IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 43

Originating Summons No 703 of 2019

Between

Chan Chi Cheong (Trustee of the Will of the Testator)

… *Plaintiff*

And

Chan Yun Cheong (Trustee of the Will of the Testator)

… *Defendant*

JUDGMENT

[Trusts] — [trustees] — [retirement]

[Statutory Interpretation] — [definitions]

[Civil Procedure] — [judgments and orders] — [enforcement]

[Civil Procedure] — [inherent powers]

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v
Chan Yun Cheong (trustee of the will of the testator)

[2020] SGHC 43

High Court — Originating Summons No 703 of 2019
28 November 2019, 23 January 2020

4 March 2020 Judgment reserved.

Tan Siong Thye J:

Introduction

1 This is a case in which two out of three trustees of a trust estate want to be discharged. The Plaintiff, Chan Chi Cheong, seeks to retire pursuant to s 40 of the Trustees Act (Cap 337, 2005 Rev Ed) ("Trustees Act"). This provision sets out several conditions to be fulfilled before a trustee who is desirous of being discharged from the trust may do so. For instance, the instrument of discharge must be by deed, and have the other trustees' consent by deed to the discharge. The Defendant, Chan Yun Cheong, on the other hand, seeks to resign in accordance with Clause 3 of the trust instrument ("Clause 3"), which contains far less onerous requirements than s 40 of the Trustees Act. The novel and pivotal issue is whether a trustee who seeks to be discharged from a trust must comply with s 40 of the Trustees Act or the trust instrument.

Background facts

2 The trust instrument, under which the Plaintiff and Defendant were appointed as trustees, is a Will dated 5 February 1947 (the "Will") belonging to Chan Wing alias Chan Min Sang alias Chan Chung Sui alias Chan Chun Wing (the "Testator"). The Testator passed away on 27 February 1947. By his Will, the Testator appointed his sons, Chan Hin Cheung, Chan Tak Cheung, Chan Kat Cheung, Chan Ting Cheung and Chan Sze Chuen, to act as executors and trustees of his estate.

3 The Will was attested in The Supreme Court of Kuala Lumpur, Federation of Malaya in Petition No. 628 of 1947. Probate of the Will was granted on 1 December 1947 to all of the Testator's sons, save for Chan Sze Chuen (collectively, the "Original Trustees"). Thereafter, the Grant of Probate of the Will was resealed in The Colony of Singapore in Probate No. 374 of 1949 on 18 August 1949. This was done on the petition of Chan Hin Cheung and Chan Tak Cheung.

4 Since the grant of probate, a series of Deeds of Appointments and Retirements of trustees have been executed. By way of background, the particulars of the appointments and the events giving rise to them are as follows:[1]

(a) Sometime in 1972 to 1973, Chan Kat Cheung retired as a trustee. The remaining three out of the Original Trustees then appointed Chan Sze Chuen as an additional trustee with effect from 1 January 1973.

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[1] Defendant's Bundle of Documents, Tab CYC-1, First Schedule.

(b) Sometime in December 1988 or 1989, Chan Ting Cheung passed away. Chan Hin Cheung, Chan Tak Cheung and Chan Sze Chuen then declared themselves as the trustees for the estate.

(c) Sometime in 1993, Chan Hin Cheung passed away. Chan Tak Cheung and Chan Sze Chuen then appointed Chan Chak Cheong as an additional trustee with effect from 1 June 1997.

(d) On 7 January 2002, Chan Tak Cheung passed away. Chan Fatt Cheung and Chan Chee Chiu were appointed as additional trustees with effect from 5 January 2003. On 7 May 2003, Chan Chak Cheong passed away.

(e) On 9 March 2009, Chan Fatt Cheung resigned as trustee of the estate, without a Deed of Retirement being executed. This left only Chan Sze Chuen and Chan Chee Chiu as trustees.

(f) On 28 April 2017, Chan Sze Chuen passed away, leaving Chan Chee Chiu as the only trustee.

5 As the sole remaining trustee of the estate, Chan Chee Chiu approached the Plaintiff and the Defendant to act as co-trustees along with him. The Deed of Appointment giving effect to this arrangement was executed on 27 June 2017,[2] bringing the number of existing trustees to three.

6 On 10 January 2019, the Plaintiff, through his lawyers, Wee Swee Teow LLP, wrote to CTLC Law Corporation informing them of his intention to be

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[2] Defendant's Bundle of Documents, Tab CYC-1.

discharged as trustee of the Will of the Testator and attaching a draft Deed of Retirement (the "10 January 2019 letter").[3] He had done so as he was under the impression that CTLC Law Corporation acted for both the Defendant and Chan Chee Chiu.

7 On 15 January 2019, CTLC Law Corporation replied to state that they acted only for Chan Chee Chiu and not the Defendant. However, Chan Chee Chiu had no objections to the Plaintiff's retirement and the draft Deed of Retirement was returned with Chan Chee Chiu's signature appended therein.[4]

8 Thereafter, on 16 January 2019, Wee Swee Teow LLP wrote to the Defendant informing him of the Plaintiff's intention to retire as trustee (the "16 January 2019 letter"). Attached to the letter were CTLC Law Corporation's reply of 15 January 2019 indicating Chan Chee Chiu's agreement to the Plaintiff's retirement and a draft Deed of Retirement (with no signatures therein).[5]

9 On 1 February 2019, the Defendant responded *via* a series of letters:

(a) In his first letter addressed to Wee Swee Teow LLP,[6] the Defendant explained that he had not responded earlier as he had been in correspondence with the lawyers of the Testator's estate regarding the legality of a transfer authorised by the Plaintiff. Specifically, the transfer

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3 Plaintiff's Affidavit, Tab CCC-3, p 26.

4 Plaintiff's Affidavit, Tab CCC-4, pp 34-42.

5 Plaintiff's Affidavit, Tab CCC-5, pp 43-50.

6 Plaintiff's Affidavit, Tab CCC-6, p 52.

referred to was one made by the Plaintiff on 17 January 2019, of a sum of SGD 10,721,745.18 from the estate's UOB account to the estate's Citi Private Bank account (the "Disputed Transaction").

(b) In the Defendant's second letter titled "RESIGNATION AS TRUSTEE OF THE ESTATE OF CHAN WING, DECEASED",[7] addressed to the Plaintiff and Chan Chee Chiu, the Defendant purported to resign "as Trustee with immediate effect as I am of the view that I am unable to effectively discharge my duties as a Trustee".[8] In this second letter (the "Letter of Resignation"), the Defendant also explained that in his view, the inability to discharge his duties was due to his disagreement with the Disputed Transaction.

10 On 19 February 2019, Wee Swee Teow LLP wrote to the Defendant stating: "You are still a trustee until a proper Deed of Retirement is executed. Your letter of resignation does not prevent you from executing the Deed of Retirement sent to you."[9]

11 In a response letter, dated 22 February 2019, the Defendant again reiterated his position as follows:[10]

> …
>
> I thoroughly disagree with your assertion that I am still a trustee of the Estate of Chan Wing, Deceased until a proper Deed of Retirement is executed.

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7 Plaintiff's Affidavit, Tab CCC-6, pp 53-56.

8 Plaintiff's Affidavit, Tab CCC-6, p 56.

9 Plaintiff's Affidavit, Tab CCC-6, p 57.

10 Plaintiff's Affidavit, Tab CCC-7, p 59.

> It should be noted that I have resigned with immediate effect as of 1 February 2019 as per my letter of resignation dated 1 February 2019.
>
> I am sure that you know this already but the Trustees Act does not say that the Deed of Retirement is the only way in which a trustee can resign.
>
> If you have read the Will of Chan Wing dated 5 February 1947 upon which the Estate of Chan Wing is based upon, I refer here specifically to the first page of the Will, the Will specifically states that "If any of my Trustees disagree with the others or have to attend to other business, he is at liberty to resign and the vacancy thereby created shall be filled accordingly".
>
> It should also be noted that prior trustees have resigned through the use of a simple resignation letter. Taking your line of reasoning that a Deed of Retirement is necessary for a resignation to a logical conclusion, this might also mean that Mr Chan Fatt Cheung of 58 Binjai Park, might still be a trustee of the Estate of Chan Wing. If Mr Chan Fatt Cheung of 58 Binjai Park is still a trustee, that would invalidate the Deed of Appointment dated 27 June 2017. As far as I am aware, I do remember that Mr Chan Fatt Cheung being alive and in good health.

