IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 151

Suit No 580 of 2016

Between

Anil Singh Gurm

… *Plaintiff*

And

(1) J.S. Yeh & Co
(2) Yasmin Binte Abdullah

… *Defendants*

GROUNDS OF DECISION

[Tort] — [Negligence] — [Breach of duty]

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Introduction

1 The plaintiff is a Singapore citizen who purchased a landed residential property located at 62 Crowhurst Drive, Singapore 557941 ("the Property"), with the intention of holding it on trust for his Australian cousin, Mr Tejinder Singh Sekhon ("Tejinder"). This nominee purchase arrangement ("the Nominee Arrangement") was carried out in breach of s 23 of the Residential Property Act (Cap 274, 2009 Rev Ed) ("RPA"). The present suit is the plaintiff's negligence claim against the first defendant, a law firm that acted for the plaintiff in his purchase of the Property, as well as the second defendant, who was the solicitor handling the plaintiff's conveyancing matter at the material time.

2 The key issues in dispute are largely factual and focus predominantly on the parties' divergent accounts of certain events which took place more than thirteen years ago, in October and November 2006.

3 Having reviewed the evidence adduced at trial as well as the parties' respective written submissions, I dismissed the plaintiff's claim in its entirety. The plaintiff has appealed against my decision. I now set out the grounds of my decision in full.

Facts

The parties

4 The plaintiff is a Singapore citizen. He holds a law degree from the United Kingdom[1] and formerly worked as a pilot, a businessman and a business consultant before ceasing employment in 2011.[2] The plaintiff is the biological cousin of Tejinder, who is (and was at all material times) an Australian citizen.[3]

5 The plaintiff engaged the first defendant to act for him in the purchase of the Property. The second defendant is a lawyer who was formerly employed by the first defendant. She had conduct of the plaintiff's matter at the material time.

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1 Notes of Evidence ("NE"), 9 July 2019, 8/11-21

2 NE, 9 July 2019, 8/30-10/21

3 NE, 17 February 2020, 6/4-6

Background to the dispute

The First Option

6 Tejinder was formerly a Singapore citizen. He migrated to Australia with his family in or about 1980 and became an Australian citizen in 1983. He subsequently returned to Singapore to work in 2001.[4] Sometime in early 2006, Tejinder began searching for a property in Singapore to purchase for his own residence. He eventually located the Property with the help of his two appointed real estate agents, Mr Ben Chiang and Ms Jasmine Lim ("the Appointed Agents").[5]

7 Tejinder was keen to purchase the Property. However, he was informed by the Appointed Agents that he had to obtain approval from the Land Dealings Approval Unit ("LDAU") of the Singapore Land Authority ("SLA") in order to do so, as he was a "foreign person" for the purposes of the RPA. The Appointed Agents also advised Tejinder that acquiring Singapore permanent resident ("PR") status was a prerequisite for the LDAU application. Tejinder thus proceeded to apply for PR status on 15 June 2006.[6]

8 Subsequently, Tejinder sought the first defendant's assistance for the purchase of the Property.[7] On 27 July 2006, Tejinder visited the first defendant's office and signed the first defendant's Warrant to Act[8] in respect of (a) his

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4 Plaintiff's Affidavit of Evidence-in-Chief dated 20 March 2018 ("Plaintiff's AEIC") at paras 6–7

5 SOC at paras 4–5

6 SOC at para 8; Tejinder Singh Sekhon's Affidavit of Evidence-in-Chief dated 20 March 2018 ("Tejinder's AEIC") at para 10

7 SOC at para 7

8 Agreed Bundle of Documents ("ABD") at pp 69–70

intended purchase of the Property; and (b) his intended application to the LDAU for the necessary approvals for the purchase. While Tejinder was at the first defendant's office, he was attended to by the first defendant's former office manager, Ms Quah Kwee Suan Irene ("Quah").[9]

9 Sometime on or about 4 August 2006, Tejinder negotiated a price of $1,628,000 for the purchase of the Property and paid a deposit of $16,280 to the vendors of the Property ("the Vendors"). The Vendors granted Tejinder an Option to Purchase dated 4 August 2006 ("the First Option").[10] Tejinder exercised the First Option on 21 August 2006.[11]

10 On 15 September 2006, the Immigration and Checkpoints Authority ("ICA") issued a letter to Tejinder informing him that his application for PR status had been rejected. The ICA also issued a letter to the first defendant on 18 September 2006 informing it of the same.[12]

The Second Option

11 On 9 October 2006, the second defendant joined the first defendant as a conveyancing solicitor. Shortly thereafter, she was given a number of conveyancing files to assist on, including Tejinder's matter.[13]

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9 Quah Kwee Suan's Affidavit of Evidence-in-Chief dated 20 March 2018 ("Quah's AEIC") at para 11

10 SOC at para 13; Defendants' Opening Statement at p 6, S/N 7

11 ABD at pp 87–90

12 SOC at para 17, Defendants' Opening Statement at p 7, S/N 12

13 Second defendant's Affidavit of Evidence-in-Chief dated 20 March 2018 ("Second defendant's AEIC") at para 8

12 About a week or so into the second defendant's employment with the first defendant, the second defendant and Quah discussed Tejinder's matter and how it ought to be progressed in light of the ICA's rejection of Tejinder's PR application.[14] It was decided that Tejinder would have to proceed to apply for the LDAU's approval in order to furnish the Vendors with documentary proof of his application to the LDAU as well as the LDAU's rejection of the same.[15]

13 On 18 October 2006, Quah called Tejinder to inform him of the above. During this conversation, Tejinder informed Quah that he intended to arrange for the Appointed Agents to meet with the Vendors to discuss whether they would be agreeable to having someone else purchase the property "in his stead". Quah told Tejinder that she would await further information from him in the circumstances.[16] She recorded the contents of this telephone conversation in a handwritten note dated 18 October 2006.[17]

14 The next day (19 October 2006), Tejinder sent a text message to Quah at 7.34pm, stating "need u 2 write 2 lawyers requesting change of name. owner suggested. we claim I was of the view could finalise name at contract. we take it from there." Quah replied, noting his instructions. At 8.04pm on the same day, Tejinder replied again stating "plse tell them. no subsale. will provide proof I am borrower but mortgagor is my brother. seller thinks subsale. provide any proof its not." Tejinder and Quah then agreed to speak again the next day.[18]

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14 Second defendant's AEIC at para 15; NE, 18 February 2020, 40/19-21

15 Second defendant's AEIC at para 15; Quah's AEIC at para 29

16 Defendants' Closing Submissions ("DCS") at para 20; Plaintiff's Reply Submissions ("PRS") at para 18

17 ABD at p 138

18 ABD at p 139

15 On 20 October 2006, Quah and Tejinder spoke over the telephone ("the 20 October 2006 Call"). The contents of this conversation were disputed.[19]

(a) According to the defendants, Tejinder informed Quah that his Singaporean cousin, *ie* the plaintiff (and not his "brother" as indicated in his SMS from the day before) would be purchasing the Property, and that the 5% purchase price already paid by Tejinder should be transferred to the plaintiff's account. Thereafter, Quah checked with Tejinder whether the plaintiff would be purchasing the property in the plaintiff's own name (in place of Tejinder) and Tejinder confirmed this. Quah then informed Tejinder that he and the plaintiff would eventually have to attend at the first defendant's office for a meeting with the second defendant.[20]

(b) Conversely, the plaintiff submitted that Quah did not obtain any confirmation from Tejinder that the plaintiff would be purchasing the property in his own name.[21] Further, the plaintiff alleged that it was likely that Quah connected Tejinder to the second defendant during the call, and that the second defendant had advised Tejinder over the telephone that his proposed arrangement was acceptable.[22]

16 Following the 20 October 2006 Call, Tejinder sent an e-mail to Quah at 4.26pm on the same day ("the 20 October 2006 E-mail"), confirming the

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19 DCS at para 22; PRS at para 19

20 DCS at para 22; Quah's AEIC at paras 33 and 67; NE, 18 February 2020, 50/9-51/1; NE, 17 February 2020, 39/1-31

21 PRS at para 23

22 Plaintiff's Closing Submissions ("PCS") at paras 52–53; SOC at para 18(b)

plaintiff's identity and requesting that the first defendant contact the Vendors' solicitors to seek the Vendors' approval to the "name change" and to assure the Vendors that there would be no sub-sale.[23]

17 Shortly after sending the 20 October 2006 E-mail to Quah, Tejinder allegedly conveyed to the plaintiff that "his lawyer said [the Nominee Arrangement] was okay".[24] Nevertheless, the plaintiff felt a need to "check for [him]self" that the Nominee Arrangement was in fact acceptable.[25] Thus, according to the plaintiff, he and Tejinder both attended at the first defendant's office to meet the second defendant in person sometime in mid-October 2006 ("the Alleged October Meeting").

18 The plaintiff described the events which occurred during the Alleged October Meeting as follows.[26]

(a) The plaintiff and Tejinder informed the second defendant that the plaintiff had agreed to purchase the Property on Tejinder's behalf, and that Tejinder would pay for all the instalments and would be a co-borrower or guarantor for the housing loan.

(b) The second defendant confirmed that their proposed arrangement was acceptable and that the first defendant would handle the necessary paperwork.

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23 ABD at p 140

24 NE, 9 July 2019, 25/16

25 NE, 9 July 2019, 36/15

26 PCS at para 58; NE, 9 July 2019, 39/21; Plaintiff's AEIC at para 35

19 In contrast, the defendants contended that the Alleged October Meeting never took place.[27]

20 On 27 October 2006, the first defendant issued a letter to the Vendors' solicitors confirming Tejinder's failure to obtain PR status, and his consequent inability to obtain approval from the LDAU to purchase the Property ("the 27 October 2006 Letter"). The letter also proposed that the Vendors issue a fresh option at the same purchase price to Tejinder's "nominee", the plaintiff, and that the monies thus far paid by Tejinder be transferred to the plaintiff's account accordingly.[28] The Vendors' solicitors subsequently confirmed via teleconversation that their clients had no objections to this arrangement.[29]

21 On 17 November 2006, the plaintiff and Tejinder attended at the first defendant's office to sign the first defendant's Warrant to Act as well as the fresh option ("the Second Option"). The details of this meeting ("the 17 November 2006 Meeting") are again disputed by the parties.

