IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 12

Originating Summons No 14 of 2018 and Summons No 300 of 2019

Between

VIK

… *Plaintiff*

And

(1) VIL
(2) VIM
(3) VIN
(4) VIO
(5) VIP

… *Defendants*

GROUNDS OF DECISION

[Probate and Administration] — [Administration of assets]

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VIK
v
VIL and others

[2020] SGHCF 12

High Court Family Division — Originating Summons Probate No 14 of 2018 and Summons No 300 of 2019
Tan Puay Boon JC
17 January, 27 February, 4 March 2020

19 August 2020

Tan Puay Boon JC:

Introduction

1 HCF/OSP 14/2018 ("OSP 14") was an application by the Plaintiff, the professional administrator ("Administrator") of the estate of the Testator ("Estate") appointed by the High Court, for approval to sell one of two of the real properties in the Estate, referred to respectively as "Property 1" and "Property 2", to raise funds for the administration of the Estate. Besides these properties, there remained in the Estate shares in [PQR], a private limited company previously owned by the Testator, valued at about S$4.4m at the time of the Testator's death.[1] These shares were not the subject of the application.

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[1] Plaintiff's Written Submissions ("PWS") at para 8.

2 The Administrator and its legal representatives have not been paid for their professional services since 2014.[2] As of 18 October 2019, the Administrator had around S$800,000 in unpaid administration fees, while its lawyers had unpaid fees (both billed and unbilled) of around S$1m (together with an additional S$80,000 to 100,000 for on-going matters). Taken together with projected statutory liabilities, future costs and fees, the Administrator estimated that a total of around S$2.3m in expenses and liabilities for the Estate would remain outstanding. In addition, there was a loan from VIL, the 1st defendant, for US$160,500 which needed to be repaid.[3] I refer to all of these outstanding expenses and liabilities collectively as "the Estate Liabilities". As of 24 February 2020, the cash balance of the Estate had been reduced to S$1,029.27 and US$1,313.15.[4]

3 At the hearing on 4 March 2020 ("the Hearing"), I ordered the sale of Property 2. I made no order as to the sale of Property 1, without prejudice to the Administrator filing a fresh application for its sale should it become necessary to do so. On 5 March 2020, I made no order as to costs for OSP 14, which I later clarified on 11 March 2020 to mean that the Administrator's costs in the application were to be borne by the Estate. The 1st to 3rd defendants have since appealed, and I now furnish the grounds for my decision.

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2 Plaintiff's 1st Affidavit dated 19 September 2018 ("PA1") at para 53.

3 Plaintiff's 2nd Affidavit dated 24 February 2020 ("PA2") at para 12.

4 PA2 at para 13.

Background

The parties

4 The Testator had passed away on 25 April 2008.[5] He had earlier executed a will dated 23 January 2007 ("Will") and a codicil dated 21 March 2008 ("Codicil").[6] Four executors were appointed under the Will ("Executors"), and they obtained a Grant of Probate on 5 January 2009. The Administrator was appointed on 2 March 2012 by order of court to replace the Executors.[7]

5 The five Defendants in OSP 14 are all family members of the Testator and are beneficiaries of the Estate. They can be divided into two groups. One group comprises the 1st to 3rd defendants, who are the daughters of the Testator from an earlier marriage. The 4th defendant was one of the wives of the Testator, and the 5th defendant is the Testator's son by the 4th defendant.

6 There have been multiple actions commenced that involved the Administrator and the defendants, and there were also actions between the Administrator and the defendants. As the parties in OSP 14 sometimes take the role of the plaintiff and sometimes that of the defendant in those other actions, in these grounds of decision I will refer to the 1st to 3rd defendants as "Sisters 1, 2 and 3" respectively (collectively, the "Sisters"), the 4th defendant as the "Mother" and the 5th defendant as the "Son". I appreciate that the descriptions do not appear to accurately describe the relationships of the parties with the Testator. However, since these were the descriptions used by the parties during

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5 PA1 at para 5.

6 PA1 at p 28 and p 49.

7 PA1 at pp 57–58.

the Hearing, to maintain consistency, I have retained them and decided not to use new terms which may be more accurate.

7 Apart from the five defendants, there are five other beneficiaries of the Estate, who are sisters of the Testator. Two of them have since passed away. I will refer to these other beneficiaries as "Aunt 1, 2, 3, 4 and 5" respectively (collectively, the "Aunts"). While the papers for the present proceedings were served on the three surviving Aunts,[8] they have not taken part in OSP 14.

The Will and the Codicil

8 Since the disposal of OSP 14 required also the interpretation of the relevant clauses of the Will and Codicil, I set out these clauses below for easy reference. The parties acknowledged that any such interpretation would be binding on them when the application of the same clauses arises subsequently in dealing with the Estate.

The Will

9 I set out below the clauses of the Will that parties referred to or are relevant for the disposal of OSP 14.[9]

> **LAST WILL OF [Testator]**
>
> …
>
> Part I – MY [PQR] SHARES
>
> 2. I declare that this part of the Will is intended to provide for my shares and interests in the [PQR] Group of Companies (as hereinafter defined), and Part I of this Will is not intended to apply to my personal assets held in my name (such as my interests in properties) for which I have made provisions separately in Part II of this Will.

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8 HCF/ORC 229/2019 (leave); see Affidavit of Service dated 11 September 2019.

9 See PA1 at p 28 onwards.

…

Part II – MY PERSONAL ESTATE

…

10. I declare that this part of the Will is intended to provide for my personal assets held in my name in Singapore and elsewhere, and such personal assets, for the purpose of this Will, include the rest of my shares or interests in [PQR] and the [PQR] Group of Companies not comprised in My Shares as hereinbefore defined.

11.1 Subject to the payment of my debts, estate duties and funeral and testamentary expenses, and subject further to the provisions of clauses 15.1 and 16 hereof, I give all my real and personal property whatsoever and wheresoever (excepting the rest of my shares or interests in [PQR] and the [PQR] Group of Companies not comprised in My Shares as hereinbefore defined) comprised in such personal assets (including any property over which I may have a general power of appointment or disposition by will) to my trustees upon trust for my 3 daughters in equal shares, namely,

(a) my eldest daughter [Sister 1];

(b) my second daughter [Sister 2];

(c) my third daughter [Sister 3];

…

15.1 I have a property, my matrimonial home in Singapore known as [Property 1] ("the first apartment"). It is my wish that so long as my son [Son] owns the first apartment, my wife [Mother] shall be entitled to continue to reside in the first apartment as a life tenant as long as she lives or desires (together with my son [Son] if he so desires), provided she does not remarry, and provided she does not permit her siblings and their immediate families (the [Mother's] family) to reside in the first apartment at any time. If any of my daughters [the Sisters] who now reside abroad wish to stay in the first apartment during their visits to Singapore, it is my wish that my wife [Mother] should allow them to stay in the first apartment without rent (subject also to my said son retaining the ownership of the first apartment), but this does not entitle them to move into the first apartment to stay there permanently. My daughter [Sister 1] presently has exclusive use of one room at the top level of the first apartment, and she may continue to have exclusive use of this room for so long as the provisions of this clause applies.

> 15.2 I wish to categorically state that I do not want the siblings of my wife (the [Mother's] family) to at any time whatsoever reside in, occupy or otherwise use any of my properties including those that I have given in one way or another to any of my said daughters [the Sisters] and my said son [the Son] during my lifetime or in this Will, and I direct my trustees to ensure that this is observed.
>
> …
>
> 16.1 Subject to the provisions of clause 15.1, I devise and bequeath the first apartment to my trustees (of this my Will) upon trust for my said son [Son] until he attains the age of twenty-five (25) years. Upon my death, it is my wish that my son [Son] will bear all expenses pertaining to the first apartment from his own funds (even if the trust herein subsists), for which I have in my lifetime made provision. The provisions of clause 11.1 shall not apply to, and the provisions of clause 13 and clause 15.1 and 15.2 shall apply to, the first apartment.
>
> 16.2 I have purchased another apartment [Property 2] ("the second apartment") for investment. Without prejudice to the general provisions of clause 11.1, I hereby devise and bequeath the second apartment to my three (3) daughters named in clause 11.1(a), (b) and (c) in equal shares as tenants-in-common absolutely. The second apartment is presently mortgaged to the Standard Chartered Bank, and it shall be the responsibility of my three (3) daughters to discharge this loan at any time they deem fit to do so.
>
> 17. Subject to the above, my trustees may sell call in and convert my personal assets as aforesaid into money with power to postpone the sale calling in and conversion thereof so long as they shall in their absolute discretion think fit without being liable for loss.
>
> [emphasis in original]

10 In effect, the Testator had first divided his assets into two classes. The first comprised certain of his shares in [PQR] (51% of the shareholding in [PQR], per cl 3.1) and [PQR's] shares in its subsidiaries. The second comprised the remainder of his assets. Of the latter, Property 1 was devised and bequeathed to the Son, and the Testator allowed the Mother to stay in Property 1 for as long as she lives or desires so long as the Son continued to hold the property. Property

2 was devised and bequeathed to the Sisters in equal shares as tenants-in-common absolutely (*per* cl 16.2), but this was then amended by a Codicil.

The Codicil

11 The clauses of the Codicil that parties referred to or are relevant for the disposal of OSP 14 are as follows:[10]

CODICIL of [Testator]

…

1. I revoke clause 16.2 (in its entirety) of my said Will, and I substitute the new following clause 16.2 therefor –

16.2 I have purchased another apartment [Property 2] ("the second apartment") for investment. Without prejudice to the general provisions of clause 11.1, I hereby devise and bequeath the second apartment in five (5) equal shares – one (1) equal share each to my wife [Mother] and my three (3) daughters named in clause 11.1(a), (b) and (c) as tenants in common absolutely, and one (1) equal share to my five (5) sisters AS TENANT IN COMMON, namely:

(i) [Aunt 1]

(ii) [Aunt 2]

(iii) [Aunt 3]

(iv) [Aunt 4]

(v) [Aunt 5]

such one (1) equal share to my sisters to be divided between my said sisters among themselves in equal shares as tenants-in-common absolutely. The second apartment is presently mortgaged to the Standard Chartered Bank, and it shall be the responsibility of my SAID WIFE, MY three (3) daughters AND MY

[10] PA1 at p 50.

