Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased) [2009] SGCA 10

Case Number : CA 49/2008

Decision Date : 04 March 2009

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Davinder Singh SC, Chenthil Kumar Kumarasingam and Una Khng (Drew & Napier LLC) for the appellant; Chia Swee Chye Kelvin (Balkenende Chew & Chia) for the respondent

Parties : Ng Chee Chuan — Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased)

Contract – Breach – Breach of alleged oral agreement – Whether there was alleged oral agreement

Evidence – Witnesses – Inappropriate to rely primarily on credibility of witnesses as basis for drawing factual interferences where events in question had taken place many years ago and there were undisputed objective facts – Availability of contemporaneous documents reduced need to rely on testimony of witnesses on stand

4 March 2009

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 The present proceedings stemmed from an action commenced by Ng Ai Tee ("the respondent"), against her half-brother, Ng Chee Chuan ("the appellant"). The respondent is the administratrix of the estate of her late mother, Mdm Yap Yoon Moi ("Mdm Yap"). The action sought to recover certain moneys due to Mdm Yap under an alleged oral agreement. The appellant denied the existence of any such agreement. After analysing the relevant evidence, the trial judge concluded that there was an oral agreement between Mdm Yap and the appellant and gave judgment for the respondent (see *Ng Ai Tee v Ng Chee Chuan* [2008] SGHC 40 ("the Judgment")). The appellant appealed. Having heard the arguments of the parties, we allowed the appeal and reversed the decision of the court below. We now give our reasons.

Brief facts

2 The trial judge has canvassed the background facts in great detail at [1]–[59] of the Judgment, including both the appellant's as well as the respondent's version of the events and we propose merely to recite the most salient facts here.

3 Despite the chasm between the parties' versions of the events, some material facts were not in dispute. The appellant and the respondent are half-siblings. Their father was one Ng Ah Hing ("NAH"), who had three wives and nine children. The appellant and his elder brother, Ng Chee Hua, were the sons of NAH's second wife but as this marriage ended when the boys were young, they were brought up by NAH's first wife, Mdm Teng, and lived with her and her five children. Mdm Yap was NAH's third wife and bore him two children – the respondent and her younger brother, Alex Ng Tian Poh ("Alex Ng"). Throughout her marriage to NAH, Mdm Yap and her children were maintained in a

separate household from that occupied by Mdm Teng and the other seven children.

4 On 8 June 1993, NAH died intestate. Accordingly, each of his surviving two wives were entitled to inherit 25% of his estate with the remaining 50% to be divided amongst his nine children in equal shares. Among NAH's assets were 4,688 ordinary shares in a company called Sin Thai Hin Trading Pte Ltd (now known as Sin Thai Hin Holdings Pte Ltd) ("the Company"). In the circumstances, Mdm Teng and Mdm Yap were each entitled to an interest in the shares which NAH held in the Company.

5 It was however the appellant's claim that out of the 4,688 shares, 3,913 ("the trust shares") had been held by NAH in trust for him. Subsequently, at a family meeting held on 25 June 1993, each of NAH's two wives and eight children (excluding the appellant but including the respondent) executed individual deeds by which each acknowledged the appellant's claim to the trust shares and further declared that he or she had no interest in the said shares.

6 From July 1993 until her death in November 1997, Mdm Teng received a monthly payment of $2,500. Similarly, Mdm Yap also received a monthly sum of $2,500 for about six years until December 1998. In January 1999, this monthly payment was reduced to $2,000, and from July 2002 onward it was further reduced to $1,000. The actual payments to both widows were made by the Company or its subsidiaries.

The dispute

7 The respondent alleged in her pleadings that Mdm Yap had signed a deed only because of an oral agreement between the latter and the appellant to the effect that Mdm Yap would not claim her entitlement to the alleged trust shares or contest the appellant's claim to those shares in exchange for the appellant's promise to pay her the sum of $2,500 per month until the entire value of her 25% stake in the trust shares had been reimbursed. By the time all payments to Mdm Yap were halted in end February 2006, Mdm Yap and her estate had received a total of $296,500. The respondent claimed that the total amount payable under the oral agreement was $953,069.85, being 25% of the net value of NAH's estate as assessed by the estate duty office, and therefore, after setting off the payments already received, an amount of $656,569.85 remained due and payable to Mdm Yap's estate.

8 At this juncture, we ought to mention that Mdm Yap passed away on 24 June 2004 but this fact was apparently not known to the appellant until late February 2006 and thus payment to Mdm Yap had only ceased thereafter. It was not in dispute that the respondent never informed the appellant of her mother's death and the monthly cheque payments to Mdm Yap after 24 June 2004 continued to be made out in Mdm Yap's favour and not to her estate. Indeed, on 20 February 2006, the Company wrote to the respondent asking her to collect the cheques for Mdm Yap's "living expenses" for December 2005 and January 2006, plus a Chinese New Year *ang pow* (or red packet). The respondent did not reply to say that Mdm Yap had passed away and instead arranged for the cheques to be collected.