22 According to the plaintiff, the following sequence of events took place on 17 November 2006.[30]

(a) The plaintiff and Tejinder attended at the first defendant's office *at the same time* and met with the second defendant *together*.

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27 DCS at para 53

28 ABD at p 142

29 ABD at p 147

30 PCS at paras 76–77; Plaintiff's AEIC at paras 44-49; NE, 10 July 2019, 2/18-3/3, 4/17-20

(b) During the meeting, the plaintiff signed a Warrant to Act, and Tejinder signed a letter of authorisation and direction ("LOA") authorising and directing the Vendors to transfer the 5% purchase price monies paid by Tejinder to the plaintiff's account.

(c) The second defendant did not give the plaintiff or Tejinder any advice regarding the Nominee Arrangement during the meeting, let alone any advice that the arrangement was unlawful or objectionable.

23 Conversely, the defendants took the following position.[31]

(a) Both the plaintiff and Tejinder had attended at the first defendant's office on 17 November 2006, but they had done so *separately*, at different times of the day.

(b) The plaintiff arrived at the first defendant's office earlier in the day. Upon his arrival, he was attended to by Quah, who procured his signature and obtained his instructions for the Warrant to Act.

(c) Thereafter, Quah left and the plaintiff was attended to by the second defendant. For the first time and to the surprise of the second defendant, the plaintiff informed the second defendant that Tejinder had asked him to buy and hold the Property on Tejinder's behalf. The second defendant told the plaintiff that this arrangement was not permissible, and was in fact unlawful. The plaintiff asked the second defendant what the repercussions were, and she repeated that the arrangement was unlawful. The plaintiff remained silent for a while. The second

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31 DCS at para 29

defendant then reiterated that if the plaintiff wished to proceed with the purchase of the Property, he had to do so on the basis that he was both the legal and beneficial owner of the Property. The plaintiff subsequently confirmed that he would be purchasing the Property in his personal and legal capacity, and proceeded to sign the Second Option.

(d) Later that same day, Tejinder attended at the first defendant's office where he signed the LOA. The second defendant informed Tejinder of her discussion with the plaintiff, as well as the plaintiff's confirmation that he was purchasing the Property as its legal and beneficial owner. Tejinder did not dispute this and left the first defendant's office.

24 It was not disputed that the Warrant to Act that was signed by the plaintiff expressly recorded that the purchase of the Property was "for own occupation", and also contained the following handwritten note: "[t]ry to complete 3rd or 4th Jan '07 will arrange to move-in by 28/12/06 (directly)".[32]

Completion of the purchase

25 After the plaintiff's exercise of the Second Option, Quah and Tejinder exchanged further communication on administrative and/or procedural matters pertaining to completion.[33]

26 On 23 November 2006, Standard Chartered Bank ("SCB") issued a facility letter ("Facility Letter") to the plaintiff as mortgagor, and the plaintiff

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32 ABD at p 160

33 ABD at pp 45 and 165

and Tejinder as joint borrowers for a loan amount of $1,302,400 ("the SCB Loan").[34] The plaintiff and Tejinder signed the Facility Letter at the first defendant's office on 28 November 2006.[35]

27 On 6 December 2006, the first defendant issued a letter to the Vendors' solicitors which was copied to the plaintiff (but not Tejinder). This letter stated, *inter alia*, that the plaintiff had instructed the first defendant that the Vendors were amenable to (a) completing the sale and purchase earlier on 29 December 2006, and (b) delivering vacant possession directly to the plaintiff on that date.[36] The Vendors' solicitors confirmed this by way of a letter dated 11 December 2006.[37]

28 On 12 December 2006, the first defendant issued a letter to the plaintiff advising him that it had lodged a caveat on the Property to protect his interest as purchaser, and that he should effect his own insurance policy over the Property. The letter also stated: "We note your instructions to complete this matter earlier on 29th December 2006, if possible, and that the vendors will deliver vacant possession of the property to you directly at 9am on the said date".[38]

29 On 26 December 2006, the first defendant wrote to the plaintiff setting out the sums for the completion account, which included the first defendant's

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34 ABD at pp 171–176

35 Plaintiff's AEIC at para 54

36 ABD at p 181

37 ABD at p 201

38 ABD at p 212

legal costs and disbursements incurred.[39] Separately, the first defendant also billed Tejinder for "abortive costs" and disbursements incurred.[40]

30 On 28 December 2006, one day before the scheduled completion date, the first defendant wrote to the Vendors' solicitors (copying the plaintiff) stating: "Our client instructs us to request your clients to release the keys to the above property to our client's representative… tomorrow morning". In the c.c. section of the letter, there was a note to the plaintiff stating that the letter's contents were "[a]s per your instructions vide the teleconversation between your goodself and our [Quah] this afternoon".[41]

31 The completion of the sale and purchase of the Property took place on 29 December 2006. Subsequently, by a letter dated 30 March 2007, the first defendant sent the plaintiff several documents in relation to the completed sale and purchase of the Property. This letter was addressed to the plaintiff and sent to the Property's address.[42]

Sale of the Property and the criminal proceedings

32 In mid-2012, Tejinder decided to sell the Property and informed the plaintiff of the same. The plaintiff engaged the services of Anthony Law Corporation ("ALC") to act for him in the sale. It was undisputed that it was the plaintiff (and not Tejinder) who was the client on ALC's record, and that ALC

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39 ABD at p 226

40 ABD at p 232

41 ABD at p 238

42 ABD at p 294

only took instructions from the plaintiff in relation to the sale.[43] At no point did the plaintiff inform ALC that Tejinder was the beneficial owner of the Property.[44]

33 On or around 27 December 2012, the Commercial Affairs Department of the Singapore Police Force ("CAD") commenced investigations against the plaintiff in relation to his purchase and subsequent sale of the Property. On 27 January 2015, the plaintiff was charged with an offence under s 23 of the RPA for purchasing the Property with the intention of holding it on trust for Tejinder.[45] The Attorney-General's Chambers ("AGC") subsequently instituted criminal proceedings against the plaintiff.

34 On 1 June 2016, the plaintiff commenced the present action, seeking an indemnity from the defendants in respect of all sums payable as fines and/or liable to confiscation under the RPA, legal costs, as well as loss of income and earnings due to the criminal proceedings against him.[46]

The parties' cases

The plaintiff's case

35 The plaintiff argued that the defendants were negligent in dispensing and/or failing to dispense advice to him in relation to the purchase of the Property. In particular, he made the following contentions.

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43 ABD at pp 338 and 357–359; NE, 10 July 2019, 22/6-8; NE, 17 February 2020, 56/14-15

44 NE, 10 July 2019, 22/9-11, 23/6-12, 24/12-19

45 ABD at p 465

46 SOC at p 15

(a) As the plaintiff's solicitor and firm of solicitors, the defendants owed a duty of care to him. The scope of this duty of care required the defendants to: (i) carry out the plaintiff's instructions with reasonable diligence; (ii) exercise reasonable skill and care in the performance of their duties; (iii) advise the plaintiff and inform him of all information known to them which may reasonably affect the plaintiff's interests in the sale and purchase of the Property; (iv) ensure that they had the relevant knowledge, skills and attributes required for each matter undertaken on behalf of the plaintiff, and apply such knowledge, skills and attributes in an appropriate manner; and (v) provide timely advice to the plaintiff on the sale and purchase of the Property.[47]

(b) The defendants' conduct had fallen short of the standard of care expected of a reasonably competent conveyancing solicitor and a firm of solicitors handling the sale and purchase of a restricted residential property.

(c) The plaintiff had suffered loss and damage as a result of the defendants' negligence, and he was consequently entitled to damages to be assessed.

The defendants' case

36 The defendants did not dispute that they owed a duty of care to the plaintiff to exercise reasonable care and skill in acting for the plaintiff in his purchase of the Property.[48] They accepted that the scope of this duty of care

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47 SOC at para 24; PCS at para 12

48 Defendants' Opening Statement at para 13

extended to the specific duties particularised at [35(a)] above. They also concurred that the applicable standard of care in the present case was that of a "reasonably competent conveyancing lawyer".[49]

37 However, the defendants denied breaching their duty of care to the plaintiff. They also contended that, in any event, the plaintiff had not discharged his burden of proving that he had suffered loss and damage as a result of the defendants' alleged negligence.

38 In addition, the defendants asserted that the plaintiff's claim was barred by the doctrine of illegality, as he knew and/or ought to have known that it was unlawful for him to purchase the Property and hold it on trust for Tejinder.

Issues to be determined

39 As noted at [36] above, it was undisputed that the defendants owed the plaintiff a duty of care in their capacity as his appointed conveyancing solicitors. The well-settled legal prerequisites for establishing a duty of care as set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [73] were clearly satisfied in the present case. The requirements of factual foreseeability and legal proximity were made out, and there were no policy considerations militating against the imposition of a duty of care.

40 As such, the primary issues to be determined in the present case were as follows.

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[49] Defendants' Reply Submissions ("DRS") at para 6

(a) Did the defendants breach their duty of care to the plaintiff?

(b) If so, did the plaintiff suffer loss and damage because of the defendants' negligence?

(c) Was the plaintiff's claim barred by illegality in any event?

