Ltd and Bukit Merah Ltd. The structure of the companies is set out in a pictorial form below:²⁶



16.11 In allowing the claim, the court further held that the losses flowing from the Defendant’s breach were not limited to funds stolen by Mr Lescaudron, but also included collateral losses stemming from his scheme of fraudulent investments which were sometimes unsuitable and overconcentrated.²⁷ In allowing Mr Lescaudron to retain his role, the Defendant’s breach was held to be causative of losses beyond misappropriation suffered by the Plaintiff.²⁸ As a result, the court held that the Defendant was liable for the difference between the value of the portfolio unaffected by fraud that would have been managed by a competent trustee, compared to the value of the portfolio at present.²⁹

26 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [67].

27 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [544].

28 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [544].

29 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [547].

16.12 The court also dismissed the Defendant's plea of contributory negligence.³⁰ In doing so, the court held that a trustee's failure to safeguard trust assets is a breach of equitable duty, not a duty of care in tort; thus, the defence of contributory negligence was not available for the breach of equitable duty.³¹ Further to this, the court also held that, in tolerating Mr Lescaudron's flagrant breaches, the Defendant neglected its core obligation of keeping the Trust safe; hence, it was not entitled to be relieved of liability pursuant to s 60 of the Trustees Act 1967.³²

16.13 This case is also significant because it lays down principles of the constraints on the trustee's power to amend the trust deed. In this case, there was a clause which allowed the Defendant to amend the trust deed and this power was exercised ostensibly to accommodate the settlor's request to accept artwork into the Trust. However, the Defendant went further in amending the trust deed than was reasonably necessary to accommodate the artwork. Patricia Bergin IJ said: "the defendant could not exercise the power to vary the Trust Deed if it conferred a benefit on itself".

16.14 Therefore, any amendment to the terms of the trust deed must be for the benefit of the beneficiaries and not for the benefit of the trustee.

16.15 *Ang Hua Heng v Ang Hwa Khong Daniel*³³ ("*Ang Hua Heng*") heard by the General Division of the High Court ("General Division") concerned a dispute over a property involving Daniel Ang ("Daniel") and his two brothers, Hua Heng and Hua Siong in their capacity as administrators of their deceased father's estate ("Father" or "Mr Ang"). The property in question was the subject of a deed of trust ("Deed of Trust") which recorded that the purchase price of the property was paid for by the Father, and that his two sons (Hua Heng and Daniel) were holding the property on trust for Mr Ang's estate.³⁴ The administrators of the Father's estate claimed that the property was beneficially owned by Mr Ang, whilst Daniel claimed that he was the sole beneficial owner.³⁵ Daniel alleged that the Deed of Trust was unenforceable for its failure to satisfy the requisite formality requirements,³⁶ viz, the sealing requirement was not satisfied as there was no physical seal affixed on the Deed of Trust at the time of execution.³⁷

30 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [548]–[570].

31 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [560]–[565].

32 *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2023] 5 SLR 59 at [576] and [577].
33 [2023] SGHC 283.

34 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [4].

35 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [7] and [8].

36 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [8(a)].

37 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [26].

16.16 Typically, a deed is signed, sealed and delivered.³⁸ Counsel for Daniel sought to rely on *Lim Zhipeng v Seow Suat Thin*³⁹ (“*Lim Zhipeng*”) for the proposition that the sealing requirement is satisfied only if the circumstances show that the parties had intended to execute the document as a deed. In this case, the document *did* bear physical seals. Nevertheless, relying on *Lim Zhipeng*, it was argued that the sealing requirement was not satisfied, notwithstanding the presence of physical seals, as Mr Ang’s lawyer did not explain to the parties (a) what a deed was; (b) what the sealing requirement involved; and (c) the difference between a deed and a contract.⁴⁰ This argument was rejected.

16.17 In *Lim Zhipeng*, the deed of guarantee was signed and delivered, but there was no physical seal. The issue was whether, in the *absence* of a physical seal, the sealing requirement was nonetheless satisfied if parties had *intended* to execute the document as a deed.⁴¹ As observed by the learned judge,⁴² it was in this context that the Court of Appeal in *Lim Zhipeng* at [37] applied the observations in *Cytec Industries Pte Ltd v Asia Pulp Paper Co Ltd*⁴³ that “when the requisite intention is clear, the courts have held that the non-affixation of the seal on a deed was of no material consequence”.⁴⁴

16.18 Therefore, the learned judge clarified that the “inquiry into parties’ intentions is necessary where no physical seal is affixed to the document”.⁴⁵ Where a physical seal is *absent*, the sealing requirement can be satisfied, for example, “by some physical manifestation of a seal which, although not amounting to an actual physical seal, indicates that the document was to be sealed”, or “where the document had pieces of green ribbon attached to the places where the physical seals ought to have been, and there were certificates accompanying the document certifying that it was the makers’ act and deed”.⁴⁶

38 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [26], citing *Lim Zhipeng v Seow Suat Thin* [2020] 2 SLR 1151 at [27]. See also *Goddard’s Case* (1584) 2 Co Rep 4b; Robert F Norton, Robert J A Morrison & Hugh J Gooden, *A Treatise on Deeds*, (Sweet & Maxwell, 2nd Ed, 1928) at p 3.

39 [2020] 2 SLR 1151.

40 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [36].

41 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [30].

42 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [32].

43 [2009] 2 SLR(R) 806.

44 *Lim Zhipeng v Seow Suat Thin* [2020] 2 SLR 1151 at [37], citing *Cytec Industries Pte Ltd v Asia Pulp & Paper Co Ltd* [2009] 2 SLR(R) 806 at [4].

45 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [34].

46 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [34], citing *TCB Ltd v Gray* [1986] Ch 621 at 633.

16.19 On the facts, physical seals were *present*, not absent, on the document. The judge found that that parties had clearly *intended* to execute the document as a deed given the following: (a) Hua Heng and Daniel had signed next to the attestation clause which stated “signed sealed and delivered”; (b) the signing of the Deed of Trust was witnessed by a solicitor engaged by Mr Ang, Loo Choon Beng (“Mr Loo”), who had signed below the attestation clause; (c) Mr Loo had explained to Hua Heng and Daniel the terms of the Deed of Trust, emphasising that they would hold the property as trustees for Mr Ang, the beneficiary; and (d) *physical seals were placed on the Deed of Trust*.⁴⁷ Therefore, the learned judge held that the formalities of the Deed of Trust were met and that it was enforceable.⁴⁸

16.20 In this regard, the learned judge rejected Daniel’s argument that in order for parties to have intended that the document be executed as a deed, Mr Ang’s lawyer was required to explain to parties (a) what a deed was; (b) what the sealing requirement involved; and (c) the difference between a deed and a contract.⁴⁹ As rightfully observed by the judge, this would “[place] far too onerous a requirement on the execution of the deeds”.⁵⁰

16.21 On the issue of whether the Deed of Trust resulted in the creation of an express trust, the court held that while the Deed of Trust did not record a transfer of an interest in the property, it simply recorded a trust arrangement that was already in place.⁵¹ Therefore, the court found that there was an express trust in the property in favour of Mr Ang.⁵²

16.22 In *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd*⁵³ (“*Acute Result Holdings Ltd*”), the court also discussed the requirement of intention in determining the existence of an express trust.

16.23 The appellant (“Acute”) owned shares in Cabbeen Fashion Ltd and engaged in various transactions with Lioncap Global Management (“Lioncap Global”) and Lioncap Asia Ltd – collectively known as “Lioncap” – surrounding Acute’s Cabbeen shares.⁵⁴ In November of 2016, the parties entered into agreements (“November Agreements”) with

47 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [35]–[37].

48 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [38].

49 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [36].

50 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [36].

51 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [39].

52 *Ang Hua Heng v Ang Hwa Khong Daniel* [2023] SGHC 283 at [40].

53 [2023] 2 SLR 307.

54 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [2].

Acute as borrower and Lioncap as secured lender. Under the November Agreements, Acute created security over 130 million Cabbeen shares in favour of Lioncap, in order to secure two separate loan agreements between Lioncap (as lender) and Acute and Acute's sole director and shareholder's associate (as borrowers) (one loan was for HK\$2m to an associate of the sole director and shareholder's associate, and the other loan was for HK\$120m to Acute itself).

16.24 Acute initially deposited 144 million Cabbeen shares in its account with PT CIMB Securities Indonesia ("CIMB Indonesia") as security for the loans. Lioncap disbursed one of the loans (the HK\$2m) but failed to disburse the other HK\$120m loan. Acute then, with Lioncap's consent, withdrew 30 million of the 144 million Cabbeen shares initially deposited as security, leaving 114 million shares remaining as security. Eventually, Acute and Lioncap executed an addendum to amend the November Agreement ("April Addendum"). The April Addendum specified that the terms of the addendum be treated as part of the November Agreements.⁵⁵

16.25 In the April Addendum, Lioncap and Acute agreed to, *inter alia*, the transfer of 57.08 million Cabbeen shares out of Acute's CIMB Indonesia account to Lioncap's account with the respondent ("CGS-CIMB"). These 57.08 million shares were duly transferred out in April and May 2017 (First Tranche Shares").