12 On 7 May 2019, Wee Swee Teow LLP wrote to the Defendant. In addition to addressing the previous points raised by the Defendant, this letter stated as follows:

> …
>
> We are pleased to inform you that Mr Chan Fatt Cheung executed a Deed of Retirement and Confirmation on the 25th April 2019 confirming that he retired as a trustee with effect from 9th March 2009. This Deed had been executed by Chan Chee Chiu.

13 Attached to this latest letter from Wee Swee Teow LLP to the Defendant was a Deed of Retirement and Confirmation that sought to regularise Chan Fatt Cheung's retirement. This Deed of Retirement and Confirmation was signed by Chan Fatt Cheung, Chan Chee Chiu and the Plaintiff, with a final section left blank for the Defendant's signature. Attached to the letter was also the Deed of

Retirement relating to the Plaintiff's retirement (the "Plaintiff's Retirement Deed"), signed by the Plaintiff, Chan Fatt Cheung and Chan Chee Chiu, and again with a section left blank for the Defendant's signature.

14 On 14 May 2019, a final letter of reminder was sent from Wee Swee Teow LLP to the Defendant. When the Defendant still refused to sign the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed, the Plaintiff commenced this Originating Summons No. 703 of 2019 ("OS 703/2019").

The parties' arguments

The Plaintiff's arguments

15 The Plaintiff argues that the only way a trustee can resign is in accordance with s 40 of the Trustees Act, *ie*, through a duly signed Deed of Retirement. The Plaintiff posits that the Defendant's attempt to resign by way of letter was not valid, for several reasons:[11]

(a) Firstly, the Plaintiff had given his notice of his intention to resign by way of a letter dated 10 January 2019, leaving only Chan Chee Chiu and the Defendant as trustees. The Defendant cannot resign by letter of resignation as that is contrary to s 40(1) of the Trustees Act.

(b) Secondly, the Defendant can only resign if a new trustee is appointed to take his place.

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[11] Plaintiff's Written Submissions, pp 8-11.

(c) Thirdly, any resignation has to be accompanied by a transfer of property held by the retiring trustee to the new trustee. Such a transfer cannot be effected by way of a letter of resignation and no other method has been relied upon by the Defendant.

(d) Fourthly, the provisions of the Will only make sense when read with s 40 of the Trustees Act, particularly when the Will is silent as to matters such as the mode of resignation, whether the consent of the other trustees should be obtained, whether the trust assets should be transferred to the continuing trustees and whether there should be at least two remaining trustees. The Defendant can only be discharged or resign in accordance with s 40 of the Trustees Act.[12]

(e) Fifthly, the Defendant's contention that he was no longer a trustee after he had tendered his letter of resignation on 1 February 2019 is inconsistent with his offer to execute all the necessary documents, after his resignation, to vest the trust assets in Chan Chee Chiu or the new trustee, if so required.

(f) Lastly, there is a distinction between resignation and retirement. A letter of resignation merely indicates an intention to resign but does not allow for effective retirement, which can only be effected under s 40 of the Trustees Act.[13]

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12 Plaintiff's Further Written Submissions pp 1-3.

13 Plaintiff's Further Written Submissions pp 1-3.

16 The Plaintiff further argues that the Defendant should not be allowed to "refuse/withhold his consent unreasonably".[14] In his view, a finding that the court cannot compel the Defendant to provide his consent would tantamount to allowing an abuse of process and to thwart the court from preventing injustice. The Plaintiff submits that the power of the court to compel the Defendant to provide his consent lies either in s 14 or s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") or under the inherent powers of the court pursuant to O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

17 The Plaintiff, thus, sought an order directing the Defendant to execute the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed, and in the event the Defendant fails to comply, an order directing the Registrar of the Supreme Court to execute both Deeds on behalf of the Defendant.

The Defendant's arguments

18 The Defendant submits that he is no longer a trustee and, therefore, can no longer provide his consent. In his view, the Letter of Resignation was an effective method of resignation pursuant to Clause 3 for the following reasons:

> (a) Firstly, Clause 3 sets a low threshold. A trustee can resign without any formalities. The resignation neither has to be in the form of a deed nor with the consent of the other trustees. Given the disagreement between the Plaintiff and the Defendant on the management of the trust assets, the Defendant submitted his Letter of Resignation.[15]

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14 Plaintiff's Further Written Submissions p 4.

15 Defendant's Written Submissions paras 10 to 16.

(b) Secondly, a trustee should be allowed to resign in accordance with the resignation provision in the trust instrument because s 40 of the Trustees Act is not an exclusive mechanism for retirement. Further, pursuant to s 2(2) of the Trustees Act, any statutory mechanism such as s 40 of the Trustees Act should not detract from the powers given by the trust instrument.[16]

(c) Thirdly, the effectiveness of the Defendant's resignation was independent of any vesting of the trust assets in any continuing trustees. The subsequent vesting of the trust assets is a matter of implementation that arises only after the discharge of a trustee is deemed effective.[17]

(d) Lastly, the Plaintiff is estopped from asserting that the Defendant is unable to resign through his Letter of Resignation when the letter of resignation of the previous trustee, Chan Fatt Cheung, was accepted as an effective mode of resignation.[18]

19 In the alternative, the Defendant argues that even if his Letter of Resignation is not effective and thus he still is a trustee, there is no basis upon which the court can compel the Defendant to provide his consent under s 40 of the Trustees Act.[19]

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16 Defendant's Written Submissions paras 17 to 20.

17 Defendant's Written Submissions paras 21 to 22.

18 Defendant's Written Submissions paras 25 to 30.

19 Defendant's Written Submissions paras 31 to 32.

My decision

Issues to be decided

20 The issues in this case are as follows:

(a) is Clause 3 or s 40 of the Trustees Act the operative mode for a trustee to resign or retire; and

(b) whether the Defendant can be compelled to provide his consent to the Plaintiff's Retirement Deed and the Deed of Retirement and Confirmation.

21 I shall now deal with each of these issues in turn.

Issue 1: Is Clause 3 or s 40 of the Trustees Act the operative mode for a trustee to resign or retire?

22 A person acting as a trustee can only retire and be discharged from his duties through a number of well-established methods. David Hayton, Paul Matthews & Charles Mitchell, *Underhill and Hayton Law of Trusts and Trustees* (LexisNexis, 19th Ed, 2016) ("*Underhill and Hayton*") at para 70.1 lists a few options by which a trustee can retire:

> (1) A trustee can only retire:
>
> (a) under an express or a necessarily implied power;
>
> (b) under the statutory power conferred by the Trustee Act 1925, either on the appointment of a new trustee in his place, or without such appointment if at least two trustees will continue in office or if the continuing trustee is a trust corporation;
>
> (c) by the consent of *all* the beneficiaries, which can only be obtained where all are of full age and capacity; or

> (d) by order of the court.
>
> …
>
> [emphasis in original]

23 These methods of retirement as listed above are often taken as alternative methods that a trustee can rely on when seeking to retire. The present case, however, illustrates the conundrum that arises when there are two methods of retirement and parties adopt opposing views on which is the operative method of retirement. The Defendant further submits that *both* methods of retirement are valid.

24 I begin with reference to the Will, which provides for the retirement or resignation of trustees. This is under Clause 3:[20]

> …
>
> Upon the death or retirement of any Trustee, the person appointed as his successor in office shall nevertheless be my male descendant through a male line.
>
> If any of my Trustees *disagree with the others or have to attend to other business*, he *is at liberty to resign* and the *vacancy thereby created shall be filled accordingly*.
>
> [emphasis added in italics]

25 The retirement or resignation provisions are broadly-worded with no requirements or mechanisms specified in order to invoke one's "liberty to resign". The words "vacancy thereby created shall be filled accordingly" also fail to specify any mechanism for appointment of replacement trustees, or even whether it is incumbent on the trustee desirous of being discharged to seek such appointment.

