IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 243

Suit No 1005 of 2019

Between

Ranjit Singh s/o Ramdarsh Singh
(suing as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and as a beneficiary of the estate)

… *Plaintiff*

And

Harisankar Singh
(sued as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and in his personal capacity)

… *Defendant*

JUDGMENT

[Family Law] — [Advancement] — [Presumption]
[Land] — [Interest in land]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

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Ranjit Singh s/o Ramdarsh Singh (suing as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and as a beneficiary of the estate)
v
Harisankar Singh (sued as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and in his personal capacity)

[2020] SGHC 243

High Court — Suit No 1005 of 2019
Tan Puay Boon JC
2 April, 29 July 2020

10 November 2020 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This is a suit by the plaintiff, Ranjit Singh s/o Ramdarsh Singh ("the Plaintiff"), against the defendant, Harisankar Singh ("the Defendant"), concerning a half-share in 85 Syed Alwi Road, Singapore ("the Property") held in the Defendant's name as a tenant in common. The Plaintiff alleged that the Defendant holds the half-share on resulting trust for Ramdarsh Singh s/o Danukdhari Singh's ("the Testator's") estate ("the Estate"), and sought relief accordingly.

2 Having considered the evidence and the parties' submissions, I find that the Defendant holds the half-share in the Property registered in his name beneficially and dismiss the Plaintiff's suit. These are my reasons.

Facts

3 The Plaintiff and Defendant are brothers and two of the Testator's six children.[1] The Testator executed a will dated 27 February 1982 ("the Will"), and passed away on 30 October 1989.[2]

4 The Defendant was appointed executor of the Estate by way of a Grant of Probate dated 1 June 1990, and issued on 2 November 1992.[3] In the list of assets, it was stated that the Testator's Estate only had a half-share in the Property.[4] In 2017, the Plaintiff, who was identified as one of the executors and trustees in the Will,[5] being dissatisfied with the Defendant's administration of the Estate,[6] applied to court and was appointed as co-executor of the Estate by way of a Grant of Probate dated 12 April 2017 and issued on 20 June 2017.[7] Further, the Plaintiff commenced an action in HCF/S 5/2017 ("S 5/2017") of the Family Division of the High Court against the Defendant for various orders relating to the Estate.

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1 Ranjit Singh's Affidavit of Evidence-in-Chief ("AEIC") at para 7.

2 Ranjit Singh's AEIC at para 8.

3 Ranjit Singh's AEIC at para 10.

4 Ranjit Singh's AEIC at para 33.

5 Ranjit Singh's AEIC at para 9; Agreed Bundle of Documents ("ABD") at p 82.

6 Ranjit Singh's AEIC at para 14.

7 Ranjit Singh's AEIC at para 11.

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5 Among the reliefs sought in S 5/2017 were two declarations, that (a) the Defendant held his half-share in the Property on resulting trust for the Estate; and (b) the Testator had not made a gift of $100,000 in cash to the Defendant. These related to the Testator's dealings with these assets *inter vivos*. Based on the High Court's decision in *URF and another v URH* [2020] 3 SLR 314, the Plaintiff took the view that these declarations should be proceeded with in separate proceedings in the High Court, and so amended the statement of claim in S 5/2017 to remove these claims for relief. Having done so, the present proceedings were brought instead to pursue those claims. However, the Plaintiff chose not to pursue the declaration at (b) above, but only sought relief in respect of the Defendant's half-share in the Property.[8] The present action, therefore, deals only with the issue of the beneficial ownership of the half-share in the Property held by the Defendant.

6 The Plaintiff has brought this suit in his capacity as co-executor of the Estate, as well as in his personal capacity as a beneficiary of the Estate. The suit is stated to be against the Defendant in, similarly, both his capacity as a co-executor of the Estate and in his personal capacity.

7 By the time of the hearing of this case, as recorded in the judgment for S 5/2017 (HCF/JUD 2/2020), there were only three beneficiaries of the Estate, *viz*, the parties and their eldest brother, Daya Shanker Singh ("Mr Daya"). He is not a party to the present proceedings, but his solicitors held a watching brief for him during the trial.

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8 Ranjit Singh's AEIC at para 44.

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8 I turn to set out the undisputed facts relating to the Property. The Property is a two-storey shophouse.[9] The title search on the Property shows that the Defendant is registered as a tenant in common for one half-share in the Property, and also as the owner of the other half-share on trust in his capacity as executor of the Estate.[10] The dispute only concerns the former half-share which appears, on the register, to be owned by the Defendant.

9 On 2 May 1967, the Property had been conveyed by one Loo Ting Soo to one Jiwan Singh ("Mr Jiwan") and the Testator as tenants in common in equal shares, for the total purchase price of $30,000.00.[11] On 10 July 1984, Mr Jiwan conveyed his half-share in the Property to the Defendant for a consideration of $50,000.00. This sum of $50,000.00 was fully funded by the Testator.[12] On the same day, the Defendant executed a power of attorney ("the Power of Attorney"), which appointed the Testator as his attorney in matters relating to the Property. The scope and significance of the Power of Attorney are subjects of dispute in this case.

10 It is not disputed that after the purchase of Mr Jiwan's share in the Property, the Testator, his wife, and the Defendant, together with the Defendant's family, moved into the Property. The Testator also employed part of the Property to derive income from rental or license fees. This income ("the Income") consisted of monies paid by persons who either operated businesses

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9 Ranjit Singh's AEIC at para 46.

10 Certificate of Title: Ranjit Singh's AEIC at pp 102–103; ABD at pp 37 and 62–63.

11 Plaintiff's Lead Counsel's Statement ("PLCS") at p 3; Defendant's Lead Counsel's Statement ("DLCS") at p 3.

12 PLCS at p 3; DLCS at p 3.

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in the shop premises in the Property or stayed in the various rooms of the Property. The facts surrounding how the Testator dealt with the Income of the Property during his lifetime are disputed. After the Testator passed away, the Defendant continued to stay there with his family, and also rented out part of the Property for income.[13] In December 1996, the Plaintiff returned to Singapore from India, where he had been living since 1968 after completing his primary education here, and where the parties' three sisters were also living. Upon his return, the Plaintiff moved into one room in the Property.[14]

Parties' cases

11 The Plaintiff's case is that the Defendant held his half-share in the Property on resulting trust for the Testator (during his lifetime) and, after the Testator's demise, for his Estate. In this case, the presumption of resulting trust arises, and it has not been rebutted.[15] While the presumption of advancement applies, the Plaintiff argued that the "presumption of advancement is not strong enough to rebut the presumption of resulting trust".[16] There is also no evidence that the Testator intended to make a gift of the half-share in the Property to the Defendant in 1984, but rather, substantial evidence that the Testator *did not* intend to give the half-share to the Defendant.[17]

12 The Defendant conceded that the presumption of resulting trust arises in this case. He relied on the presumption of advancement and asserted that the

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13 PLCS at p 3.

14 Ranjit Singh's AEIC at para 24; PLCS at p 3.

15 Plaintiff's Closing Submissions ("PCS") at para 20.

16 PCS at para 37.

17 PCS at para 38.

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burden of proof lay on the Plaintiff to prove that the purchase was not intended to be a gift.[18] On the Defendant's case, as the Plaintiff has failed to discharge that burden, the presumption of advancement remains unrebutted, displacing the presumption of resulting trust, with the effect that the Defendant holds the half-share of the Property registered in his name for himself beneficially.[19]

Applicable law and issues

13 I begin by setting out the applicable law in this context. As there was some dispute between the parties as to how the burdens of proof interacted, I consider it appropriate to set out the relevant principles before turning to the issues for determination and my conclusions on those issues. In the present case, the application of the presumption of resulting trust is not in dispute – both parties acknowledge that the presumption of resulting trust applies. The question is how this relates to the presumption of advancement.

14 As a starting point, where the presumption of resulting trust and presumption of advancement are both in issue, the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [57] stated that a two-stage approach applies:

> The court must first determine if the presumption of resulting trust arises on the facts; and it is *only* if a resulting trust is presumed that the presumption of advancement would apply to displace that initial presumption.

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18 Defendant's Closing Submissions ("DCS") at paras 41–42.