16.26 The First Tranche Shares were transferred through two instruction letters ("Instruction Letters"), which stated Lioncap Global's intention to borrow Acute's shares, but stipulating that Acute retain "legal and beneficial ownership" of these First Tranche Shares even though they were held in Lioncap's account with CGS-CIMB. Acute argued that Lioncap held the First Tranche Shares on resulting or express trust for Acute. Following this transfer, Acute alleged that the First Tranche shares were dealt with by CGS-CIMB on Lioncap Global's instructions without Acute's knowledge.⁵⁶ Acute alleged that Lioncap Global had acted in breach of trust, with CGS-CIMB being liable for knowing receipt and dishonest assistance in connection with those alleged breaches.⁵⁷

16.27 CGS-CIMB submitted that Lioncap was not an express or resulting trustee of the First Tranche Shares. As such, there was no basis

55 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [3].

56 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [5].

57 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [6].

for CGS-CIMB to be held liable as an accessory for Lioncap's alleged breach of trust or fiduciary duties.⁵⁸

16.28 The court dismissed Acute's claims. While noting internal contradictions within the April Addendum,⁵⁹ the court rejected the existence of an express or resulting trust. As a borrower of shares, Lioncap was entitled to deal with or dispose of the shares for its own purposes, subject to its borrower's obligation to return an equivalent amount of the shares that was initially borrowed.⁶⁰ As such, it was held that Lioncap's intention to *borrow* the shares placed them in a position that was inherently incompatible with the possibility of them taking up a *trustee's* role since Lioncap would have required unencumbered title to the First Tranche Shares in order to deal with and/or dispose of the shares after borrowing them.⁶¹

16.29 Hence, the court rejected the existence of an express trust. The November 2016 Agreements never contemplated that Lioncap would hold onto them on trust for Acute – they were intended merely as security for loans.⁶²

II. Resulting trust

16.30 *Acute Result Holdings Ltd* went on to consider the existence of a resulting trust. Acute's case that there was a resulting trust was based on the Instruction Letters executed by Acute when the First Tranche Shares were transferred from Acute to Lioncap which stated that Acute would remain the beneficial owner of the First Tranche Shares. This was rejected by the court.

16.31 The court held that the Instruction Letters should not be considered in isolation. When the circumstances were considered in totality, the two most plausible scenarios were:

58 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [6].

59 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [22]–[24].

60 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [27].

61 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [27].

62 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [28].

(a) Acute and Lioncap had agreed to the latter borrowing the First Tranche Shares. In addition, Acute would have a security interest over the First Tranche Shares to secure Lioncap's obligation to return an equivalent number of shares that it had borrowed and dealt with. This scenario would not ordinarily be compatible with a trust.

(b) Lioncap only had a security interest over the First Tranche Shares (to secure Lioncap's monetary loan to Acute),⁶³ which would also not be ordinarily compatible with a trust. Further, counsel for Acute was not able to point to any evidence which would satisfactorily explain why the word "borrow" was used in the Instruction Letters, if there was in fact no intent to lend the shares to Lioncap for its use.⁶⁴

16.32 However, in either scenario, there was no clear suggestion or discernible intent that Lioncap was to hold the First Tranche Shares on a resulting trust for Acute.⁶⁵

16.33 The court also noted that Acute had tried to use the April Addendum and Instruction Letters to change the transactions pursuant to the November Agreements from a pure security agreement to one coupled with a trust. However, the court eventually held that there was no clear suggestion or discernible intent that a resulting trust arose based on the present facts, and that the words in the Instruction Letters were inadequate to create a trust.⁶⁶

16.34 In *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven*⁶⁷ ("*Ng Lai Kuen*"), the General Division dealt with the tricky issue of right of survivorship and the presumption of advancement mentioned in the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terrence*⁶⁸ ("*Lau Siew Kim*").

63 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [4].

64 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [29].

65 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [30].

66 *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 2 SLR 307 at [30].

67 [2023] SGHC 343.

68 [2008] 2 SLR(R) 108. See also Ian Hao Ran Mah, "Revisiting the Presumptions of Resulting Trust and Advancement in the Context of Joint Tenanted Matrimonial Property: Two Innovations by the Singapore Court of Appeal" (2020) 28(2) *Australian Property Law Journal* 59.

16.35 In that case, a commercial property was purchased in the name of the father and the defendant son as joint tenants. It was undisputed that the father paid the entirety of the purchase price of the property.⁶⁹

16.36 The plaintiffs (three daughters of the father) asserted that the defendant son held his interest in the property on a resulting trust for the father. Upon the father's death, the plaintiffs alleged that the defendant son held 50% of the father's interest on trust for the mother and the other 50% interest on trust for the four siblings in equal shares.⁷⁰ Furthermore, the plaintiffs claimed that after the mother passed away (following the father's death),⁷¹ under the terms of the residuary gift clause of the mother's will, the defendant held the mother's 50% interest in the property on trust for the four siblings in equal shares.

16.37 The defendant's case was that he adduced sufficient evidence to rebut the presumption of resulting trust and in the alternative, the presumption of advancement would rebut the presumption of a resulting trust in respect of the right of survivorship. In other words, the defendant's case was that even though the father did not intend to benefit him during the father's lifetime, the father intended to confer on the defendant the right of survivorship upon the father's death.

16.38 The court did not approve that the presumption of advancement could operate to confer on the defendant the right of survivorship. The defendant accepted that the father intended to be and was the sole beneficial owner of the property during the father's lifetime.⁷² In doing so, the defendant was forced to advance a "nuanced" submission that the father did not intend to benefit the defendant with any beneficial interest in the father's lifetime, but instead only intended to confer on the defendant a "nuanced" benefit being the right of survivorship and surviving joint interest in the property.⁷³ Therefore, the defendant was effectively forced to separate the father's intention with respect to (a) the beneficial interest in the property during the father's lifetime; and (b) the right of survivorship arising upon the father's death.⁷⁴

16.39 A similar argument was raised in the General Division decision of *Mahmud Ebrahim Kasam Munshi v Mohamed Saleh*⁷⁵ ("*Mahmud*

69 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [1].

70 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [25].

71 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [13] and [14].

72 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [88].

73 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [87].

74 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [88].

75 [2023] SGHC 309.

Ebrahim”) as well. The same judge in *Ng Lai Kuen* had heard the *Mahmud Ebrahim* case.

16.40 The learned judge held that the right of survivorship is “not property” that could be subject to gift or a trust.⁷⁶ The right of survivorship is simply the *legal consequence* of holding property as joint tenants. It is inseparable as a proprietary right from the joint tenancy itself.⁷⁷ In this regard, the court was of the view that the only way for the father to split his interest in the property (in the manner as argued by the defendant) would be to declare an express trust to that effect.⁷⁸ However, this was not done.

16.41 The court went on to consider the defendant’s reliance on observation of the Court of Appeal’s decision in *Lau Siew Kim*.⁷⁹ In *Lau Siew Kim*, the Court of Appeal suggested that the presumption of advancement may operate in certain circumstances “not [as] an intention to give absolutely with *immediate* effect, but, rather for the rule of survivorship to operate to pass the absolute interest of the property to the survivor” [emphasis in the original].⁸⁰ Hence, a resulting trust need not relate to the entire beneficial interest of the property. It is possible for a joint owner, who is the contributing party, to receive the income during his or her lifetime, but upon his or her death, the property belongs to the other joint owner.

16.42 The court held that the defendant’s reliance on *Lau Siew Kim* at [105] was misplaced. The learned judge held that it was not possible “to make a gift of a right of survivorship arising from a joint tenancy”⁸¹ since it “is not property, whether tangible or intangible.”⁸² Hence, “it cannot be the subject of a gift or a trust.”⁸³

16.43 Further, the judge said it was not the defendant’s case that the father had a mere life interest in the property. The defendant conceded that the father was the sole beneficial owner of the property during his lifetime.⁸⁴ However, the defendant further accepted that the father was free to remove the defendant as a joint tenant, to add other joint tenants or to raise further loans on the security of the property without seeking

76 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [91].

77 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [92].

78 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [92].

79 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [105].

80 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [105].

81 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [91].

82 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [91].

83 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [92].