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[20] Plaintiff's Affidavit, Tab CCC.1, p 12.

26 According to this clause, a trustee can resign if there is a disagreement with the other trustees or he has a desire to attend to other business. These grounds are extremely vague and can be very easily met. In the case of Chan Fatt Cheung's letter of resignation, there was no Deed of Retirement executed, as stated above at [4(e)]. He had a hand-written letter dated 9 March 2009,[21] which stated as follows:

> Dear See [*sic*] Chuan & Chee Chew [*sic*],
>
> Re: Resigning from the Trusteeship
>
> Because of age I am now 85. I am resigning from the trustees of the Estate of Chan Wing (deceased) as from today 9 March 2009.
>
> Even though I look young and healthy, all of us know that age is catching up on us.

27 The acceptance of Chan Fatt Cheung's resignation underscores the vagary of the phrase "other business" and the fact that it encompasses even personal matters. Thus, the *intention* of the trustee to resign is more important than his *reason* for seeking a discharge from the trust.

28 In this instance, the Defendant explained his reason for his resignation as a disagreement between the parties in relation to the Disputed Transaction. The Defendant maintains that he did not authorise this transaction and had made efforts to stop it. This was because he believed that there were advantages to having part of the funds held by UOB to allow for diversification, to allow the estate to compare brokerage fees for investments and to have a wider selection of investment products and advice.[22] It is on this basis that the Defendant argues

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21 Defendant's Bundle of Documents, Tab CYC-17.

22 Defendant's 1st Affidavit, Defendant's Bundle of Documents, Tab 1, at para 6.

that his Letter of Resignation sufficiently fulfils the disagreement requirement under Clause 3.

29 Clause 3 may be contrasted against s 40 of the Trustees Act, which provides:

> **Retirement of trustee without a new appointment**
>
> **40.**—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least 2 individuals to act as trustees to perform the trust, then —
>
> (*a*) if such trustee by deed declares that he is desirous of being discharged from the trust; and
>
> (*b*) if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property,
>
> the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.
>
> (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

30 These requirements under s 40 of the Trustees Act are far more onerous than those under Clause 3. Pursuant to this section, any trustee seeking to retire without appointing a replacement has to comply with the following. Firstly, there are at least two remaining trustees or a trust corporation after his discharge. Secondly, this discharge is done by way of a deed. Lastly, the consent of the remaining co-trustees, or persons empowered to appoint trustees, is obtained by way of deed.

31 It is, thus, unsurprising that the Defendant seeks to argue that he is only required to meet the requirements under Clause 3. The question that, therefore, arises is whether s 40 of the Trustees Act, which sets out inflexible mandatory requirements for a trustee to be discharged, can be substituted by a differing and simpler provision under Clause 3. Alternatively, can the court agree with the Defendant's submissions that the Letter of Resignation and Deed of Retirement are both acceptable and valid?

32 The starting point for the inquiry is to look at the scope of application of the Trustees Act to a trust instrument. For this purpose, the germane provision is s 2 of the Trustees Act, which provides:

> **Application of Act**
>
> **2.**—(1) This Act, except where otherwise expressly provided, *shall apply to trusts* including, so far as this Act applies thereto, executorships and administratorships constituted or created either before, on or after 1st September 1929.
>
> (2) *The powers conferred by this* Act on *trustees are in addition to the powers conferred by the instrument*, if any, creating the trust, but those powers, unless otherwise stated, *apply if and so far only as a contrary intention is not expressed in the instrument*, if any, creating the trust, and have effect subject to the terms of that instrument.
>
> (3) This Act shall not affect the legality or validity of anything done before 1st September 1929, except as otherwise expressly provided.
>
> [emphasis added in italics]

The origin of s 2 of the Trustees Act

33 Section 2 of the Trustees Act finds its origin in the Trustee Act 1925 (c 19) (UK) (the "UK Trustee Act 1925"). Specifically, s 2 of the Trustees Act replicates s 69(2) of the UK Trustee Act 1925, which was a unique provision

specifically inserted by the draftsman at that time. This is summarised in *Underhill and Hayton* at paras 70.7 and 70.8:

> **70.7** The Trustee Act 1925 was stated in terms to be 'An Act consolidating certain enactments relating to trustees in England and Wales' (eg Trustee Act 1893, Law of Property Act 1922, Law of Property Amendment Act 1924), so as to simplify the Parliamentary procedure…Parliament's intention was not to change the law.
>
> **70.8** However, the draftsman in his consolidation exercise boldly inserted a *general* contrary intention provision at the end of the 1925 Act in s 69(2):
>
> > 'The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument…'
>
> [emphasis in original]

Implications of s 2 of the Trustees Act on Clause 3

34 Section 2(1) of the Trustees Act unambiguously states that the Trustees Act "shall apply to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before, on or after 1st September 1929." Section 2(1) of the Trustees Act applies to the trust instrument in this case as the Will cum trust instrument was made and executed on 5 February 1947. Hence, s 2(1) clearly seeks to import provisions from the Trustees Act into trust instruments. This is to augment the trust instrument so as to ensure that the interests of the trust estate, beneficiaries and the trustees are adequately addressed, provided the imported provision does not contradict any provision of the trust instrument. However, this relates only to the powers conferred by the Trustees Act on the trustees. I shall now deal with the various issues pertaining to the applicability of the Trustees Act to this case.

(1) Whether s 40 of the Trustees Act confers a power on the trustees

35 Under the Trustees Act, trustees are conferred a wide range of powers. Part III of the Trustees Act, in particular, sets out the "General Powers of Trustees and Personal Representatives". The powers under Part III span from powers to insure (s 21) to powers of advancement (s 34).

36 I note that s 40 falls under Part IV (relating to Appointment and Discharge of Trustees) and not Part III of the Trustees Act. However, the position of the various sections are, strictly speaking, not determinative of whether that section constitutes a power. This is because the powers conferred upon trustees under the Trustees Act are not contained exclusively in Part III. For instance, the power to appoint new or additional trustees is provided for in s 37 of the Trustees Act, which incidentally also falls within Part IV of the Trustees Act.

37 In *Leo Teng Choy v Leo Teng Kit and others* [2000] 3 SLR(R) 636, the Court of Appeal held that s 56 was not subject to s 2(2) of the Trustees Act (Cap 337, 1999 Rev Ed). In doing so, the court stated at [22] that: "[i]t is significant to note that s 56 falls under Pt V of the Act, intitled [*sic*] "Powers of Court" whereas Pt III is intitled [*sic*] "General Powers of Trustees and Personal Representatives." However, the reason why the court held that s 2(2) did not operate on s 56(1) was because s 56(1) conferred powers *on the court* and not on trustees. Therefore, the placement of the particular provision does not necessarily determine whether it deals with the power of the trustee which is subject to the general contrary intention requirement in s 2(2) of the Trustees Act.

38 This issue was also dealt with in *London Regional Transport Pension Fund Trustee Co Ltd v Hatt* [1993] PLR 227 ("*Hatt*"). In that case, it was held that s 37(1) of the UK Trustee Act 1925, which is *in pari materia* to s 38(1) of the Trustees Act, was susceptible to contrary intention in a trust instrument. This was as a result of the application of s 69(2) of the UK Trustee Act 1925, which is *in pari materia* to s 2(2) of the Trustees Act, as discussed above at [33]. Relying on the logic in *Hatt*, the authors in *Underhill and Hayton* argue at para 70.13 that s 39 of the UK Trustee Act 1925 (the equivalent of s 40 of the Trustees Act) would also fall within the definition under s 69(2) of the UK Trustee Act 1925:

> It would seem that the *power to obtain his discharge without appointment of a successor is one of the powers conferred on trustees* which under s 69(2) of the Trustee Act 1925 yield to the express terms of the settlement, …
>
> [emphasis added in italics]

39 I agree with the position put forth by the authors of *Underhill and Hayton* in the above quote. Section 40 of the Trustees Act confers the power on the trustee to obtain a discharge, without having to appoint a successor, provided there are at least two remaining trustees. Although s 40 of the Trustees Act is not expressly titled as a power, it very much fulfils the same purpose as other power-conferring provisions. I, therefore, find that s 40 falls within the definition of "powers conferred … on trustees" under s 2(2) of the Trustees Act.

