

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

[2021] SGHC 76

Suit No 1310 of 2018

Between

- (1) Ong Chai Koon
- (2) Ong Kim Geok
- (3) Ong Sor Kim
- (4) Ong Sor Mui
- (5) Ong Soh Ai

... Plaintiffs

And

Ong Chai Soon

... Defendant

JUDGMENT

[Trusts] — [Constructive trusts]
[Trusts] — [Resulting trusts]
[Equity] — [Estoppel] — [Proprietary estoppel]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	2
THE PARTIES	2
BACKGROUND TO THE DISPUTE	3
THE PARTIES' CASES.....	9
THE PLAINTIFFS' CASE	9
THE DEFENDANT'S CASE	12
ISSUES TO BE DETERMINED	14
IS THERE A TRUST OVER THE HOUGANG SHOPHOUSE?.....	16
THE LEGAL FRAMEWORK.....	16
TENDER FOR THE TENANCY OF THE HOUGANG SHOPHOUSE	18
PURCHASE OF THE HOUGANG PROPERTY.....	27
PAYMENTS OF THE MORTGAGE LOAN INSTALMENTS FOR THE HOUGANG SHOPHOUSE.....	29
WAS THERE A COMMON INTENTION THAT THE HOUGANG PROPERTY WOULD BE OWNED BY THE ONG SIBLINGS?	35
WAS THERE A RESULTING TRUST?	47
THE FAMILY MEETING ON 25 JUNE 2017	49
<i>Lack of consideration</i>	50
<i>Duress</i>	51
<i>Non est factum</i>	54

SECTION 51 OF THE HOUSING AND DEVELOPMENT BOARD ACT	61
PARTIES’ SUBMISSIONS AND THE CASELAW ON S 51(10)	61
FIRST APPROACH	69
SECOND APPROACH	70
DO THE PLAINTIFFS HAVE A CLAIM OF PROPRIETARY ESTOPPEL AGAINST THE DEFENDANT?	73
RELIEFS.....	78
CONCLUSION.....	86

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

Ong Chai Koon and others

v

Ong Chai Soon

[2021] SGHC 76

General Division of the High Court — Suit No 1310 of 2018

Ang Cheng Hock J

25–28 August, 1–4 September, 18 December 2020

6 April 2021

Judgment reserved.

Ang Cheng Hock J:

Introduction

1 This is a family dispute among the parties – six siblings of the Ong family – over whether they share a common intention that a Housing and Development Board (“HDB”) two-storey shophouse located in Hougang purchased more than 25 years ago is to be their “retirement fund”, in that the shophouse should be sold and they all have a right to share equally in the sale proceeds. This HDB shophouse is registered in the sole name of the defendant, who is also the oldest son (though not the oldest child) of the family. The facts of the case are not that complicated. The dispute on the facts essentially boils down to whether the parties’ conduct is consistent with the alleged common intention. On account of the dearth of available documentary evidence owing to the passage of time, the inquiry will have to focus on a careful scrutiny of the oral evidence of the siblings to assess their credibility.

2 Legally, the case is less straightforward, and many of the nuances of the legal issues seem to have escaped the attention of the parties’ counsel. The plaintiffs run three alternative claims to support their case: common intention constructive trust, resulting trust, and proprietary estoppel. The analysis is complicated by s 51(10) of the Housing and Development Act (Cap 129, 2004 Rev Ed) (“HDA”), which provides that no person shall “become entitled” to HDB property (or any interest therein) under any resulting or constructive trust. The question thus arises as to whether s 51(10) prevents the plaintiffs from “becom[ing] entitled” to the shophouse under a constructive or resulting trust.

Facts

The parties

3 The plaintiffs and the defendant in this case are siblings of the Ong family. Mr Ong Chen Kiat and Mdm Ang Mong Kwa had six children, four daughters and two sons, who are the parties in this action (collectively, the “Ong siblings”), as follows. The defendant is the oldest son of the family.¹

s/n	Name	Party	Gender	Age
1)	Ong Sor Kim (“SK”)	3 rd Plaintiff	Female	62 years
2)	Ong Soh Ai (“SA”)	5 th Plaintiff	Female	60 years
3)	Ong Sor Mui (“SM”)	4 th Plaintiff	Female	59 years
4)	Ong Chai Soon	Defendant	Male	57 years
5)	Ong Chai Koon (“CK”)	1 st Plaintiff	Male	56 years
6)	Ong Kim Geok (“KG”)	2 nd Plaintiff	Female	54 years

¹ Statement of claim (Amendment No 2) dated 26 August 2020 (“SOC Amd 2”) at [2]; Bundle of Documents Volumes 1–5 dated 19 August 2020 (“BOD”) pp 1916 and 1925.

Background to the dispute

4 The six siblings grew up in the family home in a kampong at Lorong Gemilap which is located in Yio Chu Kang. This was one of the last surviving kampongs in Singapore, until the kampong land was compulsorily acquired in the late 1980s. While they were living in the kampong, their father carried out several trades on their land: first, pig farming, and then later, poultry slaughtering. He also planted fruit trees throughout the kampong and sold the fruits.²

5 The plaintiffs and defendant attended school but also helped in the father’s poultry slaughtering business. Most of them dropped out of school at a young age, with KG being the only one managing to qualify to take the exams at secondary four level. She went on to attend a vocational institute where she learnt hairdressing. She then worked as a hairdresser at a beauty salon in Ang Mo Kio.³

6 After dropping out of school, the other plaintiffs also worked. When their father switched from pig farming to poultry slaughtering, the land where the pig sty once stood was converted to a space where SK carried out a hairdressing business of her own, which was named after her, called Sor Kim Unisex Hairdressing & Beauty Salon. SA worked as a live-in domestic helper outside of the kampong, while SM worked as a seamstress. CK was an apprentice to a carpenter before he entered national service. After that, he

² Ong Kim Geok’s AEIC dated 15 June 2020 (“KG’s AEIC”) at [5]–[8].

³ Transcript, 25 August 2020, pp 51–52.

worked in a furniture upholstery business where he made cushions, while at the same time helping in the father's poultry slaughtering business.⁴

7 The defendant was the only one who did not pick up a trade of his own but continued to help the father in the poultry slaughtering business. Their uncle was also involved in the business, for which he was paid by the elder Mr Ong. It is disputed whether CK and the defendant were also paid by their father for helping out in the business, with the defendant insisting that he was, but CK denying that the two sons were ever paid.

8 The plaintiffs all gave evidence that they would hand over their earnings to their mother, who would manage the finances of the Ong family from a communal family fund.⁵ The defendant, on the other hand, claims that he kept whatever he was paid by his father for helping in the poultry slaughtering business.⁶

9 In 1988, the kampong land was compulsorily acquired by the Government. A significant sum was paid in compensation, which was kept and managed by the mother. It is not disputed that the father did not handle the finances of the family because he was a gambler.⁷ Parties were in dispute as to the size of the compensation payment. The defendant's counsel put to the plaintiffs that it was only S\$100,000, but the defendant testified that it was

⁴ KG's AEIC at [8]–[11]; Ong Chai Koon's AEIC dated 15 June 2020 ("CK's AEIC") at [6]; Ong Sor Kim's AEIC dated 15 June 2020 ("SK's AEIC") at [5]–[8]; Ong Sor Mui's AEIC dated 15 June 2020 ("SM's AEIC") at [4]–[6]; Transcript, 1 September 2020, p 72 line 26–p 73 line 31 and p 75 lines 22–27.

⁵ KG's AEIC at [11]; CK's AEIC at [5]; Ong Soh Ai's AEIC dated 15 June 2020 at [4]; SK's AEIC at [7]; SM's AEIC at [4]–[6].

⁶ Transcript, 4 September 2020, p 63 lines 14–31.

“about” S\$110,000.⁸ The plaintiffs’ figures ranged from S\$100,000 to S\$176,000 (the plaintiffs pleaded that it was “over S\$100,000.00”, which was also SK’s testimony; KG attested that it was S\$150,000 but also testified that it was S\$176,000; CK testified that it was S\$150,000).⁹

10 However, it is not in dispute that the Ong family was offered the chance to buy two adjoining three-room HDB flats in Yishun to assist in their resettlement, and for which approximately S\$60,000 of the compensation moneys was used to pay for one flat (“Unit 172”) and the other flat (“Unit 174”) was completely financed by a loan from the HDB.¹⁰ Unit 172 was registered in the joint names of the parents, while Unit 174 was registered in the joint names of CK and the defendant.¹¹ The housing loan for Unit 174 was paid over the years, but it is common ground that the defendant did not make any financial contributions to the payment of the loan.¹²

11 In February 1989, a tender for a two-storey HDB shophouse at Block 698 Hougang Street 61 #01-06 (“the Hougang shophouse”) was made in the name of the defendant. That tender was successful and a tenancy agreement dated 31 March 1989 between the HDB and the defendant was executed.¹³ Parties are in dispute as to the circumstances leading to the tender for the

⁸ Transcript, 4 September 2020, p 57 lines 7–11.

⁹ SOC Amd 2 at [4]; KG’s AEIC at [12]; CK’s AEIC at [7]; Transcript, 25 August 2020, p 59 lines 2–14, p 60 lines 1–6, and pp 76–77; Transcript, 28 August 2020, p 25 line 31–p 26 line 2, p 27 lines 1–4; Transcript, 1 September 2020, pp 81–82.

¹⁰ Plaintiffs’ closing submissions dated 20 November 2020 (“PCS”) at [91]; Defendant’s closing submissions dated 27 November 2020 (“DCS”) at [11]; KG’s AEIC at [20].

¹¹ PCS at [71]; DCS at [4].

¹² PCS at [71]; Transcript, 4 September 2020, p 56 lines 1–22.

¹³ SOC Amd 2 at [5]–[6]; DCS at [5].

tenancy of the Hougang shophouse and who made the initial payments for that tenancy, but that will be dealt with later in this judgment.

12 The Hougang shophouse had a commercial space on the ground floor and a residential unit on the second floor. While it contains a residential unit, HDB shophouses are commercial properties, so the eligibility criteria set by HDB for their ownership is different (and less stringent) than HDB flats. I will come back to this point on whether the plaintiffs are eligible to own the Hougang shophouse later. The evidence before me is that the commercial space on the first floor was sub-divided into four separate spaces and let to various sub-tenants. One of those spaces was occupied by a hairdressing salon known as “Red Point Hair Beauty and Trading” (“Red Point”), which was a sole proprietorship registered in the name of the defendant. Again, the circumstances under which Red Point started and how it was managed and run are matters of dispute. However, it is not disputed that SK, SM and KG worked at Red Point from its inception until 2018, when this dispute started between the plaintiffs and the defendant.