84 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [96].

the defendant's consent.⁸⁵ This was inconsistent with the position that a person holding a life interest does not have the right or power to destroy, dilute or hollow out the remainderman's interests.⁸⁶

16.44 The learned judge interpreted the passage in *Lau Siew Kim* to operate only in the spousal context⁸⁷ and not a parent-child context.⁸⁸

16.45 In other words, the court's view is that *Lau Siew Kim* is not authority that the presumption of advancement is capable, in all contexts, of applying to the right of survivorship separately from its application to a life interest.⁸⁹ The court thus did not apply the presumption of advancement. This decision is slightly unusual because the judgment was released after the appeal was affirmed. The Appellate Division of the High Court ("Appellate Division") found that:⁹⁰

... presumption of advancement was rebutted in its entirety on the evidence. Accordingly, it was not necessary for the Appellate Division to consider the [Defendant's] legal arguments on whether it is possible for the presumption of advancement to be split into two components; one which relates to the life interest and one which relates to the interest under the right of survivorship.

16.46 There now appears to be contradicting High Court decisions on the issue of whether it is possible for a joint tenant who contributed more to the property to assert that he or she did not intend to give the other joint tenant a share in the property and only intended for the right of survivorship to apply upon his or her death outside the spousal context. In *Neo Hui Ling v Ang Ah Sew* ("*Neo Hui Ling*"),⁹¹ Lai Siu Chiu J accepted the plaintiff daughter's argument that she registered the property in a joint tenancy with her defendant mother so that the rule of survivorship would apply. On the facts, Lai J held that this did not mean that plaintiff daughter intended to give the defendant mother a beneficial half share in the property during the daughter's lifetime. *Neo Hui Ling* was applied with approval by Justice Aidan Xu @ Aedit Abdullah in *Ng So Hang v Wong Sang Woo*.⁹² Therefore, there is a need for clarification from the Court of Appeal in view of the conflicting cases.

85 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [96].

86 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [96].

87 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [97]; See also *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [101] and [102].

88 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [101].

89 *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343 at [102].

90 See LawNet Editorial Note in *Ng Lai Kuen Priscilla Elizabeth v Ng Choong Keong Steven* [2023] SGHC 343.

91 [2012] 2 SLR 831.

92 [2018] SGHC 162.

16.47 The case of *Salaya Kalairani v Appangam Govindhasamy*⁹³ (“*Salaya Kalairani (AD)*”) was an appeal from the decision of the High Court in *Appangam Govindhasamy v Salaya Kalairani*.⁹⁴ In this case, the Appellate Division dealt with a new point of law, *ie*, whether the statutory exceptions in s 46(2) of the Land Titles Act⁹⁵ (“LTA”) operated to preclude challenges to a proprietor’s title on the basis of a resulting trust and/or constructive trust.

16.48 In *Salaya Kalairani (AD)*, the late Tey Siew Choon (“Tey”) and the late T Govindasamy (“TG”) purchased a property in 1970 as tenants-in-common in equal shares.⁹⁶ Tey’s late husband, SV, was good friends with TG. After SV’s death in 1969, TG informally adopted Tey as his daughter and Tey’s four children as his grandchildren.⁹⁷ After both TG and Tey passed away, two of TG’s children and TG’s grandchildren (“Plaintiffs”) commenced a suit in their capacities as legal representatives and co-administrators of TG’s estate against Salaya Kalairani (“Kalairani”), the sole executrix and trustee of Tey’s will.⁹⁸ Kalairani counterclaimed for a declaration that TG had held his half-share in the property on trust for Tey and an order for TG’s half-share to be transferred to Tey’s estate.⁹⁹

16.49 At the High Court, the judge dismissed Kalairani’s counterclaim as she had failed to prove that TG had registered his half-share in the property on a resulting trust or a common intention constructive trust (“CICT”) in favour of Tey.

16.50 On appeal, the Plaintiffs sought to raise a new point of law: The Plaintiffs contended that Kalairani could not argue that TG held his half-share in the property on trust for Tey because of the indefeasibility of title under the LTA.¹⁰⁰

16.51 In this regard, the Plaintiffs argued that the statutory exceptions to indefeasibility of title in s 46(2) of the LTA only covered express trusts and were not wide enough to include the alleged resulting and/or constructive trust.¹⁰¹

93 [2023] SGHC(A) 40.

94 [2023] SGHC 91.

95 Cap 157, 1994 Rev Ed.

96 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [1].

97 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [7].

98 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [2].

99 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [3].

100 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [34].

101 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [34]–[36].

16.52 Section 46(2) of the LTA states that:

Nothing in this section shall be held to prejudice the rights and remedies of any person —

- (a) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;
- (b) to enforce against a proprietor any contract to which that proprietor was a party;
- (c) to enforce against a proprietor who is a trustee the provisions of the trust;
- (d) proprietor land acquired by him from a person under a legal disability which was known to the proprietor at the time of dealing; or
- (e) to recover from a proprietor land which has been unlawfully acquired by him in purported exercise of a statutory power or authority.

[emphasis added]

16.53 The Appellate Division rejected this argument.¹⁰² Valerie Thean J (giving the judgment of the Appellate Division) held that a plain reading of the opening words of s 46(2), “[n]othing ... shall be held to prejudice the rights and remedies” operates to *preserve* rights,¹⁰³ rather than setting out a comprehensive list that purports to *exclude* rights.¹⁰⁴

16.54 The Appellate Division clarified that the Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad*¹⁰⁵ did not go so far as to suggest that the s 46(2) exceptions were exhaustive of all claims, and it was in this *specific* context that the Appellate Division stated it should be slow to graft onto the LTA *personal* equities that were not referable directly or indirectly to the exceptions in s 46(2) of the LTA.¹⁰⁶ Arguably, this holding vindicates commentators who have long argued that personal claims against a registered proprietor fall outside the statutory exceptions in certain circumstances.¹⁰⁷

102 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [34].

103 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37].

104 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37].

105 [2006] 4 SLR(R) 884.

106 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37].

107 See Tang Hang Wu, “Beyond the Torrens Mirror: A Framework of the *In Personam* Exception to Indefeasibility” (2008) 32(2) *Melbourne University Law Review* 672 and Kelvin F K Low, “The Nature of Torrens Indefeasibility: Understanding the Limits of Personal Equities” (2009) 33(1) *Melbourne University Law Review* 205.
(cont'd on the next page)

16.55 Importantly, the Appellate Division reaffirmed the Court of Appeal's observations in *Loo Chay Sit v Estate of Loo Chay Loo, deceased*¹⁰⁸ that it is open to parties to prove evidence of a *resulting* trust in respect of registered land.¹⁰⁹ The Appellate Division reiterated that the framework for dealing with *resulting trusts* and *CICTs* is already set out in the decisions of *Lau Siew Kim* and *Chan Yuen Lan v See Fong Mun*¹¹⁰ respectively. Thus, the existence of such resulting and constructive trusts within the registered land context is already well established in Singapore law.¹¹¹

16.56 On the claim of resulting trust, the Appellate Division affirmed the High Court's decision that Kalairani had failed to prove that Tey had paid the full purchase price of the property such that TG held his half-share in the property on resulting trust for Tey. There was no direct evidence to this effect.¹¹²

16.57 As for the *CICT* claim, Kalairani had failed to prove that TG and Tey shared a common intention for TG to hold his half-share in the property on trust for Tey.¹¹³ Such a *CICT* was contradicted by the 1993 and 1995 powers of attorney granted to Tey to realise the assets of TG (including the property) and not to transfer the half-share in the property to Tey.¹¹⁴

16.58 The General Division case of *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem*¹¹⁵ ("*Kotagaralahalli*") is a significant case which should be of interest to corporate lawyers. The case dealt with issues of beneficial ownership in relation to the presumption of resulting trust.

16.59 In *Kotagaralahalli*, the plaintiff claimed he was either the beneficial owner of one third of the shares in the third defendant company ("Company"), or of one share in the Company, relying on a written

Compare Chan Sek Keong, "The Torrens System Under the Land Titles Act" (2024) 36 SAclJ 42.

108 [2010] 1 SLR 286 at [14]. See also *Appangam Govindhasamy v Salaya Kalairani* [2023] SGHC 91 at [40].

109 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37].

110 [2014] 3 SLR 1048.

111 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37].

112 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [40]–[43].

113 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [15]; see also *Appangam Govindhasamy v Salaya Kalairani* [2023] SGHC 91 at [117].

114 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [44] and [45]; see also *Appangam Govindhasamy v Salaya Kalairani* [2023] SGHC 91 at [108] and [109].

115 [2023] SGHC 6.

declaration of trust executed by the second defendant.¹¹⁶ The second defendant was the registered shareholder of the Company's shares.