(2) Whether s 40 of the Trustees Act is contrary to the Will

40 What constitutes a "contrary intention" under s 2(2) of the Trustees Act? This very question was answered by the Court of Appeal in *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1998] 2 SLR(R) 434 ("*Rajabali Jumabhoy* (CA)") at [60]–[64]:

60 In the case of *In re Warren* [1939] Ch 684 the testator, by his will in 1880, directed the trustees to invest his residuary estate in certain American securities and to appropriate those securities to the value of £35,000 for the purpose of certain legacy. The public trustee was subsequently appointed a trustee of the testator's will and the deed set out a list of investments for the trust fund which were not expressly authorised under the will. The trustee therefore sought directions from the court as to the investment of money arising out of the testator's estate, and the question was whether the investment clause in the will amounted to a "contrary intention", such that s 1 of the Trustees Act 1925 which gave to the trustees powers of investment under the Act would not apply. Simonds J drew reference to the previous Trustee Act (*ie* the Trustee Act 1893) which prevented trustees from investing under the Act, if it was "expressly forbidden by the [trust] instrument" and held, at 688:

> The 1925 Act was intended to be a consolidating Act, and, though it contains some new provisions, it would be strange if there were any serious departure from the 1893 Act: *Re Turner's Will Trusts* [1937] Ch 15. The principle that a consolidating Act is not intended to alter the law is applicable here. It is inconceivable that the Legislature intended to depart, as to investment, from the position under the 1893 Act. I am therefore bound to give to the words 'contrary intention' in the Trustee Act 1925 s 69(2) the same force as that given to the words 'unless expressly forbidden' contained in the 1893 Act. Accordingly, I have here a direction that the trustee shall invest in certain specified investments, but no prohibition against other investments. It follows, in my judgment, that the Public Trustee has power to invest the fund in any of the investments authorized by the 1925 Act.

61 What emerged from *In re Warren* was that "contrary intention" was being construed to mean "unless expressly forbidden", having regard to the earlier Trustees Act governing trustees' powers of investments. Since that decision, however, several other English authorities have taken a more liberal approach to construing the expression "contrary intention".

62 In *Inland Revenue Commissioners v Bernstein* [1961] Ch 399, the Court of Appeal held that the terms of the trust which expressly provided for accumulation of income during the life of the settlor showed an intention which was in conflict with the powers of advancement under s 32(1) of the Trustees Act 1925, and that in considering the applicability of s 69(2)

(identical with s 2(2) of our Trustees Act) it was not required that the statutory powers of advancement should be expressly excluded. The statutory power would be inapplicable if, on a fair reading of the trust instrument, it could be said that the application of the statutory powers would be inconsistent with the purport of the instrument. Lord Evershed MR said, at 412–413:

> Section 69(2), which I have read, uses the language 'so far only as a contrary intention is not expressed in the instrument … creating the trust,' though those words are followed by this later phrase 'and have effect subject to the terms of that instrument.' At a first reading of the subsection it might seem that in order to exclude the power of advancement there would have to be an express exclusion or something equivalent thereto. But Mr Bathurst for the Crown has not here contended that the section requires anything so positive in expression. He has conceded (and for reasons which will in a moment appear, I think, if I may say so, rightly conceded) that it suffices to make the statutory power of s 32 inapplicable if, on a fair reading of the instrument in question, one can say that such application would be inconsistent with the purport of the instrument.

63 In *In re Evans's Settlement* [1967] 1 WLR 1294, the settlor by a settlement made in 1946 directed the trust fund to be paid to his wife for life and subject thereto the trust fund was to be held in equal shares for the two children of the marriage if living at the wife's death. The settlement contained express powers for raising funds for the benefit of the wife and children. By cl 7 the trustees were empowered to raise a sum not exceeding £5,000 for the benefit of the wife or children, and by cl 8 the trustees were empowered to raise a second sum not exceeding £5,000 in addition to the first sum. Both these powers had been fully exercised. The trust fund was of great value, and a moiety of it much exceeded the aggregate sum raisable under the express powers. The question of whether the statutory powers of advancement applied in addition to the express powers arose for consideration and the court had to consider whether there was sufficient contrary intention appearing in the settlement to exclude the application of the statutory powers. It was held that although the existence of an express power of advancement in a settlement did not exclude the statutory power of advancement under s 32 of the Trustee Act 1925, the powers conferred by the settlement to raise and pay the second sum "not exceeding £5,000" would be inconsistent with the application of the statutory powers. Stamp J said, at 1297:

> Stopping at the first phrase, 'The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust …,' a possible approach is that those words, if they mean anything, mean that if in the trust instrument there is an express power of advancement, the power conferred by the Act is additional to it. The words cannot mean that if there are two powers of a different nature: eg, a power of maintenance in the settlement and a power of advancement in the statute, one is to be additional to the other, for, if so, those words would be merely stating what is abundantly obvious and clear. If, therefore, the statutory power does not apply in any particular case it can only be by force of one of the latter limbs of s 69(2). The second phrase is: '… but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any creating the trust …' Since the first phrase contemplates the statutory powers being additional to the powers conferred by the instrument, the mere fact that the instrument confers express powers cannot, without more, amount to an expression of intention to exclude the statutory power. Where, then – so the argument may run – is the expression of a contrary intention to be found?

The learned judge then dealt with this question as follows:

> Although the mere existence of an express power does not exclude the statutory power – for s 69(2), as I have indicated, contemplates the existence of both – when one examines its terms as distinct from its mere existence, and the surrounding circumstances by reference to which all instruments fall to be construed, one may find an expression of intention that the statutory power shall not apply. And in construing the instrument for this purpose I see no escape from the general rule of construction – that intention may be expressed by necessary implication or by ascertaining the meaning of the instrument by reference to all its terms and by reference to the surrounding circumstances.

The learned judge followed the approach of Lord Evershed MR in *Inland Revenue Commissioners v Bernstein* ([62] *supra*) and held that the statutory power of advancement was excluded so far as it would otherwise be exercisable in favour of the settlor's two children.

> 64 ***We would respectfully adopt the "fair reading" approach*** adumbrated by Lord Evershed MR in *Inland Revenue Commissioners v Bernstein*. The trust instrument ***need not expressly forbid any statutory powers*** from applying so long as it can be said that ***on a "fair reading" of the trust instrument the application of the statutory powers would be inconsistent with the purport of the trust instrument***.
>
> [emphasis added in bold italics]

41 It is crystal clear from s 2(2) of the Trustees Act that the provisions of the Trustees Act that are expressly or impliedly in contravention of or inconsistent with the trust instrument will not override the powers of the trustee under the trust instrument. To address the epicentre of the parties' hotly contested arguments of whether a letter of resignation is adequate under Clause 3, it is critical to ascertain whether a fair reading of Clause 3 expresses a contrary intention to the application of s 40 of the Trustees Act. If it is in the affirmative, then s 2(2) of the Trustees Act allows Clause 3 to take precedence notwithstanding that s 40 of the Trustees Act is the law of the land while Clause 3 is a private trust instrument.