19 DCS at para 46.

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15 The *effect* of these two presumptions relates to the burden of proof. In *Lau Siew Kim* at [57], the Court of Appeal approved of the following passage from *Pecore v Pecore* (2007) 279 DLR (4th) 513 at [81]:

> If the presumption of advancement applies, an individual who transfers property into another person's name is presumed to have intended to make a gift to that person. The burden of proving that the transfer was not intended to be a gift, is on the challenger to the transfer. If the presumption of the resulting trust applies, the transferor is presumed to have intended to retain the beneficial ownership. The burden of proving that a gift *was* intended, is on the recipient of the transfer. [emphasis in original]

16 Based on this passage, the Plaintiff's submission that "[the Defendant] has the burden of rebutting the presumption of resulting trust and [the Plaintiff] has the burden of rebutting the presumption of advancement"[20] is incorrect to the extent that it suggests that these are burdens that each party has to discharge at the same time. Rather, once the presumption of advancement applies, the burden of proof *shifts* so that it is now the challenger of the transfer, in this case the Plaintiff, who needs to prove that the transfer was not intended to be a gift. In this regard, the Court of Appeal's further guidance in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160] is helpful, although the parts concerning common intention are not relevant to the present dispute:

> In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:
>
> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be

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20 PCS at para 25.

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presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

(b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

(c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

(d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.

(e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from

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> that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

17 Applying this framework to the present case to structure the issues in dispute: first, the presumption of resulting trust arises because the Testator fully paid the consideration for the transfer of the half-share to the Defendant from Mr Jiwan; second, there is no issue of common intention in this case; third, therefore, the question is whether there is evidence that the Testator intended to benefit the Defendant with the entire of the half-share in the Property paid for with the $50,000.00. In this case, the Defendant relied on the presumption of advancement, which brings us to step (e) in the analysis in *Chan Yuen Lan* above. This is where the parties join issue, and, based on *Lau Siew Kim* at [57], it is the Plaintiff, as the party challenging the transfer to the Defendant, who bears the burden of proving that the transfer was not intended as a gift. The Plaintiff, however, has also raised specific arguments on the burden of proof in relation to the specific factors in the analysis. I will deal with these arguments as they arise below when addressing the facts.

18 In assessing whether the presumption of advancement can be rebutted, the court has to consider both the strength of the presumption and the evidence that is adduced to rebut the presumption. The strength of the presumption of advancement varies in strength according to the facts of each case: *Lau Siew Kim* ([14] *supra*) at [67]; *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 ("*Low Gim Siah*") at [33]. The stronger the presumption, the more cogent the evidence has to be for it to be rebutted. The weaker the presumption, the less weighty the evidence will have to be for the

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challenging party to succeed in rebutting the presumption of advancement: *Lau Siew Kim* at [68]. However, the strength of the presumption is not "*generally* diminished" even today for the traditional categories of relationship where the presumption applies – as the Court of Appeal in *Lau Siew Kim* cautioned at [77]:

> Instead, it should only be where the present realities are such that the putative intention *is not readily inferable* from the circumstances of the case, that the presumption would be a weak one easily rebuttable by any slight contrary evidence. [emphasis added]

19 The assessment of the strength of the presumption of advancement requires attention to be paid to all the circumstances, but certain elements are crucial in the analysis (*Lau Siew Kim* at [78]):

> [*A*]*ll* the circumstances of the case should be taken into account by the court when assessing how strongly the presumption of advancement should be applied in the particular case. The financial dependence of the recipient on the transferor or contributor, mentioned in *Low Gim Siah*, is but one factor which may affect the strength of the presumption of advancement. In our judgment, two key elements are crucial in determining the strength of the presumption of advancement in any given case: *first*, the *nature* of the relationship between the parties (for example, the obligation (legal, moral or otherwise) that one party has towards another or the dependency between the parties); and *second*, the *state* of the relationship (for example, whether the relationship is a close and caring one or one of formal convenience). **The court should consider whether, in the entirety of the circumstances, it is readily presumed that the transferor or contributor intended to make a gift to the recipient and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in that case.** [emphasis in original in italics; emphasis added in bold]

20 As for the evidence that can be used to rebut the presumption of advancement, the Singapore Court of Appeal has approved the "new approach" which allows parties' subsequent conduct to be admitted as evidence, and for

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the court to assess the weight to be given to that evidence: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [108]–[110].

21 The issue for determination in this case, therefore, is solely whether, considering all the evidence and circumstances of the case, the presumption of advancement has been rebutted. As the authorities show, however, this is a fact-sensitive inquiry which will require a close analysis of the facts. It is to that analysis that I now turn.

Analysis

Preliminary issue

22 Before turning to the evidence, I deal briefly with the Defendant's various objections to parts of the Plaintiff's affidavit of evidence-in-chief ("AEIC") detailed in his Notice of Objections to Contents of Plaintiff's AEIC, which were summarised in these three categories:[21]

(a) objections based on the principle that evidence of facts that are not in issue should not be given: Plaintiff's AEIC at paras 8–30, 38–40 and 49–51;

(b) objections based on the rule against hearsay evidence and the need to comply with s 32(4) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"): Plaintiff's AEIC at paras 47, 55, 63 and 64; and

(c) objections based on the inadmissibility of opinion evidence: paras 56–60, 62, and 63.

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21 DCS at para 4.

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23 In relation to the first set of objections, I approach this simply by dealing with what is relevant in the analysis below. In relation to the second set of objections, the Defendant concedes that the requirements of s 32(4)(*b*) of the Evidence Act have been met by the Notice to Admit Non-Documentary Hearsay Evidence dated 5 March 2020, and s 34(1)(*j*) of the Evidence Act applies because the Testator has passed away.[22] However, the Defendant rightly pointed out that the Notice to Admit did not refer to the statement described in para 64 of the Plaintiff's AEIC. As such, the notice requirement was not satisfied. In any event, given that I am not minded to accept the assertion contained in para 64 of the Plaintiff's AEIC that the Testator had told the Plaintiff that he intended to bequeath the whole of the Property to his wife and the three sons (see [84] below), I do not discuss the consequences of this any further. In relation to the third set of objections, I bore in mind the rule against the admissibility of opinion evidence and treated the Plaintiff's evidence accordingly, but since none of these statements were particularly significant and it is ultimately the court's role to decide on the inferences to be drawn from and the implications of the evidence, this was not a significant issue in the present case.

Strength of the presumption of advancement

24 I begin by addressing the strength of the presumption of advancement in this case. The Plaintiff has raised a number of general arguments that the Defendant failed to discharge the burden of proof to show the strength of the presumption. I deal first with that argument, before turning to the specific factors identified in this case.

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22 DCS at paras 6–7.

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The burden of proving the strength of the presumption

25 The Plaintiff argued that the nature and state of the relationship between the Testator and the Defendant were matters within the latter's knowledge, and that s 108 of the Evidence Act provides that the burden of proving these facts is on the Defendant.[23] The Defendant responded by arguing that (a) the nature and state of the relationship was also within the Plaintiff's knowledge; and (b) the Plaintiff had failed to put these factors in issue in his pleadings, the lead counsel's statement or his opening statement.[24]

26 In my judgment, s 108 of the Evidence Act does not apply in this case in the manner argued for by the Plaintiff. As the Court of Appeal made clear in *Phosagro Asia Pte Ltd v Piattchanine, Iouri* [2016] 5 SLR 1052 at [68]:

> … Section 108 is a provision which should only be invoked in 'very limited circumstances' since '[w]idely construed and lifted out of its context, it will reverse the burden of proof of the essential ingredients of the [claimant's] case which by section 108 [of the Evidence Act] is cast on the [claimant]' (see Chen Siyuan and Lionel Leo, *The Law of Evidence in Singapore* (Sweet & Maxwell, 2016) ("*The Law of Evidence in Singapore*") at paras 3.055–3.056, citing (at para 3.055) Tan Yock Lin, "The Incomprehensible Burden of Proof" [1994] SJLS 29 at 38). Section 103 of the Evidence Act provides that the party who desires any court to give judgment as to any legal right or liability which is dependent on the existence of facts which he asserts has the burden of proving the existence of the asserted facts. Put simply, Section 108 is the exception to the rule and may be successfully invoked 'only in very extreme scenarios' (see *The Law of Evidence in Singapore* at para 3.064). …

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23 PCS at para 27.