Whether the defendants breached their duty of care

41 The plaintiff's case rested on the following four contentions.

(a) During the Alleged October Meeting, the defendants had negligently advised the plaintiff (in the presence of Tejinder) that it was acceptable for the plaintiff to purchase the property on Tejinder's behalf ("the Negligent Advice Contention").

(b) During the period from October 2006 to December 2006, the defendants had failed to properly advise the plaintiff on the consequences of the Nominee Arrangement ("the Failure to Advise Contention").

(c) Even if the defendants had advised the plaintiff on the consequences of the Nominee Arrangement during the 17 November 2006 Meeting, the advice rendered by the defendants had fallen short of the requisite standard of care ("the 17 November Alleged Advice Contention").

(d) Even if the advice given to the plaintiff on 17 November 2006 had satisfied the requisite standard of care, the defendants had failed to discharge their *continuing* duty of care by providing further advice to

the plaintiff having reference to the events which transpired thereafter ("the Failure to Continue to Advise Contention").

42 I will address each of these four contentions in turn.

The Negligent Advice Contention

43 The Negligent Advice Contention hinges on the following sub-issues:

(a) whether the defendants had rendered negligent advice to the plaintiff during the 20 October 2006 Call; and

(b) whether the Alleged October Meeting took place and, if so, whether the second defendant had negligently advised the plaintiff during the meeting.

The 20 October 2006 Call

44 The plaintiff asserted that Quah had connected Tejinder to the second defendant during the 20 October 2006 Call, and that the second defendant had informed Tejinder over the phone that there were no issues with the plaintiff purchasing the Property as Tejinder's nominee.[50]

45 According to the plaintiff, it was "plausible" that Quah had connected Tejinder to the second defendant during the 20 October 2006 Call because (a) this was not explicitly denied by Quah during cross-examination; and (b) there had been a consensus between the plaintiff and Tejinder that they

[50] PCS at para 52; NE, 17 February 2020, 40/8-10; Tejinder's AEIC at para 27

would "go check with the lawyers" if the Nominee Arrangement was acceptable.[51]

46 The plaintiff further contended that Quah's recollection of the 20 October 2006 Call was improbable and/or unreliable because she had not kept an attendance note for the 20 October 2006 Call, despite the fact that she had kept attendance notes for all her other interactions with Tejinder.[52] Moreover, the 20 October 2006 E-mail, which Tejinder had sent as a follow-up to the 20 October 2006 Call, did not contain several key facts which Quah alleged were discussed during the call.[53] There also appeared to be a number of discrepancies between Quah's and the second defendant's recollections of the contents of their discussion regarding the 20 October 2006 Call.[54]

47 In my view, the plaintiff was unable to prove, on a balance of probabilities, that Quah had connected Tejinder to the second defendant during the 20 October 2006 Call. First, it was pertinent to note that the 20 October 2006 E-mail was not addressed or copied to the second defendant. More importantly, it did not contain *any* reference to the second defendant and/or the fact that she had spoken with Tejinder.[55] This was despite the fact that the second defendant's conversation with Tejinder had allegedly formed the "key part" of the 20 October 2006 Call.[56] Secondly, the fact that the plaintiff and Tejinder had purportedly agreed to "go check [the viability of the Nominee Arrangement]

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51 PCS at para 53; NE, 9 July 2019, 29/1

52 PCS at para 46

53 PCS at para 47

54 PCS at para 50

55 ABD at p 140

56 PCS at para 52

with the lawyers" was neither here nor there; such advice could have been sought at any time before the signing of the Second Option, and not necessarily during the 20 October 2006 Call. Thirdly, Quah's evidence that she "[could] not remember" whether she had connected Tejinder to the second defendant[57] was equivocal and did not meaningfully advance the plaintiff's case.

48 In addition, *even if* the plaintiff had succeeded in proving that Quah had connected Tejinder to the second defendant during the 20 October 2006 Call, the plaintiff would still have had to establish that the second defendant had negligently advised Tejinder during this conversation. In my view, the plaintiff was not able to discharge this burden. Notwithstanding his attempts to discredit Quah's version of the 20 October 2006 Call, the plaintiff's own account of the conversation remained uncorroborated by the objective evidence on record. Ultimately, I found that the plaintiff was, as the defendants asserted, "none the wiser" as to what had actually transpired during the 20 October 2006 Call.[58]

The Alleged October Meeting

49 The plaintiff's position, as reflected in his closing submissions, was that he had wanted to meet with the second defendant personally after being informed of Tejinder's conversation with the second defendant during the 20 October 2006 Call. As such, both he and Tejinder had attended at the first defendant's office for the Alleged October Meeting sometime on 22 or 23 October 2006.[59]

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57 NE, 18 February 2020, 94/5-16

58 DRS at para 18(c)

59 PRS at para 54

50 The plaintiff submitted that the existence of the Alleged October Meeting was supported by the 27 October 2006 Letter, which "crystallise[d]" the plaintiff's position that there were discussions involving the second defendant, Tejinder and the plaintiff before the letter was issued. In particular, it was highlighted that the 27 October 2006 Letter had referred to the plaintiff as Tejinder's "nominee" and had requested that the option monies paid by Tejinder be transferred to the plaintiff's account.[60] The plaintiff contended that it was unlikely that the second defendant would have put forward such a proposal if she had not first spoken to the plaintiff to confirm that he was in fact agreeable to such an arrangement.[61] Otherwise, the second defendant would have been acting without the plaintiff's authority.

51 Conversely, the defendants took the position that the Alleged October Meeting never took place. According to the defendants, the inclusion of the word "nominee" in the 27 October 2006 Letter was inconclusive, as the term had been used (as it was commonly used in conveyancing parlance) "to indicate that the Plaintiff was nominated by Tejinder to purchase the Property in place of him", and "not… in relation to and/or in connection with any purported trust arrangement between the Plaintiff and Tejinder".[62]

52 The plaintiff countered that this explanation made little sense since the First Option had already been issued at the time when the 27 October 2006 Letter was drafted. At that stage, it would no longer have been possible for the

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60 PRS at para 69

61 PCS at para 70(b)

62 Second defendant's AEIC at para 27

plaintiff to exercise the option in Tejinder's place.[63] When queried on this point during cross-examination, the second defendant acknowledged that the use of the word "nominee" to mean "a replacement purchaser" would not ordinarily be appropriate in the context where the option to purchase had already been exercised. However, she explained that:[64]

> [T]hat's why *[the Vendors' solicitor and I] needed to have a conversation*, and I used the term "nominee", because in essence … her clients would have no objection to any nominee of Tejinder exercising the option. So since Tejinder is not able to proceed with the purchase, because he's not ab---able to get PR, and consequently not---consequently not able to get LDAU approval, so I was telling her that she'll get---he---where---whether her clients will be okay with Tejinder's nominee accepting proceeding the purchase instead. [emphasis added]

53 While the second defendant's use of the word "nominee" in the 27 October 2006 Letter was imprecise, I did not think that her choice of language, when viewed in the context of the letter as a whole, necessarily led to the inference that the second defendant had met with the plaintiff during the Alleged October Meeting and advised him that Tejinder's proposed trust arrangement was acceptable. In my view, the second defendant's explanation (that she had used the word "nominee" loosely because she had already apprised the Vendors' solicitors of its intended meaning in a separate conversation) was not implausible. It was also supported by the first sentence of the 27 October 2006 Letter, which read: "We refer to the teleconversation between our Ms Yasmin Binte Abdullah and your Ms Jennifer Lim this afternoon".[65] Aside from the word "nominee", there was nothing in the letter to suggest that the second

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63 PCS at para 70(e)(i)

64 NE, 19 February 2020, 31/31-32/7

65 ABD at p 142

defendant understood the arrangement between Tejinder and the plaintiff to be a trust arrangement.

54 Furthermore, the plaintiff's argument that the second defendant could not have sent the 27 October 2006 Letter without his authority was circular, as it was premised on the *disputed* assumption that the second defendant had been instructed by the plaintiff before 27 October 2006. The defendants' position was that the second defendant had, up till that point in time, only taken instructions from *Tejinder.* Indeed, the plaintiff did not sign his Warrant to Act with the first defendant until 17 November 2006.[66] It was also apposite to note that the 27 October 2006 Letter referred to Tejinder (and only Tejinder) as a client of the first defendant.[67] The defendants could not possibly have required any authority from the plaintiff if they had not been acting for him at the material time.

55 Apart from disputing the significance of the 27 October 2006 Letter, the defendants also relied on the following arguments to refute the plaintiff's account of the Alleged October Meeting.

(a) The second defendant had only joined the first defendant on 9 October 2006 and was just coming on board Tejinder's matter. It was unlikely that she would have communicated with the plaintiff and/or Tejinder in early/mid-October 2006.[68]

(b) The second defendant was already in her fifth year of practice (with more than two years' of experience in conveyancing work). It was

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66 ABD at p 159

67 ABD at p 142

68 DCS at para 46(b); Second defendant's AEIC at para 20

inconceivable that she would have knowingly advised the plaintiff that it was "acceptable" for him to contravene the law.[69]

(c) If the second defendant had indeed advised the plaintiff and/or Tejinder that the proposed Nominee Arrangement was acceptable, she would have drawn up the requisite trust documents between Tejinder and the plaintiff.[70]

(d) The parties' correspondence shows that the plaintiff's alleged sequence of events in October 2006 was illogical and could not have taken place.[71]

(e) There was not a single mention of the second defendant or any communications or meetings Tejinder and/or the plaintiff had with the second defendant in any of the parties' October 2006 correspondence.[72]

(f) If the plaintiff had indeed met with the second defendant at the first defendant's office in October 2006, the second defendant would likely have obtained a copy of the plaintiff's NRIC and would not have had to request for the same from Tejinder later.[73]

(g) Tejinder's oral evidence contradicted his own evidence as well as the plaintiff's evidence.[74]

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69 DCS at para 46(b); Second defendant's AEIC at para 21

70 DCS at para 46(b); Second defendant's AEIC at para 22

71 DCS at para 55

72 DCS at para 54

73 DCS at para 59; NE, 17 February 2020, 45/17-46/13

74 DCS at paras 61 and 64

(h) The plaintiff's cautioned statement and his letter of representations to AGC did not mention that the second defendant had advised the plaintiff that it was acceptable for him to purchase the property on Tejinder's behalf during the Alleged October Meeting.[75]

56 I briefly address each of the above contentions in turn.

57 First, I was not persuaded by the defendants' suggestion that the second defendant could not have communicated with the plaintiff and/or Tejinder at the time of the Alleged October Meeting because she was not sufficiently acquainted with Tejinder's matter. Quah testified during cross-examination that she had briefed the second defendant on Tejinder's matter on 9 October 2006, *ie* the day that the second defendant joined the first defendant.[76] The second defendant also gave evidence that she had reviewed Tejinder's file within the first week of joining the first defendant.[77] Even if the Alleged October Meeting had taken place in mid-October (and not 22 or 23 October as the plaintiff subsequently alleged), the second defendant would have had at least a few days to familiarise herself with Tejinder's matter. Given that the second defendant was not a novice to conveyancing law, it was reasonable to conclude that the second defendant would have been well-placed to speak to Tejinder and/or the plaintiff about their matter *in the event* that the Alleged October Meeting had actually taken place.

