IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 15

Civil Appeal No 174 of 2017

Between

Geok Hong Company Private Limited

… *Appellant*

And

(1) Koh Ai Gek
(2) Tan Weiyang (Executor and trustee of the estate of Tan Tiong Luu, Deceased)
(3) Tan Wei Chieh
(4) Tan Wei Hsien
(5) Tan Weiyang
(6) Zhang Zhaoling

… *Respondents*

JUDGMENT

[Trusts] — [Constructive trusts] — [Common intention constructive trusts]
[Equity] — [Estoppel] — [Proprietary estoppel]
[Equity] — [Defences] — [Laches]

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Geok Hong Co Pte Ltd
v
Koh Ai Gek and others

[2019] SGCA 15

Court of Appeal — Civil Appeal No 174 of 2017
Steven Chong JA, Belinda Ang Saw Ean J and Quentin Loh J
14 January 2019

28 February 2019 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

Introduction

1 How does one prove an alleged oral representation when both the representor and representee have passed away before the commencement of the action? Can proof be achieved by way of a statutory declaration executed by the representee days before he passed away? This was one of the core issues before the court below. In spite of the observation of "a number of difficulties in deciding on the credibility of [the] claim", the court found that the oral representation was proved on a balance of probabilities.[1]

2 The appellant, Geok Hong Company Pte Ltd ("the Company"), is and has been at all material times the legal owner of a property at 17 Glasgow Road ("the Property"). The respondents, who were the plaintiffs in the underlying

[1] *Koh Ai Gek and another v Geok Hong Co Pte Ltd (Tan Wei Chieh and others, third parties)* [2018] SGHC 74 ("GD"), [141].

suit, contend that the estate of the representee has the beneficial ownership of the Property by way of a common intention constructive trust or, in the alternative, by way of proprietary estoppel.[2]

3 The factual foundation of the respondents' case largely rests on an alleged oral representation made by Mr Tan Geok Chuan ("TGC") to his son, Mr Tan Tiong Luu ("TTL") some *40 years ago* that the Property would be purchased for TTL but that the Property would be registered in the Company's name to ensure that TTL's wife would not get any share in the event of a divorce. However, the unique feature of this case is that both TGC and TTL had passed away by the time the action commenced. Further, no one witnessed the alleged oral representation and significantly, neither TGC nor TTL ever informed any other member of the family of this arrangement during their respective lifetime. The respondents are TTL's wife and children, who have resided in the Property and regarded it as their family home for the past 40 years.

4 The High Court Judge below ("the Judge") found that the alleged oral representation was proved to have been made by TGC to TTL primarily based on a statutory declaration ("the SD") made by TTL just *nine days* before he passed away. He further found that TTL had suffered detriment in reliance on this representation by undertaking various works to the Property at his own expense and by forgoing the opportunity to purchase his own residential property. Consequently, the Judge found that a common intention constructive trust had arisen in favour of TTL. The Judge further found that the respondents' alternative claim in proprietary estoppel would also have succeeded, and that the doctrine of laches did not apply to bar the claim. His Grounds of Decision ("the GD") are reported at *Koh Ai Gek and another v Geok Hong Co Pte Ltd (Tan Wei Chieh and others, third parties)* [2018] SGHC 74.

[2] 2CB(A), p 14, para 6.

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5 With respect, we are of the view that the Judge's findings in respect of the alleged oral representation were made against the weight of the objective evidence. We are also of the view that the respondents have failed to prove any detriment in reliance on this representation. Further, the doctrine of laches would apply to bar the respondents' claims in any event. Accordingly, the respondents' claims in both common intention constructive trust and proprietary estoppel cannot succeed and we accordingly allow the appeal for the reasons set out below.

Facts

The parties

6 The Company is a family-owned company. Since its incorporation, it has been managed by TGC, and subsequently by his children. TGC's family members are as follows:[3]

(a) Mdm Ong Bah Chee ("OBC"), TGC's wife.

(b) Mr Tan Tiong Wah ("TTW"), TGC's eldest son (deceased).

(c) Mr Tan Tiong Hin ("TTH"), TGC's second son (present director).

(d) TTL, TGC's third son (deceased).

(e) Ms Tan Tiong Puan ("TTP"), TGC's eldest daughter (deceased).

(f) Mr Tan Tiong Seng ("TTS"), TGC's fourth son (present director).

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[3] AEIC of Tan Weiyang, 3RA(A), p 154, para 114.

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(g) Ms Tan Tiong Kim ("TT Kim"), TGC's second daughter (present director).

(h) Ms Tan Tiong Cher ("TTC"), TGC's third daughter (present director).

(i) Mr Tan Tiong Khong ("TT Khong"), TGC's fifth son (present director).

7 TTL's family members, who are the respondents in this appeal, are as follows:

(a) Ms Koh Ai Gek ("KAG"), TTL's wife.

(b) Mr Tan Weiyang ("TWY"), TTL's third son. He is the second respondent in his representative capacity as the executor of TTL's will, and the fifth respondent in his personal capacity. He represented the respondents in the trial below as well as the appeal before us.

(c) Mr Tan Wei Chieh ("TWC"), TTL's second son and the third respondent.

(d) Mr Tan Wei Hsien ("TWH"), TTL's eldest son and the fourth respondent.

(e) Ms Zhang Zhaoling ("ZZL"), TTL's daughter-in-law and TWC's wife.[4]

Background to the dispute

8 The Company was founded in 1960 by TGC and two of his nephews.

[4] AEIC of Koh Ai Gek, 3RA(A), pp 12 and 18, para 28.

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By 1968, TGC bought out his nephews' shares in the Company and installed his three eldest sons, TTW, TTH, and TTL as directors of the Company. TGC was at all material times the managing director of the Company.[5]

9 It is undisputed that in 1963, TGC and OBC purchased a property at Surin Lane, but decided to have it registered in TTW's name.[6] At that time, TTW was a university student.[7] The Surin Lane property was TGC's family home where TGC resided with his wife and children, until some of his children eventually moved out.

10 TTW subsequently got married on 21 March 1972. About four months later, the Company passed a resolution to acquire the Surin Lane property from TTW.[8] The respondents contend that TGC decided to transfer the title of the Surin Lane property from TTW to the Company so that TTW's wife would not be able to get any share in the property in the event of a divorce.[9]

11 TTL married KAG on 14 October 1975. 11 days later, on 25 October 1975, the Company passed a resolution to purchase the Property at $110,000.[10] A 10 percent deposit for the purchase price was paid two days after the resolution was passed.[11] While the parties are in dispute as to the identity of the person who actually paid this deposit, either TGC or the Company, there is no assertion that TTL had paid *any* portion of the purchase price.

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5 GD, [78(a)].

6 AEIC of Tan Tiong Hin, 3RA(C), p 80, para 26.

7 4RA(B), p 200 (We note that TTW's name is spelt "Tan Tiong Hwa" in the indenture).

8 4RA(B), p 215.

9 GD, [4].

10 GD, [78(d)]; CB Vol II(A), p 98.

11 4RA(B), p 236.

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12 Legal completion of the Property took place on 7 February 1977.[12] The purchase of the Property was reflected in the Company's financial statement for the year ending 31 December 1976, in the form of a $114,058 increase in the value of fixed assets under "Freehold land and building" over the previous year.[13]

13 The respondents contend that when TTL was given an offer to purchase the Property, he discussed it with TGC. TGC then told TTL that he would buy the Property for him, since TTL would be staying behind to handle the business while his siblings were studying abroad[14] and that TGC had instructed TTL to register the Property in the name of the Company, so that KAG would not be able to get a share in the event of a divorce ("the oral representation").[15] The Company denies that the oral representation was ever made.

14 In or around 1980, TTL and KAG applied for a Housing Development Board ("HDB") flat, for which they paid a deposit of $9,200 from KAG's Central Provident Fund ("CPF") account.[16] KAG explained that they had not initially planned on buying a HDB flat. However, when TTL told her that the Property would be mortgaged to obtain financing for the Company, she felt it would be safer to have their own home in case the mortgagee bank foreclosed on the Property.[17] Eventually, TTL and KAG withdrew their application for the HDB flat on 21 April 1986 by way of a letter to the HDB.[18] The respondents

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12 4RA(C), pp 34–35.

13 2CB(A), pp 154–155.