24 DRS at para 14.

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27 The same logic applies in the present context. As already discussed above at [18], the starting point for the traditional categories of relationship in which the presumption of resulting trust arises is that the presumption is to be given full force *unless* the intention to make a gift is *not* readily inferable: *Lau Siew Kim* ([14] *supra*) at [77]. If the nature and state of the relationship between transferor and transferee is always a matter "especially within the knowledge" of the transferee such that s 108 of the Evidence Act applies, that would significantly reduce the practical utility of the presumption from the outset. Hence, the Plaintiff's assertion that the nature and state of a relationship is especially within the Defendant's knowledge is too broad, as a matter of principle. In any event, as a matter of fact, I do not agree with the Plaintiff that the facts would be especially within the Defendant's knowledge. The nature and state of a father-son relationship can be assessed according to objective facts, as the Plaintiff himself attempted to do in his own arguments. If there were specific facts alleged as part of this analysis that could be shown to be especially within the Defendant's knowledge, it would be more likely that s 108 of the Evidence Act would apply to those specific facts, but to shift the burden of the entire category of facts relating to the nature and state of the relationship to the Defendant would upend the manner in which the presumption of advancement operates and cannot be the effect of that provision.

Nature of the relationship

28 The relationship in this case is that between a father and a son. This is one of the traditional categories where a strong presumption of advancement applies: *Lau Siew Kim* at [62], citing *In re Roberts, deceased* [1946] Ch 1 at 5.

29 The Plaintiff pointed to a number of factors which he argued reduced the strength of the presumption in this case. While a father would generally have

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an obligation to maintain a son, this was not a case where the Defendant was dependent on the Testator as the Defendant was working both for the Testator and outside the family as well.[25] Further, the Defendant is only one of three sons, and one of six children.[26] The Plaintiff also referred to the Will executed by the Testator which gave each of the three sons equal shares in the Testator's asset, as well as the Testator's poor health at the time the half-share in the Property was purchased in 1984.[27] In addition, the Defendant was the Testator's only child in Singapore at the material time, meaning that it was simply the most convenient to use the Defendant's name for the purchase for the Testator's purposes.[28]

30 I find that the factors raised by the Plaintiff were ambivalent in this case. First, in terms of the Defendant's dependence on the Testator, while the Defendant did work for persons other than the Testator, his work for the Testator was not remunerated on a formal basis. Rather, he was paid in irregular periods of time, ranging from once every one to two weeks.[29] It appears that he relied significantly on the Testator in this regard. I would not go so far as to say that this establishes that the relationship was one of ongoing dependence, but this does undermine the Plaintiff's claim that this weakens the presumption.

31 Second, although the Defendant was one of three sons and one of six children, the Defendant also had a unique position, as the Plaintiff himself

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25 PCS at para 28.

26 Ranjit Singh's AEIC at para 7.

27 PCS at paras 29–30.

28 PCS at para 31.

29 NE 2 April 2020 at p 63, ln 7–10.

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accepted,[30] of being the only child who was living in Singapore with the Testator. The mere fact, therefore, that there were other children does not suggest that the nature of the relationship points to a weaker presumption. It could equally be said that the Defendant, being the only son in Singapore, was treated differently by the Testator. Further, in 1984, the Testator was 66 years of age,[31] and the Defendant was someone that he could rely on, as the Testator had already done so in relation to his business. Considering all the circumstances in this case (*Lau Siew Kim* ([14] *supra*) at [68]), I am unable to conclude from this fact that the Defendant was one of many children weakened the presumption of advancement. As for the Plaintiff's argument concerning the Testator's purpose behind registering the half-share in the Defendant's name, I will address that below in considering whether the presumption of advancement has been rebutted.

32 Third, on a related point, the Plaintiff pointed to the Testator's Will, the relevant parts of which read as follows:[32]

> …
>
> 2. I give devise and bequeath all my property of whatsoever nature which is situated within the Republic of Singapore unto my Trustees upon trust to sell call-in and convert the same into money with power and absolute discretion for my Trustees to postpone such sale calling-in and conversion thereof for such period as my Trustees shall in their absolute discretion think fit without being liable for loss.

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30 NE 2 April 2020 at p 47, ln 29–31.

31 NE 2 April 2020 at p 61, ln 24–26.

32 Ranjit Singh's AEIC at pp 19–20; ABD at pp 82–83.

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> 3. My Trustees shall hold the nett proceeds of such sale calling-in and conversion and my ready money upon the following trusts: -
>
> (a) Upon trust to pay thereout all my just debts funeral and testamentary expenses and
>
> (b) Upon trust to distribute the residue thereof for my wife and sons in the manner following:-
>
> (i) as to one half (1/2) share thereof to my wife, the said Chandrawati absolutely and
>
> (ii) as to the remaining one half (1/2) share thereof to my sons, the said Harisankar Singh, the said Ranjeet Singh and Daya Shanker Singh who is at present somewhere in Canada in equal shares absolutely. …
>
> …

The remainder of cl 3(b)(ii) provided that if Mr Daya could not be located within a year from the date of death, half of his share would go to the Testator's wife, and the remaining half would be shared equally by the two remaining brothers. The Plaintiff argued that the Will evidenced an intention that all of the brothers would be treated equally. This meant that the Defendant's relationship with the Testator was to be on equal footing with the other two sons' relationship with the Testator, weakening the presumption of advancement.

33 In my judgment, the Testator's Will is not as probative of the Testator's intention as the Plaintiff suggests. The Will was signed on 27 February 1982, two years before the registration of the half-share in the Property in the Defendant's name. It is true that there was no need for the Will to be updated to reflect that purchase, given that the half-share would, if held on resulting trust for the Testator, be treated as part of his property under cl 2 of the Will. However, it is equally true that because the purchase of the half-share occurred *after* the Will was signed, it is not clear from the *Will itself* that the Testator did not simply decide to provide for him apart from the Will. In that respect, given

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the Defendant's unique position as the Testator's only son in Singapore, I am unable to give much weight to the Will in determining the strength of the presumption of advancement.

34 Therefore, I am of the view that the presumption of advancement has not been weakened by any of the facts relating to the nature of the relationship between the Testator and the Defendant.

State of the relationship

35 I turn to the state of the relationship at the time of the purchase of the half-share from Mr Jiwan. The Plaintiff argued that the Defendant's relationship with the Testator was not good. He based this on his evidence that, after the Defendant had moved out of the family home at 141 Syed Alwi Road, he encountered difficulties and, in the words of the Plaintiff:[33]

> … approached the Testator's relative, Bachoo Singh, seeking assistance to be allowed to return to live with my parents. Upon the persuasion of Bachoo Singh and of my mother, the Testator relented and allowed [the Defendant] and his family to return to live with my parents.

36 The Plaintiff was not cross-examined on this part of his evidence. In response, the Defendant argued that the state of the relationship was never put in issue in the pleadings or in the Plaintiff's AEIC. In any event, the Will showed that his relationship with the Testator was at least as good as the latter's relationship with the other two sons, the Testator was still willing to work with the Defendant and to purchase the half-share of the Property without documenting the beneficial interest, and even if the Plaintiff's account were

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[33] Ranjit Singh's AEIC at para 23.

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true, those were events in 1982 and were not relevant to the purchase of the half-share in 1984.[34]

37 While I accept that the issue of the state of the relationship was never explicitly raised by the Plaintiff, given that this issue is part of the court's overall analysis of the strength of the presumption, I consider it appropriate to analyse whether the Plaintiff is able to show, on the evidence, that the state of the relationship has weakened the presumption. In the round, I find that there is insufficient evidence to show that the relationship between the Testator and the Defendant was in such a state as to weaken the presumption of advancement. I agree with the Defendant that the other circumstantial evidence indicated that the relationship was not *bad*, even if there was no specific evidence that the relationship was particularly *good* – the Testator was willing to work with the Defendant, and after the purchase of the half-share in the Property, the Defendant and his family continued to stay with the Testator. In this regard, however, I do not give much weight to the Will, as the Will also made substantial provisions for one of the sons whose whereabouts the Testator did not know – mere inclusion in the Will did not necessarily indicate a good relationship in these circumstances.