> SAID SISTERS JOINTLY to discharge this loan at any time they deem fit to do so.
>
> 2. In all other aspects I confirm my said Will.

Litigation history

12 As noted above, apart from OSP 14, the parties have been engaged in a lengthy history of litigation. It is useful now to set out this history, both for context and because some of the past and existing litigation were relevant to consider for the present case. Other than the probate actions, the following are the actions taken out by the parties (or involving the parties) in OSP 14, the nature of each of these actions, and the status of each of them.

(a) HC/OS 687/2011 ("OS 687/2011") was originally an application by the Mother and one of the Executors against the remaining three Executors for the sale of Property 2, and for the net proceeds of sale after discharging the mortgage on the property to be distributed to the Sisters, the Mother and the Aunts. OS 687/2011, however, was amended in August 2017 to proceed only against the Administrator and to seek a transfer of Property 2 rather than a sale. The action is ongoing, and had been adjourned on 10 October 2017 pending the disposal of HCF/OSP 12/2017 (now HCF/S 2/2018 ("S 2/2018")), which parties acknowledged would be dispositive of OS 687/2011 based on the facts before the court then.

(b) HC/S 426/2012 was a suit commenced by the Mother against the Administrator for repayment of a loan that she gave to the Testator. The suit was discontinued by the Mother on 27 March 2017.

(c) HC/S 883/2012 ("S 883/2012") was a suit commenced by the Sisters against the Administrator and the Mother to declare that the Codicil was null and void, and/or invalid. The suit was discontinued by the Sisters on 20 June 2017.

(d) HC/S 550/2013 was a suit commenced by the Son against the Administrator for the termination of the trust under which the Administrator was holding Property 1 as a trustee for the Son until he reaches the age of 25, and for Property 1 to be transferred to him. The Son filed the Notice of Discontinuance on 15 February 2017.

(e) HC/OS 904/2013 ("OS 904/2013") was the Administrator's action against the Sisters, Mother, and the Son. The Administrator applied for it to be discharged as administrator, and for its fees, costs and expenses since its appointment on 2 March 2012 to be paid out of the Estate, and for it to be authorised to take up two mortgages on Property 1 and Property 2 for the purpose of discharging the Estate's outstanding liabilities. The application to be discharged was refused by the High Court on 4 March 2016, but with liberty to apply when it had a viable replacement administrator to nominate. The Court granted the remaining applications. The grounds of decision was published as [2016] SGHC 31 (I refer to this as the "OS 904 GD").

(f) HC/OS 725/2016 ("OS 725/2016") was an application by one of the Sisters for a declaration that a block of 600,000 shares in [PQR] that were registered in the name of the defendant in OS 725/2016 were held by the latter on trust for the Estate, and

that the latter was also obliged to comply with any direction by the Administrator in terms of the exercise of voting rights attached to the shares. The High Court granted the application, and the judgment was published as [2017] SGHC 111.

(g) HCF/OSP 12/2017 (converted to S 2/2018) was an application by the Son and the Mother for the Son to be appointed as administrator, and for the Sisters to be liable for the costs, expenses and outstanding liabilities of the Estate up to the sum of S$5.5m, and for remaining liabilities beyond that amount to be borne by the beneficiaries of the Estate in certain proportions. S 2/2018 is still ongoing.

13 Apart from the actions above, there was also HC/S 1015/2012 in which the present parties were not directly involved as parties, but which affected [PQR] and hence, indirectly, the Estate. This was an action commenced by the receivers and managers appointed by the Court for [PQR] against 16 parties which comprised both individuals and corporate entities. The claim was for breach of fiduciary duties by directors, damages for conspiracy, damages for diversion of business opportunities, damages for diversion of monies, damages for dishonest assistance of breach of director's duties, damages for knowing receipt of any proceeds of the [PQR], an account of all the monies from the proceeds of the conspiracy as constructive trustees, tracing of such proceeds, and damages in lieu of tracing. The various claims and counterclaims were all discontinued in mid-2017.

14 While the Testator had built up [PQR] and achieved significant financial success, the conflicts surrounding his Estate have resulted in a diminution in the

Estate available for distribution.[11] It was already clear around 2012 that the Estate did not have sufficient cash on hand to meet the liabilities and expenses incurred up to 2013.[12] This prompted the application in OS 904/2013. Since then, however, the situation had apparently not been resolved. The costs of the Administrator and its legal representatives remained unpaid and have naturally increased (see [2] above). It was in this context that the present application was brought.

The assets of the Estate

15 Before turning to the application, it is also helpful to set out the assets of the Estate that were devised and bequeathed to the defendants. The following assets in Singapore were identified in the Schedule of Assets issued on 5 January 2009:[13]

(a) Property 1, valued at S$6.5m at the date of death;

(b) Property 2, valued at S$5m at the date of death;

(c) A property, "Property 3", valued at S$2.9m at the date of death;

(d) A property, "Property 4", valued at S$2.6m at the date of death; and

(e) 1,459,460 shares in [PQR], valued at S$4,430,920.56 at the date of death.

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11 PA1 at para 20.

12 PA1 at para 31.

13 PA1 at p 141.

16 Properties 3 and 4 (which I refer to as the "Residuary Properties") were transferred to the Sisters by the Executors in 2009. As of the present application, the remaining properties, therefore, were Property 1, Property 2, and 1,459,460 shares in [PQR].

The application

17 The central application in OSP 14 was prayer 1, which read as follows:

> That the Plaintiff, as the Administrator of the Estate of [the Testator] be authorised pursuant to Section 13 of the Trustees Act and/or the will and codicil of [the Testator], to sell the following properties held by the Estate on the open market for the purpose of discharging the Estate's outstanding liabilities:
>
> a. [Property 1]; and/or
>
> b. [Property 2].

18 By the Hearing on 4 March 2020, the Administrator confirmed that it was only seeking a sale of Property 2.[14]

Parties' positions

The Administrator

19 While the Administrator had made reference to s 13 of the Trustees Act (Cap 337, 2005 Rev Ed) ("Trustees Act") in OSP 14 itself, it clarified at the Hearing that it was relying primarily on its position as the administrator of the Estate and the powers granted under the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("PAA").[15] Even if the Trustees Act applied, however, the Administrator argued that the court could still grant the power to sell Property 2. As between the two properties, it was more appropriate to sell Property 2

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14 Transcript of 4 March 2020 ("Transcript 3") at p 3.

15 Transcript 3 at pp 14–15.

because of how the Will distinguished between the two properties. None of the alternatives suggested by the other parties were feasible, and the sale was needed. In response to the Sisters' argument (set out below), the Administrator argued that no issue estoppel arose.[16]

20 The Administrator took the position, and it was agreed by all parties, that the Estate was solvent. It was also not disputed that the Administrator, as a trust corporation, would be entitled to remuneration for its services, and further, that the remuneration would fall within the scope of the phrase "funeral, testamentary and administration expenses, debts and liabilities" of the Estate under s 57(4) of the PAA.

The Sisters

21 The Sisters opposed the sale of Property 1 and Property 2. They raised the following issues in their submissions:[17]

> (a) Whether a trust for sale of [Property 1] and [Property 2] arise from the operation of Clauses 11.1, 16.1, 16.2 and 17 of the Will ["Issue A"];
>
> (b) If the answer to (a) above is no, whether the Court has the jurisdiction to grant an order for the [Administrator] to sell [Property 1] and/or [Property 2] pursuant to the [Administrator's] application in OSP 14 ["Issue B"];
>
> (c) If the answer to (b) above is yes, whether the Court should exercise its discretion in the present circumstances to grant such an order for sale ["Issue C"];
>
> (d) If the answer to (c) above is yes, whether *res judicata* operates nevertheless to prevent the parties from relitigating the issue of whether [Property 2] should be sold in OSP 14 ["Issue D"].

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16 Transcript 3 at pp 9–12.

17 1st to 3rd Defendants' Written Submissions ("D1-3WS") at para 5.

22 Based on these issues, the Sisters first argued that no trust for sale arose in the Will. As a result, the Administrator needed to rely on the Trustee Act for the power to sell. However, the Sisters then contended that the court did not have jurisdiction to grant the order sought in OSP 14. Even if the court had jurisdiction, the court should *not* grant the order for such a sale. In this regard, the Sisters emphasised that the sale was not necessary, that alternatives were available, and that prejudice would be caused to the Sisters. In any case, they argued, the matter was already determined in OS 904/2013 and the doctrine of *res judicata* prevented the issue of the sale of Property 2 from being re-litigated.

23 At the Hearing, counsel for the Sisters noted that the Administrator was not relying on the Trustees Act but the PAA, and focused her oral submissions on its role as administrator of the Estate.[18] The substance of the arguments for why the order should not be granted was maintained.

The Mother

24 The Mother opposed the sale of Property 1. However, she supported the sale of Property 2 and was prepared to purchase it from the Estate so that it could immediately be put into funds to discharge its liabilities.[19] At the Hearing, given that the Administrator had confirmed that it was only seeking an order to enable it to sell Property 2, the Mother aligned herself with the Administrator's position. The Mother also took the position that the Sisters' interpretation of the Will was not tenable.[20] Counsel for the Mother also accepted the

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18 Transcript 3 at p 33, ln 3–13.

19 4th Defendant's Written Submissions ("D4WS") at paras 1 and 2.