13 The HDB offered the Hougang shophouse for sale to the existing tenant, the defendant, in 1995. The offer was taken up, and the purchase price was S\$782,000, which was completely financed by a loan from Hong Leong Finance. The defendant was registered as the owner of the Hougang shophouse, and he remains the sole registered owner up to this day.¹⁴

14 As for the two Yishun flats, they went through changes in the registered owners. In 1994, the elder Mr Ong passed away from an illness and the mother became the sole owner of Unit 172. SM was added as a joint owner of that flat

¹⁴ Ong Chai Soon’s AEIC dated 22 June 2020 (“CS’s AEIC”) at [15].

the following year. She became the sole registered owner of Unit 172, when their mother passed away in 2016.¹⁵

15 In 1999, CK got married and wanted to apply for an HDB flat of his own. To do this, his name was withdrawn as a registered co-owner of Unit 174, and he was replaced by SK. To date, the defendant and SK are the registered joint owners of Unit 174.¹⁶

16 With the exception of KG, who got married in 1989, most of the Ong family resided in the two Yishun flats after they moved out of the kampong. In the mid-1990s, SA moved out and got a resale flat of her own. CK moved out not long after he got married in 1999. While the defendant maintained a room at Unit 174, he usually stayed at a room on the second floor of the Hougang shophouse.

17 SK and SM, who were unmarried, stayed with their mother at Unit 172. But sometime after the passing of the elder Mr Ong, the three of them moved to live at the second floor of the Hougang shophouse in 2003.¹⁷ The Yishun flats were then rented out and the rental proceeds were used to pay for the Ong family expenses.

18 For the last nine years of her life, their mother became ill, was bedridden and needed medical care. A domestic helper was employed to help care for her and also to handle the household chores. She passed away in 2016, while living at the Hougang shophouse. SK and SM continued to live there until they were

¹⁵ Defendant's core bundle ("DCB") p 66.

¹⁶ DCB p 77.

¹⁷ SK's AEIC at [16].

forced to move out by the defendant in 2018. They then moved back to Unit 174 and presently reside there. Only Unit 172 is rented out now.¹⁸

19 The unchallenged evidence before me is that the relationship between the defendant and his siblings had always been quite strained. For some of his siblings, such as SM and CK, their relationship was barely cordial. After their mother's death in 2016, the defendant started acting in a way which caused the plaintiffs to believe that he would attempt to claim beneficial ownership over the Hougang shophouse. In their view, this was wrong because the property was beneficially owned by all six siblings in equal shares, as it was always the intention of all the members of the Ong family that it would be their "retirement fund" and it was in any event paid for with funds which were family moneys.

20 The differences between them eventually led to a family meeting on 25 June 2017 held at the Hougang shophouse. There is an audio recording of the meeting, which lasted more than two and a half hours.¹⁹ For most of the meeting, things were fractious, and there was plenty of shouting and arguing. Many longstanding family issues were raised. Towards the end of the meeting, the defendant signed a document in English where he acknowledged that the Hougang shophouse and Unit 174 were to be shared equally between all the Ong siblings.²⁰

21 Sometime after the meeting, the defendant sought legal advice. He then made a police report on 2 July 2017 claiming that he was forced by threats of physical violence to sign a document at a family meeting which required him to

¹⁸ SK's AEIC at [26]; SM's AEIC at [11]–[12].

¹⁹ See Lee Mui Lin's AEIC dated 26 August 2020 ("Lee Mui Lin's AEIC") at pp 23–206 for the transcript of the audio recording.

²⁰ DCB p 138; Plaintiff's core bundle dated 19 August 2020 ("PCB") p 13.

share, *inter alia*, the Hougang shophouse, which he claimed to own entirely.²¹ About six months later on 25 January 2018, the defendant started to demand that KG, SK and SM, who worked at Red Point, pay him rent for use of the premises. They refused and Red Point's business ceased shortly after.²² Then, in or around 25 June 2018, the defendant also applied to the Family Justice Courts for a personal protection order ("PPO") against his siblings.²³ This PPO application was concluded by a settlement agreement in which the parties agreed, *inter alia*, that the plaintiffs "will not visit" the defendant at the Hougang shophouse, and this was "without admission of liability by any of the parties".²⁴

22 The plaintiffs then commenced these proceedings against the defendant on 27 December 2018.

The parties' cases

The plaintiffs' case

23 The plaintiffs' primary claim is that the Hougang shophouse is the subject matter of a common intention constructive trust, under which the defendant, as trustee, holds the property on trust for each of the Ong siblings who are entitled to equal beneficial shares. The other facet of this common intention is that the Hougang shophouse represented a family asset or "retirement fund", and it would be sold when the siblings got older and the sale proceeds shared equally amongst them. It is contended that the common intention for this trust arrangement is evidenced by the circumstances under

²¹ CS's AEIC at [55] and pp 99–101.

²² SK's AEIC at [24]–[26]; SM's AEIC at [11]–[12]; KG's AEIC at [65]–[66].

²³ BOD pp 701–704.

²⁴ Transcript, 4 September 2020, p 1 lines 14–28 and p 5 lines 12–17.

which the tenancy for the property was first entered into and later how the property was purchased. The siblings' conduct throughout the years also demonstrate that all of them knew of and shared this common intention. The plaintiffs also rely on the terms of the document signed by the defendant at the family meeting on 25 June 2017 ("the family meeting document") as evidence of his acceptance and acknowledgment of the common intention constructive trust over the Hougang shophouse and the proceeds when it is eventually sold.

24 The plaintiffs also submit that the Red Point business, while registered as a sole proprietorship in the name of the defendant, was in truth a "family" business, where all the earnings were used for the expenses of the Ong family, including the payments towards the reduction of the loan on the Hougang shophouse. Put another way, it is argued that the Red Point business's beneficial owners are all six siblings.

25 The plaintiffs also contend that the Hougang shophouse was paid for through a combination of the following funds: the rent generated by the sub-tenancies of the commercial spaces on the first floor of the Hougang shophouse; the earnings from Red Point; and the personal funds of their mother and of KG. Thus, it is argued that, in the alternative, the defendant holds the Hougang shophouse subject to a resulting trust for the benefit of the Ong siblings in equal shares. This is because all these sources of funds are trust moneys to which all the Ong siblings are entitled in equal shares. This in turn stems from the fact that their mother had pooled the family's assets and funds, including the two Yishun flats, to be used for the benefit of all her children.

26 Further and alternatively, the plaintiffs also argue that the doctrine of proprietary estoppel precludes the defendant from denying that he holds the Hougang shophouse for the benefit of all the Ong siblings in equal shares. In

this regard, the plaintiffs rely on various instances of the defendant's conduct over the years and contend that this amounted to representations to the plaintiffs that they own an interest in the Hougang shophouse. The plaintiffs submit that this conduct includes the defendant's acquiescence of SK, SM, CK, and their mother using the Hougang shophouse without having to seek his permission or compensate him; his acquiescence in letting KG receive the lion dance couplet at the opening ceremony for Red Point; and his non-collection of Red Point's profits. The plaintiffs relied on this representation, for instance, by – in SK, SM, and KG's case – accepting meagre salaries at Red Point and – in CK's case – by working for free on the fitting-out of and repairs to the shophouse.

27 Arising from these claims in common intention constructive trust, resulting trust and proprietary estoppel, the plaintiffs seek various remedies, which I shall outline and address at [177] to [191] below.²⁵

28 Finally, for completeness, I should add that the plaintiffs had pleaded the existence of an express trust over the Hougang shophouse, *viz*, that Mdm Ang created an express trust over any sale proceeds of the Hougang shophouse such that the defendant was to hold such proceeds, when realised, for the benefit of the plaintiffs.²⁶ This claim was maintained at trial, but eventually abandoned in the plaintiffs' closing submissions because they accept "that the evidence does not support the existence of [such an express trust]".²⁷

²⁵ SOC Amd 2 at pp 8–9.

²⁶ SOC Amd 2 at [20].

²⁷ PCS at [5].

The defendant's case

29 The defendant's case is a straightforward one. He denies that he holds the Hougang shophouse on trust for anyone. He claims to own the property beneficially in its entirety. He denies that there was any common intention, whether express or inferred, for the property to be held on trust for all the Ong siblings when he first tendered for the tenancy for the property and later when he purchased the property outright.

30 The defendant submits that he left it entirely to KG to manage the Hougang shophouse, the sub-tenants and the Red Point business because she was the most qualified of all the Ong siblings. He claims that the rental paid by the sub-tenants would have been sufficient to pay for the mortgage loan instalments for the Hougang shophouse and he expected KG to have used that rent to make the payments. Even if KG had used the earnings from the Red Point business for herself, it would make no difference because he owned the business entirely as the sole proprietor. In this regard, the defendant argues that SK, SM and KG were his employees and he had set up this hairdressing business for them to make a living by working for him. He thus denies that any resulting trust arose over the Hougang shophouse through the payments towards its purchase price.

31 As for any payments towards the purchase price that allegedly came from the jointly held funds of their mother and KG, the defendant claims that KG should not have utilised those funds to make payments of the mortgage loan instalments given what he believed was the sufficiency of the sub-tenancy rental from the Hougang shophouse to make the payments.

32 I should add that, although the plaintiffs did not specifically plead a case based on resulting trust, the defendant had not, whether in his opening statement

or the closing submissions, raised any objection to this deficiency in the pleadings. Instead, the defendant has attempted instead to deal with the arguments on resulting trust on its merits. This is perhaps because the evidence as to the acquisition of the Hougang shophouse and the payments towards its eventual acquisition were all extensively raised and explored in the evidence, and are, in any event, relied upon by both sides on the issue of whether there is a common intention constructive trust over the shophouse.

33 The defendant argues that, in relation to the plaintiffs' claim on express trust, that is a claim that should be brought by the personal representatives of their mother's estate, because the mother would be the settlor of the trust. In this regard, the mother's estate remains unadministered, with none of the siblings having applied for letters of administration to act as the estate's personal representatives. Thus, the plaintiffs have no *locus standi*. However, since the plaintiffs are no longer pursuing their claim on the express trust, it is unnecessary for me to deal with this issue.

34 The defendant also pleaded that s 51 of the HDA "provides that no trust shall be created on HDB property without the prior written approval of HDB and any trust which purports to be created shall be void".²⁸ However, as I explain further at [140] below, the defendant's argument on s 51 has morphed significantly from the time of the pleadings until now.

