Lim Siew Bee *v* Lim Boh Chuan and another
[2014] SGHC 41

Case Number : Suit No 3of 2012

Decision Date : 05 March 2014

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Chelva Rajah SC (instructed) Gopalan Raman, Khaleel Namazie (KhattarWong LLP) for the plaintiff; Davinder Singh SC, Una Khng, Zhuo Jiaxiang and Natasha M Sabnani (Drew & Napier LLC) for the defendants

Parties : Lim Siew Bee — Lim Boh Chuan and another

Limitation of actions – Equity and limitation of actions

Limitation of actions – Particular causes of action – Estates of deceased

Probate and administration – Personal representatives – Liabilities

5 March 2014 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 The present action, which concerns the estate of the late Lim Tian Siong ("the father") and the estate of his wife, the late Goh Choon Eng ("the mother"), is a dispute amongst siblings. The first defendant, Lim Boh Chuan ("D1"), was the eldest child of the family and one of the administrators of the father's estate. The second defendant, Lim Puay Koon ("D2"), was the second child of the family and one of the administrators of the mother's estate. The plaintiff, Mdm Lim Siew Bee, the youngest sibling, claims to have been deprived of her actual entitlement in both estates by the defendants.

2 The plaintiff alleges, amongst other things, that the defendants had dishonestly and in breach of trust dealt with assets belonging to their parents' estates in a manner that diminished the values of both estates thereby benefitting themselves at her expense. [note: 1] As her pleadings stand, the plaintiff primarily seeks the remedy of an account of both parents' estates based on the wrongdoings of the defendants. It is thus necessary for her to make good her plea of dishonesty and breach of trust in order to be entitled to an account grounded on misconduct of the defendants. Likewise, as her pleadings stand, the plaintiff also seeks to surcharge or falsify a set of accounts prepared in relation to the father's estate that D1 had furnished to her on 11 January 2011 (see [64] below). She says, amongst other things, that she is entitled to do so because D1 had breached his fiduciary duty in administering the father's estate.

3 The defendants deny the allegations. In fact, most of the defendants' efforts at the trial were directed at refuting the plaintiff's specific allegations against them. In the alternative, the defendants seek relief under s 63 of the Trustees Act (Cap 337, 1985 Rev Ed) ("the 1985 TA") on the grounds that they acted honestly and reasonably throughout the administration of their parents' estates, and that they ought fairly to be excused for any breach of trust as may be proved against them. Furthermore, as this case concerns events that happened 20 years ago, the defendants' contention

in the alternative is that the plaintiff's claims, if any, are either statute barred or barred by laches and estoppel.

4 In determining whether the plaintiff's allegations against the defendants are made out, I have to decide not just what was specifically involved in the alleged culpable acts or omissions, but whether they were made out on the evidence. In addition, one of the issues I have to decide is whether D1 was in breach of duty as administrator in not recouping estate duty on a pro-rata basis from donees of *inter vivos* gifts made within five years of the father's death. This question is to be determined based on an analysis of the provisions of the Estate Duty Act (Cap 96, 1970 Rev Ed) ("the 1970 EDA"), which was in force at the time of the father's death.

Factual background

The family's circumstances

5 The plaintiff and her brothers were brought up in a traditional Chinese household where the father was head of the family and, as sole breadwinner, provided for the financial well-being of the family and education of the children. The mother's role was to take care of the family and home and, as a housewife, she did not involve herself in the father's business affairs.

6 The father worked in the steel and hardware partnership business founded in 1941 by Lim Hong Choon (the parties' paternal grandfather), Lim Boon Wan and Lim Boon Kee (the parties' paternal granduncles). [note: 2] In that partnership business, the father worked alongside his uncles and other male members of the extended Lim family. He eventually took over his own father's role and position in that business as well as other family businesses (together referred to as "the extended family business"). By the time the partnership was converted into a private limited company called Hup Seng Huat Co (Pte) Ltd ("Hup Seng Huat") in 1973, Lim Boon Wan was the only surviving founding partner. Prior to the father's demise on 23 August 1983, the father was the Managing Director and a significant shareholder of Hup Seng Huat.

7 The extended Lim family owned, amongst other businesses, several companies. I will only mention those companies that featured in this action. They are (i) Hup Seng Huat, (ii) Eastern Win Metals & Machinery Pte Ltd ("Eastern Win"), and (iii) Thong Seng Metal Pte Ltd ("TSM"). The extended Lim family together with an unrelated family also had interests in a steel hardware company known as Hoe Hup Seng Hardware Company (Private) Ltd ("HHS").

8 Following the father's death, Lim Boon Wan's son was appointed the Managing Director of Hup Seng Huat. Almost 10 years after the father's death, Hup Seng Huat was converted into a public limited company and changed its name to "Hup Seng Huat Co Ltd" in January 1994. The latter company was listed on the Singapore Stock Exchange Main Board on 4 February 1994. At the time of listing, D1 was the Deputy Managing Director of Hup Seng Huat.

9 Not everyone in the extended Lim family had an equal share in the extended family business. It is clear that only the male members were shareholders and hold directorships in the group of companies that made up the extended family business. This situation was a well-known fact within the extended Lim family. [note: 3] Hence, the pervasive understanding in the family was that the father would pass his interests in the extended family business to the sons (*ie*, the defendants). [note: 4]

10 As head of the household, the father made all the important decisions for the family. [note: 5]

The father knew of the importance of education and wanted his sons and daughter to be educated. [note: 6] At the time the father passed away, D1 was 24 years old and an undergraduate student at the National University of Singapore. He subsequently graduated with a degree in Estate Management. D2 was 23 years old when the father passed away. He left home for his studies overseas in September 1981 at the age of 22. He completed his undergraduate and graduate studies, before obtaining a doctorate in New York. He returned home in late 1989.

11 The plaintiff acknowledged that the family's expectation of her as the daughter was to have a "good education, find a good man, get married and have children". [note: 7] During the period 1981 to 1986, the plaintiff studied in Hawaii where she obtained her first and graduate degrees before returning to Singapore. The plaintiff was 22 years old when the father passed away.

12 Following the father's death, D1 took up the role of his father in the family and in the extended family business. He provided for the upkeep of the family home, his mother and siblings. He saw to it that his siblings' studies in tertiary institutions overseas were not disrupted by their father's demise. D1's evidence is that he did his best to maintain the family in which he had become the head after the father's death. The plaintiff accepted that it was the father's intention that D1 would take over the father's role at home and in the extended family business. [note: 8] According to her, she had every reason to trust D1 seeing that D1 would take up the responsibility of providing for the family.

The defendants' involvement in the extended family business

13 During his lifetime, initially the father did not get his sons fully involved in the extended family business. However, in 1981 or 1982, he started to introduce D1 to the business by having D1 accompany him to work, attend functions and meetings, including overseas travels to meet business associates. [note: 9]

14 In 1981, the father transferred 2,000 shares in HHS to D1 who was also made a director of HHS. As a director, D1 gave personal guarantees to banks to secure the borrowings of HHS.

15 Further, on 8 June 1981, D1 was appointed a director of Lim Tian Siong Enterprise Pte Ltd ("LTSE"). LTSE was incorporated by the father on 12 May 1978 and, as can be seen below, it functioned as an investment holding company. Two LTSE shares were issued at the time of incorporation: one subscription share was issued to the father ("the Father's LTSE Share") and the other was issued to the mother ("the Mother's LTSE Share"). The two subscribers were the only directors of LTSE. Subsequently, the defendants were allotted shares of $1 each for cash at par: on 9 July 1982 (allotment of one share each) and then on 16 July 1983 (allotment of two shares each). Therefore, on 16 July 1983, the brothers held three shares each and the parents held one share each in LTSE. I should mention that LTSE was eventually struck off as a registered entity in April 2006.

16 As mentioned in [12] above, following the father's death, D1 took up the role of his father in the family and in the extended family business. Even till today, the defendants continue to remain involved in the extended family business.

Father's estate

Events prior to the father's demise

17 The father was diagnosed with liver cirrhosis in the late 1970's. He died intestate on 23 August 1983.

18 Between 1981 and 1983, the father did the following things:

(i) As mentioned in [14], the father transferred his 2,000 shares in HHS to D1 in 1981.

(ii) In January 1983, the father sold two blocks of shares in Eastern Win, namely, 45,000 shares to a third party and 35,000 shares to Hup Seng Huat at $1 per share.

(iii) By July 1983, the father sold to LTSE (i) most of the father's remaining shares in Eastern Win, TSM and Hup Seng Huat, and (ii) all the shares he held in other private and publicly quoted companies. It was in this sense that LTSE was used as an investment holding company for the father's substantial shareholdings. As a result of the sales enumerated above, LTSE owed the father's estate $1,521,424.57.

19 At this juncture, I should mention again that the defendants were each allotted three LTSE shares at $1 per share and the allotments in 1982 and 1983 respectively were less than five years before the father passed away (see [15] above).

20 The father also owned two immoveable properties which he held as joint tenants with the mother: one at Puay Hee Avenue ("the Puay Hee Property"), and one at Tyrwhitt Road ("the Tyrwhitt Property").

21 At the time of his death, the father's estate held, *inter alia*, the following shares:

(i) one Hup Seng Huat share (although following a subsequent bonus share issue, his estate eventually held 200 Hup Seng Huat shares);

(ii) one Eastern Win share;

(iii) one TSM share; and

(iv) the Father's LTSE Share.

22 With the father's death, the mother, as the surviving joint tenant, became the sole owner of both the Puay Hee Property and the Tyrwhitt Property.

Administration of the father's estate

23 D1 and his mother were the administrator and administratrix respectively of the father's estate.

24 Shortly after the father passed away, D1 and his mother engaged M/s Wee Tin Teck & Co ("WTT"), a firm of solicitors, to act in connection with the administration of the father's estate. Sometime after 8 July 1987, Ng Lee & Associates, a firm of accountants, was appointed to assist in the valuation of Hup Seng Huat and LTSE for estate duty purposes. Later on Ng Lee & Associates later changed its name to Ng, Lee & Associates DFK.

25 Although the petition for the Letters of Administration was granted in August 1984, the grant of the Letters of Administration was only extracted in September 1991 after estate duty was assessed and paid. All in all, it took approximately seven years to administer the father's estate.

26 On 25 March 1991, the Commissioner for Estate Duties ("the Commissioner") provided his assessment of the estate duty payable on the father's dutiable estate as returned for estate duty

purposes. The schedule of assets for the father's estate ("the Father's Schedule of Assets") used by the Commissioner for estate duty purposes is produced below:

	Estate of Lim Tian Siong @ Lim Thian Siong Deceased			
A	Shares:			
	1 One (1) share in [LTSE] @ $337,674.99 each		$337,674.99	
	2 One (1) share in [Eastern Win] @ $0.86 each		0.86	
	3 One (1) share in [Hup Seng Huat] @ $380.29 each		380.29	
	4 One (1) share in [TSM] @ $118.71 each		118.71	$338,174.85
B	Cash at Bank:			
	1 Current account No XXX		$18,448.82	
	2 Cash in hand		136,475.00	154,923.82
C	Life insurance policy XXX with The Wing On Life Assurance Co Ltd			11,255.00
D	Other Property			
	1 Credit Balance with the current account with [LTSE]		$1,521,424.57	
	2 Director's fee from [Hup Seng Huat]		3,000.00	
	3 Motor Vehicles			
	aa Mercedes Benz 1983 Model EF 8989 D declared at	120,000.00		
	Less: outstanding loan	80, 250.00	39,750.00	
	bb Mercedes Benz 197 Model EW 4542 X declared at		20,000.00	$1,584,174.57
				$2,088,528.24
Property in respect of which the Grant is not to be made				
E	Insurance Policies:			
	1 Policy No XXX with The Asia Life Assurance Society Ltd		$14,970.00	
	2 Policy No XXX with The Great Eastern Life Assurance Co Ltd		20,928.60	35,898.60
F	Other Property:			
	Unaccounted withdrawals			145,437.27
G	Central Provident Fund Contributions			97,090.12
H	Immovable Properties:			
	[The Puay Hee Property]		Exempt	
	[The Tyrwhitt Property]			220,000.00

