

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2020] SGHC 254**

Suit No 196 of 2019

Between

Xu Zhigang

*... Plaintiff*

And

Wang Fang

*... Defendant*

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**JUDGMENT**

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[Trusts] — [Express trusts]  
[Gifts] — [Presumptions against] — [Resulting trusts]  
[Equity] — [Estoppel] — [Promissory estoppel]

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Xu Zhigang**

**v**

**Wang Fang**

**[2020] SGHC 254**

High Court — Suit No 196 of 2019

Audrey Lim J

30 June, 1–3, 7–9, 14–17, 21, 23 July, 31 August 2020

19 November 2020

Judgment reserved.

**Audrey Lim J:**

**Background**

1 The plaintiff (“Xu”), a Chinese national and businessman, had an extra-marital affair with the defendant (“Wang”) from 2014 to 2017. In 2019, Xu commenced this suit to claim that two sums totalling US\$9.6 million, an apartment and a car, which were with Wang, belonged to him. Wang claimed that he had gifted them to her.

2 The parties first met on a flight in 2011, where Wang was working as a flight attendant. They met again around September 2013 and thereafter communicated more frequently. Between December 2013 and February 2014,

Xu transferred money to Wang, totalling about \$4,198,000.<sup>1</sup> Wang used the money to purchase an apartment at The Interlace (“the Apartment”) and a Mercedes Benz (“the Car”), both registered in her name. The Option to Purchase (“OTP”) for the Apartment was signed on 12 December 2013 while the Car was purchased around 14 January 2014.<sup>2</sup> Around end January to early February 2014, Xu and Wang spent time together in China, including visiting Wang’s parents during Chinese New Year (“CNY”). They began a romantic relationship in early to mid February 2014 (“the Relationship”).<sup>3</sup>

3 In February 2014, Wang discovered that Xu had a relationship with one Wang Cong. She was very upset and wanted to break up with him. Xu informed her that he was no longer with Wang Cong but Wang Cong was still working in Eastport Petrochemical (Singapore) Pte Ltd (“Eastport”), of which he was then the main shareholder.<sup>4</sup> In January 2014, when Wang was working with United Overseas Bank (“UOB”), Xu procured employment for her at Eastport. Wang was employed at Eastport from around April or May 2014 to June 2016 and was paid a monthly salary of \$10,000 although she did not do any substantive work.<sup>5</sup>

4 Around 2 July 2014, US\$2.6 million belonging to Xu was transferred to Wang (“1<sup>st</sup> USD Sum”).<sup>6</sup> In January 2015, Xu was to receive some funds from Eastport. He gave instructions for the funds to be transferred to Hao Huanchun

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<sup>1</sup> Statement of Claim (Amendment No. 1) (“SOC”) at [5]; Plaintiff’s AEIC (2 June 2020) (“P’s AEIC”) at [34]–[35]; Defendant’s AEIC (3 June 2020) (“D’s AEIC”) at [32].

<sup>2</sup> SOC at [11]; Defence (Amendment No. 2) (“Defence”) at [6(b)]; P’s AEIC at [52]; D’s AEIC at [31].

<sup>3</sup> P’s AEIC at [64]–[74]; D’s AEIC at [17].

<sup>4</sup> 2/7/20 Notes of Evidence (“NE”) 2–3; D’s AEIC at [19], [41] to [49].

<sup>5</sup> P’s AEIC at [75]; D’s AEIC at [16]; 17/7/20 NE 46.

<sup>6</sup> P’s AEIC at [90] and exhibit XZG-16; D’s AEIC at [54]–[55].

(“Hao”), his chauffeur and assistant in China, who then transferred US\$9 million to Wei Jinzhi (“Wei”), Xu’s employee. On Xu’s instructions, Wei then transferred US\$7 million to Wang (“2<sup>nd</sup> USD Sum”) around 4 February 2015. The Relationship ended in November 2017.<sup>7</sup> The 1<sup>st</sup> and 2<sup>nd</sup> USD Sums will be collectively referred to as “the USD Sums”.

### **Applicable legal principles**

5 Wang claimed that the USD Sums, Apartment and Car (“the Properties”) were gifts to her. Conversely, Xu claimed that she held them on trust for him, relying on express trust, presumption of resulting trust, resulting trust and common intention constructive trust.

6 A valid gift *inter vivos* is made when there is an intention to gift and delivery of the precise subject matter of the gift (*Lee Hiok Tng (in her personal capacity) v Lee Hiok Tng and another (executors and trustees of the estate of Lee Wee Nam, deceased) and others* [2001] 1 SLR(R) 771 at [35]). The court will objectively assess the donor’s subjective intentions at the time of the property transfer (*Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 (“*Tan Yok Koon*”) at [83]).

7 An express trust arises when there is certainty of intention, subject matter and object of the trust. In relation to certainty of intention, it is the substance and not the form of the alleged settlor’s words and conduct that is important, and his intention to create a trust may be inferred from his words or conduct and from the surrounding circumstances (see *The State-Owned Company Yugoimport SDPR (also known as Yugoimport-SDPR) v Westacre*

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<sup>7</sup> P’s AEIC at [199]; D’s AEIC at [117].

*Investments Inc and other appeals* [2016] 5 SLR 372 at [55]–[56]). A presumption of resulting trust arises when one party has paid (wholly or partly) for the purchase of a property vested in the other party. A resulting trust may arise independently of a presumption of resulting trust if it can be shown that the transfer was not intended to benefit the recipient. The intention of the recipient is irrelevant to whether a resulting trust has arisen (see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [36], [43] and [44]). For a common intention constructive trust, there must be a common intention between the parties as to how the beneficial interest of the property is to be held and this intention may be express or inferred (*Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [83]).

8 The analysis of whether any of the Properties were intended to be gifts to Wang or held on trust for Xu would essentially depend on whether there is sufficient evidence to show that the transferor (Xu) had intended to benefit the recipient (Wang) on a particular property.

### **Parties’ arguments regarding the Apartment and Car**

#### ***Xu’s version***

9 Xu claimed that a presumption of resulting trust arose as he paid for the Apartment and Car. Alternatively, a resulting trust arose, and/or there was a common intention constructive trust, as parties had a common understanding that Xu would be the beneficial owner of the Apartment and Car, and that he had no intention to give them to Wang.<sup>8</sup>

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<sup>8</sup> SOC at [9] to [10].

10 Xu had purchased the Apartment for Wang to stay to improve her living conditions as he regarded her as a close friend and sibling. He also wanted his own place to stay whenever he was in Singapore. Wang and he viewed properties in November 2013, and he decided to purchase the Apartment on the same day that he viewed a similar unit at The Interlace. He bought the Apartment based on his preferences. Xu asked Wang to register the Apartment in her name out of convenience, as she lived in Singapore and he wanted her to help him handle the administrative matters concerning its purchase, renovation and fitting. Contrary to Wang's claim, Xu did not inform Wang that the Apartment was her birthday gift. At the time he decided to purchase the Apartment in November 2013, the Relationship had not commenced and he did not know when Wang's birthday was.<sup>9</sup>

11 Sometime in December 2013, Xu told Wang that he wanted to buy a car and he would let her drive it; he did not tell her that he was buying it for her. He decided to purchase a car as he needed to meet customers in Singapore and Eastport did not have a company car. Wang and he went to view cars around end December 2013 to early January 2014. He asked Wang to handle the administrative matters and register the Car in her name, for the same reasons pertaining to the Apartment.<sup>10</sup> The decision to purchase the Car was also made before the Relationship started.

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<sup>9</sup> P's AEIC at [26]–[27], [31]–[33] and [40]; 30/6/20 NE 55 and 60.

<sup>10</sup> P's AEIC at [44]–[45], [49]–[52]; 1/7/20 NE 31.

***Wang's version***

12 Wang claimed that the Apartment and Car were unconditional gifts to her, or alternatively, that Xu had represented to her that they were gifts and he is now estopped from resiling from the said representation.<sup>11</sup>

13 In early December 2013, Xu asked Wang when her birthday was. When she told him that it was on 10 December, Xu said that he would visit her on that day. He also asked her to arrange to view properties together and said that he would buy her a property for her birthday. Xu arrived in Singapore on 10 December 2013 and they viewed properties on 11 and 12 December. After viewing The Interlace, Wang stated that she liked it whereupon Xu said that he would buy the Apartment for her as a birthday gift.<sup>12</sup>

14 After signing the OTP for the Apartment on 12 December 2013, Xu said he would buy a car for Wang. They went to the car showroom on the same day to look for a Mercedes Benz but the model was not available. Xu thus asked Wang to order a car based on her preference.<sup>13</sup> Around 4 January 2014, Wang saw the Car at the showroom and called Xu (who was in China), and Xu told her to buy it. She signed the sales agreement on 14 January 2014 and paid for the Car with the monies that Xu had transferred to her (see [2] above).

**Findings on the Apartment and Car**

15 I find, on balance, that Xu had intended to give the Apartment to Wang as a birthday present and that Xu had also bought the Car for her.

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<sup>11</sup> Defence at [8], [13] and [14A].

<sup>12</sup> D's AEIC at [24]–[28] and pp 123–123F; 21/7/20 NE 51–52.

<sup>13</sup> D's AEIC at [29].

***When the viewing of apartments took place and choice of apartment***

16 The circumstances surrounding the purchase of the Apartment support Wang’s case that it was her birthday gift and that Xu had informed her as such.

17 I accept that when Wang told Xu that her birthday was on 10 December, he said he would buy her a property and asked her to arrange to view properties. Wang had booked his flights and arranged with a property agent to view properties, and the parties viewed The Interlace and another property. Xu was in Singapore from 10 to 13 December 2013 which coincided with Wang’s birthday<sup>14</sup> and the OTP for the Apartment was signed shortly after her birthday.

18 I disbelieve that Xu had already decided to purchase the Apartment in November 2013 before he knew about Wang’s birthday.<sup>15</sup> The phone messages showed that Wang first spoke to the property agent (“Liu”) on 9 December 2013, a day before Xu came to Singapore, to arrange to view The Interlace and another development with Xu. The records show that they viewed these two properties on 11 December, and it is undisputed that Xu viewed The Interlace with Wang on that date.<sup>16</sup> Although Xu denied that he was present when Wang signed the OTP whilst Wang claimed that he was there,<sup>17</sup> this was immaterial to the present issue. More likely than not, Xu was with Wang when she signed the OTP, as he had come to Singapore to spend time with her and they had looked

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<sup>14</sup> D’s AEIC at p 123 (exhibit 4).

<sup>15</sup> 30/6/20 NE 63.

<sup>16</sup> Exhibit D3 at pp 1, 14, 20, 24; 7/7/20 NE 82–83; 17/7/20 NE 74; Defence’s Bundle of Documents vol 2 (“2DB”) at p 4.

<sup>17</sup> 30/6/20 NE 95; 7/7/20 NE 85–87; D’s AEIC at [28]–[29].

for an apartment together. Xu admitted that he came for a birthday meal with Wang and gave her a jade bangle of about RMB 500,000 as a birthday gift.<sup>18</sup>

19 I also find that Xu had bought the Apartment for Wang because she liked it and not because of his preference. Until just before the viewing of properties, Xu did not inform Wang or Liu of any requirements of the property that he wanted to buy. He claimed that it was only after viewing a property at Orchard Road (*ie*, the Urban Resort), that he told Liu that he wanted a property with a patio and *Liu then made some last minute calls* to view The Interlace, and that all these happened in November 2013. However, the decision to view The Interlace could not have been made at the last minute or in November 2013. The chat records showed that Wang had liaised with Liu in advance on 9 and 10 December 2013 to view *both* The Interlace and the Urban Resort on 11 December 2013.<sup>19</sup>

***Reasons for purchasing and registering the Apartment in Wang's name***

20 Xu claimed that he could not have intended to give Wang the Apartment, as they were only friends then. But it could equally be said that as they were only friends and barely knew each other, it was hard to comprehend why he allowed the Apartment to be registered in her name if he did not intend to give it to her. I disbelieve that it was registered in Wang's name so that she could help him with the administrative matters. Xu could have appointed an agent for this purpose or asked Luan Wenbo ("Luan"), the general manager of Eastport,

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<sup>18</sup> P's AEIC at [36]; D's AEIC at [27]; 30/6/20 NE 64; 1/7/20 NE 64.

<sup>19</sup> 30/6/20 NE 60–63 and 63; Exhibit D3 at pp 1, 3, 12 and 13; 7/7/20 NE 82–84.

to do so as Luan was his “trusted business associate” whom he has known for at least 14 years.<sup>20</sup>

21 Additionally, the Apartment was registered in Wang’s name without any (formal or informal) documentation to show that Xu was the beneficial owner. Xu stated that it would have been “awkward” to prepare such documentation as his relationship with Wang was becoming closer and they treated each other as siblings, and in any event, the Relationship had started shortly after the Apartment and Car were purchased.<sup>21</sup> His explanation was not convincing. When the Apartment was purchased, Xu and Wang were merely friends and Xu (an experienced businessman) knew that there was a risk that Wang may dispute his ownership subsequently. Further, that he and Wang were in the Relationship shortly after the Apartment was purchased did not explain why he did not obtain such documentation at the time of its purchase when they were just friends.

22 Next, Xu stated that he wanted to improve Wang’s living conditions, and that he wanted his own place to stay in Singapore as his business at Eastport was growing and he would come here frequently.<sup>22</sup> Even if these reasons were true, he could have purchased the Apartment in his name. Indeed, Xu claimed that a property that he financed but registered in Wang Cong’s name (“RV Property”) belonged to him. If so, he could have stayed there or informed Wang Cong to move out, especially when he claimed that their relationship had ended in May or June 2013.<sup>23</sup>

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<sup>20</sup> 30/6/20 NE 83; P’s AEIC at [47] and [89].

