IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 49

Suit No 674 of 2018

Between

Lim Heng How

… *Plaintiff*

And

Lim Meu Beo

… *Defendant*

JUDGMENT

[Probate and Administration] — [Distribution of assets] — [Delay]
[Probate and Administration] — [Grant of probate] — [Revocation]
[Probate and Administration] — [Administration of assets] — [Duties]
[Restitution] – [Unjust enrichment] – [Pleadings] – [Mental incapacity]

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Lim Heng How
v
Lim Meu Beo

[2020] SGHC 49

High Court — Suit No 674 of 2018
Audrey Lim J
17–20 September, 26 December 2019

9 March 2020 Judgment reserved

Audrey Lim J:

Background

1 The plaintiff ("P") and the defendant ("D") are brother and sister respectively. The dispute ("the Suit") relates to the estates of their late mother ("Mdm Yap") and late sister ("Wendy"), and matters pertaining to their sister ("ML") who has been incapable of managing her affairs from birth and whom P is her court-appointed deputy since 29 February 2016. Mdm Yap had four daughters and three sons. The Suit proceeded on both liability and damages.[1]

2 P brought various claims against D in three differing capacities. First, P, in his capacity as co-executor of Mdm Yap's estate ("Executor") claimed

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[1] 18/9/19 NE 115.

against D in her capacity as co-executor of the estate ("Executrix"). Second, P, as a beneficiary of Wendy's estate, claimed against D as the administratrix of the estate. Third, P made claims against D on ML's behalf as ML's court-appointed deputy. In turn, D made various counterclaims against P, Mdm Yap's estate and ML. Finally, both P and D sought a declaration that the other had breached his/her duties in relation to Mdm Yap's estate and the removal of one another as Executor/Executrix of the estate. I will deal with each party's claims in turn.

P's claims against D for breach of duty as Executrix of Mdm Yap's estate

3 Mdm Yap passed away on 22 February 1995 and probate was obtained on 26 July 1995. In her will, Mdm Yap bequeathed her assets as follows:

(a) a property in Malaysia ("KL Property") to her four daughters D, ML, Wendy and Tracey in equal shares;

(b) a HDB flat ("Clementi Flat") to be sold and the sale proceeds to be used to buy a 3-room HDB flat for ML, with the balance proceeds to be distributed equally to D, Wendy and Tracey; and

(c) her personal properties to be distributed to her seven children in stated proportions.[2]

4 P and D opened two estate accounts, an OCBC account ("Mdm Yap's OCBC Account") in 1996 and an RHB account in Johor, Malaysia ("Johor

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[2] P's affidavit of evidence-in-chief ("P's AEIC) at pp 86–87.

RHB Account") in 2008/2009.[3] P claimed that D insisted on solely managing Mdm Yap's estate assets and monies, and P was kept in the dark regarding the KL Property and it was not until later that he discovered that it had been sold in 2009.[4] D refused to provide P information on Mdm Yap's estate, and when P asked D for bank statements relating to the estate, she produced only bank statements for Mdm Yap's OCBC Account in September 2014. P also alleged that D then closed Mdm Yap's OCBC Account and the Johor RHB Account without his knowledge or consent, and commingled Mdm Yap's estate monies with her personal funds by transferring monies from the Johor RHB Account to D's Standard Chartered Bank account ("D's SCB Account").[5]

5 The Clementi Flat was only sold in 2014. P claimed this was due to D's delay and this led to a delay in purchasing a new flat for ML. In April 2013, D commenced Originating Summons No 311/2013 ("OS 311") to seek sole conduct of the sale of the Clementi Flat. OS 311 was resolved by consent on 4 September 2014, with parties to cooperate in the sale of the flat for $831,000 and for its proceeds to be utilised to purchase a 3-room HDB flat for ML ("2014 Consent Order"). The Clementi Flat was subsequently sold on 12 November 2014. Meanwhile, D had purchased another flat ("West Coast Flat") on 18 January 2008 in ML's name,[6] which P claimed he was unaware of until the recording of the 2014 Consent Order.[7] Pursuant to the 2014 Consent Order, a cheque was issued for $400,000 (the amount set aside from the sale

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3 P's AEIC at [30] and [38].

4 P's AEIC at [31].

5 P's AEIC at [33] – [39] and [43]–[51].

6 List of Issues dated 15 October 2019 ("List of Issues").

7 Reply and defence to counterclaim (Amendment No 1) ("Reply") at [35(b)]; P's AEIC at [93].

proceeds of the Clementi Flat) for D to sign for the purchase of a new flat for ML but P claimed that D refused to sign it. When the Suit commenced in July 2018, this issue remained outstanding but was subsequently resolved by consent on 14 November 2018 ("2018 Consent Order"). The 2018 Consent Order provided that the West Coast Flat would be sold and: (a) some $235,000 would be paid to D upon proof that she had incurred this amount relating to the purchase of that flat; (b) the balance sale proceeds would be distributed in accordance with Mdm Yap's will; and (c) a new flat would be purchased for ML.[8] The West Coast Flat was sold on 19 July 2019 and a new flat purchased for ML on 18 March 2019 ("ML's New Flat").[9]

6 Next, P claimed that D should return $12,396.53 to Mdm Yap's estate as she had purportedly taken this sum from the estate to repay one Yap Ngan Thye ("YNT") for a loan made to Mdm Yap ("YNT Loan"). P claimed that the YNT Loan had been repaid by Mdm Yap to YNT before her demise.

7 P alleged that D had thus breached her duties as Executrix of Mdm Yap's estate.[10] D had unilaterally closed Mdm Yap's estate accounts; delayed the sale of the Clementi Flat, resulting in a delay in purchasing a flat for ML; failed to inform all the siblings in 2008 that she had purchased the West Coast Flat for ML and misled the court in OS 311. D had also misappropriated Mdm Yap's estate money by claiming to use the money to repay the YNT Loan; commingled Mdm Yap's estate monies with D's monies and Wendy's estate monies; and refused to produce bank statements pertaining to Mdm Yap's

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8 P's AEIC at pp 81–83.

9 List of Undisputed Facts (26 December 2019) ("Undisputed Facts").

10 List of Issues at [1(a)]–[1(h)].

estate and of D's bank accounts where her monies were commingled with Mdm Yap's estate monies. Finally, P claimed that he was prevented from administering Mdm Yap's estate. I will deal with each of P's claims in turn.

Unilaterally closing Mdm Yap's estate accounts

8 P claimed that Mdm Yap's OCBC Account and Johor RHB Account were unilaterally closed by D without his knowledge or consent, and without rendering any proper accounts to P or the beneficiaries.[11]

9 I find that P has failed to show that Mdm Yap's OCBC Account was closed without his knowledge or consent. The account was opened on 30 May 1996 and closed on 25 September 1998. D explained that the account was closed with "two signatures" and the balance of $1,403.87 was withdrawn by both P and D who signed the withdrawal slip and P had agreed that the money would be used to reimburse D for the administration of Mdm Yap's estate.[12] I preferred D's evidence to P's. P and D agreed that two signatories (*ie*, both P and D) were required to withdraw money from the account or to close the account.[13] As P's authority would have been required to close Mdm Yap's OCBC Account, I disbelieve that P did not know about or consent to the closure of the account and the withdrawal of the balance sum to reimburse D for estate expenses. P's assertion that "it *goes without saying* that [P's] signature *would have to have been* forged by [D] in order for her to have

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11 P's AEIC at [49]–[51]; Statement of Claim (Amendment No 2) ("SOC") at [16(b)] and [34]; D's closing submissions ("DCS") at [37]. List of Issues at [1(b)] and [1(h)].

12 17/9/19 NE 55; 18/9/19 NE 102 and 137.

13 17/9/19 NE 52 and 55; 18/9/19 NE 103.

unilaterally closed the account"[14] (emphasis mine), is but a bare assertion. The onus is on P to prove his claim. He was a signatory of the account and could have obtained the necessary documents to support his claim, but he did not.

10 As for P's claim that Mdm Yap's OCBC Account was closed without rendering proper accounts, P did not explain how this was so. On the contrary, P agreed that there was no irregularity in the handling of the account monies and that the monies had been fully and properly accounted for. P accepted that the monies withdrawn from Mdm Yap's OCBC Account when the account was live was used only to pay the mortgage of the Clementi Flat and approved by both D and him.[15]

11 That said, D did not dispute that when Mdm Yap's OCBC Account was closed, she had taken the balance of $1,403.87. She claimed that this was to reimburse her expenses relating to Mdm Yap's estate. D tendered a table of expenses that she had prepared in 2012 in relation to the estate ("Table of Expenses"). These expenses amounted to $3,078.84 of which she used the $1,403.87 to partially reimburse herself.[16] I find that when Mdm Yap's OCBC Account was closed on 25 September 1998, D did not have any basis for keeping the entire sum of $1,403.87. The Table of Expenses (and supporting documents) showed that only seven of 13 items (items 1 to 6 and 12) were incurred *before* 25 September 1998 and totalled $1,142.60 and which was less than the $1,403.87 that D had taken.[17] It is unclear when the "running

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14 P's AEIC at [50].

15 17/9/19 NE 52–55.

16 18/9/19 NE 104–109; D's affidavit of evidence-in-chief ("D's AEIC") at p 1483.

17 D's AEIC at pp 1483–1488 and 1495.

expenses" for item 13 were incurred, although P did not dispute that D made the payments.[18]

12 Nevertheless, D had produced supporting documents for items 7 to 11 of the Table of Expenses incurred after September 1998 totalling $1,436.24.[19] I accept that D had paid for all the above items and which related to Mdm Yap's estate. Even by P's claim, D had administered the estate and paid for items 7 to 11 and 13.[20] P also conceded that the $1,403.87 withdrawn from Mdm Yap's OCBC Account had been fully and properly accounted for.[21] However this did not excuse D's actions in failing to properly account for the $1,403.87 at the time Mdm Yap's OCBC Account was closed. The question is whether, by this, I should remove D as Executrix – an issue which I will deal with later.

13 As for the Johor RHB Account, I find that P has failed to prove that D had closed the account without his knowledge or consent. This account was opened around end 2008, and D claimed that it was closed in late 2009. The monies in that account could be withdrawn by P or D and did not require the parties' joint consent.[22] P agreed that he opened the Johor RHB Account with D, and was able to obtain bank statements from the bank pertaining to the account. He also accepted that the sale proceeds from the KL Property, which were deposited into the Johor RHB Account, has been distributed to the beneficiaries and that the monies in the Johor RHB Account have been

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18 18/9/19 NE 124–125.

19 D's AEIC at pp 1483, 1489–1494.

20 18/9/19 NE 124–125.

21 17/9/19 NE 55.

22 18/9/19 NE 146.

accounted for.[23] However, P did not provide any details for his assertion that the account was closed without his knowledge or consent. There was no evidence adduced as to whether both P and D must authorise or consent to the closure of the Johor RHB Account, or whether authority from either of them would suffice. As P and D were joint account holders, I infer that the bank would require both their consent/authorisation to close the account.

Delay in sale of Clementi Flat

14 P claimed that D had delayed the sale of the Clementi Flat which was only sold on 12 November 2014, and this in turn led to a delay in purchasing a flat for ML. P thus prayed for D to be removed as Executrix.