14 GD, [4] and [5].

15 GD, [4].

16 4RA(A), p 50.

17 2CB(A), p 72, lines 8–14.

18 4RA(D), p 41.

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contend that TTL and KAG did so because TGC had told them not to buy the flat, since they already owned a house *ie*, the Property.[19] The Company disputes this, and contends instead that they had withdrawn their application either because they were short of funds, or because they did not like the location of the HDB flat.[20] It is undisputed that TTL and KAG never purchased any residential property of their own thereafter.

15 TTL and KAG used the Property as their family home from at least 1977 to the present.[21] However, in the court below, the parties disputed whether TTL and his family had *exclusive use* of the Property. In particular, the Company contended that:[22]

(a) TTW and his wife also resided at the Property;

(b) TTS and TTP ran a *bakkwa* (barbecued pork) business out of the enclosed metal shelter at the back of the Property;

(c) the Property was also used to store the Company's goods as well as the goods from TTH's other businesses.

The Company no longer disputes the exclusive use of the Property by TTL and his family.

16 Over the years, various renovation and repair works were undertaken on the Property, such as the installation of sewerage pipes and the conversion of the garage into an additional bedroom. The respondents contend that the

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19 GD, [6].

20 GD, [13]; Defendants' Closing Submissions ("DCS"), 3RA(L), pp 39–40, paras 64, 67–68.

21 GD, [78(j)].

22 GD, [12].

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majority of these works were undertaken at TTL and KAG's own expense.[23] The Company denies this, and contends instead that it had paid for most of the renovation, maintenance, and repair works.[24] However, it is undisputed that the property tax levied on the Property, as well as the annual premiums for the insurance policies for the Property were paid for by the Company[25] while TTL paid for the outgoings, such as the utilities.

17 Sometime in 2012, TTL contracted liver cancer. He made a will on 10 October 2012 bequeathing the Property absolutely to KAG, referring to it in the will as "my house".[26]

18 The respondents allege that 20 days later, on 30 October 2012, TTL became agitated after a visit by some of his siblings. He told his children that his siblings had refused to "return" the Property to him, and instead told him to "go and die quickly".[27] None of the respondents witnessed this altercation. He then informed his children that he wished to make a statement before a commissioner for oaths and lodge a caveat against the Property. The SD was made later that evening outlining TTL's version of events concerning the Property. Notably, the incident with his siblings which allegedly prompted TTL to make the SD was not referred to in the SD. The material parts of the SD are as follows:[28]

> 2. My dad bought a house at 3 Surin Lane Singapore for my eldest brother, Tan Tiong Wah, the property was registered under his name, Tan Tiong Wah ("hereinafter

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23 GD, [6].

24 GD, [13]; Appellants' Case ("AC"), para 102.

25 GD, [6].

26 4RA(A), p 33.

27 GD, [8].

28 2CB(A), p 117.

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> called the "eldest brother"). My whole family (i.e. my parents and 6 siblings, my eldest brother, his wife and myself) were staying at 3 Surin Lane Singapore. My eldest brother was not having a good relationship with his wife at that time. My dad then told me to transfer the house at 3 Surin Lane under company's name, GEOK HONG (hereinafter called "the Company") so that in the event of a divorce, my eldest brother's wife would not get to share the property. I followed my dad's instructions and transferred the house at 3 Surin Lane under the company's name with my eldest brother's consent. One of my the [*sic*] other brother, Tan Tiong Heng, got a HDB flat at Toa Payoh after he was married and moved out of the house at 3 Surin Lane.
>
> 3. Around that time, Dean, the original owner of the house at 17 Glasgow Road, offered me to buy his house. I discussed with my Dad about this and he told me that he would buy the house at 17 Glasgow Road for me since I will be staying behind and I am the main person handling the business to allow my younger siblings the opportunity to study abroad. However, he told me to put my house at 17 Glasgow Road under the [Company's] name so that after I [*sic*] my marriage and in the event of a divorce, my wife would not get to share the property. Myself and my wife then moved into the house at 17 Glasgow Road. My father also instructed me to put all my savings and bonuses I received from Tong Bee finance into the [Company].
>
> 4. When the HDB started selling flats, my wife and myself have applied with HDB to buy a flat. After my father learnt of this, he told me specifically that I should not buy a flat since I already have a house at 17 Glasgow Road. The [Company] is only holding the house at 17 Glasgow Road in trust for me, Tan Tiong Luu. He instructed me not to apply for the HDB flat. I managed to convince and assure my wife that the house at 17 Glasgow Road will belong to us as long as she stays with me. My wife and I then withdrew our application for a HDB flat with HDB.

19 At the trial, the Company disputed the authenticity of the SD and the truth of its contents though authenticity is no longer challenged on appeal.

20 KAG subsequently commenced the underlying suit against the Company for a declaration that the Property was vested in equity in TTL's

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estate, and for an order that the Property be conveyed to TTL's estate.[29] The Company in turn applied to join TWY, TWH, TWC and ZZL as parties to the suit in their personal capacities, and filed a counterclaim against the respondents to deliver vacant possession of the Property.[30] Initially there was an issue relating to KAG's standing as a beneficiary to sue on behalf of TTL's estate. That issue was resolved when TWY, as TTL's executor, was added as a party.

Decision below

21 The Judge found that the respondents had proven their case on the common intention constructive trust on a balance of probabilities, and their alternative claim in proprietary estoppel.[31] Consequently, he made a declaration that the Property was held by the Company on trust for TTL and ordered the Company to convey the Property to TTL's estate.[32] Several of the findings made by the Judge are no longer live issues in this appeal and we will therefore only focus on the Judge's key findings of fact that remain relevant for the appeal.

The Judge's key findings of fact

TTL and his family had exclusive possession of the Property

22 Despite the Company's several arguments that TTL and his family did not enjoy exclusive use of the Property over the relevant period, the Judge found otherwise. As we have observed at [15] above, this finding is not challenged on appeal.

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29 2CB(A), p 22, para 25.

30 2CB(A), p 41, para 54.

31 GD, [167], [171] and [181].

32 GD, [184].

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Renovations and improvements to the Property were done at TTL and KAG's expense

23 After conducting a site visit of the Property with the parties, during which KAG and TTH explained their respective recollections concerning the works, the Judge found that the renovation works were done and paid for by TTL and/or KAG even though no evidence of such payments were adduced by the respondents.[33] These works included, *inter alia*, the installation of flushing toilets in the house and the laying of sewerage pipes to connect the Property to the public sewerage system, building of new rooms in the house, and the installation and replacement of electrical wiring and lighting.[34]

TTL and KAG withdrew their HDB application because TGC told them that they already had a house

24 The Judge found that TTL had most likely withdrawn his HDB flat application because TGC had led him to believe that the Property was his.[35] He found that KAG's testimony had withstood cross-examination as she was able to give details of what TGC had said to her with regard to the withdrawal of the HDB flat application, and to describe TGC's expression and demeanour during the conversation and to recall the fear and obedience that TGC elicited from her.[36] The Judge also found that KAG's evidence was corroborated by the chronology of events. TTH testified that TTL made his HDB flat application around 1980.[37] This was consistent with KAG's CPF statement which showed a "housing withdrawal" of $9,200 in 1980.[38] This also coincided with the date

33 GD, [103].

34 GD, [93].

35 GD, [89].

36 GD, [83].

37 GD, [88].

38 GD, [88].

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of the valuation report for the intended mortgage of the Property *ie*, 3 December 1980 which prompted TTL and KAG to consider applying for the HDB flat.[39]

TGC decided to transfer title to the Surin Lane property from TTW to the Company so that TTW's wife would not have a share in it should the marriage break down

25 The Judge found that TGC had decided to transfer the legal title to the Surin Lane property from TTW to the Company so as to prevent TTW's wife from claiming a share in the property in the event of a divorce. He rejected the Company's contention that TGC had transferred the legal title because the Company was not a suitable vehicle to hold the title to the family's property when it was still co-owned by TGC's nephews but became suitable when the Company became wholly owned by TGC and his sons.[40] He found that the timing of the transfer did not support the Company's contention as the transfer was made four years after the Company became wholly owned by TGC and his family but less than five months after TTW's wedding.