<sup>21</sup> 30/6/20 NE 22, 23, 81–82.

<sup>22</sup> P’s AEIC at [25]–[27].

<sup>23</sup> 30/6/20 NE 56–57; 1/7/20 NE 13 and 19; 2/7/20 NE 5.

23 There is also no evidence of a common intention between the parties that the Apartment would be beneficially owned by Xu. In his affidavit of evidence-in-chief (“AEIC”), Xu gave the impression that he had told Wang that she could register the Apartment in her name and that “she would hold [the Apartment] on [his] behalf”. In court, however, he admitted that he did not tell Wang that the Apartment was to be his or that she was to hold it on his behalf, unlike his claim that he had told Wang Cong that the RV Property was not a gift to her.<sup>24</sup>

24 Hence, the circumstances support on balance Wang’s claim that the Apartment was a birthday gift from Xu to her. Although Xu had given Wang a jade bangle for her birthday, this did not prevent him from giving her the Apartment. Xu had given Wang many other things (including the jade bangle) even before the Relationship began and it was clear that he was at that time interested in her beyond just as a friend or sibling (see [34]–[35] below).

***Reasons for purchasing the Car and registering it in Wang’s name***

25 I also find Xu’s reasons for registering the Car in Wang’s name to be unconvincing. Despite claiming that he needed a car to meet customers and for business, Xu never drove the Car for his business purposes and Eastport had even purchased a car in May 2014, a few months after the Car was purchased, and which he used. As with the Apartment, Xu could have appointed a representative, including an Eastport staff, to handle the administrative matters particularly when the Car was meant also for his Eastport business.<sup>25</sup>

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<sup>24</sup> P’s AEIC at [33(b)]; 30/6/20 NE 16–17, 56 and 84; 7/7/20 NE 93.

<sup>25</sup> 1/7/20 NE 32–33; 7/7/20 NE 99.

26 I accept Wang's evidence that after she signed the OTP for the Apartment on 12 December 2013, Xu said that he would buy a car for her, and they went to the car showroom near The Interlace on the same day to look for the model but it was not available. When Wang saw the Car at the showroom in early January 2014 and Xu told her to buy it, she signed the sales agreement on 14 January 2014. There was no evidence to support Xu's claim that he decided in November 2013 to purchase the Apartment and in December 2013 to buy the Car. His evidence that he decided to purchase a car after signing the OTP was more in line with Wang's claim that they visited the car showroom on the same day. Apart from his trip to Singapore from 10 to 13 December 2013, there was no evidence that he had viewed cars with Wang on a separate occasion.<sup>26</sup>

***Matters occurring after purchase of the Apartment and Car***

27 Next, the matters that occurred after the purchase of the Apartment and Car also support Wang's case that Xu had bought them as gifts for her.

28 In *Tan Yok Koon* ([6] *supra*) at [107], the Court of Appeal referred to the rule in *Shephard v Cartwright* [1955] AC 431 ("*Shephard*") that subsequent conduct in the actor's favour is inadmissible as evidence to rebut the presumption of advancement, except for conduct that is so closely connected in time to the transfer as to be part of the same transaction. However, conduct against an actor's favour (*eg*, demonstrating that the transferor intended to gift the asset) falls outside the scope of the general rule. The concern is that a party could advance his own case by making unilateral statements. However, the Court of Appeal also went on to state (at [110]) that the rule in *Shephard* should

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<sup>26</sup> 1/7/20 NE 27–29.

be relaxed, to treat the parties’ subsequent conduct as admissible even in their own favour and to leave the court free to assess its probative weight.

*Expressions of gift by Xu*

29 Xu admitted that during various quarrels, he had told Wang that the Apartment and Car belonged to her. He told Wang in chat messages on 23 February 2015 that “your savings are the foundation of your security” and “For the time being, these are all the things that I can think of to give to you a sense of security”. He stated in court that his reference to “your savings” and “all the things” included the Apartment and Car. I disbelieve Xu that he told Wang the Apartment and Car were hers only because they were in a romantic relationship and he did not wish to claim ownership over the properties as it would be inappropriate and would “only deepen [the] conflict” when they were quarrelling. If so, he could have kept silent instead of saying that the Apartment and Car were Wang’s. In fact, in a quarrel with Wang in 2016 or 2017, he again told her that the Apartment and Car were hers. Xu’s conduct and the statements made by him were against his favour and should be accorded material weight.<sup>27</sup>

30 Xu’s evidence in court also showed that he had intended the Apartment and Car as gifts to Wang. When queried as to why he had followed Wang to visit her parents during CNY in 2014, this was his reply:<sup>28</sup>

Q: Was this not because you wanted to spend more time with her and pursue her as a romantic partner?

A: I have already said, if I really want to pursue her as a romantic partner, *it would not require a long time. I had already paid \$3 million for the property and 500,000 to \$600,000 for the*

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<sup>27</sup> 3/7/20 NE 123–128; D’s AEIC at p 369.

<sup>28</sup> 1/7/20 NE 56.

*car*. I really do not need to spend so much time if I wanted to pursue her as my romantic partner... [emphasis added]

His reply that he need not spend so much time to pursue Wang when he had already paid so much for the Apartment and Car, showed that he regarded them as gifts to her and that he wanted to impress her with his extravagant gifts.

*Wang's journal entries*

31 Next, Wang's journal entries support that the Apartment and Car were gifts to her.<sup>29</sup> On 23 December 2013, she recorded, "I have got a house and a car" and "A man buys a house and a car for you unconditionally within 3 months. This kind of thing only happens if the two get married on the spur of the moment. But his man ... is now acting like a loved one." On 4 January 2014, she recorded, "I have received a lot of wealth ... I'm afraid to tell other people that I have a house and a car, and my car is a sports car". Similar references were made in the journal entries on: (a) 4 March 2014, where Wang stated that "He bought a house and a car for me"; (b) 23 March 2014 where she recorded "I have a home and a car"; and (c) 19 June 2014 where she recorded "This is my house ... and my car". In a journal entry dated 5 July 2014, Wang also recorded "the house ... that [Xu] gave me".

32 I accord weight to the journal entries although I recognise that they were self-serving. The first few entries were contemporaneous with the purchase of the Apartment and Car, and the entries made after Wang found out about Wang Cong and claimed to have discovered (in March or April 2014) that Xu was still married were consistent with the earlier entries that stated the Apartment and Car as hers. The journal entries were also consistent with the evidence at the

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<sup>29</sup> D's AEIC at pp 131, 133, 197, 199, 201 and 207.

time of the purchase of, and Xu's expression of intent with regard to, these properties (at [29]–[30] above). There was no suggestion that the journal entries were manufactured.

*Evidence of Wang's father*

33 Wang's father ("Mr Wang") attested that around late 2013, Wang informed him that Xu had told her to look for a property for herself and would give her the money for the purchase, that Xu and she viewed apartments together and Xu then bought her an apartment, and that on the same day or the next day Xu told her that he would buy her a car.<sup>30</sup> Mr Wang had saved in his phone a photograph of a plan of The Interlace development (timestamped 13 December 2013) and of a Mercedes Benz (timestamped 5 January 2014).<sup>31</sup> Wang had sent the photograph of The Interlace to Mr Wang contemporaneous to the purchase of the Apartment and of the car around the time that she claimed to have viewed the Car and obtained Xu's permission to buy it. Wang also produced a receipt for the down-payment for the Car made on 4 January 2014. These photographs saved in Mr Wang's phone supported the existence of the conversation with Wang at the material time.

*Romantic interest*

34 Next, Xu's conduct showed that he was interested in Wang as more than just a close friend or sibling, even before the Relationship began. After a brief meeting on a flight in 2011,<sup>32</sup> they reconnected in September 2013 when he essentially tried to assist her with career opportunities at UOB. Thereafter, they

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<sup>30</sup> Wang Jianhui's AEIC at [8].

<sup>31</sup> Wang Jianhui's AEIC at [14] and pp 38, 40 and 41.

<sup>32</sup> 30/6/20 NE 36; P's AEIC at [13], [15]–[18], [22]–[25]; D's AEIC at [11]–[13].

had many close interactions and together they visited Wang's parents during CNY in 2014 and visited various places in China (*ie*, Shenzhen and Xiamen) at the same time. Even prior to the Relationship, Xu had given Wang many substantial gifts and benefits. These included: (a) \$1,000 and a handphone in 2013; (b) a jade bangle worth at least RMB500,000 on her birthday in December 2013; and (c) a UOB ATM card around October to December 2013 linked to his bank account where his salary from Eastport of \$20,000 per month was deposited into. He told her that she could use the ATM card, and she relied on it for her living expenses.<sup>33</sup> When they visited Wang's parents during CNY in 2014, he paid for her flights to Shenzhen and Xiamen and the hotel room. Around October or November 2013, Xu secured employment for her at Eastport where she was employed until June 2016 and was paid \$10,000 a month without doing any substantive work.

35 Xu would not have gone to such extent of lavishing Wang with gifts and benefits even before the Relationship began if he had no romantic interest in her. I find that he had likewise purchased the Apartment and Car for her and with the intent of pursuing her.

*Parties' subsequent conduct*

36 It is not disputed that Wang had discharged the property tax and maintenance fees for the Apartment, and the road tax and insurance premium for the Car, since 2014.<sup>34</sup> Her conduct was consistent with her belief that the said properties belonged to her. On the other hand, Xu did not care about such expenses and assumed that Wang would take care of them using the resources

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<sup>33</sup> 1/7/20 NE 47–54 and 64; 7/7/20 NE 90–92; 14/7/20 NE 26; D's AEIC at [13].

<sup>34</sup> D's AEIC at [92(c)] and pp 459–653; 7/7/20 NE 94.

he had given her including his credit card, ATM card and her Eastport salary.<sup>35</sup> In that regard, Wang's salary at Eastport was hers and there is no evidence that Xu's credit card was used to pay for the expenses.<sup>36</sup>

37 Additionally, the chat messages of 25 January 2015 showed that Xu and Wang regarded Wang as the owner of the Apartment. Wang stated that "the other room" was "originally meant for [Xu] to stay in" and "[t]hat room was kept for [Xu]. Because [Wang had] asked [him] before." Wang occupied the master bedroom of the Apartment.<sup>37</sup> Xu's reply to Wang was merely that he had "never thought of this question". Xu also stated in court that Wang had previously asked him whether she should keep a room at the Apartment for him.<sup>38</sup> If Xu was the owner and could stay at the Apartment whenever he wished, it was unnecessary for Wang to ask that question.

38 Likewise, by Xu's own case, he drove the Car *only once*, because he was scolded by Wang for his poor driving skills, became angry and decided to never drive it again. He then bought another car and registered it with Eastport.<sup>39</sup> If he were the owner of the Car, there was no reason why he would stop driving it merely because Wang had commented on his driving skills and resorted to purchase another car just so that he could use it in Singapore.

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<sup>35</sup> P's Supplementary AEIC dated 26 June 2020 ("P's 2AEIC") at [40] and pp 67–72.

<sup>36</sup> 7/7/20 NE 95–97.

<sup>37</sup> P's AEIC at p 298; 3AB 1079; 1/7/20 NE 4.

<sup>38</sup> 1/7/20 NE 25.

<sup>39</sup> 7/7/20 NE 98–99.

***Conclusion on the Apartment and Car***

39 In conclusion, I find that the evidence supported Wang’s claim that the Apartment and Car had been purchased for and intended as gifts to her.

**Parties’ arguments on the 1st USD Sum**

***Xu’s version***

40 Xu claimed that Wang held the 1<sup>st</sup> USD Sum on express trust for him, or alternatively, that a resulting trust arose.<sup>40</sup>

41 Xu’s Chinese companies ran into financial difficulties in May or June 2014 and he wanted to insulate Eastport from any risks that might arise. He was concerned about the risk of Eastport’s business reputation being negatively affected if he were to remain as its legal shareholder and director, whilst being the legal representative of his Chinese companies, and wanted to dissociate Eastport’s business reputation from himself. Xu also wanted to dissociate Eastport from one Zhang Min (“Zhang”), as she was also a shareholder of one of his Chinese companies while concurrently a shareholder of Eastport. At that time, Xu and Zhang held 70% and 15% respectively of Eastport’s shares.<sup>41</sup>

42 Xu came up with a plan for Hao to purchase all of his and Zhang’s shares in Eastport (“the Shares”) and hold them as a nominee with the beneficial ownership remaining unchanged (“Share Transfer”). The Share Transfer would be accompanied by consideration to create the impression that the Shares had been sold to Hao and Hao would be the beneficial owner. Xu would provide the

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<sup>40</sup> Plaintiff’s Closing Submissions (“PCS”) at [36] and [70].

<sup>41</sup> P’s AEIC at [79]–[83]; D’s AEIC at [52]; 1/7/20 NE 71; Exhibit P6 at p 1.

funds to purchase the Shares.<sup>42</sup> He planned to transfer the funds to Wang first and for her to transfer the same to Hao (“Share Transfer Plan”), as it would be odd if Hao received the funds directly from Xu for the Share Purchase only to transfer it back to Xu later. Xu considered Wang as the intermediary for the funds as he trusted her and thought that she could assist with this in Singapore.

43 The Share Transfer Plan and its details were shared with Wang, Luan and Hao in Beijing on 29 June 2014 (“Beijing Meeting”).<sup>43</sup> Xu left Luan to execute the Share Transfer Plan (including verifying the amount needed for the Share Transfer and arranging the funds transfer and Share Transfer) as Xu was busy dealing with his business in China. Xu told Hao and Wang to take instructions from Luan. He left his personal UOB chequebook in Eastport, with pre-signed blank cheques, so that Luan and Stella Ho (“Stella”), Eastport’s finance executive, could make advance payments from his UOB account. Xu was unaware of the amount used for the Share Transfer until Wang updated him around 2 to 7 July 2014 that she had received US\$2.6 million (*ie*, the 1<sup>st</sup> USD Sum). Wang also informed Xu that Luan had briefed her on the transfer of the 1<sup>st</sup> USD Sum, *ie*, that she was to pass it to Luan in cash, who would then pass the same to Hao. Xu told her to follow Luan’s instructions.