15 It is unclear how D had caused delay in the sale of the Clementi Flat or failed to act with reasonable diligence or in the best interest of the beneficiaries. P claimed that after Mdm Yap passed away, the daughters agreed that Wendy and ML would continue to reside at the Clementi Flat. It was for this reason that the sale of the Clementi Flat was put on hold, and P moved in around December 2004 until 3 November 2014 to, as he claimed, become ML's caregiver.[24] Hence, even by P's own assertion, the sisters (being the beneficial owners of the Clementi Flat or sale proceeds) had agreed to allow Wendy and ML to continue residing at the Clementi Flat. As Wendy had resided there until she passed away in December 2005, it could not be said that D had caused delay or acted to the detriment of the beneficiaries up to that date.

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23 17/9/19 NE 31–32, 55–56.

24 P's AEIC at [53].

16 Additionally, I am not satisfied that D had caused delay in selling the Clementi Flat even after Wendy had passed away, and I find that it was P who had delayed the sale by refusing to move out. Contrary to P's initial assertion that he wanted the flat to be sold, P admitted in court (albeit reluctantly) that he had moved to the flat in December 2004 partly because his florist business suffered heavy losses and failed.[25] This supported D's assertion that in 2004 P had requested to move into the Clementi Flat because his business had failed and he had no place to stay.[26] I found P to be evasive when questioned about his financial situation at the time he moved into the Clementi Flat. He claimed that he could not recall that a suit had been commenced against him in 2009 relating to his florist business. He also claimed that the credit card debt he incurred in 2010 was a credit card given to his mother, thus imputing that Mdm Yap had incurred the debt some 15 years *after* she had passed away, which did not make any sense.[27] I find that P had moved into the Clementi Flat and remained there because he was in financial difficulties. Indeed, P had no place of his own as he had previously been renting a residence, and if he had truly been concerned to look after ML as he claimed, he would have moved into the Clementi Flat soon after Mdm Yap had passed away in 1995.

17 The correspondence also showed that it was P who had delayed the sale of the Clementi Flat.[28] On 3 July 2012, D informed P's lawyers that she hoped that the sale of the flat could be proceeded without any further delay, and asked P to confirm that he would meet the housing agent to sign an

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25 P's AEIC at [54]; 17/9/19 NE at pp 10–12.

26 D's AEIC at [65].

27 17/9/19 NE at pp 10–15.

28 Defendant's cross-examination bundle ("DCB") at pp 59–66; 17/9/19 NE 18–20.

agreement for its sale. P's lawyers responded on 3 August 2012 (one month later) stating that they were in the midst of taking P's instructions. On 31 August 2012, D informed P's lawyers that if she did not hear from P by 10 September 2012, she would proceed to take legal action against him. P still did not respond and on 19 December 2012, D wrote to P's lawyers to inform them that she would be applying to the court to remove P as Executor. P's unbelievable explanation for his silence was to blame his lawyers by stating that he never saw any of the letters from D.[29]

18 That D had to then commence OS 311 on 9 April 2013 for the court to empower her to sell the Clementi Flat and for P to vacate the flat, showed P's lack of cooperation in selling the flat. I accept that D would not have done this if P had agreed to deliver vacant possession of the Clementi Flat earlier.[30] This matter was subsequently resolved by the 2014 Consent Order, in which P agreed to vacate the Clementi Flat by no later than two weeks before the completion of the sale of the flat. The flat was to be sold on 12 November 2014, and even though P was given notice to vacate it by 29 October 2014, he did not do so until 3 November 2014.[31] I also find that the Clementi Flat was not sold by P's effort. Although P claimed that he had engaged an agent to market and sell the Clementi Flat, the 2014 Consent Order recorded that it was Tracey (the "intervener") who had appointed the housing agent for its sale.[32] Whilst P claimed that an interested buyer had proposed $800,000 for the Clementi Flat and that P had counter proposed $820,000, the flat was sold for

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29 17/9/19 NE 19–20.

30 D's AEIC at [75].

31 17/9/19 NE 21–24; DCB at pp 136–138; Undisputed Facts.

32 P's AEIC at [59] and pp 119–120 and 123–129; 18/9/19 NE 173.

an even higher price of about $831,800 which was based on D's counter offer to the buyer of $840,000.[33]

19 To conclude, P's claim that D had delayed the sale of the Clementi Flat is not borne out by the evidence. On the contrary, I find that P had delayed the sale of the flat. D did not reside at the Clementi Flat when Mdm Yap passed away but had been staying at a flat at West Coast Road which she had purchased in 1991 in joint names with ML ("D's Flat"), whilst P had moved into the Clementi Flat in December 2004 and only vacated it on 3 November 2014. As a beneficiary to the remaining proceeds of sale of the Clementi Flat (after the purchase of a substitute flat for ML), it would not have been in D's interest for the sale of the flat to be delayed. On the other hand, P had no beneficial entitlement in the proceeds of the Clementi Flat but had gained by staying there rent-free. Being an Executor, P had breached his duty in failing to act in the interest of the beneficiaries, by refusing to move out of the Clementi Flat thus delaying its sale and by benefitting from staying rent-free.

Misleading the court in OS 311/2013

20 P asserted that D had misled the court in the recording of the consent order in OS 311, and had failed to come to court with clean hands.[34] In OS 311, D had attested on an affidavit affirmed in December 2012 that she intended to buy a 3-room HDB flat for ML as per Mdm Yap's will.[35] However, D had already purchased the West Coast Flat in January 2008 in ML's name but did not inform P or the court in OS 311. P claimed that he

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33 18/9/19 NE 174.

34 SOC at [9], [10] and [15]; P's AEIC at [92]–[93].

35 3AB 898 (D's affidavit dated 6 December 2012 at [24]).

discovered the purchase of the West Coast Flat only *during* the recording of the 2014 Consent Order in September 2014 and D had deliberately concealed the West Coast Flat to mislead the court into thinking that she had to sell the Clementi Flat before purchasing a replacement flat for ML.[36]

21 I find that P has failed to prove that D had deliberately concealed the West Coast Flat in order to mislead the court in OS 311 into granting the 2014 Consent Order. First, by D's lawyers' letters dated 16 May 2014 and 9 June 2014, P was informed that D had purchased the West Coast Flat for ML in anticipation of ML's relocation upon the sale of the Clementi Flat.[37] This was some months before the recording of the 2014 Consent Order. When confronted with the evidence, P then stated that he was informed about the West Coast Flat by his lawyers around 29 May 2014.[38] If so, P's assertion that he did not know about the West Coast Flat until September 2014 was clearly false. Second, even if the existence of the West Coast Flat was revealed only during the recording of the 2014 Consent Order, it is unclear how the court was misled into granting the order as it would have known about the West Coast Flat during the recording of the order. Third, nothing in D's affidavit filed in OS 311 would suggest a deliberate concealment or misleading of the court. The 2014 Consent Order was also granted *by consent of P*, who had known of the West Coast Flat months before the order was recorded.

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36 Reply at [35(b)]; 17/9/19 NE 36–37.

37 DCB at pp 100–104.

38 17/9/19 NE 38–43.

Wrongful repayment of YNT Loan

22 P pleaded that D's claim of having used Mdm Yap's estate monies of some $12,396.53 to repay the YNT Loan could not be true, as Mdm Yap had repaid YNT prior to her passing and YNT had confirmed as such. Hence the cheque for the purported repayment of the YNT Loan, if given to YNT, was never encashed; alternatively D had deposited the monies into a joint account held with YNT which D subsequently transferred to herself. P thus sought reimbursement of $12,396.53 with interest to Mdm Yap's estate.[39] D stated that after Mdm Yap had passed on, YNT informed D that the loan remained outstanding. D told P, who did not object to the repayment and even co-signed (with D) an Application for Funds Transfer form ("Funds Transfer Form") to withdraw $12,396.53 from Mdm Yap's Citibank estate account ("Mdm Yap's Citibank Account") which D then forwarded to YNT in around August 1995.[40]

23 I find that P has failed to prove his allegation. First, he has not shown that the loan had been repaid by Mdm Yap before her passing. He merely "believe[d]" that the loan was repaid by Mdm Yap without adducing any evidence in support. This is even if Mdm Yap had the financial means to repay YNT when she was alive, as Ms Wong (counsel for P) submitted.[41] Second, P failed to show that YNT had confirmed that the loan had been repaid by Mdm Yap. He claimed that sometime in 2014, Tracey had spoken on the telephone with YNT (in the presence of P, D and their brother James) whereby YNT stated that the loan had been repaid by Mdm Yap prior to her passing, and that

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39 SOC at [28]–[31] and [51(f)]; P's AEIC at [75]–[86].

40 D's AEIC at [50]–[53]; 19/9/19 NE 10–11.

41 P's AEIC at [81]; DCS at [85]–[86].

P, D and James had heard this conversation ("the Teleconversation").[42] D denied that the issue of loan repayment was mentioned in the Teleconversation.[43] Yet, P did not call YNT, Tracey or James to testify about the Teleconversation and confirm his version of events. Whilst P had adduced emails purportedly from James to D's lawyers in 2015 referring to the Teleconversation,[44] I gave no weight to them as James was not called to testify. P also claimed that YNT had met and informed him in 2014 that Mdm Yap had repaid the YNT Loan. However, he did not call YNT to corroborate this meeting. Indeed, P made other allegations regarding YNT, but did not call YNT to answer to them. For instance, YNT had made a Statutory Declaration[45] in January 2015 where she stated that the sum of $12,380.48 had still been owing when Mdm Yap passed away but that it has since been repaid by D. P accepted that the Statutory Declaration was signed by YNT but made an unsubstantiated allegation that YNT did not know what she had signed.[46] To avoid doubt, I did not rely on the contents of YNT's Statutory Declaration in coming to my findings, given that YNT had not testified.

24 On the other hand, D had exhibited the Funds Transfer Form signed by P and her, and a copy of a bank draft evidencing money transferred to YNT, to substantiate her account of events.[47] P admitted that the signature on the Funds

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42 P's AEIC at [78].

43 19/9/19 NE 16.

44 P's AEIC at pp 173–175.

45 1AB 262.

46 19/9/19 NE 26–27; P's AEIC at [83].

47 DCB 11–13.

Transfer Form "look[ed] like [his] signature",[48] but claimed that he did not sign the Form which I disbelieve. In cross-examination, D stated that she could not recall where P had signed the Funds Transfer Form.[49] Even if the Form was signed in blank (as was P's alternative position put in cross-examination to D), this begs the question as to why P would have agreed to do so and, in any event, a copy of the bank draft made in YNT's favour supported D's claim that the monies were paid to YNT. As the funds transfer and withdrawal took place some 20 years ago in 1995, D could not be expected to remember the exact details.

25 P has failed to prove his claim that D was derelict in her duty as Executrix by using Mdm Yap's estate monies to discharge a loan which no longer existed. His claim that the cheque given by D to YNT was never encashed by YNT or that it was paid into a joint account held by D and YNT were but bare allegations.

Commingling of Mdm Yap's estate monies with D's monies and Wendy's estate monies

26 P pleaded that D had commingled Mdm Yap's estate monies with Wendy's estate monies and D's monies in D's SCB Account and had used D's SCB Account for the administration of Mdm Yap's estate.[50] P thus asked for D's SCB Account statements to be provided. It was not disputed that the rental proceeds for the KL Property were deposited into a RHB bank account in

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48 17/9/19 NE 49–50.