38 I also give little weight to the Plaintiff's account of the alleged dispute in 1982. First, this account was not put to the Defendant in cross-examination. In my view, this was something that ought, in fairness, to have been put to the Defendant for him to give a response or explanation: *Browne v Dunn* (1893) 6 R 67; *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48].

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[34] DRS at para 19; NE 29 July 2020 at p 31, ln 20–21.

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Second, even if I were to consider the account, and even if it were true, I agree with the Defendant that things could have changed in the two years leading up to the purchase of the half-share in the Property. Third, in any event, the exact nature of the dispute in 1982 was not clear. Although the Defendant had to go through a relative to ask to return to live at 141 Syed Alwi Road, there was no evidence as to *why* the Testator did not want him to come back at first, why he ultimately relented, and whether that had any broader effect on their relationship as father and son.

39 Based on this analysis of the nature and state of the relationship between the Testator and the Defendant, I conclude that the Plaintiff has not shown that the presumption of advancement has been weakened. I do not find that the putative intention to make a gift is "not readily inferable" (*Lau Siew Kim* ([14] *supra*) at [77]) from the circumstances of the case. It follows that the strength of the evidence needed to rebut the presumption of advancement is not reduced.

Has the presumption of advancement been rebutted?

40 I turn to consider whether the presumption of advancement has been rebutted. The question is whether there is evidence to show that the Testator did not intend to make a gift of the half-share of the Property to the Defendant by funding the purchase of that half-share.

Circumstances of the purchase and conveyance

41 I begin with the circumstances of the purchase and the conveyance. The Plaintiff highlighted the following circumstances, which were conceded as matters of fact by the Defendant: (a) it was the Testator's idea to purchase the

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half-share of the Property;[35] (b) the Testator negotiated the terms of the sale and purchase and the Defendant only signed the agreement;[36] (c) the Testator appointed solicitors to act in the purchase of the half-share;[37] and (d) the Defendant granted the Power of Attorney contemporaneously with the purchase of the half-share. I deal with the Power of Attorney separately below. In my view, all these circumstances were ambivalent.

42 First, the fact that it was the Testator's idea to purchase the half-share was equally consistent with the Testator intending to retain the beneficial interest and with him intending to make a gift of the half-share to the Defendant. Second, similarly, that the Testator negotiated the terms of the sale and purchase could be used to support either intention. Third, that the Testator appointed the solicitors for the purchase of the half-share is also consistent with the intention to make a gift of the half-share, since it would follow that if the Testator intended to give that half-share to the Defendant, he would also make the necessary arrangements to effect that transfer. Hence, there is nothing in how the purchase and conveyance were effected that would serve to rebut the presumption of advancement.

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35 NE 2 April 2020 at p 57, ln 25–32.

36 NE 2 April 2020 at p 59, ln 4–10.

37 NE 2 April 2020 at p 60, ln 7–32.

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The Testator's alleged reason for using the Defendant's name

43 One of the Plaintiff's primary arguments centred on what the Testator had allegedly told him about his reason for registering the half-share in the Property in the Defendant's name. The Plaintiff deposed as follows:[38]

> … The Testator told me that he had used [the Defendant's] name to register his purchase of [Mr] Jiwan's one-half share so as to facilitate him in securing loans from financial institutions (since [the Defendant] was younger in age and based in Singapore) in order to re-develop the Property eventually.

44 The Defendant maintained in cross-examination that the Testator never told him about that intention.[39] Further, he testified that the Testator did not "have the habit of developing properties", and therefore, what the Plaintiff deposed was not true.[40] He also argued in submissions that the Plaintiff's evidence was not to be believed, and that the clarity of his recollection on this point was in stark contrast to his inability to remember other important facts.[41] Further, the fact was that the Testator never did take out a loan secured on the Property, nor did he redevelop the Property.[42]

45 The Plaintiff sought to buttress his case by pointing out that by 1984 and in the years after that, the Testator disposed of all his other properties, leaving only the Property. This, it was suggested, showed that he intended to redevelop

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38 Ranjit Singh's AEIC at para 47.

39 NE 2 April 2020 at p 62, ln 7–11.

40 NE 2 April 2020 at p 94, ln 6–14.

41 DCS at paras 17–19.

42 DCS at para 20; NE 2 April 2020 at p 18, ln 15–21.

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the Property.[43] Further, the Plaintiff also suggested that the reason why no redevelopment was actually done was the Testator's poor health.[44]

46 I find on the balance of probabilities that the Testator did not make any such communication of his purpose to the Plaintiff. This is a case where the only evidence of the Testator's purported plan came from the Plaintiff, with no objective or documentary evidence to support the claim. In fact, the circumstances of the case point the other way, since no loan was ever taken and no redevelopment appears to have been attempted. There was also the Defendant's evidence that the Testator had never redeveloped any other properties. This evidence has remained unchallenged, suggesting that the Testator's intention to do so could not be assumed simply from his past conduct but had to be proved. The Plaintiff's attempts to get around these problems by pointing to the sale of the other properties and the Testator's poor health were purely speculative.

47 Furthermore, as a matter going to the Plaintiff's credibility and the veracity of his assertion, it is of note that although the Testator allegedly told the Plaintiff about this prior to his death in 1989, the first mention of a resulting trust in the correspondence between the Plaintiff's and Defendant's solicitors was in 2005. This despite the fact that he had received a list of assets of the Estate in 1998 and understood this list.[45] This list of assets appears to have been prepared for the purposes of assessing the estate duty payable, and was adopted

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43 NE 2 April 2020 at p 95, ln 2–3.

44 NE 2 April 2020 at p 94, ln 1–3.

45 NE 2 April 2020 at p 39, ln 9–15.

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by the Defendant as the list of assets of the Estate.[46] It stated that the Testator had a "1/2 share" in the Property.[47] Yet, the correspondence in 1998 between the Plaintiff's and Defendant's solicitors does not show any discussion on that "1/2 share", let alone any assertion of a resulting trust.[48] As the Plaintiff conceded, he did not instruct his lawyers in 1998 to write anything concerning the half-share in the Property.[49] His explanation was that he was "waiting for [the Defendant] to settle it", and if the Defendant claimed ownership of the half-share, then he would dispute the claim.

48 With respect, I find this difficult to accept. First, given that the list of assets already identified only a half-share in the Property as the Testator's asset, the starting position was that the Defendant was claiming to hold the other half-share for himself. It did not accord with reality for the Plaintiff to claim that he was *waiting* for the Defendant to make his move, since the Defendant was *already asserting* that the Estate only had an interest in the half-share in the Testator's name. Indeed, the Plaintiff testified that he already knew that "it was wrong" in 1998.[50] It would have been straightforward for the Plaintiff to have asserted that the entry concerning the Property was incorrect once he received the list in 1998. Yet, he did not do so. Second, even if the Plaintiff had incorrectly assessed the situation, it is remarkable that he then took seven years to raise the issue again. There was no real explanation for this very significant gap in time. Third, even after that, when a letter was sent on 10 January 2005

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46 Ranjit Singh's AEIC at p 43.

47 Ranjit Singh's AEIC at p 22; ABD at p 144.

48 ABD at pp 89–139.

49 NE 2 April 2020 at p 40, ln 1–10.

50 NE 2 April 2020 at p 39, ln 28.

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claiming that the list of assets was incorrect as the other half-share was held as a trustee and the Defendant did not respond,[51] the Plaintiff did not follow up until 2016.[52] The Plaintiff's explanation was that since the Defendant did not dispute what was written, there was no need to pursue the matter further.[53] I do not find this explanation to be plausible. In the absence of response from the Defendant, it would follow that he would administer the Estate according to the list of assets in 1998. Given that situation, the failure to pursue the matter further cast doubt on the Plaintiff's belief in his own claim and the veracity of his assertions. In the absence of any supporting objective evidence, the failure to raise the issue in 1998 and the lengthy gaps in time between 1998 and 2005, and 2005 and 2016 all cast doubt on the Plaintiff's claim.