I	Gifts *inter vivos*:		
	1 Cash to widow, Mdm Goh Choon Eng for the payment of her insurance premium	$18,117.80	
	2 Inadequate consideration in the sale of:-		
	aa [TSM] shares	11,207.29	
	bb [Hup Seng Huat] shares	1,345,111.71	
	3 to son, Lim Puay Koon:-		
	aa Motor Vehicle No EL 1543 X	$9,000.00	
	bb 10,000 shares in Straits Steamship @ $1.9225 each	19,225.00	
	cc One kilogram gold bar Gold receipt No XXX with Tat Lee Bank Ltd	29,796.00	
	dd Cash	82,450.00	
	4 to son, Lim Boh Chuan:		
	aa Motor Vehicle No EL 8374 H	7,000.00	
	bb 5,000 shares in SembawangShipyard @ $2.345 each	11,725.00	
	cc Cash	82,450.00	
	5 to Mdm Lim Kim Luan, cash	15,000.00	**$1,631,082.80**
			$4,218,037.03
	Deduct Exemption under Section 14(2)(b)		100,000.00
			$4,118,037.03

27 The prolonged and meandering correspondences between the Commissioner and WTT revealed that for estate duty the Commissioner considered the father to have sold 599 TSM shares and 4,799 Hup Seng Huat shares to LTSE (see [18(iii)] above) at undervalue. This was because the father sold those shares to LTSE at $100 per share whereas the Commissioner assessed the true value of one TSM share to be $118.71 and one Hup Seng Huat share to be $380.29 (after Commissioner's discount). [note: 10] As a result, the "inadequate consideration" for estate duty purposes was as follows:

(i) $11,207.29 (599 x $[118.71-100]) for the TSM shares; and

(ii) $1,345,111.71 (4,799 X $[380.29-100]) for the Hup Seng Huat shares. [note: 11]

I pause here to mention that for estate duty purposes, the "inadequate consideration" was deemed to be an *inter vivos* gift from the father to LTSE (see item (I)(2)(aa) and (I)(2)(bb) in the Father's Schedule of Assets at [26] above) on which estate duty was payable. I shall return to this matter later in my judgment when I discuss the law on the estate duty issues.

28 The estate duty came up to a total sum of $2,461,893.01 ($1,904,603.62 and interest of $557,289.39). D1 explained that the estate duty was discharged in the following manner:

(i) $138,434.30 was paid by D1;

(ii) $110,464.30 was paid by D2;

(iii) $1,902,550.59 was paid by LTSE; and

(iv) $310,443.82 was paid out of funds from the father's estate.

29 D1 said that both administrators treated LTSE's payment of $1,902,550.59 towards estate duty as:

(i) settlement of the debt of $1,521,424.57 owed by LTSE to the father's estate [note: 12] (see [18(iii)] above); and

(ii) additional payment of $381,126.02 by LTSE (see [28] above).

However, it was more accurate to say that the father's estate effectively paid a total sum of $1,831,868.39 ($310,443.82 directly plus $1,521,424.57 indirectly *via* LTSE) and that LTSE effectively paid $381,126.02 towards the discharge of estate duty. The sum of $310,443.82 paid directly by the father's estate came from the cash available in the father's estate and cash proceeds from the sale of the distributable assets (other than the shares) listed in the Father's Schedule of Assets at [26] above.

30 After estate duty was paid and the grant of Letters of Administration was extracted, the shares in Eastern Win, Hup Seng Huat and TSM (see [21] above) were transferred to LTSE. According to D1, this was done to partially reimburse LTSE for its payments towards the discharge of estate duty over and above the sum of $1,521,424.57 it owed to the father's estate (*ie* $381,126.02). The correctness of D1's explanation is an issue for determination in this case. I shall return to this point later in my judgment (see [115] below).

31 Following the share transfers mentioned in [30] above, the only remaining asset in the father's estate was the Father's LTSE Share. Under the law of intestacy, the mother was entitled to a half share in the Father's LTSE share and the other half share was to be shared equally amongst the three children. In other words, the plaintiff, D1 and D2 were entitled to a one-sixth share each in the Father's LTSE Share.

Plaintiff's allegations in relation to the father's estate

32 At this point, it is useful to briefly mention in broad outline what the plaintiff takes issue with in relation to the administration of the father's estate:

(i) First, she says the Father's Schedule of Assets did not reflect the "true value" of the estate which ought to be $7,500,929.04 and not the stated sum of $4,218,037.03. According to her, part of this discrepancy was due to the non-disclosure of assets including the under valuation of disclosed assets to the Commissioner. [note: 13]

(ii) Second, she says that estate duty that was paid in respect of the *inter vivos* gifts should

have been borne by the donees instead of the estate and that this diminished the value of the father's residual estate.

(iii) Third, she says that interest charge was unnecessarily incurred on the estate duty payable.

(iv) Fourth, she says the transfer of her one-sixth interest in the Father's LTSE share to D2 was obtained fraudulently when she was misled and induced into signing a letter of consent dated 18 March 1992 ("the Letter of Consent")(see [53] below).

33 The plaintiff claims that D1 administered the father's estate negligently and dishonestly, in breach of trust and in breach of fiduciary duty owed to the plaintiff. [note: 14] The charges against D1 were mainly in the nature of omissions. I also mention here, for the sake of completeness, that it is not the plaintiff's pleaded case that D2 should be jointly liable with the D1 as an executor *de son tort* because he had meddled or been involved in the administration of the father's estate.

Mother's estate

The mother's Will

34 The mother was diagnosed with cancer in January 1989.

35 On 16 March 1990, prior to the grant of the Letters of Administration of the father's estate, the mother made her Will. She named the plaintiff and D2 as her executrix and executor respectively. By her Will, the mother made the following bequeaths: [note: 15]

(i) the Puay Hee Property was bequeathed to the plaintiff with all estate duty payable out of the residuary estate;

(ii) the Tyrwhitt Property was bequeathed to the defendants in equal shares with all estate duty payable out of the residuary estate;

(iii) the Mother's LTSE Share and her half share in the Father's LTSE Share were to be given in equal shares to the defendants;

(iv) the mother's jewellery, gold coins and other ornaments were to be given to the plaintiff; and

(v) the mother's entire credit balance in two joint POSB accounts and one joint Tat Lee Bank account with one of her children, CPF monies and all other residual assets were to be given in equal shares to the parties.

36 Even though the mother's Will dealt with the Mother's LTSE Share and her half share in the Father's LTSE Share, the mother subsequently went on to deal with these shares before her demise. I shall describe these events in greater detail under the heading "The transfers of two LTSE shares to the defendants in 1992" (see [52] below).

Administration of the mother's estate

37 The mother died on 26 July 1992.

38 Following her death, D1 believing that the mother died intestate instructed Messrs Yap & Leong ("Y&L"), a firm of solicitors, to obtain Letters of Administration in respect of the mother's estate. At the time Y&L were instructed, D1 did not know that the mother had made a Will.

39 Subsequently, the Will came to light at a meeting at the offices of Y&L to discuss the mother's estate matters. At this meeting, the plaintiff produced the mother's Will. However, the parties agreed amongst themselves to administer the mother's estate as if she had died intestate. They also agreed that they would not distribute the mother's assets in accordance with the Will.

40 On 9 January 1993, the plaintiff and D2 filed a petition for the grant of Letters of Administration in the mother's estate. [note: 16] In the process, the plaintiff and D2 declared to the court that the mother had died intestate (when she did not). This petition was accompanied by an affidavit from the plaintiff and D2 affirming that the contents of the petition were to the best of their knowledge and belief in all respects true (when they were not). [note: 17] In short, the plaintiff and D2 lied to the court. I shall return to this falsehood later on in my judgment (see [145] below).

41 Over the course of the administration of the mother's estate, Y&L corresponded with the Commissioner on behalf of the plaintiff and D2 as the administratrix and administrator respectively. During this time, the plaintiff and D2 both resided at the Puay Hee Property.

42 By a letter dated 16 November 1992, the Commissioner wrote to Y&L with a number of questions relating to the administration of the father's estate. By a letter dated 22 March 1993 to the Commissioner, Y&L provided a copy of the Father's Schedule of Assets which showed that the Commissioner had valued each LTSE share at $337,674.99 for the purposes of calculating the estate duty payable on the father's estate. A copy of this letter was sent to the plaintiff and D2 at the Puay Hee Property.

43 By a letter dated 6 September 1993, the Commissioner set out his computation of the estate duty payable on the mother's estate. The computation showed that the Commissioner had valued each LTSE share at a lower figure of $224,185.25 for this purpose. A copy of this letter was sent to the plaintiff and D2 at the Puay Hee Property.

44 On 22 September 1993, Y&L sent the Commissioner an amended estate duty affidavit duly signed by the plaintiff and D2 that adopted this lower value of one LTSE share. On 7 October 1993, the Commissioner provided his assessment of the estate duty payable on the mother's estate based on the following the schedule of assets ("the Mother's Schedule of Assets"):

Estate of Goh Choon Eng Deceased	
1 United Overseas Bank Ltd, MacPherson Branch Fixed Deposit Account No. XXX	$5,600.49
2 Cash in hand (withdrawals from Tat Lee Bank Limited Savings Account No. XXX on 24.6.92 and Standard Chartered Bank Fixed Deposit Account XXX on 25.6.92)	265,686.56
3 Credit balance with [LTSE]	14,603.86
4 [The Tyrwhitt Property]	600,000.00
5 [The Puay Hee Property]	Exempt

		$885,890.91
Property in respect of which the Grant is not to be made		
6	Central Provident Fund Dependants' Protection Insurance	30,000.00
7	Central Provident Fund Balance	99,039.78
8	Gift of 1 share in [LTSE] to Mr Lim Boh Chuan	224,185.25
9	Gift of 1 share in [LTSE] belonging to the Estate of Lim TianSiong deceased to Mr Lim Puay Koon Deceased's half share in the Estate ($224,185.25 x ½)	112,092.63
		$1,351,208.57
Deduct	Exemption under Section 14(3)(b)	500,000.00
		$851,208.57

45 The grant of the Letters of Administration in relation to the mother's estate was extracted on 16 March 1994 following the payment of the estate duty to the Commissioner. [note: 18]

Deed of Family Arrangement

46 The parties entered into the Deed of Family Arrangement dated 11 April 1994 ("the DFA") to distribute the assets disclosed in the Mother's Schedule of Assets. It is not disputed that the DFA neither followed closely the terms of the Will nor intestate succession law. Under the DFA:

(i) the Puay Hee Property was transferred to the plaintiff;

(ii) the Tyrwhitt Property was transferred to the defendants in equal shares; and

(iii) the movable assets (item nos 1, 2, 3, 6 and 7 of the Mother's Schedule of Assets (see [44] above)) were transferred to the defendants in equal shares "by way of parity of exchange".

47 It was not disputed that about the time the DFA was entered into the Puay Hee Property was worth much more than the Tyrwhitt Property. For this reason, the rest of the movable assets in the Mother's Schedule of Assets were transferred to the defendants to "top up" each defendant's share of the mother's estate to achieve and give effect to a "parity of exchange".

48 In the course of administration of the mother's estate as an intestate estate, certain assets that was itemized in the Will – the mother's jewellery and the two POSB Joint Accounts (which had a total balance of $191,418.20) (see [35(v)] above) – were not disclosed to the Commissioner. Consequently, they were not taken into account for the purposes of assessing estate duty.

49 I should point out that before the mother died, her POSB joint account with the plaintiff, POSB joint account with D1 and Tat Lee Bank joint account with D1 were all closed after withdrawals of the account balances. The amounts withdrawn total $435,966.78. The siblings thereafter distributed the withdrawals amongst themselves. Each sibling took $100,000 and the balance sum of $135,965.73 was deposited in a joint account of the defendants for expenses such as the mother's medical bills and household expenses. [note: 19]

Plaintiff's allegations in relation to the mother's estate

50 This is an appropriate juncture to mention what the plaintiff takes issue with in relation to the administration of the mother's estate. To be clear, it is not her case that she was persuaded to execute the DFA under the undue influence of the defendants and that it should be set aside. Rather, the logic of the plaintiff's case appears to be as follows:

(i) She had executed the DFA in the belief that there would be "parity of exchange" in the way the assets of the mother's estate were divided amongst the siblings.