The funds for the purchase price of the Property had come from TGC

26 Some attention was spent in the court below as to whether the 10 percent deposit and the balance 90 percent purchase price for the Property were paid by the Company *or* TGC. The Judge was not able to conclusively determine the source of the funds for the 10 percent deposit[41] owing primarily to an "unsolved mystery"[42] over a suspicious annotation on the receipt for the deposit. But as regards the remaining 90 percent of the purchase price, the Judge found that it was likely to have come from TGC and not the Company. This finding is

39 GD, [88].

40 GD, [122]–[125].

41 GD, [128].

42 GD, [182(d)].

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disputed by the Company on appeal. However, in our view, this finding does not have any material bearing on the key issue in the appeal. After all, it is common ground that TTL did not make *any* financial contribution towards the purchase price for the Property. Even though the Judge might have found that the purchase price was probably paid by TGC, it is not clear whether he did so for his own benefit or on behalf of the Company given that the Property was admittedly registered in the Company's name on TGC's instructions. In any event, while the finding that it was probably TGC who had paid the purchase price (assuming he did so in his personal capacity and not as a director of the Company) may have a bearing as to whether a resulting trust had arisen in favour of TGC, we note that no such claim was mounted by any party. Ultimately, it has no real significance to the question of whether the oral representation was made to TTL. We should add that the issue as to who funded the purchase price did not expressly arise from the pleadings. It is therefore unnecessary to deal with this finding in any detail beyond these observations.

The SD was authentic and its contents were likely true

27 Contrary to the Company's submissions, the Judge accepted that TTL was fully conscious when he made the SD, and that its contents accurately reflected what TTL had wished to convey in relation to his claim to the Property.[43] The Company does not challenge this finding in this appeal. Instead, its focus for the appeal is on the proof and veracity of the *contents* of the SD.

28 The Judge found that para 3 of the SD was likely to be true, given that the other paragraphs in the SD were borne out by his findings of fact.[44] Paragraph 2 of the SD stated that legal title to the Surin Lane property was

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43 GD, [52].

44 GD, [142].

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transferred from TTW to the Company to prevent TTW's wife from getting a share in the Property. Paragraph 4 of the SD stated that TGC had told TTL and KAG to withdraw their HDB application because the Property was already theirs. Both of these paragraphs cohered with the Judge's findings of fact. Hence, the Judge concluded that an *express* common intention as alleged in para 3 of the SD was proved by the respondents on a balance of probabilities.

The Judge's legal conclusions

29 The Judge further stated that even if he had attached no weight to the SD, his findings regarding the conduct of TTL and KAG, such as the improvement works undertaken at their own expense, and the withdrawal of the HDB flat application, would have led him to find an *inferred* common intention.[45]

30 He further found that TTL had suffered detriment by making various improvements to the Property at his own expense and by withdrawing his application for a HDB flat on TGC's instruction, thereby foregoing the opportunity to make significant capital gains from ownership of his own residential property.[46]

31 The Judge also found that the respondents' alternative claim in proprietary estoppel would have succeeded though he added that the appropriate relief may not necessarily require the transfer of the Property to TTL's estate. The assurance by TGC that he would buy the Property for TTL and the further assurance that there was no need for TTL to apply for a HDB flat since he

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45 GD, [165].

46 GD, [166].

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already owned the Property brought the respondents' case within the promise-based strand of proprietary estoppel.[47]

32 Finally, the Judge held that the doctrine of laches did not apply to bar the respondents' claim. The first direct confrontation between TTL and his siblings over the Property took place on 30 October 2012, when TTL asked his siblings to "return" the Property to him. Upon being denied his request, TTL immediately sprang into action by making the SD and lodging a caveat on the Property. There was hence no undue delay in asserting the claim.[48]

Parties' cases

Appellant's case

33 For the appeal, the Company engaged new counsel, Mr Lee Eng Beng SC, whose approach is quite different from the defence which was pursued below especially in relation to several findings of fact which he rightly does not contest. Those issues unnecessarily dominated the focus of the trial which we observe parenthetically, do not have any material bearing on the pivotal issue in the appeal. This is no criticism of the Judge because those arguments were raised by the Company's previous counsel. The Judge had little choice but to painstakingly consider them before rejecting them.

34 As a starting point, the Company highlights that the default rule is that where both parties fail to prove their positive cases, there is a presumption the beneficial interest in property would follow the legal interest: *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 at [35].[49]

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47 GD, [170].

48 GD, [180].

49 AC, para 47.

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The Company argues that the respondents have failed to prove that a common intention constructive trust exists, because to do so, they would have to prove "what one dead man said to another dead man 40 years ago",[50] which is difficult without any direct or documentary evidence and without the benefit of any cross-examination. Given the fact that no one can corroborate the oral representation coupled with the complete absence of any documentary evidence in the face of the Company's corporate documents to the contrary, such a burden is an extremely onerous one for the respondents to discharge.

35 The Company contends that the Judge had erred in both law and fact in finding that:[51]

(a) the respondents had proved that the oral representation was made;

(b) TTL and KAG had withdrawn their HDB flat application because TGC told them that the Property was their house;

(c) TTL incurred the costs of renovations, repairs and maintenance for the Property from 1976 to 2012 in reliance on the oral representation from TGC;

(d) that the conduct of the parties, namely, the improvements works undertaken by TTL at his own expense, and his withdrawal of the HDB flat application, would give rise to an inferred common intention; and

(e) the respondents' claim is not barred by the doctrine of laches.

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50 AC, para 45.

51 AC, para 43.

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36 The Company argues that none of the respondents' witnesses had personal knowledge of the oral representation, and the Judge erred in relying solely on the SD. Further, the Judge should not have arrived at the conclusion that para 3 of the SD was true on the basis that other parts of the SD were borne out by his findings of fact. The Judge should instead have verified the truth of para 3 of the SD against the objective evidence.[52]

37 The Company argues that the objective evidence actually militates against the truth of para 3 of the SD.[53] First, the Company's purchase of the Property was done pursuant to a proper board resolution, and there was no evidence to suggest that the Company would deal with its assets in an informal manner. Second, the Company had exercised control and dominion over the Property by mortgaging it in order to obtain financing facilities for its own benefit. Third, it is puzzling that TGC never mentioned this arrangement to anyone else in the family during his lifetime. Fourth, there was nothing to suggest that TGC had the authority to confer the beneficial interest of the Property on TTL on behalf of the Company. Fifth, given that TGC had divested his shares in the Company such that each of his children were provided with roughly equal shares, it is unlikely that he would have intended to favour TTL by exclusively gifting him with such a significant asset of the Company. Sixth, the fact that TTL and KAG had applied for a HDB flat some years after moving into the Property demonstrates that they did not truly believe that the Property was theirs. Finally, there is no explanation as to why TTL had remained silent about his alleged beneficial interest in the Property for almost 40 years and only attempted to assert his rights just days before he passed away.

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52 AC, paras 54–55.

53 AC, paras 59–65.

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38 In relation to the improvement works done on the Property which were allegedly paid for by TTL, the Company argues that the Judge had ignored TT Kim's evidence that the Company's accounts had recorded repairs to fencing, gutter and grilles amounting to $2,252 in 1995 and the awning and roof for $6,350 in 1996.[54] The Judge did not rely on these invoices because they did not explicitly specify that the works had been done on the Property. This, the Company argues, would amount to imposing overly stringent requirements in respect of documentary evidence which were generated decades ago.[55] This is in stark contrast to the Judge's sympathetic view of the respondents' inability to produce any evidence to support TTL and/or KAG's payment of the improvement works to the Property.[56] Further, there is undisputed evidence that the Company had paid $150 on two occasions for the repair of the roof of the Property which the Judge had disregarded.

39 As regards the Judge's finding of an inferred common intention, the Company argues that short of direct financial contributions *at the time of acquisition*, it would only be in exceptional situations where an inferred common intention could arise from other conduct.[57] The improvement works done to the Property and the withdrawal of the HDB application would not, without more, give rise to an inferred common intention.

40 Finally, the Company argues that the claim is premised on an alleged oral representation made 42 years ago between two individuals who are now deceased. TTL had every opportunity to assert his beneficial ownership of the Property but did nothing until just days before his demise. It is therefore

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54 AC, para 104.

55 AC, para 105.

56 GD, [101]; AC, para 106.

57 AC, para 67.

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unconscionable for the Company to have to defend such a claim.[58] The doctrine of laches should apply to bar such a claim.