16.60 The Company, incorporated as an investment vehicle for a sugar project in Sri Lanka,¹¹⁷ had initial share capital comprising three shares of US\$1 each ("Subscriber Shares") held by the second defendant.¹¹⁸ On the same day of the Company's incorporation, the second defendant executed a trust deed, declaring that the second defendant held the three Subscriber Shares on trust for the plaintiff, the first defendant and a third party in equal shares.¹¹⁹

16.61 The first defendant opposed the plaintiff's claim, contending that the second defendant held all the shares in the Company on a resulting trust for the first defendant.¹²⁰ This resulting trust was alleged to have arisen from payments from the first defendant to a Singaporean law firm for fees necessary to incorporate the Company, as well as payment from the first defendant to the second defendant of all capital payable on the shares upon incorporation (*ie*, Subscriber Shares).¹²¹

16.62 Additional shares ("Additional Shares") in the company were eventually allotted and issued to the second defendant. The plaintiff claimed that he too had also become the beneficial owner of one third of these Additional Shares, particularly by virtue of the aforementioned trust deed.¹²² This claim was advanced on the basis of Art 47 of the Company's articles of association, which conferred on the plaintiff rights of pre-emption in relation to one third of the Additional Shares.¹²³ In response, the first defendant's case was that the second defendant held the beneficial interest in the Subscriber Shares and the Additional Shares on a presumed resulting trust for the first defendant, as the first defendant had provided all of the consideration for all these shares.¹²⁴

16.63 The High Court found that the trust deed (naming the plaintiff as beneficial owner of one of the Subscriber Shares) was simply a temporary stop gap measure to reassure the Government of Sri Lanka that the plaintiff would continue to be involved in the sugar project which the

116 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [1].

117 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [13].

118 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [21].

119 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [22].

120 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [2].

121 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [2].

122 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [31].

123 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [31].

124 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [34].

Company was incorporated for, while other investors were found for the project.¹²⁵

16.64 The High Court found that, despite the execution of the trust deed, a presumption of resulting trust arose in favour of the first defendant, as the first defendant had borne the legal cost for the incorporation of the company and paid the paid-up capital payable on the Subscriber Shares.¹²⁶

16.65 In applying the presumption of resulting trust, the court adopted the approach set out in the English case of *FanmailUK.com Ltd v Cooper*.¹²⁷ In doing so, it was decided that, when determining whether a presumption of resulting trust has arisen over a property in favour of a party, the court's consideration may extend past the direct consideration for the property, taking into account the true economic substance of the parties' transactions in a wider context.¹²⁸ This approach allows the court to discount any contribution which can be considered *de minimis* in economic substance.¹²⁹ In relation to resulting trust analyses, circumstances may arise in which it is legitimate to account for other transaction costs in a conveyance of property, conditioned by the requirement that they are of economic substance.¹³⁰

16.66 The court noted that, generally, an instance in which a presumption of resulting trust would arise occurs when one person ("B") furnishes the consideration for property and directs that it be conveyed to another person ("T").¹³¹ Such a presumption may be rebutted either by evidence that B's transfer was intended as a gift, or by the presumption of advancement.¹³²

16.67 In the present case, while the court acknowledged that the presumption of resulting trust should be treated as an evidential instrument of last resort, it applied the presumption in this case for three reasons.¹³³

125 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [36] and [111].

126 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [84].

127 [2008] All ER (D) 183.

128 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [79].

129 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [73] and [79]; see also *FanmailUK.com Ltd v Cooper* [2008] All ER (D) 183 at [203].

130 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [82].

131 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [56].

132 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [57].

133 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [55] and [62].

16.68 First, it was accepted by all parties that there was no donative intent in favour of the second defendant (*ie*, T).¹³⁴ Effectively, this was a contest between the plaintiff and the first defendant.¹³⁵

16.69 Secondly, it was unclear whether the court should look for clear evidence of the plaintiff's donative intent in favour of the first defendant or *vice versa*, as choosing to examine such intent from one party's perspective amounted to accepting that party's case without analysis.¹³⁶ In any event, there was no evidence of donative intention on the part of the first defendant.¹³⁷ Lastly, the court determined that the plaintiff and first defendant never shared a common intention.¹³⁸ Their intentions diverged and varied over time as no agreement was ever reached.¹³⁹

16.70 For the Subscriber Shares, the court found that a presumption of resulting trust arose in favour of the first defendant as he assumed a contractual obligation to pay the necessary ancillary costs of the Company's incorporation and contributed to the paid-up capital payable on the Subscriber Shares.¹⁴⁰

16.71 The paid-up capital on the Subscriber Shares was only US\$3. The Court noted that, when assessing the true economic substance of the parties' transactions, the US\$3 amount was *de minimis* on absolute terms and also relative to the incorporation fees.¹⁴¹ As such, it was the first defendant's payment of the incorporation fees of the Company which, in economic substance, had causative force in calling the Subscriber Shares into existence and vesting them in the second defendant (although the second defendant held these Subscriber Shares on resulting trust for the first defendant).¹⁴²

16.72 As for the Additional Shares, the Court found that a presumption of resulting trust also arose in favour of the first defendant. The consideration for the Additional Shares, numbering 9,997 at US\$0.01 each with a total consideration of US\$99.70, was *de minimis* in absolute terms. But, applying the true economic substance test and considering that there were no (competing) incorporation fees to consider (unlike the

134 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [62].

135 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [1]–[4].

136 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [62].

137 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [109].

138 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [62].

139 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [43]–[52] and [62].

140 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [84].

141 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [90].

142 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [90].

Subscriber Shares), the \$99.70 was 100% of the consideration which had causative force in calling the Additional Shares into existence. There was thus also a resulting trust in the first defendant's favour for the Additional Shares, which again stood unrebuted.¹⁴³

16.73 In the case of *Ong Chin Woon v Ong Bee Hah*¹⁴⁴ (“*Ong Chin Woon*”), the court also analysed the presumption of resulting trust, but this time disappplied the presumption based on evidence that contradicted that presumption.

16.74 In this case, the appellant was Ong Chin Woon (“Mr Ong”). His mother, Tan Ah Moi (“Mdm Tan”) passed away intestate, leaving her seven children as beneficiaries of her estate.¹⁴⁵ The dispute involved, *inter alia*, beneficial ownership over a property at Jalan Jermin (“Jermin Property”), as well as a separate property at No 1 Phoenix Garden (“PG Property”).

16.75 The PG property was purchased in the name of Mdm Tan using funding from her husband's business and related bank facilities during the 1970s.¹⁴⁶

16.76 Two of Mdm Tan's children – including Mr Ong – were named joint tenants of the PG Property. Following this, there were records of a family meeting in which it was agreed that the PG Property would be transferred to Mdm Tan.¹⁴⁷ However, no formal transfer of any interest in the PG Property to Mdm Tan was effected.¹⁴⁸

16.77 In 1988, Mdm Tan exercised an option to purchase (“OTP”) a separate property, the Jermin Property, depositing a sum of \$62,000 for the OTP.¹⁴⁹ This was followed by a loan taken from United Overseas Finance for the sum of \$500,000 in connection with the purchase of the Jermin Property (“UOF Loan”).¹⁵⁰

16.78 After the purchase of the Jermin Property was completed in November 1988, Mr Ong and his wife paid the ancillary payments associated with the sale of the Jermin Property (“Ancillary Payments”) using an account associated with Chung Khiaw Bank Ltd (“CKB Account”).¹⁵¹

143 *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem* [2023] SGHC 6 at [122]–[124].

144 [2023] SGHC(A) 12.

145 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [2].

146 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [6].

147 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [7].

148 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [7].

149 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [9].

150 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [11].

151 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [12].

16.79 Meanwhile, the PG Property had been sold in December 1988. The sale proceeds from the sale of the PG Property were paid to Mdm Tan, as well as Mr Ong and another child (despite family members being told many years later in 2009 that the entirety of the sum was given to Mdm Tan).¹⁵² In court, Mr Ong could not explain what had happened to the proceeds of the sale of the PG Property which were allegedly paid to Mdm Tan.¹⁵³

16.80 As noted above, the UOF Loan of \$500,000 had been taken out for the purchase of the Jermin Property. From the CKB Account, monthly payments were made to repay the UOF Loan (which had been taken out for the purchase of the Jermin Property),¹⁵⁴ before the UOF Loan was fully redeemed with a lump sum payment from an account of Banque Indosuez in Mr Ong's name (collectively, the "Mortgage Payments").¹⁵⁵

16.81 Following Mdm Tan's passing in 2015, issues arose over the sale of the Jermin Property and distribution of the proceeds of sale.¹⁵⁶

16.82 Mr Ong filed a suit against the administrators of Mdm Tan's estate. He claimed a beneficial interest in the sale proceeds of the Jermin Property on the basis that his financial contributions to the property's purchase payments gave rise to a presumption of resulting trust. He argued that, on a resulting trust analysis, he was the 83.7% beneficial owner of the property, as this percentage was proportional to his contributions to the purchase price of the PG Property.¹⁵⁷ Alternatively, he claimed 100% of the beneficial ownership, based on a CICT.¹⁵⁸

16.83 The court held that for Mr Ong to prove his presumed resulting trust claim:

- (a) He had to prove that he was the ultimate source of funds for both the Mortgage Payments and the Ancillary Payments; it was not enough to simply adduce evidence that the sums came from his bank accounts.¹⁵⁹
- (b) Additionally, the court held that, for the Mortgage Payments to be considered as Mr Ong's contributions toward the Jermin Property's purchase price, they must have been paid

152 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [13].