(ii) While there was "parity of exchange" amongst the parties on the face of the DFA, there was in reality no "parity of exchange". This was because the total amount of assets available for distribution under the mother's estate was reduced by reason of the following matters:

(a) D1's breaches of his duties as an administrator of the father's estate; and

(b) the defendants' fraudulent misrepresentations *viz* the value of the Father's LTSE Share and the Mother's LTSE Share (see the heading "The transfers of two LTSE shares to the defendants in 1992" below). [note: 20]

(iii) The plaintiff would have received substantially more assets under the DFA by way of "parity of exchange" but for the wrongdoings of the defendants. [note: 21]

(iv) The plaintiff is not seeking to set aside the DFA. Rather, she is seeking to enforce the DFA by "taking into account the spirit in which the document was entered into, to ensure that the true value of the mother's estate is [being] divided equally among the Plaintiff and the Defendants". [note: 22]

(v) Both defendants should therefore "account" for the mother's estate on the basis that each party would obtain an equal share of the mother's estate. In other words, the plaintiff wants the defendants to account for the mother's estate as if the mother had died intestate *and* her estate included:

(a) assets which would have flowed into the mother's estate from the father's estate but for D1's breaches of his duties as administrator of the father's estate; and

(b) the Mother's LTSE Share and the mother's half share in the Father's LTSE Share.

51 The plaintiff stated in her Closing Submissions that "the DFA must be read with the Letter of Consent and the manner in which the father's estate was administered." [note: 23] Furthermore, D1 had taken on the role of administering the mother's estate and should be jointly liable with D2 as an executor *de son tort*. The plaintiff proclaimed the DFA as the defendants' "last step … to secure the bulk of the residue of their parents' estate for themselves to the [plaintiff's] detriment." [note: 24]

The transfers of two LTSE shares to the defendants in 1992

52 Two events of significance to this action were the transfers of the Father's LTSE Share and the Mother's LTSE Share to D2 and D1 respectively. With the completion of these transfers, the defendants became the only two shareholders of LTSE and held four LTSE shares each. The

significance of the LTSE shares is that LTSE owned shares in Hup Seng Huat. [note: 25]

First Transfer of the Father's LTSE Share

53 As stated in [31] above, the mother was entitled to half-share in the Father's LTSE share and the plaintiff, D1 and D2 were entitled to one-sixth share each. By the Letter of Consent, the mother, the plaintiff and D1 agreed to transfer their respective interests in the Father's LTSE Share to D2 free of consideration. The Letter of Consent which was drafted by the company secretarial services of Ng, Lee & Associates read as follows: [note: 26]

> We, the undersigned, all being the lawful beneficiaries of the Estate of [the father], deceased who died intestate on the 23rd day of August 1983, hereby consent to transfer our share of entitlements in the one (1) ordinary share of S$1.00 fully paid in Lim Tian Siong Enterprise Pte Ltd registered under the name of the Estate of [the father], deceased to [D2] and free of any consideration with effect from the 18th day of March 1992.

54 On the same day, the mother, the plaintiff and D1 signed a letter addressed to the directors of LTSE requesting the registration of the Father's LTSE Share in D2's name ("the Request Form"). [note: 27] The Request Form read as follows:

> The Directors of [LTSE]
>
> We, the undersigned, being all the lawful beneficiaries of the estate of [the father], deceased who died intestate on the 23rd day of August 1983, hereby apply for [D2] ... to be registered as a shareholder of [LTSE] in respect of one (1) ordinary share of $1.00 fully paid in the said company now registered in the name of the said deceased. ...

55 Accordingly, the Father's LTSE Share was duly transferred to D2. I shall refer to the Letter of Consent and the Request Form collectively as the "First Transfer Documents".

Second Transfer of Mother's LTSE Share

56 The second transfer concerned the Mother's LTSE Share. On 23 June 1992, the mother signed a transfer form ("the Second Transfer Form") to transfer her one LTSE share registered in her name to D1 for $1. [note: 28] Accordingly, the Mother's LTSE Share was duly transferred to D1's.

Plaintiff's allegations in relation to the transfers

57 It is now a convenient juncture to mention what the plaintiff takes issue with in relation to the two transfers described above. The plaintiff's allegations in relation to the transfers are based on fraudulent misrepresentation as to the value of the Father's LTSE Share and Mother's LTSE Share. Her pleaded averments are as follows: [note: 29]

> By their conduct, [D1] and [D2]:
>
> (a) fraudulently misrepresented the true value of the said one share of the estate of [the father] and the one share that belonged to [the mother] in LTSE;
>
> (b) fraudulently drew up the Letter of Consent on 18th March 1992 and misrepresented to [the mother] and the Plaintiff the true value of the one share of the estate of [the father];

(c) [D1] (Administrator) deliberately did not disclose the accounts of the [father's] estate and [D1] and [D2] fraudulently misrepresented the true value of the one share owned by [the mother] in LTSE and effected the transfer on 23rd June 1992 to [D1] deliberately to perpetuate such fraud;

(d) fraudulently did not disclose the true value of the one share and transferred the 2 said shares (one share in LTSE owned by [the mother] and one share in LTSE owned by the estate of [the father] in which both [the mother] and the Plaintiff had an interest) at the value of $1.00 each to themselves, thereby benefiting themselves.

58 Apart from the above pleadings, the plaintiff did not plead that D1 was liable for equitable compensation because he had caused her loss by breaching his fiduciary duty as an administrator of the father's estate. I will be discussing this aspect of the pleaded case in due course (see [138] below).

59 There is no dispute that the mother, D1 and the plaintiff signed the First Transfer Documents to transfer their respective entitlements in the Father's LTSE Share to D2. The plaintiff's case at the trial is that she and her mother signed the First Transfer Documents having been misled by D2 who told her and the mother that the Father's LTSE Share was worth $1. The mother was also misled into signing the Second Transfer Form.

60 According to the plaintiff, she and her mother were misled by the defendants. Had they not been misled, the mother's estate would also have one and a half LTSE shares available for distribution (*ie*, the Mother's LTSE Share and the mother's half share of the Father's LTSE Share). Accordingly, the plaintiff would have been entitled to a one-third share of the one and a half LTSE shares under the law of intestacy. I note that despite basing her claim on fraudulent misrepresentation, the plaintiff is not seeking damages against the defendants nor is she seeking to disavow and set aside the First Transfer Documents or the Second Transfer Form. Instead, she seeks to enforce the DFA to acquire the "parity of exchange" agreed upon in the DFA for which she did not receive.

Circumstances leading to this action

The China Party Action

61 In 2008, two nationals from the People's Republic of China commenced proceedings *vide* Suit No 455 of 2008 against the siblings, alleging to be relatives with a claim to their inheritance under the father's estate ("the China Party Action"). The plaintiff says that the first time she saw documents relating to the father's estate was in the China Party Action. [note: 30] Prior to that, neither the mother (as co-administratrix of the father's estate) nor D1 had provided her with a complete set of accounts concerning the administration of the father's estate. She maintains that it was also during the China Party Action that she discovered that Hup Seng Huat had grown from strength to strength between 1983 and 1993, and that her one-sixth entitlement in her father's estate turned out to be worth a substantial amount of money. This led to a general lack of trust of her siblings. As she had not received any distribution from the father's estate, the plaintiff began to wonder whether the defendants had accounted for all the assets in both estates.

62 In light of this, she began asking for an account of the father's estate. On 12 June 2009, she wrote to D1 seeking a return of all that was due to her under the parents' estates. D2 was copied in this letter. However, she decided not to take any action against them while the China Party Action was still on-going.

63 The China Party Action was eventually dismissed in March 2010.

Accounts of the father's estate

64 On 18 October 2010, the plaintiff wrote to D1 as a follow up to her 12 June 2009 letter. D2 was again copied in this letter. In order to appease the plaintiff, DFK Singapore Corporate Services Pte Ltd was instructed to prepare a Statement of Account of Administration ("the DFK Accounts"). The plaintiff was sent the DFK Accounts on 11 January 2011. The DFK Accounts showed that there was a deficiency in the father's estate of $581,085.24 such that there was nothing left in the estate to distribute to the plaintiff.

The current proceedings

65 The DFK Accounts did not satisfy the plaintiff. She had some serious concerns that the DFK Accounts were incomplete and incorrect. Following unsuccessful settlement negotiations, the plaintiff commenced the present action on 3 January 2012.

66 The plaintiff was certain that had the father's estate been administered honestly and correctly, there would have been surplus assets remaining in the father's residual estate for distribution to the plaintiff and her mother. In her pleadings, the plaintiff stated that she was deceived and hence deprived of her actual entitlement in both estates, and that her losses could only be ascertained after the defendants have furnished proper accounts for both estates. [note: 31] As such, the plaintiff sought, *inter alia*, the following remedies: [note: 32]

(i) an account of the two estates (the father's and mother's) showing the "true values" of the assets of the two estates including the assets that were given or transferred by the father within five years of his death and the names of the donees of such gifts;

(ii) liberty to falsify or surcharge the accounts; and

(iii) upon taking such accounts, if the defendants are found to be liable, payment to the plaintiff of her due share less what she had already received from the two estates.

67 As can be seen from the entire narrative above, the allegations of breach of fiduciary duty, breach of trust and fraudulent misrepresentation fall into three separate claims:

(i) claims against D1 in relation to his administration of the father's estate;

(ii) claims against the defendants in relation to the Father's LTSE Share and the Mother's LTSE Share; and

(iii) claims against the defendants in relation to the mother's estate.

Expert witnesses

68 Before proceeding further, I turn briefly to consider the state of the expert evidence since the plaintiff relied almost entirely on her expert's evidence to prove the "true value" of the assets forming part of the father's estate and to falsify and surcharge the DFK Accounts.

69 The plaintiff's expert witness, Mr Kaka Singh, is a partner in RSM Chio Lim LLP. He is not an estate duty or tax planning expert. Instead, he is an auditor with 40 years of experience. Mr Kaka

Singh was instructed to carry out a fact finding exercise in relation to the parents' estates based on documents given by the defendants in the course of discovery. Mr Kaka Singh's report, amongst other things, sought to:

(i) assess the accuracy of the Father's Schedule of Assets (on which the DFK Accounts were based);

(ii) ascribe fair values to assets comprised in the father's estate; and

(iii) establish the true residual value of the father's estate after the payment of expenses such as estate duty.

70 In his report, Mr Kaka Singh opined that:

(i) The "true value" of the father's estate was $7,500,929.04 (as opposed to $4,218,037.03 as stated in the Father's Schedule of Assets). In arriving at this higher value, Mr Kaka Singh concluded that several of the transfers made by the father prior to his demise were done by way of a sale rather than a gift.

(ii) The "true" residual value of the father's estate was $4,411,092.64.

(iii) The plaintiff's entitlement to the father's estate was $735,182.10.

(iv) The mother's entitlement to the father's estate was $2,127,393.28 (after deducting her share of estate duty and interest). [note: 33]

Mr Kaka Singh confirmed in cross-examination that his calculations and the numbers in his report were also premised on the donees of *inter vivos* gifts bearing his or her share of the estate duty on a pro-rata basis. [note: 34]

71 Not surprisingly, the defendants strenuously challenged Mr Kaka Singh's report. The defendants called Mr Timothy Reid ("Mr Reid"), a director from Ferrier Hodgson Pte Ltd, as their expert witness. Mr Reid's report was being relied upon to critique and comment on the calculations, numbers and conclusions in Mr Kaka Singh's report. The defendants' point is that the figures mentioned in [70] above are a fallacy. For instance, the allegation that the plaintiff was entitled to $735,182.10 was based on the father's estate having a value of $7,500,929.04 when the declared value of the estate in the Father's Schedule of Assets was actually $4,218,037.03. Furthermore, although the plaintiff relied on the father's estate having a value of $7,500,929.04, in calculating the requisite estate duty payable, she did not take the figure of $7,500,929.04, but instead used the lower figure of $4,218.037.03 (which was also the actual figure used by the Commissioner). [note: 35] This "obvious mismatch" was pointed out in Mr Reid's report. [note: 36]

72 The defendants accused Mr Kaka Singh of making sweeping assumptions in his report. Counsel for the defendants, Mr Davinder Singh SC ("Mr Singh SC"), grilled the witness on his report, in particular the basis of his computations and the numbers he had used including his conclusions. He was also cross-examined on his arbitrary basis for treating the disposal of assets by the father as either a gift or sale. One example of this can be seen in the cross-examination of Mr Kaka Singh in respect of his treatment of the 2,000 HHS shares to D1 (referred to in [14] and [18(i)] above): [note: 37]

Q: Have you seen any documents to show that it was a gift?