20 Transcript 3 at p 22, ln 11–12.

Administrator's position that it was not yet a trustee but an administrator, and that OSP 14 was primarily concerned with the powers of an administrator.[21]

The Son

25 The Son initially opposed the sale of both Property 1 and Property 2, and submitted that if a sale were necessary, only Property 2 should be sold.[22] He argued that: (a) the fees owing to the Administrator and its legal representatives were not finalised; (b) there was no need to obtain more funds to finance any litigation that the Estate was involved in, as only two actions were still live; (c) the Administrator had not made best efforts to obtain mortgages for Property 1 and Property 2 after they obtained the approval to do so in OS 904/2013; and (d) the Administrator should obtain a large enough loan from the Sisters on terms that would be acceptable to the other beneficiaries to pay for the liabilities.

26 At the Hearing, however, the Son aligned himself with the Administrator's position that Property 2 should be sold. Counsel for the Son accepted the characterisation that the Administrator was not yet a trustee.[23] The Son argued that Property 1 and Property 2 were clearly distinguished in the Will.[24] As for issue estoppel, he denied that any such estoppel arose.[25]

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21 Transcript 3 at p 25, ln 8–14.

22 5th Defendant's Skeletal Submissions ("D5WS") at p 1; 5th Defendant's Reply Skeletal Submissions ("D5RS") at para 1.

23 Transcript 3 at p 28, ln 19–21.

24 Transcript 3 at p 28, ln 25–28.

25 Transcript 3 at p 29, ln 26–p 30, ln 23.

Issues

27 As can be seen from the above summary of the parties' positions, the preliminary issue was whether the question of the sale of Property 2 was *res judicata* and could not be raised in these proceedings. If the matter was not *res judicata*, a key issue in this dispute concerned the proper characterisation of the Administrator's role and the powers under which the sale was to be effected. Although there was a degree of overlap with the issues pertaining to the Trustees Act and the interpretation of the Will and Codicil, this issue was an important point to clarify at the outset. This would also effectively address Issues A and B that the Sisters raised, which were premised on the application being under the Trustees Act. Following that, the issues were effectively concerned with whether the court should grant the requested order to authorise the Administrator to sell Property 2.

28 The issues for determination, therefore, can be summarised as follows:

(a) Was the question of the sale of Property 2 *res judicata*? This is the equivalent of Issue D in the Sisters' submissions.

(b) In what capacity was the present application made by the Administrator and what was the basis for the proposed sale of Property 2? This would deal with Issues A and B in the Sisters' submissions.

(c) Should the Administrator be authorised to sell Property 2? This is the equivalent of Issue C in the Sisters' submissions, and comprises the following sub-issues:

(i) Were there viable alternatives to selling either property?

(ii) Should Property 1 or Property 2 be sold?

(iii) Would the sale predetermine existing legal proceedings?

(iv) Would the Sisters be prejudiced if Property 2 were sold?

29 Before turning to the substance of OSP 14, however, it is useful for me to address the Mother's application in HCF/SUM 300/2019 ("SUM 300/2019") for OSP 14 to be stayed pending the resolution of S 2/2018 briefly, as it sets OSP 14 in the context of other on-going proceedings and, in any case, logically comes before the substance of OSP 14 is dealt with.

SUM 300/2019

30 SUM 300/2019 was filed by the Mother on 4 November 2019 for the proceedings in OSP 14 to be stayed pending resolution of S 2/2018, including any appeal. S 2/2018 involved the Mother and Son as plaintiffs, making the following claims:[26]

(a) That the Son be appointed as administrator of the Estate and any other existing letters of administration to the contrary be revoked.

(b) A declaration that the Sisters are liable for the Estate's costs, expenses and outstanding liabilities up to the sum of S$5.5m. If the liabilities exceed that sum, such excess be satisfied by the beneficiaries entitled to the Estate's specific bequests, with the liability of each beneficiary calculated according to the rateable value of the specific bequest to which that beneficiary is entitled.

31 The first claim was not relevant to OSP 14, in my view. The directions sought in OSP 14 on how the Estate is to raise funds to pay the Estate Liabilities

[26] Statement of Claim (Amendment No 1) in S 2/2018 at p 8.

were necessary whoever the administrator will be after S 2/2018 is disposed of. There was no money or not enough money to pay the Estate Liabilities, and the administrator would need directions on how they could raise the requisite funds. I did not see a reason to stay OSP 14 on the grounds that the first claim was still to be decided.

32 I turn to the second claim, which was more relevant to OSP 14 as it concerned the question of the Estate's liabilities. The arguments in S 2/2018 centred on the transfer of the Residuary Properties (see [16] above) to the Sisters by the Executors when the latter had been in charge of administering the Estate in 2009. In the Statement of Claim for S 2/2018, the Mother and Son claimed that pursuant to the Second Schedule to the PAA (see [64] below) the residuary assets of the Estate were to be applied to discharge the Estate's liabilities before the specific bequests could be used for that purpose.[27] Hence, as the Residuary Properties were part of this residue and had been transferred to the Sisters, the Sisters ought to be made liable for the Estate Liabilities up to the value of the Residuary Properties, that is, the probate value of S$5.5m. The fact of the transfer was not denied by the Sisters, who instead claimed that the value of the Residuary Properties was not as high as S$5.5m, and that in any case, the Residuary Properties were released at a time when there were no Estate Liabilities.[28]

33 While I recognised that S 2/2018 (in its prior form as an originating summons in OSP 12/2017) had been filed before the filing of OSP 14, I considered that it would be inappropriate to order a stay as requested in SUM 300/2019. The fact of the matter was that the transfer of the Residuary

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27 Statement of Claim in S 2/2018 at para 20.

28 VIN's Defence (Amendment No 1) in S 2/2018 at para 21.

Properties had already occurred and they were no longer part of the Estate that the Administrator had access to. Whether they or an equivalent value should be returned to the Estate or applied towards the Estate's liabilities remains an open question to be determined in S 2/2018, but any further proceedings in S 2/2018 would also result in additional expenses for the Administrator and the Estate. Given this situation, it did not seem to me to be just to require S 2/2018 to be resolved (including any appeals) before OSP 14 could be determined. That would place the Administrator in the very difficult situation of having to continue to act while being unpaid and of being unable to meet their legal adviser's fees. This would not be conducive to the proper administration of the Estate. If anything in S 2/2018 would affect how the liabilities of the Estate are to be borne, appropriate adjustments to the distribution of assets can be made at the appropriate juncture.

34 Hence, I dismissed SUM 300/2019. I turn now to the substance of OSP 14.

OSP 14

Was the question of the sale of Property 2 res judicata*?*

35 The Sisters argued that the question of the sale of Property 2 was *res judicata* because of the High Court's decision in OS 904/2013. I disagreed.

36 The doctrine of *res judicata* consists of three "conceptually distinct but interrelated principles": (1) cause of action estoppel, (2) issue estoppel, and (3) the "extended doctrine" of *res judicata*, or the defence of "abuse of process": *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("*Turf Club Auto*") at [82]. The Sisters' submissions focused on both issue estoppel and abuse of process,

with the emphasis placed on the latter at the Hearing.[29] As the requirements for each are different, I deal with them in turn.

Issue estoppel

37 The requirements for issue estoppel were set out by the Court of Appeal in *Turf Club Auto* at [87] as follows: (1) there must be a final and conclusive judgment on the merits; (2) that judgment must be by a court of competent jurisdiction; (3) the two actions that are being compared must involve the same parties; and (4) there must be identity of subject matter in the two proceedings ("Conditions (1), (2), (3) and (4)" respectively). Conditions (2) and (3) were clearly satisfied. The real issues concerned Conditions (1) and (4).

38 I consider Condition (1). The question is whether the High Court's decision in OS 904/2013 was a final and conclusive judgment on the merits of *how the assets of the Estate should be applied towards meeting the Estate Liabilities*. In my view, the decision of the Court in OS 904/2013 had not finally determined the rights between the parties with regard to how monies were to be raised to pay for the Estate liabilities. It was an interim decision made based on prevailing circumstances at that time. Although the Court had refused to allow the sale of Property 2 as proposed by the Mother, I did not understand it to be a decision which was determinative of whether the property could be sold.

39 This can be seen, firstly, from the references that the Court made to matters that were subject to change. The High Court had referred to the dispute on whether the Codicil was valid in OS 725/2016. That dispute called into question the entitlements that the beneficiaries had in the property. That was, in

[29] Transcript 3 at p 39, ln 7–9.

turn, related to the issue of whether Property 2 should be sold as disputed in OS 687/2011 (OS 904 GD at [23]). Those circumstances were liable to change. In fact, the circumstances *have* changed. OS 725/2016 was withdrawn by the Sisters and they no longer take the position that the Codicil was invalid. Now that the validity of the Codicil was no longer in issue, the disposal of Property 2 would be determined according to the Codicil. Finally, as I note at [105] below, OS 687/2011 has since been amended in August 2017 so that the Mother is no longer pursuing a *sale* of Property 2 but only a transfer of Property 2 to the beneficiaries according to the Codicil. The circumstances have changed and called for a reassessment of the means by which the liabilities of the Estate were to be discharged.

40 Further, the High Court's preference of the mortgages over the sale of Property 2 had to be seen in context. Any pronouncement it made preferring the mortgages was not a conclusion that the sale of Property 2 should not be allowed under any circumstance. It was expressing a view on the *better* solution *at that juncture*, especially in the light of the fact that the Administrator had applied for the authorisation to take out mortgages on the properties. If the Administrator failed to raise sufficient funds (or any funds) by way of the proposed mortgages, it would be surprising if a later court would be prevented from considering the possibility of sale subsequently. That is exactly what has happened. Indeed, as a matter of principle, the High Court had recognised that all the properties in the Estate could be liquidated (OS 904 GD at [38]).

41 In terms of Condition (4), the identity of subject matter, I also doubted whether the High Court's decision in OS 904/2013 shared the same subject matter as the present proceedings in such a way that would give rise to issue estoppel. As the Court of Appeal summarised in *Turf Club Auto* ([36] *supra*) at [108], there are three further sub-requirements under Condition (4):

…

> (a) The prior decision must traverse the same ground as the subsequent proceedings and the facts and circumstances giving rise to the earlier decision must not have changed or should be incapable of change.
>
> (b) The previous determination must have been fundamental and not merely collateral to the previous decision so that the decision could not stand without that determination, and this analysis should be approached from the perspective of common sense.
>
> (c) The issue should be shown in fact to have been raised and argued.

