# Tan Chin Hoon and others *v* Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased) and others and other matters
[2015] SGHC 306

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| **Case Number** | : Suit No 570 of 2010, Suit No 170 of 2011 and Originating Summons No 921 of 2012 |
| **Decision Date** | : 27 November 2015 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Vinodh Coomaraswamy J |
| **Counsel Name(s)** | : Molly Lim SC, Philip Ling and Kam Kai Qi (Wong Tan & Molly Lim LLC) for the first and second plaintiffs and for the first and second defendants (by counterclaim) in S570, for the first, second, third and fourth plaintiffs in S170; Michael Khoo SC, Josephine Low and Ong Lee Woei (Michael Khoo & Partners) for the third plaintiff and for the third defendant (by counterclaim) in S570; Lee Eng Beng SC, Lai Yew Fei, Alec Tan and Lee Hui Yi (Rajah & Tann Singapore LLP) for the first defendant and for the first plaintiff (by counterclaim) in S570, for the defendant in S170, for the first defendant in OS921; Thio Shen Yi SC (instructed) and Edwin Sim (Lexton Law Corporation) for the second defendant and for the second plaintiff (by counterclaim) in S570, for the second defendant in OS921; Sim Chong (JLC Advisors LLP) for the third defendant in S570, for the third defendant in OS921; Lok Vi Ming SC and Melissa Thng (Rodyk & Davidson LLP) for the fourth defendant (by counterclaim) in S570, for the first, second, third and fourth plaintiffs in OS921. |
| **Parties** | : 1.TAN CHIN HOON — 2.TAN CHOO PIN — 3.TAN YOK KOON — 4.TAN CHOO HOON @ TAN CHENG GAY — 1.TAN CHOO SUAN (sued in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased) — 2.NG GIOK OH — 3.AFRO-ASIA SHIPPING COMPANY (PRIVATE) LIMITED — 4.AFRO-ASIA INTERNATIONAL ENTERPRISES PTE LIMITED |

*Trusts – Resulting trusts – Presumed resulting trusts*

*Equity – Defences – Laches*

*Limitation of actions – Equity and limitation of actions*

*Contract – Contractual terms – Implied terms – Implied duty to cooperate*

[LawNet Editorial Note: The appeals to this decision in Civil Appeal Nos 90 and 91 of 2015 were allowed while the appeals in Civil Appeal Nos 92 and 93 of 2015 were allowed in part and the appeal in Civil Appeal No 95 of 2015 was dismissed by the Court of Appeal on 21 February 2017. See [2017] SGCA 13.]

27 November 2015

**Vinodh Coomaraswamy J:**

**Introduction**

1 Mr Tan Kiam Toen was the patriarch of the Tan family. He passed away on 15 November 2008, at the age of 89, [note: 1] leaving behind his widow and their five adult children. By that time, the Tan

family had amassed considerable wealth through the business acumen and the efforts of Mr Tan and his family.

2 The disposition of Mr Tan's estate is governed by a will which he executed in Hong Kong jointly with his wife on 6 February 2008 ("the Joint Will"). The Joint Will bequeathed the bulk of the couple's estate ultimately to charity. [note: 2] The Joint Will also set out the couple's express wish that their descendants "should respect each other and live in harmony, and that no dispute or litigation should arise regarding [their] residuary estate". Mr Tan's wish was not to be.

3 As is sadly typical of many cases involving a family business, the patriarch's death was followed by a split in the family. Mr Tan's youngest four children find themselves ranged against his widow and his eldest child. Litigation commenced in 2010 and spawned yet more litigation in 2011 and 2012. In all, there are now three sets of proceedings between the two sides. And there are now a slew of hotly-contested appeals and cross-appeals yet to come.

4 The essence of the litigation before me is that Mr Tan's youngest four children claim that they own in equity certain assets which are now owned at law either by Mr Tan's widow or by his eldest child. Mr Tan's widow claims that the assets to which she holds legal title are her property absolutely. Mr Tan's eldest child claims that the bulk of the assets to which she holds legal title belong in equity only to Mr Tan and therefore fall to be distributed ultimately to charity under the Joint Will.

5 Much of the difficulty in this case results from the simple fact that, quite understandably, participants in a family business repose a high degree of trust in each other which leads to a high degree of informality in their dealings. They often do not state explicitly, whether orally or in writing, the reasons and objectives underlying their dealings. They often do not document, or do not document in full, their dealings. They often do not distinguish between personal assets, family assets and business assets in their dealings. They often do not apply their minds to the proprietary consequences of their dealings. This is true even of families which have the means and the foresight to secure the best legal advice when dealing with strangers. The Tan family is no exception.

6 The fact remains that every dealing in property carries a set of proprietary consequences in law. Determining these proprietary consequences is largely, though not exclusively, a matter of ascertaining the parties' subjective intentions at the time of the dealing. I now have the difficult task of disentangling the proprietary consequences of a number of dealings between the parties at a distance of many years, indeed decades. That task is made all the more complicated by the inevitable temptation for the parties to put before me self-serving testimony as to their own subjective intention as well as the intentions of others involved in the dealings, framed with the benefit of hindsight and tailored to fit the forensic case which they now seek to advance.

**Dramatis personae**

7 I start by introducing the members of the Tan family. For convenience (not least because the family includes four Mr Tans and two Ms Tans) and without intending any disrespect, I shall refer in this judgment to the members of the Tan family by their initials. I will therefore refer to Mr Tan Kiam Toen as "TKT". I will refer to his widow, Mdm Ng Giok Oh, as "NGO". [note: 3]

8 The couple's five children comprise three sons and two daughters. [note: 4] In order of birth, they are: [note: 5]

(a) Dr Tan Choo Suan ("TCS"), born in 1944;

(b) Mr Tan Choo Hoon @ Tan Cheng Gay ("TCG"), born in 1947;

(c) Mr Tan Yok Koon ("TYK"), born in 1948;

(d) Ms Tan Choo Pin ("TCP"), born in 1950; and

(e) Mr Tan Chin Hoon ("TCH"), born in 1951.

TCS is a party to these proceedings both in her personal capacity and in her capacity as the sole executrix and trustee of TKT's estate under the Joint Will.

**Procedural history**

9 The trial of the parties' actions commenced in 2011. During the trial, on 19 July 2011, the parties reached an oral agreement to compromise their disputes ("the Compromise"). [note: 6] TCS, given her status as the sole executrix and trustee of TKT's estate, insisted that the approval of the Attorney-General ("the AG") be a condition precedent ("the Condition Precedent") to the Compromise. She took this position because: (i) the Compromise was a major deviation from TKT's intent as expressed in the Joint Will, which was to bequeath the bulk of his estate ultimately to charity and specifically to exclude TKT's children as beneficiaries; (ii) TCS was afraid that her agreement to the Compromise would expose her to claims by disappointed charities because the Compromise operated to deprive the charitable beneficiaries under the Joint Will of a substantial proportion of TKT's estate; and (iii) the AG is, at common law, the guardian of charities in Singapore and could evaluate objectively whether the Compromise was ultimately in the interests of at least the Singapore charities. [note: 7]

10 As a result of the Compromise, the trial was adjourned to give the parties an opportunity to reduce the Compromise to writing and execute it, and to fulfil the Condition Precedent. Although the parties drew up a 13-point heads of agreement recording the Compromise on 19 July 2011 itself, [note: 8] the parties ultimately failed to agree on how to embody the Compromise in a formal and written settlement agreement. It is therefore common ground that the Compromise remains a purely oral agreement [note: 9] with the 13-point heads of agreement being merely evidence in writing of its terms.

11 The parties liaised with each other until November 2011 in an effort to reduce the Compromise to writing. Starting in November 2011, the parties abandoned that effort and entered into a correspondence with the AG to fulfil the Condition Precedent. In July 2012, the AG declined to grant his consent. [note: 10] The Condition Precedent was and remains unfulfilled.

12 The parties therefore returned to court in April 2013 to resume the trial.

**Summary of the three matters**

13 A brief summary of the proceedings before me is now appropriate. There are three sets of proceedings before me: Suit 570 of 2010 ("S570"), Suit 170 of 2011 ("S170") and Originating Summons 921 of 2012 ("OS921").

***S570: the main action***

14 The main action before me is S570. TYK, TCP and TCH commenced S570 in 2010 against NGO

and TCS. In S570, the plaintiffs seek declarations that they are the owners in equity of certain assets. TCG is not a plaintiff in S570. That is because, according to TCG, he had no desire to sue his own mother. But TCS and NGO brought a counterclaim in S570 and joined TCG to it as the fourth defendant to their counterclaim. [note: 11] TCG has therefore had to enter the fray, and has done so on the side of his younger siblings.

15 TCS's and NGO's counterclaim seeks declarations which are essentially to the opposite effect of those which the plaintiffs seek. They seek a determination that none of the assets which the plaintiffs claim in S570 belong in equity to the plaintiffs but instead belong ultimately either to TKT or to NGO.

16 Throughout this judgment, I will refer to TYK, TCP, TCH and TCG collectively as the plaintiffs, even though TCG is not technically a plaintiff in S570. I will also refer throughout this judgment to TCS and NGO collectively as the defendants, even though a family company is also a defendant in S570 and two family companies are defendants in OS921.

17 Four groups of assets are the subject-matter of S570. These assets are as follows:

(a) 2.54m shares in Afro-Asia Shipping Company (Private) Limited ("AAS") now registered in TCS's name ("the AAS Shares"), comprising 47.78% of its issued and paid up share capital. [note: 12]

(b) 2.66m shares in AAS now registered in NGO's name, comprising exactly 50% of its issued and paid up share capital. Because this block of shares was transferred to NGO by another family known as "the Bajumi family", I will refer to these shares as "the Bajumi Shares".

(c) 1.75m shares in Afro-Asia International Enterprises Pte Limited ("AAIE") now registered in TCS's name, comprising 35% of its issued and paid up share capital, ("the AAIE Shares").

(d) Funds from various Tan family sources which the family entrusted to TCS over time and which the plaintiffs refer to collectively as the "Tan family funds".

18 Additionally, it appears from the plaintiffs' closing submissions that they also assert in S570 a claim to 1.419m shares in EnGro Corporation Limited ("EnGro") which are now registered in TCS's name ("the 1.419m EnGro shares"). This claim does not appear in the plaintiffs' pleadings.

***S170: the Katong Property***

19 The plaintiffs commenced S170 in 2011 against TCS as the only defendant. The sole subject-matter of this second action is a property registered in TCS's name located at 2 East Coast Terrace ("the Katong Property").

20 TKT purchased the Katong Property on 31 January 1952 and registered it in NGO's name. [note: 13] In 1974, NGO transferred it to TCS. TCS has been its registered owner without interruption from 1974 to the present day.

21 In S170, the plaintiffs claim to be the owners in equity of the Katong Property. TCS resists that claim.

***OS921: the Compromise***

22 OS921 is the last of the three proceedings before me. The plaintiffs commenced OS921 in 2012 against TCS, NGO and two Tan family companies. The purpose of OS921 is to uphold the Compromise as binding on the parties, even though the AG has declined to give his consent to it, and even though the Condition Precedent is therefore unfulfilled.

23 In OS921, the plaintiffs seek substantive relief under four heads:

(a) First, a declaration that the Compromise represented a binding, full and final settlement of the disputes in S570 and S170. [note: 14]

(b) Second, an order rectifying the Compromise by removing the Condition Precedent on the grounds that it was included by reason of a common or a unilateral mistake; [note: 15] and (ii) an order that the defendants specifically perform their obligations under the Compromise so rectified. [note: 16]

(c) Third and in the alternative: (i) a declaration that the defendants are estopped by TCS's allegedly wrongful conduct – as evidenced by her letters to the AG – from asserting that the Condition Precedent has not been fulfilled; [note: 17] and (ii) an order for specific performance of the Compromise. [note: 18]

(d) Finally, and in the further alternative, an order that TCS pay damages to the plaintiffs arising from her breach of the Compromise. [note: 19]

24 I heard OS921 immediately before the trial in S570 and S170 was set to resume. After a five-day hearing, I dismissed the plaintiffs' prayers to rectify the Compromise and for specific performance of the Compromise as rectified. Given that my decision to dismiss these prayers is not the subject of any appeal, I need not dwell too long on the reasons for my decision. It suffices to say that I found that the Compromise contained all the elements necessary for a contract: *ie*, offer, acceptance, and consideration; and that the Condition Precedent qualified the performance of the Compromise and not its formation. I therefore held that the Compromise was valid and binding on all parties, but that the parties were under no obligations as to performance if the Condition Precedent were not fulfilled. Further, I did not accept that the plaintiffs were entitled to the remedy of rectification because I did not accept that the parties were operating under a common mistake or that the plaintiffs were operating under a unilateral mistake as regards the Condition Precedent. This was simply a case where the plaintiffs had agreed to the Condition Precedent because they anticipated, wrongly as it turned out, that the AG would consent to the Compromise. In any event, I could not see how the remedy of rectification – which is available only for instruments in writing embodying a preceding oral agreement – could conceivably be available for an oral agreement which was never embodied in writing. There was therefore no basis whatsoever for equitable intervention.

25 As for the remaining heads of relief in OS921, my view was that a decision on those heads depended on findings of fact and that I could not make those findings safely unless the parties' evidence was tested by cross-examination. I therefore deferred my decision on the remainder of OS921 to allow the parties an opportunity to cross-examine their opponents on their affidavits. That cross-examination took place in the course of the trial in S570 and S170.

**Overview of my decision**

26 Having heard the parties' evidence and considered their submissions, I have given the following

decision on the three matters before me:

(a) I have dismissed the remainder of OS921. In my view, the Compromise came to an end without any liability on any party when the AG declined to give his consent. Consequently, the parties are left to the rights underlying the Compromise, which are to be determined in S570 and S170.

(b) In S570, I have largely allowed the plaintiffs' claims and dismissed the defendants' counterclaims.

(c) In S170, I have dismissed the plaintiffs' claim and allowed TCS's counterclaim.

27 The parties have filed a series of seven appeals and cross-appeals against my decision in S570 and OS921. My decision in S170 is not subject to appeal. For completeness, however, I shall give my grounds in respect of S170 as well.

28 I start by setting out the facts. These facts are either agreed or represent my findings on the disputed facts.

**Background facts**

***TKT's history***

29 The best place to begin is with the history of the patriarch.

30 TKT was born in 1919 into a humble family in a poor village in China. His parents died early, forcing him to survive on earnings from odd jobs that came his way. [note: 20] In 1935, he decided to leave China for Indonesia to seek refuge from war and to find a livelihood. Despite a lack of formal education, TKT was resourceful enough eventually to set up his own factory in Indonesia selling soya sauce. [note: 21]

31 In 1943, TKT married NGO. A year later, TCS was born. The family of three moved to Singapore. TKT continued to run his business in Indonesia from Singapore. [note: 22] In the 1950s, TKT moved the focus of his business from Indonesia to Singapore. He traded and exported commodities through a sole-proprietorship called Thai Lee & Company ("Thai Lee"). [note: 23] At the same time, he ventured successfully into other fields. [note: 24]

***AAS***

*The Tan family's shareholdings in AAS*

32 By the end of the 1950s, TKT had accumulated substantial wealth. In 1961, he incorporated AAS as a vehicle for his considerable enterprise. [note: 25]

33 AAS is of great significance to the Tan family. It is the family company. It is where all of TKT's children, with the exception of TCS, channelled their ambition and efforts and worked directly or indirectly for the most part of their lives. Shares in AAS are two of the four groups of assets which form the subject-matter of S570 (see [17] above). It is, for that reason, important to trace the family members' shareholding in AAS.

34 TKT incorporated AAS with an initial paid-up capital of $2m. He owned AAS through two nominees [note: 26] who each held 50% of AAS for him. TKT's two nominees were also directors of AAS together with TKT. But there is no doubt that TKT was AAS's sole owner and its sole decision-maker. Sometime in 1962, AAS allotted and issued 380 shares to NGO, again as TKT's nominee. Later that same year, NGO acting on the instructions of TKT, transferred these 380 shares to TKT. [note: 27]

35 In 1965, AAS purchased the Nanyang Siang Pau Building at 63 Robinson Road and renamed it the Afro-Asia Building ("AAB"). AAS continues to own AAB to this day. Its value, of course, has increased by many multiples.

36 In March 1967, TKT bought two other properties, No 9 and 11 Cluny Park Road ("the Cluny Park Properties"). [note: 28] TKT used AAS as his vehicle for this purchase and drew the necessary funds from his other business, Thai Lee.

37 By the mid-1960s, TKT had appointed NGO a director of AAS. In 1966 or 1967, TKT's two nominees resigned as directors [note: 29] and transferred all their shares to NGO. After this transfer, TKT held 380 shares and NGO held 20 shares in AAS. [note: 30] TKT and NGO held all the shares in AAS in this way until 1968. NGO's position is that she held these 20 shares on trust for TKT. [note: 31]

*TKT brings his children in as shareholders of AAS*

38 In 1968, TKT caused AAS to allot and issue 40 new shares to each of his five children for a stated consideration of $1,000 per share. [note: 32] TKT's children were still young in 1968, with TCS being only 24. In fact, most of his children were not even aware then that TKT had given them shares in AAS. [note: 33] It is common ground that none of TKT's children gave any consideration whatsoever for these shares. [note: 34] TKT drew the capital for these shares from Thai Lee. [note: 35] The plaintiffs' position is that each of them became the absolute owner of the 40 shares vested in them in 1968. The defendants' position is that each of the plaintiffs and TCS held these 40 shares each on trust for TKT.

39 Bajumi Wahab, the patriarch of the Bajumi family, was at this time a close friend and business associate of TKT. TKT vested 300 shares of AAS in Asma, Bajumi Wahab's eldest daughter. [note: 36] The plaintiffs' position is that Asma became the absolute owner of these shares, and that this signified the beginning of a business cooperation between the Tan family and the Bajumi family. The defendants, however, assert that even Asma held these 300 shares on trust for TKT.

40 In October 1973, TKT caused AAS to issue bonus shares. The result was that the number of shares in AAS increased six-fold, from 900 to 5400. Each child's 40 shares in AAS correspondingly became 240 shares. [note: 37]

*The Tan family members' involvement in AAS*

41 The evidence shows that TKT, as a typical patriarch, had a strong desire that the Tan family keep control of the Tan family business and ownership of Tan family assets. This desire manifested itself in the high expectations he had for all of his children – but especially his sons – to come into the family business. With one notable exception, all of TKT's children fulfilled TKT's expectations. That notable exception was TCS.

(1) TCS

(1) TCS

42 TCS graduated with a degree in Mathematics and Economics in 1969. [note: 38] Although TKT initially brought her in to work for AAS and even appointed her a director of AAS in October 1973, she opted to leave AAS and Singapore in 1974 to continue her studies overseas. [note: 39] After earning a doctorate and working in Australia, she relocated to the United States where she worked in the World Bank for about a decade. [note: 40] In 1993, she moved to Hong Kong. [note: 41] Sometime in 1974, after she had left Singapore, TKT instructed her to step down as a director of AAS. As TCS acknowledges, TKT was disappointed, at least in the early years, that TCS was the only child unwilling to channel her ambition and effort into the family business.

(2) TCG

43 As the eldest son of a traditional patriarch, TKT saw it as TCG's duty to carry the family name and the family business forward. TCG therefore felt the considerable weight of TKT's expectation that he would go into the family business. [note: 42]

44 TCG did not, however, comply immediately with TKT's wishes. After earning a degree in engineering from King's College London, he started work with General Electric (USA) Consumer Electronics Pte Ltd ("GE"). [note: 43] This was in many ways his dream job. GE was then one of the most prestigious firms in the world for an engineer to work for.

45 In order not to disappoint TKT, however, TCG eventually deferred to his father's wishes. He left GE in October 1973. TKT appointed him a director and an employee of AAS. TKT promised TCG that he would have the opportunity to develop his own business ventures with the backing of AAS. From 1995 until TCS replaced him in 2004, TCG held office as chairman of AAS. [note: 44]

46 TCG's evidence is that he is primarily responsible for the steady growth in the Tan family business over the past 40 years, *ie* since TKT withdrew from active participation in management. I accept his evidence. His contributions have come both through his work in AAS, primarily from 1973 to 1994, and from his work in EnGro from 1973 to the present day. [note: 45]

(3) TYK

47 Like TCG, TYK also initially followed a path away from the family business. He graduated with a law degree from King's College London in 1971. [note: 46] He qualified as a barrister in England a year later in 1972. In 1974, he earned a Masters in Business Administration from Columbia University.

48 At TKT's request, TYK returned to Singapore in 1974. TKT appointed TYK a director of AAS and wanted him to come into the family business. TYK, however, wanted to practise law. After completing his pupillage with two leading firms, he was called to the bar. But even while TYK was serving his pupillage, TKT would summon him to do work for AAS. [note: 47]

49 TYK began practice as an advocate and a solicitor in a sole proprietorship, Tan Yok Koon & Co, operating from Thai Lee's premises. [note: 48] But he ended up spending much of his time helping TKT to run Thai Lee, AAS and the other family businesses.