A: No.

Q: So in the absence of documents showing either a purchase or a gift why have you, in your report, chosen to assume one against the other?

A: We had instructions that the documents are to be made available by the defendants.

Q: Yes, but at this time they were not available?

A: Yes.

Q: And you had not seen them. So you've told us that at this time, you had not seen whether it was a gift and you had not seen whether it was a purchase. My question again is, why did you pick a purchase over a gift when you couldn't have known whether it was one or the other?

A: We asked for the documents and there were no documents available.

Q: Yes?

A: Yes.

Q: Either way, right?

A: Yes.

Q: So why did you pick one over the other?

A: Well, unless the documents are made available to us to show to the contrary, we took this position.

Q: Yes. Let me understand the implications of taking that position.

A: Yes.

Q: You have said that it was … you have assumed that it was a purchase and you have assumed a price of $1.8 million; correct?

A: Yes.

Q: By making that assumption that it was a purchase for 1.8 million, the effect of that was to increase the value of the estate by 1.8 million; correct?

A: Yes.

Q: The effect of that also was to increase the distributable assets by 1.8 million less the requisite estate duty; correct?

A: Correct.

Q: And the implication of that would be to increase the residual value for the beneficiaries, including your client; correct?

A: Unless it's a gift.

Q: The answer is "yes', right?

A: Yes.

Q: So in the absence of any documents either way, you have, on the basis of an assumption, labelled this as a sale and purchase at $1.8 million, with the effect that your client will get more, yes?

A: That's the table I prepared based … on that basis, yes.

73 Where Mr Kaka Singh had in his report classified a particular transaction as a sale, he would attribute the full market value of the asset to the father's estate. If the transaction had been classified as an *inter vivos* gift within five years of the father's death, he would attribute the amount of estate duty payable to the donee and not to the estate. That is not the end of the matter. The defendants pointed out that Mr Kaka Singh in his report had conflated (i) assets that ought to be included in the father's asset base for the purposes of assessing estate duty with (ii) assets from the father's estate that were available for the purposes of distribution. By doing so, Mr Kaka Singh inflated the value of the father's estate in order to shore up the plaintiff's case.

74 Mr Kaka Singh's report and the defendants' criticisms will be discussed in detail under the heading "Analysis and Decision" below.

Analysis and Decision

(1) Claims in relation to the father's estate

75 As mentioned earlier, the plaintiff had some serious concerns about the DFK Accounts [note: 38] , and relying on Mr Kaka Singh's report, she argued that the DFK Accounts were incomplete and incorrect for several reasons:

(i) First, the consideration for the transfer of 2,000 HHS shares to D1 was not accounted for.

(ii) Second, the consideration for the allotment of the six shares in LTSE to the defendants was not accounted for.

(iii) Third, not all the consideration for the transfer of Hup Seng Huat shares to LTSE was accounted for.

(iv) Fourth, the father's investments in a company called International Trust & Finance Co Ltd ("International Finance") and a Taiwanese company called Brilliant Development Pte Ltd ("Brilliant Development") were not accounted for.

(v) Fifth, D1 had acted negligently in allowing a large amount of interest to accrue on the estate duty payable and that the pro-rata amount of estate duty that D1 should have recouped from donees of *inter vivos* gifts was not accounted for.

(vi) Sixth, the transfer of one share in (i) Hup Seng Huat (ii) Eastern Win and (iii) TSM to LTSE were not with the consent of the beneficiaries and the consideration was not accounted for.

76 I shall deal with each of these in turn. These omissions, so the argument developed, resulted in a misleading picture of the residual value of the father's estate in the DFK Accounts.

(a) 2,000 HHS shares

77 Based on Mr Kaka Singh's report, the plaintiff claims that the 2,000 HHS shares were a transfer from the father to D1, and that the latter owed the father's estate $1,848,040 for those shares. [note: 39] As a result of the failure to account for this $1,848,040, the plaintiff claims that the father's residual estate was reduced to her detriment. Interestingly, the plaintiff in her Closing Submissions treated the transfer of 2,000 HHS shares as a "gift" and her complaint was that it was not disclosed to the Commissioner. [note: 40] This contention of a "gift" is not supported by her expert who had not seen documentary evidence of a sale at $1,848,040 (see [72] above). Equally, Mr Kaka Singh accepted in cross-examination that there would not be a sale of shares at $1,848,040 if the purchaser had not agreed to buy at that price. [note: 41]

78 Whilst D1 acknowledged that the HHS shares were not gifts, D1's evidence is that there was no agreement to buy the HHS shares at $1,848,040 as alleged. It was never the intention of the father to sell his HHS shares for $1,848,040 or for D1 to buy them at that price. At the material time, D1 was only 22 years old. Instead, the transfer of the HHS shares to D1 was part of a "packaged deal" whereby he gave valuable consideration for the shares by taking up his father's place as a director in HHS and, D1 became a personal guarantor of HHS in lieu of his father (see [14] above). To support his contention, D1 produced some documentary evidence of the personal guarantees given by him after he became a shareholder in HHS. D1 explained that, given the passage of time, he could only find some but not all documentary evidence of personal guarantees furnished by him.

79 In the absence of any evidence to the contrary, I accept D1's testimony that he had given valuable consideration for the HHS shares through the provision of personal guarantees. I therefore find and hold that the transfer of the 2,000 HHS shares did not lead to any distributable value in the father's estate in which D1 had to account to the beneficiaries of the father's estate.

(b) The six LTSE shares allotted to the defendants within five years of the father's death

80 The plaintiff claims, relying on Mr Kaka Singh's report, that the six LTSE shares allotted to the defendants for $1 each within five years of the father's death was not a gift from the father. On that basis, she argues that D1 failed to account for the difference between the fair value of these shares and the actual purchase price of the shares (*ie*, $1 per share). Therefore, the defendants would have owed the father's estate $1,311,102.51 (from the sale of six shares) [note: 42] and that this amount would have been available for distribution.

81 Under cross-examination, Mr Kaka Singh deviated from the position taken in his report. He acknowledged that the six LTSE shares were gifts from the father. [note: 43] But when pressed as to why he did not take out the value of the shares from the list of distributable assets, he claimed that he had made a mistake when he told the court that the six shares were gifts. [note: 44] Not satisfied with the explanation of a mistake, Mr Singh SC pressed Mr Kaka Singh on the matter:

Q: [B]ut the whole premise of your case, on your evidence on the stand, is that the father

effectively made a gift within five years of his death. So if it was a gift, then how is it that you have not taken it out of the distributable assets?

A: I have taken the view that it was not a gift,

Q: But on the stand, you have told us that it is a gift?

A: I might have got it wrongly. For estate duty purposes, it's back-to-back but it's not a gift for estate duty purposes.

Q: But [Mr Kaka] Singh, that's where we are having some difficulty. Your whole thesis was that by issuing shares in the way in which he did so, the father was transferring value to the children.

A: Yes.

Q: And so if that was a transfer of value, how is it that it's not taken out of the distributable assets; a transfer of value done within five years?

A: I took the view that there was a reply to the Commissioner that they paid for these shares.

Q: They paid $1, … you see, [Mr Kaka Singh], the difficulty is this: your evidence is only relevant because you are saying that when they paid $1, they effectively got 1.6m and the difference, therefore, was a gift by the father.

…

Q: So if your evidence is that he gave away value of 1.6m, why is it not taken out of the distributable assets? Let me put it another way to make it easier. If, according to your evidence, it was given away, it should be removed from the distributable assets as well as the residual value; correct?

A: No, that's not what I said or meant, okay. For estate duty purposes, he gave away this amount and then for distribution purposes, this was not a gift.

Q: Mr [Kaka] Singh, could you answer my question. If, to use your own words, it was given away by the father, then it should be removed from the distributable assets and from the residual value; correct?

A: Unless it's a gift.

Q: If it is a gift, yes?

A: Yes, only if it's a gift, yes.

Q: Thank you very much. But on what basis are you suggesting that it was otherwise than a gift? Was there a transaction that you are familiar with that you have evidence of that these young boys entered into an agreement to purchase shares? Do you have evidence of that?

A: I do not have evidence that it was a gift or it was not a gift, and I took the view that it was not a gift.

Q: Yes, I want to understand the basis of your view that it was not a gift.

A: Because there was no documentation.

Q: So, you just assumed, therefore, it was not a gift?

A: That's right.

Q: Was there any documentation to show that this was a sale, or was meant to be a sale between two parties at arms' length?

A: Apart from the letter from … the Commissioner to say it was a sale, I have no other evidence, yes.

Q: But it was at $1, an issue of $1. So my question [Mr [Kaka Singh], is this. Are you suggesting that this was a transaction between the father and the two young sons at arms' length for the full value of the shares?

A: That's the position I have taken.

Q: Do you have basis for that in the evidence or in any of the documents?

A: No.

82 It is clear from this lengthy cross-examination that Mr Kaka Singh conflated two issues: (i) whether the allotment of LTSE shares should have been considered *inter vivos* gifts for the purposes of estate duty; and (ii) whether the LTSE shares were allotted for value such that the value would then be available for the purposes of distribution to beneficiaries. The evidence supported D1's version that the six LTSE shares were allotted to the defendants at par value of $1 per share as part of the father's plan to involve his sons in the extended family business. The defendants' expert, Mr Reid, confirmed that from his review of the accounting records of LTSE, in 1982, the company issued two new shares at a par value of $1 per share and the two new shares were subscribed for, and that was a transaction between the company and the two brothers. [note: 45] In his opinion, the subscriber shareholders, being the patriarch and matriarch, arranged and agreed that the company would allow two new shares to be issued at par value. In addition, Mr Kaka Singh accepted that the price at which shares were allotted was a matter for the shareholders. [note: 46] In contrast, there is no evidence to support the plaintiff's contention that the father intended the defendants to pay him (or LTSE) the sum of $1,311,102.51 for all the six LTSE shares. I agree with Mr Singh SC that there is no basis for the plaintiff's contention that there should be an "increase in value" of $1,311,102.51 that ought to have been taken into account by the Commissioner in calculating the estate duty payable by the father's estate. [note: 47] I find no evidential basis for the argument that the share allotments were improper.

83 I now turn to the plaintiff's contention that D1 had failed to disclose the six LTSE shares to the Commissioner. This contention is baseless. The six LTSE shares were disclosed to the Commissioner and he was told by WTT that the six LTSE shares were purchased by the defendants. The audited accounts of LTSE were provided to the Commissioner who accepted that LTSE (and not the father) had allotted six shares to the defendants at par value of $1 per share. In other words, the six shares were not the father's to dispose of. The Commissioner therefore did not treat the six shares as *inter vivos* gifts within five years of the father's death.

84 It is not disputed that the Commissioner did not levy estate duty for the six LTSE shares. Mr Kaka Singh suggested that the Commissioner had made a mistake by excluding the six LTSE shares as assets of the father that were disposed of within five years of his death. There is no evidential basis for Mr Kaka Singh's contention. The presumption as to the correctness of the statements in the Commissioner's certificates stands in the absence of evidence to the contrary (see s 54 of 1970 EDA). In any case, whether the Commissioner was wrong and should have levied additional estate duty on the allotment of these six LTSE shares is completely irrelevant to the issues before me.