42 In my judgment, the first sub-requirement was not met in this case. For the reasons already identified at [39]–[40], I found that the "facts and circumstances giving rise to the earlier decision" have in fact changed. The dispute over the Codicil was no longer active, and to the extent that there was still an outstanding issue relating to Property 2, the Mother was no longer seeking a sale of Property 2. Whereas mortgages on Properties 1 and 2 were still a possibility then, the Administrator argued that this was no longer viable and sale was the best option. I will discuss whether this was true below (see [69]–[72] below) but the point is that the decision that Property 2 should not be sold was given in the context of circumstances that were bound to change.

43 Therefore, no issue estoppel arose preventing the Administrator from now seeking a sale of Property 2. The reality was that the court was concerned here and in OS 904/2013 with the best way forward in the management of the Estate in the circumstances of each application. What was the preferred option then may not be the preferred option now. In this context, it would not be sensible to prevent solutions which were previously canvassed and rejected in different circumstances from being raised again at a later stage.

Abuse of process

44 I turn then to the Sisters' argument on the abuse of process doctrine. As the High Court stated in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Nellie Goh*") at [53]:

> … [A] court should determine whether there is an abuse of process by looking at all the circumstances of the case, *including whether the later proceedings in substance is nothing more than a collateral attack upon the previous decision*; whether there are *bona fide* reasons why an issue that ought to have been raised in the earlier action was not; and whether there are some other special circumstances that might justify allowing the case to proceed. The absence or existence of these enumerated factors (which are not intended to be exhaustive) is not decisive. In determining whether the ambient circumstances of the case give rise to an abuse of process, *the court* should not adopt an inflexible or unyielding attitude but *should remain guided by the balance to be found in the tension between the demands of ensuring that a litigant who has a genuine claim is allowed to press his case in court and recognising that there is a point beyond which repeated litigation would be unduly oppressive to the defendant*. … [emphasis added]

45 No abuse of process could be found on the facts of the present case. The biggest hurdle the Sisters' submission on this doctrine faced was the fact that the Administrator, which was bringing the present application for Property 2 to be sold, *had in fact argued against the sale of Property 2 in OS 904/2013.* At that time, the Administrator had taken the position that mortgages would be acceptable and sufficient for the Estate's needs. This proved to be wrong, as the Administrator claimed, when no mortgage could be obtained despite its efforts. Regardless, it was clear that this could not be a *collateral attack* on the prior decision because, in truth, the Administrator had gotten what it wanted in OS 904/2013. Its present application was not seeking to re-open the issue in its favour, but an acknowledgment that now, perhaps, a sale might be needed for the Estate. This was further buttressed by the fact that the circumstances were

bound to change and that, this being an issue with the administration of the Estate, different solutions might be required at different points in time.

46 Furthermore, the Sisters' argument here sat uneasily with their insistence that the sale of Property 2 should not be allowed because the Administrator had not exerted itself sufficiently in seeking funding through an alternative, like a mortgage. On the one hand, this argument implied that the Administrator ought to have pursued an alternative like the mortgage, which it actually did in OS 904/2013, but, on the other hand, the Sisters then argued that this would prevent the Administrator from later seeking a sale of the property. In fact, it was exactly because the Administrator had taken one position, tried it, and failed to secure financing, that it then came back to court to seek a different solution. This could not be an abuse of process. I saw no reason to apply the extended doctrine of *res judicata* in this case.

47 Therefore, on the basis of my conclusions on issue estoppel and abuse of process, I held that there was no *res judicata* that prevented the Administrator from now pursuing a sale of Property 2.

Basis for the application for authorisation to sell

48 The question then arose as to the capacity in which the Administrator was bringing the application in OSP 14, which affected the appropriate legal regime to apply. I held that the Administrator was acting as an administrator of the Estate rather than a trustee, and that the appropriate legal regime for the issue was the PAA.

The capacity of the Administrator

49 The Administrator, in both its written submissions filed on 26 February 2020 and at the Hearing, confirmed that it was not relying on the Trustees Act or any trust for sale, and was instead relying on s 57(4) of the PAA. That provision allows for assets of the Estate to be applied for "the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout", in the order specified in the Second Schedule. It argued that as its task as the administrator was not yet complete, it had not yet stepped into the position of a trustee, and hence the PAA was the relevant legislation.[30]

50 Both counsel for the Mother[31] and for the Son[32] agreed with the characterisation of the Administrator's position. While counsel for the Sisters raised the point that OSP 14 had been framed under the Trustees Act, she did not take the point further and proceeded to submit at the Hearing on the basis of the PAA. Further, I note for completeness that the Administrator's position was already known at least by 26 February 2020 by virtue of the written submissions, but no objection or issue was raised at the hearing on 27 February 2020, which was adjourned. Sufficient time had been given to all parties to submit on this issue and the applicability of s 57(4) of the PAA.

51 The Administrator, as administrator of the Estate, recognised that its role was to "call in" the assets of the Estate, and to pay all the debts and expenses of the Estate. It had to do this before it could distribute the assets to the beneficiaries as trustee of the Estate. The distinction between an "administrator" and a "trustee" was summarised by High Court in *Lee Yoke San and another v*

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30 PWS at paras 18–19.

31 Transcript 3 at p 25, ln 8–14.

32 Transcript 3 at p 28, ln 19–21.

Tsong Sai Sai Cecilia and another [1992] 3 SLR(R) 516 ("*Lee Yoke San*") at [35]:[33]

> An executor "calls in" the estate that collects and converts the assets into cash, and pays all the funeral and testamentary expenses, estate duty, debts and legacies. When he has done this, he has discharged his duties as an executor. Then he steps into the shoes of a trustee. He owes a fiduciary duty to the beneficiaries, whether he is an executor or trustee. Executors retain the status of personal representatives indefinitely so long as they have not acted in the capacity of trustees or made a declaration that they have taken on the status of trustees.

52 This distinction is between an administrator (who works to call in and convert assets, and to pay out as necessary), and the trustee of the assets in the estate. It is only after the work of the executor/administrator is done that he becomes the trustee of the property in the trusts detailed by the will. None of this appeared to be disputed by the defendants in this case. Although this case was not cited to me by the parties, the undisputed principles were summarised by the Court of Appeal in *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Swoon and another and another appeal* [2019] SGCA 61 ("*Ong Wui Teck*"):

> 64 *In our judgment, a personal representative ceases to be an executor and administrator only after all the assets of the estate have been vested in the personal representative, and the estate has been fully administered*: see G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018) at para 12.19. This involves, *inter alia*, getting in all the assets of the estate, paying for any funeral, testamentary and administrative expenses, and satisfying all outstanding debts against the estate. As trustee, the personal representative then becomes concerned with the problems of distribution of the administered estate among the persons entitled: see *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Alexander Learmonth *et al* gen eds) (Sweet & Maxwell, 21st Ed, 2018) ("*Williams, Mortimer and Sunnucks*") at para 65-05. …

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[33] PWS at para 19.

> 65 *Once an executor decides that he no longer requires the estate's assets for the satisfaction of the liabilities of the estate, he should then "assent" to the legacy*. This is explained by the learned authors of *Williams, Mortimer and Sunnucks* at para 76-01 (see also Arthur Dean, "When Does an Executor become a Trustee?" (1935-1938) 1 Res Judicatae 92 at p 93):
>
> > An assent has been described as an acknowledgment by a personal representative that an asset is no longer required for the payment of the debts, funeral expenses or general pecuniary legacies.
> >
> > As has been shown all real and personal property to which a deceased person was entitled for an interest not ceasing on his death, now devolves upon his representatives. They are responsible for the satisfaction of the deceased's debts to the extent of the whole estate, even though the testator may have directed that a portion of it should be applied to other purposes. In view of this liability they should not distribute any portion of the deceased's estate until satisfied that such debts have been actually paid or are adequately secured, or can be paid without recourse to that portion of the estate. The personal representatives are protected against competing claims by the principle that the beneficiaries' title to the deceased's property, whether devisees, legatees or persons entitled on intestacy, is not complete until some act of the representatives themselves makes it so. This act, according to the circumstances, is either an assent or a conveyance, and until it has taken place the administration continues.
>
> 66 *It follows that before the debts and liabilities of the estate have been fully settled, the beneficiaries to the will cannot claim to have a beneficial interest in the assets of the estate, since some of the assets may have to be used in satisfaction of the said debts and liabilities*. Therefore, if the beneficiaries do not have an equitable interest in the assets of the Estate, the personal representative cannot be regarded as a trustee over those assets. …
>
> [emphasis added]

53 The Court of Appeal had earlier given guidance on the nature of an "assent" in this context in *Seah Teong Kang (co-executor of the will of Lee Koon, deceased) and another v Seah Yong Chwan (executor of the estate of Seah Eng Teow)* [2015] 5 SLR 792 ("*Seah Teong Kang*"), describing an assent (at

[25]) as "an acknowledgement by a personal representative that an asset of the deceased is no longer required for the payment of the debts of the estate, funeral expenses or general pecuniary legacies". The question of whether an assent exists is a fact-sensitive one, since an assent may be informal and may also be inferred from conduct: *Seah Teong Kang* at [27]. In respect of Property 1 and Property 2, there is no evidence of any assent on the part of the Administrator, and none of the parties have sought to argue as such. It follows that both Property 1 and Property 2 are not held on trust by the Administrator, and the appropriate regime of law is that which applies to execution and administration of an estate.