9 The appellant denied the existence of any oral agreement, and contended that Mdm Teng and Mdm Yap, together with the other siblings had voluntarily recognised his interest in the trust shares and relinquished any claim to the said shares. He asserted that the monthly payments made to Mdm Teng and Mdm Yap by the Company and/or its subsidiaries were undertaken only as a form of financial support for his father's widows, and not as a legal obligation to pay for their entitlement in the trust shares which they had in a deed acknowledged as belonging to the appellant. Thus, the allowance given to Mdm Teng ceased on her death. It would also have been the same for Mdm Yap

but for the fact that the appellant did not know of Mdm Yap's passing until late February 2006 and kept on paying her allowance until then.

10 The heart of this case therefore centred on a singular issue of fact: was there an oral agreement between the appellant and Mdm Yap whereby the latter agreed to relinquish her interest in the trust shares in exchange for a monthly payment until the full value of her interest in the trust shares had been paid?

The appeal

11 The appellant's case, if we may summarise it in a nutshell, was that the trial judge had not properly appreciated the facts and drew the wrong inferences from the objective evidence. Naturally, the respondent did not agree.

12 We were well aware, and it is trite law, that an appellate court should be slow to overturn a trial judge's findings of fact, especially where they hinged on the trial judge's assessment of the credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence (see *Powell v Streatham Manor Nursing Home* [1935] AC 243 at 249–250 and *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 ("*Yap Giau Beng*") at [24]). However, as Yong Pung How CJ added in *Yap Giau Beng* at [24]:

> [W]hen it comes to inferences of facts to be drawn from the actual findings which have been ascertained, a different approach will be taken. In such cases, it is again trite law that *an appellate judge is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case*. [emphasis added]

13 Thus intervention by an appellate court is justified where the inferences drawn by a trial judge are not supported by the primary or objective evidence on record (see *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR 45 ("*Jagatheesan*") at [38]).

14 We must also emphasise that a judge can make a finding on the credibility of a witness based on: (a) his demeanour; (b) the internal inconsistency (or lack thereof) in the content of his evidence; and/or (c) the external inconsistency (or lack thereof) between the content of his evidence and extrinsic objective evidence (*Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 610 at [9] and *Jagatheesan* ([13] *supra*) at [39]). Moreover, it is important to bear in mind the difference between an assessment of a witness's credibility based, on the one hand, on his demeanour and, on the other hand, on inconsistencies in that witness's testimony or between his evidence and the extrinsic objective facts. In the latter situations, the advantage of the trial judge in having heard the witness is not as critical because the appellate court will have access to the same material as the trial judge, and will be in as good a position as the trial judge to assess the witness's credibility (see *PP v Choo Thiam Hock* [1994] 3 SLR 248 at [12] and *Jagatheesan* ([13] *supra*) at [40]).

Credibility of witnesses

15 In reaching her decision, the trial judge appeared to have relied heavily on her assessment of the credibility of the appellant and the respondent, which was based essentially on the internal inconsistency of the evidence of each party (see in particular at [103]–[114] of the Judgment). The trial judge evidently considered the respondent to be a more credible witness than the appellant (see [12] of the Judgment).

16 While it is no doubt necessary to ascertain the credibility of witnesses in most cases where

the oral evidence of the parties conflict, it is not always appropriate to rely primarily on credibility (determined on the basis of inconsistent testimony) as a basis for drawing factual inferences, especially where the events in question have taken place many years ago and there are undisputed objective facts. Imperfect memories and uncertain recollections should not necessarily be treated as impinging on the credibility of a witness. These are but afflictions which the passage of time will, in varying degrees, bring to bear on all individuals.

17 In this case, the question of the credibility of witnesses should have played a smaller role in the overall assessment as to where the truth lay given the presence of contemporaneous documents and undisputed facts. The trial judge, in our view, should have drawn inferences from these pieces of objective evidence instead of reaching conclusions influenced heavily by what was believed to be the credibility of the parties. We will return to this point in a moment ([19] and [53] below), but suffice to say for now it appeared to us that the trial judge, having decided that the respondent was a more credible witness, was more willing to give her the benefit of the doubt where there were difficulties with her evidence (see [121] of the Judgment). On the other hand, contradictions or difficulties in the appellant's testimony were not looked upon with quite the same degree of indulgence. In a case such as this, deciding which version of the events is more probable should be based on the objective facts.

18 We are not saying that all findings of fact made by the trial judge in this case were unwarranted or wrong. For example, the trial judge stated at [118] of the Judgment that "on balance, the evidence establishes that there was no close relationship between the [appellant] and Mdm Yap in June 1993." She went on to say that "the [appellant's] various attempts to paint a different picture were not successful and only cast doubt on his credibility." We agreed that this was a point on which she was entitled to make that finding. For reasons of his own, probably due to a misguided desire to bolster his case thinking that it was better for him to say that his relationship with Mdm Yap was close, the appellant chose to embellish this part of his evidence. Nevertheless, just as the trial judge had found that the respondent had embellished her evidence with regard to the way she calculated the value of her mother's 25% interest in the trust shares but did not let that influence her view of the respondent's other evidence, such embellishment by the appellant did not necessarily mean that his other evidence should also be treated as tainted.