49 19/9/19 NE 31–32.

50 SOC at [16(a)], [33] and [47(v)]; P's AEIC at [43]–[46].

Kuala Lumpur, Malaysia ("KL RHB Account").[51] D claimed that the rental proceeds were then transferred to the Johor RHB Account. It was also not disputed that the sale proceeds from the KL Property were directly deposited into the Johor RHB Account. The rental and sale proceeds of the KL Property ("KL Property Proceeds") were then placed in D's SCB Account, and monies from Wendy's estate was also transferred to D's SCB Account.[52] D explained that she placed the monies from Mdm Yap's and Wendy's estates in the same account to consolidate them for distribution,[53] but they were never mixed with her personal funds, as D's SCB Account was used only to hold estate monies.

27 I find that D had breached her duty not to commingle estate funds with her own money or with monies of another estate. D accepted that she had such a duty. Nevertheless, and although D should have kept proper accounts of the receipts and expenditure of the estate, the parties accepted that the total amount for distribution from Wendy's estate to each beneficiary was $92,902.38. The parties also accepted that the total amount from Mdm Yap's estate had already been properly distributed, save for some $334,754.83 and $45,653.89 which were to be utilised for specified purposes, and which were in any event not commingled.[54] Moreover, D explained that she could no longer obtain bank statements or records of D's SCB Account, as the bank did not issue passbooks or hard copy statements and e-statements could only be

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51 Undisputed Facts.

52 Undisputed Facts; 18/9/19 NE 142, 146 and 163; 19/9/19 NE 80; P's AEIC at p 90 (D's lawyer's letter dated 11 September 2014 at [13]–[14]).

53 18/9/19 NE 146–147.

54 Undisputed Facts at s/n 5.

retrieved for up to one year but which D did not obtain.[55] In any event it was not disputed that D's SCB Account was closed in September 2014. As such, it would be futile to order D to produce D's SCB Account statements.

Failure to produce bank statements for accounts used to hold estate monies

28 P claimed that up to 2008, he had made numerous oral requests for D to produce bank statements for the KL RHB Account, Johor RHB Account and D's SCB Account which contained estate monies, but D failed or refused to do so. Despite correspondence exchanged around September 2014, D has failed to provide the Johor RHB Account statements. D had thus failed to render proper accounts to P and the beneficiaries of Mdm Yap's estate and should be removed as Executrix.[56] D claimed that P had requested for bank statements only in 2014, and in any event, P could also have obtained the bank statements as Executor of Mdm Yap's estate.[57]

29 P has failed to show that he had made numerous oral requests up to 2008 for bank statements from D. Also, despite D's assertion to the contrary, P could not procure bank statements for the KL RHB Account or D's SCB Account as he was not an account holder. That said, trustees and executors are under a duty to keep accounts of the trusts, to be constantly ready with the accounts, and to allow the beneficiaries to inspect them as requested. Beneficiaries are entitled, within proper bounds, to be furnished with an

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55 18/9/19 NE 148–150; 1AB 346 (Standard Chartered Bank's letter dated 29 December 2014 pertaining to D's SCB Account).

56 SOC at [8] and [16(b) to (d)]; P's AEIC at [36]–[39]; P's closing submissions ("PCS") at [131]–[138].

57 D's AEIC at [38] and [111]; DCS at [50].

account of the funds in the trust/estate, and this duty is not contingent on any allegation or establishment of breach of fiduciary duty (*Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 at [86]–[87]). Mr Yap (D's counsel) and Ms Wong both agreed that an executor/executrix must keep proper accounts with supporting documents.[58]

30 I find that D had failed to keep a proper account of the KL Property Proceeds and Mdm Yap's estate monies which were commingled with Wendy's estate monies in D's SCB Account, and failed to retain the bank statements at the material time (to show the rent paid into the KL RHB Account and the monies that were transferred from the KL RHB Account to the Johor RHB Account). This is even if the beneficiaries did not ask for an account of these matters until 2014 or even if the banks did not issue hardcopy statements. In contrast, D had meticulously kept other records pertaining to the estate, such as Mdm Yap's OCBC Account statements as far back as 1996, the Funds Transfer Form (dated 1995) and the bank draft made in favour of YNT to repay the YNT Loan (dated 1995).[59] D had also prepared a Table of Expenses (see [11] above) and retained documents to support the expenses incurred by her for the estate, such as mortgage records of the Clementi Flat, receipts for works done on the Clementi Flat, cheque stubs and even for sums incurred as little as a few dollars.[60]

31 Additionally, I find that D did not make sufficient attempts to procure the bank statements for the KL RHB Account or Johor RHB Account when

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58 18/9/19 NE 19–21.

59 DCB 12, 122–135.

60 D's AEIC at pp 1483–1495.

P's lawyers had requested for them sometime in 2014. The KL RHB Account was closed in December 2008, and D claimed that RHB Bank had never issued bank statements. Then, on 11 September 2014, D's lawyers had informed P's lawyers that D had written to RHB Bank on 1 September 2014 for a copy of the transactions in the KL RHB Account from 1995 till the closure of the account, but had received no response from the bank.[61] Whilst D had stated in the same letter that she would continue to correspond with RHB Bank on the matter, there was no evidence that she made any attempts to do so, despite having subsequently received a letter from RHB Bank to say that it was in the midst of processing her request.[62] In relation to the Johor RHB Account, I accept that P, as Executor of Mdm Yap's estate and a joint signatory of that account, could have obtained the bank statements himself but did not. D had also stated that she had never received any bank statements pertaining to this account (which has also been closed), and although she had on 23 August 2017 written to RHB Bank for the bank statements, she had not received a response from the bank. Again, there was no evidence that she had followed up with the bank thereafter to check on the matter.

32 I also find that D had refused to procure the bank statements of D's SCB Account when P requested for them in 2014, and in breach of her duties as Executrix. Although D's SCB Account did not have the feature of a passbook or hardcopy statements, Standard Chartered Bank had informed D on 29 December 2014 that she was able to view the transaction history of that account for up to a year.[63] Yet D did not attempt to obtain the transaction

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61 P's AEIC at p 90 (D's lawyer's letter dated 11 September 2014 at [10]); 1AB 342

62 P's AEIC at pp 111 and 116 (D's lawyer's letter dated 13 November 2014 at [5]).

63 1AB 346.

history of the latest year despite P's request in 2014 for the statements of those accounts and despite D informing P's lawyers on 11 September 2014 that D was attempting to procure the documents from the bank.[64] D could not give a satisfactory explanation as to why she did not procure the bank statements at that time although she had a duty to do so.[65]

33 As to whether D should be removed as Executrix in the light of her conduct above, I will deal with this later.

Preventing P from administering Mdm Yap's estate

34 P claimed that he was prevented from exercising his role as Executor of Mdm Yap's estate as D had insisted in solely handling the estate accounts; that all the bank statements were addressed to the Clementi Flat or D's Flat with D holding the letter box keys; that D had refused to furnish the bank statements of the estate accounts despite P's numerous requests; that D had unilaterally dealt with the estate monies; and that D had failed to consult and act jointly with P in administering the estate.[66] To support his assertion that he was prevented from co-administering Mdm Yap's estate, P painted D as dominant and aggressive and who resorted to violence and lies to achieve her goals. D would fly into a rage and shout at P whenever he made enquiries about the estate; she had a poor relationship with ML and physically and verbally abused ML such that ML was terrified of her; she would scold, beat

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64 P's AEIC at p 90 (D's lawyer's letter dated 11 September 2014 at [13]); 18/9/19 NE 150–151.

65 19/9/19 NE 73.

66 SOC at [5]–[8], [12] and [34].

and slap Mdm Yap; and she even flew to Malaysia and punched YNT in the face in relation to a matter pertaining to Wendy.[67]

35 I find P's allegations of abuse and violence to be fabricated. If D had constantly abused Mdm Yap whilst the latter was alive, it was unlikely that Mdm Yap would have appointed D as Executrix of her estate when she had so many other adult children and, alternatively, she could have appointed P as the sole executor. Despite P's claim of D's constant abuse of Mdm Yap, Mdm Yap had left D a significant portion of her estate (*ie*, her real properties and a share in her personal properties) whilst leaving to her sons only her personal properties.[68] P also claimed that D had constantly abused ML until ML hardly spoke to D, and that P was closest to ML and looked after her. Yet, the evidence showed that D had financially supported ML by paying her insurance policies, Medisave top-ups (see [84] below) and medical bills.[69] Further, it is strange that YNT would have executed the Statutory Declaration to support D's account relating to the YNT Loan, if D had punched YNT earlier leading to a souring of relationship between them since 2007. I disbelieve that D had been so aggressive to P such that he was afraid to even administer Mdm Yap's estate or was prevented from so doing. P bore the burden of proving his assertions and he had failed to adduce concrete evidence to prove them.

36 On the contrary, I find that P was not interested in performing his functions and duties as Executor.

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67 SOC at [6]; P's AEIC at [9], [12], [17], [23], [56] and [98].

68 17/9/19 NE 29.

69 17/9/19 NE 117–118.

(a) P conceded that D had handled everything pertaining to the estate in the past 20 years.[70] D had liaised with lawyers to obtain the grant of probate for Mdm Yap's estate and to reseal the grant in Malaysia. She made payments on behalf of Mdm Yap's estate, such as the outstanding mortgage on the Clementi Flat and the service and conservancy charges (see [100] to [104] below), whilst there was no evidence that P had bothered to do so. She also managed the KL Property, including finding tenants and going to Malaysia to execute the tenancy agreements,[71] and there was no evidence that P had attempted to assist in this regard.

(b) Even as early as May 1996, when D and P had agreed to close Mdm Yap's Citibank Account, P did not bother to verify the payments made from that account after Mdm Yap's demise and prior to the closing of the account to see if they were proper or not.[72]

(c) P admitted that, as Executor, he could have approached the banks to obtain bank statements for the estate accounts (as the bank accounts were held in the joint names of P and D) but he did not do so. As Executor, he could also obtain documents directly from the relevant authorities.[73] Hence, if P had genuinely intended to administer Mdm Yap's estate and was concerned about the accounts, he could have approached the banks and authorities directly to obtain the relevant information. P's attempt to procure from D bank statements pertaining

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70 17/9/19 NE 87.

71 17/9/19 NE 78, 87; 18/9/19 NE 158.

72 17/9/19 NE 46–47.

73 17/9/19 NE 32–36; 144–145.

to Mdm Yap's estate came about only sometime in 2014, and I had rejected his assertion that he had been making verbal requests even up to 2008 (see [29] above).

(d) Although P claimed that D had inflicted violence on him, it was D who had obtained a court personal protection order ("PPO") against P in October 2011. I accept D's claim that when she had informed P that he would have to move out of the Clementi Flat for it to be sold, P had turned aggressive and violent towards her, which led to D obtaining the PPO.[74] I disbelieve P that he had voluntarily agreed to the PPO because he wanted to facilitate the sale of the Clementi Flat in 2011, because, as I had found, P had delayed its sale and the Clementi Flat was only sold in 2014 after D had commenced OS 311. Indeed, P had failed to act in the best interest of the beneficiaries of the Clementi Flat (or proceeds thereof) by refusing to move out, delaying its sale and benefitting from staying rent-free.