54 For completeness, I also note that while the Residuary Properties had earlier been transferred to the Sisters by the Executors who had charge of the Estate previously (see [16] above), this did not bring an end to the administration of the Estate. I understand that this was done at a time when there were enough liquid assets for the administration of the Estate. Since then, the Estate Liabilities have mounted, contributed to also by the many actions that the Administrator had to deal with or be involved in, and there was no longer sufficient liquidity in the Estate to pay for its administration, leaving significant expenses unpaid.[34] Nothing done in respect of the Residuary Properties could be construed as assent in relation to Property 1 and Property 2.

55 On the basis of this analysis, it was clear to me that the Administrator was still an administrator of the Estate *vis-à-vis* Property 1 and Property 2, and that they were therefore not trustees of the properties of the Estate.

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[34] Transcript of 27 February 2020 ("Transcript 2") at p 17; Transcripts 3 at p 15.

56 This should not be confused with the fact that the Trustees Act applies to executors and administrators *where appropriate.* The Trustees Act provides a *statutory* definition of "trust" and "trustee" that extends beyond the usual concept of a trustee. By virtue of s 2(1), the Trustees Act applies to "trusts including, so far as this Act applies thereto, *executorships and administratorships* constituted or created either before, on or after 1st September 1929" [emphasis added]. Section 3 of the Trustees Act provides the following definition of "trust":

> "trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and *to the duties incident to the office of a personal representative*, and "trustee" *where the context admits includes a personal representative* … [emphasis added]

57 As a result, even while assent has not been given and the administration of the estate is still on-going, *ie* before the administrator becomes a trustee in the strict sense, there *are* provisions in the Trustees Act that already apply by virtue of s 2(1) and s 3 of the Trustees Act. Not all of the provisions in the Trustees Act apply, however, as can be seen from the reservations in s 2(1) – "so far as this Act applies thereto" – and s 3 – "where the context admits". Each provision needs to be considered specifically to see if it was intended to apply to executors/administrators as well. To that extent, both the PAA and the relevant provisions of the Trustees Act may apply to an administrator of an estate.

The power to sell

58 In the present case, the Administrator had chosen to seek the court's approval to exercise its power under s 57(4) of the PAA for the assets of the Estate to be applied towards the various Estate Liabilities. The parties focused

the dispute on whether Property 2 should be sold for this purpose and accepted that the Administrator would have the power to sell the property under s 57(4) of the PAA. I proceeded on the same basis. The Sisters' submissions on whether a trust for sale existed and, if not, whether the power to sell Property 2 could be added by the court under s 56 of the Trustees Act were therefore not live issues. As submissions were made on these issues, however, I propose to make some brief observations about why these arguments did not apply to the present case.

59 Given that the Administrator has not yet completed the administration of the Estate, the assets in the Estate are not held by the Administrator on trust: *Ong Wui Teck* ([52] *supra*) at [66]; see [51]–[53] above. It follows that any trust declared by the Will and Codicil would also *not* have been constituted. The trust would only arise once the Administrator has given assent, following which the Will and Codicil take effect: *Seah Teong Kang* ([53] *supra*) at [26]. Hence, a clause like cl 17 of the Will purporting to create a trust for sale, regardless of its scope, would not be operative until the assent had been given, even if Property 1 and Property 2 do fall within the scope of cl 17. The power to sell for the purpose of meeting the Estate Liabilities, therefore, cannot come from a trust for sale, since, where such expenses and liabilities are unmet, *ex hypothesi*, the administration of the estate is not complete, and no trust for sale arises yet.

60 Given that there can be no trust for sale that operates at this stage in the administration of the Estate, the question then is whether s 56 of the Trustees Act gives the court that power. Section 56 of the Trustees Act reads:

> **Power of court to authorise dealings with trust property**
>
> 56.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be

> effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may —
>
> > (a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit; and
> >
> > (b) direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.
>
> (2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
>
> (3) An application to the court under this section may be made by the trustees, or by any of them or by any person beneficially interested under the trust.

61 Section 56 arguably applies to an administrator of an estate because of "trustees" as defined by s 3 of the Trustees Act and because s 56(1) refers to the "administration of any property vested in trustees", which would cover the assets of an estate that vests in the administrators, but which are not technically a trust. I note that the High Court in OS 902/2013 assumed that s 56 of the Trustees Act would apply to the Administrator applying for the power to take out mortgages on Property 1 and Property 2: OS 902 GD at [21].

62 As the Administrator clarified that it was no longer relying on s 56 of the Trustees Act, I do not come to a firm conclusion on whether s 56 of the Trustees Act would apply to an administrator of an estate where the administration is still going on and the administrator wishes to sell assets to cover the expenses and liabilities of the estate. While the question of how the Trustees Act interacted with the PAA did arise in the present case (albeit on the periphery), I did not ultimately have to resolve the question of the exact relation between s 57 of the PAA and s 56 of the Trustees Act for the purposes of this case and I therefore say no more.

Section 57(4) of the PAA

63 I turn then to consider the actual provision relied upon and on which I based my decision. As I noted above, the parties were agreed that the Estate was still solvent. The applicable provision was therefore s 57(4) of the PAA which reads:

> Where the estate of a deceased person is solvent his estate shall, subject to the Rules of Court (Cap. 322, R 5) and section 58 as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in the Second Schedule.

64 The Second Schedule provides as follows:

> ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT
>
> 1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.
>
> 2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
>
> 3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
>
> 4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
>
> 5. The fund, if any, retained to meet pecuniary legacies.
>
> 6. Property specifically devised or bequeathed, rateably according to value.
>
> 7. Property appointed by will under a general power, rateably according to value.
>
> 8. The following provisions shall also apply:

> (*a*) the order of application may be varied by the will of the deceased; and
>
> (*b*) this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

65 As in OS 904/2013, the parties did not dispute in this case that the assets of the Estate had been exhausted up to para 6 of the Second Schedule to the PAA, such that the next assets in line to be applied for the purpose of discharging the Estate Liabilities would be the "[p]roperty specifically devised or bequeathed, rateably according to value", *ie* Property 1 and Property 2. While there were shares in [PQR] remaining, the defendants did not attempt to argue that they should be applied towards the Estate Liabilities first ahead of Properties 1 and 2, and I therefore do not address that issue.

66 For present purposes, it was not disputed by any party that the Administrator could rely on s 57(4) and the Second Schedule of the PAA to have Property 2 sold. The Administrator brought the present application under O 15 and O 80 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") given the potential disagreement of the beneficiaries, although in reality, since the matter was filed in the Family Justice Courts, the appropriate rules were under Part 18, Division 53 of the Family Justice Rules 2014 (S 813/2014) ("FJR"). Hence, the question in this case was whether the court should allow the Administrator to sell Property 2 in the face of disagreement by the Sisters as beneficiaries.

Should the Administrator be authorised to sell Property 2?

67 The sub-issues raised in this case essentially were: (a) whether there were viable alternatives to the sale of one of the properties that the Administrator should be made to consider first, (b) whether Property 1 or

Property 2 should be sold, (c) whether the sale of Property 2 would pre-determine existing legal proceedings, and (d) whether the sale of Property 2 would unfairly prejudice the Sisters. I address these in turn.

Were there viable alternatives to sale?

68 The Sisters argued that because there were alternatives to selling Property 2, the sale should not be authorised by the court. While no authority was cited to me for the proposition that the sale must be necessary before the court would grant the authorisation to sell in the context of administration, I considered, in any case, that the sale of one of the properties was the most viable path forward.

(1) Mortgage

69 After the Administrator was authorised to obtain further mortgages on the two properties, its attempts to do so with three banks were not successful. The beneficiaries' solicitors were informed in 2017.[35] The Administrator was of the view that it was unlikely that the Estate would be able to secure mortgages over the properties when it had no income to meet the mortgage payments. When OS 904/2013 was filed, Property 2 was tenanted but it is no longer the case.[36] For the reasons I detail below, renting out Property 1 and Property 2 was not a practical solution in the present case.

70 While the Sisters claimed that the Administrator had failed to expend reasonable efforts to obtain mortgages on the properties, I did not find a basis for that conclusion. The Administrator had contacted four banks from 4 July

35 PWS at para 9(b).

36 PWS at para 9(c).

2016 to 1 February 2017 in an effort to obtain a mortgage. According to the Administrator, "[n]one of the banks…were willing to engage [the Administrator] with respect to taking any further mortgages…"[37] The conclusion of this search was set out in a letter from the Administrator's solicitors on 3 February 2017 to the beneficiaries' solicitors.[38]

71 The Administrator exhibited the correspondence between itself and the four banks in its affidavit evidence. Two of the banks were not willing to deal with the Administrator and suggested that the properties be transferred to the beneficiaries first, and the mortgages could then be taken out by the beneficiaries.[39] However, the Sisters took particular issue with how the Administrator dealt with the remaining two banks:

(a) In relation to Standard Chartered Bank ("SCB"), after the Administrator had provided the Order of Court in OS 904/2013 to evidence its authority to take up the mortgages,[40] no response from SCB was forthcoming. The Sisters argued that the Administrator should have followed up with SCB. In my view, however, after the letter was sent in January 2017, it did not appear that following up with SCB would have done much good. The Administrator was entitled to exercise its judgment on how far to pursue matters, and the mere assertions by the Sisters did not mean that the Administrator had failed in the discharge of its duty.

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37 PA1 at para 44.

38 PA1 at pp 522–523.

39 PA2 at para 17, and pp 91 and 95.

40 PA2 at p 60.

(b) In relation to HSBC Global Private Banking, the Sisters argued that after the bank replied stating that it would check with the legal team and/or external counsel, the Administrator should have followed up rather than conclude that the mortgages could not be obtained.[41] However, given the situation faced by the Administrator, I was not able to conclude that the Administrator had failed to pursue this option with sufficient diligence, since the Administrator would have had to weigh several considerations like the costs of pursuing the matter further (especially if HSBC Global Private Banking would incur legal costs in seeking advice, and such costs would be borne by the Estate) as well as the desirability of engaging the respondents to seeking a more promising solution at that juncture.