42 A fair and objective reading of Clause 3 does not *expressly* forbid the operation of s 40 of the Trustees Act. Clause 3 says that the trustee "is at liberty to resign". There are no words or phrases, such as "notwithstanding s 40 of the Trustees Act", which suggest or imply that the Testator's intention was to void the application of s 40 of the Trustees Act for the trustee who is desirous of being discharged. However, I notice that Clause 3 does not state or prescribe the mode of how the trustee can resign. It merely states that the trustee "is at liberty to resign". Clause 3 also does not say that a letter of resignation is sufficient. The Defendant's contention that Clause 3 allows a trustee to resign by a letter of resignation is misconceived. Since the Trustees Act is applicable to the trust

instrument and there is no contrary intention in Clause 3 then s 40 of the Trustees Act is applicable.

43 As mentioned at [30], s 40 of the Trustees Act lists out a number of requirements that trustees seeking to retire must comply with. There is no doubt that the structure for the retirement of the trustee has been very carefully and comprehensively considered by the legislature for the Trustees Act to ensure that the trustee who seeks to retire does so responsibly and at the same time safeguards the interests of those involved in the trust via s 40 of the Trustees Act.

44 I disagree with the Defendant's argument that s 40 of the Trustees Act is contrary to what the Testator had intended. The failure of the Testator to provide any mechanism whatsoever does not *ipso facto* mean that he obviated the need for any mechanism to apply at all. If the Testator truly intended for a low threshold that clearly disregarded the requirements under s 40 of the Trustees Act, surely the Will would have expressed this contrary intention clearly or provided its own method of retirement.

45 The Defendant's interpretation simply cannot be consistent with a fair reading of Clause 3, given the consequences that may arise. If his interpretation that a letter of resignation suffices to satisfy the phrase "liberty to resign" is accepted, it would mean that any trustee is allowed to resign using any method, under any circumstance and, particularly, without the consent of the other trustees. A practical illustration may help to exemplify the undesirable outcome which may arise on this interpretation. Hypothetically, in a situation where there are only two trustees that are left to administer the trust, any one of them could simply phone or email and inform the other trustee of his resignation with

immediate effect. That would mean that, in an instant, the trustee would be able to disregard the interests of the beneficiaries to the trust and to leave the trust estate in a lurch. This would also undermine the rule of trust law that a retiring trustee is not discharged from the trust unless there remain two trustees or a trust corporation (see ss 38 and 40 of the Trustees Act). By the Defendant's counsel's own admission, that cannot be the case, as the Testator must have known of this minimum requirement when he drafted the Will.

46 I, therefore, find that an effective resignation in this case must be pursuant to the requirements under s 40 of the Trustees Act, *ie*, by way of a deed of retirement and a deed of consent to the discharge from the co-trustees, which are stated at [30] above. The Defendant's Letter of Resignation was, therefore, not an effective and valid discharge, and he remains a trustee. In *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1997] 2 SLR(R) 296 ("*Rajabali* (HC)") at [112], Judith Prakash J (as she then was) said that the letters of resignation were ineffective because of s 43(1) of the Trustees Act (Cap 337, 1985 Rev Ed), which is *in pari materia* to s 40(1) of the Trustees Act:

> … In my judgment, none of the resignations contained in the joint surrender letter were effective because of the overriding effect of s 43(1) of the Trustees Act. Under that section, a trustee may only retire if after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust. Additionally, the retirement has to be by deed and the co-trustees and the person empowered to appoint trustees must consent, by deed, to the discharge of the retiring trustee. …

47 Assuming *arguendo* that s 40 of the Trustees Act does not apply and that a letter of resignation is sufficient, will the Defendant's Letter of Resignation be effective? This will require an analysis of the sequence of events leading to the Defendant tendering his Letter of Resignation.

48 It will be recalled that prior to the Defendant's Letter of Resignation dated 1 February 2019, the Plaintiff had made known his intention to resign as early as the 10 January 2019 letter to CTLC Law Corporation, mentioned at [6] above. That intention would have come to the Defendant's attention on 16 January 2019, or at the very latest on 19 or 20 January 2019, which was the weekend on which he claims to have received the 16 January 2019 letter mentioned at [8] above.[23] If the Letter of Resignation is accepted, these letters from the Plaintiff would suffice to allow the Plaintiff to resign as a trustee, despite the Defendant's contention that these letters would not have constituted a letter of resignation under Clause 3.

49 I disagree with the Defendant's assertion that because the Plaintiff's letter did not purport to be a letter of resignation and did not specify the resignation date, the Plaintiff did not have the intention to resign.[24] The reason for such omissions was because the Plaintiff was under the impression, rightly so, that resignation could only occur by way of a deed. In substance, however, it is clear that the 10 January 2019 letter was an obvious manifestation of his intention to resign. It is for this very reason that the Plaintiff continued to act as a trustee, authorising Citi Private Bank in relation to the Disputed Transaction. The Plaintiff cannot be faulted for continuing to act, as he thought a responsible trustee should, while awaiting effective resignation. This is because the Plaintiff thought that he was still a trustee as the process of retirement under s 40 of the Trustees Act had not been completed.

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23 Plaintiff's Affidavit, Tab CCC-6, p 52.

24 Defendant's 1st Affidavit, Defendant's Bundle of Documents, Tab 1, at para 5.

50 This would leave the Defendant and Chan Chee Chiu as the two remaining trustees to the estate. They would, therefore, have to appoint a replacement trustee so that there are at least two trustees to manage the affairs of the Testator's estate before the Defendant can resign, as is required under s 40(1) of the Trustees Act.

51 Whichever the arguments, the Defendant remains as a trustee of the Testator's estate. He, therefore, cannot maintain that he was unable to provide his consent to the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed. Despite this, he has repeatedly and unequivocally stated his position unreasonably that even if he is able to give consent, he declines to do so.[25] I shall, therefore, turn to deal with the issue of how the Defendant's consent to the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed may be obtained.

Issue 2: whether the Defendant can be compelled to provide his consent to the Plaintiff's Retirement Deed and the Deed of Retirement and Confirmation

52 It is clear that the Defendant refuses to give his consent to sign the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed. He further alleges that his power to grant consent to the retirement of a trustee derives from s 40 of the Trustees Act and the court cannot coerce him to give his consent. Does the court have the power to order him to do so when s 40 of the Trustees Act vests the power of giving consent to the Defendant and when Chan Chee Chiu has already signed the Deeds? In my view, if the Plaintiff can prove, on a balance of probabilities, that the Defendant has withheld his consent

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[25] Defendant's Bundle of Documents, Tab 1, 1st Affidavit at para 15; Defendant's Written Submissions at para 31.

unreasonably to frustrate the Plaintiff's desire to retire, then the court has both the statutory powers (under s 14 and s 18 of the SCJA) and inherent powers under O 92 r 4 of the Rules of Court to order the Defendant to grant his consent. In the event the Defendant fails or refuses to execute the Deeds, the court can direct the Registrar of the Supreme Court to execute the Deeds on the Defendant's behalf.

Section 14 of the SCJA

53 I shall first refer to s 14 of the SCJA, which states:

> **Execution of deed or indorsement of negotiable instrument**
>
> **14.**—(1) If a judgment or order is for the execution of a deed, or signing of a document, or for the indorsement of a negotiable instrument, and the party ordered to execute, sign or indorse such instrument is absent, or neglects or refuses to do so, any party interested in having the same executed, signed or indorsed, may prepare a deed, or document, or indorsement of the instrument in accordance with the terms of the judgment or order, and tender the same to the court for execution upon the proper stamp, if any is required by law, and the signature thereof by the Registrar, by order of the court, shall have the same effect as the execution, signing or indorsement thereof by the party ordered to execute.
>
> (2) Nothing in this section shall be held to abridge the powers of the court to proceed by attachment against any person neglecting or refusing to execute, sign or indorse any such instrument.

54 The Defendant argues that s 14 of the SCJA is inapplicable in this case as there must be a pre-existing judgment or order compelling the Defendant to grant his consent and he failed to do so. At the time of the filing of OS 703/2019 there was no such judgment or order against the Defendant. Therefore, this pre-requisite of s 14 of the SCJA has not been fulfilled. Hence, the court cannot exercise its powers under s 14 of the SCJA. I disagree with the Defendant's

interpretation of s 14 of the SCJA as this is an erroneous application of s 14 of the SCJA to this case.