(e) Pertinently, whilst P claimed that D had excluded him from administering Mdm Yap's estate since Mdm Yap passed away in 2005 (a claim which I did not believe), he had never taken any action to remove D as Executrix until he commenced the Suit in 2018.[75]

ML's claim as beneficiary of Mdm Yap's estate

37 P then made various claims against D on ML's behalf, and in ML's capacity as beneficiary of Mdm Yap's estate, namely that: (a) D had caused

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74 DBC 18; D's AEIC at [68].

75 18/9/19 NE 8–10.

delay in the purchase of ML's New Flat; and (b) D had caused delay in distributing the KL Property Proceeds to ML. As such, D should be removed as Executrix of Mdm Yap's estate for her breach of duties.[76]

Delay in purchase of ML's New Flat

38 As stated above, pursuant to the 2014 Consent Order, the parties were to cooperate in arranging for the sale of the Clementi Flat and the sale proceeds to be utilised to purchase a 3-room HDB flat for ML. In this regard, they agreed to set aside $400,000 of the sale proceeds to purchase the flat for ML. P claimed that when a cheque for $400,000 was prepared in favour of ML and forwarded to D to sign, D refused to do so, and only agreed to cooperate in the purchase of a flat for ML following a mediation in 2018 which resulted in the 2018 Consent Order. ML's New Flat was finally purchased on 18 March 2019. P thus claimed on ML's behalf that D pay accrued interest on the $400,000 at 5.33% per annum from the date of the deposit of the monies in Mdm Yap's estate account until the date of payment to ML.[77]

39 It is unclear what ML's pleaded cause of action was. If the claim is that ML has suffered loss as she had no place to stay due to the delay in the purchase of ML's New Flat, this was not borne out. ML was staying at the Clementi Flat until it was sold and subsequently at the West Coast Flat until ML's New Flat was purchased. If the claim is that ML was *entitled to $400,000* and thus had suffered loss due to its devaluation in the meantime (as Ms Wong submitted in closing submissions), then this claim also fails. ML was never entitled to $400,000 under Mdm Yap's will. The will provided for a

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[76] List of Issues at [2(i)(iii)], [2(j)(ii)] and [2(k)]; SOC at [51(c)], [51(d)] and [51(l)].

[77] SOC at [17], [24], [27] and [51(d)].

3-room HDB flat to be purchased for ML from the sale proceeds of the Clementi Flat. The $400,000 was an estimated sum set aside after a negotiated settlement to buy a flat for ML to give effect to Mdm Yap's will, and in fact ML's New Flat was purchased for $308,000. It is unclear what cause of action ML has on the $400,000 and what loss she had suffered. Consistent with Mdm Yap's wishes to provide for ML, ML had a place to stay throughout and a flat that belonged to her thereafter. For these reasons, I dismiss the claim.

Delay in distributing KL Property Proceeds

40 P claimed that although D had received the KL Property Proceeds by 2009, ML did not receive her share of the proceeds (of $38,973.58) until 22 September 2014. Hence ML suffered loss in interest for late payment of her share of the KL Property Proceeds of Mdm Yap's estate from 2009 until September 2014.[78] As a preliminary point, D submitted that P did not plead for D to pay interest on the late distribution of Mdm Yap's estate to ML.[79] However, I find that such a relief has been sufficiently prayed for, as P had prayed for an order that D pay all accrued interest in Mdm Yap's and Wendy's estate accounts.[80]

41 The KL Property was sold on 15 December 2008 and by around September 2009, D had received all the KL Property Proceeds and placed them in D's SCB Account. The parties agreed that the KL Property Proceeds

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78 List of Issues at [2(j)]; SOC at [47(v)]; P's AEIC at [86]–[91]; 4AB 1840; PCS at [151]–[153].

79 DCS at [61].

80 SOC at [51(l)].

have essentially been accounted for.[81] D claimed that she did not distribute ML's share of the proceeds as ML lacked capacity and had no court-appointed deputy then, and although ML and D had a POSB bank account held in their joint names ("D-ML POSB Account") she could not put ML's share of the KL Property Proceeds in there as the account also contained D's own money.[82]

42 The mere fact of delay in the distribution of sums held by a trustee/administrator/executor of an estate is insufficient to give rise to liability to pay interests on that sum, unless he *without good reason* holds on to the money that he ought to have paid over to the beneficiary entitled to it (*Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 21st Ed, 2018) at para 52–51). As Lord Chelmsford LC held in *Blogg v Johnson* (1867) LR 2 CH App 255 at 288:

> [T]hat where an executor or trustee *unnecessarily retains* money in his hand which he ought either to have invested or to have paid over to the person entitled to it, he will be made to pay interest for it. [emphasis added]

43 The High Court of New Zealand in *Re Allen (deceased); Lewis and another v Vincent and others* [2007] 10 ITELR 506 at [38] has also held that a trustee of an estate is liable to pay interests on an unjustified delay in the distribution of trust assets. This was in the context of the court's discretion to extend the one-year period from the death of the testator to distribute his legacy before a legatee has a right to claim interest on the legacy, pursuant to s 39 of the New Zealand Administration Act 1969 (No 52 of 1969). In the United Kingdom, s 44 of the Administration of Estates Act 1925 (c23) (UK)

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81 18/9/19 NE 155 and 159.

82 18/9/19 NE 163 and 165; Undisputed Facts.

provides that an administrator/executor of an estate is not bound to distribute the estate before the expiration of one year from the deceased's death. While there is no statutory equivalent in Singapore for the period of distribution of an estate, the point is that an executor/administrator should do so within a reasonable time from the deceased's death. Absent good reason for the delay, he may be made liable for interest on the undistributed sums as a form of loss or damage to the estate.

44 In the present case, there is no justifiable reason for D to withhold the distribution of ML's share to the KL Property Proceeds. ML was entitled to her share within a reasonable period after the KL Property was sold and after D had received the proceeds. That ML lacked mental capacity and there was no deputy to collect her money at the material time was not a good reason to withhold her entitlement to the KL Property Proceeds. I find that D could have transferred ML's share to the D-ML POSB Account. Even if that account contained monies belonging to D, ML would have nevertheless been entitled to her beneficial interest in that account. I find it inconsistent for D to maintain a joint account with ML and yet claim that ML's monies could not be deposited into that account. This is especially when D had *withdrawn* some $11,575.03 from the same account *which monies belonged to ML*.[83]

45 Nevertheless, I find that ML has not shown me what damage or loss in the form of interest she has suffered from 2009 to 2014. In proving entitlement to damages, ML must show both the fact of damage and its amount, and there must be sufficient evidence of the quantum of loss suffered even if ML would otherwise have been entitled to such quantum: *Biofuel Industries Pte Ltd and*

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[83] D's AEIC at [133].

another appeal v V8 Environmental Pte Ltd [2018] 2 SLR 199 at [41]. In *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 (at [30]–[31]), the Court of Appeal accepted that the proof of damage requires a flexible approach, with different occasions calling for different evidence with regard to certainty of proof, depending on the circumstances of the case and the nature of the damages claimed. If the plaintiff has attempted its level best to prove its loss and the evidence is cogent, the court should allow recovery. In the present case, P has not adduced *any* evidence of what interest rate the bank would have paid in the years 2009 to 2014, if ML's entitlement to the KL Property Proceeds had been paid into the D-ML POSB Account (or any other account belonging to ML). As such, I disallow this claim.

P's claim as beneficiary of Wendy's estate

46 I turn to P's claims in relation to Wendy's estate. Wendy died intestate on 13 December 2005 and D was appointed sole administratrix of her estate pursuant to the grant of letters of administration issued on 4 November 2006.

47 P, as a beneficiary of Wendy's estate, claimed that D had breached her duties as the administratrix of the estate, as follows:

(a) D commingled Wendy's estate funds with D's own monies and Mdm Yap's estate monies.[84]

(b) D withheld P's share in Wendy's estate.[85]

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84 SOC at [47(v)]; P's AEIC at [110]–[114].

85 SOC at [40]; P's AEIC at [124]–[135].

(c) D refused to provide bank statements for accounts used to hold Wendy's estate monies. D also did not disclose Wendy's insurance policy with her employer ("Flextronics") in the schedule of assets of the estate. P claimed that the pay-out from the insurance policy ("Flextronics insurance"), which was purportedly only $3,000, was insufficient and unsupported by documentary evidence.[86]

(d) D caused delay in distributing the KL Property Proceeds to Wendy's estate and subsequently to P.[87]

Commingling of Wendy's estate funds with D's personal monies and Mdm Yap's estate monies

48 P claimed that monies from Wendy's estate had been transferred into D's SCB Account and commingled with monies from Mdm Yap's estate and D's personal monies (see [26] above). P thus asked for D's SCB Account statements to be produced.[88]

49 For the same reasons as set out above in the claim pertaining to Mdm Yap's estate (see [27] above), whilst I accept that D had breached her duty not to commingle monies of one estate with another, I refuse to order that D's SCB Account statements be produced.

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86 SOC at [37]–[39]; P's AEIC at [100]–[105] and [106]–[109].

87 SOC at [47(v)].

88 List of Issues at [3(l)]; SOC at [51(m)].

Withholding P's share of Wendy's estate

50 P pleaded that he had not received his full share in Wendy's estate. The parties did not dispute the quantum of Wendy's estate for distribution and agreed that each beneficiary to Wendy's estate was entitled to $92,902.38. P clarified that his claim centred on a sum of $44,000 (out of the $92,902.38) which D claimed she had paid to P in 2006 but P claimed to have received only $4,811.83.[89]

51 D produced three handwritten notes dated 16 March 2006 ("DB11"), 15 June 2006 ("DB12") and 26 October 2006 ("DB13") which respectively stated that P had received a sum of $10,000, $20,000 and $10,000 from D in her capacity as the administratrix of Wendy's estate. D also produced a handwritten note dated 30 August 2007 ("DB14") which stated that P had taken a $4,000 loan from D on 12 March 2006. D claimed that these notes were signed by P. D explained that after Wendy's death, P was in financial difficulties and requested an interim distribution of Wendy's estate to him. P asked for the sums in cash as he was facing legal issues then and wanted to avoid monies being credited into his bank account to prevent them from being garnished by his creditors. Hence D made the payments on DB11, DB12 and DB13 to P by cash and separately loaned P a sum of $4,000 from her personal funds.[90] P claimed that his signatures on DB11, DB13 and DB14 were forged and that he did not receive any payments under these notes. P admitted signing

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89 Undisputed Facts at item 4; P's AEIC at [130]; PCS at [155]; 19/9/19 NE 67.

90 Defendant's Bundle of Documents ("DB") at pp 11–14; D's AEIC at [92].

DB12 but claimed that he was only paid $4,811.83 out of the $20,000 stated therein as D had made various deductions that were purportedly owed by P.[91]

52 On balance, I prefer D's version over P's. I also disbelieve P that the signatures on DB11, DB13 and DB14 were forged even though the signatures on the four notes were not entirely the same.