44 Around 7 July 2014, Wang informed Xu that she had withdrawn cash to pass to Luan but he wanted a cheque instead. Xu told her to re-deposit the cash and wait for Luan’s further instructions on the transfer of the 1<sup>st</sup> USD Sum to Hao. Xu trusted that Luan would follow up on the matter, but Luan did not. Around 10 July 2014, Hao told Xu that he had not received the 1<sup>st</sup> USD Sum

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<sup>42</sup> P’s AEIC at [84], [87]–[88]; 1/7/20 NE 73, 77 and 89.

<sup>43</sup> P’s AEIC at [87]–[88], [91]–[94]; P’s 2AEIC at [66]; 1/7/20 NE 116; Wei Jinzhi’s AEIC (“Wei’s AEIC”) at [19].

from Wang. In August or September 2014, Wang also informed Xu that the 1<sup>st</sup> USD Sum was still in her UOB account and that there was no follow up from Luan. Xu told Wang to hold on to the money for temporary safekeeping. At that time, it was no longer crucial for the 1<sup>st</sup> USD Sum to be transferred to Hao as the ripple-on effects from the Chinese companies' financial difficulties had already affected Eastport and Eastport would soon be inactive.<sup>44</sup>

***Wang's version***

45 Wang claimed that the 1<sup>st</sup> USD Sum was a gift to her. Alternatively, Xu had represented to her that it was for her and he was estopped from resiling from the representation.<sup>45</sup>

46 Around February 2014, Wang found out about Xu's relationship with Wang Cong, and subsequently discovered that he had given Wang Cong a job in Eastport and bought her the RV Property. In March or April 2014, Wang found out that Xu had lied about his marital status when he admitted that he was still married. Due to these, Wang wanted to end the Relationship.<sup>46</sup> During a quarrel in early April 2014 over Xu's marital status, Xu told Wang that he would be receiving money from Eastport and would give it to her, to show his sincerity and gratitude for staying with him and to provide her a sense of security. Wang thus decided to remain in the Relationship. In June 2014, Xu informed Wang again that he would receive money from Eastport and would give this to her.<sup>47</sup>

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<sup>44</sup> P's AEIC at [95]–[100]; D's AEIC at [56].

<sup>45</sup> Defence at [16] and [28A].

<sup>46</sup> D's AEIC at [41]–[46] and [47]–[48].

<sup>47</sup> D AEIC at [50]–[52].

47 Although Wang was in Beijing, she did not attend the Beijing Meeting. In Beijing, Xu said that he wanted to give Wang all his share rights in Eastport, but Wang did not want them whereupon Xu said that he would just give her money as promised. Xu said that he would hand to Wang his UOB cheque book, with pre-signed blank cheques, and he would let her know the amount that he would be giving her.<sup>48</sup> After returning to Singapore, Xu told Wang to write out a pre-signed cheque for US\$2.6 million in her favour. She banked the cheque into her UOB account around 2 July 2014 and informed Xu. However, after a day or two, Xu suggested to her that, as a matter of prudence, she should withdraw the money and re-deposit it into a new account. Around 7 July 2014, Wang withdrew \$2.6 million cash from her UOB account which she re-deposited into that account around 16 July 2014.<sup>49</sup>

### **Findings on the 1<sup>st</sup> USD Sum**

48 On balance, I find that the three certainties required for an express trust are established. Xu had transferred the 1<sup>st</sup> USD Sum to Wang while intending to retain its beneficial interest and its transfer was merely for the purposes of her transferring the legal title of that sum onwards to Hao.

### ***Whether Xu had lied to Wang about his marital status***

49 Wang claimed that around December 2013, Xu told her that he was a divorcee with a son, but it was only around March or April 2014 that he admitted to her that he was still married; Xu then assured her that he would divorce his wife, and that as a show of sincerity he would give her the 1<sup>st</sup> USD Sum.<sup>50</sup> Xu

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<sup>48</sup> D's AEIC at [53]; 15/7/20 NE 23–24.

<sup>49</sup> 14/7/20 NE 83–84; D's AEIC at [55]–[56].

<sup>50</sup> Defence at [16]; D's AEIC at [14] and [19].

claimed that he had told Wang about his wife and son in 2013 when he got in touch with her after their first meeting in 2011; and he also told Wang's father (during CNY in 2014) that he was a married man.<sup>51</sup>

50 There was insufficient evidence to show that Xu had lied to Wang about his marital status and, in any case, that he had for this reason promised to give her all his monies from Eastport (or the 1<sup>st</sup> USD Sum). Whilst Wang had kept a rather comprehensive and frequent journal of her friendship and the Relationship with Xu, where she recorded, *eg*, her hopes, aspirations and anger,<sup>52</sup> the records did not show that she had been angry with him at the material time when she allegedly found out about his marital status, or mentioned that he had lied about his marital status. This was a notable omission in light of Wang's claim that she was angry, very upset and felt cheated by Xu's alleged admission that he was married and even purportedly informed Xu that she wanted to end the Relationship. Instead, she recorded on 23 March 2014 that she was attracted to Xu's "masculinity and generosity" and that Xu's "generosity kept [her] drifting heart settled down for the time being". In court, Wang conceded that the journal entries made no direct reference to Xu's marital status or her unhappiness with it.<sup>53</sup>

51 Wang's reliance on Mr Wang's testimony did not assist her as their evidence were inconsistent. Mr Wang testified that the first time he learnt that Xu was married was in *end 2014 to early 2015*, when his *wife* told him that Xu had promised Wang to divorce his wife. Wang however said that it was in

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<sup>51</sup> P's AEIC at [23(b)], [68] and [70]; 1/7/20 NE 59.

<sup>52</sup> 14/7/20 NE 9–11, 43.

<sup>53</sup> 14/7/20 NE 42, 47–49, 60–62 and 73; D's AEIC at [47]–[48] and p 199.

*March 2014* (after she heard from Wang Cong that Xu was still married) that *she* informed her parents of this.<sup>54</sup>

***Beijing Meeting***

52 I accept that Xu had informed Wang of the Share Transfer Plan at the Beijing Meeting and disbelieve Wang’s claim that Xu had told her that he would give her the monies from Eastport. The urgency of the Beijing Meeting, given the unfolding financial difficulties that his business in China was facing, supports Xu’s account. Wang herself stated that Xu had told her that his business in China was in trouble and asked her to accompany Luan to Beijing to meet him whereby Luan and he would discuss business matters, and immediately “the next day” Luan and she flew to Beijing. Luan and she were in Beijing for only two to three days.<sup>55</sup> It is curious that Xu wanted Wang to meet him in Beijing so urgently and that she stayed there for only a short time, if the purpose of her trip (as she claimed) was merely to accompany Xu who was feeling down. I accept Xu’s evidence that Wang had gone to Beijing with Luan as Xu wanted to brief them on the crisis he was facing. I find that Xu wanted to share with Wang the Share Transfer Plan of which he needed her help with, that the meeting was arranged on short notice as Xu’s entities in China were facing financial difficulties and he wanted to dissociate himself from Eastport, and that he wanted to effect the Share Transfer Plan as soon as possible.

53 Hao corroborated Xu that they, Luan and Wang were at the Beijing Meeting, on what transpired there and on the purpose of the Share Transfer. Pertinently, Hao stated that Wang was present when Xu informed them of the

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<sup>54</sup> 21/7/20 NE 62–63; D’s AEIC at [47].

<sup>55</sup> D’s AEIC at [53]; 15/7/20 NE 60–61.

Share Transfer Plan and that Xu would arrange for the funds to be transferred to Wang, to transfer to Hao, who would then return them to Xu eventually.<sup>56</sup>

54 On the other hand, Wang’s version of how the 1<sup>st</sup> USD Sum came to be a gift to her was suspect. She attested that when she was in Beijing on that occasion, Xu had promised to give her shares and she recorded this in her journal on 21 June 2014. However, this journal entry could not have pertained to the Beijing trip which only occurred around 29 June 2014.<sup>57</sup> In court, she stated that “the location is different but the content [of her journal entry of 21 June 2014] is the same”, and later admitted, after some prevarication, that her journal entries did not mention the Beijing trip and claimed that Xu told her about the share transfer a week before that trip. I find this an unconvincing attempt to explain away her inconsistencies.<sup>58</sup> In any event, I disbelieve Wang that Xu had promised her the 1<sup>st</sup> USD Sum in June 2014. By then, he was in the midst of the credit crisis affecting his interests in China and it was unlikely that he would have wanted to give Wang some US\$2.6 million at that time.

### ***Matters occurring after the Beijing Meeting***

55 The contemporaneity of certain subsequent important events supports that the 1<sup>st</sup> USD Sum was meant for the Share Transfer Plan. Xu and Zhang’s shares in Eastport (of 2,100,001 and 450,000 respectively) were transferred to Hao on 30 June 2014, a day after the Beijing Meeting. Xu’s UOB bank statement showed a sum of US\$2,599,971.92 credited into his account on 1 July 2014 (which cohered with Eastport’s records that showed advance dividends of

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<sup>56</sup> Hao Huanchun’s AEIC (“Hao’s AEIC”) at [9]–[10]; 8/7/20 NE 36.

<sup>57</sup> D’s AEIC at [53]; 15/7/20 NE 19 and 60.

<sup>58</sup> 15/7/20 NE 16; 21/7/20 NE 16–17.

US\$2.6 million paid to Xu on 30 June 2014), and a sum of US\$2.6 million withdrawn from his account on 2 July 2014 (and banked into Wang's UOB account).<sup>59</sup> All these occurred within a few days and supports that the Share Transfer Plan was discussed at the Beijing Meeting and the 1<sup>st</sup> USD Sum was intended for the Share Transfer. The quantum of the 1<sup>st</sup> USD Sum also supports that it was intended for the Share Transfer Plan. Eastport's Register of Members reflected that the amount (purportedly) paid by Hao to Xu and Zhang for the Shares totalled US\$2,550,000 which approximates to the 1<sup>st</sup> USD Sum.<sup>60</sup>

56 It is not disputed that Wang was told to withdraw the 1<sup>st</sup> USD Sum from her account. On 7 July 2014, she withdrew \$2.6 million although she intended to withdraw US\$2.6 million. Wang's claim that Xu had suggested that she withdraw and re-deposit the 1<sup>st</sup> USD Sum into a new account out of an abundance of caution for her sake is unconvincing. It is unclear why it would be more prudent to withdraw the 1<sup>st</sup> USD Sum only to re-deposit it into a new account, given that any withdrawal and attempt to re-deposit such a substantial sum in cash would have invited queries and compliance issues with any bank and draw attention to herself. Wang claimed that possibly Xu had asked her to withdraw only \$2.6 million which, if true, would be at odds with her claim that Xu had told her to move the 1<sup>st</sup> USD Sum to another account to play it safe, as some of that Sum would remain in her UOB account.<sup>61</sup> Instead, I accept Xu's explanation that Wang was told to withdraw the 1<sup>st</sup> USD Sum for the purpose of passing the cash to Luan to pass to Hao for the Share Transfer Plan. The

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<sup>59</sup> 1/7/20 NE 78; 23/7/20 NE 18–19; P's AEIC at pp 157–158; Exhibits P2 and P6.

<sup>60</sup> P's 2AEIC at p 94.

<sup>61</sup> D's AEIC at [55]–[56]; 15/7/20 NE 42–43.

withdrawal coincided with Hao’s visit to Singapore from 6 to 10 July 2014 shortly after the Beijing Meeting.

***Hao’s evidence***

57 As stated earlier, Hao corroborated Xu on what transpired in Beijing and at the Beijing Meeting. He was to hold the shares on Xu’s behalf. Hao then came to Singapore to assist with the Share Transfer and, whilst here, Luan informed him that the consideration would be US\$2.6 million and that Luan would arrange the transfer of the 1<sup>st</sup> USD Sum from Wang to Hao. However, Hao did not receive any funds from Wang even when he returned to Beijing on 10 July 2014 and had informed Xu of the same.<sup>62</sup>

58 I am cognisant that Hao is Xu’s employee. Nevertheless, I find him to be a credible witness, and I accept his evidence pertaining to the Beijing Trip and the Share Transfer Plan. I did not see any reason for Hao to lie. He did not have a vested interest in the Shares or money that was intended to be transferred to him as he was merely acting under instructions to hold both for Xu.

59 Mr Lee SC submitted that Hao’s testimony was inconsistent,<sup>63</sup> as Hao fluctuated on when he first knew that funds would be transferred to him for the Share Transfer Plan and whether it was Xu or Luan who had first told him this. However, the apparent inconsistency was due to imprecise questioning. Hao had stated that it was Xu who had first told him in Beijing that money would be passed to him for the Share Transfer Plan (although the specific amount was not mentioned), but it was when Hao was in Singapore that Luan first told him the

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<sup>62</sup> Hao’s AEIC at [12]–[13], [17]–[18]; 8/7/20 NE 36–39.

<sup>63</sup> Defendant’s Closing Submissions (“DCS”) at [150]–[152].

amount was US\$2.6 million and also first told him that he was to receive the funds *whilst he was in Singapore*.<sup>64</sup> As for Mr Lee SC's submission that Hao had prevaricated on whether the 1<sup>st</sup> USD Sum would be transferred to his account or to him in cash,<sup>65</sup> I find no contradiction as the transfer to Hao's account could be by cash.