Respondents' case

41 In response to the Company's argument that TGC did not have the authority to make the oral representation on behalf of the Company, the respondents rely on the fact that in and around October 1975 when the oral representation was allegedly made, TGC was the Company's majority shareholder.[59] The respondents argue that the Company was run by a "typical Chinese family in Singapore in the 1970s with TGC as the head and TTL as his most capable child."[60] In any case, the Company did not rely on TGC's lack of authority in defending against the common intention constructive trust claim in the court below.[61]

42 The respondents submit that it is telling how the renovations to the Surin Lane property were recorded in the Company's accounts, whereas no such record was kept with respect to the Property.[62] The respondents point out that TTH had admitted that TTL and KAG paid for the works in respect of the flooring of the dining area, the two bedrooms in the posterior of the house, the kitchen, and the conversion of the garage into a bedroom.[63]

43 The respondents rely on *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [114], that "it was possible to infer a common

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58 AC, para 71.

59 Respondents' Case ("RC"), para 29.

60 RC, para 32.

61 RC, para 30.

62 RC, para 71.

63 RC, para 75(c).

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intention to alter a party's share of the beneficial interest if that party carried out 'significant improvements to the home'".[64]

44 Finally, the respondents argue that there was no undue delay in the commencement of the claim because there was never any need for TTL to assert his claim over the Property in the 40 years that he lived there. After all, TTL was expressly assured by TGC that the Property belonged to him and all the members of the Company knew of this arrangement.[65] TTL had acted as the owner of the Property in dealing with all matters relating to the Property at his own discretion. Since TTL and KAG moved into the Property, none of his siblings or the Company had ever challenged TTL's occupancy of the Property.

Our decision

45 It is apparent from the above summary of the Judge's decision that most if not all of the material findings of fact were not based on direct evidence or objective documentary records. Instead the findings were largely based on inferences drawn by the Judge.

46 While it is uncontroversial that an appellate court will be slow to overturn a trial judge's findings of fact, especially where they hinged on the trial judge's assessment of the credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence (*BOM v BOK and another appeal* [2018] SGCA 83 at [47]), that cautious and restrained approach does not apply where the findings of fact by the trial judge are based on inferences drawn from the internal consistency (or lack thereof) in the content of witnesses' testimonies or the external consistency between the

64 RC, para 43.

65 RC, para 108.

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content of their testimony and the extrinsic evidence. An appellate court is in as good a position as the trial judge to assess the veracity of the evidence and to draw any necessary inferences of fact from the circumstances of the case: *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16].

47 In our view, the key issue which is dispositive of the appeal is whether the Judge was right in finding that the oral representation was made by TGC to TTL. In that regard, it is common ground that the burden rests with the respondents to prove both the *fact* of the oral representation as well as its *contents*. If the respondents fail to prove the existence of the oral representation, then their case based on *express* common intention constructive trust and proprietary estoppel cannot succeed.

48 In the factual inquiry of this singular issue, it is relevant and vital to examine the contents of the alleged oral representation, specifically para 3 of the SD, against the conduct of TTL during his lifetime, the conduct of the Company and TGC as well as the available objective evidence. Such an examination would enable this court to draw the appropriate inferences to determine the veracity of the oral representation. This court is left to conduct such an examination because the two parties to the oral representation, for obvious reasons, are no longer available for cross-examination.

Whether the oral representation was in fact made

Contents of the Statutory Declaration

49 The Judge relied primarily on para 3 of the SD in arriving at his finding that the oral representation was probably made by TGC to TTL. It is thus crucial for this court to carefully examine the SD, in particular para 3, because absent the SD, there is no other record to evidence or support the oral representation.

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We do not think it is correct for the Judge to have stated that the absence of any document to evidence the oral representation was "a neutral factor" merely because it is not uncommon for this type of informal understandings among family members not to be reduced to writing.[66] While such informal understandings may well not be uncommon, it does not change the fact that the lack of any documentary evidence is nonetheless, objectively speaking, a significant obstacle to prove the oral representation. We would not treat it as a "neutral factor". It is a significant evidential gap which cannot be ignored.

50 The Judge was clearly cognisant of the apparently self-serving nature of the SD and warned himself to treat it with caution and to carefully ascribe the precise weight to it. He conducted a thorough examination of the circumstances under which the SD was made, and came to the conclusion that the SD was authentic and its contents accurately reflected what TTL wished to convey. However, the *authenticity* of the SD (which is no longer disputed) does not, *ipso facto*, mean that the *contents* of the SD are also true. That is an entirely separate and independent inquiry.

51 The alleged oral representation was set out in para 3 of the SD *ie,* TGC told TTL that he would buy the Property for him but the ownership of the Property would be put in the Company's name so that in the event of a divorce, TTL's wife, KAG, would not get any share of the Property. In other words, the intention behind the registration of the legal title in the Company's name, by the respondents' own case, was to render the Property "divorce-proof". In our judgment, taking para 3 to its logical conclusion would pose insurmountable difficulties for the respondents' case. It would effectively translate into an arrangement to transfer the legal title to the Property from the Company to TTL

66 GD, [142].

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at an indeterminate and unknown date in the future. Therein lies the inherent flaw with the oral representation.

52 Ironically, the only way the Property would truly be rendered "divorce-proof" is if the Company remains both the legal and beneficial owner during TTL's lifetime. If we accept that the intention was for the Company to hold the Property on trust for TTL to prevent KAG from getting a share in the Property in the event of a divorce, it begs the question as to when this risk of divorce would disappear such that the Property could then be transferred to TTL. In our view, this risk would be present so long as TTL was alive and remained married to KAG. This is consistent with the candid answer given by TWY during the hearing before us, that the risk of divorce only disappeared when TTL fell terminally ill but KAG was still married to him. This is also consistent with the glaring fact that TTL did not, at any time, ask TGC or the Company to approve the transfer of the Property since the risk of divorce could not be ruled out. What would have happened if TTL had passed away suddenly? The Company would be none the wiser of this alleged arrangement and would continue to be its legal and beneficial owner. It is therefore clear that TTL, had he remained alive would have to prove the oral representation *independent* of the SD. In short, the SD cannot and does not dispense with the need to prove the oral representation.

53 It is implicit in the respondents' case theory that TTL had a beneficial interest in the Property *from the moment it was purchased*. Indeed, as Mr Lee correctly submits, "if [the Property] was indeed held on trust for TTL, the stated purpose of this whole arrangement would not be satisfied. If there was a divorce between TTL and his wife, his wife would be able to get a share because [the Property] would be the beneficial property of TTL". Such a beneficial interest would still be regarded as a part of the matrimonial assets that would be available for division in the event of a divorce: see *UDA v UDB and another*

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[2018] 1 SLR 1015 at [31]. Therefore, the very arrangement to prevent KAG from having any share in the Property in the event of a divorce was actually doomed to fail from the outset given that the alleged trust arrangement would in itself have vested beneficial title on TTL. The transfer of the Property to TTL or lack thereof would not change TTL's alleged beneficial interest *if* the respondents' case is to be believed. It may well be possible that neither TGC nor TTL was aware that such an arrangement would vest beneficial interest in the Property on TTL. However, para 4 of the SD suggests otherwise where TTL stated that "the [Company] is only holding the [Property] *in trust* for me" [emphasis added]. Thus, it appears to us that the alleged trust arrangement was inherently unworkable from its inception which is precisely the reason why cross-examination of the parties to the oral representation is crucial to test its legitimacy.

54 We observe that the respondents did not plead *when* the transfer of the Property to TTL was supposed to have taken place pursuant to the alleged common intention constructive trust. At the hearing before us, TWY stated that the transfer could have taken place whenever TTL wanted it to be transferred. However, that cannot be right given that the intention behind the registration in the Company's name, based on the respondents' case, was to make the Property "divorce-proof" which was a risk that remained alive at all material times.

55 The Judge below did not consider the inherent difficulty of para 3 of the SD in the manner as we have identified. To be fair, this argument was not directly made below. Instead the Judge's approach in ascertaining the truth of para 3 was to verify the truth of other parts of the SD against his findings of fact and because those findings cohered with the SD, he found that para 3 was likely to be true. We do not think such an approach can be justified on the facts of this case. It remained necessary for the Judge to assess the veracity of para 3 of the

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SD against the objective evidence irrespective of his views of the rest of the SD. We turn our attention to examine the Judge's findings in relation to the other parts of the SD to assess whether those findings are correct and whether they have any material impact on proof of the oral representation.