53 I find that the evidence supported D's assertion that P needed an interim distribution of Wendy's estate in cash and that P had received the estate monies. P admitted that he had suffered heavy losses in his florist business and had to sell his florist shop in 2005, and that he had moved into the Clementi Flat around December 2004 partly because his business had failed (see also [16] above).[92] DB11 to DB14 were dated 2006/2007, shortly after P had sold his business, and in 2009 a court claim was filed against P by a third party in relation to his florist business.[93] Further, in an affidavit filed by P on 20 August 2013 in OS 311, he admitted that he still had outstanding debts. In fact, in the same affidavit, he attested that D had given him his share of Wendy's estate monies – a statement made in response to D's affidavit in OS 311 alleging that P had borrowed money from her and had failed to repay her $21,569.[94] Even putting aside DB11, DB13 and DB14 which P claimed he did not sign, P was unable to satisfactorily explain before me why he had, in

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91 17/9/19 NE 89–90, 95–96; P's AEIC at [129]–[130].

92 17/9/19 NE 11–12.

93 17/9/19 NE 13.

94 DCB 86 and 89 (P's affidavit filed in OS 311 at [9]); DCB 41 (D's affidavit filed in OS 311 at [18.2]).

2013, claimed that he had received his share of Wendy's estate, if he was now claiming that he did not receive any amount apart from $4,811.83.[95]

54 I also found P's allegation of forgery to be a delayed response. On 27 June 2014, D's lawyers informed P's lawyers that P had received significant sums from D in relation to Wendy's estate and also stated that P had taken a loan of $4,000 from D. D's lawyers enclosed DB11 to DB14 and expressly stated that they were "signed statements of [P]". On 22 September 2014, P's lawyers replied to state that P had received only $4,811.83 and further stated that "[P's] rights are hereby reserved".[96] Despite having sight of DB11 to DB14, P did not then claim that his signatures on DB11, DB13 and DB14 were forged or that he had only signed DB12 but had only received partial payment on it. P did not explain in his AEIC or in court that he had at that material time denied that the signatures on DB11, DB13 and DB14 were his. It should also be noted that at the material time, the other siblings Tracy, Robert and James had each received $43,851.52 and D's lawyers had set aside ML's share from Wendy's estate to be held on trust by P's lawyers.[97] As such, it was more likely than not that D had similarly distributed Wendy's share to P.

55 In any event, I do not believe that P would have signed DB12 acknowledging that he had received $20,000 from Wendy's estate if D only handed him $4,811.83 (when he signed DB12) as he claimed. P's explanation

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95 17/9/19 NE 91–94.

96 P's AEIC at pp 276–290.

97 P's AEIC at p 288; 4AB 1843–1844 and 1852 (P's lawyers' letter dated 27 September 2014).

that he did not wish to cause a scene in public by arguing over the sum that D had handed to him after making deductions is unconvincing.[98]

56 As such, I dismiss P's claim in this regard.

Refusing to provide bank statements and to disclose particulars of Flextronics insurance pay-out

57 P claimed that D had refused to furnish all documents or estate accounts including bank statements of Wendy's estate, and had not furnished documentary evidence pertaining to the items listed in the schedule of assets.[99] The "account" of Wendy's estate that D forwarded to P on 8 May 2014 merely comprised tables of assets and liabilities compiled by D with no supporting documents.[100]

58 P further claimed that the Flextronics insurance was not disclosed in the schedule of assets when D applied for letters of administration for Wendy's estate. Although D was aware of the Flextronics insurance since 2006, P alleged that she only disclosed this to him on 8 May 2014. D had also deliberately concealed that the amount of pay-out under the insurance ("Flextronics pay-out") was actually more than $3,000 and did not produce any documents to show that the Flextronics pay-out was merely $3,000.[101] In

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98 P's AEIC at [132].

99 List of Issues at [3(n)(ii) and (n)(iii)]; SOC at [37]–[38], [51(h)] and [51(m)].

100 P's AEIC at [104].

101 SOC at [39]; P's AEIC at [106]–[109].

response, D claimed that the Flextronics pay-out had been fully accounted for and distributed and that she had not concealed any purported higher pay-out.[102]

59 I deal first with the Flextronics pay-out. I find that D had fully accounted for this. By a letter dated 2 March 2006 to D's lawyers, Flextronics stated that it had made a claim of $3,000 under the Flextronics insurance for Wendy and that there was a further sum of salary of $958.80 due to Wendy's estate. On 18 January 2007, Flextronics forward to D a cheque for $3,958.80 for Wendy's final salary and claim under the Flextronics insurance.[103]

60 In contrast, I find P's explanation in support of his assertion that D had deliberately concealed a higher insurance pay-out from Flextronics to be a fabrication and contradicted by the documentary evidence. P claimed that D had complained to him "a few weeks" or about a month after Wendy's funeral that the Flextronics pay-out was insufficient and that she did not wish to accept the cheque from Flextronics. P claimed that D showed him a letter from Flextronics of the low pay-out.[104] However Flextronics' letter dated 2 March 2006 which showed that it was reimbursing Wendy's estate $3,000 for the Flextronics insurance only came a *few months after* Wendy's demise. Moreover Flextronics issued a cheque for $3,958.80 only in January 2007. As such, contrary to P's assertion, D could not have known, just a few weeks after Wendy's demise, how much Flextronics was intending to pay to her estate.

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102 19/9/19 NE 37.

103 P's AEIC at pp 244–245; DCB 14.

104 P's AEIC at [108]; 17/9/19 NE 100–101.

61 Hence, I find that D had fully accounted for the Flextronics pay-out, and I accept that she omitted the pay-out from the schedule of assets due to oversight.[105] P's claim that he "suspect[ed]" that D had actually asked for more money from Flextronics or that she had deliberately concealed the actual amount of pay-out from Flextronics[106] is again a bare and an unsubstantiated allegation. In any event, the parties had agreed that the total amount for distribution under Wendy's estate to each beneficiary is $92,902.38 and P had clarified in court that his dispute centred only on $44,000. Hence I do not see the basis for P to now ask for a proper account of the Flextronics pay-out.

62 Next, I turn to P's request for D to furnish documents pertaining to Wendy's assets and bank accounts and of D's SCB Account. I had earlier found that D had failed to retain the bank statements for D's SCB Account and refused to procure the bank statements which she could have obtained at the material time. Nevertheless, *as parties have agreed that the total amount for distribution in Wendy's estate to each beneficiary was $92,902.38*, there is no utility served in ordering D to furnish the underlying documents for the sole purpose of satisfying P that the assets and liabilities of Wendy's estate had been properly accounted for. This is supported by the fact that: (a) P had only taken issue with $44,000 (out of the $92,902.38) which he claimed he did not receive but which I have found otherwise; (b) I have found the Flextronics pay-out to be properly accounted for; and (c) P had agreed that two Prudential insurance policies belonging to Wendy (which formed a substantial part of her assets) had been accounted for.[107] Additionally, it was undisputed that the

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105 19/9/19 NE 40.

106 17/9/19 NE 98.

107 17/9/19 NE 103–104.

balance monies in Wendy's POSB savings account (which has since been closed) had been transferred to Wendy's estate account with UOB Bank.[108] The correspondences also showed that UOB Bank was unable to provide bank statements for the account as it no longer had records of them.[109]

63 Ms Wong accepted that if the court determined that the Flextronics pay-out had been fully accounted for, it would be unnecessary to obtain an account of Wendy's estate accounts, given that each beneficiary's entitlement was not disputed.[110] As such, I decline to order D to produce the underlying documents pertaining to the assets and liabilities of Wendy's estate.

Delay in distributing KL Property Proceeds in Wendy's estate

64 P claimed that his share of the KL Property Proceeds amounted to $6,495.60, and this amount should have been distributed to him when D received the sale proceeds of the KL Property in 2009 but was instead only distributed around September 2014. The delay in releasing P's share had caused P to suffer lost interest from 2009 to September 2014.[111]

65 The correspondence in September 2014 showed that around 22 September 2014, there was a sum of approximately $6,490.60 due to P from Wendy's share of the KL Property.[112] D had not explained satisfactorily why the KL Property Proceeds could not have been distributed until September

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108 Undisputed Facts at s/n 2.

109 1AB 343–344; 5AB 2362–2363.

110 19/9/19 NE 77–78.

111 PCS at [173]–[178].

112 4AB 1840 and 1844.

2014. However, even if D should have distributed this sum to P in 2009, P has not shown me what damage or loss in the form of interest he suffered from that date until 2014. As with my findings pertaining to the delay in distributing the KL Property Proceeds to ML, P has not adduced any evidence of what interest rate he would have obtained if the $6,490.60 (or $6,495.60) had been placed into a bank account in the years 2009 to 2014, which bank he would have placed the monies in, or whether he would have made any investments using that monies. Hence I dismiss this claim.

ML's claim as beneficiary of Wendy's estate

66 P claimed on ML's behalf in ML's capacity as beneficiary of Wendy's estate, that D (as the administratrix of the estate) had delayed paying to ML her share in the estate. This comprised: (a) Wendy's share in the KL Property Proceeds to which ML was a beneficiary valued at $6,495.60; and (b) an interim distribution of $61,701.83. P claimed that although the final pay-out from Wendy's Prudential insurance policies was made in 2007, ML's share under Wendy's estate was only paid to her in September 2014. Thus, D should pay ML interest on the interim distribution from 2007 to May 2014.[113]

67 D had obtained the Grant of Letters of Administration to Wendy's estate in November 2006, and all the siblings received their interim distribution from the estate except for ML. This included P whom D claimed to have received some $44,000 between March to October 2006, and D had also collected her share of Wendy's estate in September 2007.[114] D claimed

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113 PCS at [151]; List of Issues at [4(r)]; SOC at [47(u)] and [51(k)].

114 D's AEIC at [117]–[120]; DB 11–14; 18/9/19 NE 66.

that she excluded ML because ML was incapable of managing her own affairs and P was only appointed her deputy on 29 February 2016.

68 The evidence supported P's version of events, namely that it was only on 27 September 2014 that D forwarded a cheque to P's lawyers to be held on trust for ML pending the formal appointment of a deputy for her.[115] The correspondence in 2014 also showed that some $45,469.18 (ML's share in the KL Property Proceeds), $49,628.65 and $17,850.31 (being ML's share in Wendy's estate including CPF monies) had been retained by D and only forwarded to P's lawyers to hold for ML in September 2014.[116]

69 Wendy's share of the KL Property Proceeds was distributed to ML in September 2014, when ML received her share of the KL Property Proceeds as a beneficiary of Mdm Yap's estate. My findings and reasons in relation to the latter apply similarly to ML's claim under Wendy's estate to the KL Property Proceeds (see [42]–[45] above). Whilst D had unjustifiably delayed the payment of the KL Property Proceeds, ML has failed to show what loss she has suffered. Hence I disallow this claim.

70 I also find no reason why D should have withheld the interim distribution of $61,701.83 in Wendy's estate to ML, when she had made similar payments not only to P but also to herself as early as 2006/2007. D's explanation that ML lacked mental capacity and there was no deputy to collect her money was unconvincing (see also [44] above).

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115 D's AEIC at [117], [120] and [121]; P's AEIC at [120] and pp 247–248.

116 D's AEIC at pp 929 – 931; 4AB 1838–1840.

71 Despite the above, I find that ML has not shown me what loss she has suffered from the delay in receiving her entitlement from Wendy's estate. In relation to the interim distribution of $61,701.83, P pleaded that D should pay interest from 2007 to May 2014 on that sum. P submitted that the money should have been paid into ML's POSB account and P had lost out on interest on the same.[117] However, P has not adduced *any* evidence of the interest rate that POSB Bank would have paid in the years 2007 to 2014, even assuming ML's monies (from Wendy's estate) had been paid into her POSB account. As such, ML's claim in this regard fails.