19 As we perceived it, the availability of contemporaneous documents in this case reduced the need to rely on the testimony of the witnesses on the stand as much of the evidence was, in fact, not disputed, *eg* the amount of payments made, the dates of the payments, the signing of the deeds, *etc*. The crucial question of whether the oral agreement alleged by the respondent existed depended as much, if not more, on the inferences which could reasonably be drawn from the available objective evidence than the apparent credibility of the witnesses *per se*. Given that we had access to the same objective evidence as the trial judge, we were just as well placed as her to draw inferences from the empirical facts. We would underscore that this was not a case where the court was faced with nothing else but the oral evidence of the appellant and that of the respondent, in which event the question of the credibility or veracity of witnesses would have been critical. We will now proceed to deal with the key matters on which we did not think that the trial judge made the correct or appropriate inferences and why we concluded that there had not been any oral agreement between the appellant and Mdm Yap.

Whether NAH held the trust shares for the benefit of the appellant

20 It seemed to us that one of the issues that would appear to be relevant to the respondent's claim was whether NAH had indeed held the shares on trust for the appellant. The trial judge, however, did not consider this issue pertinent. She stated at [65] of the Judgment:

> I do not think it is necessary to decide whether or not NAH did hold the trust shares for the benefit of the [appellant]. This is because, even if he did, there could still be a valid agreement between the [appellant] and Mdm Yap that she would not challenge his claim to the trust shares in exchange for an agreed payment.

While we agree with the trial judge that NAH's holding of the shares on trust for the appellant did not necessarily preclude the possibility of a separate oral agreement between the appellant and Mdm Yap, we would have thought that the existence of such a trust would be crucial to any inferences to be drawn from the circumstances.

21 First, we noted that Gary Ng, one of the children of Mdm Teng and NAH, testified that he did not believe the trust shares were held by NAH on trust for the appellant. But considering that this was a position he took only in March 2006, some thirteen years after he had signed a deed recognising the trust, his objection could not, and should not, reasonably be given much weight. Apart from Gary Ng's adverse position, there was no evidence from any of the other siblings that the appellant's claim to the trust shares was false or unsubstantiated. In fact, it was not in dispute that *the respondent herself, as well as her own brother Alex Ng, signed a deed acknowledging the appellant's beneficiary interest in the trust shares*. This must be significant (see [26], [40] and [41] below).

22 If the appellant's claim that the shares were held on trust by NAH for him was anything less than *bona fide*, it would no doubt have been a Herculean task for him to convince some ten separate individuals to voluntarily sign a deed recognising the trust shares, especially taking into account the fact that the shares were of a substantial value. And if any form of fraud had been perpetrated in the process of securing those signatures, we surmised that the dirty linen would have been put out to wash far earlier than 2006, when this suit was commenced. Apart from the belated objection of Gary Ng, the respondent did not provide any further evidence which would have cast doubts on the validity of the appellant's claim.

23 On the other hand, the appellant had the benefit of the testimony of Liew Kim Swee ("Philip Liew"). Philip Liew had been the Company's auditor for many years, and having known NAH since 1971 was both an old and a close friend of his. According to Philip Liew, NAH had informed him sometime in 1993 that he was holding the trust shares for the appellant's benefit. We had no reason to doubt Philip Liew's testimony; he bore no allegiance to the appellant (any loyalty would have been to NAH) and was for all intents and purposes an objective witness. The veracity of his evidence was further enhanced by the fact that he had recorded his account into a signed statement in June 1993. Given the passage of time, Philip Liew's statement signed on 25 June 1993 provided the most contemporaneous evidence of the existence of the trust. Presumably the two widows and all the children believed in what Philip Liew said and thus willingly signed the deeds. All of them were prepared to abide by the wishes of their late husband/father. We could see no credible reasons for Mdm Yap to act or demand otherwise.

24 In the circumstances, we would have thought that the appellant's entitlement to the trust shares had been amply made out. To our minds, resolving the issue of whether NAH had held the trust shares for the benefit of the appellant was important because of the implications it would have, and it was also for this reason that we differed from the trial judge who thought that an inquiry into this issue would not be of real relevance to the question of whether there had been an oral agreement between Mdm Yap and the appellant.

Whether there was any reason for the appellant to reach an oral agreement with Mdm Yap to pay her for the shares

25 The trial judge had accepted the respondent's argument that in June 1993, the appellant wanted a quick resolution to the issue of ownership of the trust shares so that he could take over the helm of the Company (see [116] of the Judgment) as if to suggest that because of this wish, the appellant would be willing to meet the demands of Mdm Yap. While we would agree, bearing in mind that preparation of the deeds for execution by the spouses and children of NAH was undertaken soon after NAH's death and that the appellant wanted to regularise his controlling interest in the Company as soon as possible so that the Company would not be without a leader, nevertheless given the appellant's strong legal position as indicated in [20]–[24] above, we failed to see any reason for the appellant to be so willing to pay Mdm Yap (not a small sum at that) for something she was not entitled to. If indeed Mdm Yap had disputed the appellant's entitlement to the trust shares, we would have expected there to have been some negotiations between the appellant and Mdm Yap occurring over some period of time, with perhaps the assistance of Philip Liew, before the appellant agreed to pay Mdm Yap for her alleged interest in the trust shares. There was no evidence of any major contention having taken place. It was hardly believable that the appellant would readily agree to pay Mdm Yap almost $1 million for her interest in the shares without some very serious discussions. On the contrary, the fact that the whole question of the trust shares was taken care of with such despatch, and so little fuss, would clearly suggest that everyone in the family recognised and accepted that NAH had declared that the trust shares belonged to the appellant, and that on his death the shares should go to the appellant.