153 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [52].

154 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [16].

155 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [17].

156 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [19].

157 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [24].

158 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [24].

159 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [30].

pursuant to a prior agreement made regarding how the UOF Loan was to be repaid.¹⁶⁰

16.84 The court eventually found that Mr Ong failed to discharge his burden of proof to show either of the above requirements. Specifically, evidence indicated that Mr Ong repeatedly acted in a manner inconsistent with the two requirements, instead acting as though the Jermin Property belonged to Mdm Tan solely.¹⁶¹ The fact that Mdm Tan had sufficient funds to purchase the Jermin Property, the fact that Mr Ong could not explain why he was not registered as an owner of the Jermin Property and the fact that Mr Ong did not provide satisfactory explanation as to what happened to the proceeds of the PG Property when it was sold, pointed to Mr Ong's failure to discharge his burden of proof.¹⁶² Instead, the court found that although the Mortgage Payments and Ancillary Payments were paid from Mr Ong's bank accounts, the evidence suggested that Mdm Tan's money was used as the ultimate source of funds for the Jermin Property's purchase.¹⁶³

16.85 This case shows that the presumption of resulting trust is not applied mechanically by the court. The presumption of a resulting trust presumption would not operate if there is evidence of conduct that contradicts¹⁶⁴ the presumption of resulting trust.

16.86 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd*¹⁶⁵ (“*Zhang Lan*”) was a case heard by the Appellate Division.

16.87 At the High Court, the judge found that the assets were beneficially retained by the settlor, one Zhang Lan (“Mdm Zhang”).¹⁶⁶ A brief background to the facts in the proceedings is as follows.¹⁶⁷ The appellants were Success Elegant Trading Ltd (“SETL”), a company incorporated in the British Virgin Islands, and Mdm Zhang, the original sole shareholder and director of SETL. On 4 June 2014, Mdm Zhang transferred her sole share in SETL to AsiaTrust Ltd – trustee of the Success Elegant Trust.¹⁶⁸ The Success Elegant Trust was a family trust

160 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [31].

161 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [33].

162 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [36] and [54].

163 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [53].

164 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34], [35] and [46]–[48].

165 [2023] 2 SLR 137.

166 *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2022] SGHC 278 at [57].

167 See Tang Hang Wu & Tay Yong Seng, “Equity and Trusts” (2022) 23 SAL Ann Rev 469 at para 15.1 which discusses the High Court decision in *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2022] SGHC 278.

168 *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2022] SGHC 278 at [9].

settled by Mdm Zhang on 3 June 2014 for the benefit of her son and his family members.¹⁶⁹ Mdm Zhang remained the sole director of SETL until she was replaced by an affiliate of AsiaTrust Ltd on 3 March 2015.

16.88 The respondent, La Dolce Vita Fine Dining Co Ltd (“LDV”), a company incorporated in the Cayman Islands, was a judgment creditor of SETL pursuant to two Hong Kong judgments dated 20 May 2020. LDV subsequently obtained registration orders in the Singapore courts based on the two Hong Kong judgments and filed an application in the Singapore courts seeking appointment of receivers in relation to two bank accounts in SETL’s name in Credit Suisse AG Bank and Deutsche Bank AG. The basis of the receivership application was that the moneys in the two SETL bank accounts (“Assets”) were beneficially owned by Mdm Zhang by reason of a resulting trust. At the High Court, Philip Jeyaretnam J ruled in favour of LDV, holding that Mdm Zhang was indeed beneficial owner of the SETL accounts, and appointed receivers over the accounts.¹⁷⁰

16.89 The key issue on appeal was whether Mdm Zhang was the beneficial owner of the SETL accounts after the Success Elegant Trust was settled on 4 June 2014.¹⁷¹ Mdm Zhang’s case was that she had intended to part with the ownership of the Assets so that the Success Elegant Trust could be set up: Mdm Zhang either intended to transfer the Assets absolutely to SETL or in the alternative, to transfer the Assets beneficially to her son and his family members.¹⁷²

16.90 In approaching this issue, the Appellate Division affirmed the principle that the time at which to ascertain a transferor’s intention is generally the time at which the property was transferred to the transferee.¹⁷³ However, evidence of a transferor’s subsequent conduct is admissible and potentially relevant too if it throws light on the intention of the transferor at the relevant time.¹⁷⁴ Therefore, the operative time at which Mdm Zhang’s intention should be assessed was 4 June 2014, the date at which the trust, the Success Elegant Trust, was declared.¹⁷⁵

169 *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2022] SGHC 278 at [10].

170 *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2022] SGHC 278 at [54] and [59].

171 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [5].

172 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [21].

173 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [37], citing *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd* [2023] 5 SLR 406 at [71].

174 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [37], citing *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 at [110].

175 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [37] and [47].

16.91 In relation to this issue, the court observed that the trust documents possessed evidential significance as they set the contours of Mdm Zhang’s authority and powers as settlor, AsiaTrust as the trustee, and Mr Wang (Mdm Zhang’s son) as the “protector”. These documents provided the backdrop against which Mdm Zhang and SETL’s subsequent conduct may be assessed.¹⁷⁶ On this point, the Appellate Division observed that under the declaration of trust, Mdm Zhang was accorded *no* residual powers except to terminate the protector of the trust.¹⁷⁷ Therefore, once the declaration of trust was executed, Mdm Zhang’s involvement in the trust falls away.¹⁷⁸

16.92 Turning to the main issue at hand, the court observed that it may well be that “a trust constituted over the *shares* of the company also extends to its *assets*” [emphasis in the original].¹⁷⁹ However, in this case, the transferor’s subsequent conduct, *ie*, Mdm Zhang’s conduct and dealings with the assets *after* the execution of the trust, demonstrated that Mdm Zhang had acted on the premise that she owned the assets.¹⁸⁰ Ultimately, the Appellate Division upheld the General Division’s decision and found that Mdm Zhang had intended to retain beneficial ownership of the assets. In particular, Mdm Zhang and SETL’s subsequent conduct was highly probative of this fact:¹⁸¹

- (a) the extent of control exhibited by Mdm Zhang in directing bank transfers from the bank accounts and the concomitant lack of evidence that these transfers were initiated or instructed by the professional trustee, despite the fact that Mdm Zhang’s role within the trust was merely that of a signatory to the bank accounts and director of SETL;
- (b) Mdm Zhang had personally benefitted from the bank transfers;
- (c) with respect to the transfers made from Deutsche Bank AG in March 2015, Mdm Zhang had directed that these transfers be made on an *urgent* basis after receiving the Hong Kong freezing orders without any explanation for why such transfers had to be made with such haste; and
- (d) the late involvement of SETL in responding to the Hong Kong freezing orders and in challenging the Singapore freezing orders.

176 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [44].

177 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [44].

178 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [44].

179 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [43].

180 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [43].

181 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd* [2023] 2 SLR 137 at [86].

16.93 For those in the trust and wealth management industry, this case serves as a helpful illustration of the manner in which courts assess evidence of the transferor’s subsequent conduct when determining the transferor’s intention to inject the assets into the trust.

III. Constructive trust

16.94 The case of *ByBit Fintech Ltd v Ho Kai Xin*¹⁸² (“*ByBit Fintech*”) is part of a growing body of cases where the Singapore courts have had to deal with digital assets such as cryptocurrencies.¹⁸³

16.95 *ByBit Fintech* concerned a crypto asset called “Tether”, which is a “stablecoin”. The issuer backs each stablecoin issued with an equivalent value in fiat currency or other reserves.¹⁸⁴ The link to the fiat currency, in this case, the United States dollar, is reflected in the name “USDT”, standing for “United States Dollar Tether”.¹⁸⁵

16.96 In this case, *ByBit Fintech Ltd* (“*ByBit*”), a company which owns a cryptocurrency exchange, sought summary judgment against one *Ho Kai Xin* (“*Ms Ho*”), an employee of *WeChain Fintech Pte Ltd* and who was responsible for the payroll processing of *ByBit*’s employees.¹⁸⁶ *ByBit*’s claim was that *Ms Ho*, in breach of her employment contract, abused her position by transferring 4,209,720 USDT (the “*Crypto Asset*”) to “addresses” secretly owned and controlled by her as well as a quantity of fiat currency (the “*Fiat Asset*”) to her own bank account.¹⁸⁷ *ByBit*’s submission was that *Ms Ho* held the *Crypto Asset* as a constructive trustee, or that *Ms Ho* was unjustly enriched in relation to the *Crypto Asset* that was wrongfully transferred.¹⁸⁸

16.97 In terms of the grant of remedies, the issue was whether the USDT is property capable of being the subject matter of a trust.¹⁸⁹ The General Division answered in the affirmative. *Jeyaretnam J* recognised that the proposed Monetary Authority of Singapore amendments in 2023

182 [2023] 5 SLR 1748.