ML's claim of D's unauthorised dealing with her affairs

72 P claimed that D had dealt with ML's affairs without her authority.[118] First, in 1991, D had purchased D's Flat in her and ML's joint names. P claimed that D's Flat was funded in part by Mdm Yap when she was alive and on the condition that ML would have a beneficial interest in it. Second, D had made a pre-mature application for ML under the CPF Annuity Plan ("CPF Plan") using ML's CPF retirement account monies, thus causing loss to ML. Third, D had withdrawn $11,575.03 from the D-ML POSB Account, which monies belonged to ML.

ML's beneficial interest in D's Flat

73 It was not disputed that D's Flat was purchased in both D's and ML's names in 1991 and transferred to D's sole name in 2004.[119]

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117 PCS at [185].

118 List of Issues at [5(s)], [5(t)] and [5(u)]; SOC at [51(r)], [51(x)], [51(y)] and [51(bb)].

119 P's AEIC at [139]; 1AB 58.

74 P claimed that D's Flat was purchased partially with monies from Mdm Yap when she was alive, and the transfer of the flat to D solely was done when ML lacked mental capacity. P claimed that in 1991, Mdm Yap told him that D had intimidated Mdm Yap into financing the purchase of a HDB flat so that D could move out of the Clementi Flat. Mdm Yap also told him that ML would be the co-owner of the flat and instructed him to safeguard ML's interest as ML could not fend for herself. As such D should account to ML for the value of D's Flat, on the basis of a resulting trust in ML's favour or a common intention for ML to have a 50% share in D's Flat.[120]

75 D claimed that she paid fully for D's Flat, the purchase price being $53,000 (undisputed), for which she paid $6,000 in cash and $47,000 via her CPF monies. D pleaded that ML's name was initially added to D's Flat in anticipation that they would eventually live together and that D would care for ML. However, as Mdm Yap had provided in her will for the purchase of a flat for ML, D thus removed ML's name from D's Flat to enable ML to eventually purchase a flat in her sole name.[121]

76 On balance, I accept that D had paid for D's Flat in full. P accepted that D had purchased D's Flat with $47,000 of her CPF monies and that the balance of $6,000 was paid in cash. A HDB financial plan statement also bore these payments out.[122] On the other hand, P's assertion that Mdm Yap "could have given" D a large sum of money which D then deposited into her CPF

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120 SOC at [48(a)]–[48(c)] and [51(r)]; P's AEIC at [138] – [129]; PCS at [192]–[193].

121 Defence and Counterclaim (Amendment No. 1) ("Defence") at [53] and [53A]; D's AEIC at [26], [86]–[87].

122 17/9/19 NE 120; DCB 6.

account to pay for D's Flat was, as P himself admitted, "only speculation".[123] I also disbelieve P that Mdm Yap had been "intimidated" by D into financing the purchase of a flat for D to move out of the Clementi Flat. In court, P's version morphed into one that Mdm Yap had "succumbed" to D's request to finance the purchase of D's Flat as D had purportedly told Mdm Yap to consider putting her "pitiful daughter [ML] to be part of the owner".[124]

77 Next, I consider whether ML had a beneficial interest in D's Flat. P's case is premised on Mdm Yap having partially paid for the flat in return for ML having a share in it, and not that ML has a beneficial interest by virtue of her name being added as a joint tenant *per se*.[125] Ms Wong submitted that the approach in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160] applied when resolving a property dispute involving unequal contributions towards the purchase price.[126] As I find that D had paid for the flat in full, ML would have no beneficial interest in it by way of a resulting trust. ML also did not make any financial contributions towards D's Flat. Hence, even applying the approach in *Chan Yuen Lan*, D would hold the entire beneficial interest as she paid the entire purchase price. There was also no evidence to show an inferred common intention between D and ML that ML would have a beneficial interest in D's Flat. P also did not argue that D had intended to gift a share of D's Flat to ML. Finally, the presumption of advancement did not apply between D and ML.

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123 17/9/19 NE 120.

124 17/9/19 NE 122.

125 18/9/19 NE 58–60.

126 PCS at [191].

78 I accept D's explanation that when she purchased D's Flat, ML's name was included as the Housing and Development Board ("HDB") at that time required at least two singles registered as joint tenants in order for a person who is single to purchase an HDB flat. As D needed a roof over her head, she obtained Mdm Yap's permission to include ML's name for this purpose. I accept D's explanation that she subsequently removed ML's name to enable another HDB flat to be purchased in ML's name (to give effect to Mdm Yap's will) as HDB would not permit a person to be a registered owner of two HDB flats simultaneously.[127] Whilst D's conduct of removing ML as a joint tenant of D's Flat when the latter lacked the mental capacity is not to be condoned, this did not give ML any beneficial interest in the flat. ML's cause of action was premised on Mdm Yap having contributed to D's Flat, which I found was not made out. As such, the claim fails.

CPF Plan

79 P also claimed that D had made a premature application for the CPF Plan on ML's behalf in December 2010 when ML was around 59 years old[128] and had no mental capacity to agree to this. ML thus allegedly suffered a deduction and loss of $9,963.68 between January to December 2010 from her CPF retirement account, which was used to pay for the CPF Plan. P claimed that this sum would not have been deducted from ML's CPF account if D had made the application when ML was 65 years old.[129] D, being in a fiduciary relationship vis-à-vis ML, thus failed to act in ML's interest.

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127 18/9/19 NE 40, 41 and 55.

128 P's AEIC at [5].

129 SOC at [49(e)]; P's AEIC at [159]; 17/9/19 NE 126; 4 AB 1448; PCS at [199].

80 I find that P has failed to prove his claim on balance. Even if D had not obtained ML's approval before using her CPF money for the CPF Plan, it is unclear what loss ML had suffered or how D had failed to act in ML's interest in buying the CPF Plan before ML turned 65 years old. P did not provide any evidence of how the CPF Plan operated and what the loss to ML was when she bought into the CPF Plan around 59 years old as compared to if she had bought into it at age 65. All P could say was that "[ML] could have waited until she reached the age of … 65 years old, she doesn't need to pay this type of application costs".[130] However, there is no evidence that ML would have obtained the CPF Plan without paying any (or lesser) premium when she turned 65 years old. Further, the CPF Plan is subsisting,[131] and P *knew* that ML has *benefited* from it as she has started receiving pay outs. In a letter of 22 April 2016 from the CPF Board to P, P was informed that ML had "started to receive her monthly pay-out from March 2014 and a total of $4,979.03 has been paid to her".[132] To prove his claim, P could have provided calculations on the total premiums paid to date and the returns ML has received (or will receive) to show that the subscription to the CPF Plan (at 59 years of age) was not in ML's best interest, but he did not.

81 On the other hand, I accept D's explanation that she bought the CPF Plan early as the premium would be cheaper the earlier the CPF Plan was purchased. With the early application, ML received an additional $3,200 in bonus which was credited to her CPF Account when the CPF Plan was

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130 17/9/19 NE 126.

131 18/9/19 NE 117.

132 P's AEIC at p 333.

purchased and also started obtaining pay-outs on the CPF Plan when she was around 63 years old.[133]

Unauthorised withdrawal of ML's monies from D-ML POSB Account

82 P claimed that D had withdrawn $11,575.03, which belonged to ML, from the D-ML POSB Account. A claim in conversion or, alternatively, for unjust enrichment, arose and P (on ML's behalf) sought the return of the money with accrued interest from 2016.[134] D admitted that she had withdrawn that amount and that it belonged to ML, but claimed that she had used the $11,575.03 to set it off against various expenses which she had incurred on ML's behalf totalling $44,348.35, and that ML still owed her $32,773.32 (after the set-off).[135] In this regard, D counterclaimed against ML the sum of $32,773.32 (after set-off) comprising premiums paid by D for ML's insurance policies, Medisave top-ups made by D for ML, reimbursement for passport renewal to go to Malaysia to sign court and conveyancing documents, and medical expenses paid on ML's behalf.[136]

83 As both P's claim and D's counterclaim are related, I deal with them together. In effect, I allow P's claim and dismiss D's counterclaim.

84 P did not dispute that the insurance premiums for ML's insurance policies and Medisave top-ups were paid by D.[137] ML, being mentally

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133 18/9/19 NE 117, 119–120 and 123; 1AB 178; P's AEIC at p 333.

134 SOC at [49(c)] and [51(x)]; P's AEIC at [149].

135 Defence at [86], DCS at [103]–[104]; D's AEIC at [133].

136 Defence at [86].

137 17/9/19 NE 108.

incapacitated from birth, could not have consented and did not consent to D making these payments on her behalf. D claimed that she had arranged for the insurance policies and paid the premiums "in expectation of reimbursement when [ML] is able to pay". However she admitted in court that when she initially agreed to pay the insurance premiums (purportedly at Mdm Yap's request), D had no expectations of repayment, that ML never agreed to repay D the insurance premiums or the Medisave top ups, and that in any event ML did not have money to do so. D also stated that she had made the Medisave top-ups for ML without expecting ML to repay her and she took it upon herself to care for ML.[138] As such, D had made these payments voluntarily and without expectations of repayment from ML. D's explanation that it was Mdm Yap's request for her to pay the insurance premiums for ML was only revealed in D's cross-examination. In any event any such agreement would have been between Mdm Yap and her and not between her and ML.

85 As for the other expenses such as the passport renewal fee and medical expenses, again, D's pleadings did not state the basis for her claim and she had not explained why she made these payments for ML nor shown supporting documents on when the payments were made and how much. Ms Yap conceded that there was no evidence that D had made all these payments as she claimed that many of them were made in cash and handed over by D to P.[139] Whilst P admitted that D made some of the payments for ML, he also claimed to have contributed to ML's expenses. Hence, I am not satisfied that D has discharged the burden to prove her claims.

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138 D's AEIC at [126]; 18/9/19 NE 81–83 and 87–88; 19/9/19 NE 83–84.

139 17/9/19 NE 116–117.

86 As such, I dismiss D's claim against ML for sums pertaining to the above expenses totalling $44,348.35. D thus had no basis to withdraw the $11,575.03 which belonged to ML to set-off against the $44,348.35 which D claimed were expended on ML's behalf. The issue that remains is whether P's claim in conversion or unjust enrichment can be sustained.

87 The general rule is that money can be converted except where it has passed into currency (*Clerk & Lindsell on Torts* (Michael A. Jones gen ed) (Sweet & Maxwell, 21st Ed, 2014) at [17-37]; Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at [11.042]). Conversion only protects interest in chattels or things that can be possessed. Intangibles such as choses in action cannot be converted save for a recognised exception in the form of documentary intangibles such as cheques and negotiable instruments (*Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [131]). ML's right to her monies in the D-ML POSB Account is a chose in action. It was unclear how the claim of conversion has been made out, as there was insufficient evidence as to what the subject of the conversion was and whether that could be converted.

88 Next, to find a claim in unjust enrichment, P has to show that D has been benefitted or enriched, the benefit or enrichment was at ML's expense, D's enrichment was unjust and there are no applicable defences. However, P did not expressly plead the cause of action or the specific unjust factor sought to be relied upon. (See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [98]–[99] and [134]–[136].) Nevertheless, a balance has to be struck between instilling procedural discipline in civil litigation and permitting parties to present the substantive merits of their case notwithstanding a procedural irregularity (*Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011]

2 SLR 196 at [20]). The purpose of pleadings is to ensure that each party was aware of the respective arguments against it and that neither was therefore taken by surprise (*Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] SGCA 7 at [16]).