58 Second, the contention that the second defendant ought to have known that the Nominee Arrangement was illegal because of her conveyancing

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75 DCS at para 69

76 NE, 18 February 2020, 40/19-21

77 NE, 19 February 2020, 14/2-3

experience was premised on circular reasoning and did not advance the defendants' case very far. The crucial question for present purposes was not whether the second defendant should have known, but whether she *actually knew* that the Nominee Arrangement was unlawful at the time of the Alleged October Meeting. The second defendant's experience as a conveyancing solicitor was only tangentially relevant, if at all, to this inquiry.

59 Thirdly, the fact that the second defendant did not draw up the requisite trust documents was likewise equivocal. As the plaintiff pointed out, there was no evidence to suggest that either Tejinder or the plaintiff would have wanted such documents to be drawn up. During cross-examination, Tejinder averred that he did not see "any risk at all" in allowing the plaintiff to purchase the Property in his name since he and the plaintiff were "like… brother[s]" [78] and had known each other "for most of [their lives] since [they] were kids".[79] I saw no reason to disbelieve this assertion, which was (in my view) borne out by the nature of the WhatsApp communications between the plaintiff and Tejinder.[80]

60 Fourthly, I did not agree with the defendants' argument that the plaintiff's alleged sequence of events was necessarily illogical. According to the defendants, the existence of the Alleged October Meeting would mean that the following three events had *all* taken place between the night of 19 October 2006 and the afternoon of 20 October 2006: (a) Tejinder meeting with the second defendant at the first defendant's office to discuss whether the plaintiff could act as Tejinder's nominee; (b) Tejinder meeting with the plaintiff at either

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78 NE, 17 February 2020, 33/17

79 NE, 17 February 2020, 7/1

80 ABD at pp 419–431

Tejinder's or the plaintiff's place to discuss the advice given by the second defendant to Tejinder; and (c) the plaintiff and Tejinder meeting with the second defendant at the first defendant's office for the Alleged October Meeting. The defendants contended that, given the short time frame involved, it was highly implausible that "there were 3 different meetings – two of which … could only have happened during office working hours – that required Tejinder to travel back and forth to the respective meetings [*sic*] locations".[81]

61 In my view, this argument was predicated on a mischaracterisation of the plaintiff's pleaded position. While the Statement of Claim did state that the plaintiff had a "discussion" with the second defendant sometime before the Alleged October Meeting,[82] it did not go so far as to suggest that this discussion took place during a *physical* meeting. Furthermore, although the plaintiff's answer to Question 2(a)(iii) of the defendants' Request for Further and Better Particulars dated 1 June 2016 stated the location at which Tejinder "sought … legal advice" from the defendants as "the 1st Defendant's office", I found that this answer was only intended to denote the location of the Alleged October Meeting, and *not* the location of the parties' prior discussion. If the plaintiff's "discussion" with the second defendant had indeed taken place over the telephone (as alleged by the plaintiff), and not in person, then it was not inherently improbable that all three events outlined at [60] above could have taken place within a short span of time. I was therefore unable to place significant weight on the defendants' submissions on this point.

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81 DCS at para 58(d)

82 SOC at para 18(b)

62 Notwithstanding the above considerations, I was of the view that the objective evidence on record clearly weighed in favour of a finding that the Alleged October Meeting did not take place.

63 First, it was telling that *the second defendant was not mentioned at all* in *any* of the parties' October 2006 correspondence. In his closing submissions, the plaintiff sought to justify this conspicuous absence by referring to Quah's explanation that it was the first defendant's practice not to copy lawyers in their correspondence with clients.[83] However, even if Tejinder was not in possession of the second defendant's e-mail address, he could easily have referred to her by her name or identity in his e-mail and text messages to Quah. Given that Tejinder was (on his own evidence) unsure about the legality of the Nominee Arrangement, one would have expected him to direct his instructions and enquiries to the second defendant instead of Quah. After all, the second defendant was a legally-trained solicitor. Quah, while conversant with conveyancing matters, was the first defendant's office manager and was not legally qualified. It was clear that the second defendant was much better placed than Quah to address Tejinder's queries and concerns.

64 Next, I agreed with the defendants that it was significant that the defendants had requested for a copy of the plaintiff's NRIC on 14 November 2006.[84] If the Alleged October Meeting had indeed taken place, it was likely that the defendants would have utilised that opportunity to procure a copy of the plaintiff's NRIC. The plaintiff's response in his written submissions was that the defendants might not have taken a copy of his NRIC during the Alleged

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83 NE, 18 February 2020, 34/17-31; PRS at para 51(a)

84 ABD at p 145

October Meeting because it was merely an "introductory meeting".[85] However, this submission was inconsistent with the plaintiff's position that the second defendant had rendered negligent advice to him and Tejinder during the Alleged October Meeting. To my mind, it was extremely improbable that the second defendant would have rendered such advice to the plaintiff without first verifying his identity.

65 Furthermore, I agreed with the defendants that Tejinder's testimony was unreliable as it contradicted his own affidavit evidence as well as the plaintiff's evidence at multiple junctures. While Tejinder's inability to recall the *precise* date of the Alleged October Meeting was understandable given the lapse of thirteen years between the present suit and the events which had transpired, there were various other inconsistencies – some of which related to material facts – which surfaced during the course of trial. For example, Tejinder gave evidence that the Alleged October Meeting had taken place after he had put forward the plaintiff's name as purchaser in his 20 October 2006 E-mail to Quah.[86] However, this contradicted the plaintiff's testimony that Tejinder could only have proposed the plaintiff's name as purchaser *after* the plaintiff had personally met with the second defendant during the Alleged October Meeting to verify the propriety of the Nominee Arrangement.[87] In addition, Tejinder's recollection of the contents of the parties' discussion during the Alleged October Meeting was also inconsistent with the plaintiff's evidence of the same. Tejinder testified that the primary purpose of the Alleged October Meeting was to decide

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85 PRS at para 72

86 Tejinder's AEIC at para 29; NE, 17 February 2020, 4/9-23

87 NE, 9 July 2019, 35/12-36/18; 37/20-38/10

how to reassure the Vendors that there would be no sub-sale of the Property.[88] In contrast, the plaintiff maintained that the Alleged October Meeting was mainly a "get-to-know" session. He recalled that the second defendant had advised him that the purchase was legal and "that [was] it".[89]

66 Finally, I found it significant that the plaintiff did not mention the Alleged October Meeting at all in his cautioned statement dated 27 January 2015 ("the Cautioned Statement") or in his letter of representations to AGC dated 20 April 2015 ("the Letter of Representations"). This was despite the fact that both the plaintiff[90] and Tejinder[91] accepted that the Alleged October Meeting was a critical aspect of their factual case.

67 It is pertinent to note that the plaintiff was receiving legal advice at the time when both the Cautioned Statement and the Letter of Representations were written.[92] Yet, the Cautioned Statement did not refer to any specific instances in which the plaintiff had met and received advice personally from the second defendant prior to signing the Second Option. It only stated that "[Tejinder] informed me that the lawyers said that it was okay for me to purchase the property as a nominee" and that "[t]his was further confirmed when [Tejinder] received a letter from [the first defendant] dated 27/10/2006 … stating that I could purchase the property as a nominee".[93]

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88 NE, 17 February 2020, 41/13-23

89 NE, 9 July 2019, 39/24-32

90 NE, 10 July 2019, 51/16-52/22

91 NE, 17 February 2020, 10/21-25

92 PCS at para 140; NE, 11 July 2019, 42/18-20

93 ABD at p 468

68 Similarly, the Letter of Representations (which was drafted by the plaintiff's lawyers) did not refer to the Alleged October Meeting even though it set out a detailed "chronology of events surrounding the purchase of the [Property]" numbering 29 paragraphs.[94] Like the Cautioned Statement, the Letter of Representations only alluded to (a) Tejinder informing the plaintiff that the second defendant had advised Tejinder that the plaintiff could purchase the Property on Tejinder's behalf; and (b) Tejinder showing the plaintiff the 27 October 2006 Letter.[95]

69 Furthermore, under the heading "Relied on Advice of Lawyer", the Letter of Representations stated that "In fact, our client [*ie*, the the plaintiff] had been informed by Tejinder that *he* had sought legal advice from his solicitor in JS Yeh & Co, Ms Yasmin Binte Abdullah, who informed him that [the plaintiff] could be a nominee" [emphasis added].[96] Reading this statement in context, it was only logical that the italicised word "he" was a reference to *Tejinder*, and not the plaintiff, seeking legal advice. While the Letter of Representations subsequently went on to state that "[b]eing a layman [the plaintiff] had completely relied on the advice of his solicitor, Ms Yasmin Binte Abdullah", it did not set out any specific instances in which the plaintiff (as opposed to Tejinder) had sought and received advice on the Nominee Arrangement from the second defendant.