50 TYK eventually set aside his legal ambitions to focus exclusively on the family business.

(4) TCP

(4) TCP

51 TCP returned to Singapore in 1973 with a degree in Chemistry from the University of York. TKT started TCP off working in AAS and in AAS's subsidiary, Oil Mills Factory Pte Ltd. [note: 49] TKT appointed her the company secretary of AAS in 1973 [note: 50] and a director of AAS in 1974. [note: 51] TCP's primary role in AAS was to oversee the maintenance of AAB. TCP worked in AAS from 1973 until 2010. Her relationship with AAS came to an end when TCS terminated TCP's employment and removed her from office in 2010.

(5) TCH

52 TKT's youngest child, TCH, was less academically inclined than his siblings. TKT brought TCH into the family business immediately after he completed his secondary school education in 1970. [note: 52] He started TCH off in AAS doing odd jobs. TCH left AAS from 1974 to 1976 to pursue his studies overseas.

53 After TCH returned to Singapore in 1976, TKT appointed him the General Manager of AAS. In 1977, TKT appointed him a director of AAS. In 1997, TCH became the managing director of AAS. As AAS's managing director, TCH oversaw the business, affairs and operations of AAS as well as those of its subsidiaries and related companies. [note: 53]

54 At TCS's instigation, AAS's board of directors removed TCH as AAS's managing director in 2007 [note: 54] (see [119] below) and appointed TCS in his place. TCS removed TCH from office entirely in 2010. [note: 55]

(6) NGO

55 Just as TKT was, over the years, the archetypal patriarch of a business family, NGO was over the years the typical matriarch. By all accounts, she discharged her role with equal distinction. Although TKT made NGO a director of AAS as early as 1962, he did not involve her in the Tan family business or in AAS. [note: 56] NGO resigned as a director of AAS in 1981. [note: 57]

*TKT withdraws from active role in AAS*

56 By the mid-1970s, TKT had withdrawn from an active role in AAS. In late 1974, TKT and NGO moved from Singapore to live permanently in Hong Kong. The parties dispute the reason for this move. They also dispute the degree of control which TKT exercised over the company thereafter. It is clear to me that from the time he left Singapore, TKT left the day-to-day running of AAS to the plaintiffs. However, it is also clear to me that the plaintiffs continued to consult TKT on major decisions and continued to permit him, as the patriarch, to have a say in its affairs. But I find that they did this because they felt a moral obligation to TKT rooted in their respect for him as their father and as the founder of AAS, and not because they acknowledged any legal obligation to do so.

57 In March 1985, TKT resigned as a director of AAS. [note: 58]

*TKT transfers shares to his sons*

58 At the beginning of 1975, TKT's five children each held 240 shares in AAS. In March 1975, TKT transferred 190 shares each to TCG and TYK. [note: 59]

59 In the same year, TKT made four transfers of a total of 2,440 shares in AAS to the Bajumi family. As a result of these transfers, the Bajumi family's shareholding in AAS increased from 33.3% to 67.4%. [note: 60]

60 Between 1979 and 1981, to equalise the two family's shareholdings in AAS, a substantial number of shares from the Bajumi family were transferred to TKT's three sons. [note: 61] The consideration for the transfers once again came from Thai Lee. [note: 62] These transfers can be summarised as follows: [note: 63]

(a) In 1979, Bajumi Wahab transferred 80 shares to each of TCG, TYK and TCH for a consideration of $100,000 for each transfer.

(b) In 1980, Asma transferred 130 shares each to TCG and TYK for a consideration of $169,000 for each transfer.

(c) Also in 1980, Asma transferred 140 shares to TCH for a consideration of $182,000.

(d) In 1981, Asma transferred 100 shares to each of TCG, TYK and TCH for a consideration of $130,000 for each transfer.

61 The result is that, by 1981, the Tan family and the Bajumi family each owned exactly half of AAS's shares. Although the defendants' position is that the Bajumis initially held shares in AAS as nominees of TKT, they too agree that by 1981, the Bajumi family owned their half of the shares in AAS absolutely. [note: 64]

62 As AAS grew, there were other changes to its capital structure. In 1981 and 1983, AAS declared bonus shares. In 1984, AAS reduced its capital and, at the same time, issued a further 1.75m bonus shares. [note: 65]

63 In 1985, after TKT had stepped down as a director of AAS, he transferred all 19,710 shares in his name to TCH. The transfer was recorded to be for a consideration of $394,200. [note: 66] The source of this consideration and the circumstances surrounding this transfer are disputed by parties. I deal with this at [222] – [226] below.

64 The result of all of the foregoing transactions was that in 1985, the shareholding in AAS was as follows: [note: 67]

| Shareholder | Number of shares | Percentage of shareholding |
|---|---|---|
| NGO | 39,420 | 2.22% |
| TCS | 78,840 | 4.44% |
| TCG | 243,090 | 13.70% |
| TYK | 243,090 | 13.70% |
| TCP | 78,840 | 4.44% |
| TCH | 203,670 | 11.48% |

| | | |
|---|---|---|
| Bajumi family | 886,950 | 50.00% |
| **Total** | **1,773,900** | **100.00%** |

65 The plaintiffs' position is that each Tan family shareholder in 1985 was the absolute owner of the shares of AAS registered in his or her name as set out in the table above. All of the subsequent transfers of shares in AAS, they say, conveyed only a bare legal title to the transferee leaving the transferor's beneficial interest unchanged. The remedy which the plaintiffs seek in respect of the AAS shares in S570, therefore, is to restore their respective shareholdings in AAS to where they stood in 1985, subject to the necessary adjustments to account for changes in its capital structure since then.

66 It is therefore necessary now to trace these subsequent transfers.

***The AAS Shares***

67 Between 1986 and 2008, four transfers of shares in AAS took place. The result of these transfers is that TCS became the sole registered shareholder of about 43.3% of AAS. Part of the dispute in S570 is over the proprietary consequences of these transfers. TCS's position is that these shares were held by the transferors on trust for TKT and were therefore held by her on trust for TKT.

68 The first transfer took place in 1986. Just before he left Singapore for the United States to pursue business opportunities, TYK transferred all 243,090 of his shares in AAS into the joint names of TCS and TCG. It is common ground that neither TCS nor TCG provided any consideration for the transfer. [note: 68] Even though he no longer held any AAS shares, TYK continued to hold office as a director of AAS. TYK returned to Singapore from the United States only in 1995.

69 The second transfer took place almost four years later, in 1990. TCH transferred all 203,670 of his shares in AAS into the joint names of TCS and TCG. [note: 69] Again, TCS and TCG provided no consideration for the transfer.

70 In 1994, AAS issued two bonus shares for every one share held by every registered shareholder. [note: 70] As a result, each registered shareholder ended up with three times the number of shares previously held. That exercise obviously had no change in each shareholder's percentage of the total shares in AAS. Following these transfers and the bonus issue of shares in 1994, TCG held 729,270 shares in his sole name and TCS and TCG held 1,340,280 shares in their joint names.

71 The third transfer took place in 1997. By three transfers, TCG transferred all of his shares in AAS to TCS, TYK and TCH. [note: 71] Again, none of the transferees provided any consideration for these transfers. The specific transfers were:

(a) TCG transferred 727,270 shares held in TCG's sole name to TCS;

(b) TCG transferred 1,000 shares held in TCG's sole name to TYK;

(c) TCG transferred 1,000 shares held in TCG's sole name to TCH; and

(d) TCG transferred 1,340,280 shares held in TCG's and TCS's joint names to TCS alone. [note: 72]

The purpose of TCG's transfer of 1,000 shares each to TYK and TCH was to confer on the transferees the status of shareholders in AAS [note: 73] in connection with the litigation between the Bajumi family and the Tan family over AAS, amongst other things (see [78] – [80] below).

72 As a result of all these transfers, AAS's register of members in 1997 stood radically transformed from 1985. The Bajumis and the Tan family continued to hold 50% of the total share capital each. But the biggest registered shareholder from the Tan family was now TCS. She held a total of 2,304,070 shares, representing about 43.3% of AAS. [note: 74] NGO, TCP, TYK and TCH held the remaining Tan family shares, representing only about 6.7% of AAS. TCG held no shares in AAS at all.

73 The fourth transfer took place more than a decade later, in 2008. TCP transferred all 236,520 of her shares in AAS to TCS. Again the transfer was for no consideration. Indeed, the contemporaneous records state expressly that the transfer was by way of gift. [note: 75]

74 Although the other members of the Tan family did not know it at the time, TCP executed a statutory declaration a day before the transfer. In the statutory declaration, she declared that the transfer of the shares to TCS as a gift was null and void. [note: 76] On 30 November 2009, as the dispute which has led to these proceedings was brewing, TCP demanded that TCS return these shares to her. [note: 77] TCS has not complied with this demand. These shares form part of TCP's claim in S570.

75 Apart from these four transfers of shares in AAS between the siblings, there are three other transfers that I should mention. First, in 2004, in circumstances to which I will come, the Bajumi family transferred their 50% of AAS to NGO. Second, in 2006, TYK transferred to TCS the 1,000 shares which TCG had transferred to him in 1997. [note: 78] Finally, in 2008, TCH transferred to TCS the 1,000 shares which TCG had transferred to him in 1997.

76 Since 2008, as a result of all of these transfers, NGO and TCS have been the only two shareholders in AAS. NGO holds 52.22% of AAS and TCS holds 47.78% of AAS. [note: 79]

***The Bajumi Shares***

77 The plaintiffs also lay claim in S570 to the 50% shareholding in AAS which the Bajumi family transferred to NGO in 2004. I therefore move on to recounting the facts relating to the Bajumi Shares.

*Relationship between the families frays*

78 Towards the end of 1994, relations between the Bajumi family and the Tan family began to fray. The dispute began over the ownership of a company called PT Bumi Rambang Kramajaya ("PT BRK"). PT BRK was a company incorporated in Indonesia for the purpose of investing in a rubber plantation. [note: 80] AAS held 40% of the shares in PT BRK, TCS held 10% of the shares and the Bajumi family held the remaining 50%. [note: 81] The rubber plantation proved to be a very lucrative investment. The relationship between the two families became strained when Bajumi Wahab took the position that PT BRK belonged solely to the Bajumi family. [note: 82] The dispute came to a head in 1995 when the Tan family voted not to re-elect two of Bajumi Wahab's sons as directors of AAS at the company's Annual General Meeting. [note: 83]

79 In 1996, the Bajumi family brought winding up and minority oppression proceedings against AAS

and the Tan family. I will refer to these proceedings as the "Bajumi litigation". In the Bajumi litigation, the Bajumi family sought an order to wind up AAS and to transfer the Indonesian rubber plantation to them. [note: 84]

*The DBS Term Loan*

80 The Bajumi litigation was finally settled in 2004 by an agreement recorded in a consent order. [note: 85] As a result of the settlement, the Tan family paid $7.6m to the Bajumi family to acquire their 50% shareholding in AAS.

81 The parties disagree on who should rightly be regarded as the ultimate source of the $7.6m consideration for the Bajumi Shares. What is clear is that the immediate source of the $7.6m was a term loan in that amount in 2004 from the Development Bank of Singapore ("DBS"). I will refer to this as the "DBS Term Loan". Only four members of the Tan family – NGO, TCS, TCP and TCH – are recorded as the borrowers of the DBS Term Loan. [note: 86]

82 As security for the DBS Term Loan, DBS took a mortgage over the Katong Property and a charge over a cash deposit of US$2.8m placed by TCS with DBS. [note: 87] The funds for this cash deposit came from a loan taken by Balmain Industries Limited ("Balmain"), another Tan family vehicle, from the Hong Kong branch of Barclays Bank ("the US$2.8m Balmain deposit"). The directors of Balmain were TKT, NGO and TCS. After Barclays released the proceeds of the US$2.8m loan to TCS's account with DBS, she placed that sum on fixed deposit with DBS.

83 DBS debited the monthly interest on the DBS Term Loan from a joint account with DBS held by TCS and TCH. [note: 88] The parties refer to this joint account as the "No 2 Account" because the rent from the Katong Property (*ie*, No 2 East Coast Terrace) was deposited into this account.

84 In 2005, TCS arranged for a total of $7.66m to be paid to DBS in order to discharge in full the DBS Term Loan. This sum comprised the US$2.8m Balmain deposit together with dividends which AAS had declared a few days earlier. [note: 89]

*Transfer of the Bajumi Shares to NGO*

85 About a month after the settlement of the Bajumi litigation, TKT called a family meeting ("the 2004 Family Meeting"). [note: 90] Although TKT was no longer a shareholder or a director of AAS, his children continued to respect him as their father and as the founder of AAS. They therefore attended the 2004 Family Meeting.

86 The parties dispute what was agreed at the 2004 Family Meeting. But it is undisputed that, as a result of that meeting, the Bajumi family transferred the Bajumi Shares (*ie*, 50% of the shares in AAS) to NGO in 2004. [note: 91] Taken with her existing shareholding of 2.22% in AAS, NGO thereby became (and remains) the registered owner of 52.22% of AAS.

87 The dispute between the parties is whether NGO holds these shares absolutely or on trust for the Tan family members.

*The 2005 Trust Deed in favour of TCS*

88 On 31 May 2005, NGO executed a trust deed in favour of TCS ("the 2005 Trust Deed"). [note:

[92] In the 2005 Trust Deed, NGO declared that she held the Bajumi Shares on trust for TCS. TCS's position, however, is that NGO owns the Bajumi Shares absolutely. [note: 93] TCS therefore renounced all her right to and interest in the Bajumi Shares in 2010, shortly before S570 commenced.

***The 2002 and 2003 AAS Shareholder Loans***

89 The proceeds of sale of the Cluny Park Properties ("the Cluny Park Proceeds") feature in the plaintiff's claim as a component of what they have called the Tan family funds in which they claim an equitable interest. I therefore now recount the facts relating to the Cluny Park Proceeds.

90 The Tan family had always been concerned that the Bajumi family would use their 50% shareholding in AAS to lay claim to the Cluny Park Properties or to the Cluny Park Proceeds, even though neither the Bajumi family nor AAS had contributed to the purchase of the properties. In 1992, TKT procured a written declaration from the Bajumi family acknowledging that they had no interest in the Cluny Park Properties. Despite this acknowledgment, as the relations between the two families deteriorated, TKT's concern increased. To ensure that there was no way for the Bajumi family to claim a stake in the Cluny Park Proceeds, the Tan family decided to take the Cluny Park Proceeds out of AAS through shareholders' loans.

91 In early 2002, AAS remitted just under $39m, comprising the Cluny Park Proceeds, to TCS's personal bank accounts in Hong Kong. [note: 94] I shall refer to this remittance as the "2002 AAS Shareholder Loans". Thereafter, sometime in the last quarter of 2003, AAS remitted a further sum of US$2.35m (approximately $4.04m) ultimately to TCS's personal bank accounts in Hong Kong. [note: 95] I will refer to this as the "2003 AAS Shareholder Loans".

92 AAS recorded both these remittances as loans extended to each Tan family shareholder of AAS in proportion to that Tan family shareholder's percentage of the Tan family's total block of shares in AAS at that time, *ie* , ignoring for this purpose the 50% of AAS owned by the Bajumis. [note: 96] NGO, TCS, TYK, TCP and TCH were thereby recorded as debtors of AAS. TKT and TCG, who did not own any shares in AAS at that time, were not recorded as debtors of AAS.

93 TCS held the proceeds of the two shareholders' loans and used them from time to time in accordance with TKT's directions. Thus, for example, she used part of this money to purchase the EnGro shares which AAIE now holds (see [103] below).

94 By the end of 2008, the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans had been substantially paid down. [note: 97] This was achieved by a combination of methods. [note: 98] Between 2005 and 2008, AAS declared four rounds of dividends. TCS received the Tan family's dividends and used them to pay down the shareholders' loans. Further, in 2005, TCS remitted part of the unused proceeds of the two shareholders' loans to the accounts of her siblings, who then remitted the money to AAS to pay down the debt to AAS. This exercise was repeated six times.

95 AAS's accounts for the year ended 31 December 2009 reflect that the shareholders' loans owed by TYK, TCP and TCH had been repaid in full and that NGO owed AAS slightly over $1.37m while TCS owed AAS slightly over $13m. [note: 99]

***EnGro and AAIE***

96 I move on to the facts relating to EnGro and AAIE.

*EnGro*

97 Shares in EnGro feature directly or indirectly in the plaintiffs' claims in S570 in three ways. First, Engro shares are the only substantial asset of AAIE. The plaintiffs claim that they own in equity the bulk of TCS's shares in AAIE and therefore indirectly the bulk of AAIE's EnGro shares. Second, TCS is the registered owner of 1.419m Engro shares. The plaintiffs also claim to own in equity the bulk of TCS's shares in EnGro. Finally, a substantial part of AAS's assets continues to be the shares it owned in EnGro and which it did not transfer to the Bajumis as part of the settlement of the Bajmi litigation (see [80] above).

98 EnGro is a listed company. TCG has spent virtually his entire working life in EnGro. He is today its Chairman and Chief Executive Officer. TCS's case is that TKT, and not TCG, was responsible for establishing EnGro and developing its business. I do not accept that. TCG, and to a lesser extent TYK, were instrumental in establishing EnGro and in developing its business.

99 Engro started life in 1973 as a tripartite joint venture between Ssangyong Cement Industrial Company Limited ("Ssangyong"), AAS and DBS. [note: 100] TCG and an officer of DBS were its two subscribing shareholders. [note: 101]

100 In 1975, AAS appointed TCG as its representative in EnGro. A few years later, TYK began his involvement in EnGro's business. [note: 102] The two brothers were subsequently appointed directors of EnGro. [note: 103]

101 In 1982, TCG was appointed EnGro's Chief Executive Officer and in 2002, he was appointed Chairman. As I have mentioned, he continues to hold both positions to the present day. [note: 104]

*AAIE's EnGro shares*

102 I move on to AAIE. AAIE is a pure investment holding company. TCS and TCP are each the registered owners of 1.75m shares in AAIE which together comprises 70% of its issued and paid up share capital. [note: 105] A third party unrelated to this litigation is the registered owner of the remaining 30% of AAIE. The plaintiffs claim to own in equity the bulk of the 35% of AAIE which is registered in TCS's name.

103 AAIE's only real asset is 1.424m shares in EnGro and its only real source of income is the stream of dividends which EnGro pays on those shares. [note: 106] AAIE purchased the 1.424m shares in EnGro from Ssangyong, who wanted to sell down its stake in EnGro. The Tan family advanced to AAIE 70% of the funds which it needed to purchase these EnGro shares [note: 107] while the other shareholder advanced the remaining 30%. TCS was the immediate source of the Tan family's advance. The ultimate source of the Tan family's advance was the Cluny Park Proceeds channelled to TCS via the 2002 AAS Shareholder Loans and the 2003 Shareholder Loans (see [89] above).

104 The funds which the Tan family advanced to AAIE amounted to more than $19.6m as at 31 December 2002 and $22.1m as at 31 December 2003. [note: 108] AAIE recorded these funds as loans in equal amounts from TCS and TCP each to AAIE. [note: 109] I will refer to these loans collectively as the "the AAIE Loans". AAIE repaid the AAIE Loans over time from the Tan family's 70% share of AAIE's stream of EnGro dividends. TCS alone received and held AAIE's repayment. [note: 110]

*TCS's EnGro shares*

105 In 2007, Ssangyong again wanted to sell down its stake in EnGro. The Tan family saw this as a good opportunity to increase their stake in EnGro, given that the shares were being offered at a favourable price. Over two months, through several transactions in the market, a total of 1.419m shares in EnGro were purchased in TCS's name.

106 The parties dispute the circumstances surrounding the purchase of these shares. The plaintiffs' case is that the purchase was financed by what they call Tan family funds, drawn from the No 2 Account as well as from funds held in Hong Kong, and that TCS therefore holds these shares as a nominee for the Tan family. [note: 111] TCS, on the other hand, asserts that the funds used to pay for these shares belonged to TKT, who gifted the shares to her. [note: 112]

***The Katong Property***

107 I move on to set out the facts relating to the Katong Property, which is the subject-matter of S170. As I have mentioned, the Katong Property has been registered in TCS's name without interruption since 1974.

*The Katong Property*

108 TKT purchased the Katong Property in 1952 in NGO's name. [note: 113] It was in fact part of a bigger piece of land which TKT bought. But he sold most of the land and built a house on the remaining part which he kept. The Tan family used the Katong Property as their family home from 1958 until they moved into the Cluny Park Properties in 1969. [note: 114]

109 Although the parties dispute TKT's intention in registering the Katong Property in NGO's name upon purchase, it is common ground that it was TKT's decision to do so. It is also common ground that TKT provided the entire consideration for the purchase.

110 More than two decades later, on 31 December 1974, NGO transferred the Katong Property to TCS. [note: 115] The reason for this transfer is fiercely disputed.