### ***Luan's absence***

60 Mr Lee SC submitted that all of Xu's evidence relating to Luan's involvement in the 1<sup>st</sup> USD Sum was hearsay as Luan did not testify.<sup>66</sup> I disagree. Xu had testified on what he himself had said and done (*eg*, what transpired in Beijing in June 2014) and what he had heard directly from Wang such as her conversation with Luan. Hao had also testified on what transpired at the Beijing Meeting and his trip to Singapore.

### ***Wang's journal entries and messages with Xu***

61 The documentary evidence did not show that the 1<sup>st</sup> USD Sum (or 2<sup>nd</sup> USD Sum, which I will discuss later) was a gift to Wang. Wang admitted that the USD Sums were not expressly referred to in any chat or journal.<sup>67</sup> Although she referred to various entries made between 2015 to 2017,<sup>68</sup> they only referred to her receiving money or being wealthy and any mention of Xu providing for her financially could equally be a reference to other money and benefits that he had given to her.

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<sup>64</sup> 8/7/20 NE 39–40.

<sup>65</sup> DCS at [151].

<sup>66</sup> DCS at [137]–[138].

<sup>67</sup> D's AEIC at [54]; 16/7/20 NE 19.

<sup>68</sup> D's AEIC at [57], [88]–[89] and pp 217, 220, 230, 235, 238, 248 and 250.

62 Pertinently, the 1<sup>st</sup> USD Sum was not mentioned in Wang’s journal entry on 5 July 2014, recorded just three days after that sum was transferred to her. One would have expected Wang to have expressed some joy at receiving so much money as a gift. In contrast, the “house” was mentioned twice, even though she received the Apartment some seven months prior (in December 2013). It is also inexplicable that Wang had described herself as suffering and being disappointed with Xu. These were strange reactions from someone who had just allegedly received a US\$2.6 million gift.<sup>69</sup>

63 On 27 September 2014, Wang mentioned Xu had satisfied her financially, and on 23 December 2014 Wang stated that Xu had given her money.<sup>70</sup> These entries, recorded three and six months respectively after the 1<sup>st</sup> USD Sum was handed to Wang, are equivocal and could have referred to other moneys and benefits that he had given to her. Then, on 18 May 2016 Wang stated that she was fortunate in wealth, and on 24 July 2016 she recorded what was purportedly Xu’s words to her that “I have given you all of my money.”<sup>71</sup> Again, these statements were neutral and did not mention the USD Sums.

64 Wang then referred to journal entries in 2017,<sup>72</sup> where she recorded: (a) on 15 January that Xu had given her “so much money that [she would not] be able to finish spending all of it in [her] lifetime”; (b) on 13 March that she was grateful for what she possessed, namely “a place to live, money and car”; (c) on 9 May that Xu gave her “so much money”; (d) on 8 August about how Xu expressed his love for her by giving her money; and (e) on 29 November, after

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<sup>69</sup> 14/7/20 NE 76, 88; D’s AEIC at p 207.

<sup>70</sup> D’s AEIC at [57] and pp 208–211; 15/7/20 NE 44–45.

<sup>71</sup> D’s AEIC at [88] and pp 240–242 and 246; AB 1161.

<sup>72</sup> D’s AEIC at [88(c)]–[88(g)] and pp 252, 258, 260, 267 and 276.

the Relationship had ended, that “Luckily, I have money and a house.” However, these entries do not mention the USD Sums.

65 Finally, I refer to a text conversation on 5 September 2016, more than a year after the 2<sup>nd</sup> USD Sum was transferred to Wang, that she claimed showed that the USD Sums were gifts to her.<sup>73</sup>

Wang: All the money must be mine.

Xu: If the money is enough to make up for it, that would be good.

Wang: Not enough.

Xu: I don’t even want to have five dollars.

Wang: The children are also mine. Everything is mine.

Xu: What more do you want.

Wang: The companies are also mine. All of them.

...

Xu: Everything is yours.

Wang: I know that you are a deserter of love. You went on to find another woman, I can understand. Just let me know as soon as possible. I only want money.

...

Xu: I will give everything to you. You can do what you want.

...

Wang: People will disappoint you! Money won’t! The more the happier!

Xu: I will give everything to you.

Wang: I see through you. You have no money. I thought you were loving. You weren’t.

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<sup>73</sup> D’s AEIC at [85(a)] and [85(b)], and pp 408 to 421

Wang: You also lie to people... I will not allow other people to hurt me. No one.

Xu: I agree to your baseline, please give me time to do better.

...

Xu: All the money will be given to you. Everything will be made known to you. This is the baseline, right?

66 I agree with Xu that he wanted to appease and placate Wang when they were quarrelling and she was making unreasonable demands, but that did not mean that he had given or would give her the USD Sums.<sup>74</sup> It was not logical that he would give her everything, including his children and companies. In any case, the conversation did not reflect Xu's intention at the time of the transfers of the USD Sums, which transfers took place more than a year before.

67 As to the lack of records mentioning the 1<sup>st</sup> USD Sum and the fact that it was a gift, Wang claimed that Xu had told her to be discreet about the gift and not to mention it to anyone or in their text chats.<sup>75</sup> When it was pointed out to her that no one would read her private diary, she then claimed that she was concerned about hackers.<sup>76</sup> I disbelieve Wang that Xu had told her to keep the 1<sup>st</sup> USD Sum discreet or that she was concerned about hackers. She did not proffer any good reason for having to keep this discreet. Wang's explanation that she was concerned about hackers only came out in cross-examination, which I find to be an afterthought. If Xu had wanted to keep the gift discreet, it was strange that he told her to withdraw the money to re-deposit into a new

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<sup>74</sup> P's 2AEIC at [107]–[108]; 7/7/20 NE 46–47.

<sup>75</sup> D's AEIC at [54].

<sup>76</sup> 14/7/20 NE 76–77.

account, as a flow of such a huge amount of funds would have attracted undue attention and compliance issues with the banks (which eventually occurred).<sup>77</sup>

***Evidence of Wang's father***

68 Wang also relied on Mr Wang's evidence. Mr Wang claimed that Xu had: (a) told him in 2015 that Wang had enough money for her lifetime; (b) told him in 2016 that Xu had already given Wang all his money, had given her US\$10 million and had no money left; (c) on an occasion raised his index finger and said he had given Wang "this much" which Mr Wang took to mean US\$10 million; and (d) on another occasion told Mr Wang that he had given all that he had to Wang.<sup>78</sup> Whilst Xu admitted to telling Mr Wang that Wang was rich and that he would look after her, he denied that he had ever told Mr Wang that he had given Wang enough money to last her a lifetime or that he had given Wang US\$10 million or ever referenced the sums.<sup>79</sup>

69 I find that Mr Wang's evidence did not support Wang's claim on the USD Sums. I give little weight to his evidence as Xu was not cross-examined on or asked to verify the truth of that evidence on the 1<sup>st</sup> (or 2<sup>nd</sup>) USD Sum. I am not satisfied that even if Xu had told Mr Wang that he had given Wang US\$10 million, that this referred to the USD Sums.<sup>80</sup> This is to be contrasted with Mr Wang's evidence on the Apartment and Car which was corroborated by pictures sent by Wang to him around the time of their respective purchases.

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<sup>77</sup> D AEIC at [56]; 15/7/20 NE 30; 1/7/20 NE 107.

<sup>78</sup> Wang Jianhui's AEIC at [13(a)], [13(c)], [13(d)] and [13(g)].

<sup>79</sup> P's 2AEIC at [109]–[117].

<sup>80</sup> 21/7/20 NE 64.

***Miscellaneous issues pertaining to Xu’s case***

70 Finally, I deal with some issues pertaining to Xu’s case on the 1<sup>st</sup> USD Sum, raised by Mr Lee SC.

*Xu’s pleadings*

71 Mr Lee SC submitted that Xu changed key aspects of his pleaded case at the last minute. Xu first pleaded that Luan had briefed Wang to transfer the funds to Hao for a business transaction, but then pleaded that Xu had instructed Wang on the transfer of the funds for the Share Transfer.<sup>81</sup> I did not find this to affect my decision. The Share Transfer was an elaboration of the “business transaction” pleaded originally – Xu explained that it was just not described in detail initially.<sup>82</sup> If Mr Lee SC was suggesting that the Beijing Meeting did not take place because it was only mentioned in the amended statement of claim (“amended SOC”),<sup>83</sup> the evidence showed otherwise. Wang had also stated that she and Luan had gone to Beijing on that occasion for Luan to discuss business matters with Xu at the time when Xu’s business in China was in trouble.

72 Next, it was submitted that Xu’s pleadings were unclear as to whether the instructions were to transfer the 1<sup>st</sup> USD Sum to Hao directly or to Luan first to pass to Hao.<sup>84</sup> Again, this is immaterial. It was consistent that Hao was to eventually receive the 1<sup>st</sup> USD Sum. Hao had testified that the Share Transfer Plan included consideration that would emanate from Xu. Xu stated that he left

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<sup>81</sup> SOC at [18(a)], [19(c)]; DCS at [107] and [132]–[133].

<sup>82</sup> 1/7/20 NE 85–86.

<sup>83</sup> SOC at [18(a)]; D’s AEIC at [30] and [53]; 1/7/20 NE 82–83 and 85; 15/7/20 NE 20 and 24; DCS at [135]–[136].

<sup>84</sup> DCS at [130].

the details of the Share Transfer Plan to Luan as he was in China and Luan was in Singapore and he was unaware that Luan had told Wang to withdraw the money to pass to Luan first.<sup>85</sup>

73 Further, Xu first pleaded that he had instructed Wang to return the 1<sup>st</sup> USD Sum to him but she refused, but later pleaded that he had told her to hold the 1<sup>st</sup> USD Sum for temporary safekeeping. Mr Lee SC submitted that this change in Xu's pleadings showed that his instructions to Wang to hold the money temporarily was an afterthought.<sup>86</sup> I disagree. Xu's pleaded case in the amended SOC (that he first told Wang to temporarily hold the 1<sup>st</sup> USD Sum and subsequently asked her to return the sum on numerous occasions but she refused) was an elaboration of his original claim (that Wang had refused to return the money despite his request).

74 Next, Xu pleaded that after Wang withdrew \$2.6 million, it was Luan who instructed her to re-deposit it; but later pleaded that he told Wang to do so.<sup>87</sup> This did not affect my findings. Xu was not asked to explain his change of pleadings. In any case, it could well be that he was initially mistaken or could not recall who had informed Wang to re-deposit the money. His amended SOC is consistent with his AEIC.

#### *Share Transfer Plan*

75 I turn to examine certain aspects of the Share Transfer Plan. Mr Lee SC submitted that the Shares could have been transferred to Hao without payment

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<sup>85</sup> P's AEIC at [91] and [94]; 1/7/20 NE 103.

<sup>86</sup> DCS at [154]; SOC at [19].

<sup>87</sup> SOC at [19]; DCS at [134].

since it was only a legal transfer. Further, Xu's explanation that the Share Transfer Plan could only be completed with consideration being given and that it was common for share transfers in China to be accompanied by consideration was unbelievable.<sup>88</sup> However, I accept Xu's explanation that he wanted to transfer the Shares with consideration to create the impression that he had sold his shares to Hao when in effect Xu would retain the beneficial ownership. At the material time, Xu wanted to dissociate himself from Eastport as he was facing financial problems with his business in China and he did not want his Eastport business in Singapore to be affected.

76 Next, it was submitted that Xu could have arranged to transfer the funds directly to Hao or to Luan (instead of Wang) to transfer to Hao.<sup>89</sup> I did not find this problematic. Xu wanted to conceal the true source of the consideration to lend legitimacy to the Share Transfer Plan. As Xu explained, it would look odd if Hao had received the funds directly from him only to transfer it back to him. Xu did not want to use Luan as the intermediary as Luan was Eastport's general manager and too closely connected to the transaction.<sup>90</sup>

77 Whilst there may be flaws in the Share Transfer Plan including the potential ease in which a third party (*eg*, Xu's creditor in China) might have easily seen through it and it was unlikely that someone like Hao could afford to buy the Shares, I had nevertheless found there to be sufficient evidence to show that the Share Transfer Plan was intended to be effected (see [52]–[57] above).

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<sup>88</sup> DCS at [141]–[143].

<sup>89</sup> DCS at [147]–[148]; 7/7/20 NE 103.

<sup>90</sup> 7/7/20 NE 6, 102–103.

78 Next, Mr Lee SC submitted that the Share Transfer Plan was unbelievable because if Xu subsequently felt that it did not have to be completed, he could simply have asked Wang to return the 1<sup>st</sup> USD Sum. Xu's claim that the Share Transfer Plan was not completed as Eastport was soon to be inactive was not convincing as Eastport remained a live company.<sup>91</sup> I did not find it unusual that Xu had asked Wang to safekeep the 1<sup>st</sup> USD Sum or that he did not ask for its return immediately or until much later. Xu had explained that when his business in China was in distress, he was very stressed and not in a mood to deal with the 1<sup>st</sup> USD Sum.<sup>92</sup> It was also not unusual that he placed assets with others because he reposed his trust in them; for instance, his legal shareholding in Eastport remains with Hao. Additionally, whilst in the Relationship, he trusted Wang to safekeep the money and did not wish to rock the boat, especially given Wang's unhappiness that he was still married. Further, Xu had explained that from late 2014 until 2016, proceedings had been commenced in China against his business and him. Hence, it was unsurprising that he did not wish to reclaim the 1<sup>st</sup> USD Sum from Wang then, to prevent creditors from reaching into his assets.<sup>93</sup>

79 Next, Xu had in 2016/2017 asked for the return of only half of the USD Sums, which Mr Lee SC submitted was inconsistent with Xu's claim that all of the USD Sums belonged to him. Xu had also admitted that he had on an occasion asked Wang to lend him RMB500,000, from the RMB 1 million that he had given to her in December 2016.<sup>94</sup> Xu did not have to borrow money from Wang

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<sup>91</sup> DCS at [155]–[156]; 2/7/20 NE 60–61.