35 As for the family meeting document, the defendant insists that he signed the document under duress because there were threats of physical harm to his person when he was at the meeting. He also relies on the doctrine of *non est factum* because he claims that he was *not* told by his siblings that the family

²⁸ Defence Amendment No 2 dated 20 November 2019 ("Defence Amd 2") at [25].

meeting document would touch upon the ownership of the Hougang shophouse. Further, the defendant argues that, if the family meeting document amounts to a contract, under which he agreed to share ownership of the Hougang shophouse with his siblings, such a contract is not enforceable because no consideration has been furnished by his siblings.

36 As for the claim in proprietary estoppel, the defendant flatly denies that he had made any representations to the plaintiffs, whether written, verbal or by conduct, that suggested that all the Ong siblings had an equal beneficial interest in the property.

Issues to be determined

37 From the parties' respective cases, it appears to me that the essential issues to be determined in order to resolve the dispute between the parties are as follows.

38 First, is the Hougang shophouse subject to a common intention constructive trust, under which the defendant holds the beneficial interest in the property on behalf of himself and his siblings, all in equal shares? The determination of this issue requires, as I will explain below, a careful examination of the evidence as to whether a common intention, either express or inferred, existed at the time when the property was acquired that it would be shared among the Ong siblings.

39 Second, in any event, does the defendant hold the Hougang shophouse subject to a resulting trust where the true beneficiaries are himself and his siblings, all in equal shares? To answer this question, as will be obvious, one primarily needs to examine the sources of funds used to pay for the acquisition

of this property and whether those sources of funds are the defendant's moneys and, if not, who owned those moneys.

40 Third, if the Hougang shophouse is subject to a trust, does s 51 of the HDA prevent the trust from arising or having effect and, if so, what are the implications and remedies available to the plaintiffs, if any at all?

41 Fourth, if the Hougang shophouse is not subject to a common intention constructive trust or a resulting trust in favour of all the Ong siblings, can the plaintiffs avail themselves of the doctrine of proprietary estoppel to assert a claim to an equitable interest in the property?

42 In my view, as would be patently clear, the first two of the essential issues listed above actually devolve into a determination of one central question, *ie*, who beneficially owns the Hougang shophouse in equity? From my analysis of the relevant legal principles (as I set out at [43] to [45] below), the determination of this question requires the Court to take into account the intentions of the parties and their parents, whether these intentions were shared by all the relevant parties, the parties' conduct, and the payments towards the purchase price of the property. In other words, the entire factual context must be scrutinised. To illustrate, the payments towards the mortgage instalments for the Hougang shophouse, according to the plaintiffs, came not only from the rental generated by the sub-tenants of the property but also the Red Point business, amongst other sources. This in turn requires the Court to delve into the issue of whether the Red Point business was indeed beneficially owned by the Ong siblings as alleged. Otherwise, one would not be able to conclude whether any payments from Red Point's earnings to reduce the mortgage loan would be considered as a financial contribution by the defendant to the acquisition of the Hougang shophouse. As the issues of whether there exists a

common intention constructive trust over the Hougang shophouse or whether the property is held by the defendant on resulting trust for all the Ong siblings are so intimately intertwined, I will deal with the issues together in an overarching analysis of who the beneficial owner or owners of the Hougang shophouse are.

Is there a trust over the Hougang shophouse?

The legal framework

43 Parties are not in dispute as to the law and rely mainly on the same authorities. The legal principles that are applicable when the Court has the task of determining the beneficial ownership of property, when various parties have contributed to the purchase price and where there has been no declaration of trust, were explored and summarised in the Court of Appeal’s decision in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [160]:

In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

(a) Is there sufficient evidence of the parties’ respective financial contributions to the purchase price of the property? If the answer is “yes”, it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is “no”, it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

(b) Regardless of whether the answer to (a) is “yes” or “no”, is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is “yes”, the parties will hold the beneficial interest in

accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

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

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

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

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is “yes”, the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is “no”, the parties will hold the beneficial interest in one of the modes set out at (b) – (e) above, depending on which is applicable.

[emphasis in original]

44 The starting point, thus, is for the Court to examine whether there is sufficient evidence of the financial contributions to the purchase price of the Hougang shophouse – what were the sources of funds for the payment of the

purchase price and how much was paid? That, as per the Court of Appeal in *Chan Yuen Lan*, will lead to the presumption that the beneficial interest in the property will be held in proportion to the parties' respective contributions to the purchase price, which is an application of the *presumption* of resulting trust.

45 However, in this suit, the plaintiffs' claim in resulting trust is not their primary case. Indeed, as I pointed out earlier (see [32] above), it is not even pleaded by the plaintiffs, although the defendant has raised no objection in this regard. Furthermore, as noted by the High Court in *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 at [24]:

While the approach in *Chan Yuen Lan* starts its analysis with the purchase price resulting trust, in practice the foremost claim that is put forward is usually the common intention constructive trust, with an alternative basis relied upon of a proprietary estoppel; the resulting trust is usually the backstop claim.

46 This was indeed how the plaintiffs structured their arguments in this trial – their primary and foremost case in their closing submissions was based on a common intention constructive trust. As such, I shall consider if a common intention constructive trust exists first. I will begin my analysis of the evidence from around the time when the tender for the tenancy for the Hougang shophouse was submitted and move forward chronologically from that point. Along the way, I will touch upon the evidence as to the mother's and the siblings' intentions with respect to the ownership of the property. My findings in that regard will be relevant to the determination of the issue of the common intention constructive trust.

Tender for the tenancy of the Hougang shophouse

47 Due to the long passage of time from when the material events occurred, the evidence of what had happened at this time is based mainly on the oral

evidence of the parties. In this regard, the main person who is able to shed the most light on the details in relation to the tender for the tenancy and the later acquisition of the Hougang shophouse was not the defendant, but KG.

48 It is quite clear from all the evidence before me that KG is clearly the most capable and competent of the Ong siblings in terms of being able to manage the finances of the family and handle issues of administration. As already mentioned, of all the Ong siblings, she had achieved the highest standard of academic qualifications, in that she took her “O” Level exams at secondary four and later attended ITE for her hairdressing certificate. I also find that KG has a better command of written and spoken English as compared to her siblings. It is thus no surprise that their mother placed trust and responsibility on KG to help her in managing the finances of the family. She was meticulous and kept records of financial transactions, significant payments and key documents. In fact, it was KG who produced the documentation in relation to the tenancy of the Hougang shophouse, its subsequent acquisition and also the financing of its purchase, and its subsequent refinancing. The defendant, despite being the registered legal owner, did not have in his possession any of these documents.

49 SK’s and CK’s unchallenged evidence is that, at the time when the kampong land was being acquired, officers from the HDB had visited the Ong family and, on learning that SK operated a hair salon there, they suggested that the family tender for a tenancy of an HDB shophouse so they could continue with their hairdressing business. Their mother thought that this was a good idea and gave instructions for the children to tender for the tenancy of an HDB shophouse. Their mother said that she would provide the initial funds for the tenancy and for the start-up costs of the hairdressing business.

50 KG's, SK's and CK's evidence is consistent in that they, together with the defendant, discussed and decided to tender for the tenancy of two HDB shophouses – one in Yishun and one in Hougang. The tender for the shophouse in Yishun was in SK's name, while the other tender was in the name of the defendant. KG was the one who filled up the tender application forms, and she gave evidence that there was no particular reason for having chosen the names of SK and the defendant.²⁹ After all, it was understood by all of them that the business was going to be a family business. As things turned out, only the tender for the shophouse in Hougang was successful, and a tenancy agreement was then executed with the HDB by the defendant.

51 In contrast, the defendant's evidence is that his mother never gave any instructions for the tender of an HDB shophouse and he never had any discussions with KG, SK or CK about this. Instead, it was his own decision to do so, after learning from a friend that the HDB put up notices for shophouses available for tender, and after reading from the notices that a tenancy for the Hougang shophouse was up for tender. He then asked KG to help him fill up the tender application form. He denied having any knowledge of any other tender for a shophouse in Yishun.³⁰

52 In the absence of any documentary evidence, in assessing the oral evidence of the Ong siblings, I had to consider the inherent probabilities of each side's version of events against the undisputed facts. It is clear from the evidence that, when they lived at the kampong, the Ong family operated businesses which were treated as family businesses in that the income earned was utilised for the benefit of the family. With the acquisition of the kampong

²⁹ KG's AEIC at [15].

³⁰ CS's AEIC at [10].

land, the ability of the Ong family to earn a livelihood from their family businesses of poultry slaughtering, planting of fruit trees and hairdressing had been taken away. It is thus entirely logical that the family would have thought about how the children could help start a business to make a living for themselves. It is also sensible that the mother, who was in charge of the moneys paid by the HDB as compensation for the acquisition, would have set aside some portion of those moneys to assist in the setting up of a new family business.

53 I thus found the evidence of SK, KG and CK to be more consistent with the circumstances as they stood at that time. I was not helped, in general, by the poor quality of the evidence given by the defendant. In particular, and in this regard, he never explained why he would tender for a tenancy of an HDB shophouse to run a hairdressing business. The undisputed evidence is that he knew nothing about hairdressing.³¹ He gave no evidence that he had discussed with his sisters about them coming to work for him in a hairdressing business that he was planning to set up. Not only that, the evidence before me, which was not challenged by the defendant, is that he got on quite poorly with his siblings, in particular, SM.³² This is relevant because it makes it quite improbable then that he would have asked SM and that she would have agreed to work for him.

54 Significantly, the defendant also did not state in his affidavit of evidence-in-chief (“AEIC”) that he asked for KG’s assistance to complete the tender application form. That evidence only came out belatedly in his oral evidence, in what I find to be a rather feeble attempt to explain away the fact that it is KG’s handwriting which appears on the tender application form and it

³¹ Transcript, 4 September 2020, p 33 line 7.

³² SM’s AEIC at [12].

was KG who was able to produce that document in these proceedings and not the defendant.³³ This added to the general poor quality of the defendant's evidence.

55 I come now to the evidence as to the payments for the tender and the initial rental for the Hougang shophouse.

56 KG's evidence is that the government had paid the total sum of between S\$150,000 to S\$176,000 as compensation for the acquisition of their land in the kampong and for the loss of their farming licence (see [9] above). She was candid in admitting that she did not know precisely how much was received because it was their mother who handled the finances for the family at that time and it was their mother who had custody of the compensation moneys. She had heard about these figures from her mother.³⁴ She also agreed with the defendant's counsel's suggestion that some portion of the compensation moneys had to be repaid to the authorities because the elder Mr Ong had overstated the number of fruit trees that the family had cultivated. She estimated the repayment to be in the region of S\$4,000 to S\$5,000, which is based on what her father had told them.³⁵

57 Out of the compensation moneys received, it is common ground that a sum of almost S\$60,000 was used to pay for Unit 172, while the purchase of Unit 174 was financed completely by an HDB loan.³⁶ Even after the cost of the renovations for the two Yishun flats, there was still more than sufficient compensation moneys left over. CK had assisted in doing the carpentry work

³³ Transcript, 4 September 2020, p 22 line 23–p 23 line 1.