111 From the 1980s, the Katong Property earned a rental income which was deposited over the years into the No 2 Account (see [83] above). Sometime in 1992, TCP moved back into the Katong Property with her family. [note: 116] She continued to reside there rent-free for the next 15 years, until 2007. From about 2002, TKT and NGO started spending more time here in Singapore and lived in the Katong Property whenever they were here. [note: 117]

112 In 1981, while TCS was studying in Australia, she executed a power of attorney in favour of TCG. [note: 118] By this power of attorney, TCS conferred on TCG the full power and authority to deal with the Katong Property on her behalf.

113 In 2004, the Katong Property was mortgaged to DBS as security for the DBS Term Loan used to finance the purchase of the Bajumi Shares (see [82] above).

*The No 2 Account*

114 As I have mentioned, the monthly rental income for the Katong Property was deposited in the

No 2 Account. The No 2 Account is also one of the assets that the plaintiffs claim falls within what they claim as the Tan family funds.

115 It is common ground that TCS and TCH opened the No 2 Account in the 1970s as a joint account. [note: 119] TCH was authorised to be the sole signatory of the account up until 1991. Thereafter, TCS left cheques signed in blank and drawn on the No 2 Account with AAS staff to be used to pay for expenses.

116 Over the years, the siblings used funds in the No 2 Account for various purposes. These ranged from paying TKT's and NGO's living expenses to servicing the monthly interest on the DBS Term Loan. The Tan siblings even used the money in the No 2 Account for personal expenses. For example, TYK withdrew $300,000 from the account to pay towards the purchase of an apartment in Ardmore Point and withdrew a further $5,000 a few months later to pay for the renovation of the apartment. In most instances, the Tan siblings would keep TCS informed if they used money from the No 2 Account for their own purposes. [note: 120]

***TCS begins to exert influence and control in AAS***

117 I have now set out the facts which explain how the assets in dispute came to be acquired and are held as they are today. I turn now to the events which have triggered this litigation.

118 Until the 2000s, TCS had had little or no involvement in AAS or the family business, given that she had been overseas since 1974. After the Bajumi litigation ended in 2004, however, TCS began to exert greater control over AAS and greater influence over her parents. It was also in 2004 that TCG and TYK withdrew from AAS in order to focus their time and energy on developing EnGro, [note: 121] thereby leaving a vacuum in AAS.

119 In January 2007, TCS proposed to TKT that TCH should resign as the managing director of AAS, [note: 122] a position he had held since 1997. TCH was powerless in the face of this proposal. AAS's board of directors removed TCH as managing director on 25 January 2007 and appointed TCS in his place. [note: 123] Despite this, TCH continued to perform largely the same duties in AAS as he had before his resignation.

120 On 25 February 2008, after a hiatus of over 20 years, TKT and NGO were re-appointed as directors of AAS. [note: 124] The plaintiffs' evidence is that TCS was behind their desire to be re-appointed. [note: 125] I accept this. As I have mentioned, NGO had resigned as a director of AAS in 1981 (see [55] above) and TKT had resigned as a director in 1985 (see [57] above). Left to their own devices, there was no reason either of them should want to seek re-appointment as a director in 2008, after having withdrawn decades earlier.

***TKT passes away***

121 TKT passed away on 15 November 2008. Relations between the Tan siblings deteriorated sharply after TKT's death. In August 2009, [note: 126] TCH wrote to TCS to demand that she return the AAS shares which TCG, TYK and he had transferred to her in the past. In November 2009, TCP issued her own separate demand for the return of the shares she had earlier transferred to TCS. TCS refused to comply with both demands. Her position was, and still is, that all the siblings who transferred their shares in AAS to her held those shares merely as TKT's nominees; and that she therefore now holds all of the shares in AAS which are today registered in her name on trust for TKT's

estate to be dealt with in accordance with the terms of the Joint Will.

122 In January 2010, TCH proposed that TCG be re-appointed as a director of AAS in order for the company to tap his expertise. [note: 127] TCP, in her capacity as the company secretary, issued a notice convening a meeting of the directors of AAS on 29 January 2010 to consider and pass a resolution reappointing TCG as a director. TCS strongly objected. She sent a curt email to TCP and TCH stating that TKT's wish when he was alive was that TCG was not to be involved in the business of AAS. TCS also demanded that TCP withdraw the notice, failing which TCS said she would convene an extraordinary general meeting ("EGM") of AAS in Hong Kong to remove TCP and TCH from office. [note: 128] She further told them that their proposed resolution would never pass because NGO and TCS would vote against it, and because TCS held the casting vote as the chairperson.

123 TCP and TCH refused to comply with TCS's demand. TCS made good on her threat. She issued a notice on 27 January 2010 for an EGM of AAS to be held on 28 January 2010, one day before the directors' meeting which TCP's notice had convened, to remove TCH and TCP from office. TCS sent an ultimatum on 28 January 2010, demanding that TCP and TCH withdraw their notice by 10.30 am that day. They refused. TCS's EGM went ahead on 28 January 2010. TCP was removed as the company secretary and TCS appointed in her place. TCH was removed as a director and an external accountant appointed in his place.

124 On 9 February 2010, TCH instructed his solicitors to write to TCS to demand that she take immediate steps to reinstate him as a director of AAS. She refused.

125 The plaintiffs' case is that these resolutions passed at AAS's EGM of 28 January 2010 are invalid. They assert that TCS and NGO held their shares in AAS on trust for them and had no right to exercise the votes attached to those shares so as to remove them from office.

126 This episode was the catalyst for the plaintiffs to commence S570 on 4 August 2010. Among the relief they seek is a declaration that they are the beneficial owners of the shares in AAS in the same proportions as they held their shares in 1985 (see [64] above).

127 On 9 October 2010, TCG received a letter informing him of a directors' resolution excluding him from AAS's premises. [note: 129] TCG responded on 29 October 2010 with a letter asking for an explanation. He received no reply. Thereafter, TCS barred TCP, TCH and TCG from entering AAS's premises, even to remove their personal belongings. They had entered these premises freely for over 40 years. Eventually, TCS relented and permitted the plaintiffs to enter AAS's premises for the limited purpose of removing their personal belongings, but not until solicitors had intervened and not without imposing a number of conditions. The impasse between the two camps continued throughout these proceedings.

***The Hong Kong litigation***

128 TKT's estate is governed by the Joint Will (see [2] above). None of the parties dispute the validity of the 2008 Joint Will. But the parties are embroiled in yet more litigation in Hong Kong regarding the interpretation of a phrase in Chinese which appears in the Joint Will. That phrase has been translated to me as "under our names" or, when applied to TKT's estate alone, as "under my name". The question in the Hong Kong litigation is whether, on its true construction, the scope of TKT's Joint Will is restricted to assets in which TKT had a legal interest at the time of his death, or whether the Joint Will extends to all assets in which he had any type of proprietary interest, including a beneficial interest.

129 The Hong Kong litigation went all the way to the Hong Kong Court of Final Appeal. On 5 November 2015, the Court of Final Appeal (Ma CJ, Ribeiro, Tang and Fok PJJ and Neuberger NPJ) handed down its decision. [note: 130] It upheld the decision of the Hong Kong Court of Appeal, which had in turn upheld the decision of the Hong Kong Court of First Instance. The Hong Kong Court of Final Appeal held that "under my name" on its true construction extends to all property in which TKT had any type of proprietary interest, including a beneficial interest.

130 I describe the Hong Kong litigation only to note it. Its outcome has no direct bearing on the litigation before me. The Hong Kong litigation and the litigation before me operate on separate planes. The Hong Kong litigation had to do with the scope of the Joint Will. The litigation before me has determined the extent, if any, to which TKT has a beneficial interest in the assets claimed by his estate. The scope of the Joint Will is not in issue in the litigation before me.

***Conclusion on the background facts***

131 Having summarised (to the extent possible) the background to this dispute, I move on to discuss my decision on the parties' claims and counterclaims.

132 I start with the last set of proceedings to be commenced: OS921. The outcome of OS921 determines whether I need to decide S570 and S170. That is because if the Compromise indeed binds the parties, the disputes over their underlying rights in S570 and S170 fall away.

**OS921: the Compromise**

***The parties' positions***

133 To summarise: the Compromise was subject to a condition precedent that the AG must consent to the terms of the settlement. I have found that the condition precedent did not prevent a valid contract from coming into existence, but did qualify the parties' performance obligation. I have rejected the plaintiff's claim that the Compromise is tainted by mistake (see [24] above). Each side having had the opportunity to test the opposing side's evidence by cross-examination, I have now to decide the plaintiffs' alternative case, which is essentially that TCS breached the terms of the Compromise.

134 It is undisputed that the Compromise does not oblige the parties, expressly or impliedly, to *procure* the fulfilment of the Condition Precedent, *ie*, neither party undertook an unqualified contractual obligation to ensure that the AG consented. It is also undisputed that the Compromise does not expressly oblige the parties to use their best endeavours to bring about the fulfilment of the Condition Precedent. [note: 131] Nor does the Compromise expressly oblige the parties to cooperate with each other in pursuing the fulfilment of the Condition Precedent.

135 The plaintiffs' entire case on breach of contract relies on implying a term into the Compromise which imposes a duty on the parties to cooperate with each other to bring about the fulfilment of the Condition Precedent. The plaintiffs contend that TCS's correspondence with the AG amounts to a breach of this implied term. [note: 132] The consequence of this breach, they argue, is that TCS ought to be required specifically to perform her obligations under the Compromise and cannot be allowed to resist that result by relying on the AG's failure to consent to it. In the alternative, they submit that TCS should be held liable for all damage that the plaintiffs have suffered as a result of her breach of this implied term. [note: 133]

136 TCS's response is that she did not breach the implied duty to cooperate. She argues that the implied duty to cooperate obliged her only to take *reasonable* steps to provide all relevant information to the AG and to assist the AG in coming to an independent decision on whether to consent to the Compromise. [note: 134] She submits that she did not have any obligation to try to convince the AG to give his consent. Indeed, she submits that she could not have had – and would not have undertaken – any such duty in light of her duties to TKT's estate as its executrix and trustee. [note: 135] TCS points out that she insisted on including the Condition Precedent so as to ensure that she could not be sued by any of the disappointed beneficiaries under the Joint Will for distributing TKT's assets in a way which did not accord with the will. If the plaintiff's position is accepted, she submits, that purpose would be defeated. [note: 136]

***The issues***

137 The issues I have to deal with in OS921 are:

(a) whether TCS is subject to an implied duty to cooperate with the plaintiffs under the Compromise; and

(b) if so, whether TCS's conduct in her correspondence with the AG amounts to a breach of the duty.

I consider each issue in turn.

***Is there an implied duty to cooperate?***

138 I accept the plaintiffs' submission that the courts may imply a duty to cooperate into a contract where the object of the contract can be achieved only with the cooperation of both parties to the contract. [note: 137] *Chitty on Contracts Volume I: General Principles* (H G Beale, gen ed) (Sweet & Maxwell, 31st Ed, 2012) ("*Chitty on Contracts*") discusses this issue at para 13-012:

> **13-012**
>
> **Co-operation.**
>
> The court may be willing to imply a term that the parties shall co-operate to ensure the performance of their bargain. Thus:
>
> > "… where in a written contract it appears that both parties have agreed that something shall be done, which cannot effectively be done unless both concur in doing it, the construction of the contract is that each agrees to do all that is necessary to be done on his part for the carrying out of that thing, though there may be no express words to that effect."
>
> …
>
> [emphasis in bold in its original]

139 The quote in the passage above originates from the case of *Mackay v Dick and others* (1881) 6 App Cas 251 ("*Mackay v Dick*"). In that case, a contract to sell a digging machine was subject to a condition precedent that the seller demonstrate to the buyer that the machine was capable of excavating a given quantity of clay in a fixed time on a "properly opened-up face" at a certain railway

cutting. The machine was taken to the agreed railway cutting but the buyer failed to make available a "properly opened-up face" for the test. The machine broke down on testing. The buyer refused to carry out any further tests and argued that he was not bound to purchase the machine because the seller had failed to fulfil the condition precedent. The House of Lords held that buyer had breached an obligation to cooperate which was an implied term of the parties' contract.

140 Closely linked to the duty to cooperate is a principle known as the "prevention principle". This principle is summarised in *Chitty on Contracts* at para 13-013, immediately following para 13-012 cited above:

> **13–013**
>
> **Prevention of Performance.**
>
> By the same token:
>
> > "… if a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances under which alone the arrangement can become operative." [quoting from *Stirling v Maitland* (1864) 5 B & S 840 at 852]
>
> *Also where a binding contract is subject to a condition precedent, a term may be implied that a party will not do an act which, if done, would prevent fulfilment of the condition.* …
>
> [emphasis in bold in its original; emphasis in italics added]

141 The duty to cooperate and the prevention principle have been recognised in Singapore. [note: 138] In *Evergreat Construction Co Pte Ltd v Presscrete Engineering Pte Ltd* [2006] 1 SLR(R) 634 ("*Evergreat*") V K Rajah J (as he then was) stated (at [48]):

> When parties make and seal a contract, they are deemed to have done so on the basis that they intend and desire the contract to be performed and taken to its conclusion. …

Rajah J quoted the same passage from *Stirling v Maitland* (1864) 5 B & S 840 cited in para 13-013 of *Chitty on Contracts* (see [140] above) and recognised the cooperation principle when he stated at [49] that:

> … [a]nother facet of a contracting party's obligation to honour its undertaking is the implied duty to co-operate. …

142 Rajah J in *Evergreat* also recognised the prevention principle. The prevention principle is invoked if a party is asserting a contractual right or claiming a contractual benefit which is a direct result of that party's prior breach of contract: see *Evergreat* (at [52]). Rajah J explained the rationale behind the prevention principle at [51]:

> … [the prevention principle] is wedded to notions of fair play and commercial morality. It offends all sensible norms of commercial intercourse to allow a party in breach of its contractual obligations to rely on its very breach to either evade responsibility or, even more farcically, to assert that the other contracting party must also willy-nilly accept or sustain the consequences of that breach.

143 This makes eminent sense. If two parties enter into a contract subject to a condition precedent which can be satisfied only if both parties cooperate, a term may readily be implied that both parties are under an obligation to cooperate in order to facilitate the fulfilment of that condition. Similarly, if a contract expressly provides that the contract will *ipso facto* determine upon the happening of a certain event, that provision will be construed subject to the principle that neither party can be allowed to rely on an event which is attributable to his own act or default to escape from his contractual obligations (see *Alghussein Establishment v Eton College* [1988] 1 WLR 587 at 594 and *Evergreat* at [51]). To hold otherwise would be to allow a party to take advantage of his own wrong.

144 In my view, while the implied duty to cooperate and the prevention principle are conceptually different, they are related and their operation may overlap in practice. In the present case, I am satisfied that the two involve the same inquiry because the plaintiffs are arguing essentially that TCS breached the duty to cooperate *thereby* preventing the AG from giving consent, and therefore cannot be allowed to rely on the AG's refusal to give consent to deny that the parties are obliged to perform the Compromise.

145 I readily imply a duty to cooperate into the Compromise. An implied term to that effect is necessary in the business sense in order to give the Compromise efficacy. I also have no doubt that the parties would have responded with an emphatic affirmation had the existence of the duty to cooperate been suggested to them when they entered into the Compromise. In these circumstances, it is appropriate to imply a duty to cooperate to give effect to the parties' presumed intention: *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [93] and [101].

146 The true issue dividing the parties, of course, is not so much the existence of a duty to cooperate but its scope. Applied to the facts of this case, the plaintiffs submit that the duty to cooperate not only required the parties to cooperate in answering the AG's questions and to provide him the information he asked for, but also barred the parties from doing anything which would lead the AG to withhold his consent. [note: 139] Counsel for TCS, on the other hand, argues that the content of the implied duty to cooperate is only to do what is reasonable for that party to do in the surrounding circumstances. [note: 140]

147 TCS's position on this must be correct. *Ong Hun Seang and others v Yeoh Oon Teik and others* [1996] 2 SLR(R) 488 ("*Ong Hun Seang*") recognises that the duty to cooperate extends only to doing what is reasonable in all the circumstances. In that case, the purchasers of a group of residential units sued their vendors for the return of the deposit paid against the purchase price of those units. The purchasers argued that the vendors had breached their implied duty to cooperate with the purchasers in their efforts to secure a licence which they required to hold the units. The complaint was that the vendors had failed or neglected to execute two forms necessary to change the use of the units, which was said to have resulted in the purchasers' failure to obtain the licence.

148 Lim Teong Qwee JC implied a term that the purchasers and the vendors would cooperate in securing the required licence and that they would do nothing to prevent the licence from being secured in sufficient time to enable completion on the contractual date. But Lim JC observed that the implied duty to cooperate requires the parties to do only what is reasonable in the circumstances. At [56] of the judgment, he noted that the implied term pleaded by the purchaser in its statement of claim required that each party "would promptly do all that was necessary on its part for the completion of the sale and purchase … and that the [vendors] would cooperate with and/or assist the Plaintiffs to obtain the licence". He found difficulty in implying a duty to assist but agreed that there

was a duty to cooperate, albeit qualified by reasonableness (at [57]):

> 57 I have some difficulty with the notion of assistance [as pleaded] and in my opinion *all that can be implied in this contract is that the vendors need do no more than what is reasonable in the circumstances*. …
>
> [emphasis added]

149 Therefore, the implied duty to cooperate in this case entails each party doing no more than that which is reasonable in all the circumstances. On the facts of this case, the duty encompasses at least providing the AG relevant information which he reasonably requires to make an informed decision about whether to grant his consent. The duty would obviously also prevent a party from providing false information to the AG. The crucial question is whether the duty equates to an obligation to become an advocate: emphasising the positive and de-emphasising the negative in an effort to persuade the AG to give his consent.

150 Bearing these observations in mind, I now turn to consider whether TCS breached her implied contractual duty to cooperate.

***Did TCS breach the implied duty to cooperate?***

*TCS's conduct*

151 By November 2011, the parties had tried and failed to reduce the Compromise to writing and were trying to agree the terms of a joint approach to the AG to secure his consent to the Compromise. Instead of waiting to reach agreement on a joint approach, TCS wrote to the AG unilaterally. That letter commenced a three-way correspondence which lasted ten months, from November 2011 to August 2012.

152 To determine whether TCS breached her implied duty to cooperate, I will focus on the correspondence between TCS and the Attorney-General's Chambers ("AGC"). Some of the key exchanges in that correspondence are as follows:

(a) On 14 December 2011, the AGC sought clarification from the parties. TCS responded on 16 December 2011 explaining that the Condition Precedent was put in place because the terms of the Compromise envisaged that a substantial part of TKT's estate would be transferred to the plaintiffs, thereby reducing the amount that would be available for distribution to the charities in Singapore. [note: 141]

(b) On 7 March 2012, AGC asked TCS to respond on three issues: [note: 142]

> Issue 1: Her opinion, as the executrix and trustee of TKT's estate, as to whether the Compromise was beneficial to, or in the interest of, the charities in Singapore.
>
> Issue 2: The proportion of TKT's estate that would be transferred to the plaintiffs under the Compromise, and the amount that would remain available to the charities in Singapore after deducting certain specific bequests amounting to HK$200m set out in the Joint Will.
>
> Issue 3: TCS's assessment on whether there would be sufficient funds left in TKT's estate to satisfy her obligations as the executrix and trustee of the Joint Will.

(c) On 30 March 2012, TCS responded to the issues as follows: [note: 143]

> Issue 1: The Compromise would reduce the portion of TKT's estate that could otherwise be given to charitable causes.
>
> Issue 2: The value of TKT's estate was approximately $121m, and the Compromise would result in approximately $90m being transferred to the plaintiffs based on the information available at that time.
>
> Issue 3: There should be sufficient funds left in TKT's estate to meet the two specific bequests of HK$200m set out in the Joint Will, but the remaining funds available for donations to the other charities in Singapore would be diminished.

(d) On 18 April 2012, [note: 144] the AGC replied stating that the AG was not in a position to represent the interests of named Singapore charities in consenting to a settlement agreement "for the purpose of compromising a legal proceeding to which the [AG] is not a party". Thus, the AGC stated that the AG would confine his consideration of the issue only to the unnamed charitable interests in Singapore. [note: 145] Paragraph five of the letter indicated that the AG was inclining towards not giving his consent:

> 5. From [TCS's] letter of 30 March 2012, it appears that the [AG] is being asked to consent to an act which adversely affects the unnamed Singapore charitable interests under the Joint Will. The Trustee did not, in her opinion set out in [her] letter of 30 March 2012, elaborate on the benefit of entering into a settlement to avoid the uncertainties of trial. Based on the information provided to us, the [Compromise] does not appear to bring any substantial benefit to the unnamed Singapore charitable interests. Furthermore, the Trustee is unable to confirm that there will be sufficient assets left in the Estate to make the discretionary donations to the Singapore charitable institutions after taking into consideration the two specific bequests under the Joint Will.