72 Therefore, I was of the view that there was little merit to the Sisters' argument that the sale of Property 2 could not be authorised because the Administrator had failed to make sufficient efforts to obtain the mortgages. For the avoidance of doubt, I note that the order made in OS 904/2013 was not to *mandate* the Administrator to take up further mortgages on the properties. Rather, it was that the Administrator was *authorised* to do so pursuant to the Trustees Act. This should be borne in mind in terms of the Sisters' argument that the Administrator had not yet "complied" with the terms of the order in OS 904/2013.

(2) Renting out

73 The possibility of renting out Property 1 and Property 2 was relevant in two ways. First, it was considered as an alternative to selling Property 2, if the

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41 PA2 at p 99.

rental income could be used to discharge the Estate's liabilities and expenses. Second, it could be used to finance a mortgage that could be taken out on the properties. Common to both was the issue that the properties could not be tenanted out as a practical matter and as a matter of respecting the Testator's intentions.

74 After OS 904/2013 was disposed of, the Son moved into Property 1 and resided there. It was therefore no longer possible for this property to be rented out. In any event, once the administration of the Estate was complete, Property 1 would be transferred to the Son (since he has already reached the age of 25). Clause 15.1 of the Will also provided that the Wife could reside in Property 1 so long as the Son owns it, with or without the Son, during her lifetime. Moreover, by the same clause, any of the Sisters who are living abroad would be allowed to stay in Property 1 when they visited, and one of them, Sister 1, had exclusive use of one room in Property 1. Renting out Property 1 would require the Administrator to override the Testator's wishes that are embodied in those clauses of the Will. It was therefore not available for renting out unless parties agreed. There was no evidence of such agreement.

75 Property 2 was not in a tenantable condition, and required renovations with an estimated cost of S$35,000 before it could be rented out. The Estate did not have the funds to undertake the necessary renovations.[42] Therefore, as a practical matter, renting out Property 2 did not appear to be a viable solution. As I go on to explain, I did not find the loan arrangement proposed by the Sisters to be viable, even if it would resolve the need for the S$35,000 in the short term.

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42 PA2 at para 7.

76 Even if the properties could be rented out, it was clear that the rental income would be dwarfed by the outstanding Estate Liabilities. Property 2 was apparently generating S$8,700 per month in rental income between 2018 and 2019.[43] Compared to the more than S$2m in expenses and liabilities that the Estate had or would incur, merely using rental income was not viable. As for the proposal to use the rental income to finance a mortgage, I was ultimately not convinced that this was appropriate. Apart from the fact that no banks had come forward to agree to such a mortgage, saddling either or both of Properties 1 and 2 with a mortgage at this point, after the finances of the Estate had been further drawn down upon in the intervening four years between the decision in OS 904/2013 and the Hearing, did not appear to be a sensible solution.

(3) Loans or guarantees from the Sisters

77 The Sisters had also offered to advance a loan to the Estate to pay its income and property taxes, and the outgoings (*ie,* MCST and property management fees, and renovation costs) for Property 2.[44] Alternatively, they would either provide guarantees for the mortgages of both Property 1 and Property 2, or offer the Estate a loan on similar commercial terms as a mortgage.[45]

78 Considering the first alternative, while it addressed the Estate Liabilities other than the professional fees of the Administrator and its legal representatives, it is the said fees which formed the bulk of the Estate Liabilities and which will continue to increase so long as the Estate has to be administered.

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43 PA1 at para 51.

44 PWS at para 40; D1-3WS at para 38(a).

45 D1-3WS at para 38(b).

As of 18 October 2019, the amount was already around S$1.8m.[46] If Property 2 is rented out, it can only obtain rental income of about S$8,700 per month if the rental in the past is used as a guide.[47] It would take more than 17 years to discharge the current debt, with more debt piling up in the meantime. Even if the current debt is halved, it would still take at least eight years to discharge it. Meanwhile, the Administrator and its legal representatives will continue to charge professional fees for new work done until the administration of the Estate is completed. These were not addressed in the proposal.

79 Under the second alternative, it appears that both Property 1 and Property 2 would be rented out to finance the mortgages. I have already addressed why, even if funds were available for Property 2 to be renovated and prepared for tenancy, such rental would not be appropriate, even if the banks were willing to accept the mortgage of the two properties (see [71] above). Furthermore, the proposal for the guarantees came very late in the day, much after the efforts were taken in 2016 to 2017 to attempt to secure the mortgage. It is telling that this proposal was not made by the Sisters after the Administrator's solicitors had written to the beneficiaries in February 2017.[48] As for the proposal that the Sisters would offer a loan on the same commercial terms as a mortgage over the properties, this also came late in the day. Further, it was not clear how the loan would be able to account for on-going and increasing expenses of the Estate. In addition, rather than take on further liabilities, this proposal did not ultimately seem very different from allowing the Administrator to sell Property 2, at which point the Sisters could be the ones to purchase the property if they so desired.

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46 PA2 at para 12.

47 PA1 at para 51.

48 PA1 at p 522.

80 As for the Son's proposal that the Administrator should seek a big enough loan from the Sisters on terms that would be acceptable to the other beneficiaries, given the lack of cooperation between different groups of beneficiaries that has been manifest in the history of the administration of the Estate, I did not think that the Administrator should be placed in the invidious position of having to resolve their disagreements. Its energies would be better spent in calling in, and then distributing the assets in the manner directed under the Will and Codicil. A solution that reduced the need for further negotiations and which was not predicated on the goodwill of the parties was a more realistic solution.

(4) Sale to the Mother

81 At the hearing of OSP 14, there was also an offer from the Mother to purchase Property 2,[49] subject to satisfactory valuation. I did not take this into consideration when deciding OSP 14. First, it came very late in the day. Second, as pointed out by the Administrator, the Sisters have not agreed to the proposal.[50] Nor have the Aunts, for that matter. If indeed the Mother wishes to purchase Property 2, she can always indicate her interest and make her bid when the property is put up for sale by the Administrator if OSP 14 is granted.

(5) Conclusion on alternatives

82 Therefore, I concluded that the alternatives raised to the sale of Property 2 did not appear sufficient to militate against ordering the sale of Property 2 to discharge the Estate Liabilities.

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49 D4WS at para 1.

50 PWS at paras 45-46.

Should Property 2 be sold in advance of Property 1?

83 The next question to address was why Property 2 was to be sold ahead of Property 1. The Administrator argued that this was to give effect to the Will and Codicil. The Mother and Son aligned themselves with this submission. The Sisters contended that there was no such preference, and indeed, Property 1 was to be sold first. I found that the Administrator's proposal to sell Property 2 ahead of Property 1 was consistent with Will and Codicil.

84 I clarify that my judgment in this regard was not based on any conclusion concerning the order in which assets are to be applied for the Estate Liabilities under the Second Schedule to the PAA. I recognised that para 6 of the Second Schedule of the PAA refers to "[p]roperty specifically devised or bequeathed, *rateably according to value*" [emphasis added]. This was subject to para 8(*a*), which states: "the order of application may be varied by the will of the deceased." Section 57(4) of the PAA also provides that the payment out is subject to the provisions of the will in question. However, in my view, the issue of how the assets should be applied under the Second Schedule of the PAA *is distinct* from the issue of whether Property 2 should be sold. In other words, whether one property should be sold to raise funds for the administration of the Estate is not equivalent to the question of which property should bear the Estate Liabilities. In finding that the Administrator should be allowed to sell Property 2, I have *not* found that Property 2 is to be applied to the Estate Liabilities *before* Property 1, *nor* have I concluded that Property 2 and Property 1 must be applied "rateably according to value". I left the question of how the expenses should fall as between Property 1 and Property 2 open and chose to restrict my reasons for authorising the sale of Property 2 in this case.

85 I briefly explain my reasons for not making a finding on the order of application of assets under the Second Schedule of the PAA. First, this is a matter that is best left to be resolved at the end of the administration when the full scope of the Estate Liabilities can be quantified. That would lead to a better appreciation of whether and how the Estate Liabilities have to be borne by Property 1 and Property 2 rateably. Second, there remains the unresolved question in S 2/2018 concerning the alleged S$5.5m from the Residuary Property that, on the Mother's and Son's argument, ought to be applied to discharge the Estate Liabilities before Property 1 and Property 2 are used. Depending on the outcome of S 2/2018, that would necessarily have an effect on how the expenses and liabilities are to be borne between the assets (and, thereby, the beneficiaries). It would be preferable to consider all of these issues in the round once these matters have been resolved.

86 Hence, in this case, I was concerned only to examine whether the Administrator's decision to sell Property 2 could be impugned on the facts presented before me. I decided that it could not be, on the basis of how the Will and Codicil treated Property 2 in contrast to Property 1. The decision to sell Property 2 ahead of Property 1 best accorded with the Will and Codicil in this case.

(1) Principles relating to the construction of a will

87 The applicable legal principles on the construction of a will have been set out in the seminal case of *Nellie Goh* ([44] *supra*) and I respectfully adopt these principles in this case:

> 58 The principles governing the proper construction of a will are many: see generally, *C H Sherrin* et al eds, *Williams on Wills* (London: Butterworths, 8 ed, 2002) ("*Williams*") at chapter 50; Clive V Margrave-Jones ed., *Mellows: The Law of Succession* (London: Butterworths, 5th ed, 1993) ("*Mellows*") at chapter 10.

For the purposes of the present application, the following principles may be noted.

59 First, the overriding aim of any court construing a will is to seek and give effect to the testamentary intention as expressed in the words employed by the testator: see *Williams* at para 50.1. The court's function is not to rewrite the will or to seek to "improve upon or perfect testamentary dispositions": *Re Bailey* [1951] Ch 407 at 421.