³⁴ Transcript, 25 August 2020, p 60 lines 5–12.

³⁵ Transcript, 25 August 2020, p 61 line 20–p 62 line 11.

³⁶ Transcript, 25 August 2020, p 60 lines 10–12 and p 71 lines 5–12.

for the two Yishun flats. This helped considerably in keeping the costs of renovations for the flats within manageable limits.

58 KG's evidence is that the Red Point business was started with funds which came from their mother, which probably came from the balance of the compensation moneys. Moneys were needed to renovate and fit out the commercial space at the Hougang property from which Red Point was to operate, and also to purchase the necessary equipment for hairdressing. Funds were also needed for the initial payments of rent and conservancy charges to HDB and the stamp fees, and for the deposit of three months' rental with Far Eastern Bank so that it would issue a guarantee to the HDB as security, which was a requirement of the tenancy. All these funds were provided by their mother.³⁷

59 The defendant's evidence, on the other hand, is that he came up with the funds to fund the start of the business and the initial tenancy payments. In his oral evidence, he claims that he expended about S\$20,000 for the start up costs, including the amount paid to provide security for the tenancy. The defendant also claimed, during cross-examination, that, of the sum of S\$20,000 he spent, he borrowed a sum of S\$5,000 from his mother and the rest were his personal funds. He said that he saved up money from what the elder Mr Ong paid him for assisting his father in the poultry slaughtering business in the kampong and also from having helped out in some "renovation business".³⁸

60 I find that the defendant's evidence on this factual dispute suffers from a number of problems. Despite his claim that he furnished the sums required

³⁷ Transcript, 26 August 2020, p 43 lines 10–23.

³⁸ Transcript, 4 September 2020, p 14 line 10–p 15 line 32.

for the tenancy of the Hougang shophouse to be granted to him, he was not able to give accurate details as to the tenancy in a number of significant respects.

61 First, the defendant confidently stated in his oral evidence that he gave a cashier's order of approximately S\$14,000 to the HDB as the security deposit for the tenancy.³⁹ But, when he was confronted in cross-examination with documents showing that no cashier's order was given to the HDB, but instead a guarantee was provided by Far Eastern Bank to the HDB for the amount of S\$10,942, the defendant hastily changed his evidence to say that he provided the bank with the cash so that it would issue a guarantee to the HDB. When asked why he had so specifically mentioned a cashier's order earlier in his evidence, he was unable to explain himself.⁴⁰

62 Second, the defendant was not able to even accurately state the rental charged by the HDB for the tenancy. In his oral evidence, he claimed it was S\$3,500,⁴¹ which is the accurate figure, but in his AEIC, he referred to a figure of S\$3,200.⁴²

63 Third, in his affidavit dated 25 October 2019 filed in support of his personal protection order against his siblings, he claimed that the tenancy of the Hougang property started in 1997,⁴³ when it was in fact eight years earlier, in 1989. Worse, in that same affidavit, the defendant gave a completely wrong name for the Red Point business as the business that would be operating at the premises. He set out the name of the business, which he claims to have

³⁹ Transcript, 4 September 2020, p 14 lines 19–29 and p 16 lines 24–28.

⁴⁰ Transcript, 4 September 2020, p 17 line 17–p 18 line 31.

⁴¹ Transcript, 4 September 2020, p 14 lines 19–22.

⁴² CS's AEIC at [10].

⁴³ BOD p 702 at [9].

conceived, started and owned as a sole proprietor, as “Hair & Beauty House & Trading”.⁴⁴ As is obvious, there was no mention of anything even remotely close to the name “Red Point”. No proper explanation was given for these serious inaccuracies, other than the fact that he did not have the relevant documents at that time. Under cross-examination, the defendant vacillated between insisting that his said affidavit from October 2019 was correct and that, if it was wrong, it was because he could not remember these details.⁴⁵ If indeed it is true that the defendant could not remember these rather basic details such as the name of Red Point, the year when the tenancy started or what was the initial rent, I find that quite remarkable for a person who claims to be the owner of the Hougang shophouse and the sole proprietor of the business. The critical point is that it was not simply that the defendant could not remember these details; rather, it is that the defendant could not keep his story straight, and he could not come up with a credible explanation for the inconsistencies in his evidence. Instead, he continued to put up a front and shifted from one excuse to another, as aforementioned, when he was confronted with his inaccurate and inconsistent accounts.

64 Fourth, in his oral evidence, the defendant also claimed that he leased the Hougang shophouse for about ten years before HDB offered to sell the property to him.⁴⁶ Again, this is way off the mark because the property was offered by the HDB for sale to the defendant in 1995, after six years from the start of the tenancy.

⁴⁴ BOD p 702 at [6].

⁴⁵ Transcript, 4 September 2020, p 8 line 3–p 10 line 28.

⁴⁶ Transcript, 4 September 2020, p 11 lines 1–29.

65 Fifth, the defendant was not able to furnish any evidence that he had savings of S\$15,000 or so in 1989 to be able to start the Red Point business. He was not able to produce any documents at all, *eg*, in the form of bank statements or pay slips, to show that he had the wherewithal at that time to be able to finance the start up of the business. His evidence that his father paid him for helping in the poultry slaughtering business is contradicted by the evidence of CK, who testified that only their uncle was paid by their father for helping in the business.⁴⁷ I find the evidence of CK to be more credible in this regard because it is consistent with the evidence of all the plaintiffs that all the children would hand over their earnings to their mother for her to manage the finances of the family communally.

66 Viewed in its totality, I find the evidence of the defendant in this regard to be rather confusing and unsatisfactory. On the other hand, the plaintiffs gave a coherent and consistent account that the set up of the business and the initial payments for the Hougang shophouse was paid for from their mother's funds. KG's evidence is particularly credible because she was able to provide some documentation to show that she was involved in the process of the tender of the tenancy for the Hougang shophouse, and the payments for the issuance of the bank guarantee as security and the initial rental payment to HDB.⁴⁸

67 I should point out that one of the defendant's main arguments in his closing submissions is that there could not have been enough moneys left over after the expenditure on the purchase of Unit 172 and the renovations to the two Yishun flats for their mother to come up with any other moneys for the tenancy

⁴⁷ Transcript, 4 September 2020, p 16 lines 1–4; Transcript, 1 September 2020, p 75 lines 5–9.

⁴⁸ See KG's AEIC at [17] and Exhibit "OK-5", pp 2–8.

of the Hougang shophouse and the start of Red Point's business.⁴⁹ However, I find that this argument proceeds on the flawed premise that the parents had no savings of their own at all. Even if I were to assume that the elder Mr Ong had frittered away what he earned from the poultry slaughtering business because he was a gambler, it was unchallenged that the mother also did extra jobs at the kampong as a cleaner and washerwoman. KG, who shared a joint account with her mother, gave evidence that her mother had approximately S\$40,000 in savings.⁵⁰ That being the case, I am not prepared to accept the defendant's suggestion that his mother had no savings of her own. I thus accept the plaintiffs' evidence that their mother provided the initial funds for the tenancy of the Hougang shophouse from the HDB and the setting up of the Red Point business.

Purchase of the Hougang property

68 As already mentioned, in April 1995, the HDB offered the defendant, who was the existing tenant, the opportunity to purchase the Hougang shophouse. KG's evidence is that she discussed the matter with her mother and siblings, and a collective decision was made to take up the offer to purchase the property. She was the one who replied to HDB to indicate that the defendant was interested in buying the property.⁵¹ Her handwriting appears on the form "*APPLICATION TO PURCHASE EXISTING HDB SHOP*", which she was able to produce to the Court.⁵² She not only filled in the defendant's name, but also signed on the defendant's behalf. KG also used her own money, in the amount

⁴⁹ DCS at [19] and [25].

⁵⁰ Transcript, 26 August 2020, p 36 lines 2–4.

⁵¹ KG's AEIC at [41].

⁵² KG's AEIC at Exhibit "OK-5", pp 658–660.

of S\$515, to purchase a money order for the administrative fee that had to accompany the application.⁵³

69 KG testified that she did think, when she was filling up the application form, whether it was necessary to include all the family members as registered owners for the Hougang shophouse, but thought it was probably fine to have the property registered solely in the name of the defendant given that the whole family knew that this was considered a “family property”. The purchase was thus completed with the defendant as the sole registered owner. It was financed by a loan for 100% of the purchase price by Hong Leong Finance, which KG arranged on her own without any involvement of the defendant, save that he was asked to sign the relevant documents in relation to the housing loan and the mortgage.⁵⁴

70 The defendant’s evidence is that he made the decision to purchase the Hougang shophouse on his own, without consulting his family members, because he was the sole registered tenant of the property.⁵⁵ However, the defendant’s evidence was again wanting in several respects. In his affidavit made in support of his personal protection order application, he claimed that the HDB offered the property for sale to him in 2007, which is more than 12 years after the property was registered in his name as the sole owner. In that same affidavit, he also wrongly stated that S\$870,000 was the purchase price, when the correct figure was S\$782,000.⁵⁶ He could not give any coherent explanation as to why, at the time of the making of that affidavit in October 2019, he could

⁵³ KG’s AEIC at [41].

⁵⁴ KG’s AEIC at [15] and [41].

⁵⁵ CS’s AEIC at [10] and [15].

⁵⁶ BOD p 702 at [9].

not state accurately when he purchased the Hougang shophouse *and* how much the sale price was, again other than saying that he did not have the relevant documents.⁵⁷ The defendant did not give any evidence that he ever purchased any other property in Singapore. That would mean that the acquisition of the Hougang shophouse was the one and only time in his life that he was buying a property, if his evidence is to be believed. If so, I find it surprising, to say the least, that he would not be able to remember what was the purchase price of the Hougang shophouse.

Payments of the mortgage loan instalments for the Hougang shophouse

71 I now turn to the issue of who paid for the mortgage loan instalments for the Hougang shophouse. I first set out the legal principles on whether mortgage payments may be taken into consideration for the purposes of presuming a resulting trust, which were considered by the Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 (“*Su Emmanuel*”) and *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”).