(e) On 14 May 2012, the plaintiffs' solicitors wrote to the AGC in an attempt to persuade the AG to reconsider his tentative view and to consent to the Compromise. [note: 146] Specifically, the plaintiffs pointed out that:

> … [e]ven after taking into consideration the two specific bequests totalling HK$200 million (equivalent to approximately S$32 million) … there would still be a substantial sum of at least [$100m] left in the Estate for the discretionary donations to the Singapore charitable institutions … [note: 147]

(f) TCS responded on 18 May 2012 correcting what she characterised as "factual inaccuracies" in the plaintiffs' letter. [note: 148]

(g) On 23 May 2012, the AG declined to give his consent to the Compromise: [note: 149]

> …
>
> 4. Both the Trustee and the [plaintiffs] appear to have conflicting assessments on whether the terms of the [Compromise] is (sic) beneficial to or in the interests of the Singapore charitable interests. *We are more inclined to heed the Trustee's assessment as the*

*[plaintiff's] interests are in direct conflict with the interests of the beneficiaries under [TKT's] Joint Will.* Furthermore, the Trustee would be more acquainted with the assets comprising [TKT's] Estate than the [plaintiffs] since she is both the appointed [executrix] and trustee of the Estate. *Based on the information provided by the Trustee, the [Compromise] does not appear to bring substantial benefit to the unnamed Singapore charitable interests*.

5. The Trustee has also disagreed with the [plaintiff's] estimation of the amount of funds that would be left in the Estate to make discretionary donations to the unnamed Singapore charitable institutions. It also appears that the [plaintiff's] estimation may be too optimistic as it is premised on the sale of [AAB] which is presently owned by [AAS] and not the Estate per se. Furthermore, the valuation of [AAB] at $145 million is derived from an offer made by DTZ which is subject to certain conditions which may or may not be met.

…

[emphasis added]

(h) Dissatisfied with the outcome, the plaintiffs wrote to the AGC through their separate solicitors on 30 May 2012. They also sought clarification from the AG and asked for a meeting with the AG or his representatives. [note: 150]

(i) On 8 June 2012, solicitors of all the parties had a meeting with officers from the AGC. Thereafter, the AGC asked for further information from the parties via a letter dated 14 June 2012. [note: 151]

(j) On 29 June 2012, TCS responded through her solicitors. [note: 152] The important parts of her letter read:

…

4. … [TCG] has chosen to highlight the risks of litigation for the Estate without highlighting the benefits of litigation for the Estate. This is completely one-sided and self-serving. … the Trustee is of the view that the [plaintiffs'] claims have no merit. … The Trustee has informed us that the reason she even considered a settlement was to protect her aged mother from further public humiliation and emotional distress on account of being sued by the [plaintiffs] (who are her children).

…

6. … As the [plaintiffs] did not agree to waive all further claims relating to the assets belonging to the Estate and [NGO], there is a real concern on the part of the Trustee that the continuing defence of further claims made by the [plaintiffs], in Singapore or elsewhere, will deplete the remaining assets and adversely affect the Trustee's ability to carry out the wishes of the late [TKT] to make donations to charities. Since the AG has already declined to give consent to the [Compromise], the resumption of the trial may be the most expedient solution for resolving the impasse.

…

12. … at the time of the [Compromise], the Trustee specifically inserted the condition

> precedent of the AG's consent precisely because she was aware that the [Compromise] would not only result in a deviation from the terms of the Joint Will which she is duty bound to administer, it would also substantially reduce the amount available for donations to the charities in Singapore … The Trustee was not prepared to assume that the AG would agree that whatever certainty arising from a settlement but resulting in significantly smaller donations to charities outweighs the exaggerated uncertainties of trial, as in this case. As the authority that would represent the interests of charities in Singapore, the Trustee firmly believed that the AG would be able to determine whether the [Compromise], which reduces the amount originally intended for the charities by 35% to 45%, would be beneficial to the charities in Singapore. The [plaintiffs] were also fully cognizant that this was the case. This was why all parties decided that the [Compromise] would be subject to the AG's consent[.]
>
> …
>
> 14. … the Trustee wishes to be honest to the AG. In the Trustee's opinion, the [Compromise] benefits the [plaintiffs] immeasurably but the charities in Singapore would be deprived of a substantial amount which they would otherwise have benefited from. The uncertainties of litigation have also been exaggerated by the [plaintiffs]. While there is no certainty of return if the trial is resumed, the Trustee is highly confident that the Estate will prevail at trial. However, the Trustee leaves the AG to make the ultimate decision on whether to reverse its decision.
>
> [underline emphasis in original]

153 On 9 July 2012, the AGC wrote to all parties informing them that the AG maintained his previous position and declined to consent to the Compromise. [note: 153]

*TCS did not breach the implied duty to cooperate*

154 I move on to consider whether TCS's conduct in her correspondence with the AGC and the plaintiffs amounts to a breach of her implied duty to cooperate.

155 The plaintiffs contend that TCS's conduct throughout the correspondence with the AGC was the reason the parties failed to obtain the AG's consent. They submit that her refusal to cooperate was apparent right from the start, when she unilaterally issued her own letter to the AG while the plaintiffs were still liaising with her in hopes of presenting a joint agreed letter to the AG. [note: 154] This, they argue, set the tone from the start, especially given that TCS emphasised in the letter that she faced difficulty in reaching an agreement and finalising a written draft of the agreement with the plaintiffs.

156 The plaintiffs further submit that TCS took a wholly obstructive position, severely understating the merits of the plaintiffs' claims, falsely asserting that the Compromise would result in substantial funds being diverted from charities, insinuating in her letters that the plaintiffs had misrepresented material facts to the AG and falsely representing that the Compromise was detrimental to the interests of the charities when she herself had agreed to it in the first place. [note: 155]

157 TCS, however, argues that she was simply fulfilling her duties to the estate as a responsible and prudent executrix and trustee. She explains that she wore multiple hats when negotiating the Compromise. [note: 156] She participated in the negotiations not only in her personal capacity as a defendant in the suits, but also as the executrix and trustee of TKT's estate. In the latter capacity,

she had a legal duty to protect the interests of the beneficiaries under the Joint Will and a moral duty to give effect to her father's wishes. Further, in agreeing to the Compromise, she had also had to consider NGO's predicament and emotions because long, drawn-out litigation would be very taxing and upsetting for her aged mother. TCS further asserts that she insisted on including the Condition Precedent in order to protect herself from being exposed to suits from charities or any authorities representing charities for diverting funds away from the charitable objects of the Joint Will. [note: 157] She holds the belief that entering into the Compromise placed her in breach of her obligations as the executrix and trustee of TKT's estate. She was therefore trying to protect herself from any legal repercussions by insisting that the consent of the AG, as the protector of charities, first be obtained. [note: 158] These reasons were also canvassed in TCS' solicitor's letter to the AG on 29 June 2012 (see [152(j)] above).

158 At the outset, I will state that I consider it wholly unnecessary to look at the merits of the Compromise. Although some of the parties' submissions rely on these merits (or the lack thereof), the merits or demerits are irrelevant to any issue which I have to determine.

159 I find that TCS's conduct in her communications with the AG did not breach her obligation to cooperate, to the extent reasonable in all the circumstances, with the plaintiffs in securing the AG's consent. These circumstances include TCS's reason for including the Condition Precedent and her duties as the executrix and trustee of TKT's estate. This is not a case where fulfilling the condition precedent is wholly within the parties' control (*eg*, in *Mackay v Dick*). Nor is this a case where the condition precedent is securing an approval from an authority which is simply a question of making the necessary application (*eg*, in *Ong Hun Seang* and in *Duncan v Mell* (1914) 14 NSWR 33). In this case, the parties agreed—for whatever reason—to subject their agreement to a condition precedent that an independent party exercising an independent judgment grant its consent to their agreement after considering its merits from the third party's perspective. The very purpose of the Condition Precedent was therefore to require the AG to assess the merits of the Compromise in his capacity as the protector of charities in Singapore.

160 I therefore accept TCS's submission that the implied duty to cooperate did not require her to become an advocate and therefore to do all that was reasonably within her power to *persuade* the AG to give his consent to the Compromise. The plaintiffs' submission [note: 159] in this regard is misguided. As I have explained (see [149] above), TCS's duty to cooperate extends only to her taking reasonable steps to provide to the AG relevant information which the AG, a neutral third party, required in order to reach an independent and informed decision on whether to consent to the Compromise. It is not an obligation to provide to the AG only information which is likely to induce him to grant his consent and to withhold information that is likely to induce him to refuse his consent. By producing all the materials and furnishing all the information that the AG requested, and by answering his questions from her perspective as the executrix and trustee of the TKT's estate rather than as the plaintiffs' advocate, TCS did not breach her duty to cooperate.

161 Needless to say, TCS would have breached her duty to cooperate if she had made statements or representations to the AG which were false. The plaintiffs therefore submit that TCS breached her duty to cooperate by baselessly accusing the plaintiffs of reserving or initiating claims over TKT's collection of antiques and artwork in Hong Kong. [note: 160] The context of their first submission is that TCS conveyed to the AG that even after the Compromise, there was still a possibility of the plaintiffs bringing other claims against TKT's estate for his other assets such as the antiques or art work. The plaintiffs argue that this was untrue and that they have never asserted any such claims. [note: 161] I do not find this particular representation that was made to be materially false. In fact, a document drafted by the plaintiffs' solicitors shows that there was some truth in TCS' assertions. In a

draft prepared by the plaintiffs' solicitors in August 2011 to embody the Compromise, the plaintiffs reserved their rights in respect of chattels by way of a proposed clause that read: [note: 162]

> 27 For the avoidance of doubt, this settlement agreement does not settle any claims regarding the chattels (including but not limited to the personal belongings of the [plaintiffs] and the artwork and antiques enumerated in the stock take lists) which are in the possession, custody or control of the 1st and 2nd Defendants or AAS or its subsidiaries, including but not limited to those held at the premises of AAB, Bowen Mansion, No. 2 East Coast Terrace, 14 Daymar Place, Castle Cove, Sydney or any storage facility that such chattels may have been moved to from the said locations.

In light of the position that was taken by the plaintiffs at that time, which was not limited to property which belonged to them personally, it was not a breach of TCS's duty to render reasonable cooperation for her to inform the AG that the plaintiffs may make further claims against the estate even if the Compromise were performed.

162 The plaintiffs also allege that TCS breached the duty to cooperate by falsely understating the value of the estate. The effect of that, they say, was to overstate the proportion of the estate to be distributed to the plaintiffs under the Compromise and to exaggerate the prejudice to the charitable objects of the Joint Will. [note: 163] In particular, the plaintiffs submit that TCS ascribed an extremely low value to AAB, failed to inform the AG of the value of TKT's antiques and artwork, and referred to the net asset value of the EnGro shares instead of the actual market price of those shares which, after all, were publicly-traded. [note: 164]

163 I first observe that the parties were always at odds on the value of the estate. The AGC also noted this in its letter to the parties dated 23 May 2011. [note: 165] The plaintiffs accuse TCS of undervaluing the estate for her own purposes. TCS alleges in return that the plaintiffs overvalued the estate to show, falsely, that the value of what they would receive under the Compromise would be relatively small. [note: 166] There was consequently an exchange of correspondence with the AGC in which the parties put forward their respective positions on the value of various assets in TKT's estate. After the meeting with the AGC on 8 June 2011, the parties put in their final letters to the AGC, providing their comments on figures computed into tables by the AGC (in Annex A) and by TCG's solicitors (in Annex B). [note: 167] I note that TCS did not object to the value that the plaintiffs ascribed to AAB in the tables (*ie*, $145m). [note: 168] As for the value of the EnGro shares, I do not consider TCS to have been culpable in referring to the shares' value based on their net asset value instead of their last traded price. In any case, both values were put before the AGC.

164 To summarise, I find that the plaintiffs have not proved, on the balance of probabilities, that any of the statements or representations which TCS made to the AG amounted to a breach of her duty to extend reasonable cooperation. Both sides had the opportunity to put their positions and estimates on the figures to the AG, and both sides duly did so. By the same token, I am also of the view that TCS's omission to provide to the AG the total value of TKT's antiques and art work cannot be said to be a breach of her duty to extend reasonable cooperation, especially given that the AG was aware that the estate's assets included these antiques and art works.

165 I must, however, say that the tone adopted by TCS's solicitors in the bulk of their letters to AGC – no doubt on instructions from TCS herself –clearly demonstrated TCS's lack of commitment to the Compromise. Indeed, it would not be entirely unfounded to conclude that TCS insisted on the Condition Precedent not because of any well-founded fear of legal exposure but in order to secure a

lever with which to fight a rear-guard action to derail the entire Compromise.

166 Having said that, the fact remains that on the evidence before me, I cannot find TCS in breach of her implied duty to cooperate to the extent reasonable in all the circumstances. Her cooperation was undoubtedly begrudging and far from wholehearted. But TCS went as far as the law required her to. The failure to fulfil the Condition Precedent was, I find, not due to any breach of contract by TCS.

167 Once the Condition Precedent failed, therefore, the Compromise between the parties came to an end. Both parties ceased to be under any duty to perform their obligations under the Compromise. All of this happened without TCS coming under any liability in damages to the plaintiffs for that state of affairs. The remainder of the plaintiffs' claim in OS921 therefore fails and is dismissed.

168 The result is that the parties are thrown back upon their legal rights as they stood at the time they entered into the Compromise on 19 July 2011. That is the subject-matter of S570 and S170, to which I now turn.

**S570: The main suit**

***Introduction***

169 In S570 the plaintiffs assert a claim to own in equity the following assets:

(a) the AAS Shares;

(b) the shares registered in NGO's name which are derived from the Bajumi Shares;

(c) the AAIE Shares registered in TCS's name;

(d) the Tan family funds; and

(e) the 1.419m EnGro registered shares in TCS's name.

The last claim, as I have pointed out at [18] above, is not one which has been pleaded.

170 The plaintiffs rely on a resulting trust analysis for most of their claims.

171 The defendants resist the claims. They argue that (a), (c) and (d) are assets that have always belonged beneficially to TKT and which the legal owners now hold on trust for his estate. On the other hand, they argue that (b) and (e) are assets which TKT gifted in his lifetime to NGO and TCS respectively.

172 Before I analyse the parties' submissions on the ownership in equity of these five classes of assets, it is apt to set the context for my analysis with some general observations and findings of fact.

***General observations and findings of fact***

*The siblings' relationship with TKT*

173 First and foremost, it is clear to me that TKT was an autocratic patriarch. He expected and received the utmost respect from his children and from his wife, NGO. This was the case when he was in charge of AAS. It remained the case even after he withdrew from active management of the family

businesses. It is also undoubtedly true that even in his dotage, right up until his death in November 2008, he continued to expect and command considerable respect from his children. However, it is also true that his children's respect for his authority diminished over time, and that his children did not hold or display that respect in equal measure.

174 TKT was an astute entrepreneur with considerable acumen. Through his hard work, TKT laid the foundation of what is today the Tan family's successful business. He did that alone, before the children became involved in the business, with only NGO's help and support. Thereafter, from the time TKT moved his residence to Hong Kong, TKT passed the burden of day-to-day management to his sons (see [56] above). Eventually, he even ceded strategic oversight of the family business to his sons, primarily to TCG and to a lesser extent to TYK.

175 His children, with the exception of TCS, spent the better part of their lives working in various parts of the family business or in related companies such as EnGro (see [42] – [54] above). TKT placed a heavy burden of expectation on each of his sons, especially his eldest son, TCG. In contrast, TCS left Singapore and AAS in 1974 and was not involved in AAS until almost 20 years later when she was re-appointed a director of AAS in 1995 to help deal with the Bajumi litigation. It was only after the Bajumi litigation was settled that TCS started exerting more influence in AAS (see [42] and [118] above).

176 As the patriarch of the Tan family TKT drew no distinction between his assets, his wife's assets, his companies' assets and his children's assets. I have no doubt that he considered them all to be his property to vest, divest and dispose of as he saw fit and that he continued to hold that view, encouraged by TCS, right up until his death. The fact that TKT, throughout his lifetime, saw all of the Tan family assets as his own cannot, of course, make it so.

177 Similarly, NGO and the Tan siblings gave little thought to the legal implications of the asset transfers they carried out within the family, whether of their own volition or at TKT's direction. On occasion, each of them has transferred assets to another family member out of respect for TKT and on his instructions, and having trust in the transferees, without considering or necessarily intending any fundamental proprietary consequence by the transfer.

178 It is axiomatic, however, that every transfer of an asset must leave the proprietary rights in that asset vested somewhere. Where those rights are vested is not always determined by the transferor's intent in carrying out the transfer. That intent is only one of the pieces of the proprietary puzzle. In any event, to the extent that the transferor's intent is directly relevant to the proprietary puzzle, it is the transferor's intent at the time of the transfer. A transferor, whether in person or through his personal representatives, cannot retrospectively alter the proprietary consequences of a transfer simply by attributing a different subjective intent to the transfer years or even decades later.

179 I have no doubt that TKT's five children loved, respected and obeyed him. But because of this, I find that it is not safe to draw inferences about the legal rights of the parties purely from their conduct in acceding to TKT's wishes from time to time. This is what the defendants invite me to do. They submit that the reason TKT's directions for the management of AAS were heeded was because he retained beneficial ownership of all the shares he transferred away over the years. [note: 169] They point, for example, to the fact that TCH readily handed over the originals of all of AAS's share certificates to TKT in December 2007, when he demanded them. That was more than 30 years after TKT had stepped down as a director of AAS. [note: 170] They also point to how TKT had a say in dealing with AAS's assets such as the Cluny Park Properties. [note: 171] I am unable to accept this submission. The Tan family, like many traditional families headed by a patriarch, did not defer to the

patriarch's wishes because they felt a legal obligation to do so. They did so because of their respect for him as their father and as the founder of the family business. I therefore reject the defendants' submission that the children's deference to TKT over the years is, in itself, probative of the parties' proprietary rights.

180 TCS's submission in this regard was further weakened by her concession in cross-examination that she had merely assumed, and did not know as a fact from her own personal knowledge, that her siblings consulted TKT and abided by his wishes in connection with AAS because he was in fact the beneficial owner of AAS. The relevant part of the cross-examination is as follows: [note: 172]

Q: … How are you able to give this evidence that your brothers consulted your father and tried to abide by his wishes on account of his ownership, as well as his relationship with your brothers? How are you able to give that evidence? Is this something you know for a fact?

A: Yes, in regards to the 1983 dividends, instructions were given by TKT that the dividends were to be sent back to him, and that the dividends were sent through me because I was then in the US, and I had already become a non-resident Singaporean. So the dividends were sent to me, and then I forwarded them on to TKT.

Q: But, Mdm Tan, did your father give these instructions as a shareholder of the company? Is that apparent in the instructions given by TKT? "Yes" or "no"?

A: He gave the instructions as the owner of the company.

Q: Are you able to refer us to the document so that we can take a look at it and see if it bears out what you've just said?

A: I think this was instructions given to [TCG] to do so. To, you know, send the dividends to me.

…

Q: *How did you know that your father had issued those instructions as a shareholder?*

A: *I recall [TCG] calling me to say that Father wants these dividends to be sent to him via me.*

Q: *Yes, so your brother said, "Father wants those shares or these dividends", he never said "The shareholder of the company wants these shares", so how did you know that your father gave those instructions in the capacity as shareholder and not in the capacity as Father?*

A: *I just assumed, this is – Father owns the company; he had the rights to what he wants to do with the dividends, and he wanted the dividends to be sent to him.*

[emphasis added]

Further, TCS also conceded in cross-examination [note: 173] that even if TKT did not own the shares in AAS in equity, TKT's children, including her, would still have acted in the same manner by consulting him and abiding by his wishes. [note: 174]

*TCS's relationship with her parents*

181 I do not doubt that TCS, like the rest of TKT's children, deeply loves both of her parents. It is also undisputed that she has been the main caregiver for her aged parents since 1993. [note: 175] But I find that TCS is, or perceives herself to be, alienated from her family – and particularly from her siblings, as opposed to her parents – for two reasons. First, TKT tended to favour his sons over his daughters. That is unfortunate, but it is typical of his generation. I have no doubt that TCS, given her undoubted intelligence and her status as the eldest child, felt that favouritism most acutely. Second, TCS was, by her own election, the only child of the family who did not build a career in the family business. TCP and TCH devoted their entire working lives to the family business. TCG and TYK each gave up their professions to build their careers in the family business. TCS deliberately chose to build her career, successful as it was, outside the family business.