183 See *B2C2 Ltd v Quoine Pte Ltd* [2019] 4 SLR 17, a case suggesting that crypto assets may be considered to be property; see also *CLM v CLN* [2022] 5 SLR 273, where the court held on a *prima facie* basis that cryptocurrencies fulfilled the requirements to be classified as a property in the context of deciding whether cryptocurrencies could be subject to a proprietary injunction.

184 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [1].

185 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [1].

186 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [7].

187 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [2] and [9].

188 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [27].

189 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [28(a)].

to the payment services regulations reflect the reality that it is possible in practice to identify and segregate such digital assets, and hence support the view that it should be legally possible to hold them on trust.¹⁹⁰ Moreover, general recognition has been given to cryptocurrency in the Rules of Court 2021¹⁹¹ which defines “moveable property” to include “cash, debt, deposits of money, bonds, shares ... and cryptocurrency or other digital currency”.¹⁹² Further, cryptocurrency assets meet the four common law requirements to be classified as property as set out in *National Provincial Bank v Ainsworth*.¹⁹³

16.98 In addition, the court held that cryptocurrencies such as the USDT in this case, can be classed in the category of things in action. The court recognised the counter-argument that crypto assets should not be classed as things in action given that the origin of this category concerns rights enforceable by action against persons and there is no individual counterparty to the crypto holder’s right. However, the court was of the view that the category of things in action is broad, flexible and has been expanded over time to include documents of title to incorporeal rights of property, such as copyrights.¹⁹⁴ Therefore, the court held that the holder of a crypto asset has in principle an incorporeal right of property recognisable by the common law as a thing in action and so is enforceable in court.¹⁹⁵

16.99 The court, reaffirmed the principle in the oft-cited *dictum* by Lord Browne-Wilkinson in *Westdeutsche v Islington*,¹⁹⁶ which is that a constructive trust arises over stolen assets at the time of theft and the remedy of tracing in equity is available in respect of such stolen assets.¹⁹⁷ In this regard, the court was of the view that the constructive trust may operate even if Ms Ho had mixed the USDT with other USDT in the balances of the respective online wallets, or the Fiat Asset with other money in her bank account.¹⁹⁸ On the facts, the court declared

190 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [29]; see also Kelvin F K Low, “Trusts of Cryptoassets” (2021) 34(4) *Trust Law International* 191.

191 Rules of Court 2021 O 22 r 1(1).

192 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [30].

193 [1965] 1 AC 1175. See *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [31]–[33].

194 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [34] and [35].

195 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [36].

196 *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 1 AC 669.

197 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [42]; see also *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 1 AC 669 at 716.

198 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [43]; see also *Foskett v McKeown* [2001] 1 AC 102.

a constructive trust over the USDT given that Ms Ho had fraudulently transferred the Crypto Asset to herself.¹⁹⁹

16.100 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd*²⁰⁰ (“*B High House*”) was a case where the General Division held that a constructive trust did not arise due to the plaintiff’s inability to prove on a balance of probabilities that the defendant had misappropriated moneys which were specifically owed and due to the plaintiff.²⁰¹ In that case, the plaintiff, B High House International Pte Ltd, was in the business of managing and collecting payments for the group of companies to which it belongs. To that end, the plaintiff processed payment transactions and managed, collected and recovered payments from customers of the plaintiff’s affiliates.²⁰²

16.101 The first defendant, MCDP Phoenix Services Pte Ltd, was a full service global financial services provider, and provided, amongst other things, payment processing services, software solutions in respect of financial services and remittance services.²⁰³ The second defendant, one Michael Carbonara, was the sole shareholder, chief executive officer and managing director of the first defendant.

16.102 The crux of the dispute was that the plaintiff claimed that it had entered into a contract with the first defendant for the provision of payment processing services, and that the first defendant, by failing to pay over some alleged trust moneys in the sum of US\$2,680,535.21 to the plaintiff, had breached its contractual obligations.²⁰⁴ The High Court dismissed the plaintiff’s contractual claim as the plaintiff was unable to prove the existence of a contractual relationship with the first defendant.²⁰⁵

16.103 The plaintiff also brought a claim of constructive trust: The first defendant, having received payments from particular merchants (associated with the plaintiff) where a specific merchant identification number was associated with those merchants, had “full knowledge that such payments were meant to be allocated to and/or belong beneficially

199 *ByBit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748 at [41] and [44].

200 [2023] SGHC 12.

201 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [266].

202 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [4].

203 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [4].

204 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [44].

205 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [248].

to the Plaintiff”. Given that the defendants failed to account for or pay over those funds to the plaintiff, the plaintiff argued that the defendants held and continue to hold such payments on “constructive trust” for the plaintiff.²⁰⁶

16.104 In this regard, the plaintiff advanced two key arguments on why a constructive trust should be imposed: (a) the defendants had misappropriated and/or diverted funds which they knew rightfully belonged to the plaintiff; and (b) in allegedly misapplying the funds, the first defendant had breached fiduciary duties which it owed to the plaintiff. With respect to the second argument, while the court recognised that a constructive trust may be imposed over assets where there is a breach of fiduciary duties, the court dismissed this argument because the plaintiff was unable to prove the threshold issue that the first defendant owed it fiduciary duties in the first place.²⁰⁷

16.105 With respect to the first argument, the plaintiff sought to rely on the Court of Appeal’s decision in *Yuanta Asset Management International Ltd v Telemedia Pacific Group Ltd*²⁰⁸ (“Yuanta”).

16.106 In *Yuanta*, a constructive trust arose by operation of law over the sale proceeds from the sale of shares. The defendant, one Yeh Mao-Yuan, had *dishonestly misappropriated* the plaintiff’s property when he transferred the shares from the plaintiff’s account to the defendant’s subsidiary.²⁰⁹ In this regard, the High Court in *B High House* noted that the Court of Appeal in *Yuanta* had referred to the oft-cited English case of *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*²¹⁰ (“*Westdeutsche Landesbank*”):²¹¹

I agree that the stolen moneys are traceable in equity. But the proprietary interest which equity is enforcing in such circumstances arises under a constructive, not a resulting, trust. Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity.

206 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [248].

207 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [264] and [250]–[257], especially [254].

208 [2018] 2 SLR 21, cited in *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [265].

209 *Yuanta Asset Management International Ltd v Telemedia Pacific Group Ltd* [2018] 2 SLR 21 at [112]–[116].

210 [1996] AC 669.

211 *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 716C.

16.107 The Court of Appeal in *Yuanta* also referred to Snell's Equity comments:²¹²

(b) **Fraudulent taking.** A distinction must be drawn between fraud consisting in the outright taking of a person's property, wholly without his consent, and a transaction induced by a fraudulent misrepresentation. In the first case, it has been said that a thief who steals the property of another holds it on constructive trust for the claimant. The thief's possessory title is subject to the claimant's equitable entitlement to have the property specifically restored to him so that he holds it as a constructive trustee. ...

16.108 The above authorities therefore supported the finding in *Yuanta* that the defendant, having dishonestly misappropriated the plaintiff's shares, accordingly held the same on constructive trust for the plaintiff.²¹³

16.109 In *B High House*, the High Court found that the plaintiff was unable to point to any evidence capable of proving on a balance of probabilities that the defendants had taken for themselves moneys which were specifically owed and due to the plaintiff.²¹⁴ In this regard, the plaintiff's key point was that the evidence showed that there were two sums (US\$4,846,462.13 and US\$1,579,678.55) which the defendants were unable to account for.²¹⁵ The High Court dismissed the plaintiff's argument that the burden was on the first defendant to prove that it had remitted all funds that it had received which were meant for the plaintiff. The principle that "he who asserts must prove" is a well-established common law rule which likewise applied in the present case involving a claim of constructive trust.

16.110 Accordingly, the plaintiff bore the legal burden of proving its case of the alleged misappropriation of its funds by the first defendant, and the corresponding evidential burden of proof.²¹⁶ In this regard, the evidential burden on the plaintiff required the plaintiff to adduce some (not inherently incredible) evidence that the first defendant had received the moneys and had misappropriated both amounts.²¹⁷ On the facts, the

212 *Snell's Equity* (John McGhee ed) (Sweet & Maxwell, 33rd Ed, 2015) at para 26-012.

213 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [265] and [266], discussing *Yuanta Asset Management International Ltd v Telemedia Pacific Group Ltd* [2018] 2 SLR 21. See also *Yuanta Asset Management International Ltd v Telemedia Pacific Group Ltd* [2018] 2 SLR 21 at [112]–[116].

214 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [266].

215 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [267].

216 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [268].

217 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [269].

High Court found that the plaintiff simply could not muster the evidence to prove that the defendants had taken the sums for themselves which were specifically owed and due to the plaintiff. Accordingly, the plaintiff was unable to establish its claim for a declaration that the defendants held the moneys on a constructive trust.²¹⁸

16.111 This case emphasises that the example in *Westdeutsche Landesbank* (the imposition of a constructive trust in cases involving a thief) requires the finding of a dishonest intention on the part of the defendant.