49 As I have concluded that I am unable to accept the Plaintiff's claim that the Testator had told him that he had registered the half-share in the Defendant's name for the purpose of securing a loan and redeveloping the Property, and since that was the only evidence of this alleged intention, it follows that I do not accept that this was the Testator's real purpose in registering the half-share in the Defendant's name. Hence, this is not something that the Plaintiff can rely upon to rebut the presumption of advancement.

The Power of Attorney

50 The other major plank of the Plaintiff's case is the Power of Attorney executed by the Defendant on the same day as the conveyance of the half-share

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51 Ranjit Singh's AEIC at paras 34–35.

52 NE 2 April 2020 at p 42, ln 19–21.

53 NE 2 April 2020 at p 20, ln 29–32.

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was signed, *ie*, 10 July 1984. It is not disputed that the Power of Attorney was executed by the Defendant nearly contemporaneously with the conveyance. The question in this case relates to the nature of the Power of Attorney and its relevance to the dispute in this case. I deal with this in the following steps: first, I discuss the circumstances surrounding the execution of the Power of Attorney, second, I consider its scope, and third, I discuss its relevance for the presumption of advancement.

51 The evidence of the circumstances surrounding the execution of the Power of Attorney came largely from the Defendant. The Defendant deposed that he had granted the Power of Attorney to the Testator "as a matter of convenience because [the Testator] had been handling matters such as the collection of rental from tenants of the Property even before my half-share was purchased and it made sense for him to continue doing so".[54] This extended to dealing with the tenants, collecting rent, and handling any potential sale of the Property. The Testator had discussed this with the Defendant and the Defendant agreed to grant the Power of Attorney.[55] The same lawyers who assisted with the purchase and conveyance of the half-share assisted in the drafting and execution of the Power of Attorney.[56]

52 The Plaintiff first took issue with the Defendant's claim that he was continuing the practice that the Testator had of collecting rent for the Property. He pointed out that the Defendant in cross-examination had asserted that the Property had been vacant for the few years before 1984, and so contradicted his

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54 Harisankar Singh's AEIC at para 11.

55 NE 2 April 2020 at p 71, ln 12–18.

56 Harisankar Singh's AEIC at p 26; ABD at p 67.

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claim that the Testator had been collecting rent.[57] The Defendant clarified in response that he had meant that there were tenants from before the period of vacancy.[58] While the Plaintiff attempted to characterise this as an "unseemly attempt … to wriggle out of his material contradiction",[59] there is nothing to suggest that the Defendant's clarification was false. Further, it is also the Plaintiff's case that the Testator did in fact collect the rent for the Property after the purchase in 1984, suggesting that there is some truth to the Defendant's assertion that the Power of Attorney was executed, in part, to enable the Testator to do so.

53 The Plaintiff then argued that the Defendant's claim that the Power of Attorney was executed for convenience was contradicted by the fact that the Defendant lived under the same roof as the Testator.[60] I do not think that these are contradictory – convenience is more than just a question of physical proximity, and it is clear that the scope of the powers granted under the Power of Attorney, which the Plaintiff emphasised were broad, gave a great deal of freedom to the Testator to manage the Property. This would have provided a different kind of convenience. The Defendant's assertion that it was just more convenient for the Testator to have the Power of Attorney is not impeachable on this basis.

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57 PCS at paras 48–50.

58 NE 2 April 2020 at p 67, ln 13–16.

59 PCS at para 50.

60 PCS at para 52.

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54 I turn to the specific scope of the Power of Attorney. The clauses emphasised by the parties are as follows:[61]

> …
>
> 5. To grant tenancies of the said property or any parts thereof to such persons at such rents and upon such terms as he shall think fit and to let any such persons into possession thereof and to accept surrenders of tenancies and for these purposes as my act and deed to make, sign, seal and deliver all tenancy agreements and other instruments.
>
> …
>
> 7. To sell and dispose of the said property either by private contract or by public auction for such price as to him shall seem reasonable, and subject to such exceptions reservations covenants and conditions, if any, as he shall think fit.
>
> 8. Upon the receipt of the consideration or purchase money for the same or any part thereof to give a good receipt therefor which receipt shall exonerate the person paying such money from seeing to the application thereof or being responsible for the loss or misapplication thereof.
>
> …

55 The Plaintiff sought to argue that the breadth of the powers suggested that the Testator intended to retain full control over the Property. It is true that these are very broad powers, as the Defendant also acknowledged, which allowed the Testator to set the rent for tenancies and to sell the Property at "such price as to him shall seem reasonable". The Defendant's response was that these powers were granted to the Testator because the Testator had experience with such matters and he trusted the Testator to deal with the Property.[62] This tied in to his explanation for why the Power of Attorney was granted in the first place. Further, it appears to be consistent with the relationship between the Testator

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61 Harisankar Singh's AEIC at p 38; ABD at p 69.

62 NE 2 April 2020 at p 72, ln 3–19.

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and the Defendant, in which the Testator managed the Property just as he did for the other properties in the family, and in which the Defendant was effectively dependent on the Testator for employment as well as a place to live. The mere fact, however, that the powers given are broad does not, in and of itself, mean that the Testator intended to retain the *beneficial* interest. I address this further below.

56 Before turning to the significance of the Power of Attorney in this case, however, there is one point that needs to be clarified. The Plaintiff had suggested that the effect of cl 8 of the Power of Attorney was that the Testator would be able to collect the money and "if [the Testator] did not pass those monies to [the Defendant] … [he] did not have any say."[63] I doubt that this is a correct interpretation of cl 8. As counsel for the Defendant pointed out, cl 8 deals primarily with the position of a third party who pays money.[64] It provides that if that third party pays money to the Testator, the Testator can give "good receipt" and that third party would not have to be concerned with how the money paid to the Testator is applied thereafter. It says nothing about the Testator's responsibilities in relation to money received and would not exonerate the Testator from misappropriation of such money. Similarly, none of the other clauses in the Power of Attorney suggest that the Testator was not responsible to the Defendant for his actions in dealing with the half-share in the Property.

57 Having considered the circumstances surrounding the Power of Attorney and the scope of the powers, I now analyse its relevance to the question of whether the presumption of advancement has been rebutted.

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63 NE 2 April 2020 at p 73, ln 28–31.

64 NE 29 July 2020 at p 25, ln 29–30.

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58 In the first place, I agree with the Defendant that the existence of the Power of Attorney does *not* serve to rebut the presumption of advancement. The concepts of control and beneficial ownership, while linked, can be distinguished. Further, in truth, the very existence of a power of attorney suggests that the beneficial interest *is with the grantor* of the power, as it is the owner of the property that can cede control of the property for certain purposes under a power of attorney. In most instances, the existence of a power of attorney would therefore point *in support* of the presumption of advancement, unless the circumstances suggest that the power of attorney can be explained in a manner that otherwise undermines it. Further, the fact is that the Power of Attorney required the assistance of lawyers. But the same lawyers could have been instructed to establish an express trust. If that was not done, since there was legal advice involved, the choice of a Power of Attorney in contrast to a trust instrument had to be given significant weight.