182 All of this clearly still rankles with TCS. As TCS herself puts it, she believes that TKT saw her as "the unmarried daughter [who] didn't ... live up to his aspirations of a successful entrepreneur: [note: 176]

| | |
|---|---|
| Ct: | *Dr Tan, you keep mentioning the sons. Are you saying it was different for the daughters?* |
| A: | *He had high hopes for the sons.* |
| Ct: | I understand, but is there a reason why you don't speak of the daughters? |
| A: | *For the daughters, I was a black sheep.* |
| Mr Khoo: | Precisely. |
| Ct: | I wasn't asking about you, Dr Tan. I was asking you why, in your characterisation of your father's aspirations, you mention only the sons. |
| A: | I had opted out of the family business. |
| Ct: | I'm not asking about you. |
| A: | Yes, so his hopes were for the sons. |
| Ct: | Your father had two daughters. |
| A: | Yes. |
| … | |
| Ct: | That is why I'm not asking about you, I'm asking about the daughters. |
| A: | Choo Pin was married and, you know, he also gave her an oil mill to run, Singapore Oil Mill. Until that became, you know – I don't know the history, didn't work out well, so she joined the company. |
| Ct: | I wasn't asking for specifics. I was asking why you mentioned only the sons. I think you mentioned your father's aspirations for his sons twice in your last answer – |
| A: | Yes. |
| Ct: | -- that's the only reason I asked you whether you were suggesting that he didn't have the same aspirations for his daughters. |
| A: | *He had the same, except that, you know, the unmarried daughter didn't, you know, live up to his aspirations of a successful entrepreneur.* |

Ct: Again, I'm not asking about you Dr Tan. I'm asking about the daughters as a class. Sons as a class, daughters as a class.

A: *Yes, you could – yes, he – you know, he was very focused on the sons.*

Ct: I see.

Mr Khoo: *He looked to his sons to carry on the business he started 50 or 60 years ago?*

A: *Yes.*

[emphasis added]

183 In 1993, TCS made the decision to re-enter her parents' lives after having been away for the most part of the two preceding decades. TKT and NGO gradually fell under TCS's influence over the years. This influence became most pronounced after the Bajumi litigation ended in 2004. It is impossible to say whether TCS acquired and exercised this influence as a result of a deliberate plan or as the natural consequence of the increase in the amount of time which TCS spent with TKT and NGO when they were most in need of her care and required the most assistance in decision-making. But the influence was real in the case of TKT and is real and ongoing in the case of NGO.

184 TCS's influence over NGO, at least in respect of these proceedings, was apparent to all who were in court when NGO gave evidence. She was not able to give coherent answers on many of the key issues in these proceedings and repeatedly asked her cross-examiners to ask TCS instead. She also testified that TCS "is the only daughter that take [*sic*] good care of me [and] she take care of my health and everything" and that "if I [had] anything, I [would] ask [TCS] to help me to do". [note: 177] Sadly, TCS's increasing influence over her parents was accompanied by their increasing distance and expression of displeasure towards their other children.

185 I make a related finding that TCS played a significant role in influencing TKT's and NGO's decisions after the Bajumi litigation ended in 2004. During that period, TKT and NGO executed numerous documents. I find that TCS was involved and exercised influence over TKT and NGO in respect of each of these documents. Her involvement included, at the very least and on her own account, liaising with and giving directions to the solicitors who prepared the documents, helping TKT assemble the documents and information for the preparation of the statutory declarations, and giving the solicitors the details of the share transfers between the family members. [note: 178] It was wholly uncharacteristic of TKT to document transactions and events with the assistance of lawyers. Until then, he had seldom resorted to formal documents, especially on matters internal to the Tan family. [note: 179] It is clear to me that all of these documents were generated in order to advance a particular case that TCS had in mind and without regard for historical accuracy or TKT's and NGO's actual intentions.

186 I now turn to discuss the relevance of these documents together with a number of other documents which the parties executed.

***The parties' subsequent declarations***

*The subsequent declarations that are relied on*

187 The key documents that post-date the transfers of the assets in issue are:

(a) A will executed by TKT and a joint statement executed by TKT and NGO on 21 April 2006. [note: 180]

(b) A letter of undertaking executed by TCP and TCS on 21 December 2006, which records TCP's and TCS's promise that they will distribute the AAIE shares in their names to their siblings and to NGO in the agreed proportions that had been set out in the letter.

(c) A joint will executed by TKT and NGO on 30 March 2007. They executed this will while TKT was hospitalised in Hong Kong. The terms of this will are entirely different from the terms of earlier will he had executed in 2006. Under this 2007 will, the bulk of TKT's and NGO's estate was to be applied to charitable causes. [note: 181]

(d) A deed of gift executed by TKT on 31 January 2008. [note: 182] In the deed, TKT declared that NGO was holding 2.22% of the shares in AAS on his behalf and that he gifted those shares to her absolutely. The deed further records that TKT had made a gift of the Bajumi Shares to NGO after the 2004 Family Meeting (see [85] above).

(e) TKT's SDs purportedly executed on 31 January 2008 and 8 May 2008 respectively. These two documents form the pillar of TCS's case. Their admissibility and authenticity are fiercely disputed by the parties. The first statutory declaration sets out TKT's entire life story and records that TKT retained the beneficial ownership of all the assets which he had transferred to the plaintiffs.

(f) The Joint Will. The Joint Will was intended to supersede all preceding wills. The Joint Will appoints TCS as TKT's and NGO's sole executrix and trustee. [note: 183] Under the terms of the Joint Will, TKT and NGO agreed that all the income of the assets of the one who predeceased the other would be used for the benefit of the survivor for the rest of his or her life. [note: 184] After the survivor's death, the bulk of the estate would be devoted ultimately to various charitable causes in Hong Kong, China and Singapore. [note: 185]

(g) The Joint Codicil supplements the Joint Will and declares, amongst other things, that TCS was added as a joint tenant in 2003 to a property which TKT and NGO owned in Sydney, and that TCS was to inherit their flat located at 504 Bowen Mansion, Hong Kong after they had both died. The validity of the Joint Codicil is not challenged by the plaintiffs.

(h) A letter of offer written by TKT and NGO to their children on 16 August 2008. [note: 186] TKT and NGO inform their children in this letter that they will not be giving the children any shares in AAS but instead, were prepared to give them shares in AAIE.

(i) A draft of a deed of family arrangement and release that was circulated to the siblings at the reading of the Joint Will on 2 April 2009. [note: 187] The draft was subsequently executed on 3 August 2009. [note: 188] The defendants submit that this document is wholly inconsistent with the plaintiffs' alleged entitlements to the assets in question and that therefore their lack of objections to the document is telling. [note: 189]

The rule in *Shephard v Cartwright*

188 To analyse the effect of these subsequent statements on the parties' proprietary rights, I begin with the case of *Shephard v Cartwright* [1955] AC 431.

189 The facts in *Shephard v Cartwright* were broadly similar to the present case. A father caused a large part of the shares in a company for which he had subscribed to be allotted in varying proportions to his three children. There was little or no evidence as to the circumstances in which the allotments were made. In the years that followed, the three children complied with their father's instructions and signed various documents without understanding what they were doing. After the father passed away, the children started an action against the executors of the father's estate and asserted a beneficial right to the shares that were in their names. The House of Lords allowed the children's claim, holding that that the presumption of advancement applied and that the children therefore did not hold the shares on resulting trust for their father's estate.

190 Of particular relevance in *Shephard v Cartwright* is the way in which the House of Lords dealt with acts and declarations made by the parties subsequent to the relevant transactions. At 445–446 of the decision, Viscount Simonds stated:

> It must then be asked by what evidence can the presumption [of advancement] be rebutted, and it would, I think, be very unfortunate if any doubt were cast … upon the well-settled law on this subject. It is, I think, correctly stated in substantially the same terms in every textbook that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from Snell's Equity, 24th ed., p. 153, which is as follows:
>
> > *"The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration … But subsequent declarations are admissible as evidence only against the party who made them, and not in his favour."*
>
> … the burden of authority in favour of the broad proposition as stated in the passage I have cited is overwhelming and should not be disturbed.
>
> [emphasis added]

There is, as Viscount Simonds pointed out at 446:

> … room for argument whether a subsequent act is part of the same transaction as the original purchase or transfer, and equally whether subsequent acts which it is sought to adduce in evidence ought to be regarded as admissions by the party so acting, and whether, if they are so admitted, further facts should be admitted by way of qualification of those admissions.

191 Three principles directly applicable to the facts emerge from Viscount Simonds's speech:

(a) The general rule is that subsequent acts and declarations which are *in favour* of the party who made them are not admissible as evidence to rebut the presumption of advancement.

(b) An exception to this general rule admits subsequent acts and declarations which are so closely connected in time to the original act, *ie*, the purchase or the transfer, as to be part of the same transaction.

(c) Declarations that are against the interest of a party to the transaction fall outside the scope of the general rule.

192 On the facts of this case, a subsequent declaration may be admitted under the proposition at [191(c)] above in two different ways:

(a) where a subsequent declaration of *TKT* tends to show that he intended to give a certain asset to a particular transferee by transferring that asset to that transferee; and

(b) where a subsequent declaration of a *transferee* tends to show that the transferee acknowledged receiving that asset as trustee and not as absolute owner.

*A new approach?*

193 This general rule has been accepted in Singapore. In *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410, the Court of Appeal said at [34]:

> … The logic for [the rule in *Shephard v Cartwright*] makes a lot of practical sense. Otherwise, it would mean that a party could advance his own case by making unilateral statements.

194 But counsel for TCS argues for a new approach that eschews a rule excluding subsequent acts which are in favour of the party who made them but allows them to be proved and leaves it to the court to attach to that evidence the appropriate weight. This new approach was referred to by Belinda Ang Saw Ean J in *United Overseas Bank Ltd v Giok Bie Jao and others* [2012] SGHC 56. After setting out the rule in *Shephard v Cartwright*, Ang J went on to say at [16]:

> … However, in the latest edition the authors of *Snell's Equity* (32nd Ed, 2010) suggested that such evidence should not be excluded but left to the court to decide on the weight to be given to it (see emphasis in bold below). Para 25-013 states:
>
> > *Contemporaneous and subsequent conduct*. The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration. It has been held that subsequent acts and declarations may only be admissible as evidence against the party who made them, and not in his favour. ***The preferable approach nowadays may be to treat the parties' subsequent conduct as admissible even in their own favour, and to leave the court free to assess its probative weight. This approach would be consistent with the looser significance attached to the presumptions of resulting trust and of advancement in the modern authorities.***
> >
> > …
>
> While local courts have previously expressed approval of the rule originally cited in *Shephard v Cartwright*, the new approach seems eminently sensible. However, it is unnecessary for me to express a formal view on the matter to dispose of this case and I leave it to another forum to ponder on the new approach.
>
> [emphasis in original]

195 Ang J's observation that the new approach is "eminently sensible" is, as she herself acknowledges, *obiter*. The present case too does not require me to conclude whether the rule in *Shepard v Cartwright* continues to apply. To my mind, the new approach is not inconsistent with the general rule insofar as it accommodates the caution with which a court must approach subsequent

self-serving declarations, because of the risk of a party using post-transaction declarations with hindsight to recast their initial intent in order to bolster the case they now advance. The principle that self-serving evidence is of little probative value underpins both the established approach which excludes it entirely and the new approach which makes its self-serving potential ultimately a matter of weight.

*TKT's declarations are inadmissible or not deserving of weight*

196 Returning to the present case, I find that even if I accept that the new approach ought to be adopted, little or no weight should be given to the subsequent declarations on which the parties rely, especially those on which the defendants rely. The subsequent declarations listed at [187] above that are relied on by parties are too far removed in terms of time from the transactions in question. On no view could they be plausibly be argued to be part of the transactions in question.

197 The subsequent declarations made by TKT that the defendants rely on are also highly self-serving in nature. What TKT says about his intention two decades after the relevant events, at a time when he might have wished for whatever reason to reassert an interest in shares, cannot alter the fact that the transactions two decades earlier carried proprietary consequences which fixed ownership at that time. In the words of Viscount Simonds in *Shephard v Cartwright* at 450, "[h]e may well have changed his mind at a later date, but it was too late".

198 Further, the subsequent statements such as TKT's SDs and his letters to his children were executed and written after TCS began to spend more time with NGO and TKT and came to exercise influence over them. That is another ground on which I find their contents an unreliable indication of TKT's intent at the time of the transfers.

199 Lastly, I accept the plaintiffs' submission that it is appropriate to draw an adverse inference against the defendants for not calling as witnesses the lawyers who prepared TKT's SDs (*ie*, John Brewer and Hwang Sok Inn). [note: 190] This omission serves only to cast greater doubt over these documents and whether they genuinely express TKT's thinking, whether at the time of the transfers or even at the time he made the SDs.

*TKT's subsequent declarations against interest are admissible*

200 I move on to consider whether any of the subsequent declarations by TKT are declarations against his interest so as to be admissible under the rule in *Shephard v Cartwright* (see [191(c)] above).

201 There are subsequent declarations by TKT which are very clearly against his interest. On 6 December 1996, TKT affirmed an affidavit in the Bajumi litigation. In that affidavit, his evidence unequivocally asserted that he then had no interest of any kind in the shares of AAS. [note: 191] For example, when Bajumi Wahab suggested to TKT that the Tan and the Bajumi families should part ways, TKT said that he replied that he "no longer had any say in the matter as [he] was no longer, and had not been[,] a shareholder in [AAS] for a long time". [note: 192] At another place in the same affidavit, TKT said that he repeatedly told Bajumi Wahab that he "was in no position to speak since [he] was no longer a shareholder of [AAS]". [note: 193] When threatened by Bajumi Wahab, TKT replied that any losses would not be his but that they would be his children's instead.

202 These statements are all contrary to TKT's interest. They clearly show TKT saying that he not only had no legal interest in any shares in AAS but also that it was his children and not him who

owned the beneficial interest in shares in AAS.

203 TCS sought to explain away TKT's statements by saying that her father was speaking in "litigation mode". [note: 194] When pressed to explain what she meant by "litigation mode", TCS said that while in "litigation mode", one "might rephrase or put certain facts or statements not necessarily explicitly". [note: 195]

204 TCS was then confronted with another of TKT's affidavits filed in the Bajumi litigation, this one filed on 5 March 1998. In this affidavit, TKT made several additional statements which suggested again that he no longer considered that he had any beneficial interest in AAS shares. [note: 196] Once again, TCS maintained that her father was in "litigation mode". I reproduce the relevant part of TCS's cross-examination which sheds light on what she means by "litigation mode":

| | |
|---|---|
| Q: | Well, this is what you father states in his affidavit. |
| A: | Yes. So, as you say, litigation mode, this is the second of two affidavits filed for that litigation. |
| Court: | But you're not suggesting, by using the phrase "litigation mode", that your father would be lying to the court? |
| A: | No, but I – well, he lied then, you know. … |

205 I attach great weight to these statements by TKT. They are statements against his interest in the context of the present proceedings in that the statements disclaim ownership of an asset which his estate now seeks to claim as his property. It is, of course, true that these statements were self-serving statements in the context of the Bajumi litigation. They supported TKT's case that the core dispute in the Bajumi litigation was between the Bajumi family and his children, and not with him. I also bear in mind that these statements might be said to carry less weight because they came over a decade since the last of the relevant allotments or transfers of shares. But TKT made these statements as solemn, sworn declarations on oath and subject to the penalties for perjury. I do not consider TKT to be a dishonest person, whether in "litigation mode" or otherwise. These statements establish very clearly that by 1996, TKT did not consider himself to be the owner of any shares in AAS whether at law or in equity. The defendants' case is based on TKT owning the AAS shares in equity without interruption from the time of their allotment to date. In the face of these statements by TKT, the defendants' case is unsustainable.

206 I cannot leave this part of the case without recording my dismay at seeing a child traduce her father in this unjustifiable and unseemly way, particularly where her father is no longer able to defend his good name.

*The plaintiffs' subsequent declarations against interest*

207 I turn to consider whether any of the acts and declarations of the plaintiffs are admissions against their interest and therefore admissible. Viscount Simonds made the important point in *Shephard v Cartwright* that the conduct of a child can constitute an admission of the father's original intent only if the child knew the material facts at the time of the conduct. As Viscount Simonds said (at 446):

> … I conceive it possible, and this view is supported by authority, that there might be such a

course of conduct by a child after a presumed advancement as to constitute an admission by him of his parent's original intention, though such evidence should be regarded jealously. *But it appears to me to be an indispensable condition of such conduct being admissible that it should be performed with knowledge of the material facts*. In the present case the undisputed fact that the appellants under the father's guidance did what they were told without inquiry or knowledge precludes the admission in evidence of their conduct and, if it were admitted, would deprive it of all presumption value. …

[emphasis added]

In *Shephard v Cartwright*, the children merely obeyed the father's instructions and did what they were told without inquiry or knowledge. Their obedience was not conduct from which an inference rebutting the presumption of advancement could be drawn.

208 The plaintiffs in the present case were not as clueless as the appellants in *Shephard v Cartwright*. The fact remains, however, that they deferred to TKT's directions and dealt with assets that were in their names according to TKT's wishes. As I have observed at [179] above, I do not consider it appropriate to draw inferences about their proprietary rights in assets which they transferred away simply from the fact that they did so at TKT's suggestion or on his direction. It appears to me far more likely that they acted on his directions out of love and affection and a feeling of moral duty than from any acknowledgment that he continued to be the owner in equity of the assets.

*Conclusion on subsequent declarations*

209 To conclude, save as set out at [200] – [206] above, it is inappropriate to draw any inferences from any of the acts or declarations of TKT or of the plaintiffs after the various assets transfers took place.

***Beneficial ownership of the AAS Shares***

210 Having covered the preliminary issues, I now give the grounds of my decision in relation to each group of assets which the plaintiffs claim to own in equity.

*Summary of the parties' positions*

211 To summarise: the plaintiffs claim the AAS Shares, which are 2.54m shares in AAS registered in TCS's name. These shares went through two sets of transfers. The first set involved a series of transfers from TKT to the plaintiffs, while the second set was a series of transfers from the plaintiffs to TCS.

212 The plaintiffs' position is that, with one exception, all of the AAS Shares which TKT allotted to them or transferred to them before 1985 were gifts to each of them. The one exception is TKT's transfer in 1985 of 19,710 shares in AAS to TCH (see [63] above). I analyse this transfer more fully at [222] – [226] below. The plaintiffs say no resulting trust arises in relation to the gifted shares because the presumption of resulting trust is rebutted either by direct evidence of TKT's intent to benefit each recipient, or by the presumption of advancement. In the alternative, the plaintiffs rely on a common intention constructive trust or the doctrine of proprietary estoppel.

213 In relation to the second series of transfers from the plaintiffs to TCS, the plaintiffs' evidence is that they had no intention whatsoever to benefit TCS personally by these transfers. Consequently,

they argue, TCS holds these shares on resulting trust for each plaintiff in proportion to that plaintiff's percentage of the Tan family's total block of shares in AAS in 1985, ignoring for this purpose the 50% block of AAS shares held by the Bajumis (see [64] above).

214 The defendants' case, on the other hand, is that TKT never parted with the beneficial ownership of the AAS Shares. [note: 197] They submit that at all material times, the parties held all the shares which they received either from TKT or on his direction on a bare trust for TKT. Thus, they submit, the various transfers of the AAS Shares had no implications on TKT's beneficial ownership of the shares. [note: 198] On their case, TCS now holds all of the AAS Shares on trust for TKT's estate alone.

215 It is undisputed that no shares were ever allotted or transferred subject to an express trust. The question then is whether: (i) a resulting trust arose in favour of TKT in the first set of transfers; and (ii) whether a resulting trust arose in favour of the transferors in the second set of transfers.

*The law on resulting trusts*

216 A presumed resulting trust arises in favour of A where A provides the consideration, wholly or in part, for the acquisition of property, legal title to which is vested in B alone or in the joint names of A and B. It also arises where A makes a voluntary transfer of property, either into the sole name of B or into the joint names of A and B, without receiving any consideration in return. In both circumstances, a rebuttable presumption of law will arise that A did not intend his contribution to the acquisition or his voluntary transfer to be a gift to B. B therefore holds his interest in the property on trust for A (though in the former case, this will be in proportion to their respective contributions to the property). This is the presumption of resulting trust.

217 Independent of the presumption of resulting trust, a resulting trust may also arise so long as it can be shown that the transfer was not intended to benefit the transferee: see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [43] ("*Chan Yuen Lan*") citing *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [35]. In other words, a resulting trust may arise either by relying on the presumption of resulting trust or by adducing direct evidence to show that the transferor had no intention to benefit the transferee. The Court of Appeal in *Lau Siew Kim* further indicated (at [59]) that direct evidence is to be preferred over the use of presumptions, for only where "there is no direct evidence that may reveal the intention of the parties … will there be any necessity to *infer* or *presume* intention" [emphasis in original].

218 If there is direct evidence to show that the transferor did not intend to benefit the transferee, a resulting trust arises. If there is no direct evidence available but the parties' relationship is such that a presumption of resulting trust arises, the court then moves to the next stage of analysis. There are two ways to rebut the presumption of resulting trust: (i) by using direct evidence to show that A did in fact intend to make a gift to B or (ii) by displacing the presumption of resulting trust with the presumption of advancement. The presumption of advancement arises only when a gift is made in limited, recognised relationships such as a parent-child relationship, a relationship involving persons in *loco parentis* to a child or a spousal relationship: see *Lau Siew Kim* at [56].