70 The plaintiff attempted to explain away this glaring omission in his Cautioned Statement by asserting that he had been focused on providing

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94 ABD at p 472, para 7

95 ABD at p 475, para 10

96 ABD at p 475, para 10

contemporaneous documentary evidence that was "black and white", and that "it was… not necessary for [him] to write within the very limited space available the facts that give rise to a claim for negligence".[97] In my view, these arguments were not persuasive. It was clear that the Alleged October Meeting formed a crucial part of the plaintiff's negligence claim against the defendants, which in turn constituted the cornerstone of the plaintiff's defence against the RPA charge. In addition, the Letter of Representations contained a similar glaring omission, while making references to several other oral discussions between Tejinder and the plaintiff[98] even though these conversations were similarly unsupported by contemporaneous documentary evidence.

71 The plaintiff maintained that he had in fact mentioned the Alleged October Meeting in his long statement.[99] I was unable to place any weight on this bare allegation since the plaintiff's long statement was not adduced before this court. Furthermore, even if this point were taken at its highest, it still would not point conclusively towards a finding that the Alleged October Meeting had taken place, since the plaintiff did not mention it at all in both the Cautioned Statement and the Letter of Representations. Viewing the evidence in its totality, I was satisfied that Tejinder's and the plaintiff's accounts of the Alleged October Meeting were not credible, and I accepted the defendants' position that no such meeting had taken place.

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97 PCS at para 141

98 See for example, ABD at p 473, paras 7(k) and (l)

99 NE, 10 July 2019, 53/6-10

The Failure to Advise Contention

72 The Failure to Advise Contention centred on whether the second defendant had failed to advise the plaintiff that the Nominee Arrangement was unlawful during the 17 November 2006 Meeting.

73 In this regard, the defendants' position was that the plaintiff had raised the Nominee Arrangement *for the first time* during the 17 November 2006 Meeting, and that the second defendant had immediately and unambiguously informed him that the Nominee Arrangement was "unlawful", "illegal" or "an offence".[100]

74 In contrast, the plaintiff asserted that the second defendant did not give Tejinder or the plaintiff any advice in relation to the Nominee Arrangement during the 17 November 2006 Meeting. According to the plaintiff, neither he nor Tejinder had considered it necessary to enquire about the legality of the Nominee Arrangement as they had already done so at the Alleged October Meeting.[101]

75 As the parties had presented me with two vastly different accounts of the 17 November 2006 Meeting, both of which were largely unsupported by contemporaneous documentary evidence, my findings on this issue were ultimately contingent on my assessment of the witness' credibility. I elaborate further on my reasoning below.

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100 DCS at paras 29(b) and 81

101 PCS at para 76

Credibility of the second defendant's evidence

76 As a preliminary point, the plaintiff emphasised that the second defendant did not take attendance notes of the 17 November 2006 Meeting, and did not send a follow-up letter confirming her advice to him and Tejinder.[102] He argued that this ought to give rise to an adverse inference against the second defendant's evidence of what had transpired during the meeting. In support of this submission, he relied on the 2018 Practice Directions and Rulings of the Law Society ("2018 Practice Directions"), which exhort legal practitioners to "maintain contemporaneous notes of their dealings with clients", failing which "the court may draw an adverse inference against the legal practitioner's testimony of events". The plaintiff also referred to the case of *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 ("*Lie Hendri Rusli*"), in which V K Rajah JC (as he then was) gave the legal profession a "salutary reminder … to maintain attendance notes", in the absence of which "the solicitor may find himself handicapped when the credibility of his evidence is assessed" (at [63]).

77 It is clear that neither the 2018 Practice Directions nor *Lie Hendri Rusli* suggest that an adverse inference would *invariably* be drawn against a lawyer who had failed to keep attendance notes of a particular meeting. Indeed, Rajah JC clarified in *Lie Hendri Rusli* that it would be incorrect to assume that the absence of an attendance note "is either tantamount to negligence or robs a solicitor's testimony of all significance" (at [63]). Rather, the ultimate inquiry in each case is whether the solicitor is able to "satisfy the court that his recollection of events is case specific and not a convenient reconstruction of

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102 PCS at para 80

events" (at [63]). Thus, in *Lie Hendri Rusli*, the court chose to accept a solicitor's account of what had transpired during a client meeting despite the fact that the solicitor had not maintained attendance notes of the same (at [36]).

78 Looking at the evidence in its totality, I was of the view that it would not be appropriate to draw an adverse inference against the second defendant's evidence in this case. Like the solicitor in *Lie Hendri Rusli*, the second defendant was "consistent, assured and candid" in giving evidence, and any "minor creases" which emerged in her testimony were readily explicable by the substantial lapse of time since the relevant events had transpired. I elaborate on my reasoning below.

79 Firstly, I agreed that the second defendant had a rational and compelling explanation for her failure to take attendance notes during the 17 November 2006 Meeting. She had not thought it necessary to reduce the contents of the meeting to writing because there had been no change in her understanding that the plaintiff was purchasing the Property as its legal and beneficial owner. As the second defendant explained during cross-examination, "going [into] the meeting, the understanding was that [the plaintiff was] going to be the replacement purchaser, and at the end of the meeting, he was still a replacement purchaser".[103] I accepted that this explanation was reasonable.

80 Secondly, even though the second defendant admitted that she had been "taken aback"[104] when the plaintiff told her about the Nominee Arrangement, any concern which she might have felt at that time would have been addressed

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103 NE, 19 February 2020, 51/13-19

104 Second Defendant's AEIC at para 33

by the plaintiff's subsequent confirmation that he was purchasing the Property in his own legal and beneficial capacity (and *not* as Tejinder's nominee). It was thus unsurprising that she saw no need to record an attendance note of the advice which she had rendered to the plaintiff.

81 Thirdly, although the second defendant candidly acknowledged during cross-examination that, on hindsight, it would have been "ideal" if she had kept an attendance note[105] or written a follow-up letter[106] concerning the 17 November 2006 Meeting, I did not read these statements as an admission that her conduct had fallen below the standard of a reasonably prudent solicitor. Rather, I found that she was merely expressing her cognisance of the fact that it would have been easier to defend her case if there had been some form of documentary evidence on record.

82 I did recognise that the second defendant's testimony was not altogether free from gaps and contradictions. For example, she had not been able to recall the contents of the 17 November 2006 Meeting "at all" when she was interviewed by the CAD in April 2013.[107] There were also some internal inconsistencies within the defendants' case. For instance, the second defendant testified that the plaintiff had signed the Warrant to Act *before* meeting her, but the defendants' pleaded position (as stated in the defence) was that the plaintiff had only signed the Warrant to Act *after* meeting the second defendant.[108]

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105 NE, 19 February 2020, 55/29-30

106 NE, 19 February 2020, 55/23

107 NE, 19 February 2020, 72/7

108 PCS at para 97

Moreover, the second defendant and Quah could not agree on the precise location in the first defendant's office in which the meeting had taken place.[109]

83 However, it would have been unrealistic to expect the second defendant to have perfect recollection of a meeting which had taken place *more than thirteen years ago.* Given the intervening lapse of time, the blemishes in the second defendant's testimony were relatively insignificant and did not materially detract from the cogency of her evidence as a whole.

84 More importantly, the second defendant's account of the 17 November 2006 Meeting was strongly supported by the defendants' conduct and communications from 2006 to 2012. There were several important indications that the defendants were *genuinely unaware* of the fact that Tejinder and the plaintiff had acted unlawfully.

(a) Firstly, the plaintiff was clearly listed as the client on record in the first defendant's Warrant to Act dated 17 November 2006.[110] Furthermore, the defendants had opened two separate files for Tejinder's aborted purchase of the Property (File Reference No. YJS/il/13961/06 (IQ)[111]) and the plaintiff's purchase of the Property (File Reference No. YHL/iq/pa/14220/06[112]). This suggested that they viewed Tejinder's and the plaintiff's matters as distinct. Although the first defendant did continue to issue some letters under the old reference number after 17

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109 PCS at para 105

110 ABD at p 159–160

111 ABD at pp 85–86, 136

112 ABD at p 161, 212

November 2006,[113] I was of the view that this was more likely due to an oversight than a recognition that the defendants "saw the plaintiff and [Tejinder] as one and the same".[114]

(b) Secondly, all the letters which the first defendant had issued in relation to the plaintiff's purchase of the Property were addressed and/or copied to the plaintiff *only*, and not to Tejinder.[115] Moreover, the letter dated 30 March 2007 was sent to the Property's address,[116] thus reinforcing the defendants' assertion that they had believed it was the plaintiff (and not Tejinder) who would be residing at the Property. Although both the Vendors' solicitors[117] and SCB[118] had sent several letters to the plaintiff's address (instead of the Property's address), these documents were created before or on the day of completion itself, when it would have been reasonable to assume that the plaintiff had not yet moved into the Property. There was also nothing to suggest that the defendants had informed the Vendors' solicitors and/or SCB that the plaintiff would not be residing in the Property after completion.

(c) Thirdly, the first defendant had billed the plaintiff and Tejinder separately. The plaintiff was billed for disbursements in respect of "PURCHASE AND MORTGAGE OF [THE PROPERTY]"[119] whereas

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113 ABD at pp 181, 199–221, 238

114 PRS at para 121

115 DCS at para 95(c); ABD at pp 181, 212, 226, 238, 294 and 313

116 ABD at p 313

117 ABD at pp 254–257

118 ABD at p 258

119 ABD at p 234

> Tejinder was separately billed for "ABORTIVE COSTS IN RESPECT OF [THE PROPERTY]".[120] The word "abortive" conveyed the impression that Tejinder had ceased to be involved in the purchase of the Property once the plaintiff had agreed to take over as the purchaser.