60 Second, the general rule for ascertaining the meaning of the words used is to read the will as a whole without regard to particular canons of construction. The following passage from *Williams* at paragraph 50.2 (omitting citations) provides a concise summary:

> **General rule for ascertaining the meaning of words**. For the purpose of ascertaining the intention, the will is read in the first place without reference or regard to the consequences of any rule of law or canon of construction. Words are given the meaning which is rendered necessary by the context of the whole will, the particular passage being taken together with whatever is relevant in the rest of the will to explain it. Where the court finds on the face of the will a clear, general or paramount intention to which effect can be given, and a particular or subordinate intention to which, by reason of some rule of law, the court cannot wholly or partially give effect, or which is inconsistent with or does not carry out all the intentions which the testator has or is presumed to have, then the particular intention must be rejected or modified, and the general intention of the testator carried into effect …
>
> The will itself is taken as the dictionary from which the meaning of the words is ascertained, however inaccurate such meaning would be in ordinary or legal use. The only qualification on the application of this general principle is that a clear context is required in order to exclude the usual meaning of a word.

61 Third, because a court is to construe the will as a whole and is not to adopt a clause-bound view of each part of the will (see *Mellows* at para 10.13; *Leo Teng Choy* at [25 - 26]), a court should pay particular attention to two things. One is the overall architecture of the will, meaning the structural placement of certain words and phrases. If certain clauses are found in one area of the will but not another, this cannot readily be dismissed as being without significance, unless the context indicates otherwise. The second point is that the intratextual use of words, phrases and language is often important. A court

> should compare and contrast identical words used in different parts of the will so as to elucidate the most complete meaning or intention that should be ascribed to the words used.
>
> 62 Finally, there is a presumption that effect should be given to every word: *Re Sanford, Sanford v Sanford* [1901] 1 Ch 939. A court should not disregard parts of the will as long as some meaning can be ascribed to it and that meaning is not contrary to some intention plainly expressed in other parts of the will: *Williams* at para 50.15. A testator, in other words, does not will in vain.

(2) Construction of the Will and Codicil

88 The relevant clauses of the Will are set out in [9] above. The entire cl 16.2 of the Will has been revoked and substituted by cl 16.2 in the Codicil (see [11] above). I will be referring to these clauses in this section.

89 The Will draws a distinction between two classes of assets: the majority of the "[PQR] shares" (which are dealt with in Part I of the Will) and the "Personal Estate" (which is dealt with in Part II of the Will). The latter comprises the Testator's "personal assets" which include the Testator's interests in various properties, personal and real, as well as the remainder of the [PQR] shares (see cl 2 and cl 10).

90 Clause 11.1 of the Will provides for the real and personal property *other* than Property 1 and Property 2 and the remainder of the shares (these shares being dealt with under cl 11.2). It is the only clause in the Will and Codicil that refers expressly to the "payment of [the Testator's] debts, estate duties and funeral and testamentary expenses". This set of property is given to the trustees on trust for the Sisters in equal shares. Clause 11.2 then addresses the remainder of the shares, giving them to the three Sisters and the Son in equal shares. Clause 11.3 provides that the beneficiaries who receive assets under "this clause", *ie* cl 11, shall be liable to pay the liabilities pertaining to the share received,

including estate duty, mortgage loans (if any), and expenses incidental to that property.

91 Clause 15.1 then describes Property 1 as the "matrimonial home". Provision is made for the Son to own Property 1 and the Mother is granted the entitlement to stay in Property 1 for as long as she lives or desires, provided she does not remarry and does not permit any members from her side of the family to reside in the property. This provision also allows for any of the Testator's daughters, *ie*, the Sisters, living overseas to stay in the property during their visits to Singapore, and for Sister 1 to have exclusive use of one room of the top level of Property 1.

92 The most crucial provisions in this case are cll 16.1 and 16.2 (as amended by the Codicil). For ease of reference and given their importance, I reproduce them here again. Clause 16.1 of the Will reads:

> 16.1 Subject to the provisions of clause 15.1, I devise and bequeath the first apartment to my trustees (of this my Will) upon trust for my said son [Son] until he attains the age of twenty-five (25) years. Upon my death, it is my wish that my son [Son] will bear all expenses pertaining to the first apartment from his own funds (even if the trust herein subsists), for which I have in my lifetime made provision. The provisions of clause 11.1 shall <u>not</u> apply to, and the provisions of clause 13 and clause 15.1 and 15.2 shall <u>apply</u> to, the first apartment.
>
> [emphasis in original]

93 Clause 16.2 as provided by the Codicil reads:

> 16.2 I have purchased another apartment [Property 2] ("the second apartment") for investment. Without prejudice to the general provisions of clause 11.1, I hereby devise and bequeath the second apartment in five (5) equal shares – one (1) equal share each to my wife [Mother] and my three (3) daughters named in clause 11.1(a), (b) and (c) as tenants in common absolutely, and one (1) equal share to my five (5) sisters AS TENANT IN COMMON, namely:

(i) [Aunt 1]

(ii) [Aunt 2]

(iii) [Aunt 3]

(iv) [Aunt 4]

(v) [Aunt 5]

> such one (1) equal share to my sisters to be divided between my said sisters among themselves in equal shares as tenants-in-common absolutely. The second apartment is presently mortgaged to the Standard Chartered Bank, and it shall be the responsibility of my SAID WIFE, MY three (3) daughters AND MY SAID SISTERS JOINTLY to discharge this loan at any time they deem fit to do so.

94 In my view, the key differences between cll 16.1 and 16.2 are (a) in terms of how the properties are described ("matrimonial home" versus "for investment"), (b) the express *disapplication* of cl 11.1 in cl 16.1, and the express reference to cl 11.1 in cl 16.2, and (c) the provision for residence of various persons in Property 1 in cl 15 and the absence of any provision for residence in Property 2.

95 Structurally speaking, it is clear that in Part II of the Will, the broad disposition of the assets is covered under cl 11.1. It is also this provision that is expressly subject to the payment out for the expenses and liabilities of the Estate. Given the absence of any reference to expenses and liabilities of the Estate elsewhere, I conclude that cl 11.1 is intended to be the primary pool of assets from which these expenses and liabilities are to be met. Apart from this general pool that is given to the Sisters, the remainder of the shares are dealt with under cl 11.2, which is given to the Sisters and the Son. From here, two specific assets are carved out: (a) Property 1 is dealt with by cl 15 and cl 16.1, and (b) Property 2 is dealt with by cl 16.2. The question is how Property 1 and Property 2 relate back to the general pool in cl 11.1, out of which the expenses and liabilities of the Estate are to be met.

96 Clause 11.1 makes reference to cl 16 in order to exclude Property 1 and Property 2 from the assets dealt with under cl 11.1. This is neutral since both cll 16.1 and 16.2 are referred to. To distinguish the two, I consider the wording of these two clauses.

97 In my judgment, the exclusion of cl 11.1 in cl 16.1 and the reference to the same clause in cl 16.2 are crucial. The court should seek to give effect to every word found in the Will and Codicil. In cl 16.1, it is emphasised that cl 11.1 shall *not* apply to Property 1. As noted before, cl 11.1 is the only provision that refers to the discharge of the expenses and liabilities of the Estate. This exclusion of cl 11.1 in cl 16.1 should be read to mean that Property 1 is clearly distinct from the general pool of assets in cl 11.1 out of which the expenses and liabilities of the Estate are primarily to be met. By contrast, the provision for Property 2 is "without prejudice to cl 11.1". This must mean that cl 16.2 does not purport to depart from or affect cl 11.1. Although cl 11.1 had excluded Property 2 from its scope by subjecting the distribution of the assets to cl 16, by making cl 16.2 without prejudice to cl 11.1, the Will and Codicil recognised that Property 2 bore a closer relation to the general pool of assets in cl 11.1 than Property 1 did.

98 This is not to say that cl 16.2 *subjects* Property 2 to the discharge of the Estate Liabilities in the same way that cl 11.1 does for those assets. That, in my view, would go too far against the language of the Will and Codicil. Nor do I conclude that para 6 of the Second Schedule of the PAA has been varied by the above language – that is a matter that I leave open in this case. However, the conclusion can be drawn that as between Property 1 and Property 2, it was intended that Property 2 would bear a closer relation to the assets detailed in cl 11.1.

99 Furthermore, Property 1 is described as the matrimonial home and is the only property discussed where rights of residence and occupation are set out. There are no such rights in relation to Property 2. It follows, as a matter of common sense and logic, that as between the two properties, if one had to be sold to meet the needs of the Estate, Property 2 should be sold ahead of Property 1. Otherwise, the rights of occupation given under cl 15 would be defeated, while Property 2 would remain untouched, but with no rights of occupation thereby protected. It would accord better with the Will and Codicil as a whole, and respect the language used in the relevant provisions, to apply Property 2 towards the expenses and liabilities before Property 1 can be used.

100 The Sisters argued that Property 1 should be sold ahead of Property 2. First, they argued that Property 2 was subject to on-going proceedings in OS 687/2011 and S 2/2018.[51] I address those concerns below at [104]–[106]. Second, they argued that it was unfair to impose the burden of discharging the Estate's expenses and liabilities on the Sisters, who were the minority beneficiaries. In particular, they cited the High Court's observation in OS 904/2013 that parity in treatment of Property 1 and Property 2 would disincentivise the parties from pursuing frivolous legal actions. I deal with the question of prejudice at [107]–[111] below as well. As for the question of disincentivising frivolous legal actions, while that was a *benefit* of the solution arrived at in OS 904/2013, I did not see how that consideration could enable the court in this case to depart from the order of application of the properties. In any case, as I have noted, my decision in this case does not mean that the Mother and Son would remain unaffected by the Estate Liabilities, since it would be possible for a subsequent court to conclude that para 6 of the Second Schedule

[51] D1-3WS at para 63(a).

applied without variation, so that all the specific bequests would bear the liabilities rateably according to value. That would have an effect on the distribution of the assets once the administration is complete. Third, the Sisters highlighted the values of Properties 1 and 2 were not significantly different. I accepted that, but in any case, this did not feature in my reasoning.