219 It bears reiterating that, on the resulting trust analysis, the parties' beneficial interests are fixed once and for all at the time of the transfer, disregarding any events which occur *after* the transfer including a change in the parties' intentions.

*First set of transfers: no resulting trust in favour of TKT*

220 I turn to consider whether a resulting trust arose in favour of TKT in each of the transfers. The relevant transfers are set out at [58] to [63] above. When TKT allotted or transferred the AAS Shares to the plaintiffs, the plaintiffs must have taken those shares either as absolute owners or as trustees.

221 In brief, I find that TKT made a gift to his children of all the shares which he allotted or transferred to them before 1985. This finding applies to the shares which TKT allotted to his children in 1968 and 1974, to the shares which TKT transferred to his children in 1975 and 1985, as well as to the shares which the Bajumi family transferred to the children in 1979, 1980 and 1981 for which TKT provided the consideration.

(1) TKT's transfer of 19,710 shares to TCH in 1985

222 The only one of this first set of transfers for which the transferee claims to have given TKT consideration for the transfer is TKT's transfer of 19,710 shares to TCH in 1985 (see [63] above). TCH's evidence is that he paid TKT $20 per share, or a total of $394,200, for these 19,710 shares. He says, therefore, that he purchased these shares and did not receive them as a gift from TKT. TCH's evidence is that the $394,200 which he paid TKT came in part from TCH's interest in a company called Goodyear Timber and in part from his own funds.

223 I do not accept TCH's evidence. I find it more probable than not that TKT either transferred the shares to TCH without consideration or that the ultimate source of both the shares and the $394,200 in consideration for these shares came from TKT.

224 There is nothing to suggest that this particular transaction by which TKT transferred his shares to a child was any different from all the other and earlier transactions in which TKT transferred his shares to his children. It is undisputed that TKT received no consideration for any of those other transfers. There does not seem to be any reason why TKT would put this transfer to TCH on a different footing from all the other transfers to all his children, including TCH, and require TCH to pay for these shares and only these shares.

225 Furthermore, if, as the plaintiffs assert, TKT transferred these 19,710 shares to TCH in order to increase TCH's shareholding in AAS and reduce the gap between TCH's share of AAS and his two older brothers' share of AAS, [note: 199] it is even more curious that TKT should have required TCH to pay for these shares when he did not require TYK or TCG to pay for their larger shareholdings with which TCH was supposedly being allowed to catch up.

226 I therefore find that, like all the other transfers from TKT to his children, TCH provided no consideration to TKT for the 19,710 shares in AAS which TKT transferred to TCH in 1985.

227 I now turn to consider whether there is a presumption of resulting trust in relation to all of the transfers which comprise this first set of transfers.

(2) Presumption of resulting trust arises

228 I start by stating that there is no direct evidence of TKT's intent when he allotted or transferred any of the shares to any of the plaintiffs. Even TCS herself concedes that TKT never told his children that they were to hold the shares on trust for him. [note: 200] But the fact that the plaintiffs provided no consideration for any of the shares suffices to raise a presumption of resulting trust in favour of TKT.

229 I move on to consider whether the presumption of resulting trust is rebutted.

(3) Direct evidence that rebuts the presumption of resulting trust

230 I am satisfied that there is sufficient evidence to rebut the presumption of resulting trust. The plaintiffs have proved, on the balance of probabilities, that TKT intended to make a gift of the shares to his children when he allotted or transferred shares to them or provided the consideration for shares transferred into their names. The plaintiffs concede that they did not have knowledge of the transactions, especially the initial allotments, until some years later. But this does not prevent the presumption of resulting trust from being rebutted or prevent the shares from being gifts to them: see *Shephard v Cartwright* at 450.

231 I am persuaded on two grounds. First, I accept the plaintiffs' evidence that TKT transferred the shares to them as an incentive for them to work hard in AAS. The plaintiffs testified that TKT represented to them from the time they started work at AAS, and thereafter from time to time throughout the years, that they had a stake in AAS and should thus work hard at cultivating the family business. [note: 201] This explains why TKT made all of them, with the exception of TCS, return to AAS to work after they completed their tertiary education. The shares which TKT vested in his children could not have been an incentive to them to work hard if they did not belong to the children absolutely. I therefore find that TKT's intent was that all of the shares he allotted or transferred to his children should belong to his children absolutely.

232 Second, it is, to my mind, not a coincidence that as at 1985, the allotments and transfers by TKT, as well as the transfers that he directed, led to his three sons holding the bulk of the shares that the Tan family had in AAS. It will be recalled that the Tan family and the Bajumi family each held 50% of the share capital of AAS in 1985. TKT's three sons held 77.8% of the 50% of the shares in AAS that belonged to the Tan family. [note: 202] In contrast, TCP and TCS each held 8.89% and NGO held 4.44% of the Tan family's 50% of AAS. I find it more probable than not that this shareholding structure was by TKT's design. As I have observed, TKT wanted his sons to play an increasingly larger role in AAS and eventually to take over the business from him. This explains why TCG, TYK and TCH held more shares as compared to TCS and TCP, the latter who had worked in AAS for a similar length of time to TKT's sons.

233 It also the case that, even as between his sons, TKT placed a greater burden of expectation on TCG and TYK as compared to TCH. This explains why TCG and TYK have equal shareholding in AAS. It also explains why TCH's shareholding is less than TCG's and TYK's. If TKT's intent was that none of the plaintiffs should hold their shares absolutely, the legal ownership of the shares would be of no consequence at all. There would have been no need for TKT to structure the shareholdings so carefully to reflect his own beliefs, desires and expectations.

234 I am therefore of the view that there is sufficient evidence to rebut the presumption of resulting trust in this case. TKT, I find, had the intention to allot or transfer the shares to the plaintiffs as gifts.

235 In any event, I accept the plaintiffs' submission that even if these inferences which I have drawn from the direct evidence are insufficient to rebut the presumption of resulting trust, the presumption of advancement operates. The Court of Appeal held in *Lau Siew Kim* at [68] that there is no reason to preclude adult children from benefiting from the presumption of advancement. This is because the presumption of advancement rests no less on affection than on dependency. The presumption logically applies to all gratuitous transfers from a parent to *any* child, regardless of the age of the child or the degree of dependency of the child on the parent: see *Lau Siew Kim* at [68];

*Pecore v Pecore* [2007] 1 SCR 795 at [90] to [103]. Thus, the fact that TKT's children were adults at the time of the first set of transfers is quite irrelevant to the application of the presumption of advancement.

236 The defendants have also failed to adduce evidence that sufficiently rebuts the presumption of advancement in respect of the various transfers from TKT to the plaintiffs.

(4) Conclusion on the first set of transfers

237 I therefore find that a presumption of resulting trust arose in relation to each transfer within the first set of transfers by TKT. I find, however, that that presumption of resulting trust in respect of each transfer is rebutted by direct evidence that TKT's intention was to allot or transfer all of these shares to his children as gifts. In the alternative, I find that the presumption of resulting trust in respect of each transfer is rebutted by the presumption of advancement that arises by virtue of the father-child relationship that subsisted between TKT and each transferee.

238 In conclusion, each registered shareholder was the absolute owner of the AAS shares which he or she held in 1985. To reiterate, the shareholding in 1985 was as follows (see [64] above):

| **Shareholder** | **Number of shares** | **Percentage of shareholding** |
|---|---|---|
| NGO | 39,420 | 2.22% |
| TCS | 78,840 | 4.44% |
| TCG | 243,090 | 13.70% |
| TYK | 243,090 | 13.70% |
| TCP | 78,840 | 4.44% |
| TCH | 203,670 | 11.48% |
| Bajumi family | 886,950 | 50.00% |
| Total | 1,773,900 | 100.00% |

*The second set of transfers: resulting trusts in favour of transferors*

239 I move on to ascertain the proprietary consequences of the second set of transfers, by which the plaintiffs transferred their AAS shares ultimately to TCS. The relevant transfers are set out at [67] to [75] above. In brief, I find that a resulting trust arose in favour of each plaintiff over the shares comprised in each transfer to TCS.

240 In relation to TCP's transfer of shares to TCS in 2007, I am satisfied that there is sufficient evidence that TCP had no intention whatsoever for the shares to be a gift to TCS. This is clear from the statutory declaration which she executed a day before the transfer expressly denying any such intention. Thus, a resulting trust arises in favour of TCP in relation to these shares.

241 As for the rest of the transfers to TCS by TCG, TYK and TCH, I have before me the direct evidence of each transferor that he had no intention whatsoever to make a gift of the shares, whether to TCS, to TKT or to anyone else. To explain these transfers, the plaintiffs have given

evidence that they were pursuing a plan to consolidate the Tan family's AAS shares in TCS's hands as a first step to setting up a Tan family trust. I have found that no such trust exists (see [294] below). However, I do accept that the parties intended to establish such a trust and that these transfers were part of the preparatory steps to doing so. I therefore accept the plaintiffs' evidence of an intention to establish a Tan family trust as direct evidence of their reason for transferring their AAS shares to TCS, and as corroborating their oral evidence denying any intention whatsoever that these transfers should, in themselves, immediately convey away from them absolute ownership of the AAS shares.

242 In any event, even without direct evidence, a presumption of resulting trust arises in relation to each transfer to TCS because she provided no consideration for any of these transfers. TCS has not provided any evidence to show that the plaintiffs intended to make a gift of those shares, whether to her or to TKT or to anyone else. She has failed to rebut the presumption of resulting trust. Whether the transfers took place on TKT's instructions or on these plaintiffs' own initiative, I am satisfied that TCG, TYK and TCH had no intention to divest themselves of absolute ownership of these shares.

243 Further, TCS is wholly unable to rely on the presumption of advancement to rebut the presumption of resulting trust which I have found arises in this case. This is because the presumption of advancement does not apply in a sibling relationship. In *Chan Gek Yong v Chan Gek Lan* [2008] SGHC 167, Woo Bih Li J cited *Gorog v Kiss* [1977] 16 OR (2d) 569 and *Loo Hon Kong v Loo Kim Lim @ Loo Kim Leong* [2004] 4 AMR 591 and remarked at [17] that "there exists no presumption of advancement between siblings". The presumption that TCS holds her shares on resulting trust for the plaintiffs stands without rebuttal.

244 It therefore follows that TCS holds the AAS Shares on resulting trust for each plaintiff in proportion to that plaintiff's percentage of the Tan family's total block of shares in AAS in 1985, as set out at [238] above. As a trustee of these shares for the plaintiffs under a resulting trust, TCS has a duty to account for the shares and for their fruits, which include the dividends or any other income arising from the shares from the time she became trustee of those shares.

*The plaintiffs' alternative claims*

245 Having found for the plaintiffs on their primary claim of a resulting trust over the AAS Shares, I need not address their alternative claims for a common intention constructive trust or proprietary estoppel.

*Do the defences apply?*

246 TCS pleads two main defences. [note: 203] First, she submits that the plaintiffs' claim is time-barred under the Limitation Act (Cap 163, 1996 Rev Ed). Second, she submits that the plaintiffs' claim is barred by the doctrine of laches. I will consider each defence, even though parties did not fully address them in their submissions. [note: 204]

(1) Limitation

247 Under s 22(2) of the Limitation Act, actions based on breach of trust are subject to a limitation period of six years from the date on which the right of action accrued. However, s 22(1) establishes an exception to this rule. The relevant portions of s 22 of the Limitation Act read as follows:

> **Limitations of actions in respect of trust property**

**22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

...

(*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

…

248 Section 22(1)(*b*) provides that the six-year limitation period does not apply to an action by a beneficiary "to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use." The exception applies whenever a trustee retains trust property, or its proceeds, in her hands: see Robert Pearce, John Stevens and Warren Barr, *The Law of Trusts and Equitable Obligations* (5th Ed, Oxford University Press, 2010) at p 900.

249 Section 2 of the Limitation Act defines the terms "trust" and "trustee" as "[having] the same meanings as in the Trustees Act [Cap. 337]". This is a reference to s 3 of the Trustees Act (Cap 337, 2005 Rev Ed), which defines the terms "trust" and "trustees" as including "implied and constructive trusts, and ... cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative".

250 Although the definition does not include resulting trusts, the weight of authority suggests that resulting trusts are dealt with on the same footing as express and constructive trusts for the purposes of the section: see David Hayton, Paul Matthews and Charles Mitchell, *Underhill and Hayton Law of Trusts and Trustees* (18th Ed, LexisNexis, 2010) at para 94.2; John Mowbray QC *et al*, *Lewin on Trusts* (19th Ed, Sweet & Maxwell, 2015) ("Lewin on Trusts") at para 7-004.

251 I therefore find that the plaintiffs' claims against TCS in respect of the resulting trusts that arose over their AAS shares which they transferred to TCS are not subject to the six-year limitation period in s 22(2) of the Limitation Act as they fall within the scope of s 22(1)(*b*).

(2) Doctrine of laches

252 TCS further argues that the plaintiffs are guilty of prolonged, inordinate and inexcusable delay in bringing this action and are therefore barred by the doctrine of laches from claiming the relief they now seek.

253 Section 32 of the Limitation Act preserves the equitable doctrine of laches as a defence: see *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 ("*Tan Kow Quee*") at [28], *British and Malayan Trustees Ltd v Sindo Realty Pte Ltd (in liquidation) and other actions* [1998] 1 SLR(R) 903 at [64]. The section reads:

**Acquiescence**

**32.** Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

[emphasis in bold in original]

254 The doctrine of laches is a broad doctrine founded on the concept unconscionability. Sundaresh Menon JC (as he then was) considered this doctrine in *Tan Kow Quee* and held as follows (at [33]):

> 33 [The doctrine of laches reflects] a confluence of two factors: delay and the existence of circumstances that make it inequitable to enforce the claim. A claimant in equity is bound to pursue his claim without undue delay… The basis for the equitable intervention of the court is ultimately found in unconscionability. The following passage from the judgment in *Green v Gaul* at [42] is instructive:
>
> > The modern approach to the defences of laches, acquiescence and estoppel was considered by this Court in *Frawley v Neill* ([2002] CP Reports 20, but otherwise unreported, 1 March 1999) … After reviewing the earlier authorities … Aldous LJ (with whom the other members of the court agreed) said:
> >
> > > "In my view the more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a preconceived formula derived from earlier cases. *The inquiry should require a broad approach, directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right.* No doubt the circumstances which gave rise to a particular result in the decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach."
>
> [emphasis added]

255 This doctrine encompasses the principle that equity aids the vigilant and not the indolent. But the plaintiffs in this case have not been indolent. TCS has not shown that there was inexcusable delay on the plaintiffs' part in pursuing their claims to the AAS Shares or that she has been prejudiced in any way by a delay on their part in putting forward her defence. In fact, the plaintiffs cannot be faulted for bringing their claims to the AAS shares only in 2010. The dispute as to the beneficial ownership of the AAS Shares started only started in late 2009, when TCS refused to comply with the plaintiffs' demands to return the shares. The dispute continued into January 2010 when TCS removed TCH and TCP from office in AAS.

256 I therefore find that the plaintiffs acted reasonably promptly in bringing this action in 2010. I also add that I find that the plaintiffs have not acted in any way that would cause them to be estopped from reclaiming their beneficial interest in the AAS Shares.

***The Bajumi Shares***

257 I now consider the next class of assets: the Bajumi Shares. The Bajumi Shares are 2,660,850 shares in AAS that the Bajumi family transferred to NGO in 2004. The relevant facts are set out at [77] to [88] above.

*Summary of the parties' position*

258 The plaintiffs rely on a presumed resulting trust to claim beneficial ownership of the Bajumi Shares. They submit that there was no intention to make a gift of these shares to NGO in 2004. In the alternative, they rely on a common intention constructive trust.

259 NGO's position, on the other hand, is that TKT provided the consideration for the transfer of the Bajumi Shares and that he intended to make a gift of the shares to her. According to NGO, she asked for the shares as a gift and TKT agreed out of recognition of NGO's contribution to AAS and the family. [note: 205] In the alternative, she submits that if the shares were beneficially owned by the family, the family collectively intended to make NGO the beneficial owner of the shares [note: 206] as recognition for her contribution to the family. [note: 207]

260 In response to the plaintiffs' alternative claim, NGO submits that no common intention constructive trust could have arisen given that she never shared a common intention to hold the Bajumi Shares on trust for the plaintiffs. I state at the outset that I agree with this submission. The plaintiffs' alternative claim based on a common intention constructive trust therefore fails.

261 Finally, NGO also argues that she is entitled to the Bajumi Shares as they constitute matrimonial assets. [note: 208] This claim is without legal basis and I need only deal with it very briefly. The courts have the power to adjust property rights in matrimonial assets only upon divorce, judicial separation or nullity of marriage: s 112(1) of the Women's Charter (Cap 353, 2009 Rev Ed). NGO and TKT never underwent divorce or judicial separation (and needless to say did not apply for nullity of marriage). The court's power to divide matrimonial assets is at no point invoked. NGO has no claim under the Women's Charter. Her only claim can be in the law of property.

*The resulting trust analysis*

262 It is undisputed that NGO did not provide any consideration to the Bajumi family for the Bajumi Shares. The question then is whether a resulting trust arose over the Bajumi Shares in favour of the person or persons who did provide the consideration. Two issues must be determined:

(a) Who provided the consideration for the Bajumi Shares?

(b) Is it proved or presumed that they intended to make a gift of the shares to NGO?

I turn to answer these questions in their logical sequence.

(1) Who provided the consideration for the Bajumi Shares?

263 Under the settlement agreement in the Bajumi litigation, the Bajumi family agreed to transfer their 50% shareholding in AAS to the Tan family in exchange for $7.6m. [note: 209] The question, therefore, is who is to be treated as the source of this payment.

264 As set out at [81] above, the $7.6m paid to the Bajumi family came from the DBS Term Loan. The four borrowers of the DBS Term Loan were TCH, TCP, NGO and TCS. The interest on the loan was serviced monthly from the No 2 Account. The principal was ultimately repaid in full using the US$2.8m Balmain deposit and dividends declared by AAS on 20 July 2005.

265 The plaintiffs' position on the issue is that the consideration for the Bajumi Shares should be attributed to the beneficial owners of the AAS shares (*ie*, according to the 1985 shareholding). That would make all of the plaintiffs contributories to the consideration, albeit in varying proportions. NGO,

on the other hand, submits that the repayments of the loan should be attributed to TKT because he owned both the US$2.8m Balmain deposit and all of the shares in AAS, and therefore owned also the dividends used to repay the DBS Term Loan.

266 On the resulting trust analysis, repayments are relevant only if there is an agreement on how repayment is to be effected at the time the asset is acquired: see *Lau Siew Kim* at [116] and [117]. The focus should therefore be on who took on liability for the DBS Term Loan in 2005. Under the DBS Term Loan, the four borrowers (*ie*, TCH, TCP, NGO and TCS) were jointly and severally liable for the loan. But it is clear that the Tan family did not intend for any of the four named borrowers personally to bear the ultimate burden of the loan. It is highly unlikely that NGO, the matriarch of the family, with no independent income or capital, expected personally to repay the entire loan or even a fraction of it. Instead, I am satisfied that at the time the borrowers undertook their obligations under the DBS Term Loan, the intention was that the loan would be repaid from the fruits of the Tan family's AAS shares. The same is true in respect of the funds borrowed by Balmain which comprised the Balmain deposit. Balmain was a mere proxy. I therefore find that the purchase consideration for the Bajumi Shares is attributable collectively to the beneficial owners of the Tan family's shares in AAS.

267 The result is that NGO is presumed to hold the beneficial interest in the 50% of AAS comprising the Bajumi Shares on resulting trust for each Tan family member (including of course herself) in the same proportion in which that Tan family member owned the Tan family's block of 50% of the shares in AAS in 1985 (see [238] above).

(2) No intention to benefit NGO

268 The next question is whether the members of the Tan family had any intention to make a gift of the Bajumi Shares to NGO. The plaintiffs reject any intention to make a gift of the Bajumi Shares to NGO. In any event, the presumption of resulting trust operates in favour of the beneficial owners of the Tan family's 50% of the shares in AAS.

269 NGO submits that it is crucial that TKT and the Tan family members never told her at 2004 Family Meeting, or any time thereafter, that the Bajumi Shares were not a gift to her. [note: 210] This may be true, but it is ultimately irrelevant. NGO's belief, as the recipient of the shares, as to the intent behind the transfer does not determine whether a resulting trust arises: *Chan Yuen Lan* at [43]. What matters is the intention of the transferors of the property.