(c) Inadequate consideration for the sale of Hup Seng Huat shares to LTSE

85 Mr Kaka Singh pointed out that the Commissioner had computed the "inadequate consideration" for the sale of Hup Seng Huat shares to LTSE (*ie*, $1,345,111.71 (see item (I)(2)(bb) in the Father's Schedule of Assets at [26] above) on the basis of 4,799 shares when, in actual fact, a total of 4,949 (*ie* 150 more) shares were sold to LTSE. The plaintiff relies on an LTSE director's resolution dated 16 July 1983 to show that D1 (who was a director of LTSE at the relevant time) knew that 4,949 and not 4,799 Hup Seng Huat shares were purchased by LTSE. [note: 48] The plaintiff initially suggested that D1 deliberately under-disclosed to the Commissioner the total number of Hup Seng Huat shares purchased by LTSE to reduce the estate duty payable on "inadequate consideration". This later morphed into an argument that the under-disclosure would have meant that D1 had failed to recover the full consideration for these extra 150 shares from LTSE. [note: 49]

86 As for the plaintiff's initial point, the amount of "inadequate consideration" that should be included in Father's Schedule of Assets for estate duty purposes is entirely irrelevant for the purposes of ascertaining the amount of distributable assets in the father's estate. Turning to the latter point, it was clear to me that the under-disclosure of 150 shares was an inadvertent mistake of no consequence for the reason explained in the passage quoted below. The credit balance of $1,521,424.57 with LTSE at the time of the father's death would have already included the consideration paid for these 150 shares. As the plaintiff's expert report states: [note: 50]

> We note that a total of 4,949 shares (4,500 + 449) owned by [the father] in [the Company] were sold to [LTSE] at a consideration of $100 per share at par. The total consideration of $494,900 was credited to [the father's] current account with [LTSE] on 1 March 1983 … and 16 July 1983.

87 I therefore find that the under-disclosure of the number of Hup Seng Huat shares sold to LTSE did not lead to any distributable value in the father's estate for which D1 had to account to the plaintiff.

(d) The 1,000 shares in International Finance and $100,000 investment in Brilliant Development

88 The plaintiff claims that the father had (i) purchased 1,000 shares at $1.70 per share in International Finance, and (ii) made a $100,000 investment in Brilliant Development in 1981. She argued that the shares in International Finance should have been included in the Father's Schedule of Assets and included as part of the father's distributable estate. [note: 51] She also asserted that the $100,000 investment in Brilliant Development was mischaracterised as "gifts to persons unknown" and that it should not have formed part of the $145,437.27 of unaccounted withdrawals at line item (F) in the Father's Schedule of Assets (see [26] above). [note: 52] As a result, the plaintiff claimed that the size of the father's estate was reduced to her detriment since these two investments should have been available for distribution.

89 D1 disagreed that those investments were available for distribution. According to D1, neither

WTT, the mother nor him were able to find out what became of the investments or whether the investments were still held by the father at the time of his death. [note: 53] I accept D1's version of events. The documentary evidence clearly shows that the purchase of the 1,000 shares in International Finance was disclosed to the Commissioner. The fact that they did not appear in the Father's Schedule of Assets meant that the Commissioner accepted D1's explanation and was thus satisfied that those shares did not form part of the father's estate at the time of his death for estate duty purposes. I agree with Mr Singh SC's submissions that the plaintiff had not shown that the shares in question were available to the defendants or the father held them at the time of his death.

90 In relation to the $100,000 investment in Brilliant Development, a Taiwanese company, the documentary evidence shows that WTT, D1 and his mother had attempted to obtain more information about this investment, but were not successful and have notified the Commissioner of the efforts made and outcome. [note: 54] In the absence of any contrary evidence from the plaintiff, I am satisfied that there was nothing improper about accounting for the $100,000 investment as gifts to persons unknown. It therefore did not lead to any distributable value in the father's estate for which D1 had to account to the plaintiff.

(e) Estate duty issues

(i) Interest of $557,289.39

91 The plaintiff initially alleged that D1 was negligent in giving untimely responses to the Commissioner in relation to the administration of the father's estate and that this had caused a large amount of interest (*ie*, $557,289.39) to accrue unnecessarily. However, during the course of the hearing, the plaintiff conceded that D1 had done everything he could in this respect and withdrew her allegations of negligence: [note: 55]

> Q: It's a very simple question. I've shown you what steps Boh Chuan took to find money to put as deposits with the Commissioner. Are you saying that he could have found other money, additional money to put in as deposits?
>
> A: No.
>
> Q: Thank you very much. Are you saying that any of these deposits could have been put in earlier than when they were put in?
>
> A: No.
>
> Q: Thank you. Therefore, you would accept that Boh Chuan as co-administrator, did all he could in the circumstances, and acted reasonably in realizing the cash that he did on the days which he did to make the deposits on the dates on which they were made?
>
> A: Yes.
>
> Q: Thank you very much. So you would withdraw, therefore, the allegation against Boh Chuan that he acted negligently or failed to discharge his duty by allowing interest of half a million to accrue, correct? Please don't look at the back of the court, Ms Lim.
>
> A: Yes.

92 Even though she withdrew her complaint at the trial, the plaintiff's Closing Submissions raised it

again by alleging undue delay in the filing of the estate duty forms and further delay in not ensuring that estate duty and interest were paid promptly. [note: 56] In my view, the complaint is without merit. I accepted D1's evidence that he and his mother were completely dependent on WTT and had followed WTT's advice in their dealings with the Commissioner.

93 At the outset, WTT estimated the estate duty to be in the region of $600,000 on 30 May 1984. [note: 57] In fact, on 23 August 1984, the Commissioner's estimate of the estate duty payable on the father's estate was in the region of $652,000. [note: 58] WTT's advice to D1 and the mother on 30 May 1984 was that pending final assessment they should take steps to pay a substantial amount as deposit of estate duty to reduce the interest that was accruing. This was what D1 and the mother did in the months and years that followed. The first payment of $100,000 to account of estate duty was on 15 September 1984. [note: 59] There were further periodic payments to account such that by 30 October 1989, D1 had paid to account of estate duty a total sum of $1,022,342.42 to the Commissioner. [note: 60] Notably, the Commissioner's computation of the net estate duty payable (excluding interest) sent under cover of the Commissioner's letter of 16 October 1989 was $1,917,753.86.

94 I pause here to mention that from WTT's communications, the legal advice given to D1 and his mother on estate duty was for the estate to continue to make periodic advance payments towards estate duty in order to reduce the charge on interest. As D1 maintained, WTT did not advise D1 and his mother that donees of *inter vivos* gifts were accountable for estate duty purpose.

95 From the correspondence, whilst WTT engaged the Commissioner in its valuation of shares in Hup Seng Huat, D1 continued to make periodic payments to account of estate duty right up to 8 October 1990, and by that date, a total amount of $1,749,816.17 had been paid. [note: 61] The Commissioner's revised and amended computation of the net estate duty payable in the sum of $1,904,603.62 (excluding interest) was finalised on 25 March 1991. By 1 April 1991, the Commissioner sent the Notice of Amended Assessment and Amended Computation of Interest to WTT. By that Notice of Amended Assessment, the net estate duty payable (after taking in all payments to account of estate duty plus interest) was $707,471.45 and interest from 11 October 1990 to 25 March 1991 on $154,767.45 at the rate of 6% per annum was $4,223.79. [note: 62] D1 paid the final outstanding amount of estate duty in the sum of $771,695.24 ($707,471.45 plus $4,223.79) and interest of $381.60 on 9 April 1991. [note: 63]

96 Unfortunately, the periodic payments to account of estate duty (which started in September 1984 and ended in 8 October 1990) were insufficient as the actual estate duty assessed by the Commissioner some six years later turned out to be almost three times the original estimate of $652,000. The plaintiff did not deal with this initial under-estimation of estate duty and many periodic advance payments. It would be wrong not to take these matters into consideration. I should mention, at this juncture, a related point made in the plaintiff's Closing Submissions that effectively contradicts her overall complaints against D1 in the administration of father's estate – that interest at the rate 12% would not normally be charged unless the Commissioner detected evidence of omission of assets that should have been declared or undue delay in filing the estate duty forms. [note: 64] I note that the rate of interest charged by the Commissioner was 6% and not 12% (see [95] above). For all the reasons stated, I find the plaintiff's assertion that D1 had caused a large amount of interest (*ie*, $557,289.39) to accrue unnecessarily to be misplaced and baseless.

(ii) Accountable persons: Donees of *inter vivos* gifts

97 I now turn to the plaintiff's main allegation in relation to estate duty: that D1, as an administrator of the father's estate, was in breach of his duty because he failed to recoup estate duty paid on behalf of donees of *inter vivos* gifts made by the father within five years of his death. According to the plaintiff, if D1 had discharged his duty, the father's estate would have surplus assets available for distribution.

98 In their submissions on this point, the parties referred to the now-repealed Estate Duty Act (Cap 96, 2005 Rev Ed) ("the 2005 EDA") instead of the 1970 EDA. This is immaterial in so far as the relevant provisions of the 1970 EDA are the same as the corresponding provisions of the 2005 EDA, save that the section numbers differ. The following provisions of the 1970 EDA applied to the administration of the father's estate:

> **Interpretation**
>
> 2. In this Act, unless the context otherwise requires —
>
> …
>
> "executor" means the executor or administrator of a deceased person…
>
> **Estate duty imposed**
>
> 6.—(1) Save as hereinafter expressly provided, there shall be levied and paid upon the principal value, ascertained as hereinafter provided, of all property settled or not settled which passes on the death of any person a duty, called estate duty. …
>
> **What property is deemed to pass**
>
> 7. Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—
>
> (a) property of which the deceased was at the time of his death competent to dispose;
>
> …
>
> (c) property taken as a donatio mortis causa made by the deceased or taken under a disposition made by him, purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made five years before his death…
>
> **Liability of executor**
>
> 26.—(1) The executor of the deceased shall pay the estate duty in respect of all property of which the deceased was competent to dispose at his death, on delivering an estate duty affidavit to the Commissioner, and may pay in like manner the estate duty in respect of any other property passing on such death, … in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment …
>
> …
>
> **Liability of person other than executor**

(3) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession … shall be accountable for the estate duty on the property…

Recovery of estate duty

34.—(1) Any sum of money owing by way of estate duty or interest thereon to the Government … shall be a debt due to the Government…

99 In my view, the following propositions can be gleaned from the relevant provisions of the 1970 EDA:

(i) The 1970 EDA levied estate duty on property which passed on the father's death: s 6 of the 1970 EDA.

(ii) A gift that is not *bona fide* made within five years of the father's death was property which was deemed to pass on his death: s 7(c) of the 1970 EDA.

(iii) The persons accountable to the Commissioner for estate duty on property which passed on the death of the father were: (i) the executor (*ie*, the mother and D1) and (ii) "persons other than the executor": s 26 of the 1970 EDA.

(iv) Section 26(3) read with s 26(1) of the 1970 EDA envisages that "persons other than the executor" included persons who obtained a beneficial interest in property which the father was not competent to dispose of at his death but which was deemed to have passed on his death. Such a definition would encompass donees of *inter vivos* gifts made by the father less than five years before his death.

(v) The estate duty owed by an "accountable person" such as a donee constitutes a debt due to the Government: s 34 of the 1970 EDA.

100 It is clear from the 1970 EDA that estate duty should be borne by the donee of *inter vivos* gifts made within five years of the donor's death (see E J Mann, *Green's Death Duties* (Butterworths, 6th Ed, 1967) at 581; R K Johns and Roy Greenfield, *Dymond's Death Duties* (Oyes Publishing Limited, 15th Ed, 1973) at 912-913) (*ie*, the "donee rule"). Although the donee is an accountable person, the donee may at any time request the executor to pay on his behalf and the executor may do so if he wishes in exercise of his discretion under s 26(1) of 1970 EDA.

101 Section 26(1), as Mr Singh SC contends, is permissive and not mandatory in that the executor "may pay" estate duty "in the case of property not under his control" if the accountable person requests him to make such payment. In other words, the provision gives the executor discretion to decide whether he wants to pay the estate duty on behalf of the donee. The provision does not go on to spell out whether the estate duty paid by the executor becomes a debt recoverable against the donee. Ordinarily, the executor if he chooses to exercise his discretion to pay the estate duty on the donee's behalf, he may agree to pay on the basis of whatever arrangement he deems appropriate and wishes to impose on the donee. This reading of the provision makes sense since the Commissioner is only concerned with the proper recovery of the estate duty payable; the persons accountable for estate duty may make his own private arrangements with the executor to discharge his obligation to pay such duty.