59 This analysis is supported by the Court of Appeal's observations in *Chan Yuen Lan* ([16] *supra*). That case concerned a husband, Mr See, and a wife, Mdm Chan. The property in question was purchased in the wife's sole name, and was in large part funded by the husband. The husband's case was that he had agreed to put the property in the wife's name on the condition that she acknowledge him as the true owner, and a power of attorney was accordingly executed *before* the completion of the purchase appointing the husband and their eldest son as attorneys to manage the property. Similar to the Power of Attorney in the present case, the power of attorney executed in *Chan Yuen Lan* provided a power to sell the property for such consideration as they saw fit and to give receipts for monies received: *Chan Yuen Lan* at [17]. The Court of Appeal observed the following (*Chan Yuen Lan* at [91]):

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> On appeal, Mdm Chan challenged Mr See's account of the events surrounding the execution of the POA on the basis that the POA could not be considered an 'appropriate legal document'. She argued that:
>
> > (a) The POA was wholly ineffective to show that the designated attorney was the true beneficial owner of the Property. A declaration of trust should have been used *but was not* used.
> >
> > (b) That a declaration of trust should have been but was not used was even more glaring given that Mr See had executed a written declaration of trust not too long before the Purchase …
> >
> > (c) The only reason why a power of attorney, and not a declaration of trust, was executed was because Mr See wanted at that time *only to retain control over the Property* and not to claim beneficial ownership over it as well. This could be seen from the fact that [the eldest son] was also named as one of the attorneys in the POA – there was no reason to do so if Mr See intended to retain beneficial ownership of the Property *himself*.
>
> We appreciate the force of these arguments and agree with Mdm Chan that the POA is ineffective in showing the existence of any agreement between the parties that Mr See was to be the true beneficial owner of the whole of the Property.
>
> [emphasis in original]

60 In my view, although there are two distinguishing factors when that case is compared to the present one, the Court of Appeal's reasoning is applicable here as well. The two distinguishing factors are, first, that the Testator was the sole attorney under the Power of Attorney in the present case, and second, the allegation in *Chan Yuen Lan* was that there was an *agreement* that the wife would acknowledge the husband as the owner of the property, but there is no such agreement alleged in this case. However, the Court of Appeal's appreciation of the force of the arguments raised in that case did not turn on those facts. Further, whether or not an agreement is alleged, the central question remains whether the transferor of the property intended to make a gift of the property. The distinction between control and beneficial ownership, and the

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possibility of using a trust instrument but deciding not to, are both arguments that apply in the present case. I respectfully agree with the Court of Appeal that such arguments have force and, just as in *Chan Yuen Lan*, the present Power of Attorney is not sufficient to show that the Testator intended to retain beneficial ownership in the half-share of the Property.

61 The Court of Appeal in *Chan Yuen Lan* did go on to find that the absence of any reason for why the wife would agree to allow the husband to exercise control over the property was inconsistent with her case that the property was a gift: at [92]. The Court of Appeal's reasoning was based on the absence of a reason for the power of attorney, as well as the absence of any reason why the husband "who had just begun an affair" would give the property to a woman "who was his wife in name only": *Chan Yuen Lan* at [92]. I do not think that these same reasoning applies in the present case. I have already found that the Defendant's explanation for the Power of Attorney was plausible and consistent with the other facts, especially the overall relationship between the Testator and Defendant, and the Testator's role in relation to the various properties. In this case, therefore, since the Power of Attorney executed in favour of the Testator does not evidence the Testator's intention to retain the beneficial ownership, I also find that there was ample reason for why the Power of Attorney was granted and that the grant of the Power of Attorney was consistent with the evidence of the relationship as it stood in 1984.

62 Beyond the mere fact of the Power of Attorney, the Plaintiff further argued that where a transferee grants *extensive* powers to the transferor of the property in a power of attorney such that the latter retains "absolute dominion", it can be concluded that the transferor did not intend to give the property to the

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transferee.[65] In this case, as described above, the powers granted to the Testator were very extensive. Therefore, his argument went, this shows that the Testator retained dominion and was the beneficial owner.

63 To support his argument, the Plaintiff cited the case of *Sidmouth v Sidmouth* [1840] 2 Beav 447 ("*Sidmouth*"), which concerned a purchase of certain sums in funds by a father in the name of his son. In particular, that case also involved a power of attorney from the son under which the father received the dividends of the investments during his life. The dispute was between the beneficiaries of the son's estate and those of the father's estate, and turned on whether the funds had been advanced to the son or if the father retained the beneficial interest. After setting out the presumption of advancement, Lord Langdale MR considered the question of whether the presumption was rebutted. Most relevant to the present case is his observation in *Sidmouth* at 457–458:

> [S]upposing that the demand of the powers of attorney afforded evidence of [the father's] intention at the times of the several transfers, I am of opinion that it cannot thence be deduced that [the father], at the same times, intended his son to be a mere trustee for him. Consider the situation in which they stood – the son unmarried, living in the house of his father, and wholly maintained by him, having future expectations from another source, but not present maintenance except from his father, and having very great future expectations from his father's large property; and then consider what the father could mean by transferring sums of stock into the name of his son, with an intention to receive the dividends himself. It is clear that he meant to continue to maintain his son; it is probable that if he had meant only a contingent provision in the event of the son surviving him, he would have made a transfer into the joint names of himself and his son, for this would have given the absolute power over stock to the survivor; *if he had intended, notwithstanding the transfer to the son, to retain the absolute dominion in himself, it is probable he would have taken care to*

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65 PCS at para 61.

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> *extend the power so as to enable himself to sell and transfer*; but it is scarcely to be conceived why he should make any transfer at all if he intended the son to have neither any present interest in the stock, nor any power over it, nor any future benefit of any kind from it. [emphasis added]

64 To put this reasoning in terms of the analysis in *Lau Siew Kim* ([14] *supra*), there were many factors that showed that the presumption of advancement applied strongly in that case, and there was insufficient evidence to rebut the presumption of advancement. Specifically, in terms of the power of attorney, the Plaintiff cited the *dictum* emphasised in the quote above to suggest that *if* a power of attorney provides for the power to sell and transfer, that would be evidence of an intention to retain absolute dominion and would be sufficient to rebut the presumption of advancement.

65 Before analysing the significance of *Sidmouth*, it is worth setting out how *Sidmouth* was applied by the Court of Appeal in *Low Gim Siah* ([18] *supra*). In *Low Gim Siah*, a father ("LKT") had six joint accounts with his youngest son ("LGB"). At first instance, the High Court held that the money in the joint accounts vested beneficially in LGB upon LKT's death, given that he was the surviving joint account holder: *Low Gim Siah* at [1]. The money in the accounts was provided by LKT, and the presumption of resulting trust arose. As LGB was LKT's son, the presumption of advancement applied and the question was whether the presumption was rebutted. The Court of Appeal held that the presumption of advancement was rebutted (*Low Gim Siah* at [51]):

> … We have earlier cited the statement of Lord Eldon in *Murless v Franklin* (see [27] above) that '[p]ossession taken by the father at the time would amount to such evidence' sufficient to rebut the presumption of advancement even in cases where the father has purchased property in the name of the child, but has retained control over it. We have also referred to the statement of Lord Langdale MR in *Sidmouth v Sidmouth* (see [30] above) that 'if [the father] had intended, notwithstanding the transfer

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> to the son, to retain the absolute dominion in himself, it is probable he would have taken care to extend the power so as to enable himself to sell and transfer'. This was precisely what LKT did in the case of Account 6, and later Accounts 2 to 5. He retained absolute dominion, as a fact, of Account 6 in himself. LGB was not given the opportunity to operate the account. LKT kept all the accrued interest and retained the power to close and/or deal with Account 6 as he wished, and this was demonstrated by his opening another four joint accounts with money from Account 6. Even then, he could have closed all the accounts and retaken possession of the money in these accounts without the knowledge of LGB. The same conditions were applicable to Account 1. *The present case stands in stark contrast to cases where property, such as stocks or shares or real estate, are purchased in the name of the son or jointly with the son, thereby vesting the title in the son immediately and requiring the consent of the son if the father wishes to regain title over the property*. Here, LKT had *full and complete dominion* over the money in the six joint accounts throughout his life. In our view, this fact is sufficient to rebut the presumption that LKT intended for LGB to have the money in the joint accounts upon his death. [emphasis added]

66 In my view, these cases do not support the Plaintiff's argument that the presumption of advancement is rebutted in the present case. First, I note that the statement relied upon by the Plaintiff in *Sidmouth* is not as conclusive as the Plaintiff made it out to be. Lord Langdale MR was concerned with distinguishing the power of attorney present in that case with other means of arranging the relative entitlements and powers of the father and the son, in order to show that the mere fact that the father had control over the dividends did not mean that the father also had the beneficial interest in the funds. In other words, a case where the father had obtained the power to sell and transfer from a power of attorney from the son would certainly give rise to a *stronger* case, but that is not the same as a finding that such a grant of powers would *inevitably and necessarily* lead to the conclusion that the presumption of advancement would be rebutted. As that was not the situation before the court, it was merely an observation and *obiter dicta*.