270 NGO further asserts that the shares were a gift to her because she had asked for them as a gift and the Tan family wanted to reward her for her contributions. I do not consider it probable that this would lead the plaintiffs to transfer the Bajumi Shares to her at their own cost. I also note that NGO's evidence that she had asked TKT for the Bajumi Shares was an unpleaded position. I am therefore inclined to agree with the plaintiffs that this is an afterthought. [note: 211]

271 The essential fact remains that NGO was never involved in the family business. I therefore accept the plaintiffs' submission that it does not make sense for the owners of the Tan family's half of AAS to agree to make a gift to NGO of the Bajumi family's half of AAS. Taken together with NGO's existing 2.22% shareholding in AAS, that would have given NGO alone majority control of AAS. There was no reason for the Tan family to do that.

272 I therefore find, either by the plaintiff's direct evidence or by NGO's inability to rebut the presumption of resulting trust, that the beneficial owners of the Tan family's half of AAS had no intention to benefit NGO when they agreed that the Bajumi family should transfer the Bajumi family's half of AAS to NGO. I find it more probable that the parties' intention was simply that NGO should hold

the shares temporarily, without affecting the parties' underlying beneficial interests. As the plaintiffs submit, the intention was to "*pang*" (Hokkien for "put") the shares with NGO. [note: 212]

(3) Conclusion on the resulting trust analysis

273 NGO has failed to rebut the presumption of a resulting trust in respect of the Bajumi Shares. The beneficial interest in the Bajumi Shares results back to each Tan family member (including herself) in the same proportion in which that Tan family member owned the Tan family's block of 50% of the shares in AAS in 1985 (see [238] above).

*Defences raised by NGO*

274 NGO relies on three defences: the doctrine of laches; the time-bar under s 22(2) of the Limitation Act and an estoppel against the plaintiffs. For the same reasons that led me to dismiss TCS' defences in relation to the AAS Shares, I do not accept that any of the defences apply to afford NGO a defence against the plaintiffs' claim to the Bajumi Shares.

*Conclusion on the Bajumi Shares*

275 Given that I have found that NGO is not the beneficial owner of the Bajumi Shares (save for the 2.22% of the Bajumi Shares which are attributable to NGO personally), the 2005 Trust Deed in which NGO declared that she holds the Bajumi Shares on trust for TCS has no effect. NGO was clearly unable to give away the beneficial ownership to TCS in 2005 as she had no beneficial ownership in them to begin with.

276 As a trustee of the Bajumi Shares under a resulting trust, NGO has a duty to account for the shares and for the fruits of those shares, which include the dividends or any other income arising from the shares from the time she became trustee of those shares in 2004.

***The AAIE Shares***

277 I turn to consider the AAIE Shares. The relevant facts in relation to these shares are at [102] to [104] above.

*Summary of the parties' positions*

278 The parties are agreed that TCS holds the AAIE Shares on resulting trust. They agree also that the beneficial owner of the AAIE Shares is the person or persons who provided the consideration for the EnGro shares which AAIE acquired. The only dispute between the parties is as to who provided the consideration.

*Source of consideration*

279 It will be recalled that the source of the consideration for the EnGro shares which AAIE acquired was the Cluny Park Proceeds channelled to TCS via the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans (see [89] to [95] above). TCS advanced part of the proceeds of these loans to AAIE by way of the AAIE loans (see [103] above). That advance made up 70% of the total consideration which AAIE paid to acquire the EnGro shares from Ssangyong.

280 The ultimate source of the consideration for AAIE's EnGro shares is therefore the Tan family's 50% shareholding in AAS, to which the entirety of the Cluny Park Proceeds is attributable. The

proceeds of the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans funded by the Cluny Park Proceeds therefore belong in equity to the beneficial owners of the Tan family's shares in AAS in the same proportions in which they own the beneficial interest in that block of shares. The consideration paid for AAIE's EnGro shares is attributable to the Tan family members in the same proportions. There was no intention to make any gift of the AAIE shares to TCS, to TCP or to AAIE. The beneficial interest in the AAIE Shares therefore results back to those same beneficial owners in those same proportions on a presumed resulting trust.

281 I need not address the submissions of parties on the subsequent declarations or conduct of the family members in relation to the AAIE Shares (*eg*, the letter of offer from the parents to the children referred to at [187(h)] above and the children's reply). Their subsequent conduct does not change the proprietary consequences that took effect when the resulting trust arose. In any event, as I have discussed at [187] to [209] above, such declarations, insofar as they are in favour of the parties who made them, are either inadmissible or entitled to virtually no weight.

***The 1.419m EnGro Shares***

282 I move on to consider the beneficial ownership of the 1.419m EnGro Shares that are registered in TCS's name (see [105] above). It is not entirely clear if the plaintiffs assert a claim to the beneficial ownership of these shares. Throughout the proceedings, they have at several points asserted such a claim. But there is no specific claim for this in their statement of claim or in TCG's counterclaim.

283 The plaintiffs do, however, plead a claim for an account of the dividends arising from the 1.419m EnGro shares under the section on "Tan family funds" in their statement of claim. [note: 213] At paragraph 13D of the plaintiffs' reply to defence and counterclaim, the plaintiffs also aver that "the 1,419,000 Engro shares were paid for by the Tan family funds and are held by [TCS] on trust and for the benefit of the Tan family, any dividends declared thereon are likewise held by [TCS] on trust and for the benefit of the Tan family". I am satisfied that there is no prejudice to any of the parties if I deal with these shares because it is clear to all that the plaintiffs have always taken the position that these shares are held on trust for them by TCS. Both parties also had ample opportunity to submit on the beneficial ownership of these shares.

284 To summarise, these EnGro shares were bought in late 2007 using money from the No 2 Account as well as funds from Hong Kong. The plaintiffs argue that the consideration for the shares came from the Tan family funds and therefore the Tan family members are the beneficial owners of these EnGro shares. TCS's position is that TKT provided the consideration for the shares and that he gave the shares to TCS. [note: 214] TCS argues that the plaintiffs' claim cannot stand given that they concede that they have no idea where the consideration for the shares came from. [note: 215] TYK, for example, was able to allege only that TCS "got the funds from whatever that were placed in Hong Kong, which was taken out to be given to her". He even conceded that it was "very possible" that TKT transferred the funds to TCS to purchase the shares.

285 I find that the plaintiffs have failed to prove that they have a beneficial interest in these EnGro shares. It is fatal to their case that they are not able to state the source of the consideration, apart from attributing it to the loose concept of "Tan family funds". It was made clear in the course of the proceedings that the shares were purchased using funds from the No 2 Account and funds from Hong Kong. Money from the No 2 Account, given my finding in S170 (see [303] below), belongs to TCS. The only remaining issue is whether the funds from Hong Kong can be attributed to the plaintiffs. There is no evidence before me that they can.

286 TCS's evidence is that the funds in Hong Kong which were used to pay for these EnGro shares belonged to TKT. The proprietary effect of that is to give rise to a resulting trust over these EnGro shares in the same proportion that TKT's funds bear to the total acquisition cost. Although a presumption of resulting trust arises, the counter-presumption of advancement, which presumes that TKT meant to give the shares to TCS, rebuts it. TCS, however, disclaims any interest in these EnGro shares and accepts that they belong in equity to TKT.

287 Given that the plaintiffs are unable to adduce any evidence to show that the consideration for these EnGro shares is attributable to them, no resulting trust can arise in favour of the plaintiffs. Thus, the plaintiffs claim to the beneficial ownership of these shares fails.

***The "Tan family funds"***

288 The only remaining group of assets in S570 that I have to deal with is what the plaintiffs have called the Tan family funds. The plaintiffs submit that TKT and the family members agreed over the years to accumulate and consolidate under TCS's control funds which they intended eventually to form the subject-matter of a family trust. The plaintiffs seek as relief in S570 an account from TCS of the Tan family funds. [note: 216]

289 According to the plaintiffs, the Tan family funds comprise money derived from the following sources: [note: 217]

(a) dividends from shares in AAS;

(b) funds derived from the capital reduction exercise undertaken in AAS in or around 1984;

(c) dividends from the shares in EnGro owned by AAIE and attributable to the AAIE Shares registered in TCS's name;

(d) dividends from the 1.419m EnGro shares;

(e) the Cluny Park Proceeds;

(f) proceeds of sale from a property at 143 Tamarind Road which was purchased in TCS's name using monies from the Tan family fund; and

(g) rental income from the Katong Property.

TCS, on the other hand, submits that this claim is wholly baseless and that she has no duty to account to the plaintiffs for any of this money.

290 I do not accept the plaintiffs' submission that they ever had any proprietary rights in anything as amorphous as Tan family funds or that a Tan family trust ever came into existence. There was certainly an intention to establish a Tan family trust and to accumulate Tan family funds which were eventually to form part of the subject-matter of that trust. But the Tan family trust and the Tan family funds were never anything more than a concept that operated on the minds of the parties and affected their dealings with each other. No such trust or fund ever existed as a matter of law.

291 I accept that there were many discussions over the years about settling family funds on an express family trust. In fact, the idea of forming a family trust came about in the 1980s. [note: 218] This was envisioned to be a way to consolidate, preserve and safeguard the substantial Tan family

wealth for the Tan family members, for their future generations and for charity. Throughout the next two decades, the Tan family members had discussions on forming a Tan family trust. They even went as far as to obtain professional advice on the mechanics of establishing a trust. For example, TCG consulted Barclaytrust International sometime in 1991, while TCS corresponded with a Hong Kong law firm, Deacons, on the issue in 1993. [note: 219]

292 These discussions and informal understandings between the parties explain why the Tan family was not very concerned over the years with whose names the various shares or assets were to be registered or held in. They expected all of that to be addressed when the Tan family trust was eventually constituted. But the Tan family trust was always envisaged as an express trust. And no express trust ever came into existence. The parties' agreement or intention to set up a Tan family trust did not take legal effect with proprietary consequences. Further, the intentions of some parties, notably TKT, NGO and TCS, changed over the course of the years.

293 TCS and NGO are therefore only trustees for the specific discrete assets which I have found that they each respectively hold on resulting trust for the plaintiffs (*ie*, the AAS Shares, the AAIE Shares and the Bajumi Shares) as well as the fruits of these shares from the time they each became the resulting trustee of those shares. I have also found that the 2002 and 2003 AAS Shareholder Loans (which were derived from the Cluny Park Proceeds) were owned beneficially by the Tan family shareholders of AAS in proportion to their shareholding as at 1985.

294 The plaintiffs did not, however, advance a claim against TCS that she held on resulting trust the proceeds of AAS's capital reduction exercise and the AAS dividends that the plaintiffs gave to TCS before she became a resulting trustee of the AAS shares. The plaintiffs' case was that all these assets form part of larger pool of assets under a Tan family trust. I have found that no such trust was constituted. Therefore, I reject the plaintiffs' assertion that TCS has any general obligation to account as a trustee for anything as amorphous as the Tan family funds.

295 When I delivered judgment, I dismissed plaintiffs' entire claim in relation to the Tan family funds, including their prayer that TCS account for the Cluny Park Proceeds, including the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans. The parties subsequently attended before me to settle the terms of the final judgment in these proceedings. The plaintiffs took that opportunity to ask that I reconsider my decision and order instead that TCS account for the Cluny Park Proceeds. The plaintiffs submitted that that duty to account was the necessary and natural consequence of my finding that the beneficial owners of the proceeds of the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans were the beneficial owners of the Tan family's shares in AAS.

296 I have made a primary finding that TCS holds the proceeds of the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans on resulting trust for the Tan family members in proportion to their beneficial interest in the Tan family's total block of shares in AAS in 1985. In the light of the further arguments I have heard on this issue, I agree with the plaintiffs that it is the necessary consequence of my findings that TCS should account to them for the entirety of the Cluny Park Proceeds.

297 My judgment in this action has yet to be perfected. Both parties accept that a judge "has an inherent jurisdiction to recall his decision and to hear further arguments, so long as the order is not yet perfected" (see *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246 at [6] where the Court of Appeal cited *In Re Harrison's Share under a Settlement; Harrison v Harrison* [1955] 1 Ch 260).

298 I therefore exercise my power to recall my order dismissing the plaintiffs' entire claim in respect

of the Tan family funds and to substitute for that a dismissal of the entire claim in respect of the Tan family funds subject to an order that TCS account to the plaintiffs for the Cluny Park Proceeds, in the amount of $42,344,761.

***Conclusion on S570***

299 It follows from my decision in S570 that TKT had no beneficial interest in the AAS Shares, the Bajumi Shares or the AAIE Shares. The defendants' counterclaim necessarily fails.

300 It also follows that TCS and NGO have to transfer the assets registered in their respective names to the plaintiffs in proportion to the plaintiffs' shareholding in AAS as at 1985 (see [237] above). This, of course, obliges TCS to transfer the AAS Shares to the plaintiffs and NGO to transfer the Bajumi Shares to the plaintiffs to recreate the relative shareholding structure set out in that table. Following the transfers, the plaintiffs may then exercise the power associated with those shares and convene a meeting to remove or appoint or reappoint any persons as directors, if they so wish.

301 On this point, I will add that I do not accept the plaintiffs' submission that TCS acted in breach of trust by wrongfully removing TCH as a director or by asking the plaintiffs to vacate AAS's premises. Although I have found that TCS held the AAS Shares on resulting trust for the plaintiffs, the resulting trust does not necessarily impose upon her all the duties of an express trustee. In *Lonrho plc v Fayed and others (No 2)* [1992] 1 WLR 1 at 12, Millett J (as he then was) said, "[i]t is a misake [*sic*] to suppose that in every situation in which a constructive trust arises the legal owner is necessarily subject to all the fiduciary obligations and disabilities of an express trustee." While Millett J's comments were made in the context of constructive trusts, they are equally applicable to resulting trusts, which also arise by operation of law. In this case, I find that TCS was merely a bare trustee of the AAS Shares and AAIE Shares. As a bare trustee, her obligation is simply, when called upon, to transfer the trust property to the beneficial owner or as the beneficial owner directs (Lewin on Trusts at para 1-028). In addition to this, TCS has an obligation to account for dividends or any income received in respect of the shares from the time she is a trustee of those shares.

302 For this reason, I dismiss the plaintiffs' prayers for damages arising from TCS's breach of trust. I also dismiss TCG's prayer which seeks damages against TCS for depriving him of his office space in AAB. [note: 220] My dismissal of these aspects of the plaintiffs' claims does not, of course, preclude the plaintiffs from pursuing any claim for breach of trust which may arise out of taking the accounts which have been ordered.

**S170: The Katong Property**

303 I move on to the final suit: S170. As I have described at [19] above, this suit involves only one question: who owns the Katong Property in equity. The relevant facts are set out at [107] to [115] above. To summarise: TKT purchased the Katong Property and registered it in NGO's name in 1952. NGO conveyed it to TCS in 1974. TCS has been its registered owner since then.

***The parties' positions***

304 The plaintiffs claim a beneficial interest in the Katong Property under a common intention constructive trust or in the alternative, under the doctrine of proprietary estoppel. The plaintiffs' position is that when TKT registered the Katong Property in NGO's name in 1952, she held it on trust for the benefit of all the members of the Tan family. [note: 221] When NGO later transferred the Katong Property to TCS in 1974, they submit, TCS then held it on trust for the Tan family.

305 TCS's case, on the other hand, is simply that the Katong Property belongs to her absolutely.

***TCS is absolute owner of the Katong Property***

306 The starting point is that TCS, as the legal owner of the Katong Property today, is entitled absolutely to every incident of ownership of that property to the extent reflected in the legal title. At this point in the inquiry, there are no equitable interests in the property to speak of. Equitable interests are not inherent in property, created and existing automatically and in parallel with legal interests: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 1 AC 669 at 706. An equitable interest in property typically comes into existence only when one of a limited number of sets of events takes place which are legally significant in that equity attaches consequences to them which have proprietary effect. The burden is thus on the plaintiffs to prove that any events recognised in equity have occurred to give rise to them having an equitable interest in the Katong property. The plaintiffs have failed to discharge this burden.

307 There is absolutely no basis to assert that either NGO or TCS ever held the Katong Property on trust for the Tan family. There is no suggestion that TKT purchased the Katong Property otherwise than with funds that he alone provided. There is no basis to say that NGO held the Katong Property on trust for the Tan family when TKT registered it in her name. No doubt, NGO provided no consideration for the conveyance. But TKT's decision to register the Katong Property in NGO's name could conceivably give rise to a presumption of resulting trust only in favour of TKT, and not in favour of the entire Tan family. However, the presumption of resulting trust in this transaction is comprehensively rebutted by the presumption of advancement in NGO's favour. Importantly, I note that none of the plaintiffs have any knowledge whatsoever of TKT's intention in registering the Katong Property in NGO's name in 1952. TCS, the oldest child, was then only eight years old. TCH, the youngest child, was only one year old. They are in no position to rebut the presumption of advancement.

308 As for the conveyance from NGO to TCS in 1974, NGO conveyed the Katong Property to TCS without qualification and without retaining any beneficial interest. It was intended to be a gift. With clear evidence of NGO's donative intent, there is no scope for a presumption of resulting trust to operate.

309 I also reject the plaintiffs' claim that they each have a beneficial interest in the Katong Property simply because it was the Tan's "family home". [note: 222] It suffices to say that there is no basis to argue that the fact that a property is a "family home" gives the family members any sort of proprietary interest in the property at law or in equity.

310 The plaintiffs also point to other facts as evidence of their beneficial interest in the Katong Property. This includes their free use of the monies in the No 2 Account, the power of attorney in favour of TCH in relation to the property and TCP's family's rent-free occupation of the Katong Property for 15 years. I am unable to accept that these facts demonstrate that any of them had any beneficial interest in the property. To my mind, this is just further evidence and manifestation of the Tan family's practice of not segregating assets strictly. It cannot be that by allowing her siblings to use the monies in the No 2 Account and to live in the property, TCS altered or compromised her proprietary rights in the property.

311 Finally, I find that TCS had no intention to hold the Katong Property on trust for the plaintiffs and made no such representations. Thus, a common intention trust cannot arise. Similarly, TCS is also not estopped from asserting her absolute ownership in the property.

312 The plaintiffs' claim in S170 therefore fails.

313 It is also on this basis that TCS's counterclaim for a declaration that the plaintiffs have no beneficial interest in the property and that the caveat lodged over the Katong Property be removed succeeds. In addition, the plaintiffs are not allowed to lodge a further caveat in respect of the Katong Property. TCS is further entitled to damages arising from the caveat which was wrongfully lodged, such damages to be assessed.

**Conclusion**

314 To conclude matters, I now summarise my findings in respect of each set of proceedings.

***OS921***

315 In OS921, I have dismissed the remaining prayers in the plaintiffs' application. The result that the application has failed entirely. I have found that TCS did not breach the Compromise. I have also found that the parties' mutual performance obligations under the Compromise came to an end with no liability on the part of any party because the Condition Precedent could not be fulfilled.

316 As for costs, I have ordered that the plaintiffs pay the defendant's costs of and incidental to OS921. These costs are to be taxed if not agreed.

***S170***

317 In S170, I have dismissed the plaintiffs' claim in its entirety and allowed TCS's counterclaim in its entirety. The plaintiffs have failed to establish any basis for a beneficial interest in the Katong Property. I have found, instead, that TCS is the absolute owner of the Katong Property.

318 I have also ordered that the plaintiffs in S170 pay TCS her costs of and incidental to those proceedings. Those costs are to be taxed, if not agreed.

***S570***

*The merits*

319 I have found that TCS holds the AAS Shares and NGO holds the Bajumi Shares on resulting trust for the Tan family members in proportion to their beneficial interest in the Tan family's shares in AAS (see [237] above). TKT gifted the shares to his children. The plaintiffs had no intention to divest themselves of those shares absolutely when they transferred them to TCS. The plaintiffs had no intention to make a gift of the Bajumi Shares to NGO.

320 TCS and NGO therefore have a duty to account for the dividends and any other income accrued in respect of the shares they held on trust from the time they became trustee of those shares.

321 I have found that TCS holds the AAIE Shares on resulting trust for the Tan family members in proportion to their beneficial interest in the Tan family's shares in AAS. The beneficial owners of the Tan family's shares in AAS provided the consideration for the purchase of 70% of AAIE's EnGro shares through the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans. They had no intention to benefit TCS personally when she became the registered owner of 35% of the shares in AAIE. TCS therefore has a duty to account for the dividends and any other income accrued in respect of these

shares in AAIE from the time she became the registered owner of these shares.

322 The plaintiffs have failed to prove that they provided the consideration for the purchase of the 1.419m EnGro Shares now owned by TCS or that, in some other way, they acquired any interest in equity in these shares.

323 In addition, I have found that there was no express trust constituted in respect of the assets that make up the Tan Family funds. While there were discussions to constitute such a trust, no steps were ever taken to do so, and those discussions have no consequence as a matter of property law. TCS, however, has a duty to account to the Tan family members for the Cluny Park Proceeds, *ie*, the 2002 AAS Shareholder Loans and the 2003 AAS Shareholder Loans, in proportion to the Tan family members' beneficial interest in the Tan family's shares in AAS.

324 Finally, I have dismissed the plaintiffs' claim against TCS for breach of trust. I am unable to find on the evidence now before me that TCS breached any of her duties as a resulting trustee as alleged by the plaintiffs.