<sup>92</sup> P's AEIC at [100]; 1/7/20 NE 117–118.

<sup>93</sup> P's AEIC at [102]–[103]; 2/7/20 NE 62–65.

<sup>94</sup> 2DB 17; DCS at [166]; [217]–[221]; 7/7/20 NE 49.

when he could have asked for the return of the USD Sums. Xu explained that he wanted to borrow RMB 500,000 as he needed RMB in China and not US dollars to do his business.<sup>95</sup> But this did not mean that he had given the USD Sums to Wang. Xu's actions of requesting the return of half the USD Sums or borrowing RMB from Wang must be seen in the light that he had attempted to obtain part of the USD Sums back from Wang but to avail and he did not wish to sour the Relationship with her then (see further [92] below). Pertinently, when asked why he could not have asked Wang for part of the USD Sums (in relation to another issue), Xu revealed that he did not wish to do a conversion from US dollars to RMB as it would "attract checks from the authority".<sup>96</sup>

80 Finally, Mr Lee SC argued that Xu's delay in bringing his claim showed that they were gifts; it was only in November 2018 that Xu's lawyers issued a demand letter to Wang to claim the return of the Properties.<sup>97</sup> However, I accept Xu's reasons for the delay in claiming the USD Sums. At the material time and after the Relationship ended, Xu had been subject to travel restrictions by the Chinese authorities which were only lifted in late 2018.<sup>98</sup> In any event, shortly after the Relationship ended, he had in around December 2017 instructed Wang Qiaolian ("Qiaolian"), his lawyer in China, to seek advice from Singapore lawyers on how to recover the Properties. Qiaolian attested that she consulted lawyers in Singapore in early 2018 on this issue, and around 5 November 2018 (shortly after the travel restrictions were lifted against Xu) she arranged a meeting between the Singapore lawyers and Xu to seek further advice on the

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<sup>95</sup> 7/7/20 NE 50.

<sup>96</sup> P's AEIC at [198]; 30/6/20 NE 28; 3/7/20 NE 111; 7/7/20 NE 43 and 54.

<sup>97</sup> DCS at [223] to [226].

<sup>98</sup> 7/7/20 NE 55 and 65; P's AEIC at [202] and [204]; P's 2AEIC at [147].

matter. Prior to sending the demand letter, Xu had also tried to engage with Wang for the return of his moneys.<sup>99</sup>

81 Hence, I accept that Xu had sought to recover the USD Sums as soon as he could. As parties were and had been in the Relationship for almost four years, it is logical that Xu did not initially wish to take the hard approach to demand the sums back and wanted to talk things over with Wang instead. His conduct did not show that he had intended the USD Sums as gifts to her at the time of transfer or thereafter.

### ***Abandoned claims***

82 Mr Lee SC argued that Xu had a habit of asking for the return of properties even though they were gifts and this included a car he gave to Wang's father, RMB 1 million that he gave to Wang and a property in China ("Zhangzhou Property") held jointly by Wang and her mother and of which RMB 3 million (*ie*, 75% of the purchase price) was paid by Xu.<sup>100</sup> Even if Xu had asked for the return of certain properties, it did not mean that everything held in Wang's name were gifts to her. Whether any particular item was gifted is a question to be determined based on the facts specific to it. For clarity, I do not make any findings on whether the RMB 3 million or 75% of the Zhangzhou Property was intended as a gift to Wang as Xu has abandoned this claim.

### ***Conclusion on 1<sup>st</sup> USD Sum***

83 In conclusion, I prefer Xu's version to Wang's and find that the 1<sup>st</sup> USD Sum was handed to Wang with the express intent that it would be used for the

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<sup>99</sup> P's AEIC at [203], [204]–[219]; Wang Qiaolian's AEIC at [16]–[17].

<sup>100</sup> DCS at [81]; 1/7/20 NE 64–65; 7/7/20 NE 52 and 67.

Share Transfer Plan, with Xu intending to retain its beneficial interest. I find that there was no intent to benefit Wang with this sum, and even when the 1<sup>st</sup> USD Sum was not applied towards the Share Transfer Plan.

### **Parties' arguments on the 2<sup>nd</sup> USD sum**

#### ***Xu's version***

84 Xu claimed that Wang held the 2<sup>nd</sup> USD Sum on an express trust or a resulting trust. He had told her that the 2<sup>nd</sup> USD Sum was for temporary safekeeping and that it was for him to restart his business.<sup>101</sup> From August or September 2014, Xu's Chinese companies underwent audits, and actions were commenced against them and Xu. Around end 2014, Xu knew that he would receive from Eastport dividends accruing from his previous shareholding ("Dividends") and his share of profits accruing from Eastport's futures trading ("Profit Share") (collectively the "EP Funds"). He hence explored options to insulate the EP Funds from risks that may arise from the financial difficulties that his Chinese companies were facing and to readily access the funds to start a business outside of China as and when he was ready to do so.<sup>102</sup>

85 In late December 2014 to January 2015, Wei assisted Xu to incorporate a company in Hong Kong ("HK"), namely Yong Cheng Investment Ltd ("Yong Cheng"), as a preparatory step to starting a new business outside China with the incoming EP Funds. In early January 2015, Xu together with Qiaolian and Wang Wenzhong ("Wenzhong"), another Chinese lawyer, discussed three broad options for the EP Funds ("the Three Options") as follows:<sup>103</sup>

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<sup>101</sup> SOC at [24]–[25]; PCS at p 42.

<sup>102</sup> P's AEIC at [101]–[105].

<sup>103</sup> P's AEIC at [106] and [120].

- (a) Change the shareholders of Eastport to Hao and Xu and keep the EP Funds in Eastport, which Eastport would invest in a new company that would be the main operating company to start Xu’s new business.
- (b) Transfer the EP Funds to a new company in Singapore or HK, which could be the main operating company for Xu to start his new business.
- (c) Transfer the EP Funds to Xu’s trusted associates or friends (including Wang) to hold as his personal nominee(s) (“Option 3”).

86 Xu updated Wang of the developments and told her that there were risks that potential creditors of his Chinese companies would still be able to pursue the EP Funds. Wang was particularly interested in Option 3 and was willing to help him hold on to the EP Funds.<sup>104</sup>

87 Around 18 January 2015, at a meeting in Jinan, China (“Jinan Meeting”), Xu met Luan, Wei, Stella, Wenzhong, Qiaolian and others, to further discuss his options. One option was to transfer the EP Funds to a new Singapore company which would then invest in a HK company that would be the main operating company for Xu to start his business in HK (“SG-HK Plan”). Xu thought of making Wang the nominee director and shareholder of the new Singapore company but did not mention it at the Meeting as he first wanted to check if she was agreeable.<sup>105</sup> The SG-HK Plan was mooted as Xu was then unsure as to whether a Singapore entity could be incorporated and who its

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<sup>104</sup> P AEIC at [110]–[121] and [124]–[125].

<sup>105</sup> P’s AEIC at [129]–[134].

director would be or whether a HK bank account could be opened for the HK entity in order for the funds transfer.<sup>106</sup>

88 That evening, Xu told Wang that he preferred the SG-HK Plan and of his intention to make her the nominee director in the new Singapore company. Wang became agitated as she was fixated on Option 3 and was worried about the personal liabilities of being a director. Xu replied that she could seek legal advice on this and told her that she may be exposed to the risk of potential Chinese creditors pursuing her for the funds even if they were stored with her.<sup>107</sup>

89 On 19 January 2015, Eastport approved Xu's Profit Share of US\$8,345,063. Around the same time, the Dividends were determined to be US\$2,805,000. Xu instructed the EP Funds to be paid to Hao as his nominee, and the pay-outs were made to Hao several days later. He also told Hao that the funds were to be used for his business and that he would need Hao to make onwards transfers to other nominees soon. Prior to this, Xu did not know the amount he would obtain for the Profit Share and Dividends. On 21 January 2015, Wang asked Xu how the incoming EP Funds could be transferred to the HK company, and suggested using underground banks or going through her mother. Xu told her these options were not viable.<sup>108</sup>

90 Around 27 January 2015, Xu instructed Wei to go to Singapore to open a personal bank account to receive the EP Funds, as Xu intended for Hao to transfer the funds to her for onward transfers, and alternatively for Wei to incorporate a Singapore company to hold on to the funds. Xu also told Wei that

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<sup>106</sup> 3/7/20 NE 103–104.

<sup>107</sup> P's AEIC at [135]–[140].

<sup>108</sup> P's AEIC at [141]–[142], [145]–[148] and p 203; 3/7/20 NE 25–27.

Wang and Hao would be assisting with the relevant transfers. On 28 January 2015, when Wei was in Singapore, Xu instructed her to open a personal bank account with UOB, and to consult a corporate secretarial firm on the requirements to incorporate a Singapore company and on the responsibilities and liabilities of its resident director(s). The latter was to assuage Wang's concerns. Xu shared with Wang the information obtained from Wei, but Wang remained concerned about acting as a company director. Xu suggested she seek legal advice and for Wenzhong to go to Singapore to accompany her to meet lawyers. Wenzhong arrived in Singapore around 2 February 2015. That night, Wang reiterated her preference for Option 3.<sup>109</sup>

91 On 3 February, Wang updated Xu on her and Wenzhong's visit to the Singapore lawyers and said that she was not agreeable to act as Xu's nominee director. Xu then instructed Hao to transfer US\$9 million to Wei first (being the remainder of the EP Funds after some US\$2 million had been utilised to pay for expenses). The transfer was done on 3 February. That night, after further consideration, Xu asked Wei to transfer US\$7 million (*ie*, the 2<sup>nd</sup> USD Sum) to Wang for temporary safekeeping and US\$2 million from Wei's Singapore UOB account to her HK Industrial and Commercial Bank of China (Asia) ("ICBC") account for Xu's futures trading ("Final Decision"). Xu conveyed the Final Decision to Wang and Wei. Wei then made both transfers on 4 February, and the transfer of the 2<sup>nd</sup> USD Sum to Wang was completed by UOB bank on 5 February 2015.<sup>110</sup>

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<sup>109</sup> P's AEIC at [161]–[164] and [166]–[170]; [171]–[175].

<sup>110</sup> P's AEIC at [181]–[185].

92 Consistent with his intention that the USD Sums were only entrusted to Wang for temporary safekeeping, Xu had on at least three occasions during the Relationship asked her to return some of them to carry out his business. These were in 2016/2017 when they were holidaying in China but Wang refused, they ended up quarrelling and she threatened to leave him. Each time, Xu did not pursue the matter further as he did not wish to sour the Relationship. Sometime in November 2017 (when the Relationship had ended around 10 November 2017) Xu requested Wang to return half of the USD Sums but she refused.<sup>111</sup>

***Wang's version***

93 Wang claimed that the 2<sup>nd</sup> USD Sum was an unconditional gift, and alternatively, that Xu had represented to her that it was a gift to her and was estopped from resiling from the representation.<sup>112</sup>

94 Around August 2014, she discovered text messages in Xu's mobile phone from other women, which worsened her insecurities about him. Further, he had not taken steps to divorce his wife, which led to many quarrels.<sup>113</sup> Around December 2014 to early 2015, Xu told Wang that he would be receiving money from Eastport and he would give it to her as an assurance that he would divorce his wife, to provide her with a sense of security, and as a show of his sincerity and gratitude for staying with him. Xu said he would be giving her around "1000" which she understood as US\$10 million. Of this amount and at Xu's

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<sup>111</sup> P's AEIC at [196]–[198]; P's 2AEIC at [143]; 30/6/20 NE 28.

<sup>112</sup> Defence at [22] and [28A].

<sup>113</sup> D's AEIC at [20] and [59].

request, Wang agreed to Xu using about “200” (which she understood as US\$2 million) for his business.<sup>114</sup>

95 Wang was worried if there would be risks in giving her the money, as Xu’s business in China was facing problems. Xu assured her that there would be no risks but subsequently told her otherwise. On 13 January 2015, Xu told her there would be three steps to transfer the funds to her: (a) change the shareholders of Eastport to Hao and himself; (b) create a new investment company at a location to be determined; and (c) transfer the money to her. By 18 January 2015, Wang was quite agitated as Xu then claimed that there were risks of transferring the money to her. He did not want to subject Wang to risks by depositing the money into her account directly. Wang then made enquiries with a lawyer at Drew & Napier LLC (“D&N lawyer”) and also with her lawyer friend pertaining to the transfer.<sup>115</sup>

96 Between 21 to 23 January 2015, Wang told Xu to avoid any risks and to first transfer the money elsewhere (such as to her mother) before routing it to her. Xu then informed Wang that the money would be transferred to Hao. Between 23 and 28 January 2015, Xu informed Wang that Eastport would be distributing dividends to him and he would transfer “200 plus” to HK and give her about “700” as previously agreed. Wang understood these figures to mean US\$2 million and US\$7 million respectively. Xu also said that the final plan was to transfer the sums to Hao’s account, then to Wei’s account, and then to Wang’s account, all on the same day. Xu told Wang that he had arranged for

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<sup>114</sup> D’s AEIC at [61].

<sup>115</sup> D’s AEIC at [63(e)].