55 In *Yeo Guan Chye Terence and another v Lau Siew Kim* [2007] 2 SLR(R) 1, the plaintiffs in that case sued their step-mother, the defendant, claiming that several properties she held jointly with their late father was held on trust for the deceased's estate. The court ordered that a percentage of the properties be returned to the estate, and Lai Siu Chiu J (as she then was) stated at [75]:

> … The defendant is *required to execute instruments of transfer* for both the properties in favour of the estate's interest within 30 days of today's date, *failing which the Registrar is hereby empowered under s 14(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) to do so on her behalf*. I further give the plaintiffs liberty to apply. …
>
> [emphasis added in italics]

56 Similarly, in *AQR v AQS* [2011] SGHC 139, which involves the division of matrimonial assets, Lai J (as she then was) stated at [2]:

> 2 On 14 January 2011, the ancillary matters came up for hearing before this court. After hearing the submissions from counsel, I made the following orders:
>
> > (a) *The wife was to transfer to the husband all her rights, title and interest* in the property at Bayshore Road, Singapore ("the matrimonial flat") as well as her rights, title and interest in two Australia properties (see [9(d)] below without consideration. … *In the event the wife failed or refused to execute the transfer* of the matrimonial flat within seven days of a request in writing from the husband's solicitors, the *Registrar of the Supreme Court was empowered to do so on her behalf pursuant to s 14 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).*
> >
> > …
>
> [emphasis added in italics]

57 The court in the above cases exercised its power under s 14 of the SCJA and ordered the defaulting parties to execute a transfer of assets when there was no pre-existing order or judgment, failing which the Registrar of the Supreme Court was empowered to do so. I, therefore, reject the Defendant's arguments that it is necessary to first have a separate pre-existing order and only when a party is in default of the first existing order can the applicant then resort to s 14 of the SCJA.

58 In OS 703/2019 the Plaintiff seeks the court's order to require the Defendant to execute the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed within 14 days failing which the Registrar of the Supreme Court is empowered to execute these Deeds. I have earlier explained that the Defendant's Letter of Resignation is ineffective and that the proper mode for a trustee to resign is by way of a Deed of Retirement as prescribed in s 40 of the Trustees Act. Therefore, when the Defendant received the Plaintiff's Retirement Deed on 16 January 2019, the Defendant was still a trustee together with Chan Chee Chiu who had already signed the Deed of Retirement and Confirmation of Chan Fatt Cheung (a former trustee who retired by way of a letter of resignation dated 9 March 2009). On the other hand, the Defendant has categorically stated that he will not give his consent. Is this withholding of consent reasonable?

Is the Defendant reasonable in refusing to grant his consent?

59 The Defendant alleges that he was not satisfied with the management of the trust funds, as elaborated upon at [9] and [28]. This prompted his resignation

as it resulted in his "inability to effectively discharge [his] duties as a Trustee".[26] Furthermore, the Defendant also argues that the Disputed Transaction raised a series of issues that may possibly be detrimental to the welfare of the estate. In his Letter of Resignation, he detailed as follows:[27]

(a) the effect of the Disputed Transaction was to place substantially all the estate's assets in a single bank, a risky endeavour with no evidence of due diligence done;

(b) the assets were now placed in an account opened in the personal names of all three trustees, when it should rightly be in an account under the name of the estate; and

(c) the Disputed Transaction would have been contrary to investment parameters that, although removed from the Will, were present in prior versions of the Will. Specifically, as the Defendant sets out:

> The will stands silent on the Estate's investment parameters.
>
> However in prior wills that have been superseded, it has been stated that:
>
> "After my death my estate executors are strictly forbidden to make any settlement day transactions or risky profits which will cause a lot of harm. Every one of my posterity must pay special attention to this" (Translated and attributed to the 24 January 1947 Will).
>
> "My Trustees shall not invest use lend or employ any money on or in mining land or in undertakings in which

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26 Defendant's Bundle of Documents, Tab CYC-14; Defendant's 1st Affidavit, Defendant's Bundle of Documents, Tab 1, at para 7

27 Defendant's Bundle of Documents, Tab CYC-14, headings A, B & G.

> mining shall be the object or in any form of investment of a speculative nature" (19 June 1936 Will).
>
> …
>
> I strongly advise the Trustees to thoroughly and independently review and understand the implications of the investment proposals put forward by the various financial services providers prior to committing Estate assets.

60 These problems in relation to the Disputed Transaction were amongst a series of broader issues relating to the administration of the trust that the Defendant raised in his Letter of Resignation.[28]

61 The Defendant alleges that he was unhappy over the Plaintiff's management of the trust funds and he felt that he was not able to act as a trustee for the benefit of the estate. Therefore, it would appear that from the Defendant's perspective the management of the trust funds would be better off without the Plaintiff. The Plaintiff's role as a trustee was the main source for the Defendant wanting to resign. These are the allegations of the Defendant which are unverified and the Plaintiff has not expressed his views on these allegations as he intends to resign but is being frustrated by the Defendant. Under the circumstances, as explained by the Defendant, it seems that the refusal of the Defendant to grant his consent for the Plaintiff to retire is illogical and unreasonable. Instead, the Defendant submitted his Letter of Resignation on 1 February 2019. It is clear that the Defendant was attempting to beat the Plaintiff to the resignation by trying to circumvent the requirements of s 40 of the Trustees Act which the Plaintiff is attempting to assiduously comply with. The Defendant was trying to avoid the inconvenience of seeking a replacement

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[28] Defendant's Bundle of Documents, Tab CYC-14, headings C to F.

trustee as required under s 40 of the Trustees Act, if the Plaintiff's resignation is successful. The conduct of the Defendant is unfair as he knew that the Plaintiff wanted to resign sometime in the middle of January 2019 and he is preventing him from doing so as he is also desirous to resign.

62 For the above reasons, there are sufficient justifications for the court to invoke its powers under s 14 of the SCJA. I, therefore, order the Defendant to execute both the Plaintiff's Retirement Deed and Chan Fatt Cheung's Deed of Retirement and Confirmation within 14 days of the date of this order, failing which the Registrar of the Supreme Court is hereby directed to execute the Deeds on the Defendant's behalf.

63 On this ground alone the court can grant orders in term to the Plaintiff's application in OS 703/2019. However, for completeness I shall address s 18 of the SCJA and the inherent powers of the court.

Section 18 of the SCJA

64 Section 18 of the SCJA states:

> **Powers of High Court**
>
> **18**.—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> (3) The powers referred to in subsection (2) shall be exercised in accordance with any written law, Rules of Court or Family Justice Rules relating to them.

65 Under the First Schedule to the SCJA, to which s 18(2) refers, the "Additional Powers of the High Court" include the "[p]ower to issue to any person or authority any direction, order or writ for the enforcement of any right

conferred by any written law or for any other purpose…" This provision empowers the court to order an individual to execute a trust deed, while simultaneously directing the Registrar of the Supreme Court to execute the deed on his behalf should he fail to do so.

66 Accordingly, I find that the court does have the power under s 18 of the SCJA to compel the Defendant to grant his consent, or the Registrar of the Supreme Court will do it on his behalf.