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67 Second, Lord Langdale MR did not make mention of the distinction between control granted by an owner and retention of the beneficial interest. Neither did he consider that the execution of a power of attorney by the transferee of property was, at least *prima facie*, inconsistent with the existence of a trust since it assumes ownership to belong to the transferee, and represents a conscious choice of a power of attorney as opposed to an express trust instrument suggesting that no trust was intended. It is understandable that he did not do so because that was not the case before him. In this regard, these arguments, which found force with the Court of Appeal in *Chan Yuen Lan* ([16] *supra*) at [91] (see [59] above) are, in my view, convincing, and I would prefer the approach taken in *Chan Yuen Lan* that even a power of attorney granting a power to sell or transfer (as it was in *Chan Yuen Lan* and in the present case) does not, in and of itself, evidence an intention to retain the beneficial interest.

68 Third, the Court of Appeal's application of *Sidmouth* ([63] *supra*) in *Low Gim Siah* was in a very different situation. The Court of Appeal's finding that the presumption of advancement was rebutted in *Low Gim Siah* turned on the fact that LKT retained "absolute dominion" in the sense of being able to unilaterally close the bank accounts and to take possession of the money without LGB's consent and knowledge. The power retained by LKT in that case went far beyond a power of attorney which included the power to sell or transfer. Indeed, in that case, no power of attorney was needed at all because of the rights that LKT retained over the money in the bank accounts. It was expressly stated that such a case stood in "stark contrast" from cases where property is purchased in the son's name, as the half-share in the Property was in this case. Here, the Defendant had legal title to the half-share in the Property, and the Testator could not deal in that half-share except with the Defendant's consent, which, in this case, was expressed in the Power of Attorney. The Power of Attorney, however,

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could be revoked. The "absolute dominion" spoken of in *Low Gim Siah* was a more extreme case that has no application here.

69 Hence, I find that neither *Low Gim Siah* ([18] *supra*) nor *Sidmouth* can be used to establish the broad proposition that a power of attorney including the power of sale and transfer would amount to absolute dominion, which would rebut the presumption of advancement. I prefer the approach taken in *Chan Yuen Lan* toward the significance of a power of attorney, and find that in this case the extensive powers granted to the Testator did not serve to rebut the presumption of advancement.

70 For the reasons above, I find that the existence of the Power of Attorney, the scope of the powers that it granted, and the circumstances in which it was executed do not support the Plaintiff's case that the presumption of advancement is rebutted. In fact, given that the Defendant has provided a plausible reason for granting the Power of Attorney, its existence suggests that the Defendant is the true owner who had given authority to the Testator to deal with the half-share in the Property.

Title deeds

71 The Plaintiff also relied on the following *dictum* by Lord Eldon LC in *Murless v Franklin* (1818) 1 Swans 13 ("*Murless*"), speaking of the evidence required to rebut the presumption of advancement: "Possession taken by the father at the time would amount to such evidence." This does not assist the Plaintiff in relation to the physical possession of the property. In this case, the Testator and his wife, as well as the Defendant and his family moved into the

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Property after the purchase of the half-share in 1984.[66] Hence, it is clear that the Testator did not take possession of the Property on his own, but shared it with the Defendant. This occupation of the Property is entirely consistent with the Defendant holding the half-share in his name beneficially.

72 The Plaintiff then highlighted that the Defendant had given evidence that the Testator kept the title deeds to the Property.[67] I acknowledge that there are authorities – although not cited to me by parties – to the effect that the retention of the title deeds can be good evidence of an intention to retain the beneficial interest in the property: *eg*, *Yeo Kia Yong and others v Yeo Kia Hock* [1998] 2 SLR(R) 602 ("*Yeo Kia Yong*") at [102]. The English authorities were summarised as such in *Chua Cheow Tien v Chua Geok Eng and another* [1968-1970] SLR(R) 139 ("*Chua Cheow Tien*") at [36]–[37]:

> 36 The fact that the plaintiff held the title deeds is a very significant factor. In *Scawin v Scawin* (1841) 1 Y & CCC 65; 62 ER 792 a father bought shares in the name of his son but retained the share certificate. It was observed by Knight Bruce VC (at 793):
>
> > The father may certainly, even in cases where the doctrine of advancement is held to take place, receive the title deeds and the dividends; but although those circumstances may exist in such cases, yet they are circumstances in favour of the father, especially where the son is adult.
>
> 37 In the case of *Warren v Gurney* [1944] 2 All ER 472 a father bought a house in the name of his daughter but the title deeds were retained by the father. Morton LJ said this (at 473):
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> > The second contention put forward by counsel for the appellants was that, on the admissible evidence, the judge was not justified in coming to the conclusion that the defendants had rebutted the presumption of

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66 Ranjit Singh's AEIC at para 48.

67 NE 2 April 2020 at p 83, ln 25.

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> advancement. In my view, there was ample evidence to justify that conclusion of the judge. In the first place, there is the fact that the father retained the title deeds from the time of purchase to the time of his death. I think that is a very significant fact, because title deeds, as it was said in *Coke on Littleton*, are 'sinews of the land.' One would have expected the father to have handed them over, either to the plaintiff or her husband, if he had intended the gift.

73 However, those cases can be distinguished. Those were cases where the party who had purchased or transferred the property into the name of the transferee, but retained the title deeds, was either no longer or was never the legal owner of the property in question: *Yeo Kia Yong* at [4] (property transferred to three sons); *Chua Cheow Tien* at [4] (property transferred to daughter and son-in-law) ; *Scawin v Scawin* (1841) 1 Y & CCC 65 at 65 (shares purchased in son's name); *Warren v Gurney and another* [1944] 2 All ER 472 at 473C (house purchased in daughter's name). There was no reason for that person to retain the title deed and that retention was therefore probative evidence of an intention to retain the beneficial interest. The situation is very different here, where the father was a tenant in common with the son. The fact that the Testator had the title deeds was consistent with his *legal* interest in his half-share of the Property. Indeed, as counsel for the Plaintiff implicitly recognised during cross-examination of the Defendant, the title deeds could be kept by just *one* of them, and not necessarily both.[68] It is also consistent, in this case, with the fact that the Defendant had granted the Power of Attorney to the Testator, giving him the power to deal with his share of the Property. Under this arrangement, having possession of the title deeds would facilitate any action on the Defendant's behalf. Further, in contrast with the cases cited above, here, the

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68 NE 2 April 2020 at p 83, ln 20–23.

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Defendant's unrebutted evidence was that he could obtain access the title deeds[69] and that he had "let" the Testator keep those documents.[70] Therefore, I find that the fact that the Testator had possession of the title deeds in this case does not support the Plaintiff's case that the presumption of advancement is rebutted.

The Income

74 The Plaintiff claimed that the Testator did not share the Income derived from the Property with the Defendant, who was rightfully entitled to half of the income if he were the beneficial owner of his half-share. The Plaintiff therefore argued that it was clear that the beneficial interest remained with the Testator. The Defendant responded that the Plaintiff has failed to prove that the Testator did not share the Income with the Defendant.

75 As a preliminary objection to this issue being raised, the Defendant argued that this assertion of fact was not stated in the Plaintiff's pleadings.[71] I find that the Statement of Claim did not include this assertion of fact. This is a very significant omission given that the question of how the Income was dealt with formed a large part of the Plaintiff's case. For completeness, however, even if I had considered the Plaintiff's argument, I would not have accepted it.

76 Here, the issue of the burden of proof arises in a stark manner because the Defendant claimed to be unable to put forward his income tax statements or

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69 NE 2 April 2020 at p 83, ln 29.

70 NE 2 April 2020 at p 84, ln 7.

71 NE 2 April 2020 at p 87, ln 8–12.

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any other supporting documents to show what he had received for the period from 1984 to the Testator's death in 1989.[72] The only relevant evidence was therefore the Testator's own income tax statements as well as financial statements declared for his business.