26 On this point, we would add a further observation. It seemed incredulous to us that the respondent, while advising and helping her mother negotiate a payment from the appellant for the shares, would have failed to insist on a similar agreement for her own interest in the trust shares. If both Mdm Yap and the respondent did not recognise the appellant's entitlement in the trust shares, we could see no sensible explanation (and none was given) for why the respondent (and also her brother Alex Ng) did not demand a similar agreement from the appellant for forgoing her own interest in the trust shares before agreeing to sign a deed. On her own evidence, her side of the family was not close to the appellant and the trial judge had so found. Indeed, nothing demonstrated this better than the fact that the appellant was not even informed of Mdm Yap's death. Moreover, the respondent's own monthly income then was only $2,000 and yet, she was apparently willing to give up some $200,000 worth of shares in favour of the appellant without asking for anything in return. Given that the respondent signed the deed for no consideration, the natural and irresistible inference to be drawn must be that both Mdm Yap and the respondent (and everyone else who signed deeds) did not doubt the appellant's claim to the trust shares at the material time. Thus, the behaviour of the parties, scrutinised objectively, militated against the likelihood of an oral agreement having been reached between Mdm Yap and the appellant.

The respondent's explanation for arriving at the monthly sum

27 The respondent provided an elaborate explanation of how she had arrived at the figure of $2,500 to be the monthly sum paid for Mdm Yap's interest in the shares. This was described in [14] and [15] of the Judgment:

> 14 … [The respondent] knew that NAH had held about 50% of the shares in the Company. She therefore decided to use the Company's most valuable assets (*ie* the Sin Thai Hin building and the freehold land on which it stands) to estimate the value of the shares. She took the cost of the land and building as being $3.2m on the basis of the Company's audited accounts. She then applied a multiplier of 2.5 to reflect the appreciation in value from the time the building had been constructed (around the late 1980s). The [respondent] derived the approximate value of her mother's share as follows:

[50% x $3,200,000 x 2.5] x 25% = $1 million

She rounded this figure down to $900,000 to factor in a possible ten percent margin of error since she was dealing with estimated numbers.

15 The [respondent] informed Mdm Yap that it was not likely that the [appellant] would be able to pay $900,000 in one lump sum. She said that it would be more reasonable to break the compensation down into monthly instalments. At the time, Mdm Yap was 52 years old. Based on a life expectancy of 80 years, she would have 28 years more to live. Working backwards, the [respondent] arrived at a figure that was slightly higher than $2,600 per month. She then rounded this down to $2,500 for convenience. Mdm Yap said that this monthly sum would be acceptable to her if she was compelled to relinquish her shares.

28 The trial judge recognised the dubiousness of the respondent's logic, but appeared to have been prepared to overlook it (see [121] to [124] of the Judgment). She noted at [125] of the Judgment:

As for the [respondent's] claim that she used the natural life expectancy of a female and that was 80 years, the [appellant's] criticism was that she had no evidence to support it. *I think that this was theweakest part of the [respondent's] case.* Her explanation that she used her grandmother's life expectancy as a basis for her mother's life expectancy was a bit far fetched since the two of them did not have the same health situation. *I think that there may have been some* ex post facto*rationalisationof the figureson the [respondent's] part* and also some over optimistic expectations of how long Mdm Yap would live. *The [respondent] could not really justify on the basis of her calculations why Mdm Yap had agreed to$2,500 per month* but I accept that this figure was used because it was convenient and because *MdmYap thought that sum would be enough to support her comfortably.*

[emphasis added]

29 Notwithstanding this observation, the trial judge accepted the respondent's explanation as to how she had arrived at the various figures. From the last sentence above it would be seen that the trial judge had relied on hearsay evidence to find that the monthly sum of $2,500 was acceptable even though the trial judge did not think it justifiable on the respondent's calculation. The statement to the effect that Mdm Yap had expressed to the respondent that the sum would be enough to support her comfortably came from the mouth of the respondent. This alleged utterance of Mdm Yap did not come within any of the exceptions set out in s 32 of the Evidence Act (Cap 97, 1997 Rev Ed), and though no express objection was taken by the appellant to this piece of evidence, it should not have been relied upon by the trial judge for the truth it asserted. We noted however that the evidence would not have been objectionable if it were adduced just to show that the utterance had indeed been made by Mdm Yap, and not as to the truth thereof. On this restricted basis, we found the evidence admissible, but we did not share the trial judge's reliance on it for the truth thereof.