The transfer of the Surin Lane property from TTW to the Company

56 The respondents claim that the transfer of the Surin Lane property as set out in para 2 of the SD is supported by the objective facts. For ease of reference, we replicate para 2 of the SD, which states:

> 2. My dad bought a house at 3 Surin Lane Singapore for my eldest brother, Tan Tiong Wah, the property was registered under his name, Tan Tiong Wah ("hereinafter called the "eldest brother"). My whole family (i.e. my parents and 6 siblings, my eldest brother, his wife and myself) were staying at 3 Surin Lane Singapore. My eldest brother was not having a good relationship with his wife at that time. My dad then told me to transfer the house at 3 Surin Lane under company's name, GEOK HONG (hereinafter called "the Company") so that in the event of a divorce, my eldest brother's wife would not get to share the property. I followed my dad's instructions and transferred the house at 3 Surin Lane under the company's name with my eldest brother's consent. One of my the [*sic*] other brother, Tan Tiong Heng, got a HDB flat at Toa Payoh after he was married and moved out of the house at 3 Surin Lane.

It is important to first explain the significance which the respondents have purportedly attached to para 2. The respondents suggest that, similar to the arrangement in respect of the Property, the Surin Lane property was originally *purchased for* TTW but was *subsequently* transferred to the Company after he got married to prevent his wife from getting a share in the property in the event of a divorce.[67] Notably, however, there was never any suggestion that the Surin

[67] GD, [4]; DCS, 3RA(K), p 62, para 87.

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Lane property was intended to be held on trust by the Company for the benefit of TTW.

57 The underlying purpose of para 2 of the SD was to draw a parallel between the arrangement for the Surin Lane property and the Property *ie*, the two properties were each purchased for TTW and TTL but the registration of both properties in the Company's name was to render them "divorce-proof".

58 TTH explained in his affidavit of evidence-in-chief that the Surin Lane property was purchased by his parents to be the family home after the original family home was acquired by the government.[68] This is corroborated by the undisputed fact that TGC and his family had regarded the Surin Lane property as their family home even in the period when it was registered in TTW's name until some of the children eventually moved out and formed their own families. TTH further stated that the decision was made to have the property registered in TTW's name instead of the Company because at the time the Surin Lane property was purchased, the Company was still co-owned by TGC's two nephews. As stated at [25] above, the Judge did not accept this explanation. He found TTL's explanation as set out in para 2 of the SD "more likely than not to be true".[69] We are not convinced that TTL's explanation should be preferred just because the transfer was more proximate in relation to TTW's wedding as compared to the date when the Company became wholly owned by TGC and his family. In our view, the relevant inquiry is not whether TTL's version for the transfer should be preferred over the Company's but whether TTL's version *even if accepted* supports or undermines the oral representation. A closer examination of the arrangement for the Surin Lane property actually undermines the respondents' case, whatever might have been the reason for the

68 3RA(C), p 79, paras 24–26.

69 GD, [125].

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initial registration in TTW's name. It is clear to us that TTW was never intended to be the legal and beneficial owner of the Surin Lane property and given that para 2 of the SD was intended to draw a parallel with the Property, it stands to reason that TTL was likewise never intended to be the legal and beneficial owner of the Property.

59 The objective evidence suggests, contrary to the respondents' case, that the intention was for TTW to hold the Surin Lane property on trust for the Company and not the other way around. Such an arrangement would in fact be more consistent with the way that the Surin Lane property was actually dealt with. At all material times, it was treated as the family home of TGC and the children. After the Surin Lane property was transferred to the Company, it was never transferred back to TTW. TTW never claimed that the Company was holding the Surin Lane property on trust for him. Further, even though the Company had passed a resolution to purchase the Surin Lane property from TTW for a consideration of $50,000,[70] there was no evidence that this $50,000 was actually paid by the Company to TTW. In other words, it would appear that TTW had simply complied with the directions for the Surin Lane property to be transferred to the Company without question.

60 Therefore, instead of assisting the respondents' case, this shows that the arrangement in relation to the Property was not intended to be any different from the arrangement in relation to the Surin Lane property *ie*, that the Company would be the legal and beneficial owner of the Property in the same way as it is the owner of the Surin Lane property. In fact, such an explanation is even more compelling here because unlike the Surin Lane property, the Property was registered in the name of the Company *from the outset*.

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70 4RA(A), p 223.

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The withdrawal of the HDB application

61 Just as the respondents sought to prove the reliability of para 2 of the SD, a similar exercise was undertaken in respect of para 4 of the SD, which we replicate for ease of reference:

> 4 When the HDB started selling flats, my wife and myself have applied with HDB to buy a flat. After my father learnt of this, he told me specifically that I should not buy a flat since I already have a house at 17 Glasgow Road. The [Company] is only holding the house at 17 Glasgow Road in trust for me, Tan Tiong Luu. He instructed me not to apply for the HDB flat. I managed to convince and assure my wife that the house at 17 Glasgow Road will belong to us as long as she stays with me. My wife and I then withdrew our application for a HDB flat with HDB.

62 In our view, the circumstances leading to and the precise reason for the withdrawal of the HDB application are not free from doubt. What appears to favour the respondents' case is that TTL and KAG had indeed applied for a HDB flat but subsequently withdrew their application, thereby forfeiting the deposit of $9,200. It could be argued, as the respondents have done, that there would be no reason for them to have done so unless they were sufficiently assured by the oral representation.

63 However, the fact of the HDB application in and of itself might appear to contradict the respondents' case. Why did TTL and KAG apply for a HDB flat in the first place, if indeed the oral representation was made some five years earlier that TTL already owned the Property? KAG explained that TGC had spoken to TTL about mortgaging the Property to obtain loan facilities for the Company. They were concerned with the risk of repossession by the mortgagee if the Company were to default on the loan. However, the respondents were unable to explain how this concern had been allayed simply by TGC telling them that the Property was theirs.[71] In fact, KAG testified that TTL did not even

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raise the issue of the mortgage of the Property with TGC.[72] Even if TTL and KAG were meant to be the beneficial owners of the Property, the risk of a default on the mortgage and the consequent repossession would be present so long as the loan remained outstanding.

64 Further, we find KAG's evidence in relation to the reason for the withdrawal to be largely inconsistent with the respondents' case. When asked to recount what TGC had said to TTL and her with regard to the withdrawal of the HDB flat application, she stated:[73]

> [M]y father-in-law told my husband and me that --- he said that "This house belongs to the *both of you*. You cannot --- the both of you cannot make the purchase. I had already paid 9,200 from my CPF." He said that "*The house belongs to the both of you.* The two of you cannot make the purchase."
>
> [emphasis added]

This is clearly at odds with the respondents' case, that TGC had represented to TTL that the Property would be his *alone*. In fact, it is the respondents' case that the Property was registered in the name of the Company instead of TTL because TGC did not want KAG to get a share in the Property in the event of a divorce. Therefore, it is surprising that TGC would have told KAG that the Property belonged to *her* as well.

65 TGC's assurance to TTL and KAG which allegedly led to their *withdrawal* of their HDB application does not sit well with their initial decision to *defer* their application. The deferment was alluded to in the letter from the HDB dated 9 May 1986.[74] That letter was in response to TTL's letter requesting

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71 3RA(F), p 17, lines 15–25.

72 3RA(F), p 18, lines 4–5.

73 3RA(F), p 14, lines 10–13.

74 4RA(D), p 55.

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for a deferment. When it was put to KAG in cross-examination, she was unable to provide any satisfactory explanation. KAG simply replied that she was unsure.[75] It would certainly have been relevant to examine the *reasons* provided by TTL for the deferment but TTL's letter (which apparently provided the reasons) was never produced.

66 We should add that the specific reason for the withdrawal of the application as stated in TTL's letter to the HDB was that it was "due to the present economic downturn".[76] This point was also put to KAG in cross-examination but she denied any knowledge of the letter. She maintained that it was TTL who had drafted the letter and that she left matters in relation to the withdrawal of the HDB application to him.[77] In other words, it was for TTL to explain the inconsistency between the contemporaneous letter to the HDB and the self-serving SD made almost 30 years later. KAG conceded that she was not able to provide any cogent explanation.