102 In the present case, the executor paid the whole of the estate duty without recovering pro rata estate duty from the donees. A tacit understanding not to seek recovery from donees of *inter vivos* gifts is not far-fetched seeing that it was, as Mr Singh SC submits, never the father's intention that the estate duty be paid by his wife and the children to whom he had given *inter vivos* gifts within five years of his death. At the time of the father's death, the mother was a housewife, and the children, who had then not completed their tertiary education, were not financially independent. Even the plaintiff herself conceded in cross-examination that the father never intended her, her siblings and her mother to pay estate duty on *inter vivos* gifts from the father, and that instead, the estate was to pay the estate duty. [note: 65] In these circumstances, the executor's payment of the whole of the estate duty must have been on a without recourse basis in the absence of evidence pointing to the contrary. It follows that D1 was properly exercising his discretion under s 26(1) of the 1970 EDA in accordance with the concomitant family setting of the present case.

103 For the executor to exercise his discretion under s 26(1), the donee has to "request him to make such payment". In the present case, was the "request" requirement satisfied even though there was no express request made by the donee? Mr Singh SC argues that the requirement becomes nugatory where the executor and the donee are the same person. I agree with counsel for the plaintiff, Mr Chelva Rajah SC ("Mr Rajah SC") who pointed out that the case of *In Re Hole Davies v Witts* [1905] 2 Ch 384 cited by Mr Singh SC does not stand for the proposition that where the executor was the same person accountable for the property, he will be assumed to have made the payment on an implied request by himself as the accountable person to himself as executor. Nonetheless, I find support for such a principle in *Meyrick v Hargreaves* [1897] 1 Ch 99. In that case, there was an implied request because the administrator and the beneficiary were the same person. Chitty J held that a "request" may have been impliedly made if the executor and the person accountable for the duty are the same person:

> It was under his control as trustee of the settlement; for, being settlement. The sub-section provides that in the case of property not under his control, which plainly means under his control as executor of the deceased person, he may pay the estate duty, "If the persons accountable for the duty in respect thereof request him to make such payment." As trustee he was one of those persons, and he did pay the duty. I need hardly say that he paid the duty on the whole rightly; and *as for the request, it was the request which he impliedly made to himself in the character of trustee to himself as executor of the deceased*.
>
> [emphasis added]

104 The principle is clear – there is no need for an express request if the executor or administrator is already apprised of the donee's intention or situation. Therefore, I find that D1 cannot be faulted for causing the estate to pay the whole estate duty even though no actual request was made; it was plausible to view the payment of the estate duty in exercise of his discretion derived from s 26(1) in light of the family situation described in [102] above and the periodic payments to account of estate duty made on advice of WTT (see [94] above). It would be superfluous to expect D1 and his mother to make a request to D1 and his mother when they together with the plaintiff and D2 were already apprised of the situation that the father never intended the plaintiff, the defendants and his wife to pay estate duty. Equally, the reasoning in [102] above applies to LTSE and the cash gift of $15,000 to Lim Kim Luan, who was the father's sister.

105 In contrast to Mr Singh SC's contention that intention may be implied from the testator's conduct based on the facts of each case which is relevant to whether the executor's discretion is properly exercised, Mr Rajah SC submits that the testator's intention may only be taken into account if it is in writing. In support of his argument, Mr Rajah SC relies on s 29(1) of the 1970 EDA

(corresponding provision is 33(1) of the 2005 EDA) which reads as follows:

> **Liability of executor**
>
> 29. —(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition *not containing any express provision to the contrary*. [emphasis added]

106 Mr Rajah SC argues that short of an "express provision to the contrary, the donee cannot "recover" the estate duty from the executor. This line of argument is unsustainable on the present facts. First, s 29(1) does not affect the executor's discretion to pay the estate duty per se under s 26(1). Second, s 29(1) does not apply to the present facts. The provision relates to the apportionment of estate duty amongst beneficiaries by giving a beneficiary who has made a prior payment of estate duty the right to recover a rateable proportion from other beneficiaries of a particular property. The provision in s 26(1) gives the executor discretion to pay, while the provision in s 29(1) gives the beneficiary a right to recover. The two provisions are legally distinct from each other. In other words, the beneficiary's right to recover under s 29(1) has little bearing on the executor's discretion to pay under s 26(1). Indeed, as E J Mann observed, "[e]state duty, where it is a charge on the property, is intended to fall on the beneficiaries according to their respective interests. Under s 14(1) of the Finance Act 1894 a rateable part of such duty, paid by a person authorised to do so, may be recovered by him…" (see E J Mann, *Green's Death Duties* (Butterworths, 6th Ed, 1967) at 576). Section 14(1) of the UK Finance Act 1894 which is *in pari materia* with s 29(1) of the 1970 EDA allows a beneficiary who has paid the estate duty (either in full or in part) to recover a rateable part of it from another person holds or has held a beneficial interest to the property under the disposition. For instance, the English Court of Appeal held in *Re Keele Estates (No. 2)* [1952] 2 All ER 164 that a rateable proportion of the estate duty was recoverable from persons entitled to portions charged on the settled land under the will of the deceased remainder man. The intended effect of the provision plainly makes sense as it is a mere extension of the principle that the person who has received a benefit must also bear the burden. Be that as it may, I will say no more because this issue did not arise on the present facts. Suffice to say for now, neither the executor nor the estate received any part of the *inter vivos* gift and therefore s 29(1) is not applicable to the present case.

107 In light of the analysis above, I find that D1 did not breach his duty in paying the estate duty for the donees. For the sake of argument, however, even if the administrator's payment of estate duty of the *inter vivos* gift was at the donee's request and the EDA obliges the former to recoup the payment from the donee, I find that D1's omission to recoup estate duty was excusable under s 63 of the 1985 TA (see [3] above) on the grounds that he had acted honestly and reasonably throughout the administration of the parents' estates. I should mention that the defendants referred to s 60 of the Trustee Act (Cap 337, 2005 Rev Ed) ("the 2005 TA") instead of the 1985 TA which was the version in force at the material time. Section 63 of the 1985 TA is the same as s 60 which is the corresponding provision of the 2005 TA, save that the section number differs.

108 Even though Mr Charles Leong of Y&L testified that he would ordinarily advise a client about the "donee rule", it does not follow that WTT had given the same advice to D1 and his mother. D1 said that WTT's advice to him and his mother was to find money to make periodic advance payments to the Commissioner to reduce the charge on interest and that he was not told by WTT that the donees of *inter vivos* gifts were accountable for estate duty.

109 I accept D1's evidence which is borne out by WTT's contemporaneous communications with D1 and his mother in which the main thrust on estate duty was for the estate to continue to make periodic advance payments towards estate duty in order to reduce the charge on interest. D1 followed WTT's advice of 30 May 1984 and the first advance payment of $100,000 was on 15 September 1984. The documentary evidence showed that D1 and his mother consistently made periodic payments to account of estate duty such that a total amount of $1,749,816.17 was paid by 8 October 1990. There was nothing in the contemporaneous communications to suggest that WTT advised D1 that donees of *inter vivos* gifts were accountable for estate duty purpose. It is important to remember that throughout this period of time, the Commissioner had not yet finalised his assessment of estate duty payable, and the focus of WTT and the administrators during this interim period was to heed WTT's advice by sustaining the periodic payments to account of estate duty.

110 The case of *Ng Eng Ghee & Others v Mamata Kapildev Dave* and Others [2009] 3 SLR(R) 109 does not assist the plaintiff. In that case, the Court of Appeal held that a trustee who has sought legal advice on matters that are not within his competence may take the legal advice into account but he is still required to act in good faith, responsibly and reasonably in coming to his own decision. In the present case, the matter of legal advice is contextually relevant to the issue of D1's bona fides. Certainly, the position is different where WTT did not tell D1 and his mother that donees of *inter vivos* were persons accountable for estate duty in respect of the *inter vivos* gifts and that they had a duty to recover estate duty paid on behalf of donees. As such, I do not see how the element of dishonesty is made out in these circumstances where there was no recoupment of payment per se. I find that D1 had, in good faith, relied on the legal advice (or lack thereof) of WTT in carrying out his duty as an administrator, and contrary to the plaintiff's contention, the non-recovery of estate duty from donees of *inter vivos* gifts would not be considered dishonest by the standards of ordinary and honest people to render the omission fraudulent. Furthermore, in this regard, D1 ought to be excused for not recouping estate duty on a pro-rata basis from LTSE and other donees under s 63 of 1985 TA.

111 In any event, even if, for the sake of argument, s 63 of 1985 TA does not apply, D1's start-date of his obligation to recoup pro rata estate duty under the donee rule would 19 September 1991. In the absence of fraud, any claim against D1 would have been time barred six years later as was the case here seeing that the present action was commenced in January 2012.

112 "Fraud" in the context of s 22(1)(a) of the Limitation Act (Cap 163, 1996 Rev Ed) ("the LA"), does not mean the common law fraud or deceit but it denotes conduct by the defendant that would be against conscience for him to avail himself of the lapse of time (per Brightman J in *Bartlett and Others v Barclays Bank Trust Co Ltd* [1980] 1 Ch 515 at 537). Brightman J in his decision appropriately cited Lord Denning MR's observations in *Applegate v Moss* [1971] 1 QB 406 at 413:

> The section applies whenever the conduct of the defendant or his agent has been such as to hide from the plaintiff the existence of his right of action, in such circumstances that it would be inequitable to allow the defendant to rely on the lapse of time as a bar to the claim.

113 In this case, D1 was not advised of the "donee rule" and as such there was no cover-up by D1 that the estate paid the pro-rata duty for the donees. As Lord Denning MR puts it in *King v Victor Parsons & Co* [1973] 1 WLR 29 at 34:

> If the defendant was, however, quite unaware that he was committing a wrong or a breach of contract, it would be different.

(f) Transfer of shares by way of partial reimbursement

114 I now turn to the related issue of the transfer of one share each in Eastern Win, Hup Seng Huat and TSM from the father's estate to LTSE as a form of partial "reimbursement" (see [30] above). Those shares were valued by the Commissioner as follows:

(i) one share in Eastern Win at $0.86;

(ii) one share in Hup Seng Huat at $380.29; and

(iii) one share in TSM at $118.71 (see [26] above).

The combined value of those shares was $496.86.

115 As for the transfers, D1 has to justify the partial "reimbursement" *in specie*. It cannot be disputed that after paying funeral expenses and collecting assets, the duty of executors or administrators is to pay the just debts and to satisfy just claims against the estate. In the light of my ruling that the whole of estate duty was to be paid by the estate, the father's estate did owe LTSE money. D1's transfer of one share each in Eastern Win, Hup Seng Huat and TSM from the father's estate to LTSE as a form of partial "reimbursement" was in the circumstances not unwarranted, and I find that D1 was not in breach of duty in the light of my ruling on the "donee rule".

116 For the sake of argument, even if D1 was mistaken on this point, again on the basis of the advice (or the lack thereof) which D1 and his mother received from WTT in relation to the issue of estate duty, I am satisfied that D1 had acted honestly and reasonably and ought to be excused under s 63 of 1985 TA for transferring one share each in Eastern Win, Hup Seng Huat and TSM from the father's estate to LTSE as a form of partial "reimbursement".

(2) Claims in relation to the LTSE Shares

117 I turn now to the plaintiff's pleaded case that the defendants made fraudulent misrepresentations to her and the mother which induced both of them to part with their entitlements to the LTSE shares.

118 I shall first deal with the plaintiff's claim that the mother was misled into transferring her interests in LTSE to the defendants. Significantly, the mother's Will was made in 1990 and by her Will she bequeathed her interests in her LTSE shares to the defendants. That was well before the First Transfer Documents and the Second Transfer Form were signed in 1992. The terms of her Will provided objective and compelling evidence of her independent intention at the material time.

119 I accept D2's evidence that his mother signed the Will on 16 March 1990. He remembered that a Hokkien interpreter translated the Will to his mother before she signed it. At that time, his mother was fully aware of what was happening and she remained clear minded until her death. As it was the plaintiff who brought the mother to the lawyer's office to execute the Will, the plaintiff is not challenging the Will and it is not her case that the Will did not reflect the mother's wishes. It is not disputed that D1 learned about the Will sometime after the mother passed away.