Wei, Hao and Wenzhong to go to Singapore to oversee the transfers and for Wenzhong to advise Wang on any risks of the transfer to her.<sup>116</sup>

97 On 2 February 2015, Wang suggested the transfer of the US\$7 million from Hao to her directly, but if this was not possible, the transfer could be made to Wei and then to her. The transfers of the 2<sup>nd</sup> USD Sum from Hao to Wei and then to her were all effected on 3 February 2015, the same day after Wenzhong had informed her that there would be no risk in her receiving the funds.<sup>117</sup>

98 Subsequently on three occasions, around November 2016, CNY in 2017 and November 2017, Xu asked Wang to lend him a part of the USD Sums.<sup>118</sup> Wang refused and Xu did not thereafter assert any right to the USD Sums.

#### **Findings on the 2<sup>nd</sup> USD Sum**

99 I find on balance that there was an express trust of the 2<sup>nd</sup> USD Sum as it was transferred to Wang only for safekeeping, with Xu intending to retain the beneficial interest. I accept Xu's explanation that he essentially wanted to keep the EP Funds out of reach of potential creditors in China at the time when his business there was facing financial difficulties, and to enable him to restart his business outside China when he was ready to do so.

#### ***Witnesses in support of Xu's claim***

100 Various witnesses corroborated Xu's account as to the circumstances leading up to, and his intention for, the transfer of the 2<sup>nd</sup> USD Sum.

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<sup>116</sup> D's AEIC at [63(e))(iii)], [63(f)], [63(k)].

<sup>117</sup> D's AEIC at [63(l)], [64]–[66]; 17/7/20 NE 22–24.

<sup>118</sup> D's AEIC at [75]–[76].

101 Hao attested that around 23 January 2015, Xu told him that the EP Funds would be transferred to his account in Singapore and he was to transfer the same to Xu's nominees which had not been determined then. Xu also told him that the EP Funds would be used for Xu's future business<sup>119</sup> and to go to Singapore to await instructions on the fund transfer. Hao was in Singapore from 26 January to 4 February 2014 and Wei and Wenzhong came to Singapore around the same time. Hao transferred US\$9 million to Wei on 3 February 2014. Hao also attested that, just before he returned to China on 4 February 2015, Wei told him that she had transferred part of the EP Funds (the 2<sup>nd</sup> USD Sum) to Wang for safekeeping and the remainder US\$2 million to HK for Xu's business.<sup>120</sup>

102 Wei attested that in around April 2014, a financial fraud scandal occurred in China, resulting in a credit crisis which affected Xu's business. At Xu's request to incorporate a company in HK to do business outside China, Yong Cheng (a shell company) was subsequently bought and transferred to her as nominee for Xu. She attended the Jinan Meeting where Xu mentioned that he was due to receive the EP Funds (although the specific amount was yet to be determined) which he intended to use to start his business outside China. Due to the financial difficulties surrounding Xu's Chinese business, several Chinese lawyers had attended the Jinan Meeting to advise Xu on the options to transfer or hold the EP Funds, so that he could access them if and when necessary. The SG-HK Plan was discussed and Xu raised the possibility of trusted friends acting as his nominee director and shareholder in a new Singapore company.<sup>121</sup>

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<sup>119</sup> Hao's AEIC at [20]; 8/7/20 NE 51.

<sup>120</sup> Hao's AEIC at [23]–[24], [29]–[31]; 8/7/20 NE 52.

<sup>121</sup> Wei's AEIC at [15]–[17], and [21] to [26].

103 Wei further attested that on 27 January 2015, Xu told her to go to Singapore to receive the EP Funds from Hao and transfer them onward on his instructions. She was to open a personal bank account in Singapore to receive the EP Funds and to incorporate a company in Singapore if necessary. On 28 January 2015, Wei opened a UOB account and visited a corporate secretarial firm to find out the requirements to incorporate a Singapore company and on the responsibilities/ liabilities of its resident director(s).<sup>122</sup> On 3 February 2015, Xu told her that he had informed Hao to transfer US\$9 million to her first, but that he was still considering how the sum would be further transferred or held.<sup>123</sup> Later that night, he told her of the Final Decision, and she effected the transfers on 4 February 2015 (see [91] above). Xu told Wei to transfer US\$7 million to Wang to “put the money with her” for temporary safekeeping and the remaining US\$2 million into Wei’s account in HK for Xu to use for his futures trading. At all material times, she understood that the 2<sup>nd</sup> USD Sum transferred to Wang belonged to Xu, and that Hao, Wang and she were Xu’s nominees and assisting him with the relevant transfers.<sup>124</sup>

104 Qiaolian attested that her law firm was engaged to advise Xu on how the EP Funds should be held or transferred, to ensure that they would be readily accessible for his business outside of China. She corroborated Xu’s evidence of the Jinan Meeting; and the discussion on the options for the EP Funds, the SG-HK Plan and the possibility of Xu’s trusted friends or associates acting as his nominee director or shareholder if a Singapore company were incorporated.<sup>125</sup>

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<sup>122</sup> Wei’s AEIC at [30], [35]–[39].

<sup>123</sup> Wei’s AEIC at [49].

<sup>124</sup> Wei’s AEIC at [53]–[54] and [56]; 8/7/20 NE 102.

<sup>125</sup> Wang Qiaolian’s AEIC at [6], [8]–[14]; 9/7/20 NE 4–5.

105 The testimonies of Hao, Wei and Qiaolian were materially consistent with Xu's on the events leading up to the transfer of the EP Funds and that the transfer of the 2<sup>nd</sup> USD Sum to Wang was for temporary safekeeping and to enable Xu to use the funds later on. I find them to be reliable witnesses, although Hao and Wei are Xu's employees. Wei had also made contemporaneous records which supported her testimony, which I will deal with below. Wei's and Qiaolian's evidence support that Xu was concerned about the option he should use to either transfer or hold the EP Funds for his future business use, as opposed to Wang's case that Xu was concerned with how to gift the monies to her safely.

### *Contextual evidence*

106 I find that various other circumstances supported Xu's version over Wang's, in relation to the intended purpose of the EP Funds.

### *Meetings with lawyers*

107 The parties had made multiple attempts to consult lawyers. On 2 December 2014, Wang told Xu to "speak with [Wenzhong] before deciding". Then, in early January 2015, Xu consulted Wenzhong and Qiaolian.<sup>126</sup> On 12 January 2015, Xu informed Wang that Wenzhong was "trying to come up with a solution", and on 16 January 2016, Xu told Wang that he would be meeting Wenzhong and a HK lawyer. On 18 January 2015, Xu informed Wang that she could also consult lawyers.<sup>127</sup> Again, on 2 February 2015, Wang said that "Regarding this question, I will also ask the attorney tomorrow".<sup>128</sup> Finally,

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<sup>126</sup> P's AEIC at [106]–[110] and pp 505–506; Defendant's Supplementary AEIC dated 19 June 2020 ("D's 2AEIC") at [7]

<sup>127</sup> P's AEIC at [138] and pp 566 and 595; D's AEIC at [63(d)(i)] and [63(e)(i)]; AB 1165.

<sup>128</sup> P's AEIC at p 223.

Wenzhong had accompanied Wang to meet with Singapore lawyers on 3 February 2015.<sup>129</sup>

108 Xu claimed that the consultations were to discuss how to transfer or hold the EP Funds, including the transfer of funds to HK, the requirements of incorporating a Singapore company, the responsibilities and liabilities of its resident director and the viability of the SG-HK Plan.<sup>130</sup> I accept Xu's version and find that the consultation with lawyers was to enable Xu to consider how to hold or transfer the EP Funds for his use later on and to place it out of his creditors' reach, and to check on Wang being a nominee director of his new Singapore company. If the purpose of the consultations was to assess the risk of transferring the EP Funds/2<sup>nd</sup> USD Sum to Wang as a gift safely and without risk as she claimed,<sup>131</sup> there would have been no need for multiple meetings with multiple lawyers in various jurisdictions. The messages and chats also did not refer to a plan to ensure the safe transfer of the EP Funds/2<sup>nd</sup> USD Sum to Wang.<sup>132</sup>

109 Next, Wang claimed that a D&N lawyer had given her preliminary advice that she could receive funds from overseas so long as she was not involved in the overseas dealings that were being investigated and would not be implicated, and that generally, once given, the money could not be claimed back by third parties. Wang claimed that she also confirmed this with a lawyer friend (see [95] above). If these were true, it is inexplicable that she was (according to her) still worried about the risks of receiving the 2<sup>nd</sup> USD Sum that she even

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<sup>129</sup> 17/7/20 NE 20 to 21; P's AEIC [178]–[181].

<sup>130</sup> P's AEIC [109 to [134], [169]–[172], [181]–[182].

<sup>131</sup> D's 2AEIC at [7]; D's AEIC at [61], [63], [64]; 17/7/20 NE 19; 21/7/20 NE 44–45.

<sup>132</sup> 16/7/20 NE 45, 56.

required Wenzhong to fly to Singapore to speak to her and accompany her to consult Singapore lawyers on this. I disbelieve that Wang had sought the advice of a D&N lawyer regarding the matter as she claimed. It was unlikely that the lawyer, whom Wang did not even meet and whose name she claimed she could not recall, would have given her preliminary legal advice over the telephone.<sup>133</sup>

110 I also disbelieve Wang that Wenzhong's trip to Singapore was to advise her on the risks of receiving the 2<sup>nd</sup> USD Sum safely,<sup>134</sup> when they could have communicated via telephone or teleconferencing. Wang's explanation that she would have a "clearer understanding of the issues" if she spoke to him "face-to-face" is unconvincing,<sup>135</sup> given that she had been communicating with Xu on many important matters via skype and over the phone, and even claimed to have sought advice from a D&N lawyer over the phone. I accept Xu's explanation that Wenzhong accompanied Wang to visit Singapore lawyers to check on the responsibilities and liabilities of being a director of a Singapore company.

*Preparatory steps made by Xu and circuitous route of transfer*

111 Xu and Wei gave coherent testimonies about the preparatory steps taken for Xu to start a new business in HK, which support Xu's case that he wanted to set aside the EP Funds for his subsequent business. They testified that Wei had, on Xu's instructions:<sup>136</sup> (a) caused Yong Cheng's transfer to her (as Xu's nominee); (b) opened a personal ICBC bank account in HK; (c) applied for a corporate Yong Cheng bank account (although bank approval could not be

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<sup>133</sup> 16/7/20 NE 69–70; 17/7/20 NE 18.

<sup>134</sup> D's AEIC at [63(k)].

<sup>135</sup> 17/7/20 NE 19.

<sup>136</sup> Wei's AEIC at [15]–[40], [47]–[53]; P's AEIC at [106]–[108], [133], [142], [159]–[165], [178]–[185]; 8/7/20 NE 76–77.

obtained to open the account); (d) opened a futures trading account in HK; (e) consulted a corporate secretarial firm in Singapore on the requirements to incorporate a Singapore company and on the responsibilities/liabilities of its resident director; and (f) transferred US\$2 million to her ICBC bank account.

112 Wang’s explanation, that Xu wanted to transfer the EP Funds to HK so that it would be easier for one “Teacher Yang” to operate the HK bank account to route the funds to her,<sup>137</sup> did not make sense. It was unclear why the money had to route through Teacher Yang, when Xu had trusted associates such as Hao and Wei and through whom the moneys were eventually transferred. In addition, if the 2<sup>nd</sup> USD Sum was meant as a gift to Wang, there was no need to transfer it to Wei (from Hao) to transfer to Wang. Wang implicitly acknowledged that this circuitous route did not make sense, as she claimed to have suggested a simple transfer from Hao directly to her. She was unable to explain this circuitous route, merely claiming that Xu wanted to “play it safe”.<sup>138</sup>

113 Also, if Wang had purportedly been informed by a D&N lawyer and her lawyer friend that it would be safe to receive the money as a gift, the circuitous routes above, the parties’ discussion on incorporating a company to receive the money, or even her subsequent suggestion of transferring the money to an underground bank or to her mother first, would have been unnecessary.<sup>139</sup> I accept that Xu had first transferred the US\$9 million to Wei on 3 February 2015 (before the onward transfer of the 2<sup>nd</sup> USD sum to Wang on 4 February 2015)

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<sup>137</sup> D’s AEIC at [63(f)].

<sup>138</sup> D’s AEIC at [63(l)(iv)] and [64]–[66].

<sup>139</sup> 16/7/20 NE 70, 72, 73, 78.

because he was, until the night of 3 February 2015, undecided on how the moneys should be held.<sup>140</sup>

*13 January 2015 chat*

114 Finally, I deal with a chat between Xu and Wang on 13 January 2015:<sup>141</sup>

Xu: First, change the shareholders to Xiao Hao and I

Xu: Second, create a new investment company. The location is to be determined ...

Xu: Third, transfer ...

...

Wang: What do you think? ...

Wang: The steps for the plan? ...

Xu: There is no better way, can only control temporarily ...

115 I accept Xu’s explanation that the chat referred to the Three Options (see [85]–[86] above) and disbelieve Wang that she “understood” Xu to mean that these were the three steps to transfer the funds to her (see [95] above). If the money would be given to Wang, there was no need to change Eastport’s shareholders or incorporate a new company just so that the EP Funds or part of it (which emanate from Eastport, a Singapore entity) could be transferred and given to her. It was also Wang who referred to the three points as “steps” in the chat.<sup>142</sup>

116 Mr Lee SC submitted that the Three Options made no sense and Xu could not coherently explain the purpose of the options – for instance, the

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<sup>140</sup> P’s AEIC at [182].

<sup>141</sup> P’s AEIC at [120]–[121] and p 176; D’s AEIC at [63(c)] and p 348.

<sup>142</sup> 2/7/20 NE 103; 21/7/20 NE 36–37.

options did not mitigate the risks of creditors going after Xu's moneys.<sup>143</sup> But this misses the point. When the Three Options were suggested, Xu was *exploring* ways to move some of his moneys out of reach of his creditors or potential creditors. This did not mean that the proposed plans, which details would not have been completely thought through let alone finalised, were or had to be fool proof or did not carry risks – Xu himself was cognisant of this.<sup>144</sup>

***Documentary evidence to support Xu's account***

117 The documentary evidence supported Xu's account, including the contents of the Jinan Meeting and that Xu was contemplating options on the transfer of the EP Funds to achieve his intended business purposes.