30 With respect, we could not agree with the trial judge's overly charitable view of the calculation offered by the respondent. It was nothing but an *ex post facto* rationalisation, and an incredible one at that. Of course, the trial judge also thought that the calculation was a rationalisation (see [28] above). Here, it must be borne in mind that the respondent is not any uneducated individual but someone who has a degree in accountancy. By the time the deeds were executed, she already had had several years of post-degree working experience. It defied belief and common sense that someone with such relevant professional training, if she was asserting a right, would have undertaken such an amateurish way of calculating the value of the shares. For an asset

worth around $1 million, the respondent would have us believe that she had relied on such imprecise and crude mathematics.

31 The trial judge took a rather kindly view of the respondent's bad method of calculation on the ground that the question of the trust shares was raised by the appellant soon after the death of NAH, and the appellant had wanted a quick resolution to it (at [122] of the Judgment). While this could be a material circumstance, it could nevertheless also cut both ways. Just as it was possible that because of that circumstance the appellant could have been willing to sanction a payment for the shares as a quick fix, Mdm Yap could also have been happy to relinquish her interest to the trust shares out of respect for the wishes of her late husband. Given the respondent's evidence that she and her mother, Mdm Yap, would not have wanted to relinquish Mdm Yap's interest without proper consideration, it made little sense that the respondent would subsequently undertake an unprincipled approach to the calculations, and even less sense that Mdm Yap and the respondent would be willing to accept a sum based only on ballpark figures.

32 We are not ourselves accountants by training, but we do not think one need to be so to recognise the flaws in the respondent's rationalisation. The implausibility of her evidence was also reflected in her explanation for rounding down the figure of $1 million to $900,000, and also the monthly payment of about $2,600 to $2,500 (see [14] and [15] of the Judgment). The use of the age of 80 (based on her grandmother's age) as a measure of Mdm Yap's life expectancy (Mdm Yap was then 52 years of age) was also wholly arbitrary and illogical. It was amazing that someone with her training would fail to appreciate the vicissitudes of life and rely on such a speculative measure to calculate her own mother's life expectancy and, more significantly, use that yardstick to determine the monthly repayment necessary to repay Mdm Yap for her interest in the trust shares. While we recognised that Mdm Yap and the respondent might not have wished to be difficult with the appellant by insisting that Mdm Yap's interest in the trust shares be repaid in full in one lump sum, we thought that the fact that she did not even raise the possibility of paying in one lump sum with the appellant was a little strange. Be that as it may, common sense would dictate that a reasonable person would have demanded that the sum be repaid over a much shorter period instead of having to wait until Mdm Yap had attained the age of 80 as that would have better ensured that Mdm Yap would receive full payment for her interest while she was still alive. Why didn't the respondent even ask for a more expedited arrangement for paying up the full value? She could not offer any satisfactory answer. The respondent even said that it was she who suggested the monthly sum of $2,500 as her mother was not used to handling large sums of money. Why did she suggest a figure like that and a repayment period of 28 years, neither of which were in her mother's interest, bearing in mind that her mother was then suffering from hypertension and heart disease? Why could not the respondent handle whatever money, however large, that was due to her mother? Quite apart from these, the respondent's calculations also failed to take into account the effects of inflation or the interest foregone, factors which could not have escaped the mind of an accountant. These again raised further question marks against the case put up by the respondent.

33 There was also another mistake in the calculation offered by the respondent as to how she arrived at the monthly sum of $2,500. Her calculation was based on the fact that the trust shares constituted 50% of the issued share capital of the Company, when it was in fact only 38%. The formulae she used was this: a quarter of (50% x $3,200,000 x 2.5). The sum $3,200,000 was the historical cost of the land and building owned by the Company; the multiplier 2.5 was the inflation factor; and the quarter being her mother's share, Mdm Yap being one of two widows of NAH. We would also add that this equation did not take into account a number of other assets of the Company.

Subsequent conduct

34 We had even more reasons to be sceptical of the respondent's excuses in light of subsequent events. There was no dispute that in 1999, the appellant had reduced the monthly payment to $2,000, and this figure was further reduced to $1,000 in July 2002. If it were true that the monthly payments by the appellant were the consideration for Mdm Yap forgoing her interest in the trust shares, then why did the respondent accept the reduction in 1999, and the further reduced sum of $1,000 from July 2002? A legal challenge should have been brought after the appellant, in January 2003, refused the respondent's demand that the monthly payment be maintained at $2,000. The conduct of the respondent and Mdm Yap, in accepting the payment of $1,000 per month without further demur after the appellant's letter of 7 January 2003, was contrary to the existence of any agreement between the appellant and Mdm Yap. We now set out the relevant parts of this letter:

> With due respect, it is untrue that you agreed to the transfer of the shares to me in consideration of my purportedly agreeing to pay you $2,500.00 monthly for as long as you lives [*sic*].
>
> On 25 June 1993, you had acknowledged, by way of deed, that you had no interest in the shares. You knew that the shares were held by my late father upon trust for my exclusive benefit. Therefore, there was no need in the first place for you and me to enter into any alleged agreement concerning the shares.
>
> It was only out of respect of my late father that the company gave you a monthly allowance and continues to do so. The company is not obliged to do so. Under the adverse economic conditions, the company believes that the monthly sum of $1,000.00 is reasonable.