120 The plaintiff case is that there was a misrepresentation of fact by D2 at the time of signing the First Transfer Documents that one LTSE share was worth only $1 (when in fact the Commissioner had assessed the value of one LTSE share to be $337,674.99). [note: 66] Significantly, the plaintiff conceded that there was no such similar allegation made against D1.

121 According to the plaintiff, the fraudulent misrepresentation of fact by D2 was made both orally

and in writing. The written misrepresentation took the form of D2 passing her the Letter of Consent which contained the phrase "transfer our share of entitlements in the one (1) ordinary share of S$1.00 fully paid in Lim Tian Siong Enterprise Pte Ltd". The oral misrepresentation took the form of D2 repeating words of a similar effect to the plaintiff. She asserted that (i) the representations were false; (ii) she had relied on the representations; and (iii) had it not been for D2's fraud, she would not have transferred her one-sixth entitlement in the Father's LTSE Share to D2.

122 The applicable principles in relation to fraudulent misrepresentation were enunciated by the Court of Appeal in *Panatron Pte Ltd and Another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435. The Court held that there are five elements to proving fraudulent misrepresentation at [13]–[14]:

> 13 The law as regards fraudulent representation is clear. Since the case of *Pasley v Freeman* (1789) 3 Term Rep 51, it has been settled that a person can be held liable in tort to another, if he knowingly or recklessly makes a false statement to that other with the intent that it would be acted upon, and that other does act upon it and suffers damage. This came to be known as the tort of deceit. In *Derry v Peek* (1889) 14 App Cas 337 the tort was further developed. It was held that in an action of deceit the plaintiff must prove actual fraud. This fraud is proved only when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.
>
> 14 The essentials of this tort have been set out by Lord Maugham in *Bradford Building Society v Borders* [1941] 2 All ER 205. Basically there are the following essential elements. First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

123 The plaintiff sought to argue that having regard to the circumstances in which the Letter of Consent was signed and her lack of understanding of the technical meaning of the phrase "$1.00 fully paid", she had reasonably understood D2's representation to mean that the share was only worth $1.

124 The phrase "$1.00 fully paid" which was written in the Letter of Consent and allegedly communicated to her orally was literally true – the par value of each LTSE share was $1. It was true that $1 par value did not reflect and was not the true value of the LTSE Share but nothing in the Letter of Consent suggested that it was only worth $1.

125 D2's testimony was more credible than the plaintiff's version. D2 said that he never told the plaintiff that the Father's LTSE Share was worth $1. He had made no reference to $1, and that he acted honestly at all material times. He further testified that D1, the plaintiff and his mother were aware of what was stated in the Letter of Consent, *ie* the par value of the Father's LTSE Share and that the Letter of Consent expressly stated that the transfer was free of any consideration. Furthermore, D1's payment of $1 for the Mother's LTSE share was a nominal sum.

126 D2 also testified that the transfer of the Mother's LTSE Share to D1 and the Father's LTSE Share to D2 by the mother was in keeping with the father's wishes to pass the business on to his sons. It was for this reason that that the First Transfer Documents and the Second Transfer Form was prepared and signed.

127 He rejected the plaintiff's claim that she was misled into believing that the value of the Father's

LTSE Share was worth $1. He doubted that the plaintiff who was inquisitive by nature was unaware that the Father's LTSE Share was worth more than its par value. Besides, it was implausible that the plaintiff who was a graduate in business studies did not understand what par value of a share meant.

128 While the context in which the words were spoken or written are valid considerations (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at 11.018), I was not convinced that this particular context rendered the representation false, nor was there an intention by D2 to mislead her as to the value of the father's LTSE Share. This was not a case of a misrepresentation against the plaintiff – this was *at best* a case of a misunderstanding by the plaintiff.

129 For these reasons, the plaintiff has not made out the five ingredients of the tort (see [122] above). Accordingly, her claim against D2 fails.

130 However, even if D2's words and conduct amounted to fraudulent misrepresentation, which was not the case, the plaintiff's case would fail because it is time-barred. As D2 was not an administrator of the father's estate, any claim against D2 for fraudulent misrepresentation would have been susceptible to the statutory time bar in s 6(1)(a) read with s 29 of the LA:

> **Limitation of actions of contract and tort and certain other actions**
>
> 6(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (a) actions founded on a contract or on tort;
>
> …
>
> **Postponement of limitation period in case of fraud or mistake**
>
> 29(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
>
> (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or
>
> (*c*) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

131 In relation to the phrase "could with reasonable diligence have discovered it" in s 29 of the LA, reference can be made to English case law on s 32 of the Limitation Act 1980 (UK) (the English equivalent to s 29 the LA). In *Paragon Finance plc v D B Thakerar & Co (a firm)* [1999] 1 All ER 400 ("*Paragon Finance*"), Millett LJ held that the question is not whether the plaintiff should have discovered the fraud sooner; but whether she could with reasonable diligence have done so (*Paragon Finance* at 418). The burden of proof is on her to establish that she could not have discovered the fraud without exceptional measures which she could not reasonably have been expected to take.

132 What measures the plaintiff is reasonably expected to take is very much dependent on the context of the case (see for example *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 3 All ER 193; *Paragon*

Finance). In light of the fact that the plaintiff was a co-administratrix of the mother's estate, and amongst other things she had signed the estate duty affidavit where the Mother's LTSE Share was valued as $224,185.25 by the Commissioner, in my view, the plaintiff would be expected to take the same measures that an ordinary prudent person would take in the management of his own affairs. This is consistent with the common law standard of care expected of an administrator in the management of the affairs of an estate (see *Re Lucking's Will Trusts* [1967] 3 All ER 726 at 733), which to some extent, has been codified in the statutory duty of care under the 1985 TA.

133 D2 testified that the plaintiff as co-administratrix of the mother's estate was fully aware of matters relating to the administration of the mother's estate as he would discuss from time to time such matters with the plaintiff before giving instructions to Y&L. [note: 67] The plaintiff, at that time, did not voiced any objections. D2 rejected the plaintiff's assertion that she was co-administratrix in name only and that it was not true that she played no active role in the matter. [note: 68]

134 In the course of ascertaining the value of the mother's estate for estate duty purposes, copies of the estate duty affidavit and the Father's Schedule of Assets were made available to D2 and the plaintiff. Y&L wrote to the Commissioner of Estate Duty on 4 June 1993 stating that the mother did not hold any shares in LTSE at the date of death and that she had sold her share on 23 June 1992 for $1. On 23 June 1993, the Commissioner enquired who bought the Mother's LTSE Share and what had happened to the Father's LTSE Share. Y&L replied on 4 August 1993 stating that the former was purchased by D1 for $1 and the latter was transferred to D2.

135 D2 maintained that the plaintiff would have known of the Commissioner's valuation of the one share in LTSE at the time of the mother's death from the Commissioner letter dated 6 September 1993 that was copied to him and the plaintiff under L&Y's cover letter dated 9 September 1993. The Commissioner valued the mother's one share in LTSE at $224,185.25 and her half share derived from the father's estate was fixed at $112,092.63.

136 For these reasons, the defendants rejected the plaintiff's contention that she was not aware of the value of the Father's LTSE Share until the China Party Action. In addition, the plaintiff confirmed at the trial that she received the listing prospectus of Hup Seng Huat although her pleaded case was that she never received the prospectus. The relevance of the prospectus is that it contained, amongst other things, financial information relating to Hup Seng Huat, Eastern Win, TSM, LTSE's shareholding in Hup Seng Huat and the defendants' shareholding in HHS as at 22 January 1994. It is clear from the prospectus that LTSE was worth a substantial amount. The defendants submitted that the plaintiff could have ascertained the value of the LTSE shares if she had read the prospectus. Mr Singh SC submitted that the fact remains that she chose not to read the prospectus; it was irrelevant that she found prospectus too boring to read.

137 If the plaintiff had taken the same measures as a prudent person would have in the management of his or her own affairs, she would have discovered the purported misrepresentation since there was no active concealment of the value of an LTSE share by the defendants. In fact, as mentioned, there were several documents which she came across or ought to have come across (had she exercised diligence) in the administration of the mother's estate which showed that the value of the LTSE shares in question were well above $1.

138 As mentioned above at [58], it was not the plaintiff's pleaded case that, apart from any fraudulent misrepresentation, D1 fraudulently breached his duties as an administrator by failing to make disclosure of the value of the plaintiff's entitlement to her before she signed the First Transfer Documents. However, Mr Rajah SC introduced this in at a late stage in the plaintiff's Closing

Submissions: [note: 69]

> [the defendants] contend that the Letter of Consent was not misleading because that document was never intended to set out the true value of 1 LTSE share. However, that submission misunderstands the Plaintiff's case, which is that *at no time* did the Defendants ever inform her of the true value of the 1 LTSE share. They could have stated that value in the Letter of Consent, or they could have informed her before or at the time she signed the Letter of Consent. The Defendants did not do so because it was clearly in their interest to keep the Plaintiff in the dark.
>
> Furthermore, as trustees of her father's estate, they had a duty to ensure that if any beneficiary was transferring any interest under the estate to either of them, the beneficiaries should be made aware of the true value of the interest and be compensated in such amount. This the Defendants failed to do, although the Defendants both knew that the 1 LSTE share had been valued for estate duty purposes alone at more than $200,000.
>
> [emphasis in original]

139 This argument is not the case pleaded, and is tantamount to a last attempt to augment a gap in the pleadings in Closing Submissions. As stated by Rubin J in *Abdul Latif bin Mohammed Tahiar (trading as Canary Agencies) v Saeed Husain s/o Hakim Gulam Mohiudin (trading as United Limousine)* [2003] 2 SLR(R) 61 at [7]:

> … It is a settled principle of law that parties stand by their pleaded case and any defect in the pleadings cannot be cured by any averments in affidavits, let alone an oblique reference in counsel's closing speech (see *The Gold Ores Reduction Company v Parr* [1892] 2 QB 14; *Novotel Societe D' Investissements Et D' Exploitation Hoteliers v Pernas Hotel Chain (Selangor) Bhd* [1987] 1 MLJ 210 at 214 and *Spedding v Fitzpatrick* (1888) 38 Ch D 410).

140 In any event, the plaintiff's submissions appear to run into two difficulties:

> (i) First, the First Transfer Documents were drafted and premised upon the plaintiff, the mother and D1 having already received their respective entitlements in the Father's LTSE Share. It is thus questionable whether any fiduciary duty would arise in such a situation.
>
> (ii) Second, even if D1 did owe a fiduciary duty of disclosure to the plaintiff and this fiduciary duty was breached, it is hard to see how D1's silence was conduct that was dishonest by the standards of ordinary and reasonable people so that the plaintiff could rely on s 22(1)(a) of the LA to circumvent the statutory time bar. Crucially, D1 had transferred his own one-sixth entitlement in the Father's LTSE Share to D2 for no consideration. This is consistent with D1's testimony that he was, in good faith, carrying out his mother's instructions to arrange for the Father's LTSE Share to be transferred to D2. The plaintiff's claim that D1 deliberately kept silent because he was out to deceive the plaintiff into giving up her one-sixth share is without merit and thus fails.

(3) Claims in relation to the mother's estate

141 I now deal with the claims by the plaintiff in relation to the mother's estate.

142 The plaintiff reminded this court in her Closing Submissions that "the DFA must be read with the Letter of Consent and the manner in which the father's estate was administered." [note: 70] She

developed her arguments on how the defendants cheated her of her inheritance from both estates in the following manner:

(i) Firstly, D1 "ensured that the father's estate bore the bulk of the estate duty so that there was no residue left for the Plaintiff." [note: 71]

(ii) Secondly, the defendants "arranged for the Letter of Consent to be prepared and procured the Plaintiff's execution of it. They were aware that the Plaintiff though she was signing away her interest in an almost valueless share… [t]hey knew that in reality she was giving up an interest in very valuable shares." [note: 72]

(iii) Thirdly, the DFA was the final piece of documentation to dispose of the remaining assets in the mother's estate. The [DFA] was "the last step… to secure the bulk of the residue of their parents' estate for themselves to the Plaintiff's detriment." [note: 73]

As mentioned in [50(v)] above, the plaintiff now wants the defendants to account for the mother's estate as if the mother had died intestate.