72 The resulting trust crystallises at the time the property is acquired. Thus, the extent of the parties’ beneficial interests under a resulting trust must be determined at the time the property is purchased: *Lau Siew Kim* at [112]–[113] and [117]. To determine the direct contributions to the acquisition of a property when a mortgage is taken out, the crucial consideration is the parties’ intentions, at the time the property was acquired, as to the ultimate source of the funds for the purchase of that property. Actual mortgage payments made at a later time would therefore only count as direct contributions to the purchase price where

⁵⁷ Transcript, 4 September 2020, p 11 line 1–p 12 line 8.

these were referable to, and in keeping with, a prior agreement between the parties as to who would be liable to repay.

73 Many factors are engaged in the determination of the precise agreement or understanding between the parties as to who would repay the mortgage, and the focus should not lie exclusively on who took on liability for the mortgage as against the bank. In this regard, subsequent conduct may be relevant to the extent that it sheds light on such an agreement (if any) between the co-owners: *Su Emmanuel* at [87]–[90]. Furthermore, if the objective evidence does not demonstrate that parties reached a clear agreement, a court would not be precluded from determining the parties’ rights based on some common intention or understanding, and the actual loan repayments can be relied on as the manifestation of the parties’ intention as to the extent to which each source of funds was to be used to repay the loan: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [153] and [160].

74 Therefore, I have to assess who the parties agreed, at the time when the mortgage was taken out, would be paying for the mortgage for the Hougang shophouse. Subsequent mortgage instalment payments can only count towards the resulting trust analysis if they are consistent with the parties’ original agreement on who should pay for the mortgage.

75 KG’s account in her evidence is the most helpful in this regard. She gave evidence that the mortgage for the Hougang shophouse was serviced by transfers from her personal UOB bank account, and the monies in this account “mainly” came from income generated by Red Point.⁵⁸

⁵⁸ KG’s AEIC at [42]–[43].

76 In addition, KG also gave evidence that shows that the sub-tenant rental was used to pay for the mortgage payments. She was the sole person in charge of procuring the sub-tenants for the commercial spaces on the first floor of the Hougang shophouse, apart from the space occupied by Red Point. She applied to the HDB for permission to partition the first floor into four commercial spaces, one of which would be retained for use by Red Point. She advertised for sub-tenants. She denied that the defendant played any role in any of these tasks. Also, unlike the defendant, KG was able to identify the sub-tenants that occupied the spaces over the years, the various types of businesses they carried out, and the amount of rental they paid.⁵⁹

77 KG also gave evidence that, right from the start, she was also the one who was in charge of collecting the rent from the sub-tenants. She estimated that the amount of rent collected from the sub-tenants totalled the amount of approximately S\$5,300 monthly.⁶⁰ This was sufficient to pay for the monthly rental to the HDB at the time when the Hougang shophouse was still leased. I find that the rental collected from the sub-tenants was also generally sufficient to pay the monthly mortgage payments to Hong Leong Finance, which was about S\$4,300 per month.

78 I should add that it was KG who produced the receipts for the various mortgage payments in these proceedings, and not the defendant. She was responsible for and made all these payments monthly to Hong Leong Finance. In this regard, she paid the monthly mortgage instalments to Hong Leong Finance from the funds in her personal UOB account. She had regularly deposited cash and other payments due to Red Point into her UOB account. KG

⁵⁹ KG's AEIC at [47]–[48]; Transcript, 26 August 2020, p 18 line 19–p 26 line 22.

⁶⁰ Transcript, 26 August 2020, p 26 lines 23–29.

also often deposited the amounts she collected from the sub-tenants as rental into her UOB account.⁶¹ That being the case, I can only infer that the sub-tenants must have either often paid in cash or, if by cheque, KG must have told them to make the cheque out to her personal name.

79 KG explained in her evidence that she had this arrangement of making such deposits into her UOB account solely out of convenience because Red Point kept an account with OCBC, but UOB had a branch that was closer to where she lived. Hence, it was more convenient for her to travel to the UOB branch to do her deposits.⁶² The payments of the mortgage instalments directly from the funds in KG's UOB account carried on until 2011.

80 KG approached OCBC in 2010 to seek a refinancing of the housing loan for the Hougang shophouse. It was her personal decision to do so after learning from friends that OCBC provided better interest rates on housing loans. She got the defendant to sign the necessary documents for the refinancing by OCBC to take place. The arrangement where she would make payments of the mortgage loan instalments, now to OCBC, directly from funds in her personal UOB account carried on.⁶³

81 In 2012, she arranged for the defendant to open an account with OCBC. She would then regularly transfer moneys from her personal UOB account to the defendant's OCBC account, and the monthly instalments would be deducted by OCBC from that latter account to service the mortgage instalments. Throughout all this time, KG continued to deposit the cash takings of the Red

⁶¹ KG's AEIC at [42] and [48].

⁶² Transcript, 26 August 2020, p 63 lines 1–8; KG's AEIC at [43].

⁶³ KG's AEIC at [44]; Transcript, 26 August 2020, p 33 lines 21–29.

Point business and the sub-tenant rental for the Hougang shophouse into her personal UOB account.⁶⁴ It is a matter of common sense that not all the takings of Red Point nor all the sub-tenant rental received would have been paid into her personal UOB account because some portion would have been kept as cash for the day to day functioning of the Red Point business. I infer that some portion would have also been paid into Red Point's account with OCBC.

82 I should point out that KG also testified that, on occasion, she had transferred sums from the joint account she held with her mother to the defendant's OCBC account, totalling the amount of approximately S\$17,000, in order to meet the mortgage instalments.⁶⁵ She said that she would do this when the Red Point revenues and the sub-tenant rental were insufficient to pay the mortgage instalments. However, it was not explained how and when the sub-tenant rental, or the earnings generated by Red Point, would ever be insufficient to pay the mortgage instalments in respect of the Hougang shophouse. In my judgment, it is more likely to be the case that KG simply used whatever funds that were available at her disposal to make payments of the mortgage instalments. It may be that she might on occasion have used the moneys from her joint account with her mother to make the payments, but I find that most of the payments were from moneys that can be traced back to the sub-tenant rental from the Hougang shophouse and Red Point's business.

83 It is significant that KG's evidence as to how she procured the refinancing of the loan and how she arranged for the payments of the monthly mortgage instalments was not seriously challenged in cross-examination. The

⁶⁴ KG's AEIC at [44]; Transcript, 26 August 2020, p 34 lines 2–24.

⁶⁵ KG's AEIC at [46] and Exhibit "OKG-5", p 793; Transcript, 25 August 2020, p 47 line 28–p 48 line 32; PCB pp 7, 9, and 12.

defendant's main focus in his case on the issue of payments of the mortgage instalments is that the sub-tenant rental was sufficient to pay for the mortgage payments to Hong Leong Finance and later OCBC. Since he claims to be the sole owner of the Hougang shophouse, these were funds that were entirely his. As such, the defendant submits that this is a situation where the Court should find that he made all the payments for the purchase of the Hougang shophouse.

84 None of the parties gave any evidence as to the arrangements for the payment of the mortgage instalments at the time the Hong Leong Finance mortgage was taken out, and also later when it was replaced by the OCBC mortgage. To my mind, there was no explicit discussion on this issue because it was understood that the earnings of Red Point and the sub-tenancy rental income would be sources of funds for the payment of the mortgage instalments. The defendant must have known that, and hence he left it to KG to handle matters and took no interest in how payments were effected and where precisely each payment came from. I find that this arrangement between the defendant and KG was arrived at when the Hong Leong Finance mortgage was created, and subsequently it was expected to continue when KG refinanced the loan with OCBC and the latter's mortgage was created. The payments that were made by KG were consistent with this arrangement.

85 Further, from my analysis above, I find that there is sufficient evidence as to how the Hougang shophouse was paid for. It was paid from a mixed fund, which comprised mostly the sub-tenant rental and Red Point's takings, although it appears not possible on the evidence before me to say what proportion of the payments came from which source of funds. Even if the Court is to proceed on the assumption that the mortgage payments could and should have been paid for entirely by the sub-tenant rental, but for the conduct of KG in mixing the sub-tenant rental with earnings from Red Point, the issue of the legal entitlement to

that sub-tenant rental remains unresolved. It ultimately depends on whether there was a common intention, express or inferred, at the time the Hougang shophouse was acquired, that the property would be owned equally by the Ong siblings and thus that the defendant would only hold the property as a trustee. I turn now to that issue.

Was there a common intention that the Hougang property would be owned by the Ong siblings?

86 To determine if there is sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a different proportion from their respective financial contributions to the property's purchase price, the evidence must be sufficient and compelling: *Su Emmanuel* at [83].

87 In my judgment, what is clear from a holistic examination of the evidence before me is that the Ong family treated the compensation moneys paid for the acquisition of their kampong land as a communal or family fund to pay for the expenses of the Ong family and to set up businesses for the benefit of the family. Consequently, I find that, on a balance of probabilities, the Ong siblings always shared a common intention that they shall have equal beneficial shares in the Hougang shophouse and, more importantly, its sale proceeds. I will set out what I consider to be the key considerations which have led me to this conclusion.

88 First, the evidence shows quite clearly that the Ong family treated the two Yishun flats as assets that would ultimately be shared by all the Ong siblings. This is relevant because the two flats were acquired mainly from the proceeds of the compensation given by the authorities, and it appears to me that

the parties treated those Yishun flats not much differently from the Hougang shophouse.

89 For Unit 172, the purchase price of approximately S\$60,000 was paid outright entirely from the compensation moneys.⁶⁶ It was initially in the names of the two parents, but after the father passed away in 1994, SM was added as a registered co-owner with the mother. When their mother passed away in 2016, SM became the sole registered owner (see [14] above). That flat is now rented out and the rental collected by SM is paid into an account held by KG, which holds the Ong “family funds”. There is no dispute between the Ong siblings that Unit 172 is beneficially owned by them in equal shares.

90 For Unit 174, the flat was registered in the name of the defendant and CK. The purchase price of approximately S\$60,000 was 100% financed by a loan from the HDB (see [10] above). As was the case for Unit 172, the renovations for Unit 174 were paid for by their mother. KG gave unchallenged evidence that the monthly loan instalments for the flat was paid for by the mother over time from the compensation moneys received. When CK withdrew as a registered owner in 1999, he was replaced by SK. It is not disputed that SK then paid the sum of S\$39,267.15 out of her own funds, which was the balance of the outstanding loan owed to HDB. The defendant does not claim to have paid any moneys towards the acquisition of Unit 174. While the unit is today registered in the names of the defendant and SK, the Ong siblings do not dispute that the property is beneficially owned by all of them in equal shares. Even SK, who I find appears to have paid more than 50% of the purchase price from her own savings, does not dispute that Unit 174 is owned by all the siblings in equal shares.