Inherent powers of the court

67 In addition to s 14 and s 18 of the SCJA, the court also has inherent powers to grant the Plaintiff's application. The inherent powers of the courts are in O 92 r 4 of the Rules of Court which states:

> **Inherent powers of Court (O. 92, r. 4)**
>
> **4.** For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

68 These inherent powers of the court are invoked only in situations where the justice of the case so requires. As the Court of Appeal stated in *Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp Ltd and another* [2003] 2 SLR(R) 353 at [16]–[17]:

> 16 By its very nature, the inherent jurisdiction of the court should only be exercised in special circumstances where the justice of the case so demands. This court had, in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 cited a passage from Sir Jack Jacob published in (1970) 23 Current Legal Problems 23, indicating how this inherent jurisdiction should be exercised:

> This [inherent] jurisdiction may be invoked when it is ***just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties.*** Without intending to be exhaustive, we think an essential touchstone is really that of 'need'.
>
> 17 Accordingly, this inherent jurisdiction should only be invoked in exceptional circumstances where there is a ***clear need for it and the justice of the case so demands***. The circumstances must be special. …
>
> [emphasis added in bold italics]

69 In determining whether there is indeed a need to invoke the inherent powers of the court, it is imperative to bear in mind the warning of Andrew Phang Boon Leong J (as he then was) in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at [81]:

> 81 The parameters of O 92 r 4 are, understandably, not particularly precise. What does appear clear is that if there is an existing rule (whether by way of statute or subsidiary legislation or rule of court) already covering the situation at hand, the courts would generally *not* invoke its inherent powers under O 92 r 4, save perhaps in the most exceptional circumstances … *It is commonsensical that O 92 r 4 was not intended to allow the courts carte blanche to devise any procedural remedy they think fit*. That would be the very antithesis of what the rule is intended to achieve. The *key criterion justifying invocation of the rule is therefore that of "need" – in order that justice be done and/or that injustice or abuse of process of the court be avoided.* …
>
> [emphasis added in italics]

70 The requirements to invoke the inherent powers of the court have recently been pithily summarised by Valerie Thean J in *Cheong Wei Chang v Lee Hsien Loong and another matter* [2019] 3 SLR 326 at [66] as follows:

> 66 The various cases may be summarised into two primary requirements: (a) there must be no statutory exclusion of the inherent power; and (b) there must be exceptional circumstances where there is need for the court to use its

> inherent powers in order for justice to be done or injustice to be averted.

There is no statutory exclusion of the inherent power in this case thus I shall focus on the second, *ie*, requirement (b).

71 It is axiomatic that the court possesses an inherent power to deal with the trustees of an estate (see Robert Pearce & Warren Barr, *Pearce & Stevens' Trust and Equitable Obligations* (Oxford University Press, 7th Ed, 2018) at pp 612 to 613; see also Jamie Glister & James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 21st Ed, 2018) at para 18-040; Graham Virgo QC, *The Principles of Equity & Trusts* (Oxford University Press, 3rd Ed, 2018) at pp 353 to 354). It would, thus, be useful to illustrate several instances where the inherent powers of the court have been exercised.

72 In *Hwa Soo Chin v Personal Representatives of the Estate of Lim Soo Ban, deceased* [1994] 2 SLR(R) 1 ("*Hwa Soo Chin*"), Hwa Soo Chin ("Hwa"), Lim Soo Ban ("Lim") and several others co-founded a crèche that took care of poverty-stricken children while their parents were at work. To this end, they purchased a property using, *inter alia*, a bank loan. The property was registered in Lim's name at the bank's request, but the interest was repaid by the crèche. When Lim subsequently became bankrupt, Hwa paid off the sums owed to Lim and used her own funds to renovate and run the property. When the crèche closed, the property was rented out, and the profits were collected by Hwa. In ordering, *inter alia*, that Hwa was allowed to keep the sums, K S Rajah JC stated at [33]:

> In any event, and in addition to its powers under the Trustees Act, the court also has as part of its inherent jurisdiction the power to remunerate trustees. In *Re Duke of Norfolk's*

> *Settlement Trusts* [1982] Ch 61 at 75; [1981] 3 All ER 220, Fox LJ stated:
>
> > There is, in my judgment, no doubt that the court has an inherent jurisdiction to authorize payment of remuneration to trustees. Danckwerts J in *Re Masters, deceased* [1953] 1 WLR 81 and Upjohn J in *Re Worthington, deceased* [1954] 1 WLR 526 accept that. The older authorities lead me to the same conclusion. In *Marshall v Holloway* 2 Swan 432, Lord Eldon LC himself authorized remuneration for both past and future services. The existence of the jurisdiction is also supported by *Morrison v Morrison* Myl & Cr 215, *Bainbrigge v Blair* 8 Beav 588, *Forster v Ridly* 4 De GJ & S 452, and *Re Freeman's Settlement Trusts* 37 Ch D 148.

Rajah JC relied on the inherent powers to remunerate Hwa, although she was not a formal trustee, but had acted as a *de facto* or constructive trustee over the years (see *Hwa Soo Chin* at [34]).

73 The court also has an inherent power to sanction the variation of a trust, albeit in limited circumstances. In *Rajabali Jumabhoy* (CA) at [68] the court stated:

> **Inherent jurisdiction**
>
> 68 … The court has an inherent jurisdiction to sanction a variation of a trust in limited circumstances. This inherent jurisdiction is summarised in *Halsbury's Laws of England* vol 48 (4th Ed) at para 921 as follows:
>
> > **921 Inherent jurisdiction**. The court gives effect to the intention of the settlor or testator as expressed in the trust instrument and has not arrogated to itself any inherent overriding power to disregard or rewrite the trusts. However, apart from cases where a change has been effected in a minor's property, or the court has approved a compromise on behalf of minors and of possible after-born beneficiaries, there have been cases in which the court has allowed trustees exceptionally to obtain remuneration or increased remuneration for their services or to enter into some beneficial business transaction by way of management or salvage or in

> emergency, which was not a transaction authorised by the trust, and cases in which, in allowing maintenance out of income, the court has altered beneficial interests, for example because accumulation is thereby suspended. Nevertheless, the court's inherent jurisdiction to modify private trusts is limited; …

Following an extensive analysis of the case law, the court said at [75]:

> 75 Thus the court's inherent jurisdiction would be exercised mainly in circumstances such as emergency where the *trustees have no power under the trust* to carry out the act or transaction and it is *expedient in the interest of trust that the court should allow the trustees* to carry out the act or transaction, and such jurisdiction is *not exercised merely because the court considers that it is beneficial to the trust.* The established principle is that the court *must give effect to the intention of the settlor or testator as expressed in the trust instrument or the will (as the case may be) and should not arrogate to itself any inherent overriding jurisdiction to disregard that intention and rewrite the trust.* …
>
> [emphasis added in italics]

74 In *In re Wrightson* [1908] 1 Ch 789, several trustees of an estate acted in breach of trust, and consequently, a majority of the beneficiaries wanted the trustees removed and replaced. Warrington J, who heard the application, held that this was still an insufficient reason, and stated at 797 to 798 and 803:

> … It seems to me that it is probably unnecessary to ask expressly for the removal of the trustees. If the facts alleged in the pleadings, or if the facts ascertained in working out the judgment pronounced at the trial or the inquiries properly added to it according to the practice of the Court, shew that the *removal of the trustees is necessary for the welfare of the trust*, I have no doubt that, as the Court is carrying out the trusts into execution under its direction, it would have jurisdiction to do that which is one of the incidents to the execution of the trusts, namely, *do that which is necessary for the preservation of the trust property or the welfare of the cestuis que trust.* …
>
> …
>
> You must find something which induces the Court to think either that the *trust property will not be safe, or that the trust*

> *will not be properly executed in the interests of the beneficiaries*. Is that so here, and is it for the welfare of the trust generally, and not merely of the plaintiffs, that these trustees should be removed? I think it is not. The trustees were undoubtedly guilty of a breach of trust, and they undoubtedly in the statement to which I have referred expressed views which have occasioned the blame which has been attached to the trustees both by Buckley J. and myself, but, having regard to the fact that the Court has now the power of seeing that the trust is properly executed, to the fact that a large proportion of the beneficiaries do not require the trustees to be removed, and further (and this is of great importance), to the extra expense and loss to the trust estate which must not be occasioned by the change of trustees, I think it would not be for the welfare of the cestuis que trust generally, or necessary for the protection of the trust estate, that these trustees should be removed. I must therefore refuse the application for their removal as well as the application for the further accounts and inquiries.
>
> [emphasis added in italics]