***Wei's work journal***

118 Wei kept a personal work journal with a contemporaneous record of her work and in the event that follow-up was required.<sup>145</sup> I had examined the original journal in whole and observed that the journal entries were generally organised chronologically by date. I had no reason to doubt that the entries were genuine.

119 Wei's journal supported Xu's and her testimonies on various matters. First, it recorded the matters that happened at the Jinan Meeting. Wei explained that she did not bring her journal to the meeting but entered a record of this meeting shortly after, which I had no reason to disbelieve.<sup>146</sup> Second, on 28 January 2015, Wei recorded that she had visited UOB Bank to open a personal

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<sup>143</sup> DCS at [174]; 2/7/20 NE 96–98.

<sup>144</sup> 2/7/20 NE 96–98; P's AEIC at [121].

<sup>145</sup> Wei's AEIC at [7]; 8/7/20 NE 63.

<sup>146</sup> Wei's AEIC at [20] and exhibit WJZ-2; 8/7/20 NE 72–73.

bank account, and also visited a corporate secretarial firm. She also recorded key points on the requirements of setting up a company and the role of the directors.<sup>147</sup> This corroborated Xu's account that he had instructed her to come to Singapore to open a personal bank account to receive the EP Funds or to incorporate a Singapore company to hold the funds. Third, in an entry on 3 February 2015, she recorded that "[Wenzhong] and [Wang] went to the law firm at 11:30am" and "Decided that I would personally establish a company, [Wang] will be Director, inject capital of 2 million. The rest is transferred to [Wang]".<sup>148</sup> This supports that Xu had told Wei of the plan to incorporate a company in Singapore with a share capital of US\$2 million, and further lends support that Xu had thought of using Wang as his nominee director and told her so despite Wang's denial that Xu had informed her as such.<sup>149</sup>

120 At the end of the same entry, Wei had drawn a flowchart as follows:



Wei attested that the portion which showed "Hao", "Wei", "Wang 700" and "Wei HK 200" with the corresponding arrows were recorded on 3 February 2015 after Xu had called to tell her the Final Decision<sup>150</sup> regarding the US\$9 million, *ie*, that US\$7 million was to be transferred to Wang for temporary

<sup>147</sup> Wei's AEIC at p 30.

<sup>148</sup> Wei's AEIC at p 31.

<sup>149</sup> Wei's AEIC at [47]; P's AEIC at [178]; 16/7/20 NE 59.

<sup>150</sup> 8/7/20 NE 100–101.

safekeeping and US\$2 million was to be transferred onwards to HK. This supports Xu’s version that he had informed Wei of the Final Decision (see [91] above). I had no reason to disbelieve how she had kept a record on this matter.

*Wei’s loose-leaf letter*

121 Wei produced a loose-leaf letter that contained her handwritten notes (“Notes”) made at the Jinan Meeting, which she kept with her work journal.<sup>151</sup> The translated version of the Notes is reproduced here:

[Handwriting]

Eastport → Hao (Xu) → Wei/ Hao → incorporate a company



Hong Kong Company change company shareholders

(Swipe Deputy Executive Director)

122 Wei explained that the Notes recorded the SG-HK Plan and the transfer of funds, and Xu’s name appeared in brackets beside “Hao” as Hao would be the nominee shareholder of Xu’s Eastport shares. The arrow from “Wei/ Hao” to “incorporate a company” was a suggestion made at the Jinan Meeting that Hao or Wei would be Xu’s nominee for the new Singapore company and the funds would be transferred from Hao to it.<sup>152</sup> These support that the SG-HK Plan was discussed at the Jinan Meeting and that Xu had plans to transfer funds to a newly incorporated company to be held on his behalf. I accept that the Notes were recorded by Wei at the material time and I did not find anything to suggest that they were manufactured for the purposes of the Suit.

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<sup>151</sup> Wei’s AEIC at pp 42–47; 8/7/20 NE 63, 81–82.

<sup>152</sup> 8/7/20 NE 86–89.

*Bank statements*

123 Wei's and Wang's bank statements showed that US\$7 million was transferred from Wei to Wang on 5 February 2015.<sup>153</sup> This supports Xu's version that he made the Final Decision only on the night of 3 February 2015 and did not come to a conclusive landing on the EP Funds until then, and that Wei effected the transfer of the 2<sup>nd</sup> USD Sum only on 4 February 2015 which transfer into Wang's account was completed on 5 February 2015. The dates of the transfer contradicts Wang's account that the transfer was made on 3 February 2015 (see [97] above) and disproves her version that Xu conveyed the "final plan" to her in late January 2015, *ie*, that the EP Funds would be transferred to Hao's Singapore account, then to Wei's Singapore account, and finally to Wang's Singapore account, all on the same day.

*18 January 2015 chat*

124 A skype chat on 18 January 2015 where the parties had referred to "keeping" the EP Funds in Wang's bank account, supports Xu's case. Xu said: "You think keeping [it] in your account will bring peace of mind? I don't want to bring the risk(s) to you".<sup>154</sup> Wang replied: "Then, what you previously said, about wanting to keep [it] here. Why did [I] not hear you say that there [would] be risk(s)". In the same chat, Wang then stated: "Only now do you yourself know that there are risks with the money belonging to you", and then asked: "Keeping in my account – that's not safe, is it?" The messages as a whole suggest that Xu intended to transfer the money to Wang only for safekeeping. The chat also supports Xu's assertion that Wang was keen on Option 3 to hold

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<sup>153</sup> P's AEIC at p 235; Wei's AEIC at exhibit WJZ-7.

<sup>154</sup> 3AB at p 1165; 16/7/20 NE 61–62.

the EP Funds directly, and she thus became agitated when he said that he did not want to bring risks to her by keeping the monies in her account. Wang's claim, that her agitation was because Xu was now backtracking on his earlier position that the transfer of the money would not carry risks, was not convincing as she had known of these risks even by 12 January 2015, before this chat.<sup>155</sup>

125 Mr Lee SC submitted that Wang's exclamation in the same chat that the money was "not for [her]" and that "It's for [the entire family]", showed that Wang wanted the money to be kept for the family that they planned to set up together. He also submitted that Xu had not, in that chat, informed Wang about the SG-HK Plan and his intention to use her as a nominee director of the Singapore company.<sup>156</sup> I disagree. Xu had stated that, before that chat, he had called Wang on the same day to share with her the possibility of the SG-HK Plan.<sup>157</sup> In any event, the chat did not show that Xu had intended the 2<sup>nd</sup> USD Sum to be a gift to Wang. Wang's exclamation could equally be a recognition by her that the money was not hers but Xu's, since, as Mr Lee SC submitted, Wang wanted it to be used for their future family and did not want Xu to use it for his business. In fact, Wang had said to Xu that there were risks with the money "belonging to [Xu]" (see [124] above).

***Evidence that Wang relied on to support her case***

126 I turn then to some of Wang's assertions to support that the 2<sup>nd</sup> USD Sum was a gift from Xu to her. I find that they are not credible.

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<sup>155</sup> 16/7/20 NE 51 and 60.

<sup>156</sup> DCS at [181]; D's AEIC at [63(e)(ii)]; 3/7/20 NE 41.

<sup>157</sup> P's AEIC at [135]–[137].

127 Wang claimed that Xu had wanted to give her the 2<sup>nd</sup> USD Sum to allay her insecurities as he had still not divorced his wife, and it was also following from his earlier promise to give her all his money.<sup>158</sup> If the 2<sup>nd</sup> USD Sum had been a gift to resolve Wang's anxiety about marriage, the quarrels should have largely been resolved after the transfer. Wang agreed that if she had received US\$9.6 million by early February 2015 (*ie*, the USD Sums), her insecurity would have had been assuaged to a very large extent.<sup>159</sup> Yet, the chat records show that Wang quarrelled with Xu on 23 February 2015, less than three weeks after the 2<sup>nd</sup> USD Sum was transferred to her. Wang admitted this was a quarrel over Xu's marriage and she had still been feeling insecure then. On the same day, Wang recorded: "It may be better to leave... Leaving is the best option ... I do not want to quarrel anymore ... This is the end of the relationship".<sup>160</sup> Wang's feelings towards Xu (including contemplating leaving him) was inconsistent with a person who had just received US\$7 million purportedly as a gift to assuage her anxieties over his marital status. Indeed, Wang agreed that there was no documentary evidence including chat messages to show that Xu had expressed an intent to give her US\$7 million or the 2<sup>nd</sup> USD Sum.<sup>161</sup>

128 Next, Wang relied on a 23 January 2015 chat:<sup>162</sup>

Wang: You want to take all the money to do things?

Xu: Transfer first. Let's talk again when [it's] as safe as it can possibly be.

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<sup>158</sup> 15/7/20 NE 61–63; D's AEIC at [60].

<sup>159</sup> 17/7/20 NE 26.

<sup>160</sup> D's AEIC at [68] and pp 215 and 369; 17/7/20 NE 26–27.

<sup>161</sup> 15/7/20 NE 80–81; 16/7/20 NE 19, 52; 17/7/20 NE 12–13; D's 2AEIC at [7].

<sup>162</sup> D AEIC at [63(j)(ii)]; AB at pp 1169–1170.

Xu: We'll go according to your arrangements once [it's] safe.  
(*After safe, follow your arrangement.*<sup>163</sup>)

Xu: Okay, wifey?

Wang: Okay.

Xu: Aren't I very obedient?

...

Wang: It's not that [we're] going according to my arrangements.  
It's that [we're] proceeding based on what we said  
previously. Isn't it?

Xu: Yes.

Wang: A home needs reasonable planning ... Like a city ... If  
[we] want a family ... There must be planning

Xu: That's a must. Anything you say, wifey.

[Words in square brackets added by translator based on context  
but were not in the original Chinese text. Words in parentheses  
and italics were translated in court.]

129 Wang claimed that the words “proceeding based on what we said previously” referred to previous assurances from Xu that he would unconditionally give her the money to provide her a sense of security, and her stated intention to use the money for their family. Xu claimed that this referred to the arrangement to place the money in Wang’s account if he could not register a company, and that “safe” was referring to him being safe.<sup>164</sup> I find the chat to be ambiguous. Wang’s explanation that “as [Xu] was not *using the money for his business, then* he should keep to his promise to give me the money, rather than merely having arrangements according to my wishes” [emphasis added] was inconsistent with her claim that Xu had already informed her that the money would be hers.<sup>165</sup>

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<sup>163</sup> 23/7/20 NE 20.

<sup>164</sup> D’s AEIC at [63(j)(ii)]; 3/7/20 NE 73–74; 8/7/20 NE 24–26.

<sup>165</sup> 17/7/20 NE 6–7; D’s AEIC at [63(j)(ii)].

130 Wang also claimed that sometime between 23 and 28 January 2015, Xu had told her that he would be receiving US\$10 million but that he would use around “200 plus” and give her around “700” (see [96] above). However, this is but her oral evidence.<sup>166</sup> She also stated that by 28 January 2015, Xu told her that he would receive US\$8.345 million and US\$2.805 million from Eastport. If Xu had earlier promised to give Wang *all* his money from Eastport as she claimed, it is strange that she did not object to him using the “200 plus”. In fact, from the US\$11 million, Xu transferred US\$2 million to Wei and used another US\$2 million to pay for expenses, without needing Wang’s permission.<sup>167</sup>

131 Notably, in Wang’s journal entry on 23 February 2015, the earliest entry after the 2<sup>nd</sup> USD Sum was transferred, there was no mention of her receiving this sum as a gift.<sup>168</sup> Wang claimed that a chat message on 23 February 2015, where Xu stated that her “savings are the foundation of [her] security” and that “these are all the things I can think of to give to you to give you a sense of security”, showed that Xu had given her the USD Sums. However, Xu denied this (although he conceded that this was a reference to the Apartment and Car (see [29] above)), and Wang’s claim is not borne out by the chat.

132 I had earlier also rejected Wang’s reason for not mentioning the USD Sums, *ie*, that Xu wanted her to keep it discreet and she was afraid of hackers (see [67] above). Pertinently, Wang did not state in her Defence or AEIC that she was also told by Xu to keep the 2<sup>nd</sup> USD Sum discreet, and this explanation only came out in cross-examination. Also, if Xu wanted her to keep the 2<sup>nd</sup> USD

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<sup>166</sup> 16/7/20 NE 15–19.

<sup>167</sup> P’s 2AEIC at [81].

<sup>168</sup> D’s AEIC at [68] and p 215.

Sum discreet, it did not make sense for him to transfer the money to her through various intermediaries or to ask her to seek legal advice on the transfer.<sup>169</sup>

133 Finally, Wang said that she attended an information session (“Session”) for the Singapore Management University Master of Science in Wealth Management programme (“Masters Programme”), as she wanted to learn to manage her wealth given the substantial sum she was expecting to receive in addition to the 1<sup>st</sup> USD Sum, Apartment and Car. This did not assist her case. She attended only an information session and did not enrol for the Masters Programme.<sup>170</sup> Also, prior to attending the Session, she had received substantial benefits from Xu including the Apartment and Car and a monthly salary from Eastport, which could have been the impetus to sign up for the Session.

***Whether discussion on the Three Options and SG-HK Plan were fictitious***

134 I next deal with Mr Lee SC’s assertion, which I find were not made out, that the Three Options and the SG-HK Plan were fictitious.