⁶⁶ KG’s AEIC at [20].

91 Furthermore, and this is significant, it is evident from the siblings' testimony that it was always intended that the Hougang shophouse was meant as a shared fund meant for their retirement.

(a) As KG explained in her oral evidence:⁶⁷

Court: No, what---why do you say that he doesn't own it, why do you say he doesn't own it when it's in his name? Did he ever say to you that he would---he's holding it---he's just holding it in his name, but actually, it belongs to the whole family?

A: Right from the beginning, he already knew that we were only using his name.

Court: But why do you say that, why do you say he knew?

A: Because, right from the beginning, when we wanted to tender for the shophouse, my mother told us that she had some savings, she had about \$40,000. *She told us not to work for anybody else but to run our own business, such that we could derive or save up the income from this business and use it for our pension as our pension fund.* I'm sorry, I would like to correct that, my mum told me not to work for others.

...

Q: Alright. Now, madam, from the commencement of business for Red Point Hair Beauty, Ong Chai Soon has been the ... sole proprietor and you and two sisters - ... Sor Kim and Sor Mui, you---and yourself were employees. Do you agree?

A: In writing, yes. But, in reality, we are not.

Q: Correct. And ... each of you derived a salary and CPF payment ... proportionately each month. Is that correct?

A: Yes. But we were only receiving a meagre sum of salary plus CPF contribution because this was meant to be a family business. What we are getting was just sufficient for our own use. *Our mother's intention was such that eventually when we grow old, we could sell off this property and use the sale proceeds as our pension fund.*

[emphasis added]

⁶⁷ Transcript, 26 August 2020, p 35 line 27–p 36 line 8; p 46 lines 18–22.

(b) As KG and the other sisters said at the family meeting on 25 June 2017:⁶⁸

KG/CK: We keep giving you chances. We continued to struggle, despite getting on in years ourselves. We have to resolve this issue today. We kept on struggling because we could continue to have our monthly salaries and we're able to cover our costs. *But we're aging, we don't want to continue struggling. We want to retire.* The oldest is 60 years old. I'm the youngest sister and I'm already 51 years old. Why do we keep on struggling and stressing ourselves? We are all getting old now. I'm telling you [defendant], to stop!

...

CK: Today, everybody is disappointed in you to be honest. Actually I had thought we could continue with the family business because you are over 50 years old, 60 years old and have not married, neither has elder sister gotten married. If you don't have a job, you will not have any income for living expenses, I understand. *At this age, we should be able to enjoy our semi retirement.* Mother has passed on. If we can continue with the business we should continue. *With the money made, you could use it for retirement,* we could buy a flat in Yishun. We can rent it out, as well as rent this Hougang flat out. We don't know if you will both be physically dependent as well.

...

KG/Sisters: I can no longer struggle on the job, I don't have the energy. *This is retirement money.*

...

KG/Sisters: But you cannot ask for more than \$2,000. And you are not allowed to interfere with how I/we raise this cash, whether we rent the properties, or raise the money through external financing. We will give It to you. We don't mind taking less for ourselves. *We will rather use less, and we can enjoy our retirement.* We don't need to stress. And you are not allowed to pick on anyone for any unsatisfactory work issue.

[emphasis added]

⁶⁸ Lee Mui Lin's AEIC at pp 120, 135, 152, 166–167.

(c) Soh Wei Ling (“Wei Ling”), KG’s daughter, was also present at the family meeting on 25 June 2017. Wei Ling testified that:⁶⁹

Court: What was being said at the meeting?

A: How like the---the Hougang property, Your Honour, was supposed to be, like, a retirement plan for all of them. So when it comes a day when my mother, like, is unable to work anymore because she has, like, occupational hazard. Her---her arm always keep getting numb. *So she says, like, we all can plan to sell the Hougang property and then the proceeds will be the retirement fund for everyone.*

Court: And what did the defendant say to that?

A: He---during the meeting, he always escapes the topic, Your Honour. So he---he will always change the topic here and there, yah.

...

Court: So can you answer the question now which is, you know, can you tell us what is the context you’re referring to in relation to the discussions about the property?

A: Okay. So, from about 1 minute, the part where he tore the paper, so my mother gave him a choice of whether or not he either say he wanted ... to share the Hougang property and then if he had plans to share the property then *they will stop the Red Point salon and then they will rent the Hougang property until at a later age when they are reaching the retirement age then they will sell the property and like take care of everyone using the proceeds.*

[emphasis added]

92 From my review of the evidence, it is quite clear that the Ong siblings shared a common intention that the Hougang shophouse was to function as an income generating asset for them. They derived income from the rental collected from the sub-tenants and from the Red Point business that carried on its business from the premises. While it was intended that the plaintiffs should own shares in the Hougang shophouse, it was certainly not envisaged that they

⁶⁹ Transcript, 1 September 2020, p 32 line 28–p 33 line 7; p 37 lines 14–24.

would all reside at the premises for the long term, given the abysmal state of the relationship between the defendant and some of his siblings. Instead, the common intention was that, at some stage, when the siblings could no longer work and make a living for themselves, the shophouse would be sold and the sale proceeds distributed equally to each of them as a “nest egg” for their retirement.

93 Second, I accept the evidence of the plaintiffs that Red Point was started by using the funds of their mother and the compensation moneys and that Red Point was intended by their mother to be a family business to be operated for the benefit of all the Ong siblings. KG’s evidence is clear and cogent as to the tender of the tenancy of the Hougang shophouse, setting up of the business, the choice of “Red Point” as a name and their mother’s intentions. On the other hand, the defendant’s claim to be the sole owner of Red Point business was so lacking in credibility and substance that I have no hesitation in rejecting it.

94 As I already noted, the defendant could not, in his affidavit made in October 2019, even name the hairdressing business accurately. This lack of knowledge of even basic facts about the business is consistent with the evidence of KG, SK and SM that he was never involved in the business of Red Point at all. KG was the *de facto* “boss” of the salon. KG set the salaries for herself and for SK and SM, without having to consult or check with the defendant.⁷⁰ She managed all the finances and maintained the accounts. She operated Red Point’s bank account with OCBC. Even though the defendant was named as an account signatory because the business was registered in his name, the undisputed evidence is that he never once attempted to operate Red Point’s bank account, or even examined Red Point’s bank statements.

⁷⁰ KG’s AEIC at [29].

95 The defendant claims in his evidence that the Red Point business belonged to him and he had set it up for his sisters, KG, SK and SM, to work as his employees.⁷¹ I find this to be inherently improbable given the poor relationship he had with them, particularly with SM. I also find that the defendant's complete unfamiliarity with the details of the business, for instance, the salaries of his sisters, or whether the business was turning a profit or loss over the years, or who prepared the accounts of the business, makes it highly unlikely that he is the true owner of the business. He claims that he left it to his sisters to pay themselves the market rate for employees in a hairdressing salon. But, when cross-examined as to what those market rates would be, the defendant was at a loss for words.⁷² Needless to say, I find it very unlikely that an owner of a hairdressing business would not know what the market rate of salaries paid to hairdressers are.

96 I do not accept the defendant's evidence that he entrusted the business entirely to KG to run but ultimately remained the "boss". There is no evidence at all that KG reported to him as to how the business was doing. Rather, this was a case that the business was simply registered in his name and thereafter he took no part at all, save to sign documents when he was asked to do so by KG. What I find most telling is the unchallenged evidence that the defendant would approach KG to ask for cash from time to time.⁷³ KG would then pass cash to the defendant from the earnings of Red Point. In my judgment, this showed that it was not KG who reported to the defendant as the owner of the business. Rather, it was the defendant approaching KG as the "custodian" of the family

⁷¹ CS's AEIC at [32].

⁷² Transcript, 4 September 2020, p 44 line 15–p 45 line 30.

⁷³ KG's AEIC at [34].

funds, to ask for some portion of the family funds to be given to him from time to time.

97 In my view, if the defendant were the true owner of Red Point, he would at the very least have examined the finances and the accounts of the business from time to time. However, it is not disputed that he never did so. Instead, this was the domain of KG, who took care of the finances of Red Point and arranged for the accounts to be prepared every year.

98 KG also gave evidence that the earnings from Red Point was used as part of the Ong family funds to pay for family expenses, such as holidays for the siblings and their families, the medical expenses of their parents, and the funeral expenses of their father.⁷⁴ I rejected the defendant's evidence as being untruthful that he was unaware of the use of Red Point's earnings for these purposes until during the course of these legal proceedings. He claimed in his oral evidence that, had he known of the use of Red Point's moneys as a family fund, he would have objected to it.⁷⁵ But this assertion is an entirely hollow one because the defendant has taken no steps in these legal proceedings or in any other proceedings to get KG to account for the use of Red Point's moneys. In my judgment, the defendant has shown through his conduct that he knew the earnings of Red Point was treated as family funds and properly utilised as such.

99 In all the circumstances, I find that there is overwhelming evidence to support the plaintiffs' contention that the parties' intention was always that the Red Point business was a family business and the profits generated therefrom belonged to the Ong siblings in equal shares.

⁷⁴ KG's AEIC at [36]–[39].

⁷⁵ Transcript, 4 September 2020, p 35 line 24 – p 39 line 21.

100 Third, the conduct of the siblings in relation to the Hougang shophouse is also consistent with there being a common intention that it was to be shared beneficially by all the Ong siblings, and that, at some later stage, the shophouse would be sold and the sale proceeds shared equally by them.

101 KG, SK and SM all worked at Red Point for 28 years taking relatively meagre salaries. To illustrate, KG's last drawn salary before the business shuttered was S\$1,200, SK's was S\$1,000 and SM's was \$600.⁷⁶ The gist of their evidence is that this was because they regarded Red Point as a family business and they believed that the earnings of Red Point would be pooled with the family funds and used, amongst other things, to service the mortgage loan on the Hougang shophouse. Put simply, they regarded the property as a family asset for which they owned a part, and they were happy to contribute to its payment.

102 On this particular issue, I will also add that the defendant blatantly lied in his oral evidence when he claimed that he had an arrangement with KG, SK and SM where they would take a 70% share of the revenue generated by the business, and he would bear the costs of the business from the 30% share that remained.⁷⁷ He said this in an attempt to justify the low salaries that his sisters were drawing from the business and claims that they were "sharing profits" of Red Point with him. However, on further questioning, the defendant then conceded that there was in fact no such arrangement.⁷⁸ I find it unacceptable that he would attempt to mislead the Court in this way.

⁷⁶ KG's AEIC at [30].

⁷⁷ Transcript, 4 September 2020, p 60 lines 15–21 and p 84 lines 3–19.