35 Two points in this letter were worth noting. First, the statement that the monthly payment was made not out of any obligation but goodwill. Second, the payment was not made out of the pocket of the appellant but out of the funds of the Company. This second point had implications for Mdm Yap, the respondent as well as her brother Alex Ng because, quite apart from the trust shares, each of them owned shares in the Company of about 8%, 3% and 3% respectively. In other words they were each contributing towards the monthly payments to Mdm Yap. Yet, not a single protest came from any of them.

36 Indeed, prior to this letter, all previous cheques issued to Mdm Yap were never the personal cheques of the appellant but were cheques of a subsidiary of the Company, Sin Thai Hin Marina Fiesta Pte Ltd ("STH Marina Fiesta"). This continued until December 2004. From January to June 2005 the payments came from Sin Thai Hin Development Pte Ltd and from July 2005 to February 2006 the payments were made out of the account of the Company. Much earlier, on 9 May 1995, the general manager of STH Marina Fiesta wrote to Mdm Yap as follows:

> This is to confirm that the total sum of consultant fee paid to you for the year ended 31st December 1993 and 31st December 1994 were S$17,500/- & S$40,000/- respectively.

37 From this letter it would have been apparent to both Mdm Yap and the respondent that from the very beginning all payments to Mdm Yap had come from STH Marina Fiesta and not from the personal account of the appellant. STH Marina Fiesta even had to reflect the payments as a "consultant fee", a euphemism, as Mdm Yap was never a consultant. The respondent, being an accountant, could not have failed to recognise the significance of this. In fact there was an exchange between the respondent's counsel and the court[note: 1] which clearly showed that the respondent was aware that all the payments received by Mdm Yap came from the various companies. If in fact the obligation to pay the monthly sum to Mdm Yap was a personal one, why was it that no issue was ever taken by the respondent and her brother Alex Ng as to what the appellant was doing,

ie making the various companies pay Mdm Yap, which in effect meant that Mdm Yap, the respondent and her brother (all of whom had an interest in the Company) were contributing towards the payments. How could they have taken what the appellant did sitting down? Their silence spoke volumes and was wholly consistent with what the appellant alleged, *ie* the payments to the two widows, Mdm Teng and Mdm Yap, by the Company or its subsidiaries, were out of goodwill and the respondent was aware of the understanding reached by all the children of NAH. The excuse offered by the respondent was that she and her mother did not object to the payments being made by the Company or its subsidiaries because they accepted the appellant's desire to hide the alleged legal obligation which the appellant had undertaken to pay Mdm Yap for her interest in the trust shares. This reason hardly made sense. If secrecy was what the appellant wanted, we would have expected him to pay Mdm Yap with his personal cheques or by cash. Making the Company, or its subsidiaries, pay Mdm Yap was a sure way of letting the cat out of the bag. Moreover, the reason did not explain why the respondent, her mother and her brother (being shareholders of the Company), did not even once protest to the appellant or seek from him an explanation as to why they should have to bear the responsibility of discharging the appellant's personal obligation to Mdm Yap. With respect, this was an aspect of the case which the trial judge gave insufficient consideration to. If this aspect was squarely addressed, it would have clearly indicated to the trial judge that the respondent's version of the events could not be true and, accordingly, had no merit.

38 Incidentally, if the appellant had continued paying $1,000 per month from July 2002 onward, Mdm Yap would not have received the full value of her interest in the trust shares for approximately another 54 years. That could not possibly have been acceptable to any party with a legal right to the balance sum.

39 The respondent's explanations for arriving at the various figures were at best lame, and at worst, a pack of recent concoctions. They did not gel with her background and training. Objectively assessed, the respondent's reasons did not stand up to scrutiny, and without a credible basis for adopting the figures supposedly used in the oral agreement, we found it harder still to be convinced that there had been in existence an oral agreement to compensate Mdm Yap for the value of her interest in the trust shares. We were aware that these illogical aspects of the respondent's case had already been canvassed before the trial judge. Indeed, the trial judge spent considerable time summarising the appellant's objections on these points (see [60]–[75] of the Judgment). However, faced with the same objective facts, we were of the view that the trial judge had not drawn the appropriate inferences.

The respondent and her brother also signed deeds

40 As indicated before, another germane circumstance which was not compatible with the respondent's assertion as to the existence of an oral agreement between the appellant and Mdm Yap was the fact that not only did all the other children of NAH sign deeds, the respondent and her brother, who together would otherwise be entitled to two-ninths of half of the trust shares (the other half would on intestacy belong to the two widows), also signed individual deeds. On this point, the trial judge said (at [118] of the Judgment):

> The [respondent's] own willingness to give up her claim to those shares was, on examination, not suspect. By the time of her father's death, the [respondent] was married and not only living in a separate household but also earning her own living and able to rely on her husband who was also gainfully occupied. Her position was very different from that of Mdm Yap who had been dependent on NAH. I also agree that, on balance, the evidence establishes that there was no close relationship between the [appellant] and Mdm Yap in June 1993 and that therefore there was no reason for her to relinquish her interest without asking for something in return.