325 Given these findings, I have allowed part of the plaintiffs' claim in S570 and dismissed the defendant's counterclaim.

*Costs*

326 As for the costs of S570, the plaintiffs have indicated from the outset of this action that they will not seek costs against NGO. They do, however, seek an order that TCS pay them their costs of pursuing their claim in this action not only against TCS but also against NGO; and their costs of defending the counterclaim in this action brought not only by TCS but also by NGO. Further, they seek costs against TCS on an indemnity basis. They also seek separate sets of costs, given that TCP and TCH are represented by one firm, TYK by another firm and TCG by yet another firm. In addition, for each set of costs, the plaintiffs seek a certificate for more than two solicitors under O 59 r 19. Finally, the plaintiffs also seek an order that TCS pay the costs personally and not out of TKT's estate.

327 Having heard the parties' submissions on costs, I order that TCS shall pay the plaintiffs' costs as follows:

(a) TCS shall pay one third of TCP's and TCH's costs of and incidental to the claim and the counterclaim in S570, such costs to be taxed on the indemnity basis with a certificate for more than two solicitors under O 59 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), if not otherwise agreed;

(b) TCS shall pay one third of TYK's costs of and incidental to the claim and the counterclaim in S570, such costs to be taxed on the indemnity basis with a certificate for more than two solicitors, if not otherwise agreed;

(c) TCS shall pay one third of TCG's costs of and incidental to the counterclaim in S570, such costs to be taxed on the indemnity basis with a certificate for more than two solicitors, if not otherwise agreed;

I make these orders for the following reasons.

328 First, it appears to me that TCS pursued the fundamental core of her defence and counterclaim

dishonestly and unreasonably, for ulterior motives having far more to do with historical sibling rivalry than with vindication of her or her late father's rights. It appears to me inconceivable that TCS genuinely believed that TKT intended to retain the beneficial interest in all of the AAS shares which he allotted or transferred to his children decades ago; and equally inconceivable that TCS genuinely believed that her siblings intended to make gifts to her of all the shares which they transferred to her. For that reason, I consider it appropriate that TCS pay the costs of all those she opposed, whether by way of claim or counterclaim, on the indemnity basis.

329 Second, there is no doubt that S570 is an action of sufficient complexity, both in law and in fact, to warrant a certificate for more than two solicitors.

330 Third, I did not consider it reasonable for the plaintiffs to be represented by three sets of solicitors. I initially intended to confine TCS's liability in costs to TCP, TCH, TYK and TCG to a single set of costs. That, however, would have posed procedural difficulties in having that single set of costs taxed given that the plaintiffs were in fact represented by three sets of solicitors. I have therefore ordered the closest convenient proxy for a single set of costs, which is that TCS is to pay only one-third of the costs of each set of plaintiffs.

331 Finally, I make no order that TCS is to bear the plaintiff's cost of pursuing their claim against NGO or of defending NGO's counterclaim. It appears to me obvious that NGO has taken her position in these proceedings because of the influence of TCS. It is also true that NGO is of limited sophistication and of advanced years. However, there is nothing before me to suggest that NGO is incapable of making decisions for herself. I cannot, therefore, find that TCS's influence over NGO is malign in the sense of being unwanted or undue.

332 While it is admirable from a moral perspective that the plaintiffs do not wish to mulct their own mother in costs, that is not a reason to permit them to throw those costs onto TCS. It remains the case that the plaintiffs have made a voluntary choice to forgo their procedural right to recover from NGO their costs of pursuing her and defending her counterclaim. In the circumstances, therefore, I do not consider it appropriate to visit those costs upon TCS.

333 I also make no order that TCS is to bear the costs I have ordered above personally rather than out of TKT's estate. That does not operate to permit TCS to reimburse herself these costs out of TKT's estate. I make no order on this issue because the plaintiffs have no interest in TKT's estate and therefore have no standing to seek such an order from me. TCS's entitlement to reimburse herself for these costs from TKT's estate is not therefore an issue that is properly before me.

334 TCS has clear and onerous obligations as the sole executrix and trustee of TKT's estate. She will have to conduct herself in accordance with those obligations. It is not for me in these proceedings to police her compliance with those obligations.

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[note: 1] Closing submissions of 1st defendant dated 29 January 2014 at para 698; Closing submissions of 4th defendant (by counterclaim) dated 29 January 2014 at para 504.

[note: 2] Clause 11 of the 2008 Joint Will; Closing submissions of the 1st defendant dated 29 January 2014 at para 12; Defendant's bundle of documents volume 8 page 2120.

[note: 3] Affidavit of Evidence in Chief ("AEIC") of NGO dated 10 June 2011 at para 3.

[note: 4] AEIC of NGO in S570, para 18; Closing submissions of the 1st and 2nd plaintiffs dated 29

January 2014 at para 2.

[note: 5] AEIC of TCS at para 4.

[note: 6] Affidavit of TCH in support of OS921 filed on 24 September 2012 at para 4.

[note: 7] TCS's 18th affidavit in S570 filed on 10 August 2012 at para 7 and at pages 35 to 36; TCS's 19th affidavit filed in S570 on 20 September 2012 at para 7 and at page 128.

[note: 8] 2nd affidavit of Edwin Sim Puay Jain in S570 filed on 24 July 2012 at page 7.

[note: 9] Closing submissions of the 1st defendant dated 29 January 2014 at para 1197.

[note: 10] AEIC of TCH in OS921 dated 20 September 2012 at page 202.

[note: 11] Closing submissions of 4th defendant (by counterclaim) dated 29 January 2014 at para 2.

[note: 12] AEIC of TCS at para 9.

[note: 13] TCH AEIC in S170 dated 10 June 2011 at para 7

[note: 14] Prayer 1 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 15] Prayer 3 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 16] Prayer 4 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 17] Prayer 5 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 18] Prayers 3 and 4 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 19] Prayer 6 of OS921 (Amendment No 1) filed 8 April 2013.

[note: 20] AEIC of NGO filed on 10 June 2011 at paras 13 and 14.

[note: 21] AEIC of NGO filed on 10 June 2011 at paras 15.

[note: 22] AEIC of NGO filed on 10 June 2011 at paras 16 and 17.

[note: 23] AEIC of NGO filed on 10 June 2011 at para 19.

[note: 24] AEIC of NGO filed on 10 June 2011 at para 23.

[note: 25] AEIC of NGO filed on 10 June 2011 at para 29; AEIC of TCG at para 14; AEIC of TCH at para 14.

[note: 26] AEIC of TCS filed on 10 June 2011 at para 12; Closing submissions of the 1st and 2nd plaintiffs dated 29 January 2014 at para 5; Closing submissions of the 3rd plaintiff dated 29 January 2014 at para 15.

[note: 27] AEIC of NGO at para 31.

[note: 28] AEIC of TCH in S570, para 29.

[note: 29] Closing submissions of the 1st and 2nd plaintiffs dated 29 January 2014 at para 5.

[note: 30] AEIC of TCS filed on 10 June 2011 at para 14.

[note: 31] AEIC of NGO filed on 10 June 2011 at para 33.

[note: 32] 1 SAB 18.

[note: 33] See, *eg*, AEIC of TCP at paras 19 to 20; AEIC of TCH at para 35.

[note: 34] AEIC of NGO filed on 10 June 2011 at para 42.

[note: 35] AEIC of TCS filed on 10 June 2011 at para 20.

[note: 36] Closing submissions of the 1st defendant dated 29 January 2014 at para 58.

[note: 37] Closing submissions of 1st defendant dated 29 January 2014 at para 67; Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 20.

[note: 38] AEIC of TCS filed on 10 June 2011 at para 5.

[note: 39] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 23.

[note: 40] AEIC of TCS filed on 10 June 2011 at para 36.

[note: 41] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 23.

[note: 42] AEIC of TCG filed on 10 June 2011 at paras 22 to 25.

[note: 43] AEIC of TCG filed on 10 June 2011 at para 24.

[note: 44] AEIC of TCG filed on 10 June 2011 at para 58.

[note: 45] AEIC of TCG filed on 10 June 2011 at para 61.

[note: 46] AEIC of TYK filed on 13 June 2011 at para 28.

[note: 47] AEIC of TYK filed on 13 June 2011 at para 39.

[note: 48] AEIC of TYK filed on 13 June 2011 at para 29.

[note: 49] AEIC of TCS filed on 10 June 2011 at para 22.

[note: 50] AEIC of TCS filed on 10 June 2011 at para 26.

[note: 51] AEIC of TCS filed on 10 June 2011 at para 26.

[note: 52] AEIC of TCH at para 45.

[note: 53] AEIC of TCH at para 46.

[note: 54] AEIC of TCS at para 10.

[note: 55] AEIC of TCH at para 47.

[note: 56] AEIC of NGO at para 45.

[note: 57] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at paras 24 and 25.

[note: 58] AEIC of TCG dated 10 June 2011 at para 32.

[note: 59] AEIC of TCS at para 27(d) to (e)

[note: 60] Closing submissions of the 1st defendant dated 29 January 2014 at paras 69 to 70.

[note: 61] AEIC of TCS filed on 11 June 2011 at paras 30 to 32.

[note: 62] AEIC of TCS filed on 11 June 2011 at para 32.

[note: 63] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 26.

[note: 64] AEIC of TCS filed on 10 June 2011 at para 34.

[note: 65] AEIC of TCH filed on 13 June 2011 at para 65.

[note: 66] AEIC of TCS filed on 10 June 2011 at para 35; Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 27.

[note: 67] AEIC of TCH filed on 13 June 2011 at para 71.

[note: 68] AEIC of TCS at paras 44 and 45.

[note: 69] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 41.

[note: 70] AEIC of TCG filed on 10 June 2011 at para 123 and AB (1) 36 and AB (2) 442.

[note: 71] AEIC of TCG filed on 10 June 2011 at para 155.

[note: 72] Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 43.

[note: 73] AEIC of TYK filed on 13 June 2011 at para 106.

[note: 74] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 43.

[note: 75] AB (9) 2530.

[note: 76] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 57.

[note: 77] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 58.

[note: 78] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 59.

[note: 79] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 60.

[note: 80] Closing submissions of 1st defendant dated 29 January 2014 at para 362.

[note: 81] AEIC of TYK filed on 13 June 2011 at para 100.

[note: 82] AEIC of TYK filed on 13 June 2011 at para 100.

[note: 83] AEIC of TYK filed on 13 June 2011 at para 101.

[note: 84] AEIC of TYK filed on 13 June 2011 at para 105.

[note: 85] AB (7), pages 2027 to 2032; Closing submissions of 1st defendant dated 29 January 2014 at para 391.

[note: 86] AEIC of TCS filed on 10 June 2011 at para 155.

[note: 87] AEIC of TCS filed on 10 June 2011 at para 157.

[note: 88] Closing submissions of 1st defendant dated 29 January 2014 at para 403.

[note: 89] Closing submissions of 1st defendant dated 29 January 2014 at para 403.

[note: 90] AEIC of TCS filed on 10 June 2011 at para 167.

[note: 91] AEIC of TCS filed on 10 June 2011 at para 168; Closing submissions of 1st and 2nd plaintiff dated 29 January 2014 at para 50.

[note: 92] Closing submissions of 1st defendant dated 29 January 2014 at para 495.

[note: 93] Defence and Counterclaim (Amendment No 3) of the 1st defendant at para 51.

[note: 94] AEIC of TCS filed on 10 June 2011 at para 83.

[note: 95] AEIC of TCS filed on 10 June 2011 at para 86.

[note: 96] AB (8) pages 2299 to 2307.

[note: 97] AEIC of TCS filed on 10 June 2011 at para 125.

[note: 98] AEIC of TCS filed on 10 June 2011 at paras 88 to 90.

[note: 99] AEIC of TCS filed on 10 June 2011 at para 125.

[note: 100] AEIC of TCG filed on 10 June 2011 at para 64; AEIC of TYK filed on 13 June 2011 at para 160.

[note: 101] AEIC of TCG filed on 10 June 2011 at para 65.

[note: 102] AEIC of TCG filed on 10 June 2011 at para 66.

[note: 103] AEIC of TCG filed on 10 June 2011 at para 67.

[note: 104] AEIC of TCG filed on 10 June 2011 at para 68.

[note: 105] AEIC of TCS filed on 10 June 2011 at para 131.

[note: 106] AEIC of TCG filed on 10 June 2011 at para 287.

[note: 107] AEIC of TCS filed on 10 June 2011 at para 134.

[note: 108] AEIC of TCS filed on 10 June 2011 at para 133.

[note: 109] AEIC of TCS filed on 10 June 2011 at para 145.

[note: 110] AEIC of TCS filed on 10 June 2011 at para 147.

[note: 111] AEIC of TYK filed on 13 June 2011 at para 149.

[note: 112] Closing submissions of the 1st defendant dated 29 January 2014 at para 1099.

[note: 113] AEIC of NGO filed on 10 June 2011 at para 25.

[note: 114] AEIC of NGO filed on 10 June 2011 at para 26.

[note: 115] AEIC of NGO dated 10 June 2011 at para 27.

[note: 116] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 320.

[note: 117] Closing submissions of 1st defendant dated 29 January 2014 at para 1160.

[note: 118] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 319.

[note: 119] Closing submissions of 1st defendant dated 29 January 2014 at para 1164.

[note: 120] Closing submissions of 1st defendant dated 29 January 2014 at paras 1172 and 1176.

[note: 121] AEIC of TCG filed on 10 June 2011 at para 17.

[note: 122] AEIC of TCH filed on 13 June 2011 at para 157.

[note: 123] AEIC of TCS at para 10.

[note: 124] AEIC of TCH filed on 13 June 2011 at para 182.

[note: 125] AEIC of TCH filed on 13 June 2011 at para 182.

[note: 126] AB (10) 2788.

[note: 127] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 64.

[note: 128] AB (11) 3050.

[note: 129] AEIC of TCG filed on 10 June 2011 at para 434.

[note: 130] FACV No 3 of 2015; attachment to Rajah & Tann Singapore LLP's letter dated 9 November 2015.

[note: 131] Closing submissions of the 1st defendant dated 29 January 2014 at para 1200.

[note: 132] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 584.

[note: 133] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 585.

[note: 134] Closing submissions of 1st defendant filed on 29 January 2014 at para 1202.

[note: 135] Closing submissions of 1st defendant filed on 29 January 2014 at para 1202.

[note: 136] Closing submissions of 1st defendant filed on 29 January 2014 at para 1199.

[note: 137] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 586.

[note: 138] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 589.

[note: 139] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 595.

[note: 140] Closing submissions of 1st defendant filed on 29 January 2014 at para 1201.

[note: 141] Closing submissions of 1st defendant filed on 29 January 2014 at para 1206.

[note: 142] Closing submissions of 1st defendant filed on 29 January 2014 at para 1207; Affidavit of TCH filed in support of OS921 at page 534.

[note: 143] Closing submissions of 1st defendant filed on 29 January 2014 at para 1208; Affidavit of TCH filed in support of OS921 at page 538.

[note: 144] Closing submissions of 1st defendant filed on 29 January 2014 at para 1210; Affidavit of TCH filed in support of OS921 at page 542.

[note: 145] Affidavit of TCH filed in support of OS921 at page 542, para 3.

[note: 146] Closing submissions of 1st defendant filed on 29 January 2014 at para 1210; Affidavit of TCH filed in support of OS921 at page 544.

[note: 147] Affidavit of TCH filed in support of OS921 at page 546, para 12.

[note: 148] Closing submissions of 1st defendant filed on 29 January 2014 at para 1210.

[note: 149] Closing submissions of 1st defendant filed on 29 January 2014 at para 1213; Affidavit of TCH filed in support of OS921 at page 549.

[note: 150] Closing submissions of 1st defendant filed on 29 January 2014 at para 1213; Affidavit of TCH filed in support of OS921 at pages 551, 555 and 559.

[note: 151] Affidavit of TCH filed in support of OS921 at page 564.

[note: 152] Affidavit of TCH filed in support of OS921 at page 612.

[note: 153] Closing submissions of 1st defendant filed on 29 January 2014 at para 1216; Affidavit of TCH filed in support of OS921 at page 202.

[note: 154] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 59.

[note: 155] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para

583.

[note: 156] Closing submissions of 1st defendant filed on 29 January 2014 at para 1195.

[note: 157] Closing submissions of 1st defendant filed on 29 January 2014 at para 1195.

[note: 158] Closing submissions of 1st defendant filed on 29 January 2014 at para 1199.

[note: 159] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 670.

[note: 160] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 611.

[note: 161] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 611.

[note: 162] AEIC of TCS for OS921 at page 74.

[note: 163] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 617.

[note: 164] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at paras 618, 629 and 636.

[note: 165] Affidavit of TCH filed in support of OS921 at page 549.

[note: 166] Affidavit of TCH filed in support of OS921 at page 615, para 16(b) of the letter.

[note: 167] Affidavit of TCH filed in support of OS921 at page 624.

[note: 168] Affidavit of TCH filed in support of OS921 at page 624.

[note: 169] Closing submissions of 1st defendant filed on 29 January 2014 at para 75.

[note: 170] Closing submissions of 1st defendant filed on 29 January 2014 at para 87.

[note: 171] Closing submissions of 1st defendant filed on 29 January 2014 at para 92.

[note: 172] NE 10 July 2013, from page 58 onwards.

[note: 173] NE 10 July 2013, page 58 onwards.

[note: 174] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 164.

[note: 175] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 345.

[note: 176] NE 14 May 2013 at page 109, line 20 onwards.

[note: 177] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 337; NE 10 May 2013 at page 123.

[note: 178] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 399 onwards.

[note: 179] AEIC of NGO filed on 10 June 2011 at para 43.

[note: 180] PCB at page 226.

[note: 181] Closing submissions of 1st defendant dated 29 January 2014 at para 581.

[note: 182] Closing submissions of 1st defendant dated 29 January 2014 at para 605.

[note: 183] Clause 4 of the 2008 Joint Will.

[note: 184] Clause 5 of the 2008 Joint Will.

[note: 185] Closing submissions of 1st defendant dated 29 January 2014 at para 642.

[note: 186] PCB at page 253.

[note: 187] Closing submissions of 1st defendant dated 29 January 2014 at para 712.

[note: 188] Closing submissions of 1st defendant dated 29 January 2014 at para 738.

[note: 189] Closing submissions of 1st defendant dated 29 January 2014 at paras 714 to 722.

[note: 190] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 413.

[note: 191] AB (4) 1019

[note: 192] AB (4) 1038.

[note: 193] AB (4) 1039.

[note: 194] NE 2 July 2013 at page 59, lines 5 to 6.

[note: 195] NE 2 July 2013 at page 73 lines 24 to 25.

[note: 196] AB (6) 1558.

[note: 197] Closing submissions of 1st defendant dated 29 January 2014 at para 859.

[note: 198] Closing submissions of 1st defendant dated 29 January 2014 at para 6.

[note: 199] Statement of claim at para 24.

[note: 200] NE of 10 July 2013 at pages 11 and 15.

[note: 201] AEIC of TCG filed on 10 June 2011 at para 107; Closing submissions of 1st and 2nd plaintiffs of 29 January 2014 at para 391.

[note: 202] Closing submissions of 4th defendant (by counterclaim) of 29 January 2014 at para 79.

[note: 203] Defence and counterclaim of 1st Defendant at para 63.

[note: 204] A mention of the inapplicability of the defences was made at para 579 of the 4th defendant (by counterclaim)'s submissions.

[note: 205] Closing submissions of the 2nd defendant at paras 57 and 63.

[note: 206] Closing submissions of the 2nd defendant at para 65.

[note: 207] Closing submissions of the 2nd defendant at para 70.

[note: 208] 2nd defendant's Defence and Counterclaim at para 2A.

[note: 209] PCB at page 188.

[note: 210] Closing submissions of 2nd defendant filed on 29 January 2014 at para 41.

[note: 211] Closing submissions of 4th defendant (by counterclaim) filed on 29 January 2014 at para 233.

[note: 212] Closing Submissions of 1st and 2nd Plaintiffs filed on 29 January 2014 at para 204.

[note: 213] Statement of claim at para 50K(d).

[note: 214] Closing submissions of 1st defendant dated 29 January 2014 at para 1099.

[note: 215] Closing submissions of 1st defendant dated 29 January 2014 at para 1100.

[note: 216] Statement of claim at para 61l(2)(iii).

[note: 217] Statement of claim at para 50K.

[note: 218] Closing submissions of 1st and 2nd plaintiffs dated 29 January 2014 at para 32.

[note: 219] Closing submissions of 1st defendant dated 29 January 2014 at paras 246 and 247.

[note: 220] Defence and counterclaim of 4th defendant (by counterclaim) at page 39.

[note: 221] Statement of claim for S170/2011 at para 20.

[note: 222] Closing submissions of 4th defendant (by counterclaim) at para 286; closing submissions of 1st and 2nd plaintiffs at para 321.