⁷⁸ Transcript, 4 September 2020, p 84 line 20–p 86 line 13.

103 As for CK, he helped in the renovations and fitting out of the space which Red Point would occupy. He did the carpentry work, like he did for the Yishun flats. His evidence is that he was happy to contribute because he regarded Red Point and the Hougang property as family assets.⁷⁹

104 As for the defendant, I have already dealt with the evidence (at [70] above) where, in an earlier affidavit filed in October 2019, he could not even state which year the Hougang shophouse was acquired from HDB or accurately set out the purchase price. He did not have in his possession the relevant documents relating to the purchase of the property or its financing. The evidence before me was also quite clear that he did not know how the mortgage instalments were being paid, or the source of funds of each payment. He could not name the sub-tenants of the first floor of the property, or how much rent they paid. He did not collect the rent from these sub-tenants. He only handled the letting out of a room on the second floor of the property, which was illegally tenanted to an employment agency for a period of time. It is common ground that the defendant lived on a room on the second floor of the property. KG's evidence is that the defendant wanted to rent out one of the other rooms on the second floor to one of his friends.⁸⁰

105 The defendant had his own businesses apart from the family business at Red Point. In this regard, he claims to be involved in some businesses involving the sale of birds' nests and honey. The plaintiffs also gave evidence that, at some point, the defendant was an illegal bookie for horse racing and ran into trouble with the law because of that and, as a result, needed some financial help from his siblings. The plaintiffs' evidence in this regard was not disputed. The

⁷⁹ CK's AEIC at [9]–[10].

⁸⁰ Transcript, 26 August 2020, p 26 lines 3–9.

point here is that the defendant was never involved at all in the affairs concerning the management of the Hougang shophouse or Red Point, and was busy with his own matters. As already stated, he also did not himself make any direct financial contributions to the payment of the mortgage loan for the Hougang shophouse, although he insisted that any payments from the sub-tenant rental or Red Point's earnings should be regarded as payments from him.

106 What I found rather remarkable was the fact that the defendant did not even know that CK started operating his audio equipment business from a part of the commercial space used by Red Point from sometime in the mid-1990s. CK's evidence is that KG agreed to let him use some of the space in Red Point's premises to carry out his audio equipment business. This arrangement carried on until 2017. CK did not pay any rent. According to CK's evidence, the defendant's consent was not sought for this arrangement.⁸¹ This is entirely consistent with the fact that the defendant did not know when CK started operating his business at the Hougang shophouse. In my view, this showed how uninvolved and uninterested the defendant was in the dealings involving the Hougang shophouse over the years, and is consistent with the plaintiffs' contention that he did not act in any manner which showed that he believed that he was the sole owner of the property.

107 In my judgment, an assessment of the totality of the evidence shows that the plaintiffs' contention is correct. The defendant's conduct is entirely consistent with his belief that the Hougang shophouse was part of the pool of family assets. I accept that there is no direct evidence that the Ong siblings and their mother had collectively met to discuss and agree that the Hougang property should be held by the defendant on trust for the Ong siblings at the time when

⁸¹ CK's AEIC at [12].

the HDB offered the property for sale to the defendant in 1995. However, in my view, there is sufficient evidence as set out above which shows quite clearly that the acquisition of the Hougang shophouse in 1995 was intended for the Ong family as a whole. It was intended to be a family asset, just like the two Yishun flats and Red Point's business, for the benefit of the second generation of the Ong siblings. It was intended that, at some later time, the shophouse would be sold and the sale proceeds shared equally so that each of the siblings would have a "retirement fund". This intention was known to and shared by all the Ong siblings, including the defendant, whose conduct throughout the years was consistent with the fact that he did not own the Hougang shophouse beneficially but that it was owned by the family as a whole.

108 I thus find that the plaintiffs have established their case that the Hougang shophouse and its sale proceeds is subject to a common intention constructive trust where the true beneficial owners are the plaintiffs and the defendant in six equal shares.

109 Finally, for completeness, I note that there were a few instances in 2018 when the defendant attempted to start to assert control over the Hougang Shophouse and Red Point. For example, on 25 January 2018, the defendant entered the Hougang shophouse and asked KG, SK, and SM to pay him rent.⁸² That same day, the defendant told KG, SK, and SM to move out of the Hougang shophouse, and even called the police that day when KG, SK, and SM did not move out (and no further action has been taken by the police).⁸³ The defendant also removed KG as the authorised signatory to Red Point's bank account in or

⁸² KG's AEIC at [65]; BOD p 748 at [69].

⁸³ BOD pp 748–750 at [71]–[76].

around January 2018.⁸⁴ However, in my judgment, it is the defendant's conduct over the years that is relevant and probative, and not the conduct *after* the family meeting on 25 June 2017 and when he had already consulted lawyers. Such post meeting conduct, after the dispute had erupted, would obviously be self-serving and unreliable as indicative of the defendant's true intentions.

Was there a resulting trust?

110 As explained, I have examined the financial contributions to the payments on the mortgage loan in respect of the Hougang shophouse. Factually, it was paid for from a mixed pool of funds, comprising the sub-tenant rental and the earnings from Red Point. As I have found that the Hougang shophouse belonged beneficially to the Ong siblings, the sub-tenant rental would also beneficially belong to them. I have already found that Red Point was a family business, where the earnings would be applied for the benefit of all members of the family. It follows that the Hougang shophouse was paid for entirely by funds that belonged beneficially to the Ong siblings. This conclusion is dependent on my finding that there was a common intention shared by the entire family that the Hougang shophouse would be owned beneficially by the Ong siblings. As such, it would be circular to apply a resulting trust analysis to the Hougang shophouse and I do not propose to do so. In any event, there is no need for me to apply any such analysis given that the resulting trust claim is the plaintiffs' alternative claim, and I have found that there is a common intention constructive trust over the Hougang shophouse for the benefit of all the plaintiffs and the defendant.

⁸⁴ CS's AEIC at [42].

111 For completeness, I note that, even on a resulting trust analysis, there would be a resulting trust in favour of all the Ong siblings equally. It is amply evident from my foregoing analysis that the evidence shows that the parties made equal financial contributions to the purchase price of the property. The Hougang shophouse was completely financed by mortgages. Applying the considerations at [72] to [73] above here, I note that, while the mortgages (Hong Leong Finance and OCBC) were in the name of the defendant, KG was the one who took charge of arranging for the mortgage instalments to be serviced, and KG primarily used a mix of funds from Red Point and the sub-tenant rental to pay for the mortgages. This is a clear manifestation of the parties' intentions on the source of funds to repay the mortgage loan: the moneys from Red Point and the sub-tenant rental were meant to be beneficially owned by the Ong siblings equally, so the fact that KG always used these funds to pay the mortgages, and that she did so without protest from any of the other Ong siblings, shows that the parties always agreed, at the time the mortgages were taken out, for them to share the burden of paying for the mortgages.

112 While KG did give evidence that she occasionally had to use moneys from her joint bank account with her mother to pay for the mortgages, she was also clear in her evidence that this was somewhat of a last resort for her *when the funds from Red Point and the sub-tenant rental ran out*. Therefore, the parties' common intention, at the time the mortgages were taken out, was always for them to pay for the mortgages equally. To the extent that some of the mortgage payments may have been made using moneys from KG's and her mother's joint bank account, these payments should be disregarded for the resulting trust analysis because they are not in keeping with the parties' inferred intention, at the time the mortgages were taken out, as to who should pay for the mortgages.

113 On this basis, it is clear that the parties had equal financial contributions to the payment of the Hougang shophouse, and so, if it were necessary for me to presume a resulting trust, I would have done so in favour of the parties in equal shares.

The family meeting on 25 June 2017

114 The plaintiffs also rely on the family meeting document that was signed by the defendant on 25 June 2017 as an acknowledgement by him that he held the Hougang shophouse on trust for the Ong siblings. The family meeting document, titled as an “Agreement”, is brief and states the following:⁸⁵

AGREEMENT

I, Ong Chai Soon ... agree to share the following properties under my name with all of my siblings equally as the following properties were financially supported by late mother, Ang Mong Kwa, prior to her passing:

1. [The Hougang shophouse]
2. [Unit 174]

My five siblings are Ong Sor Kim ..., Ong Soh Ai ..., Ong Sor Mui ..., Ong Chai Koon ..., Ong Kim Geok ...

I agree to acknowledge that my siblings and I have an equal say in the matters of the mentioned properties.

In the event of selling the mentioned properties, I agree to divide the proceeds equally among my siblings and I.

115 Strictly speaking, it is unnecessary for me to consider this family meeting document, because I have found a common intention constructive trust (and, alternatively, a resulting trust) without reliance on this document. Nevertheless, for completeness, let me now consider the defendant’s various objections to the plaintiffs’ reliance on this document.

⁸⁵ PCB p 13.

Lack of consideration

116 First, the defendant’s objection that there is a lack of consideration which renders the document unenforceable can be quickly disposed of. This submission rests on a misunderstanding of the plaintiffs’ case. While I accept that the plaintiffs’ statement of claim terms the family meeting document as an “Agreement”,⁸⁶ a proper reading of the statement of claim will show that the plaintiffs did not plead that the family meeting document evidenced or gave rise to an enforceable *contract*.

117 Any possible confusion caused by the plaintiffs’ pleadings had been clarified when counsel for the plaintiffs delivered his opening address. It was stated that the plaintiffs rely on the document as “a memorandum in which the Defendant acknowledges the parties’ common intention over the Hougang Property”, and the plaintiffs “implore” the Court to “regard the [family meeting document] as incontrovertible evidence that the [d]efendant was aware of and had acquiesced to the [common intention constructive trust] over the Hougang [shophouse]”.⁸⁷ In other words, the plaintiffs are not relying on the document as an independent contract that gives rise to enforceable legal rights between the plaintiffs and the defendant. The family meeting document is part of the *corpus* of evidence that the plaintiffs are relying on to support their position that the defendant is fully aware that the Hougang shophouse is an asset that is owned beneficially by all the Ong siblings. That being the case, the doctrine of consideration has no application to this case.

⁸⁶ SOC Amd 2 at [18].

⁸⁷ Plaintiffs’ opening statement dated 17 August 2020 at [40]–[41].