67 It is apparent from our review of the SD as a whole that there are immense difficulties in establishing the truth of para 3 either in itself or with reference to the other parts of the SD. Paragraph 3 of the SD is central to the respondents' case to establish the oral representation. Not only was there a total absence of any documentary evidence whatsoever to support it, the veracity of the oral representation cannot be tested at all given the fact that the only two persons who could provide evidence on the circumstances of the oral representation are no longer available for cross-examination. The absence of cross-examination is especially crucial here because of the inherent difficulties of the oral representation. Given that the oral representation cannot be

75 3RA(F), p 28, lines 10–28; p 29, lines 15–23.

76 4RA(D), p 41.

77 3RA(F), p 28, lines 10–28.

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established, there is thus nothing to rebut the presumption that the Company as the legal owner is also the beneficial owner of the Property.

68 This determination should suffice to dispose of the appeal in favour of the Company. Nonetheless for completeness, we are satisfied that our conclusion is adequately borne out by the objective conduct of the relevant parties.

Conduct of TTL

69 We find it troubling that TTL, *throughout his lifetime*, never informed any of his siblings about the oral representation or his alleged beneficial interest in the Property, including those who were involved in the management of the Company. This is an obvious question which only TTL could answer. It cannot be ruled out that his reticence to do so was due to his concern that any such claim would be challenged as indeed it has come to pass.

70 In fact, the Judge found at [108] of the GD that "the Company knew of TTL's claim at the latest by 3 January 2013, if not earlier". By then, TTL had passed away. When the Company disclosed in its financial statements for the first time in 1989 that rent-free occupation of the Company's properties were benefits to directors,[78] we find it curious that TTL did not take the opportunity to inform his fellow directors (*ie*, his siblings) that his entitlement to reside in the Property was on account of his beneficial interest in the Property rather than a benefit provided to him by the Company on account of his position as a director.

71 The only person who could have validated the oral representation to enable TTL to realise his interest in the Property was TGC. Yet TTL did not

[78] 4RA(D), p 192.

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take any steps to realise his interest between 1975 and 1990 while TGC was alive. We find this omission particularly disturbing. There does not appear to be any sensible explanation. That is not all. In the 22 years following that, TTL also did not take any steps to assert his beneficial interest. Instead, he chose to assert his interest by way of the SD after he contracted liver cancer and shortly before he passed on.

72 At the appeal hearing, TWY submitted that TTL's siblings should have known that TTL had an interest in the Property based on TTL's conduct in carrying out improvement works to the Property without seeking permission from the Company. As we explain at [87] to [90] below, such conduct, taking into account the nature of the improvement works, is equally consistent with their quiet enjoyment as a long-term occupant of the Property rather than on account of any *ownership* interest. It is one thing to allege that TTL's siblings *should have known* of TTL's alleged beneficial interest and another to claim that the other siblings had *actual knowledge* of his interest in the Property.

73 We agree with the Company that TTL's conduct in fact undermined his purported beneficial ownership of the Property. It is undisputed that he signed off on directors' resolutions which allowed the Company to mortgage the Property on two occasions to two different banks to obtain loan facilities for the Company.[79] He also acknowledged in the Company's books that the Property belongs to the Company without any reservation.

Conduct of TGC

74 From 1976, just about a year after the oral representation, to 1989, TGC gradually took steps to divest his shareholding in the Company from 42 percent

[79] 4RA(A), pp 195 and 201.

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to 2.5 percent in order to equalise his children's shareholdings. The shareholding changes in the Company over the years can be summarised as follows:[80]

	Dec 1973	**Jul 1976**	**Nov 1979**	**Oct 1989**	**Mar 1994**
TGC	42%	5%	3%	2.5%	0%
OBC	5%	5%	3%	2.5%	5%
TTW	5%	11%	11%	9%	9%
TTH	11%	16%	14%	11.8%	11.8%
TTL	11%	16%	14%	11.8%	11.8%
TTP	0%	3%	8%	11.8%	11.8%
TTS	13%	18.5%	15%	13%	13%
TT Kim	0%	3%	8%	11.8%	11.8%
TTC	0%	3%	8%	11.8%	11.8%
TT Khong	13%	19.5%	16%	14%	14%

75 The inference from TGC's efforts to equalise his children's stakes in the Company is that he wanted to provide for his children by way of the shares in the Company in approximately equal proportions, an explanation which the Judge at [145] of the GD fairly remarked "was certainly one possibility". The

[80] 2CB(A), p 60.

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Judge decided not to draw this possible inference because it was "inconsistent with the conduct of the parties – in particular, the major renovation and improvement works undertaken by TTL and TTL's withdrawal of his HDB flat application".[81] As we have found at [67] above that the oral representation has not been proven and consequently the improvement works and the withdrawal of the HDB application were not made in reliance on the oral representation, there was thus nothing in the conduct of the parties which was inconsistent to prevent such a possible inference from being drawn. Through their shareholdings, each shareholder will receive any future distribution of the assets of the Company in proportion to their respective shareholdings. Apart from the Surin Lane property and an industrial warehouse,[82] the Property is the Company's other most significant asset. We agree that it would indeed be odd for TGC to have taken steps to provide his children with roughly equal shares in the Company but to gift a substantial asset of the Company *ie*, the Property to TTL. We are not suggesting that it was impossible for TGC to have such an intention. As he is not available for cross-examination, our task is to evaluate that probability in light of the objective evidence including the relevant and indisputable conduct of TGC. We therefore disagree with the Judge's view that nothing turns on the equalisation of the shareholdings.

Conduct of the Company – the legal owner of the Property

76 From the outset, the Property was registered in the name of the Company. The Company has also consistently treated the Property as an asset of its own, with the knowledge and consent of TTL.

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81 GD, [145].

82 4RA(D), p 127; 4RA(F), p 261.

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77 First, the Company had recorded the Property as an asset in its balance sheet for the year ending 31 December 1976. This was signed and acknowledged by TTL without any objection or reservation.[83] That remained the case up to 2012 when TTL passed away. Second, the Company had mortgaged the Property to secure banking facilities for its own benefit. The directors' resolutions were duly passed. Significantly, TTL also signed them without any objection or reservation.[84] It is also undisputed that the Company paid the insurance premiums and property taxes levied on the Property at all material times – acts which are consistent with its ownership interest in the Property.

78 From our examination of the SD as well as the conduct of the relevant parties especially TTL, it is clear to us that the objective evidence does not support the Judge's finding of an *express* common intention constructive trust based on para 3 of the SD. In our view, it was quite off the mark.

Whether TTL and KAG's conduct could give rise to an inferred common intention

79 As the Judge also found that an *inferred* common intention had arisen based on the conduct of TTL and KAG, specifically, the renovation works to the Property and their withdrawal of the HDB flat application, we now explain why we disagree with this alternative finding as well.

80 This Court stated in *Chan Yuen Lan* at [97] that an inferred common intention can arise from direct financial contributions towards the *purchase price of the property* by the person claiming a beneficial interest. Although this Court did state that an inferred common intention may arise from other forms

83 4RA(C), p 77.

84 4RA(A), pp 195, 201

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of conduct in "exceptional situations", the focus remains very much on the financial contributions of the parties: see *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin and another* [2016] SGHC 113 at [95].

81 Therefore, in finding an inferred common intention, the emphasis should be directed at the direct financial contribution to the purchase price by the person claiming the beneficial interest. In the present case, although there is some dispute as to whether the purchase price was paid by the Company or TGC, what is undisputed is that TTL did *not make any contribution* towards the purchase price.

82 The respondents rely on *Chan Yuen Lan* at [114] to argue that a common intention may be inferred if the party claiming the beneficial interest has carried out "significant improvements" to the home. With respect, this argument is flawed. The respondents cited the following passage in support:

> 114 Finally, Lord Neuberger accepted that there was nothing wrong in principle with *subsequently* altering, after the date of acquisition of the property, the parties' respective shares of the beneficial interest in the property as it stood on the date of acquisition in the event of a change in their common intention after that date. However, in his view, such an alteration of the quantification of each party's share of the beneficial interest required "compelling evidence", which would normally involve "discussions, statements or actions, subsequent to the acquisition, from which an agreement or common understanding as to such a change [could] properly be inferred" (see *Stack* at [138]), although he appeared to accept that ***it was possible to infer a common intention to alter a party's share of the beneficial interest*** if that party carried out "significant improvements to the home" (see *Stack* at [139]).
>
> [emphasis in original in italics; emphasis added in bold italics]

83 When properly understood, the proposition which this Court in *Chan Yuen Lan* cited from Lord Neuberger of Abbotsbury's minority judgment in

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Stack v Dowden [2007] 2 AC 432 ("*Stack*") applies only to a *change* or an *alteration* of the parties' shares in the beneficial interest of the property. In other words, a party would first have to *acquire* a beneficial interest, either by way of an express common intention or generally a direct financial contribution to the purchase price. Only thereafter would undertaking significant improvements to the property result in an *alteration* of the proportion of that beneficial interest.