143 Given the findings that the plaintiff has not made out her case against the defendants in relation to the father's estate and the transfers of the Father's LTSE Share and the Mother's LTSE Share, there is no unaccounted assets due to the mother from the father's estate.

144 In any event, it is trite that a party seeking equitable relief must come to the Court with "clean hands". In *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292, Sundaresh Menon JC (as he then was) held at [225] and [226]:

> 225 It is true that a plaintiff in equity must approach the court with clean hands but this does not mean he must be blameless in all ways. Firstly, the undesirable behaviour in question must involve more than general depravity. "[I]t must have an immediate and necessary relation to the equity sued for; it must be a depravity in a legal as well as in a moral sense": see *Dering v Earl of Winchelsea* [1775-1802] All ER Rep 140. This principle was similarly followed in *Moody v Cox* [1917] 2 Ch 71 where it was held by Warrington LJ at 85:
>
> > [I]n order to prevent a man coming for relief in connection with a transaction so tainted it must be shown that the taint has a necessary and essential relation to the contract which is sued upon, and it is not enough to say in general that the man is not coming with clean hands when the relief he seeks is not based on the contract which was obtained by fraud, but is to have the contract annulled on a ground which exists quite independently of the fact that a bribe has been given and received.
>
> 226 Moreover, the principle has lost some of its vitality over time. The position is set out thus in Halsbury's Laws of Singapore vol 9(2) (LexisNexis, 2003) at para 110.016:
>
> > The maxim has been relaxed over time and is no longer strictly enforced. The question is whether in all the circumstances it would be a travesty of justice to assist the plaintiff given his blameworthy participation or role in the transaction. The whole circumstances must be taken into account having regard to the relief sought, for the relative blameworthiness only emerges after a complete and exhaustive scrutiny and relief which is less drastic need not be defeated by conduct that is less opprobrious. It has been said that the "the conduct complained of must have an immediate and necessary relation to the equity sued for" and "it must be a depravity in the legal as well as moral sense".

145 I find that the plaintiff has not come to this court with clean hands. As stated above at [40], the plaintiff lied to the court when she declared that the mother had died intestate when she knew that this was patently untrue. This untruth had an immediate and necessary relation to the equitable remedy she now seeks. Her dishonest deed was an essential ingredient in her argument that the defendants should account for the mother's estate as if she had died intestate, rather than in accordance with the Will. Such an argument was premised on a situation which had been created as a direct result of her lying to the court to obtain the grant of Letters of Administration. The plaintiff's quest for an order that the defendants account for the mother's estate as if the mother had died intestate serves to perpetuate her lie and this court should not lend its aid to assist the plaintiff. For this reason alone, the plaintiff's claim in relation to the mother's estate fails.

146 In any event, I am not satisfied that there is any basis for the remedy sought by the plaintiff. Not unlike D1, D2 maintained that: [note: 74]

> The Deed was intended to deal fully with all the assets in my mother's estate which had not already been dealt with previously, and to distribute the assets among the [plaintiff], [D1] and me. The Deed was also intended to resolve all outstanding matters (if any) and compromise any entitlement or claims relating to or arising from both my father's and my mother's estates, so as to keep the peace in the family and to avoid a family dispute.

147 The starting point of the analysis must be the legal significance of the DFA on any claim by the plaintiff against the defendants. The concept of a "family arrangement" was discussed at length in *Sheares Betty Hang Kiu v Chow Kwok Chi and others* [2006] 2 SLR(R) 285. V K Rajah J (as he then was) held at [16]:

> 16 … The term "family arrangement" is in itself a term of art that has a peculiar and particular legal significance. In Halsbury's Laws of England vol 18 (Butterworths, 4th Ed, 1997) at paras 301, 303, 304 and 312, it is stated:
>
> > 301. ... A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.
> >
> > The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.
> >
> > 303. ... The following arrangements for division of property have been supported as family arrangements:
> >
> > (1) an agreement for the division of family property by way of compromise of a family quarrel or litigation about a disputed or lost will, or even to prevent family friction, where there is no question as to the devolution of the property nor any disputed right, there being some consideration for the arrangement other than love and affection. ...
> >
> > 304. ... Family arrangements are governed by principles which are not applicable to dealings between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into

account…

> 312. ... Since the consideration for a family arrangement is partly value and partly love and affection, the pecuniary worth of the consideration is not regarded too closely. The court will not, as a general rule, inquire into the adequacy of the consideration, but there is an equity to set aside a family arrangement where the inadequacy of the consideration is so gross as to lead to the conclusion that the party either did not understand what he was about, or was the victim of some imposition.

[emphasis in original omitted]

148 A deed of family arrangement compromises any potential claims in relation to the estate of the deceased. This compromise is effective unless the family arrangement is set aside, whether because of undue influence or the dishonest non-disclosure of material facts (see for example, *Pek Nam Kee v Peh Lam Kong* [1994] 2 SLR(R) 750). If the plaintiff wanted to make any claim against D2 as co-administrator (or against D1 as an executor *de son tort*), she would first have to set aside the DFA. Nowhere in her pleaded case does she seek to do this. In fact, the plaintiff's Closing Submissions confirms that this is not her intention: [note: 75]

> … the Defendants claim that the reason the Plaintiff has not asked for the Deed to be set aside is because she does not wish to lose the Puay Hee Avenue Property.
>
> This is a gross misreading of the plaintiff's case. …
>
> *The true reason the Plaintiff has not sought to rewrite the Deed is that she seeks the enforcement of the Deed*, taking into account the spirit in which that document was entered into; that is, to ensure that the true value of the mother's estate is divided equally among the Plaintiff and the Defendants. That could only be the case if the estate duty on gifts from the father had been paid by the beneficiaries of those gifts in accordance with law, if the Plaintiff had been informed of the true value of LTSE (and had not therefore entered into the Letter of Consent) and if the Deed took into account the residue in the mother's estate on that basis.
>
> [emphasis added]

149 Accordingly, even if I were to find that she had come to the court with "clean hands", her claims in relation to the mother's estate must necessarily fail since she is bound by the Clause 5 of the DFA which includes a release of the administrators from and against all actions proceedings claims and demands in respect of the matters agreed in the DFA. Furthermore, the plaintiff's contention that the DFA was the last piece of documentation in the brothers' plan to deprive her of her inheritance in the mother's estate is not made out in light of my rejection of the plaintiff's claims in relation to the father's estate and her additional claim that the mother was defrauded of the Mother's LTSE Share and her half share in the Father's LTSE Share.

Alternative defences

150 I have already commented on s 63 of the 1985 TA in relation to D1 in [107]–[110] above. I have also already commented on time bar in relation to D1 and D2 in [111]–[113], and [130]–[137] above. As for the defence of laches and estoppel, it is not necessary for me to deal with them in the light of the various findings I have made in the defendants' favour.

Result

151 For the reasons stated, the plaintiff's claims against the defendants are dismissed in their entirety with costs of the action to be taxed if not agreed.

[note: 1] Plaintiff's Closing Submissions, para 219.

[note: 2] Transcripts of Evidence dated 17.4.13, pp 16 and 17.

[note: 3] Transcripts of Evidence dated 17.4.13 pp 20-27.

[note: 4] Transcripts of Evidence dated 17.4.13, p 6.

[note: 5] Transcripts of Evidence dated 17.4.13, p 6.

[note: 6] Transcripts of Evidence dated 17.4.13, p 11.

[note: 7]

[note: 8] Transcripts of Evidence dated 17.4.13, p 13.

[note: 9] LBC's AEIC, para 10.

[note: 10] 5AB 1314B.

[note: 11] 5AB 1314C.

[note: 12] LBC's AEIC, para 117.

[note: 13] Defendants' Closing Submissions, para 102.

[note: 14] Statement of Claim (Amendment No.1), para 10e(d).

[note: 15] LSB's AEIC, p 227.

[note: 16] LSB's AEIC Exhibit LSB-49, pp 533-545.

[note: 17] LSB's AEIC Exhibit LSB-49, pp 533-545.

[note: 18] LSB's AEIC, para 169.

[note: 19] LBS's AEIC Exhibit LBC-62 p 740.

[note: 20] Plaintiff's Closing Submissions, paras 270 -272.

[note: 21] Plaintiff's Closing Submissions, para 296.

[note: 22] Plaintiff's Closing Submissions, para 273.

[note: 23] Plaintiff's Closing Submissions, para 270.

[note: 24] Plaintiff's Closing Submissions, para 272.

[note: 25] Plaintiff's Closing Submissions, para 6.

[note: 26] 6AB 1555.

[note: 27] 6AB 1554.

[note: 28] LBC-57; LBC's AEIC p 723.

[note: 29] Statement of Claim (Amendment No. 1) dated 15 October 2012, para 14.

[note: 30] LSB's AEIC para 96.

[note: 31] Reply (Amendment No 1) para 5.

[note: 32] Statement of Claim (Amendment No. 1) dated 15 October 2012, p 22.

[note: 33] Kaka Singh's report at paras 4.10.2 and 4.10.5.

[note: 34] Transcripts of Evidence dated 23/4/13, pp 33-34.

[note: 35] Defendants' Closing Submissions, para 204.

[note: 36] Reid's Report, para 73.

[note: 37] Transcripts of Evidence dated 23/4/13, pp 84-86.

[note: 38] Plaintiff's Closing Submissions, paras 8, 75 and 161.

[note: 39] Kaka Singh's Report, para 4.6.4.

[note: 40] Plaintiff's Closing Submissions, para 49(c).

[note: 41] Transcripts of Evidence dated 23/4/13 pp 86-87.

[note: 42] Transcripts of Evidence dated 23/4/13, pp 56-57.

[note: 43] Transcripts of Evidence dated 23/4/13, pp 69-73.

[note: 44] Transcripts of Evidence dated 23/4/13, pp 74-77.

[note: 45] Transcripts of Evidence dated 26/4/13 p 96.

[note: 46] Transcripts of Evidence dated 23/4/13 p 68.

[note: 47] Defendants' Closing Submissions, para 110; Kaka Singh's Report para 4.1.1 item 25.

[note: 48] LBC AEIC Exhibit LBC-5, p 99.

[note: 49] Plaintiff's Closing Submissions at [109].

[note: 50] Kaka Singh Report, para 4.4.3.

[note: 51] LSB's AEIC, para 150.

[note: 52] LSB's AEIC, para 160.

[note: 53] LBC's AEIC, paras 60 and 83.

[note: 54] LBC's AEIC Exhibit LBC-27, pp 419-424.

[note: 55] Transcripts of Evidence dated 18/4/13, p 75.

[note: 56] Plaintiff's Closing Submissions, paras 59(b)(ii), 60 and 140.

[note: 57] LBC's AEIC Exhibit LBC-7, p 129.

[note: 58] LBC's AEIC Exhibit LBC-11 p 186.

[note: 59] LBC's AEIC Exhibit LBC-50 p 641.

[note: 60] LBC's AEIC Exhibit LBC-8 p 131.

[note: 61] LBC's AEIC Exhibit LBC-43 p 587.

[note: 62] LBC's AEIC Exhibit LBC-50 p 644.

[note: 63] LBC's AEIC Exhibit LBC-51 p 647.

[note: 64] Plaintiff's Closing Submissions, para 139.

[note: 65] Transcripts of Evidence dated 18/4/13 pp 27-28; p 55.

[note: 66] LSB AEIC Exhibit LSB-36; p 436.

[note: 67] D2's AEIC, para 64.

[note: 68] D2's AEIC, para 112(b).

[note: 69] The plaintiff's Closing Submissions at [189]-[190].

[note: 70] Plaintiff's Closing Submissions, para 270.

[note: 71] Plaintiff's Closing Submissions, para 270.

[note: 72] Plaintiff's Closing Submissions, para 270.

[note: 73] Plaintiff's Closing Submissions, para 272.

[note: 74] D2's AEIC, para 113.

[note: 75] Plaintiff's Closing Submissions at [268]–[273].