A. Common intention constructive trust

16.112 The case of *Chee Yin Meh v Ong Kian Guan*²¹⁹ clarified that under the Residential Property Act²²⁰ (“RPA”), a foreign person could not acquire an estate or interest in a residential property in Singapore by way of a CICT.

16.113 The appellant (“Mdm Chee”) is married to Fan Kow Hin (“Mr Fan”) (now a bankrupt).²²¹ In or around 2011, their residence at Sunrise Drive (the “Sunrise Drive Property”) was acquired in the sole name of Mr Fan.²²² At that time, Mdm Chee was not a Singapore citizen, although she had applied for citizenship two months prior to the acquisition of the Sunrise Drive Property.²²³ It was undisputed that at the time of the purchase of the Sunrise Drive Property, (a) Mdm Chee was a “foreign person” within s 2 of the RPA; (b) the Sunrise Drive Property was “residential property” under s 2 of the RPA, (c) Mdm Chee had not obtained the Minister’s approval “to purchase, acquire or retain any estate or interest in any residential property” under s 25 of the RPA. Although Mdm Chee eventually became a Singapore citizen on 23 December 2011, the Sunrise Drive Property remained in the sole name of Mr Fan.²²⁴ Subsequently, in May 2017, Mr Fan’s trustees in bankruptcy sold the Sunrise Drive Property.²²⁵

16.114 Mdm Chee thereafter commenced an action against the present trustees, seeking an order that the trustees transfer 50% of the net

218 *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd* [2023] SGHC 12 at [287].

219 [2023] 2 SLR 495.

220 Cap 274, 2009 Rev Ed. See Residential Property Act (Cap 274, 2009 Rev Ed) s 3 read with s 2(1).

221 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [2].

222 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [2].

223 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [3].

224 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [8].

225 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [2].

proceeds of the sale to her.²²⁶ Mdm Chee's claim was based on a CICT, under which Mr Fan had allegedly agreed to hold 50% of the beneficial interest in the property on trust for her, which arose at some time in the latter part of May 2011.²²⁷

16.115 The Appellate Division dismissed Mdm Chee's appeal and affirmed the trial judge's decision that the RPA bars foreign persons from acquiring an interest in residential property under a CICT. As a foreign person who desired to purchase or acquire an interest in the Sunrise Drive Property, Mdm Chee was obliged to obtain the Minister's approval under s 25(2) of the RPA, but she did not do so.²²⁸

16.116 As to Mdm Chee's CICT claim, the Appellate Division held that s 23 of the RPA prohibits foreign persons from purchasing or acquiring any estate or interest in any residential property, by way of a trust.²²⁹

16.117 Section 23(1)(a) of the RPA prohibits citizens from purchasing or acquiring an interest in residential property with the intention of holding it on trust for any foreign person.²³⁰

16.118 Section 23(1)(b) prohibits foreign persons from authorising or appointing any citizen as a nominee to acquire an interest in residential property with the intention that the citizen is to hold the interest on trust for the foreign person.²³¹

16.119 In light of the foregoing, the Appellate Division held that ss 23(1)(a) and 23(1)(b) ought to be interpreted as provisions which work in tandem which place prohibitions on both parties in such a trust arrangement: the foreign person (as beneficiary), and the Singapore citizen (as trustee).²³²

16.120 Therefore, the Appellate Division held that the CICT (as alleged by Mdm Chee) would be void under s 23(2) of the RPA.

16.121 In addition, Mdm Chee sought to rely on the case of *Public Prosecutor v Intra Group (Holdings) Co Inc*²³³ ("*Intra Group*") to argue that there was nothing in the RPA to prohibit a CICT.

226 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [2].

227 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [9].

228 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [13].

229 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [16] and [17].

230 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [17].

231 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [17].

232 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [17].

233 [1999] 1 SLR(R) 154.

16.122 In *Intra Group*, Yong Pung How CJ had held that:²³⁴

These provisions all refer to, and prohibit the creation of, express trusts. Section 14(2) prohibits a resulting trust from arising upon the failure of the express trust ... There is, however, nothing in the statute which prohibits a constructive trust from arising by operation of law. A constructive trust ... falls into none of the prohibitions: it is neither a trust for sale nor an acquisition by a person intending to hold it only as a nominee. The Act prohibits trusts created by a transfer of property with the consent of, or the intention to benefit, the beneficiary. The constructive trust, on the other hand, is imposed by law when the transfer occurs against the wishes of the beneficiary, often fraudulently, and without exception, to his detriment.

16.123 Yong Pung How CJ further stated that:²³⁵

The Parliamentary Debates reveal that the creation of a constructive trust in favour of a foreign person was never an issue which concerned the legislators. That is perhaps understandable – I do not see how giving effect to a constructive trust, at least one arising in the manner I have described, can contravene the objectives of the Act. If the property is purchased by a Singapore citizen intending to hold it absolutely, then, at face value, there is no violation of the Act: even if his investment is speculative, this is not the type of speculation which the Act is aimed at. If, however, it happens that he was a fiduciary for some foreign person and had misappropriated the foreign person's moneys to acquire the property, then the declaration of a constructive trust in the foreign person's favour does not in any way contravene the intention of the Act. There was no intention on the part of the foreign person to speculate in Singapore property. It cannot even be said that he intended to acquire that property. The acquisition of the property on trust for him is against his wishes, and, in my view, he is entitled to trace his moneys into the property or the proceeds of its sale. In short, a constructive trust in moneys used to purchase residential property would survive the provisions of the Act.

16.124 The Appellate Division clarified that in *Intra Group*, Yong CJ was referring specifically to constructive trusts “imposed by law when the transfer occurs against the wishes of the beneficiary”, where a foreign person's money was misappropriated and used to acquire residential property.²³⁶ In such a case, the foreign person had no intention to acquire the residential property in question; as a corollary, the Singapore citizen had no intention to hold the residential property on trust for the foreign person: on its terms s 23 of the RPA would not apply.²³⁷ As rightly recognised by the Appellate Division, the CICT discussed in *Intra Group*

234 *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] 1 SLR(R) 154 at [36]; see also *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [21].

235 *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] 1 SLR(R) 154 at [37]; see also *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [21].

236 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [22].

237 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [22].

was one imposed to protect an innocent party, not a party which sought to contravene s 23 of the RPA, as in the present case.

16.125 Further, Mdm Chee argued that the RPA should not apply to trusts in favour of foreign persons who eventually acquire Singapore citizenship. In this regard, the court held that s 2 defines a “foreign person” as (a) any person who is not a citizen; or (b) any permanent resident who has not been granted approval under s 25 of the RPA. On the facts, Mdm Chee satisfied both (a) and (b). Therefore, the fact that she had applied for citizenship did not take her out of the statutory definition of “foreign person”.²³⁸

16.126 The above decision is instructive on the legislative purpose of s 23 of the RPA which is to prohibit “foreign persons” from purchasing or acquiring any interest in a residential property in Singapore. As observed by the Appellate Division, CICTs arise from the “common intention” of the parties. If an express trust is prohibited by s 23 of the RPA, there is no basis to exclude CICTs from the scope of s 23.²³⁹ Otherwise, a foreigner can acquire an interest in residential property by simply alleging a “CICT” as opposed to an “express trust”,²⁴⁰ thereby skirting around the RPA. This would essentially defeat the prohibitive purpose as envisioned by s 23 of the RPA.

16.127 In *Ong Chin Woon*, discussed above,²⁴¹ the issue of CICT also arose. Aside from an argument that Mr Ong was entitled to a majority share of the beneficial interest in the sale proceeds of the Jermin Property by virtue of a presumed resulting trust, he also claimed the entirety of such interest based on a CICT.²⁴²

16.128 Mr Ong drew a distinction between agreements relevant for a CICT analysis and that for a resulting trust analysis.²⁴³

- (a) An agreement relevant to a CICT analysis was one whereby parties agreed on their respective beneficial ownerships of the property.²⁴⁴

238 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [24] and [25].

239 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [23].

240 *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495 at [23].

241 See paras 16.73–16.85 above.

242 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [29].

243 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34].

244 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34].

(b) On the other hand, an agreement relevant to the resulting trust analysis was one whereby parties agreed on who was to be responsible for financing the property.²⁴⁵

16.129 Though the court recognised such a distinction in law, the facts underlying both types of agreements overlapped.²⁴⁶ In this case, any evidence contradicting an agreement that Mr Ong was to be a beneficial owner of the Jermin Property also contradicted an agreement that he was to finance the UOF Loan (which was taken out to finance the acquisition of the Jermin Property).²⁴⁷

16.130 Having dismissed Mr Ong’s claims regarding the presumption of a resulting trust, the court also found that Mr Ong failed to show that there was an agreement between him and Mdm Tan that he would have entire ownership of the property. As such, his claim on a common intention trust failed.²⁴⁸

IV. Illegality and trusts

16.131 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard*²⁴⁹ (“*Lau Sheng Jan Alistair*”) is a significant decision which sets out the appropriate test for illegality in the trusts context, being a modified version of the test laid out in the Singapore Court of Appeal decision in *Ochroid Trading Ltd v Chua Siok Lui*²⁵⁰ (“*Ochroid*”).