89 I find that D could not have been taken by surprise at a claim in unjust enrichment. P had pleaded that D had withdrawn $11,575.03 from the D-ML POSB Account which belonged to ML, that D had not rendered any credible account to justify her claim over the $11,575.03, and that D had thus wrongfully taken, retained or misappropriated the money belonging to ML.[140] P had also stated that D had procured the opening of the D-ML POSB Account despite ML's incapacity.[141] Further, D had *admitted* to taking the money. The pleaded facts showed that D had benefitted from the withdrawal of the $11,575.03 at ML's expense.

90 I find the unjust factor to be ML's incapacity, particularly mental incapacity, given that ML could not have consented and did not consent to the withdrawal of monies belonging to her. Further, D knew that ML was mentally incapable of managing her financial affairs and exploited that by withdrawing $11,575.03 from the D-ML POSB Account without her knowledge or consent. The rationale for "incapacity" to constitute a ground of restitution is that the claimant cannot be considered to have intended that the defendant should receive a benefit, since the claimant is incapable of forming the necessary intent (Graham Virgo, *The Principles of the Law of Restitution* (Oxford University Press, 3rd Ed, 2015) at 379). As such, I find that there has

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140 SOC at [59(c)].

141 D's AEIC at [148].

been unjust enrichment. There are no defences availed to D, and I thus order that D pay $11,575.03 to ML.

91 P, on ML's behalf, had also sought accrued interest on the sum of $11,575.03 from 2016 until repayment, and submitted that this should be at 5.33% per annum or at such other rate as the court deems fit.[142] Pursuant to s 12(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"), I award ML pre-judgment interest on the sum of $11,575.03. However, I find that the default interest rate of 5.33% (as provided for in the Supreme Court Practice Directions at para 77(9)) would over-compensate ML: see *Ong Teck Soon (executor of the estate of Ong Kim Nang, deceased) v Ong Teck Seng and another* [2017] 4 SLR 819 at [85]. ML has been fully incapable of managing her affairs and there is no evidence that P (even after assuming the role as court-appointed deputy) would have invested the money to produce returns. If the $11,575.03 had not been withdrawn, it would have been left in the D-ML POSB Account, and which would have generated a relatively low interest rate. I will thus impute an interest rate of 1% per annum. As P has prayed for this interest to run from 2016 when D had closed the D-ML POSB Account, I will order the interest rate of 1% per annum to run only from 2016 until judgment.

D's counterclaims against P

92 I next turn to D's counterclaims against P as follows:[143]

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142 PCS at [210].

143 List of Issues at [1]; Defence at [86(i) and (iii)].

(a) Each beneficiary of Wendy's estate was entitled to receive total interim payments amounting to $75,052.07. P however, received $75,200.55 and should return $148.48 to D.[144]

(b) When P vacated the Clementi Flat, he removed a sofa worth $1,017.50 belonging to D and D claimed the costs of the sofa.

Claim against P for overpayment of $148.48

93 D claimed against P for the return of $148.48 being an overpayment to P from Wendy's estate. D pleaded that each beneficiary to Wendy's estate was entitled to receive $75,052.07 in interim payment but P was paid $75,200.55 instead. Hence, P should return $148.48.[145]

94 The burden is on D to prove what she has asserted. I am not satisfied that D has done so. D stated in her AEIC that P was paid $44,000 from Wendy's estate but he should have received only $43,851.52.[146] However, it was not disputed that the total amount for distribution from Wendy's estate to each beneficiary was to be $92,902.38. When asked to clarify the above figures, D stated that P has been paid the following sums: (a) $44,000 (see DB11 to DB14); (b) Wendy's CPF monies of $17,850.31; (c) $6,490.60 (by a cheque dated 26 September 2014); (d) $14,083.33 (by a cheque dated 17 November 2014); (e) $5,222.54 (by a cashier's order dated 15 October 2014) and an additional $5 charge for the cashier's order; and (f) $5,000 which P

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144 Defence at [72].

145 Defence at [72] and [86(i)].

146 D's AEIC at [143].

agreed to set aside for ML.[147] Given that I had found the $44,000 to have been paid to P, and the items at sub-paras (b) to (f) were not disputed by P, D has paid to P an aggregate of only $92,651.78, which was lower than what each beneficiary (and P) should have received in total, *ie*, $92,902.38.

95 As such, I am not satisfied that D has shown that overall there has been an overpayment of $148.48 to P and I dismiss D's claim in this regard.

Claim against P for D's sofa

96 Next, D claimed that she had asked P whether he wanted a sofa left at the Clementi Flat which D had purchased. P said no, whereupon D promised the sofa to her friend. However, P subsequently took the sofa, and D had to buy a replacement sofa for her friend as promised. D thus claimed the sum of $1,017.50 for the cost of the sofa.[148] P admitted that he removed the sofa, but claimed that D had also wrongfully removed a sofa from the Clementi Flat worth about $5,000 and replaced it with one of inferior quality. P argued that D should thus compensate Mdm Yap's estate $5,000 which would extinguish D's claim of $1,017.50. P also offered to return D's sofa.[149]

97 I dismiss D's claim. She did not show evidence of how much the original sofa was acquired for or that she had bought a replacement sofa for her friend and at what price. Also, P's assertion that D should compensate Mdm Yap's estate for $5,000 should also be dismissed as he has not pleaded

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147 19/9/19 NE 62–67; 4AB 1849, 1853, 1868.

148 Defence at [73] and [86(i)]; D's AEIC at [141]–[142].

149 Reply at [67]; P's AEIC at [189]–[190].

any relief in this regard, and has not shown evidence that D had taken a sofa belonging to Mdm Yap valued at about $5,000.

D's counterclaim against Mdm Yap's estate

98 Next D claimed $41,057.53 from Mdm Yap's estate being expenses which she had allegedly incurred for the estate, and a commission for administering the estate pursuant to s 66 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("the PAA").[150]

D's claim for $41,057.53

99 D's claim for $41,057.53 relating to the Clementi Flat and estate expenses comprised the following which she claimed to have paid:[151]

(a) Outstanding mortgage from February 1995 to November 1997 – $18,599.12.

(b) Service and conservancy charges ("S&CC") from February 1995 to August 2013 – $16,242.80.

(c) Property tax from April 1998 to August 2014 – $2,874.77.

(d) TV licence fee from February 1995 to 2011 – $1,301.66.

(e) Home insurance from January 1996 to April 2013 – $1,042.75.

(f) Miscellaneous estate expenses – $996.43.

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150 List of Issues at [2]; Defence at [82] and [86(iv)] and [86(vii)].

151 Defence at [81] and [83]; D's AEIC at [47].

Outstanding mortgage of $18,599.12

100 P agreed that D had paid the outstanding mortgage of $18,599.12 and should be reimbursed from Mdm Yap's estate. However, P claimed that D had already been reimbursed.[152] P claimed that the outstanding amount of $18,599.12 had been taken into account when he computed Mdm Yap's estate's assets and liabilities and in the course of a meeting among the siblings in June 2014 ("June 2014 Meeting").[153] However, it is unclear from the computation how this amount had been reimbursed to D and none of the other siblings have testified to support P's assertion. On balance, given that there is no dispute that D paid for the outstanding mortgage and that there is no evidence that she had been reimbursed, I allow D's claim on this amount.

Service and conservancy charges of $16,242.80

101 D claimed that she paid the S&CC from February 1995 to August 2013 for the Clementi Flat. It is not disputed that the S&CC had been paid and P admitted that he did not pay it. In court, P claimed that D had paid some of it and the rest had been paid by Wendy. This differed from his assertion in his AEIC that it was Wendy who paid all the S&CC.[154] Nevertheless, P did not produce evidence of Wendy's contribution other than a bare assertion that he "suspected" that Wendy had made the payments. Further, Wendy could not have contributed to the S&CC from 13 December 2005 when she passed away and P conceded in court that D had made the payments from that date

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152 17/9/19 NE 58.

153 P's AEIC at [182].

154 P's AEIC at [184]; 17/9/19 NE 68.

onwards.[155] On the other hand, D produced some supporting documents to show that she had made the payments, such as her cheque records and receipts from the Town Council addressed to her.[156]

102 I prefer D's evidence over P's and I find that D has shown, on balance, that she made these payments. I thus allow D's claim on the S&CC totalling $16,242.80.

Property tax of $2,874.77, TV licence fee of $1,301.66 and home insurance of $1,042.75

103 P did not dispute that D paid for the property tax, TV licence fee and home insurance. However, he claimed that they had been properly accounted for at the June 2014 Meeting and a copy of the accounts was given to all the siblings and agreed upon.[157] P further claimed that D was reimbursed through an off-setting against the KL Property Proceeds. However P was not able to produce a copy of any such account taking or evidence of how the notional value of these three items were set off against the KL Property Proceeds, and did not call any of the siblings to support his claim.

104 Given that there was no dispute that D had paid for the above three items and P has not been able to show that D had been reimbursed on these amounts, I allow D's claim on these sums.

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155 17/9/19 NE 62, 64 and 65.

156 2AB 368–381; 17/9/19 NE 58–64.

157 P's AEIC at [183]; 17/9/19 NE 69–75; PCS at [226].

Miscellaneous estate expenses of $996.43

105 D's claim for $996.43 relate to seven items which D recorded in her statement of accounts for Mdm Yap's estate.[158] P accepted that D's claims should be allowed for three items totalling $300, namely, notary fees of $120, a $30 fee for extracting a certificate, and $150 incurred for removing items from the Clementi Flat. I proceed to deal with the remaining four items.

106 First, D claimed $237.53 for miscellaneous expenses that she paid in administering Mdm Yap's estate. D relied on the Table of Expenses (see [11] above) which showed a remainder of $737.53 (out of a total $3,078.84) had not been reimbursed. Although I had found that all the items in the Table of Expenses were indeed incurred by D for Mdm Yap's estate, D had not shown me how her claim of $237.53 was part of the claims in the Table of Expenses, and had not elaborated on the items that pertained to this amount of $237.53. No details were provided in the Defence, her AEIC or even in closing submissions.[159] Given that D must prove her claim and quantum of that claim, I find that she has not done so and I disallow this claim.

107 Second, D claimed $28.50 being taxi fare to accompany the court process server from the court to execute a court judgment against a judgment debtor of which Mdm Yap was the judgment creditor.[160] However, D did not produce a receipt to show that she had incurred this expense, much less how much the taxi fare was. As such, I disallow this claim.

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158 D's AEIC at [45] at pp 1297–1298.

159 DCS at [121].

160 D's AEIC at pp 1298 and 1544.

108 Third, D claimed $290 as exhumation and cremation costs pertaining to her late father ("Cremation Expenses"). D produced two cheque stubs to evidence this payment.[161] In response, P claimed that D had been reimbursed this sum, as D's lawyers had on 13 November 2014 informed P's lawyers that D had been reimbursed this sum from Mdm Yap's estate ("R&T's Nov 2014 Letter").[162] D pointed to a later letter dated 11 March 2016 ("R&T's Mar 2016 Letter") to show that she had overpaid $290 and was claiming this sum back.[163] Whilst D had made the initial payment of $290, I find that she had been reimbursed this sum and I accordingly disallow her claim.