84 Where parties' common intention to share in the beneficial interest of a property changes over time, this might produce what has been referred to as an "'ambulatory' constructive trust": see *Stack* at [138]; *Jones v Kernott* [2011] 3 WLR 1121 at [14]. The concept of an "ambulatory" constructive trust was accepted by this Court in *Chan Yuen Lan* at [160(f)]. Compelling evidence is needed before one can infer that, subsequent to the acquisition of the home, the parties intended a change in the shares in which the beneficial ownership is held: *Stack* at [138]. One way by which such a change in the parties' intentions may be inferred is "where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is different from what they had then.": *Stack* at [70], *per* Baroness Hale of Richmond. Where a party carries out significant improvements such as to increase the value of the property on the basis that he has an ownership interest, he would expect to receive a share in that increase of value by way of an increase in his beneficial interest in the property.

85 In contrast, where an individual undertakes renovation works without more, it cannot be said that there is a common intention for that person to acquire a beneficial interest in the property. That said, we acknowledge that there may be situations where such renovation works are undertaken in reliance on an express discussion between the parties that they are to share in the beneficial interest in the property. In such cases, it might be open to argue that a new

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common intention constructive trust has crystallised upon that express discussion or, in the alternative, that proprietary estoppel has been made out. However, the key is that there must be a common intention for parties to hold beneficial interest in the property in a proportion which differs from their legal interest in the property. One party undertaking renovation works to the property would not, without more, indicate that there was such a common intention.

86 Therefore, the respondents' argument, which the Judge appears to have accepted, that the renovation works paid for by TTL and KAG had led TTL to *acquire* a beneficial interest in the Property is incorrect and should be rejected.

87 In any event, we are of the view that all the renovation works that were done were improvement works that were made for the enjoyment of the Property by TTL and his family. These were the works which the Judge found had been paid for by TTL and/or KAG:

(a) filling in of the pond in front of the house;

(b) changing the gradient of the driveway, so as to create more flat, usable land at the top of the slope;

(c) the shifting of the front gate and the gate pillars away from the main road and nearer the house;

(d) conversion of the garage into an additional bedroom;

(e) installing flushing toilets in the house and laying sewerage pipes below the land to connect the Property to the public sewerage system;

(f) building a metal shelter at the back of the house to enclose most of the backyard;

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(g) building boundary walls and fences with neighbours;

(h) building cemented walkways and cemented drains around the house;

(i) cementing and sealing a door within the house;

(j) installing and replacing electrical wiring and circuit boards;

(k) installing and replacing internal and external lighting; and

(l) restructuring and building additional water pipes.

88 For the purposes of the appeal, we proceed on the basis that the Judge's findings that these renovation costs were paid by TTL and/or KAG are not to be disturbed even though we note that no proper evidence was adduced to support the various payments. There is also no evidence as to the total costs of these works. That having been said, it is apparent to us that these were not works which necessarily indicate an *ownership* interest in the Property. Given that TTL and the respondents had occupied the Property for 40 years, it is entirely reasonable to expect that they would have undertaken some works to upkeep the Property and to ensure its suitability for their comfortable enjoyment. In *Sledmore v Dalby* (1996) 72 P & CR 196 ("*Sledmore*"), at 209, it was held that renovation works done to a property on which the claimant had lived rent-free would not be regarded as a detriment capable of giving rise to proprietary estoppel, because the equity would have been spent. Although that case dealt with the issue of detriment in the context of proprietary estoppel, we are of the view that the logic applies with equal force in the present case. The respondents cannot rely on the renovation works that TTL and/or KAG had undertaken to claim that an equitable interest in the Property has arisen in their favour, because that equity would have been spent by virtue of them having lived rent-free on the Property for the past 40 years. This may well explain the conspicuous

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absence of any reference in the SD that these improvements were paid by TTL and/or KAG in reliance on the oral representation or in their belief that they have an ownership interest in the Property.

89 By contrast, in *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 ("*Tan Chui Lian*"), Sundaresh Menon JC (as he then was) accepted that where renovation costs were expended at about the same time that the property was acquired, this would be taken into account in ascertaining the respective equitable interests of the parties (at [26]). On the facts of that case, the sum that was expended by the plaintiff's father on the renovations at the time the property was purchased was taken into account by the court in assessing each party's contribution towards the purchase price of the property. Menon JC explained at [25] that:

> [I]t would be artificial to ignore the reality of the situation when dealing with a case where such costs are expended at about the same time that the property was acquired. This is all the more so in dealing with properties such as HDB flats where purchasers very often intend and expect to spend considerable sums of money on renovations or improvements or remodelling soon after a flat is purchased. In such cases, the reason that a large portion of the cash reserves that are available to the purchasers is applied towards the renovation costs rather than the purchase price of the flat is driven by the mechanics of obtaining financing rather than by reason of a conscious choice as to the effect this is to have on the apportionment of the beneficial interest in the property. Simply put, it is possible to get longer terms and cheaper financing for the acquisition of a property than it is for the cost of carrying out renovations.

90 We agree with the observations of Menon JC that where significant renovation works have been undertaken at or around the time of acquisition of the property, the renovation costs should be regarded as part of the total "acquisition cost" of the property. We use the term "acquisition cost" here in a loose sense, because it would include both the cost of acquiring the land which the property is situated on (or in the case of a HDB flat the bare flat itself), and

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the cost expended to improve the property. In such situations, renovation works that are undertaken by one party may give rise to that party acquiring a beneficial interest. Here, the renovation works which TTL and KAG had undertaken in the present case falls far short of the type of works envisaged in *Tan Chui Lian*.

Whether TTL had suffered any detriment in reliance on the oral representation

91 This issue is only relevant if the oral representation was proved. Given our finding to the contrary, this point is strictly moot. Nevertheless, we do not regard either the renovation works done to the Property or the withdrawal of the HDB flat application to be sufficient to constitute detriment for the purposes of the common intention constructive trust and/or proprietary estoppel.

92 In relation to the renovation works done to the Property, we have stated at [88] above that the present case is similar to that of *Sledmore*, where even though the claimant had undertaken various renovation works to the property at his own expense, whatever equity that had arisen in his favour was extinguished by the fact that he had fully enjoyed the benefits of such expenditure and lived in the property rent-free for over 15 years. The benefits of the renovation works done to the Property were ultimately enjoyed by TTL and the respondents. This is buttressed by the fact that they had exclusive use of the Property throughout that period. In relation to the withdrawal of the HDB flat application, the specific detriment which the Judge found TTL to have suffered was his deprivation of the opportunity to make capital gains on his own residential property. We must respectfully disagree. It is entirely speculative whether such capital gains would indeed have materialised without the benefit of hindsight, and therefore it cannot be said with any certainty that this "opportunity" had any value such that the loss of it would constitute a detriment.

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93 In *Lalani v Crump Holdings Ltd* [2007] EWHC 47 (Ch) ("*Lalani*"), the claimant relied on her father's promises that she would be the true owner of a flat, and chose not to purchase another property which she had contemplated purchasing. Instead, she chose to invest her savings in certain shares. She argued that this constituted detrimental reliance, because the shares in which she had invested eventually lost value, whereas if she had bought the property which she had originally intended to, it would have appreciated in value. The English High Court agreed with the judge below that "no court would say that she had an equity because her father's promise influenced her to invest her capital one way rather than another, and unfortunately the way she chose did not work out well" (*Lalani* at [72]). Similarly, in the present case, it is entirely speculative whether TTL would have made capital gains if he had gone ahead with the purchase of the HDB flat or some other residential property. Just as the judge in *Lalani* had noted, there are so many variables which would have affected the success or failure of TTL's would-be investment in a residential property. It would be speculative to assume that TTL would have made capital gains on his investment, and that because he had given up on that opportunity due to TGC's representation to him, it must follow that he had suffered a detriment.