101 On the issue of the construction of the Will, the Sisters emphasised that cl 16.2 referred to cl 11.1 only because cl 11.1 was addressed to the Sisters, and cl 16.2 was also addressed to the Sisters. The effect of the "without prejudice" phrase in cl 16.2 was only to show that in addition to the residuary property, the Sisters were to receive Property 2.[52] I accepted that this was the gist of the relationship between cl 11.1 and cl 16.2, but in my view, this did not sufficiently account for why cl 11.1 was the only provision to expressly refer to the expenses and liabilities of the Estate. The question is, in the absence of the residuary property, which property was to be sold next? In this regard, I did not find that the Sisters' construction of the Will offered an answer to this based on the wording and structure of the Will and Codicil.

102 Therefore, I conclude that as between Property 1 and Property 2, the Administrator could not be faulted for applying for Property 2 to be sold first. There was no reason to refuse the authorisation to sell Property 2 at this juncture.

103 I state, for the avoidance of doubt (and given the history of this Estate), that nothing in the above suggests that Property 1 is excluded from the assets of the Estate that can be used to meet the expenses and liabilities of the Estate. Hence, my conclusion here does not prevent a future application to be made, if necessary, for the sale of Property 1.

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[52] Transcript 3 at pp 36–37.

Would sale predetermine existing legal proceedings?

104 I have already dealt with the relationship between OSP 14 and S 2/2018 above in addressing SUM 300/2019, and explained there why I decided that OSP 14 should be heard and determined even before S 2/2018 (see [30]–[34] above). I did not see any objection to determining OSP 14 even if it might have an ancillary effect on the issue of the Residuary Properties and their use to meet the expenses and liabilities of the Estate. I emphasise here again that the issue of how the Sisters might be made to bear the Estate Liabilities by virtue of the fact that the Residuary Properties had been transferred to them remains to be resolved in S 2/2018, and I do not pre-empt the allocation of the liabilities in this case. I have not decided that Property 2 should be applied to the Estate Liabilities ahead of Property 1, but only that Property 2 should be sold first so that the Estate can be put into funds for the purpose of the administration. In that sense, nothing in this case would pre-determine S 2/2018 either, since the question of allocation of the Estate Liabilities remains open.

105 The other issue concerned OS 687/2011. This was the Mother's application (together with one of the Executors) that dealt specifically with Property 2, seeking a court order for Property 2 to be sold and for the net proceeds to be distributed according to the Codicil. It has, however, since been amended. It is useful here to set out the history of OS 687/2011 and its related matters here:

(a) OS 687/2011 was filed on 15 August 2011. At this point, this was an application for Property 2 to be sold and the proceeds distributed according to the Codicil. The Sisters were joined as interveners in 2011.

(b) OS 687/2011 was adjourned since 2012 *sine die* given the other matters that were pending.

(c) S 883/2012 was filed by the Sisters on 15 October 2012 seeking a declaration that the Codicil was invalid. S 883/2012 was discontinued by the Sisters on 20 June 2017.

(d) On 2 August 2017, the Mother filed HC/SUM 3550/2017 to amend OS 687/2011. Leave to amend was granted on 18 August 2017. The amendments removed one of the Executors as co-plaintiff and replaced the other three Executors with the Administrator as defendant. The substantive prayer was amended to seek a *transfer* of Property 2 to the Sisters, Mother and Aunts in the shares dictated by the Codicil, rather than a sale of Property 2.

106 Seen in the light of the amended prayer, the objection by the Sisters that the sale of Property 2 would predetermine OS 687/2011 lost much of its weight. The Sisters' argument was predicated on the understanding that the Mother was seeking a sale of Property 2 in OS 687/2011. That is no longer the case. There is no question of sale of Property 2 in OS 687/2011, and all that is envisaged in that application is simply for the property to be dealt with as provided under the Codicil. However, it is clear that any such transfer is subject to the completion of the administration of the Estate. Hence, contrary to the Sisters' arguments, the sale of Property 2 would not simply predetermine OS 687/2011 in the Mother's favour.

Would the Sisters be prejudiced if Property 2 were sold?

107 I turn, then, to the question of whether the Sisters would suffer any prejudice if Property 2 were sold. First, as a matter of principle, I considered that the Sisters could not be said to suffer any prejudice simply because of the sale of Property 2 to put the Estate into funds to meet its liabilities. This was because the Sisters did not have any right to Property 2 until the administration

of the Estate was complete, and at any time before that, the property could be sold in order to meet the needs of the Estate: *Seah Teong Kang* ([53] *supra*) at [21]. The Sisters' entitlement was, in that sense, always subject to the possibility that Property 2 may have to be sold to discharge the expenses and liabilities of the Estate.

108 Second, in any case, I did not find that there was prejudice suffered *specifically* by the Sisters. Originally, under cl 16.2 of the Will, Property 2 was to have been divided between the Sisters in equal shares, *ie,* with each Sister receiving one of three shares. However, cl 16.2 has been substituted by the Codicil, the validity of which is no longer disputed by the Sisters. In the following analysis, I examine the position as it stands under the Codicil. The entitlement to Property 2 is now divided into five equal shares, with one each given to the three Sisters and the Wife. The fifth share is given to the five Aunts in equal shares among themselves.

109 In the result, any prejudice suffered by the beneficiaries of Property 2 will not be borne by the Sisters alone. While the Sisters would collectively have a 60% share of Property 2, individually, their share is only 20%, the same as that of the Mother. Further, given the way that Property 2 is divided among the beneficiaries, it has to be sold eventually for these beneficiaries to receive their shares of the property. Using the value of S$5m as of the date of the Testator's death, each of the Sisters and the Mother will receive S$1m while each of the Aunts will receive S$200,000, under the Codicil. Although the Mother pointed out in her affidavit that the Aunts have voluntarily renounced their interests in Property 2 in favour of the Sisters,[53] given the absence of argument on this point,

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[53] 4th Defendant's Affidavit dated 5 February 2020 at para 26.

I do not address it, and, in any case, this does not significantly change my analysis.

110 Third, the fact that Property 2 is being sold ahead of Property 1 does not necessarily mean that the Mother and Son will not bear any share of the Estate Liabilities. I have left open the question of whether both Property 1 and Property 2 should be applied rateably according to their value. That can be addressed at a later stage in the proceedings, once S 2/2018 is resolved and the Estate Liabilities finalised. At that point, the court would be in a better position to identify how the Second Schedule has been varied and how the Estate Liabilities ought to be borne by the assets in the Estate. There is therefore no prejudice to the Sisters upon the sale.

111 Taking the situation of the Estate as a whole, in these circumstances, I did not think that it was accurate to say that the Sisters would be prejudiced by the sale of Property 2. In any case, any such prejudice did not outweigh the need to complete the administration of the Estate.

Conclusion on OSP 14

112 For all the above reasons, I granted the application by the Administrator to sell Property 2 to raise funds for the administration of the Estate. For avoidance of doubt, nothing I have said in this judgment is intended to preclude the sale of Property 1 in the future, and any references to the quantum of the expenses incurred by the Administrator and its legal representatives are not endorsements of that quantum, since that is not a matter before the court in the present application. I also clarify again that nothing in the judgment expresses the court's conclusion on how the Second Schedule would apply to the Estate Liabilities.

Costs

113 Although OSP 14 had initially been taken out under the Trustees Act and O 15 and O 80 of the ROC, the parties have since proceeded on the basis that the appropriate legal regime was the PAA. As the matter was dealt with in the High Court (Family Division), the appropriate rules were under Part 18, Division 53 of the FJR. This was an administrative action, as it was an application for the direction of the court for the administration of an estate: r 785 of the FJR.

114 I recognised that it was not clear at the outset if Property 1 or Property 2 was to be sold first to cover the liabilities, as the proceeds of sale of either would be sufficient to cover the expenses and liabilities of the Estate, which led the Mother and Son to oppose the application until it was clear from the submissions dated 26 February 2020 and confirmed at the Hearing that Property 2 was to be sold first. However, since OSP 14 was an administration action, I did not think that it was necessary for party and party costs to be ordered between the Administrator and the beneficiaries. The Administrator would have its costs borne by the Estate for seeking directions necessary for the administration of the Estate.

115 I note for completeness that there were without prejudice negotiations ongoing at various points. However, the negotiations had broken down and there was no reason to hold back the resolution of OSP 14. Even if the negotiations were still taking place, a decision in OSP 14 was still required by the administrator of the Estate, whether it is the Administrator or some other party (pending the result of S 2/2018), to be able to raise funds to administer the Estate.

Conclusion

116 I therefore granted an order in terms of prayer 1(b) of OSP 14. I made no order as to costs, which meant that the Administrator's costs in OSP 14 would be borne by the Estate.

117 Before ending, the following passage from OS 904 GD bears repeating:

> 38 In conclusion, I would take the opportunity, once more, to urge the parties involved to seek an amicable resolution to their disputes. As they continue their feuding, they will only deplete the assets of the Estate and there will come a point in time when all the assets have to be liquidated to pay the professionals so employed. This would be of no benefit to any of the beneficiaries.

118 Even if the parties are minded to continue with their disputes, the sale of Property 2 would allow the Administrator to work towards completing the administration of the Estate. Any further disputes between the parties that still involve the Administrator can be properly funded until the completion of the administration, or the funds run out again and a new solution needs to be considered. However, the parties should again consider whether a more amicable resolution of these matters would be preferable, or if they wish to have the Administrator, or any other administrator, continue with the Sisyphean task of administering an estate so beleaguered with disputes.

Tan Puay Boon
Judicial Commissioner

Sarjit Singh Gill SC, Lim Chong Guang Charles and Shakti Krishnaveni Sadashiv (Shook Lin & Bok LLP) for the plaintiff;
Kee Lay Lian, Marissa Zhao Yunan (Rajah & Tann Singapore LLP) for the first to third defendants;
Chan Tai-Hui Jason SC and Oh Jialing Evangeline (Allen & Gledhill LLP) for the fourth defendant;
Edmund Kronenburg, Anthony Yvette Loretta and Tan Po Nin Jeslyn (Braddell Brothers LLP) for the fifth defendant.