(a) It is not disputed that each of the surviving siblings were to contribute to the Cremation Expenses, of about $394.08 each and which was to be paid into Mdm Yap's estate.

(b) R&T's Nov 2014 Letter (written on D's behalf) clearly stated that D *had been reimbursed the $290* that she had earlier paid for the Cremation Expenses and that there was no further $290 which D intended to claim from her siblings for such Expenses. The letter also stated that each sibling, including D, had to contribute $394.08.

(c) On the other hand, the tenor of R&T's Mar 2016 Letter was not entirely clear. It stated that the Cremation Expenses were shared among the surviving siblings (*ie*, of $394.08 each) and "included a contribution of S$394.08 by [D], when she had already paid S$290.00

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161 D's AEIC at pp 1588–1589.

162 P's AEIC at p 111–113 (R&T's 13 November 2014 Letter at para 12).

163 19/9/19 NE 89; 5AB 2051 (R&T's 11 March 2016 Letter at para 8).

for such costs. As such, parties had collectively overpaid Mdm Yap's Estate account and a sum of $290.00 is due back to [D]."

(d) The two letters above suggest that D had contributed $290 and followed by another $394.08 and hence, she had overpaid by $290. Whilst R&T's Nov 2014 Letter was clear in stating that D had been reimbursed $290, R&T's Mar 2016 Letter did not expressly state that there was an error in R&T's Nov 2014 Letter in that D had not actually been reimbursed $290. R&T's Mar 2016 Letter stated that "parties had collectively" overpaid Mdm Yap's Estate account, without explaining what it meant, and did not explain how $290 was thus due back to D.

(e) Given that D is asserting this claim for $290, it was incumbent on her to explain or clarify the two letters and to show how $290 was still owing to her, after the accounts for Mdm Yap's estate had been reconciled. This was not done by D.

109 Fourth, D claimed a total of $140.40 being expenses incurred in photocopying documents in relation to Mdm Yap's estate.[164] She produced numerous receipts to show the photocopying charges. However, the receipts do not show what items were photocopied or for what purpose or whether the photocopying charges were incurred in relation to Mdm Yap's estate. Whilst I would not have expected D to keep a detailed tabulation of her photocopying activities, the fact remained that D did not give *any* explanation or elaboration of what types of documents she had photocopied or the purpose of the documents photocopied. As such, I disallow this claim.

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164 D's AEIC at pp 1299 and 1595–1598.

110 In conclusion, I allow only D's claim for $300 for the three undisputed items (see [105] above).

Claim for commission under s 66 of PAA

111 D claimed to have expended much time and effort since 1995 to administer Mdm Yap's estate including obtaining the grant of probate and resealing it in Malaysia, collecting assets, and making interim distributions to the beneficiaries. She claimed to have single-handedly administered the estate over the years. D thus prayed for a reasonable and fair commission pursuant to s 66 of the PAA of $23,942.47. This sum is the difference between $65,000, which the parties had agreed to set aside for payment of testamentary expenses, and $41,057.53 claimed by D from the estate.[165] P objected on the basis that D had breached her fiduciary duties as Executrix, caused loss to the beneficiaries and profited from her position. In court, P agreed that given the time D spent administering Mdm Yap's estate, she should be awarded a reasonable commission from the estate, provided she kept proper accounts.[166]

112 Section 66(1) of the PAA provides as follows:

> The court may in its discretion allow the executors or administrators a commission not exceeding 5% on the value of the assets collected by then, but in the allowance or disallowance of such commission the court shall be guided by its or his approval or otherwise of their conduct in the administration of the estate.

The payment of commission under s 66 of the PAA is at the court's discretion. In deciding the quantum of award, the various factors to be considered include

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165 Defence at [82]–[83] and [86(vii)]; DCS at [126].

166 D's AEIC at [187]; DCS at [234]; 17/9/19 NE 87.

the nature of the estate administered, the work done by the executor, the executor's conduct in administering the estate, and whether the executor has performed his duties according to law: see *Shiraz Abidally Husain and another (executors of the estate of Abidally Abdul Husain, deceased) v Husain Safdar Abidally and others* [2009] 4 SLR(R) 11.

113 I allow D's claim under s 66 of the PAA as I am satisfied that she had expended substantial effort in administering Mdm Yap's estate.

114 Although D may have been slow to produce the relevant documents supporting the assets and expenses of the estate and had breached some duties as Executrix of Mdm Yap's estate, the fact remained that D had been the person administering the estate. On the other hand, P had done very little given his disinterest. I had also found that P had caused delay in the sale of the Clementi Flat which formed part of Mdm Yap's estate and resulted in D having to file OS 311.

115 Further, the parties agreed that Mdm Yap's estate has already been distributed save for approximately: (a) $263,315 which is subject to the 2018 Consent Order; (b) $65,000 set aside for testamentary expenses; and (c) a sum of $45,653.89.[167] As the assets in the estate have substantially been dealt with, including the matters determined by this court and by the consent orders, and the parties have agreed on the remaining amounts that are the subject assets of the estate, I will allow D's claim under s 66 of the POA.

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167 Undisputed Facts at s/n 5.

116 As such, I allow a sum of $20,000 as commission. Even just taking the Clementi Flat alone (sold for some $831,000) as the value of Mdm Yap's assets, the commission amounts to less than 2.5% of the value of the assets collected.

D's counterclaim against ML for $32,773.32

117 Next D claimed $32,773.32 from ML. This claim has already been dealt with earlier (see [82]–[91] above), and which I have dismissed.

P's and D's claims to remove each other as executor of Mdm Yap's estate

118 Finally I deal with P's and D's claim to remove each other as executor/executrix of Mdm Yap's estate. P sought a declaration that D had breached her fiduciary duties and for her removal as Executrix. In the same vein, D sought a declaration that P had breached his fiduciary duties and for his removal as Executor. D claimed that P was disinterested in administering the estate and did not make any effort to do so. Instead, he made spurious and unfounded allegations against D. D further alleged that P had refused to vacate the Clementi Flat resulting in a delay of its sale and refused to allow the reimbursement of testamentary expenses incurred by D in relation to Mdm Yap's estate.[168] Section 32 of the PAA provides that any probate or letters of administration may be revoked or amended for any "sufficient cause", *ie*, where there has been undue and improper administration of the estate in total disregard of the beneficiaries' interests (*Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi (executrix of the estate of Kantilal Prabhulal Doshi, deceased) and another* [2000] 3 SLR(R) 290 ("*Jigarlal*") at [12]).

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168 List of Issues; SOC at [51]; D's AEIC at [148]–[149].

119 I had found that P caused delays in the sale of the Clementi Flat, and had benefitted to the detriment of the beneficiaries of the Clementi Flat by staying there rent-free after Mdm Yap's demise. On the other hand, I had also found that some of D's actions were in breach as Executrix. For instance, D had retained the whole of $1,403.87 in Mdm Yap's OCBC Account after the Account was closed, when she had no basis to that sum in full at the material time. D had delayed in distributing to ML her share of the KL Property Proceeds. She had also commingled Mdm Yap's estate monies with Wendy's estate monies without good reason, as the sum from Mdm Yap's estate would have differed from Wendy's estate, and the distribution to the beneficiaries would also have differed in the two estates. D had also failed to procure D's SCB Account statements even though she could have obtained some of the statements when P requested for them in 2014.

120 Nevertheless, this was not a case in which D had administered the estate in total disregard of the interest of the beneficiaries. There was no evidence that D had gained personally and at the expense of the other beneficiaries of the estate.

(a) It was not disputed that Mdm Yap's estate *has been properly distributed* save for certain defined and specified sums which are mainly the subject of the consent orders (see [27] above).

(b) Whilst D had commingled estate monies of Mdm Yap's with Wendy's and had failed to retain the bank statements at the material time, the fact remained that Mdm Yap's estate has been properly distributed save for the sums mentioned at paragraph (a) above, and the parties have crystallised the amount due to each beneficiary from Wendy's estate (*ie*, at $92,902.38). There was no evidence that D had

siphoned off monies from Mdm Yap's estate and Wendy's estate for her benefit.

(c) Although D had retained part of the $1,403.87 at the material time when she should not have done so, the amounts incurred by her for Mdm Yap's estate exceeded what she had retained and thus I had allowed D to retain the excess as reimbursement for such expenses.

121 Based on the totality of the circumstances, I did not find sufficient cause to remove D as Executrix of Mdm Yap's estate. Even if there were, it would be necessary to consider whether in the circumstances of the case, it would be in the beneficiaries' interest to do so: see *Jigarlal* at [17]. I am of the view that this would not be so. In removing D as Executrix, P would become the sole executor of the estate, as no other person has indicated an interest in administering the estate. This would be an unsatisfactory position, as I have found P to be disinterested in the administration of the estate even whilst he was (and still is) an executor, and in view of his conduct in casting numerous aspersions and allegations against D which I had found to be untrue. Also, P had caused delay in the sale of the Clementi Flat. Whilst P alleged that he was prevented from managing the estate, the fact remained that, as Executor, he could have conducted independent investigations into the accounts, *eg*, by asking for bank statements and documents directly from source.

122 Likewise, I am not minded to grant D's prayer to remove P as Executor, even though P had failed to discharge his duties as Executor. D herself was not entirely free from blame. She had not been forthcoming in producing the accounts and keeping proper records of supporting documents pertaining to the KL Property Proceeds and the commingling of estate funds at the material time.

123 Ultimately, Mdm Yap's estate has been properly distributed save for certain specified and defined sums which parties have agreed on how to resolve via the consent orders. It is thus pointless to change the status quo now. Whilst I am cognisant of the hostile relationship between the parties, maintaining both P and D as executors of the estate will act as a check and balance to ensure the remaining monies in the estate, the subject of the consent orders, will be properly accounted for and distributed to the beneficiaries.

Miscellaneous

124 Finally, in closing submissions, P (on ML's behalf) had decided not to pursue a claim against D for rental proceeds and/or of D's occupation of the West Coast Flat from February 2008 to November 2016 as he intends to pursue the matter under the 2018 Consent Order. D objected to P's belated attempt to withdraw the claim and to reserve his rights to pursue it under the 2018 Consent Order. Given P's decision, I make no findings and give no orders on this claim. As to whether he would be entitled to this claim as part of the 2018 Consent Order, this matter is left to be determined at the appropriate stage.

Conclusion

125 In summary, I allow the following claims:

(a) ML's claim against D for $11,575.03, with pre-judgment interest of 1% per annum from 2016 until judgment;

(b) D's claim against Mdm Yap's estate relating to the Clementi Flat and estate expenses being $18,599.12 (for outstanding mortgage payments), $16,242.80 (for S&CC), $2,874.77 (for property tax),

$1,301.66 (for TV licence fee), $1,042.75 (for home insurance) and $300 (for miscellaneous estate expenses); and

(c) a commission of $20,000 to D pursuant to s 66 of the PAA, from Mdm Yap's estate.

126 I will hear the parties on costs.

Audrey Lim
Judge

Wong Soo Chih, Nicholas Roshan Rai and Koh Shin-E Mandy (Ho Wong Law Practice LLC) for the plaintiff;
Yap Jie Han and Seah Yan De Bryan (Wong Tan & Molly Lim LLC) for the defendant.