Whether the claim in proprietary estoppel is made out

94 In order to establish a claim in proprietary estoppel, it must be shown that a representation or an assurance was made that the claimant would have an interest in the property, and that in reliance on this representation the claimant had suffered a detriment.

95 Given our conclusion at [67] above that the respondents have failed to prove the oral representation to TTL, it is unlikely that TGC would have told TTL and KAG not to buy the HDB flat because the Property was already theirs.

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In our view, both of these representations should stand and fall together. If the oral representation was not made by TGC, then there would have been no cause for him to make the subsequent representation indicating that the Property belonged to TTL. In any event, we have concluded at [91] to [93] above that TTL had not suffered any detriment in this respect either. Therefore, the proprietary estoppel claim must likewise fail.

Whether the doctrine of laches applies to bar the respondents' claim

96 Given our decision to allow the appeal, it is strictly unnecessary to address this issue. Since submissions were made by the parties, we would briefly explain why the doctrine of laches would have barred the respondents' claim in any event.

97 The doctrine of laches was succinctly summarised in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46] (and cited with approval by this court in *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [58]) as follows:

> Laches is a doctrine of equity. It is properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, *where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted* (*Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 at [23]; *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [32]). This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced (*Re Estate of Tan Kow Quee* at [38]).
>
> [emphasis added]

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98 In the present case, crucial information relating to the oral representation and the alleged arrangement for the Company to hold the Property on trust for TTL resided only in two persons *ie*, TGC and TTL. We have set out above the immense and inherent difficulties with the fact and contents of the oral representation, the difficulties of which could only be meaningfully clarified and explained through cross-examination. However, what is clear is that TTL did not take any steps while he was alive to assert his alleged beneficial interest. In that regard, it is important to note that the omission was not over a trifling period. It was instead a substantial lapse of almost 40 years. He should have brought the claim or at the very least raised his interest in the Property while TGC was still alive, given that TGC was the only person who could have supported his claim. Even after TGC passed away in 1990, he had at least 22 years to raise his claim but failed to do so. Instead, he chose to assert his interest in the Property by way of the SD. Given that he was suffering from terminal liver cancer at the time when he made the SD, he would have known that he would not be available for cross-examination in the event of a suit.

99 The Company relies on *Quek Hung Heong v Tan Bee Hoon (executrix for estate of Quek Cher Choi, deceased) and others and another suit* [2014] SGHC 17 ("*Quek Hung Heong*") to argue that the doctrine of laches should apply in the present case. In *Quek Hung Heong*, the plaintiff sought to lay claim to the entire beneficial interest in a property by way of a resulting trust or alternatively a constructive trust and/or proprietary estoppel. Vinodh Coomaraswamy JC (as he then was) found that it would have been unconscionable to allow the plaintiff to pursue his claim (at [127]). First, the plaintiff was in a position to commence action from 1973 onwards, but chose to wait 40 years before commencing the action. This, in Coomaraswamy JC's view, was a significant delay. Coincidentally, the lapse here was also about 40 years. Second, there were multiple occasions over the intervening 40 years

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where the plaintiff had both reason and opportunity to commence proceedings to assert his full beneficial ownership over the property, but he took none of these opportunities. Third, the delay in the commencement of the action meant that all the important witnesses had died by the time of the proceedings. Finally, the plaintiff family's exclusive possession of the property did not constitute acquiescence by the defendants of the plaintiff's delay. The plaintiff's exclusive possession of the property was not inconsistent with the defendants' interest in the property bearing in mind that only family members were involved.

100 In our view, the decision in *Quek Hung Heong* is illustrative of the point that where there has been undue delay *without any proper justification* in taking earlier steps to assert a claim leading to prejudice to the other party, such delay may be held to bar any remedy. The Judge distinguished *Quek Hung Heong* on the basis that in that case, the plaintiff had several direct confrontations over the beneficial title of the property and therefore, had many occasions and reasons to take legal action to assert his claim but delayed in doing so. In comparison, the respondents contend that TTL was never confronted about his beneficial ownership of the Property until the alleged confrontation with his siblings on 30 October 2012, at which time he immediately sprang into action by making the SD and lodging the caveat on the Property. While this may be true (taking the respondents' case at its highest), what appears to have been lost in the distinction is the fact that the similarity of the present case with *Quek Hung Heong* lies in the simple fact that TTL had no reasonable explanation for his inordinate delay in asserting his claim. It is untenable for the respondents to suggest that TTL had no reason to do so *before* the alleged altercation with his siblings just before he passed away. Apart from the fact that no one witnessed the alleged altercation and leaving aside the fact that this incident was not even referred to in the SD, it should be self-evident that until the respondents brought this claim, there was no reason or cause whatsoever for the Company to

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challenge TTL's ownership claim. It should be noted that the Property was *always* registered in the Company's name and *no one* had ever suggested otherwise before TTL did so by way of his SD nine days before he passed away. No one other than TGC and TTL was privy to the oral representation (if it was made at all). There would have been *no* reason for the Company to challenge TTL's beneficial interest in the Property as it was not aware of any such beneficial interest in the first place. While it is true that TTL and his family had lived in the Property for some 40 years unchallenged, there was no reason or occasion for the Company to challenge TTL's unknown *ownership* claim until steps were taken by TTL to assert his beneficial interest in the Property. The only person who claimed to know about this alleged beneficial interest in the Property, apart from TGC, was TTL by way of the SD. In that light, it was certainly unconscionable for TTL not to have taken any step to establish his claim long before he passed on. In any event, we would note that unchallenged *occupation* of the Property is entirely different from admitting that TTL had an *ownership* interest in the Property.

101 In our view, TTL's undue and inexplicable delay was extremely prejudicial to the Company. In particular, TGC and TTL could have been cross-examined on various matters that would have been essential to the claim, such as the circumstances surrounding the making of the oral representation in 1975, the precise contents of this oral representation, the arrangement in relation to the Surin Lane property, the circumstances surrounding the withdrawal and/or deferment of the HDB flat application and the reason for TTL's complete silence about his interest in the Property from 1975 to 2012. Further, the effluxion of time in the present case had led to documentary records being lost, and the memories of witnesses being eroded, such that the state of the evidence in this case was bare to say the least.

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Conclusion

102 For the foregoing reasons, we find that the oral representation as set out in para 3 of the SD has not been proven. The renovation works that had been undertaken to the Property were also insufficient to give rise to an inferred common intention. The renovation works that TTL and KAG had paid for, as well as their withdrawal of the HDB flat application, also did not constitute detriment suffered by TTL. Therefore, the respondents' claims in common intention constructive trust and proprietary estoppel must fail. Finally, the doctrine of laches would apply to bar the respondents' claims in any event.

103 In passing, we observe that the circumstances which led to the SD suggest that TTL, upon realising his imminent passing and in the knowledge that the Company is the owner of the Property, decided to help his family to lay claim to the Property. This intention can be gleaned from para 8 of the SD:[85]

> Now that I am ill, I want to ensure my house at 17 Glasgow Road will be transferred to my wife, [KAG], as I have willed my house to my wife.

There is no conceivable reason why TTL had to wait until he was terminally ill to assert his claim in the Property when he had the last 40 years to do so.

104 The respondents were represented in the trial and the appeal by TTL's son, TWY. We would like to say that the difficulties which the respondents encountered in their attempt to prove their case were entirely not of their doing. In an unfortunate way, they literally "inherited" the difficulties from TTL. Despite the difficulties, we would like to commend them of the manner in which they conducted themselves in the appeal. TWY was polite, calm and forthright in the way in which he candidly responded to our questions. He tried his level best but unfortunately, the facts and the evidence simply do not support their

[85] 2 CB(A), p 118.

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case.

105 Accordingly, we allow the appeal. We fix the costs of the appeal at $50,000 inclusive of disbursements to be paid by the respondents to the Company. The respondents shall also bear the costs below, such costs to be taxed if not agreed by the parties. We encourage the parties to resolve the costs of the trial in a fair and sensible manner given that most of the findings of fact were resolved against the Company below.

Steven Chong Judge of Appeal	Belinda Ang Saw Ean Judge	Quentin Loh Judge

Lee Eng Beng SC and John Seow (Rajah & Tann Singapore LLP) for the appellant;
The respondents in person.

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