41 While it was not disputed that at the time when NAH died, Mdm Yap was a dependent of NAH and the respondent was not (as she was then working as an accountant and also had a husband to support her), if it were not the wish of NAH that the trust shares were held for the appellant, we failed to understand why the respondent (as well as her brother Alex Ng) should so readily give up her interest in the trust shares in favour of the appellant, especially when the two sides of the family were hardly close. The trial judge, having found that the two sides of the family were not close, did not go further and ask why the respondent (and her brother) should give up her share to the appellant. The fact that she did not need the inheritance to support herself was beside the point. Why then did the respondent institute the present claim? This would similarly be a question of inheritance, since Mdm Yap had already passed away and no longer had need of the money. In value terms, the respondent mentioned that her interest in the trust shares would be $200,000, not a sum to be scoffed at. It seemed to us that the truth of the matter was that she signed the deed without protest because she accepted that the deed was in accordance with the wishes of her father. The deed unequivocally stated that the respondent (and her brother Alex Ng) acknowledged that NAH held the trust shares for the appellant and declared that she had no further claim or interest in the shares.

The July 2002 letter

42 The first time the respondent raised the issue of an oral agreement was in her letter of 30 July 2002 ("the July 2002 letter"), written nine years after the alleged oral agreement had supposedly been reached. As this letter is of direct relevance to the respondent's claim, we set it out in full.

> I was informed by Madam Yap Y.M. that your staff has informed her that from 1 August 2002, you intend to reduce the monthly instalments that you are paying her from S$2,000 to S$1,000. I would like to know your basis for reducing the monthly payments to her as you have already reduced the monthly payments to her a few years back from S$2,500 to S$2,000.
>
> I would like to remind you that the oral agreement between Madam Yap Y.M. and yourself was that for her to *transfer* her 25% share of Mr Ng Ah Hing's 3,913 shares in Sin Thai Hin Trading Pte Ltd to you was that you would pay her a monthly consideration of S$2,500 to her *as long as she lives*. You have been doing so in the earlier years until in 1998 or 1999 when you decided to reduce the payment from S$2,500 to S$2,000. The reason given was that you were badly affected by the financial crisis. Madam Yap did not kick up a fuss then as she knew that the suddenly [*sic*] drop in business in Singapore in 1997/98 was a great shock to many businesses in Singapore. She accepted your suggestion with good faith that when your financial position improves you would reinstate the reduced amount to the original amount of S$2,500.
>
> However, now that you want to reduce the payments from S$2,000 to S$1,000, a 60% reduction from the original agreed amount is far too low for Madam Yap to accept. *Please be reminded that when Madam Yap agreed to transfer the shares to you, the value of her shares was 25% of S$3,812,279.38 (as assessed by the Estate Duty department), which was S$953,069.85.*
>
> *I sincerely hope that you will reconsider your decision and to let her monthly payments remain at S$2,000 p.m.*
>
> [emphasis added]

43 From its terms it is clear that the letter was written after the appellant had sought to reduce the monthly payments to $1,000 in July 2002. It was a letter of protest to the appellant written by the respondent on her mother's behalf. In this letter, she reminded the appellant "that the oral agreement between [Mdm Yap] and [the appellant] was that for [Mdm Yap] to transfer her 25%

share of [NAH's] 3,913 shares in [the Company] to [the appellant] … [the appellant] would pay [Mdm Yap] a monthly consideration of S$2,500 … as long as she lives".

44 The express terms of the July 2002 letter clearly contradicted the respondent's claim that the oral agreement was for the appellant to pay Mdm Yap $2,500 per month until the full value was repaid. Paragraph 5 of the respondent's statement of claim read as follows:

> It was … agreed by the [appellant] and [Mdm Yap] that the latter *would not claim the Shares and/or contest the former's claim therefor* in exchange for his promise to pay the sum of **$2,500.00** per month to [Mdm Yap] *until the entire value of the Shares is paid-off* … [emphasis in italics added]

45 We would point out that this pleaded version of the events was asserted for the first time in a letter dated 20 April 2006, which was 22 months after the death of Mdm Yap and only after the appellant came to know that Mdm Yap had long passed away and had stopped her monthly payments.

46 The respondent sought to explain in her evidence that the phrase "as long as she lives" in the July 2002 letter was not intended to mean that the appellant was only obliged to pay Mdm Yap $2,500 a month until she died. What she meant was that the instalments were calculated based on, and intended to stretch over the period of Mdm Yap's life expectancy (see [20] and [127] of the Judgment).