85 On the whole, I was satisfied that the second defendant had been a credible and coherent witness, and I accepted that she had given an honest account of the 17 November 2006 Meeting.

Credibility of the plaintiff's and Tejinder's evidence

86 Conversely, I was not convinced by the plaintiff's and Tejinder's evidence, which I found to be unreliable and contrived. I found that the plaintiff and Tejinder had been wholly aware that the Nominee Arrangement was unlawful, but had chosen to proceed with the purchase nevertheless. This was apparent from an examination of the plaintiff's and Tejinder's conduct over the following time periods:

(a) before the sale of the Property (December 2006 to mid-2012);

(b) during the sale of the Property (mid-2012); and

(c) when the CAD commenced investigations against the plaintiff (December 2012).

(1) Conduct prior to the sale of the Property

87 The plaintiff asserted that, "even before the sale of the Property in 2012, the Plaintiff and [Tejinder had] conducted themselves in a manner that show[ed]

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120 ABD at p 232

that they understood the Nominee Arrangement was lawful". In this regard, he stressed that there was no attempt to conceal the fact that Tejinder had lived in the Property for five-and-a-half years, or that Tejinder had arranged for the payment of the monthly mortgage. Furthermore, Tejinder had carried out extensive renovations to the Property and the invoices for those renovations were issued under his name or that of his wife.[121] I agreed with the defendants that these matters were inconclusive. It was plausible that Tejinder may have assumed that the existence of the unlawful Nominee Arrangement would not have been uncovered since it evidently had not been detected by the Vendors and/or the defendants.

(2) Conduct during the sale of the Property

88 It was undisputed that, during the sale of the Property, the plaintiff was the sole client on ALC's record and ALC had only taken instructions from him in relation to the sale.[122] Tejinder's name did not appear in any of the correspondence or communications involving ALC.[123] In fact, Tejinder himself expressly acknowledged in an email dated 22 May 2012 that he did not have authority to instruct ALC in relation to matters involving the Property.[124]

89 At trial, Tejinder alleged that he had initiated the arrangement of having "one point of contact" to "keep the communication simple" since he had to leave Singapore by end-May 2012.[125] In my view, this explanation did not hold much

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121 PCS at paras 121–123

122 ABD at pp 338 and 357–359

123 NE, 10 July 2019, 34/23-35/20

124 ABD at p 332

125 NE, 17 February 2020, 57/18-20 and 58/19-22

water. Tejinder had been instructing and directing the plaintiff behind the scenes at all material times. Even if the plaintiff was to be their main point of contact with ALC, it would have been more efficient and logical to include Tejinder in the communications with ALC since any information which ALC conveyed to the plaintiff would eventually have to be relayed to Tejinder.

90 Furthermore, if the plaintiff and Tejinder had genuinely believed that the Nominee Arrangement was *bona fide* and lawful, it was even more puzzling that the plaintiff did not inform ALC that he was taking instructions from Tejinder, or that Tejinder was the beneficial owner of the Property. When the plaintiff was queried on this point during cross-examination, his feeble comeback was: "Tejinder told me what to do, I was dealing with it."[126] With respect, this was an evasive non-answer. The existence of the Nominee Arrangement had obvious legal implications, and it was more likely than not that the plaintiff – being a commercially-savvy, legally-trained individual – would have recognised the need to disclose such information to ALC whilst it was acting for him in the sale of the Property. I found that a deliberate decision was made to keep the information away from ALC and avoid alerting them to the Nominee Arrangement.

91 The plaintiff also highlighted the fact that Tejinder had been involved in "open" and written communications with the plaintiff, Mr Robin Lim (who was one of the Property's purchasers) and Mr Jenard Nair (Tejinder's appointed property agent who assisted in the sale of the Property ("Mr Nair")).[127] The plaintiff stressed that Tejinder was "not simply copied in these emails", but that

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126 NE, 10 July 2019, 23/26

127 PCS at paras 128–130; ABD at pp 332–333

he had "actively participated, providing instructions and views on certain matters relating to the sale of the Property".[128] According to the plaintiff, this clearly demonstrated that Tejinder and the plaintiff were unaware that the Nominee Arrangement was illegal. Otherwise, they would have taken pains to conceal Tejinder's involvement from the purchasers and Mr Nair, and they would not have left behind such a "lengthy paper trail".[129]

92 To my mind, the existence of any such "paper trail" was hardly conclusive. No similar "paper trail" was extended to ALC, who were acting as the plaintiff's solicitors in the sale of the Property. Moreover, as the defendants pointed out, there were many possible (and plausible) reasons as to why Tejinder and the plaintiff may have "openly" revealed Tejinder's involvement to the purchasers and/or Mr Nair.[130] For instance, the purchasers and/or Mr Nair may well have been misled into believing that it was the plaintiff (and not Tejinder) who was the beneficial owner of the Property. Neither Mr Nair nor the purchasers were called to give evidence on this score and an adverse inference could thus be properly drawn against the plaintiff in this regard. But I saw no necessity to do so, for even if the plaintiff's case were taken at its highest, I would not have accorded any significance to this particular chain of correspondence.

93 Finally, it was pertinent to note that the proceeds from the sale of the Property were not directly transferred to Tejinder, but were instead first sent to

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128 PCS at para 128(b)

129 PCS at para 130

130 DRS at para 52(a)

the plaintiff who then transferred the proceeds to Tejinder.[131] During cross-examination, the plaintiff himself repeatedly acknowledged that he had "no idea" why he could not give instructions for the sale proceeds to be paid to Tejinder directly, even though he had allegedly been "in and out of hospital" at the material time.[132] Subsequently, Tejinder explained that he had put the payment arrangement in place so that the cheques issued by the mortgage account could be deposited into an OzForex account (which supposedly offered a better interest rate) before the monies were transferred to Australia.[133] In my view, this explanation was clearly an afterthought. If there was a legitimate reason for the indirect payment arrangement, Tejinder could easily have informed the plaintiff of the same. It was much more probable that the plaintiff and Tejinder had decided to route the sale proceeds through the plaintiff's account because they *knew* that the Nominee Arrangement was unlawful.

(3) Conduct after the CAD commenced investigations against the plaintiff

94 The reactions of the plaintiff and Tejinder after the CAD commenced criminal investigations against the plaintiff in December 2012 also supported the defendants' contention that the plaintiff and Tejinder knew that the Nominee Arrangement was unlawful.

95 First, if the defendants had indeed negligently advised the plaintiff, one would reasonably expect this fact to have featured prominently in the plaintiff's mind in December 2012 when the CAD raided his home and informed him that there had been a possible breach of s 23 of the RPA. However, the evidence did

131 NE, 10 July 2019, 26/27-30

132 NE, 10 July 2019, 26/27-27/28, 28/11

133 PCS at para 137(d); ABD at p 347

not disclose any apparent spontaneous concern whatsoever on the plaintiff's part over the defendants' alleged negligence. Neither the plaintiff nor Tejinder had thought to approach the defendants to seek clarity or to confront them on the negligent advice which had supposedly been dispensed to them. It was only some *nine months* after the CAD raid that Tejinder suggested in a WhatsApp message to the plaintiff dated 14 September 2013 that the plaintiff should ask his lawyer, Mr Harpal Singh ("Mr Singh"), to "try… out" putting the first defendant on notice that they would sue them.[134] This strongly suggested that, up to that point, Mr Singh had not advised the plaintiff that the first defendant should be held accountable for the plaintiff's predicament. The corresponding inference was that Mr Singh had not been told of any allegation that the plaintiff was the victim of the first defendant's negligent advice.

96 During cross-examination, the plaintiff asserted that he had not contacted the defendants at the material time because he had wanted to "tackle what was in front of [him], which was at that point in time the criminal proceedings that were about to take place".[135] Tejinder also stated that he had assumed that the plaintiff's solicitors would handle the situation,[136] and that "if [the defendants had] given [him] negligent advice… why would [he] invite them to tell [him] what's going on?"[137] In my view, these explanations were contrived and wholly without merit. If the plaintiff had relied in all earnestness on negligent legal advice only to find himself facing potential prosecution, surely the natural and logical reaction would be to confront the defendants to seek an

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134 ABD at p 420

135 NE, 10 July 2019, 43/17-24

136 NE, 17 February 2020, 20/18-30

137 NE, 17 February 2020, 23/5-8

explanation. The plaintiff's suggestion that he had been preoccupied with the criminal proceedings was unconvincing since it was self-evident that the defendant's purported negligence would have formed the central plank of his defence against the RPA charge. If the defendants had indeed been responsible for the plaintiff's predicament, there was no reason why the plaintiff could not have informed Mr Singh of the defendants' alleged negligence from the very outset. The plaintiff would not have had to be prompted by Tejinder, *nine months* after the CAD raid, that he should "try… out" suing the defendants. In the circumstances, the irresistible inference was that the plaintiff had, up till September 2013, failed to provide his solicitors with a consistent and coherent account of the events which had transpired during the purchase of the Property in 2006.