75 In *In the Matter of the E A Scott 1991 Children's Settlement No 1* [2012] EWHC 2397 (Ch), a dispute had arisen between two brothers, Andrew and Martin, who were the sole trustees of a trust set up by their mother. Andrew sought the removal of Martin, and *vice versa*, while both were content for a third-party, Simon, to replace the removed trustee. In deciding to remove Andrew as a trustee, Behrens J stated:

> **Removal of Andrew**
>
> … In my view Andrew's hostility to Martin has had and is continuing to have a *deleterious effect on the administration of the trust*. The most obvious example is in the refusal to finalise the accounts based on the wholly irrational and unreasonable grounds that there is a partnership between Andrew, Martin and Simon despite clear advice that no such partnership exists. However, the matter does not end there. Andrew's attitude throughout the proceedings including the allegations that he has made which have proved unfounded have convinced me that Andrew's hostility is affecting the welfare of the beneficiaries. In those circumstances I have decided to remove Andrew as a trustee. …

> [emphasis added in italics]

76 In addition to the instances elaborated above, trustees may also be removed where one invests based on considerations other than the interests of the beneficiaries (see *Cowan and others v Scargill and others* [1985] Ch. 270), or sets up a rival business that conflicts with his duties as a trustee (see *Moore v M'Glynn* [1894] 1 Ir.R. 74), or ignores one's duties (see *Walker v Walker* [2010] W.T.L.R. 1617).

77 From the foregoing analyses, what emerges as the overarching principle is that while the court will not rewrite the trust, the inherent power of the court is most likely to be exercised to ensure the welfare of the beneficiaries and/or the trust estate. This was underscored by Lord Blackburn in *Letterstedt (now Vicomtesse Montmort) v Broers and another* [1884] 9 App Cas 371 at 386 to 387 as follows:

> …
>
> The reason why there is so little to be found in the books on this subject is probably that suggested by Mr Davey in his argument. As soon as all questions of character are as far settled as the nature of the case admits, if it appears clear that the *continuance of the trustee would be detrimental to the execution of the trusts*, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give his trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If without any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported. It is to be lamented that the case was not considered in this light by the parties in the Court below, for, as far as their Lordships can see, the Board would have little or no profit from continuing to be trustees, and as such coming into continual conflict with the appellant and her legal advisers, and would probably have been glad to resign, and get out of an

> onerous and disagreeable position. But the case was not so treated.
>
> In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their *main guide must be the welfare of the beneficiaries*. Probably it is not possible to lay down any more definite rule in a matter so essentially dependent on details often of great nicety. But they proceed to look carefully into the circumstances of the case.
>
> [emphasis added in italics]

78 The inherent powers of the court, thus, include the power to compel the Defendant to provide his consent to the retirement of the Plaintiff as it is unfair and unreasonable, under the circumstances of this case, not to grant his consent.

Deed of Retirement and Confirmation of Chan Fatt Cheung

79 I turn to the issue of the Deed of Retirement and Confirmation of Chan Fatt Cheung. Based on my findings in Issue 1, Chan Fatt Cheung's letter of resignation would have been ineffective as well. Notwithstanding that, all parties, including the Defendant, had acted on the basis that Chan Fatt Cheung was no longer a trustee from that time henceforth. In this regard, reference can be had to the analysis in *Rajabali* (HC) at [114]–[115]:

> 114 *Davis v Richards & Wallington Industries Ltd* [1991] 2 All ER 563 is authority for the proposition that in certain circumstances a written resignation by a trustee may be effective although it is not in the form of a deed and no other deeds have been executed by the co-trustees accepting it in accordance with the provision of s 43 of the Trustees Act. What matters is whether all relevant parties have acted upon the resignation such that it would be inequitable to later allow them to contend that the trustee who retired nevertheless retained his position. Scott J expressed his understanding of the law as follows:
>
> > All concerned had treated Mr Parson's written resignation as effective. The other trustees had done so.

> Industries, both before and after the appointment of the receivers, had done so. Godwins & Scottish Widows had done so. For the court to hold that, notwithstanding the resignation letter and the common understanding of its consequences, Mr Parsons still owed fiduciary duties and still had fiduciary responsibilities that required him to approve the new rules and to execute the definitive deed, would be to permit the merest technically [*sic*] to override the apparent intentions of all the parties.
>
> 115 In the circumstances of this case, the intentions of the parties clearly were that Mustafa should cease to be trustee as early as possible. They and he acted accordingly and it would not be correct for me to hold that his resignation did not take effect shortly after its date when Rajabali accepted it. …

80 It would, therefore, be inequitable to allow the Defendant to now argue that Chan Fatt Cheung is still a trustee and that the Deed of Appointment appointing both the Plaintiff and the Defendant was ineffective. Thus, notwithstanding that Chan Fatt Cheung's resignation was not in compliance with s 40 of the Trustees Act, his resignation on 9 March 2009 can be considered valid as for all intents and purposes the trustees and those who had dealings with him over the last 10 years acknowledged his discharge from the trust. Further, given the opportunity now, there is no basis for the Defendant to object to the Plaintiff's application to regularise the retirement of Chan Fatt Cheung by way of the Deed of Retirement and Confirmation. It is obvious that the reason for the Defendant's objection is for a self-serving purpose, so that he can rely on Chan Fatt Cheung's resignation as precedence to justify that his Letter of Resignation is valid. I shall elaborate in the next paragraph.

81 I also reject the Defendant's argument that the acceptance of Chan Fatt Cheung's letter of resignation serves as a "representation to the Defendant that a letter of resignation sent by the Defendant would be effective for him to resign

from being a trustee of the estate."[29] He alleges that it is inequitable and unjust for the Plaintiff and Chan Chee Chiu to reject his Letter of Resignation. As stated at [26], Chan Fatt Cheung's letter of resignation was sent to Chan Sze Chuen and Chan Chee Chiu. The Plaintiff and the Defendant both subsequently acted on this purported resignation at the same time, when they were appointed as trustees. Moreover, two wrongs (*ie*, Chan Fatt Cheung's and the Defendant's letters of resignation) do not make it the correct and valid way for a trustee to retire. There is nothing inequitable and unjust to the Defendant.

Conclusion

82 In summary, Clause 3 allows the trustee to resign but it does not prescribe the mode of resignation. The effect of s 2 of the Trustees Act is that s 40 of the Trustees Act supplements Clause 3. This means that any trustee who is desirous to resign will have to comply with the requirements under s 40 of the Trustees Act. Therefore, the Defendant's Letter of Resignation is invalid as it fails to comply with the requirements under s 40 of the Trustees Act.

83 Section 14 of the SCJA does not require the Plaintiff to have a pre-existing order or judgment at the time he files OS 703/2019 seeking the court to direct the Defendant to execute the Deed of Retirement and Confirmation and the Plaintiff's Retirement Deed. In addition, the court also has the powers under s 18 of the SCJA and the inherent powers under O 92 r 4 of the Rules of Court to direct the Defendant to execute the Deeds. The facts disclose that the Defendant attempted to beat the Plaintiff to the resignation by trying to circumvent s 40 of the Trustees Act so that he does not have to face the

[29] Defendant's submissions, p 18 at para 27.

inconvenience of seeking a replacement trustee as required under s 40 of the Trustees Act. The Trustees Act prescribes that after the discharge of the trustee there will be either at least two remaining trustees or a trust corporation. The Defendant has unreasonably and unjustly withheld his consent to allow the Plaintiff to resign. The Plaintiff was desirous of being discharged way before the Defendant tendered his Letter of Resignation.

84 Accordingly, I order the Defendant to execute both the Plaintiff's Retirement Deed and Chan Fatt Cheung's Deed of Retirement and Confirmation within 14 days of the date of this order, failing which the Registrar of the Supreme Court is hereby directed to execute the Deeds on the Defendant's behalf.

85 I shall now hear parties on the issue of costs.

Tan Siong Thye
Judge

Menon T P B (Wee Swee Teow LLP) for the plaintiff;
Paul Wong Por Luk and Lau Wen Jin (Dentons Rodyk & Davidson LLP) for the defendant.