135 First, Mr Lee SC submitted that Xu’s decision to transfer the 2<sup>nd</sup> USD Sum to Wang for temporary safekeeping only after “serious consideration” on the night of 3 February 2015 contradicted his testimony that by 12 January 2015 he had already told Wang that he would receive money from Eastport and would put it with her.<sup>171</sup> I did not find any material contradiction. Xu had explained that at 12 January 2015, the option of keeping money with Wang had not been finalised and he was still considering the most suitable way of dealing with the

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<sup>169</sup> 16/7/20 NE 62–63; 21/7/20 NE 30.

<sup>170</sup> D’s AEIC at [62] and [91(a)].

<sup>171</sup> P’s AEIC at [183]; DCS at [170]–[172].

money from Eastport. In any case, as Xu stated, this did not mean that he intended to give it to her, as opposed to putting it with her for safekeeping.<sup>172</sup>

136 Second, it was submitted that Xu's plans, if true, boiled down to eventually putting the money in a new entity, and that it was unnecessary for Wang to hold the 2<sup>nd</sup> USD Sum when it could be placed with Hao as Xu did put the EP Funds with him initially. Xu explained that the Dividends were paid to Hao first as Hao was the nominee shareholder and the Profit Share due to Xu was also to be transferred to Hao initially because Xu's bank account could not be used then. I accept that Xu wanted to subsequently transfer the EP Funds (minus amounts used for expenses) from Hao onwards and in particular some of it to Wang because he was then in love with her and trusted her with his money.<sup>173</sup> Xu's plan of dissociating the EP Funds from himself and Eastport (including Hao who was a director) was logical and his conduct must be seen in light of his overall objective to move his money out of his creditors' reach and for his future use.

137 Third, it was submitted that Xu's evidence that the SG-HK Plan was discussed at that Jinan Meeting was untrue and contradicted by Qiaolian's testimony at trial.<sup>174</sup> However, Qiaolian did not contradict Xu's evidence. She clearly stated in her AEIC that the SG-HK Plan and other options were discussed at the Jinan Meeting. Whilst she could not recall the details of the discussion, she attested that Xu had mentioned the incorporation of a Singapore

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<sup>172</sup> 2/7/20 NE 82–87.

<sup>173</sup> DCS at [173]; 2/7/20 NE 90–91; 3/7/20 NE 47–49.

<sup>174</sup> DCS at [174].

company and the fund transfer from Eastport to a new entity.<sup>175</sup> In any case, Wei corroborated that the SG-HK Plan was discussed at the Jinan Meeting.

138 Fourth, Mr Lee SC submitted that it unbelievable that, after intensive discussions on the Three Options and the SG-HK Plan with lawyers, Xu then decided to simply transfer the 2<sup>nd</sup> USD Sum to Wang and US\$2 million to Wei. This showed that Xu could have simply transferred the EP Funds to the same HK account.<sup>176</sup> However, it was not unusual that Xu had wanted to first utilise US\$2 million for his futures trading in HK and to place the rest (the 2<sup>nd</sup> USD Sum) with Wang for safekeeping. He did not wish to place so much money all at once as capital into the new company, and Yong Cheng also could not open a bank account in HK.<sup>177</sup> As for Xu settling on the Final Decision, he had attested that Wang had been concerned about acting as a company director and it was only on 3 February 2015 and after she and Wenzhong had visited Singapore lawyers that she then told Xu that she was not agreeable to act as a director.<sup>178</sup>

139 Whilst Mr Lee SC attempted to point to various chat messages on 21, 22 and 23 January 2015 between Xu and Wang<sup>179</sup> to show that there were no conversations on the Three Options or SG-HK Plan, this did not assist Wang's case that the converse (*ie*, that the 2<sup>nd</sup> USD Sum was a gift to her) was true.

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<sup>175</sup> Wang Qiaolian's AEIC at [11]–[12]; 9/7/20 NE 9–10.

<sup>176</sup> DCS at [175].

<sup>177</sup> 2/7/20 NE 91 and 92; 3/7/20 NE 52, 105–107 and 110.

<sup>178</sup> P's AEIC at [166] and [181]; 3/7/20 NE 90, 96, 98, 102–103, 108.

<sup>179</sup> DCS at [179]–[183].

***Conclusion on the 2<sup>nd</sup> USD Sum***

140 In conclusion, I prefer Xu’s case over Wang’s and accept on balance that the 2<sup>nd</sup> USD Sum was transferred to Wang for safekeeping.

141 In particular, I find that: (a) Xu had informed Wang that the 2<sup>nd</sup> USD Sum was for temporary safekeeping so that he could restart his business in future; (b) Xu had kept Wang updated on the Three Options and the SG-HK Plan (despite Wang denying that she knew about this)<sup>180</sup> and discussed these options with her; (c) the Jinan Meeting occurred and the attendees discussed how the EP Funds should be transferred to fulfil Xu’s intended purpose of using them for his future business; (d) Xu had informed Wang of the possibility of incorporating a Singapore company and for her to be the nominee director; (e) Wang had sought legal advice to find out about potential liabilities of being a nominee director; and (f) the subsequent transfer of the EP Funds to Hao and then to Wei and Wang was in accordance with Xu’s Final Decision.

142 As to Xu’s reason for borrowing money from Wang, his delay in taking action to reclaim the 2<sup>nd</sup> USD Sum and Mr Wang’s evidence in relation to the 2<sup>nd</sup> USD Sum, I repeat my findings at [68] to [69] and [78] to [81].

143 As I have found that the USD Sums are held on express trust for Xu, I need not consider the issue of resulting trust. In any event, my findings also lend to a case of a resulting trust if an express trust was not made out, as I have found on the evidence that the transfers of the USD Sums were not intended to benefit Wang. Contrary to Mr Lee SC’s submissions, there is nothing to prevent a resulting trust from applying in respect of moneys (see *Westdeutsche*

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<sup>180</sup> 16/7/20 NE 59.

*Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 689; *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 at [6] finding that there was a presumed resulting trust over monies).

### **Estoppel**

144 Wang relied alternatively on estoppel by representation and by acquiescence, essentially arguing that subsequent to the transfer of the USD Sums: (a) Xu represented to her that they had been given to her; and (b) Xu represented to her that she was free to spend the sums.<sup>181</sup> I deal only with the USD Sums as I have found that the Apartment and Car were gifts to Wang.

145 Wang claimed, for instance, that these representations were made:<sup>182</sup>

(a) From 2015 to 2017, Xu told her that the USD Sums were hers and she could spend them, and that he would give her even more money than what he had given to her. In the chat message of 5 September 2016 (see [65] above), Xu told her that everything was hers.

(b) Xu had told Wang's parents in 2016 that he had already given Wang enough money to last her a lifetime and used his index finger to indicate the amount which she understood to mean as US\$10 million which was approximately the sum total of the USD Sums.

(c) On one or two occasions in 2015 or 2016, Xu told Mr Wang in Wang's presence that she was a wealthy lady and had money.

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<sup>181</sup> DCS at [38] and [189]; Defence at [14A] and [28A]; Email from Defence Counsel dated 23 October 2020.

<sup>182</sup> D's AEIC at [85].

146 Wang claimed that as a result of Xu's representations: (a) she had spent some of the USD Sums to purchase a piano in around July 2016 costing about \$20,000 ("the Piano") and a membership at the Sentosa Golf Club around September to November 2017 for about \$280,000 ("Club Membership"); and (b) she stayed in the Relationship and did not pursue a career or further her education and hence she is now significantly disadvantaged in this regard.<sup>183</sup>

147 Estoppel by representation is traditionally understood to be an evidential doctrine, which primary purpose is to set up the facts against which the parties' rights and liabilities will be determined. It is unlike promissory estoppel, which is a substantive doctrine, the immediate object of which is to adjust the parties' rights (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) ("*Phang*") at para 04.101). Estoppel by representation requires representation of an existing fact (*Phang* at para 04.101). Wang must prove that Xu had represented to her the fact that the sums had been gifts to her. The representation must be clear and unambiguous and Wang must show that she relied on it to her detriment (*United Overseas Bank Ltd v Bank of China* [2006] 1 SLR(R) 57 at [18]; Sean Wilken QC & Karim Ghaly, *The Law of Waiver, Variation and Estoppel* (Oxford University Press, 2012) at para 9.32).

148 I find that Wang has failed to prove estoppel by representation. She has failed to prove that the alleged representations were made or that she had relied on them to her detriment. There is no evidence of any conversation between 2015 and 2017 in which Xu had told Wang what she claimed at [145(a)] above,

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<sup>183</sup> Defence at [28A].

which Xu in any event denied.<sup>184</sup> The chat message of 5 September 2016 did not refer, nor show that their conversation related, to the USD Sums. The chat message could equally refer to the other moneys or benefits which Xu had given to Wang. I am also not satisfied that Wang has proved that Xu made the remarks that she claimed at [145(b)] above. Even if Xu had used his index finger to indicate the amount given to her, he did not expressly mention any figure and it is unclear what amount Xu's index finger represented. I also reiterate [68]–[69] above. As for the other representations alleged by Wang, although Xu admitted to informing Wang's parents that she was a wealthy lady,<sup>185</sup> and even assuming that Xu had said that Wang was rich, had a lot of money, or words to that effect, these statements are ambiguous and did not expressly refer to the USD Sums.

149 I also find that Wang has not shown evidence that she relied on the representations such that she then decided not to pursue a career or further her education. On the contrary, she had, even before the 1<sup>st</sup> USD Sum was transferred to her, been content to live off Xu. Her journal entries and chats with Xu showed that she was more interested in pursuing her passion and hobbies rather than any career or education. As early as 23 March 2014, she recorded that she now had the money to pursue any passion,<sup>186</sup> and whilst employed at Eastport she did not do any substantive work. Although she claimed to want to learn to manage her new-found wealth, she did not take any action to sign up for the Masters Programme.

150 However, I accept that estoppel by acquiescence partially assists Wang. Acquiescence is an instance of the defence of estoppel (*Genelabs Diagnostics*

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<sup>184</sup> P's 2AEIC at [105].

<sup>185</sup> P's 2AEIC at [116].

<sup>186</sup> D's AEIC at p 199.

*Pte Ltd v Institut Pasteur and another* [2000] SLR(R) 530 at [76]; *Nasaka Industries (S) Pte Ltd v Aspac Aircargo Services Pte Ltd* [1999] 2 SLR(R) 817 at [69]–[70]). The defence applies where a person who has a right sees another person about to commit, or in the course of committing, an act infringing that right, but stands by in such a manner as to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to its being committed; a person so standing-by cannot afterwards be heard to complain of the act.

151 I find that Xu had acquiesced to the use of the USD Sums for Wang to purchase the Piano and the Club Membership, and as such is estopped from claiming the amounts that Wang expended for these purchases. Wang claimed that around 28 June 2016 she told Xu that she would be buying a piano which cost around \$80,000 and Xu replied that it was alright so long as she liked it. She ultimately bought the Piano at around \$20,000. Wang also claimed that she had kept Xu apprised of her intention to purchase the Club Membership and the payments made in respect of it, and although Xu knew or would have known that she used the USD Sums for this, he did not say anything.<sup>187</sup>

152 I find that Xu had represented to Wang by his words and conduct that he was agreeable with her using his monies, which were at that time kept with her, to purchase the Piano and Club Membership. Xu admitted that Wang had discussed with him about the Piano prior to the purchase and he believed that she would have used his money for the purchase, whereupon he told her to “carry on”. Likewise, Xu admitted that he had not objected to Wang buying the Club Membership when she told him about her intention to purchase it, and he

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<sup>187</sup> D’s AEIC at [91(c)] and [91(d)].

must have had known that the reason she discussed this intended purchase with him was because she wanted to use his money.<sup>188</sup> I also find that Xu's conduct had induced Wang to then purchase the Piano and Club Membership. However, the amount that Xu should be estopped from claiming in relation to the Club Membership is \$200,000. Xu claimed that Wang had given him a rough estimate of the Club Membership as \$200,000, and Wang has not rebutted Xu's claim or shown evidence that Xu had acquiesced to the full cost of it at \$280,000. The acquiescing party must be aware of the acts to be committed, because one cannot acquiesce to something one does not know (*Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 at [117]). If Xu is taken to have acquiesced to Wang purchasing a club membership at \$280,000 just because he had acquiesced to her purchasing the Club Membership which she had informed him would be about \$200,000, it would lead to a slippery slope where he could be taken to have acquiesced to Wang purchasing it at a far larger amount or of any amount and there would be no principled way to draw the line.

### **Conclusion**

153 In my view, it is not inconsistent that Xu had intended the Apartment and Car, but not the USD Sums, to be gifts to Wang. When the Apartment and Car were purchased, there was no evidence that Xu's business in China was facing financial difficulties. By the time the USD Sums were arranged to be moved from Xu to Wang, his business in China was facing serious financial problems and it was unlikely that he intended to part with a substantial amount of US\$9.6 million by gifting it to Wang at that time. More likely, he intended her to keep it for him first for his future purpose.

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<sup>188</sup> P's 2AEIC at [138]–[140] and p 148.

154 Hence, I dismiss Xu's claims for the Apartment and Car, but I allow his claims on the USD Sums after deducting \$220,000 which I find Wang had applied towards the Piano and Club Membership with Xu's acquiescence. I also order Xu to remove the caveat lodged against the Apartment. As the trial was not bifurcated, Wang's counterclaim for damages resulting from the caveat lodged is dismissed, as she has not adduced any evidence of the loss suffered or the amount thereof due to the caveat so lodged.

155 I will hear parties on costs.

Audrey Lim  
Judge

Tan Chee Meng SC, Jenny Tsin, Ho Wei Jie and Ephraim Tan Hui  
Rong (WongPartnership LLP) for the plaintiff;  
Lee Eng Beng SC, Jeremy Gan Eng Tong, Doreen Chia Ming Yee  
and Tao Tao (Rajah & Tann Singapore LLP) for the defendant.

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