77 The Plaintiff argued that this was another fact especially within the Defendant's personal knowledge such that s 108 of the Evidence Act would apply. I disagree. The question of how the Income was handled is an objective one, and can be evidenced by statements and documents. Even if those documents are in the possession of the Defendant, it is an issue of discovery for the Plaintiff to obtain the necessary evidence to mount his case. It cannot be the case that every time the documents are insufficient, the issue would fall within s 108 of the Evidence Act. In any event, on a related but separate note, it appears that the Plaintiff had failed to take out the necessary applications for discovery of these documents which the Plaintiff now claimed were relevant to his case.[73]

78 In my judgment, the legal burden of proof lay on the Plaintiff, since it was *his* case that the Income was not shared with the Defendant according to his alleged interest in the half-share of the Property. The Plaintiff did point to a number of the Testator's documents in an attempt to invite the court to make the necessary inferences, but I find that he has not managed to shift the evidential burden of proof to the Defendant. I explain.

79 The Plaintiff relied on the Testator's business records. These were documents prepared to show the trading, profit and loss account for the various

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72 NE 29 July 2020 at p 26, ln 20–26.

73 NE 2 April 2020 at p 86, ln 22–p 87, ln 18.

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assets. I summarise the information in these business records, as well as the information derived from the Testator's tax returns in the following table:

S/N	Year	Income	Income Declared
1.	1987	$1,060.00[74]	N/A
2.	1988	$1,207.00[75]	$960.00[76]

80 The Plaintiff made the point that the income stated on the business records as licence fees did not make mention of the fact that it was a half-share, and therefore, it could mean that it was a full share.[77] Certainly, the entry was capable of bearing that meaning, but, equally, it could also be a half-share, but with no express statement to that effect. Further, as the Defendant pointed out,[78] even when the Testator was holding the Property together with Mr Jiwan, the business records did not record the asset as being a half-share, but only referred to the Property without indicating the extent of the Testator's interest.[79]

81 The Plaintiff also compared these records to the tax returns filed by the Defendant on the Estate's behalf for 1991 and 1992, where he stated the source as "Licence Fee from part of 85 Syed Alwi Road S(0820) (0.5 share)", and the gross income as $510.00 for 1991 and $550.00 for 1992.[80] The Plaintiff made

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74 ABD at p 5.

75 ABD at p 7.

76 ABD at pp 9–10.

77 NE 2 April 2020 at p 88, ln 1–17.

78 DCS at para 29.

79 ABD at pp 2 and 3.

80 ABD at p 16 and p 21.

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two points. First, in contrast to the tax return filed for the year 1988, here was an express statement that the income was for half of the Property, meaning that the absence of that statement indicated that it was the whole of the Income. I do not accept this argument. As the Defendant rightly pointed out, these were two different tax returns filed by two different people, and there is nothing to suggest that there was a standardized way in which the source of income was to be described. As such, not much weight could be placed on the fact that the Testator's tax return omitted to mention that the income was only for half the Property. Second, he argued that the gross income of $510.00 for half the Property in 1991 and $550.00 in 1992 showed that the earlier tax return in 1988 of $960.00 (which the Plaintiff suggested was the net income after expenses were deducted) must have been for the whole of the Property. This is speculative. There is no evidence that this was the *same* licensee (or combination of licensees and tenants) in 1988, on the one hand, and 1991–1992, on the other.[81]

82 In any event, even if the business records reflected the whole of the Income rather than half, I accept the Defendant's point that it is not clear what happened to the money thereafter. The Defendant testified that he did receive money from the Testator which was supposedly his share of the Income.[82] Even if the income recorded in 1987 and 1988 was the full Income, given that the Testator was given the task of handling the management of the Property, it is not inconceivable that the Testator would have received the whole of the Income and then disbursed it accordingly to the Defendant.

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81 NE 29 July 2020 at p 59, ln 5–6.

82 NE 2 April 2020 at p 85, ln 16–21.

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83 I do not find that the Plaintiff has discharged his evidential burden of proof in this case, as the evidence presented was ambivalent and did not lead to the result that he contended for. Therefore, the absence of documentary evidence from the Defendant did not mean that the Plaintiff could discharge his legal burden of proof. I find that it has not been proved that the Testator did not share the Income with the Defendant, and do not factor this into my analysis of whether the presumption of advancement has been rebutted.

Other evidence

84 The Plaintiff also deposed that the Testator had told him that he intended to bequeath the whole of the Property (together with his assets in Singapore) to the Wife and three sons.[83] This appears to be a different point than that raised in relation to the Will, since here, the allegation is that there was a specific statement of intent in relation to the Property. I am unable to accept this evidence. First, as the Plaintiff himself recognised, this was merely his own assertion which was not backed up by any other evidence.[84] Second, for the reasons already discussed, the Plaintiff's conduct in relation to this matter did not inspire confidence that his assertion of the resulting trust was true (see [47]–[48] above). Third, the absence of particulars of the conversation in which this was allegedly communicated cast doubt on the truth of his assertion. I find that the Plaintiff has failed to prove that the Testator did in fact tell him that he intended to leave the whole of the Property to the Wife and three sons.

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83 Ranjit Singh's AEIC at para 64.

84 NE 2 April 2020 at p 30, ln 3–7.

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85 One final piece of evidence was the letter dated 21 July 1984 sent by the Testator's solicitors to the Public Utilities Board concerning the Property.[85] First, it is worth noting that the solicitors state that they are acting for the Testator and the Defendant. Second, they identify the Testator and Defendant as "owners of the [Property] holding the same as tenants in common in equal shares." Third, in the same letter, the Testator is stated to be the attorney of the Defendant under the Power of Attorney. During cross-examination, when the Defendant pointed to this letter, counsel for the Plaintiff state that they were not disputing the contents of the letter "on the face of it".[86] Indeed, on the face of it, it appears for all intents and purposes that the Testator and Defendant were both the owners of the Property. While not conclusive, I find that this document supports the Defendant's case.

Conclusion on the presumption of advancement

86 In this case, I find that there are no grounds for diminishing the strength of the presumption of advancement. While the Defendant is one of three sons and one of six children, he was in the unique position of being the only son in Singapore living with and working for the Testator. He was, in that sense, also reliant on the Testator for his living, as he was not paid a regular salary but received money from the Testator periodically. There is nothing in evidence to suggest that the state of their relationship was bad in such a way that would weaken the presumption of advancement.

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85 ABD at p 36.

86 NE 2 April 2020 at p 81, ln 12.

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87 The evidence in this case is not sufficient to rebut the presumption of advancement:

(a) The mere fact that the Testator was the one who initiated the purchase of the half-share, conducted the negotiations, and instructed the solicitors, was equally consistent with an intention to give the half-share to the Defendant.

(b) I ultimately do not believe the Plaintiff's claim that the Testator had told him that he had put the half-share in the Defendant's name to secure loans and to redevelop the Property.

(c) As for the Power of Attorney, the circumstances surrounding its execution and the scope of the powers granted did not support the Plaintiff's case, and neither did the authorities cited by the Plaintiff – indeed, in this case, I find that the Power of Attorney supported the *Defendant's* case that he was the owner of the half-share.

(d) The fact that the Testator was the one who kept the title deeds was not material in the present case, and the authorities on the relevance of the possession of title deeds could be easily distinguished.

(e) The Plaintiff has failed to prove that the Testator did not in fact share the Income derived from the Property with the Defendant in accordance with their respective interests in the Property.

(f) I do not accept the Plaintiff's assertion that the Testator had told him that he intended to bequeath the whole of the Property to his wife and the three sons. I also find that the letter to the Public Utilities Board

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in 1984 was evidence that the Defendant was treated by the Testator as a tenant in common with him in equal shares.

88 I therefore conclude that the presumption of resulting trust has been displaced by the presumption of advancement, which has not been rebutted. Therefore, the Defendant holds the half-share in the Property beneficially.

Costs

89 Parties are to file and exchange written submissions on the costs of these proceedings limited to 6 pages (excluding annexes exhibiting documents and list of disbursements), within 14 days of this judgment.

Conclusion

90 Having found that the Defendant holds the half-share of the Property registered in his name beneficially, I dismiss the Plaintiff's suit.

Tan Puay Boon
Judicial Commissioner

Ranvir Kumar Singh (UniLegal LLC) for the plaintiff;
Twang Kern Zern and Lam Jianhao Mark (Central Chambers Law Corporation) for the defendant;
Sara Binte Abdul Aziz (Silvester Legal LLC) (watching brief) for non-party.

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