97 The nature and contents of the plaintiff's and Tejinder's WhatsApp communications in the aftermath of the CAD raid were also significant. Aside from several e-mails enclosing the Property's completion documents,[138] there was no documentary record of any correspondence exchanged between the plaintiff and Tejinder from 1 December 2012 to 22 February 2013.[139] Neither the plaintiff nor Tejinder was able to offer any plausible explanation for this silence. The plaintiff's only response was that he had spoken with Tejinder over the telephone and that there were no WhatsApp communications that he or Tejinder could retrieve.[140]

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138 ABD at pp 337–414

139 Plaintiff's 6th Affidavit dated 29 May 2017 at para 27

140 NE, 20 July 2019, 38/27-39/23

98 Furthermore, the WhatsApp messages that *were* disclosed in evidence conveyed the impression that all was not as it seemed. In particular, there were several WhatsApp messages which suggested that the plaintiff may have deliberately misinformed Mr Singh that Tejinder was incommunicado although he and Tejinder were obviously in contact with each other during this period. These included a message from the plaintiff to Tejinder dated 23 March 2013 which stated, "If you keep contact things maybe worse",[141] as well as a message from Tejinder to the plaintiff dated 18 September 2013 which stated, "In no way let [the defendants] know we are in touch. Have to put the acid on them."[142] As the plaintiff and Tejinder were not cross-examined on these messages, I did not draw any firm inferences from this point.

99 I was conscious that the plaintiff and Tejinder did exchange some WhatsApp messages which appeared to suggest that they held the view that the defendants were at fault, and that it was the defendants' negligence which had led to the criminal investigations against the plaintiff.[143] I placed limited weight on these text messages as they had been sent *more than eight months* after the CAD raid in December 2012. They did not provide a contemporaneous record of the plaintiff's and Tejinder's views in the immediate aftermath of the CAD raid. Viewing these messages amidst the totality of the evidence, it was more likely that the idea of pinning the blame on the defendants was an afterthought that the plaintiff and Tejinder had developed along the way as they sought to find ways to avoid the consequences that might follow from the CAD investigations.

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141 ABD at p 419

142 ABD at pp 420

143 PCS at para 158

Conclusion on the Failure to Advise Contention

100 In summary, I disbelieved the plaintiff's and Tejinder's evidence of the 17 November 2006 Meeting. I found that the second defendant had advised the plaintiff that the Nominee Arrangement was unlawful during the said meeting. The plaintiff had chosen to proceed with the purchase regardless, for reasons best known to himself.

The 17 November Alleged Advice Contention

101 Next, the plaintiff alleged that, even if the defendants' case was taken at its highest and it was assumed that advice was rendered at the 17 November 2006 Meeting, the defendants had breached their duty of care to the plaintiff by providing insufficient advice.[144]

102 In this regard, the plaintiff's key argument was that merely telling the plaintiff that the Nominee Arrangement was "unlawful", without explaining its repercussions in full and confirming that the plaintiff understood her advice, was inadequate to discharge the second defendant's duty of care.[145]

103 This aspect of the plaintiff's case was not pleaded in the Statement of Claim. Nevertheless and in any event, I took the view that the plaintiff's submissions on this point did not withstand scrutiny.

104 First, the cases cited by the plaintiff did not assist him. The plaintiff relied on *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 for the proposition that a reasonably competent

144 PCS at para 159

145 PRS at para 89

solicitor must draw his client's attention "to any pitfall" (at [135]), and that he/she would "do well to err on the side of caution particularly in relation to the understanding of a legal term which he has never provided direct advice on" (at [173]). Thus, according to the plaintiff, the second defendant ought to have (a) explained what "unlawful" meant in the context of the Nominee Arrangement;[146] and (b) ensured that the plaintiff understood what it meant to purchase the Property as its "legal and beneficial owner".[147] I was unable to agree with this submission. The second defendant's evidence was that she had informed the plaintiff that he "[could] not" buy and hold the Property on Tejinder's behalf,[148] and that the plaintiff had verbally agreed with her advice.[149] Given this context, it was entirely reasonable for the second defendant to have assumed that the plaintiff would not be purchasing the Property on trust for Tejinder. A reasonable person in the second defendant's position would not have thought it necessary to continue advising the plaintiff on the legal repercussions of the Nominee Arrangement.

105 Likewise, I found that *Abu-Mahmoud v Consolidated Lawyers Pty Ltd* [2015] NSWSC 547 ("*Abu-Mahmoud*") supported rather than detracted from the defendants' case. In *Abu-Mahmoud*, the defendant solicitors had failed to advise the plaintiff of the likely actions which would be taken by the Australian Tax Office when the plaintiff entered into a certain restructuring scheme. The Supreme Court of New South Wales held that the solicitor was "obliged to proffer advice, warning [the plaintiff] of the legal consequences of the scheme,

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146 PCS at para 175

147 PCS at para 176

148 NE, 19 February 2020, 49/16-20

149 NE, 19 February 2020, 51/8-12

and counselling him not to enter into the restructure scheme" (at [330]). In my assessment, *Abu-Mahmoud* was distinguishable from the present case as the second defendant had (unlike the solicitors in *Abu-Mahmoud*) discharged her duty of "counselling" the plaintiff not to enter into the Nominee Arrangement.

106 Secondly, I was of the view that the plaintiff had over-exaggerated the extent and significance of the second defendant's alleged unfamiliarity with the RPA.[150] Although the second defendant admitted during cross-examination that she was unable to recall the subject-matter of s 23 of the RPA without referring to the relevant provision,[151] I did not find this admission to be material. The second defendant had already left legal practice for some time[152] and it was thus unsurprising that she did not have the detailed provisions of the RPA at her fingertips. I did not accord any weight to the fact that the second defendant was, by her own admission, unsure of the specifics of the 1989 Practice Directions and Rulings of the Law Society ("1989 Practice Directions"), which reminded members of the Bar to be "vigilant" and to bear in mind the consequential effects of breaching the RPA. The second defendant was well-aware that foreigners could not acquire legal or beneficial ownership of landed properties in Singapore without approval of the LDAU, and she had expressly advised the plaintiff of the same.[153]

107 Finally, I was not persuaded that the second defendant had "complete[ly] abdicat[ed]"[154] her responsibility as a solicitor by relying on the plaintiff to seek

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150 PCS at para 168

151 NE, 19 February 2020, 8/23-26

152 NE, 19 February 2020, 8/6-10

153 NE, 19 February 2020, 8/29-9/6

154 PCS at para 172

further advice on the specific repercussions of the RPA. In this regard, I found the plaintiff's reliance on *United Project Consultants Pte Ltd v Leong Kwok Onn (trading as Leong Kwok Onn & Co)* [2005] 4 SLR(R) 214 ("*United Project*") to be misplaced.

108 In *United Project*, which was a case involving the negligence of a professional auditor, the Court of Appeal held (at [41]) that:

> Where some form of mistake has been brought to [a professional tax agent's] attention, he cannot remain strongly silent and seek to exculpate himself by saying that the company was the one responsible for providing him with accurate information. He must take action, which includes *making the necessary inquiries* and warning the relevant persons in charge of the management or accounts of the company. [emphasis added]

Consequently, the court found (at [44]) that the auditor was negligent as he had failed to (a) check the veracity of the income tax return forms provided to him by his client; and (b) warn his client of the potential consequences which would ensue if the Inland Revenue Authority of Singapore ("IRAS") discovered a mistake in the tax return forms.

109 However, the holding in *United Project* was predicated on the court's finding that the auditor had actual knowledge of the fact that the appellants were underreporting their directors' fees to IRAS (at [24]). This clearly distinguished *United Project* from the present case, where the defendants did not have actual or constructive knowledge of the trust arrangement between Tejinder and the plaintiff (see [84] above).

110 Moreover, the remarks in *United Project* must be counterbalanced against the principle that "there is, in general, no duty upon a solicitor to enquire in every case whether his client is telling the truth… *the duty to verify arises*

only in the presence of compelling reasons or circumstances, and *is not triggered simply because the client gives conflicting instructions*" (see *Bachoo Mohan Singh v Public Prosecutor and another matter* [2010] 4 SLR 137 at [119] [emphasis in original]). There were no such "compelling" circumstances here. The second defendant had expressly informed the plaintiff that he could not proceed with the Nominee Arrangement, and he had given her his verbal confirmation that he would be purchasing the Property in his personal and legal capacity. It might have been *ideal* if the second defendant had gone further to advise the plaintiff on the specific repercussions of a breach of the RPA; indeed, the second defendant herself candidly acknowledged that "[she] should have" done so.[155] However, this was a conclusion reached largely with the benefit of hindsight. On the whole, I did not think that the second defendant's conduct in the specific circumstances of this case had fallen short of the standard of care that was required of a reasonably competent conveyancing solicitor.

The Failure to Continue to Advise Contention

111 The plaintiff's final contention was that the circumstances surrounding his purchase of the Property raised red flags which ought to have alerted the second defendant to the possibility that the plaintiff and Tejinder might be contravening the provisions of the RPA. The alleged red flags were as follows:

(a) first, the fact that Tejinder had continued to finance the purchase of the Property despite conveying the impression that the plaintiff was the "replacement purchaser" ("the First Alleged Red Flag");[156] and

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155 19 February 2020, 50/1-2

156 PCS at para 189

(b) second, the fact that "it was clear to the [d]efendants all along that [Tejinder] would be occupying the Property after his purchase" ("the Second Alleged Red Flag").[157]

112 Accordingly, the plaintiff averred that, by failing to address these red flags, the second defendant had breached her *continuing* duty to advise the plaintiff on his rights and liabilities in relation to the purchase of the Property.

The First Alleged Red Flag

113 In relation to the First Alleged Red Flag, I found that Tejinder's extensive involvement in the purchase of the Property distinguished the plaintiff's transaction from a run-of-the-mill conveyancing transaction. The following features stood out in particular.