16.132 The brief facts of the case are as follows. In July 2020, the respondents sought to purchase the property and engaged solicitors to draft and execute a trust deed. Under the trust deed, the respondents were to hold the property, or alternatively, the net proceeds of the sale of the property, on trust as joint trustees for the applicant’s sole benefit until he reached the age of 40.²⁵¹ Sometime in 2021, the second respondent (the applicant’s mother) commenced divorce proceedings against the first respondent (the applicant’s father), who had moved out of the property.²⁵² The applicant’s mother, the applicant and the applicant’s sister continued living in the property.²⁵³ Subsequently, the applicant instructed

245 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34].

246 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34].

247 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [34].

248 *Ong Chin Woon v Ong Bee Hah* [2023] SGHC(A) 12 at [56].

249 [2023] 5 SLR 1703 (noted in Hui Jing, “The Illegality Defence in Singapore Trust Law: A Refined *Ochroid* Test”, (2024) *Trusts & Trustees*, ttae074).

250 [2018] 1 SLR 363.

251 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [5].

252 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [11].

253 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [11].

his solicitors to inform the respondents of his intention to terminate the trust and to seek their agreement for the legal title of the property to be transferred to the applicant.²⁵⁴

16.133 In support of his position, the applicant relied on the rule in *Saunders v Vautier*:²⁵⁵ “the beneficiaries of a trust, if together entitled to the whole beneficial interest, can if *sui juris* put an end to the trust and direct the trustees to hand over the trust property as they direct.”²⁵⁶ Given that the applicant was the sole beneficiary who had reached full age and did not suffer from any mental disability, the judge found that the applicant had established a *prima facie* case for the termination of the trust pursuant to the rule in *Saunders v Vautier*.²⁵⁷

16.134 However, the first respondent (the applicant’s father) alleged that the trust deed was a sham and that it was created to avoid the payment of additional buyer’s stamp duty (“ABSD”).²⁵⁸ Therefore, the key issue was whether the applicant’s entitlement to the property could be defeated by the allegation that the trust was a sham and/ or illegal.²⁵⁹

16.135 The court dealt with this in two parts: (a) whether the trust was a sham; and (b) whether the trust should be unenforceable for illegality.

16.136 On issue (a), the court held that the trust was not a sham. In this regard, the court reaffirmed the general principle in *Chng Bee Kheng v Chng Eng Chye*²⁶⁰ that the trust deed is a sham where it was never intended by the settlors to create an arrangement to divest themselves of the beneficial ownership in a manner that is provided for in the trust, while intending to give that false impression to third parties or the court.²⁶¹ On the facts, the court found that the trust deed in this case was not a sham as there was no common intention between the settlors and trustees, *ie*, the respondents, to commit to a sham trust. Rather, the respondents had at all material times intended for the property to be purchased for the applicant’s benefit. Importantly, the fact that this trust arrangement additionally allowed the respondents to save on ABSD is an “incidental benefit” which does not detract from their overall intention to benefit the applicant.²⁶²

254 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [12].

255 (1841) 4 Beav 115.

256 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [18].

257 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [18]–[21].

258 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [6].

259 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [22].

260 [2013] 2 SLR 715.

261 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [23].

262 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [28].

16.137 On issue (b), the court first discussed the rule in *Tinsley v Milligan*²⁶³ (“*Tinsley*”) that a plaintiff who asserts a claim founded on illegality will be refused the court’s assistance if he must rely on the illegality to maintain his claim (the formal reliance principle). However, the court noted that the formal reliance principle in *Tinsley* has since been the subject of strong judicial disapproval (in other jurisdictions such as England and Australia) due to concerns that it presents the risk that the principle may operate to bar the enforcement of a proprietary interest and that it will do so in an *arbitrary* manner.²⁶⁴ As observed by the Law Commission of England and Wales, under the formal reliance principle, “whether a trust is enforceable or unenforceable depends on whether it is possible for the claimant to establish his or her entitlement without leading evidence of the illegality”.²⁶⁵

16.138 The judge recognised that the above concerns and arbitrariness of the formal reliance principle could be illustrated in the present case. In the judge’s view, there appears to be no justifiable reason why, if a trust is affected by illegality, the application should turn on whether the applicant needs to formally rely on the illegality in question.²⁶⁶

16.139 Given that the formal reliance principle was not applicable, the court took the opportunity to consider what should be the appropriate test in relation to the application of the doctrine of illegality in the trusts context. In this regard, the applicable framework on illegality (albeit in the contractual context) as set out by the Singapore Court of Appeal in *Ochroid* was strongly persuasive.

16.140 With the notion of *coherence* in mind, the learned judge was of the view that the principles in *Ochroid* should similarly apply in the *trusts context*, *ie*, the *Ochroid* framework should broadly apply in the context with the appropriate modifications.²⁶⁷ First, as a matter of principle, the illegality defences in the trusts context and the contractual context should be broadly consistent with each other. If it were otherwise, this would encourage illegal conduct as parties would simply structure their legal arrangements differently in order to circumvent the rule that does not favour them. Second, the *Ochroid* framework is consistent with the view

263 [1994] 1 AC 340.

264 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [42]–[54].

265 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [54], citing *Illegal Transactions: The Effect of Illegality on Contracts and Trusts* (LCCP No 154, 1999) at para 3.19.

266 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [55].

267 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [67].

that the court in applying the illegality defence, should look to substance rather than form.²⁶⁸

16.141 The learned judge analysed the present two-stage framework in *Ochroid* and applied it in the trusts context:

- (a) **the first stage:** Is the trust enforceable?
- (b) **the second stage:** If the trust is not enforceable, can there nevertheless be restitutionary recovery?

16.142 In this regard, the judge held that only the first stage was applicable in the trusts context given that the second stage (which involves asking whether there can be restitutionary recovery) would not make sense in the trusts context where the claim is for the enforcement of a proprietary interest.²⁶⁹

16.143 In so far as the first stage of *Ochroid* was concerned, the learned judge set out the modified *Ochroid* test in the trusts context, which comprises three stages:²⁷⁰

- (a) **The first stage:** The court should first consider whether the trust is prohibited by statute (whether expressly or impliedly) or if it falls within an established category of situations that renders it void and unenforceable.
- (b) **The second stage:** If the trust is not illegal in itself, the court should then consider whether the trust was created for an illegal purpose or arose as an incidental consequence of the illegal purpose. If so, the proportionality analysis applies to determine a proportionate response to the illegality, and the factors to be considered include: (i) whether allowing the claim would undermine the purpose of the prohibiting rule; (ii) the nature and gravity of the illegality; (iii) the remoteness or centrality of the illegality to the trust; (iv) the object, intent, and conduct of the parties; and (v) the consequences of denying the claim.
- (c) **The third stage:** If the court decides that the trust was created for an illegal purpose and should not be enforceable, the court may consider whether the party seeking to enforce the trust can nonetheless establish an alternative basis for enforcing a proprietary interest by the operation of trusts law (such as by a resulting trust). In considering this, the court should apply the principle of stultification to determine whether, in allowing the

268 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [69].

269 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [78].

270 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [81].

claim, the fundamental policy that prohibited the trust in the first place would be undermined.²⁷¹

16.144 Applying the above modified *Ochroid* test, the court found that the trust deed was not illegal. First, the trust deed did not contravene the relevant provisions of the Stamp Duties Act.²⁷² Upon an examination of these provisions, the court found that (a) there was no express prohibitions of trusts created to avoid ABSD obligations; and (b) it is difficult to conclude that there was a necessary inference or clear implication that such trusts are illegal.²⁷³ Second, the court also relied on its earlier conclusion that the trust deed was not a sham, and thus the trust was not created for an illegal purpose, (*ie*, to avoid ABSD). Therefore, the court granted a declaration for the trust to be terminated and for the respondents to transfer the property to the applicant.²⁷⁴

16.145 Prior to this decision, the legal principles in the trusts context where the illegality defence is raised against a claim to enforce a trust were previously not settled.²⁷⁵ As observed in the judgment, it appears that whether a trust is found to be a sham or not a sham would likely be a weighty factor in the application of the modified *Ochroid* Test, in particular, the second stage.²⁷⁶

271 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [81].

272 Cap 312, 2006 Rev Ed. See Stamp Duties Act (Cap 312, 2006 Rev Ed) s 4(1)(a), read with Art 3(bf)(iii) of the First Schedule.

273 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [83] and [84].

274 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [86].

275 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [37].

276 *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 at [84].