47 In our opinion, the trial judge gave insufficient regard to this glaring inconsistency and instead, accepted the respondent's explanation as to what she meant by that phrase merely on the basis that one could not expect precision in writing from someone who is not a lawyer but an accountant. The trial judge said at [129] of the Judgment:

> [T]he reference in the [respondent's] letter to "as long as she lives" cannot be used by me as a basis to find that the terms of the oral agreement were different from what was pleaded. *The [respondent] is an accountant not a lawyer.* She wrote the letter as her mother's daughter to make a protest on her mother's behalf. *The wording of theletter cannot be given the same close construction that a document or contract drafted by a lawyer would be subject to.* I accept the [respondent's] explanation for the use of the language "as long as she lives". [emphasis added]

48 With respect, we could not agree with the trial judge's reasoning. The phrase "as long as she lives" is simple and elementary English; it did not require a linguist or a lawyer to appreciate the meaning of those plain words. There was no evidence either that the respondent's command of the language was poor. The sense of the letter was quite clear. It was also well written. Its tone appears to be what a lawyer would have written in similar circumstances. We would not at all be surprised if it was written by the respondent with input from a legal advisor. However, if it were not written with such assistance, then all the more it showed that she was capable of writing sensibly. Thus, we could not accept the respondent's background, of just being an accountant, as an excuse for ignoring the plain and ordinary meaning of the words used in the July 2002 letter. The letter was an objective piece of evidence, and it clearly contradicted the respondent's claim that there had been an oral agreement between Mdm Yap and the appellant for the latter to pay Mdm Yap $2,500 a month until the full value of her interest in the trust shares had been repaid. Moreover, even if we were to take the phrase "as long as she lives" to mean, as the respondent sought to explain, that the monthly payments were to stretch over the period of Mdm Yap's life, it would still be inextricably linked to the lifetime of Mdm Yap, not to the repayment of the full value. There could only be repayment of the full value if, besides the monthly sum, the period of repayment was also fixed.

49 We noted that in the second last paragraph of the letter (see [42] above) there was a reference to the sum of $953,069.85. Read in its context, the reference to the sum of $953,069.85 was no more than a reminder to the appellant of the alleged value of Mdm Yap's interest in the trust shares which she had given up as a plea to the appellant not to reduce her monthly payment. It in no way suggested that that was the total sum which Mdm Yap was entitled to be paid for giving up her interest in the trust shares irrespective of whether she was alive or otherwise. Again, with respect, we did not think the trial judge drew the correct inferences from the July 2002 letter either.

Lack of legal formalities

50 Arguments were also raised by the appellant to challenge the claim of the respondent as to the alleged oral agreement on the ground of a lack of formalities. The point was made that a sum close to a million dollars was certainly a very significant sum and it was not something that should be left to the frailty of the human memory. Three explanations were proffered for the informality relating to the transaction. First, Mdm Yap had promptly received her monthly sum after the alleged oral agreement. Second, the respondent and Mdm Yap did not want to create a squabble in the family so soon after the death of NAH. Third, they viewed the appellant as part of the family and were prepared to accept his word for it. Before us, the additional allegation made in submissions was that the respondent had requested for a document to record the understanding but the appellant had declined to do so.

51 *Prima facie*, we would say that, in the context of the present case where the two sides of NAH's family were hardly close, the argument based on a lack of formalities was not without some merits. Here we would note that in respect of NAH's estates in Malaysia and Hong Kong, where much smaller amounts were involved, there was proper documentation yet nothing similar was done in respect of the interest in the trust shares which Mdm Yap had given up and where the repayment was to stretch over a long period of 28 years. This was indeed curious. However, we accepted that this point alone could not be determinative, although it was certainly more compatible with the case advanced by the appellant than that of the respondent.

52 Finally, we would allude to one other matter. On festive occasions, *ang pows* were presented by the various subsidiary companies to Mdm Yap, which were not taken into account (as admitted by the respondent) in reducing the liability of the appellant to Mdm Yap under the oral agreement. If the obligation to pay Mdm Yap the monthly sum of $2500 was a legal one, and there was yet so much to be paid to her under that obligation, we failed to see why the appellant should make gift payments to Mdm Yap on festive occasions. Such festive *ang pows* were wholly consistent with what was said by the appellant *ie*, that the monthly allowance paid by the Company to Mdm Teng and Mdm Yap were pursuant to the moral obligation of supporting the widows of his late father. On festive occasions, the widows were likely to incur more expenses, thus the a*ng pow* payments. It would not make sense otherwise.

Conclusion

53 We appreciated that the trial judge had considered the facts extensively, and also had the occasion to observe the demeanour of the witnesses at trial. We did not have this benefit. However, given the nature of the case, and the objective evidence on record, we were persuaded that the trial judge had put excessive emphasis on the credibility of the witnesses, when greater reliance should have been placed on the contemporaneous documents and objective facts. It was the inherent probabilities, in the light of the objective evidence, that should have been decisive. With a lapse of some fourteen years between the date of the execution of the deeds and the commencement of the trial, it was hardly surprising that memories would fade. In the circumstances, we were convinced

that we were in as good a position as the trial judge to draw the necessary inferences from the objective facts, and having perused the evidence, we respectfully disagreed with the inferences drawn by the trial judge. We thus concluded that there was no oral agreement between Mdm Yap and the appellant for the latter to compensate Mdm Yap for giving up her interest in the trust shares.

54 In the result, the appeal was allowed with costs here and below.

[note: 1]Appellant's Core Bundle II at 183–189.