(a) Firstly, the first defendant had written to the Vendors' solicitors on 15 November 2006 to request the transfer of the 5% option monies paid by Tejinder to the plaintiff's account.[158]

(b) Secondly, Tejinder had been listed as a borrower of the housing loan in respect of the Property in the Facility Letter dated 23 November 2006. The plaintiff and Tejinder had signed the Facility Letter in the first defendant's office on 28 November 2006.[159] It was undisputed that the second defendant was the solicitor in charge of overseeing the loan transaction.[160]

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157 PCS at para 195

158 ABD at p 147

159 Plaintiff's AEIC at para 54

160 NE, 19 February 2020, 42/1-2

(c) Thirdly, Tejinder had continued to liaise with Quah in relation to completion matters even after the First Option under his name was cancelled.[161] The second defendant would have been notified of these communications as it was Quah's practice to update the first defendant's solicitors on her correspondence with clients.[162]

114 Nevertheless, these features were not so strikingly unusual as to have put a reasonably competent solicitor in the second defendant's position on notice that an unlawful transaction was taking place. After all, the second defendant had expressly advised the plaintiff that the Nominee Arrangement was unlawful during the 17 November 2006 Meeting, and the plaintiff had communicated his unequivocal confirmation of his understanding of the same. In addition, Quah also gave evidence that it was not uncommon for third parties to finance property purchases[163] and her evidence on this score was not challenged. There was thus no apparent reason for the defendants to suspect that the plaintiff was purchasing the Property on trust for Tejinder.

The Second Alleged Red Flag

115 In relation to the Second Alleged Red Flag, the plaintiff pointed to several facts which supposedly indicated that the defendants must have been "fully aware"[164] that it was Tejinder, and not the plaintiff, who would be residing in the Property after completion. These facts were, *inter alia*, the following.

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161 ABD at p 165

162 NE, 18 February 2020, 21/13-18

163 NE, 18 February 2020, 48/1-2; 93/17-18

164 PCS at para 196

(a) On 27 July 2006, Tejinder informed Quah that he wanted to purchase the Property "for his own stay".[165]

(b) The words "for own occupation" on the plaintiff's Warrant to Act did not necessarily indicate that the plaintiff was going to move into the Property. "For own occupation" had been selected in contradistinction to the words "for investment", as the Property had not been purchased for investment purposes.[166]

(c) In an SMS to Quah dated 4 December 2006, Tejinder wrote: "plse write 2 vendors lawyers n request keys 4 house so *we* can start moving in on 29th" [emphasis added].[167]

(d) The only reason why it was the plaintiff and not Tejinder who had called Quah to arrange for the collection of the keys on 28 December 2006 was because Tejinder had been in Australia at the material time.[168]

(e) The letter from SCB to the plaintiff dated 29 December 2006 was addressed to 63 Chartwell Drive, which was the plaintiff's address, and not the address of the Property (62 Crowhurst Drive).[169]

116 In my view, the plaintiff's contentions on this point were largely speculative. The context of the parties' correspondence had to be borne in mind. Given that the possibility of a trust arrangement had only been brought to the

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165 NE, 18 February 2020, 22/4-5

166 PCS at para 195(b)

167 AB at p 165

168 PCS at para 195(e)

169 PCS at para 195(f)

defendants' attention during the plaintiff's meeting with the second defendant on 17 November 2006, the words "for own occupation" on the plaintiff's Warrant to Act could only have been a reference to the occupation of the Property *by the plaintiff*. Furthermore, for the reasons stated at [84(b)] above, I did not see a need to draw any inferences from the fact that SCB and the Vendors' solicitors had sent letters to the plaintiff's address (instead of to the Property's address). I was thus satisfied that, on the facts, a reasonably competent solicitor in the second defendant's position would not have had any reason to believe that Tejinder would be living in the Property after completion.

Conclusion on the Failure to Continue to Advise Contention

117 For completeness, it should also be stated that the cases which were referred to by the plaintiff did not advance his case.

(a) *Various Claimants v Giambrone & Law (A Firm) and others* [2015] EWHC 1946 (QB) stands for the proposition that a solicitor has to be "very diligent" when he or she is acting in a transaction where "red flags… were popping up" (at [268] and [270]). However, the case does not explain how unusual or obvious these red flags must be in order for the solicitor to be regarded as being in breach of his/her duty of care.

(b) *AEL and others v Cheo Yeoh & Associates LLC and another* [2014] 3 SLR 1231 was a case in which a solicitor was held to have breached his duty of care to the beneficiaries of a will because he had failed to ensure that there were at least two witnesses present at the time of execution of the will. This was not a case involving red flags, but a straightforward case in which the solicitor had failed to carry out the steps which were necessary to ensure the validity of the will.

(c) Likewise, the issue of red flags did not arise in *Wai Wing Properties Pte Ltd v Lim, Ganesh & Liu (a firm)* [1994] 1 SLR(R) 1004. In that case, a solicitor had failed to respond to two statutory notices due to an oversight on his part. The court held that the need to reply to the notices had been "obvious" (at [52]), but did not point to any *unusual* factual circumstances which could have alerted the solicitor to the need for a response.

(d) The cases of *Law Society of Singapore v Tan Chwee Wan Allan* [2007] 4 SLR(R) 699 and *Chu Said Thong and another v Vision Law LLC* [2014] 4 SLR 375 were also irrelevant to the facts at hand. The plaintiff relied on these cases to argue that the defendants had a duty to supervise Quah's conduct of the plaintiff's transaction.[170] However, as the defendants pointed out,[171] it had never been the plaintiff's case that the defendants had abdicated their responsibility as solicitors by delegating matters to Quah.

118 For the reasons above, the Failure to Advise Contention also failed. I thus concluded that the defendants had not breached their duty of care to the plaintiffs.

Whether the plaintiff's claim is barred by illegality

119 Finally, I turn to the defendant's contention that the plaintiff's claim was barred by illegality.

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170 PCS at paras 205–206

171 DRS at para 69

120 The law on illegality is well-settled. It is premised on the *ex turpi causa* doctrine, according to which "[n]o court will lend its aid to a man who founds his cause of action upon an immoral or illegal act" (*Holman v Johnson* (1775) 1 Cowp 341 at 343). The defence of illegality applies generally to all areas of law, including tort law (see *ANC Holdings Pte Ltd v Bina Puri Holdings Bhd* [2013] 3 SLR 666 ("*ANC Holdings*") at [81]).

121 The plaintiff asserted that the defence of illegality was inapplicable in the present case because he had not known or understood that it was illegal and unlawful for him to purchase the Property on trust for Tejinder.[172] Reliance was placed on the observations of Vinodh Coomaraswamy JC (as he then was) in *ANC Holdings* at [82]:

> … [N]ot every civil or criminal wrong will trigger the doctrine: *where the wrong is a criminal wrong of strict liability and the plaintiff is unaware of it, the doctrine may not be engaged.* The common thread is that – as the doctrine's maxim implies – the plaintiff's behaviour must involve turpitude or culpability … [emphasis added]

122 However, as stated at [86]–[100] above, I found that the plaintiff's factual case was not credible, and that both Tejinder and the plaintiff had proceeeded with the Nominee Arrangement despite knowing that it was illegal and/or unlawful. Correspondingly, I was of the view that the plaintiff's claim was necessarily barred by the doctrine of illegality.

Conclusion

123 From the evidence before me, it was patently clear that the plaintiff and Tejinder were mature, educated and savvy individuals; neither was a babe in the

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172 PCS at para 252

woods. In my assessment, both of them knew exactly what they were doing. It was uncontroversial that the plaintiff himself did not stand to gain from the purchase arrangement; he had not stayed in the Property, and there was no evidence that he had obtained any benefit, whether direct or collateral, from the purchase. Obviously, it was Tejinder who was fully incentivised to ensure that the purchase went ahead, possibly with the hope or expectation that it could be sold for profit in due course (as it eventually was). The plaintiff was Tejinder's means to this end. He went along with the arrangement believing that he and Tejinder would not get caught out.

124 I should add that I was not persuaded by Tejinder's assertion[173] that they would "never" have entered into the Nominee Arrangement if they had known that it would put anyone at risk. The evidence pointed cogently to the inference that the plaintiff had been prepared to enter into the illegal transaction because he himself had determined, or had been persuaded by Tejinder, that any attendant risk was low and could be managed. Indeed, until the property was sold in mid-2012, it would not have been obvious to any third party that a nominee purchase arrangement had taken place in 2006.

125 In conclusion, I found it implausible that the plaintiff had not been advised or had been wrongly advised by the defendants in relation to the unlawful nature of the Nominee Arrangement. The probabilities were that he had been appropriately advised and was fully conscious of the fact that purchasing the Property as Tejinder's nominee was unlawful and in breach of s 23 of the RPA. The objective evidence did not support the plaintiff's assertions that the defendants had been negligent in advising him. I found it more likely

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173 NE, 17 February 2020, 68/2-7

than not that he had chosen to proceed with the purchase because of Tejinder's request for his assistance.

126 Accordingly, I found that the plaintiff had not discharged his burden of proving that the defendants were in breach of the duty of care which they owed to him. Given this finding, it was unnecessary to address whether the plaintiff had suffered loss or damage as a result of the defendants' alleged negligence. I therefore dismissed the plaintiff's claim.

Costs

127 Having perused the parties' written submissions on costs, I determined that the plaintiff should bear the defendants' costs totalling $160,000, inclusive of full disbursements of $13,650 claimed by the defendants.

128 Effectively, the hearing of the evidence at trial required five days over two tranches. The trial did not involve novel or complex legal issues. The factual disputes, though considerable, were not inordinately convoluted. The proceedings were unfortunately somewhat protracted and the matter ultimately took over four years to reach its conclusion.

129 Costs in respect of the various interlocutory applications had already been fixed. I was thus of the view that the defendants' pre-trial costs would reasonably and fairly be allowed at $60,000, with the balance amount (excluding disbursements) to be allowed for the preparation for and conduct of the trial proper.

See Kee Oon
Judge

Deborah Barker SC, Harpal Singh and Ushan Premaratne (Withers Khattarwong LLP) for the plaintiff;
Chandra Mohan Rethnam, Ang Tze Phern and Marissa Zhao (Rajah & Tann Singapore LLP) for the first and second defendants.