Duress

118 Second, the defendant submits that he was the subject of duress because there were threats of physical violence made against him at the family meeting; he was physically manhandled; and also prevented from leaving the property when he tried to do so. The defendant pleaded that the family meeting document is thus “null and void” as his signature was “obtained by force”.⁸⁸

119 First, the defendant’s case on duress was poorly thought out and legally flawed. It is trite that duress does not render a contract “null and void”; rather, it renders the contract *voidable* so that the party who entered into a contract as a result of duress may rescind the contract (see, eg, *Tam Tak Chuen v Khairul bin Abdul Rahman and others* [2009] 2 SLR(R) 240 at [50], citing Nelson Enonchong, *Duress, Undue Influence and Unconscionable Dealing* (Sweet & Maxwell, 2006) at para 3-022). In any event, as I have already found, the family meeting document is not a standalone contract, and the plaintiffs are also not seeking to enforce it as a contract. Thus, the defendant’s attempt to void the family meeting document on the basis of duress is legally misconceived.

120 Second, to the extent that the defendant is seeking to submit that the family meeting document is unreliable as evidence of his intentions because the defendant was forced to sign it, I find, on a balance of probabilities, that the defendant signed the document willingly and voluntarily. I have carefully reviewed the various accounts given by the witnesses who were present at the meeting, which included all the Ong siblings, CK’s wife and KG’s daughter. I have also listened to the more than 2½ hour audio recording of the meeting that

⁸⁸ Defence Amd 2 at [19].

was made by KG, where the persons present spoke mostly in Hokkien, with some Mandarin.⁸⁹

121 At the start of the meeting, things were quite heated because a number of family issues were raised, including the ownership of the Hougang shophouse. At approximately the 1½ hour mark, his siblings accused the defendant of lying to SK to get her to help clean Unit 174. The defendant got agitated and went upstairs to the second floor of the Hougang shophouse. He then tried to leave the gate at the second floor but was prevented from leaving by CK. He tried to strike CK with his arm but was prevented from doing so by SA. This was the moment where the defendant claimed he was manhandled and physically restrained from leaving the property. His siblings all told the defendant to stay because they wanted to sort out all their family issues. He then stayed on to carry on discussing things with them. At approximately the 2½ hour mark, the defendant signed the family meeting document that had been prepared in advance by KG's daughter.

122 In my judgment, the evidence falls well short of showing that the defendant was subject to duress when he signed the document. I did not hear any threats of physical violence against the defendant in the audio recording. In fact, under cross-examination, when shown the transcript and the absence of any threats of physical harm to him, the defendant conceded this.⁹⁰ Quite the contrary, from the audio recording, the defendant often appeared to be the aggressor in the way he spoke to his siblings. When voices were raised against him, he was more than capable of responding loudly himself and hurling his own accusations against his siblings. In short, it appeared to me that he was

⁸⁹ See Lee Mui Lin's AEIC at pp 23–206 for the transcript of the audio recording.

⁹⁰ Transcript, 3 September 2020, p 88 lines 12–18.

quite capable of holding his own. It is true that there was some kind of physical altercation when the defendant tried to leave the property from the second floor gate. But I do not accept the defendant's evidence that he was physically hurt in the process. There was no medical evidence before me that showed that the defendant suffered any injury. More significantly, after that confrontation, things calmed down over further discussions.

123 In his oral evidence, the defendant claimed that he was told that he could not leave the premises until he signed the document presented to him by KG.⁹¹ This is not borne out by the audio recording. While it is true that his siblings were insistent on him staying to talk things over, I also noted that the defendant himself made no attempt to leave the premises after the 1½ hour mark (when he went upstairs and tried to leave from the gate on the second floor). The meeting thereafter carried on, and the defendant could have left the premises from the back door on the first floor which led to the public car park. But he chose to stay to discuss things and argue with his siblings.

124 Eventually, the defendant signed the second copy of the document presented to him, after he initially tore up the first copy he was presented with. If one listens to the audio recording in the period leading to the signing of the document, it is clear from their tone that all of them had calmed down considerably and things were not as heated as they were earlier on in the evening. I find that the defendant signed the document willingly after being convinced by his siblings that it was the right thing to do, and not because of any threats or coercion that vitiated his will. Even if the defendant felt some pressure to sign the document, I find that the pressure exerted by his siblings did not go to the extent of compelling his will to do it. They tried to convince

⁹¹ Transcript, 3 September 2020, p 88 line 10.

the defendant, sometimes by shaming him, to do what was right, but ultimately they did not go any further than any reasonable person might have done in trying to win an argument. In other words, I find that there was nothing illegitimate about the plaintiffs' conduct.

125 At around that point of the meeting when the defendant signed the document, he was discussing with KG about an allowance of S\$2,000 for his living expenses he would get from the family in exchange for giving up his involvement in illegal bookmaking and customs fraud in relation to his bird nests' business. This was according to the defendant's own evidence. What should be noted is that, by this point in the meeting, the defendant appeared to have already accepted that the Hougang shophouse and Unit 174 were indeed shared family assets. That was why he signed the document. As such, I find, on a balance of probabilities, that the defendant did not sign the family meeting document under duress. This means that, while it is unnecessary for me to rely on the family meeting document as evidence of the parties' common intention, the family meeting document in fact reinforces my finding above that the parties had a common intention that the defendant would hold the sale proceeds of the Hougang shophouse on trust for the parties in equal shares.

Non est factum

126 The final objection raised by the defendant in relation to the family meeting document is that he is illiterate in English and he did not understand the contents of what he was signing. He relies on the doctrine of *non est factum*. He claims that he was misled by KG and his siblings into believing that the document was only about the sharing of the two Yishun flats, which he acknowledged was owned by all the siblings equally, but not the Hougang shophouse which he insisted he owned entirely. He claims not to know that the

family meeting document referred to the Hougang shophouse when he signed it. Otherwise, he would not have agreed to sign the document.

127 *Non est factum* (literally, “it is not my deed”) is a specific category of mistake that operates as an exception to the general rule that a person is bound by his signature on a contractual document even if he did not fully understand the terms of the document. There are two requirements for the doctrine to be established: (a) there must be a radical difference between what was signed and what was thought to have been signed; and (b) the party seeking to rely upon the doctrine must prove that he took care in signing the document, *ie*, he must not have been negligent: *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 at [119].

128 In my judgment, this contention fails completely. Leaving aside the siblings’ evidence, the defendant’s contention is squarely contradicted by the audio recording, his own AEIC, his own answers under cross-examination, and the police report that he filed about a week after the meeting.

129 First, the contents of the family meeting document were explained to the defendant by KG in clear terms:⁹²

CS: What is stated here in this agreement?

KG: It just states that this “thing” (referring to family properties) belongs to all six of us, was made of our mother’s fund. As simple as that, nothing more. Ah Mi typed this agreement.

CS: All of you, what was stated here just now, do you all agree? Ah Di? When you grow up, don’t interfere in others’ business. ...

⁹² Lee Mui Lin’s AEIC at p 183.

130 Therefore, it is evident that this is not a situation whereby the defendant signed the family meeting document blindly. Quite the contrary, he asked KG what the contents of the document were, and, after being informed of it by KG, the defendant (referred to as “CS” in the transcript) had no further clarification questions and was happy to sign the document. There is simply no basis, in these circumstances, to find that there is a radical difference between what was signed and what the defendant thought he signed.

131 Second, the defendant himself admitted that he recognised addresses written in English. He also knows his own name in English and I am sure this applies to his siblings’ names as well.⁹³ He would thus have been able to read from the document that it referred to the Hougang shophouse and Unit 174. The fact that he continued to sign the document shows that he knew that he was signing a document that concerned the Hougang shophouse. His evidence that he did not look at the contents of the document before he signed it does not assist him because, even if that were true, it simply shows that the defendant acted without due care when he executed the document. That would disentitle him from seeking relief under the doctrine of *non est factum*, as explained at [127] above.

132 Third, the defendant’s own AEIC does *not* make the point that he did not know that the Hougang shophouse was discussed at the family meeting and that the document he signed referred to the property. Instead, he explains in some detail how he was “confronted” with the demand that the property be sold and the sale proceeds shared equally. He also explains how eventually he was “intimidated” by his siblings and signed the document that was presented to

⁹³ Transcript, 3 September 2020, p 38 lines 23–29.

him.⁹⁴ It was only in his oral evidence that the defendant departed from this version of events in his AEIC and claimed that he did not know that the siblings were referring to the Hougang shophouse as well and that he signed the family meeting document on that mistaken belief.⁹⁵ I find that this abrupt change in the evidence of the defendant speaks volumes about the credibility of his claim that he was mistaken about what he thought was signed. Quite evidently, the defendant was making up his evidence as he went along so that he could distance himself from the family meeting document.

133 Fourth, the audio recording makes clear that the siblings were arguing about the Hougang shophouse very soon after the start of the meeting. By the 19-minute mark, the defendant was already telling his siblings that he owned it to the exclusion of his siblings. Under cross-examination, the defendant later tried to explain that he was referring to the Yishun flats, and not the Hougang property. He said that he was confused by KG’s reference to “mother’s property”, which he took to be a reference to the Yishun flats.⁹⁶ I find this to be a poor attempt by the defendant to distance himself from what he said at the meeting. This is because when he was cross-examined on another part of the transcript of the audio recording, where KG told those present at the meeting that “grandfather’s property” – which was referred to by them in Hokkien as “Ah Kong’s property” – belonged to all the siblings equally, he agreed that KG was referring to the two Yishun flats *and* the Hougang shophouse.⁹⁷ KG herself gave evidence that she used the term to refer to the family business, moneys and

⁹⁴ CS’s AEIC at [51] and [52].

⁹⁵ Transcript, 3 September 2020, p 84 lines 19–20.

⁹⁶ Transcript, 3 September 2020, p 45 lines 17–19.

⁹⁷ Transcript, 3 September 2020, p 42 lines 2–28.

the three properties.⁹⁸ CK also testified that he understood KG's references to "Ah Kong's property" to mean the Yishun flats and the Hougang shophouse.⁹⁹ In my view, it is quite clear that the defendant had come to Court quite prepared to feign ignorance that he knew the meeting was about the Hougang shophouse being a family asset that had to be shared equally, all in a misguided effort to support his case of *non est factum*.

134 I should add that there are numerous other portions of the transcript of the audio recording that make it quite clear that the defendant knew that the discussion was about whether he would acknowledge that Unit 174 and the Hougang shophouse had to be shared equally. For example, when the defendant tore up the first copy of the document that was presented to him to sign, he was asked by his siblings, in particular, KG, whether he was taking the position that he "want[ed] everything".¹⁰⁰ Not once, in his responses, did the defendant clarify whether the siblings were referring only to the Yishun flats and not the Hougang shophouse. Also, at the meeting, when the defendant eventually acknowledged verbally that he would share the properties, he did not say then that he was referring only to the Yishun flats and *not* the Hougang shophouse. His evidence in court that he was always referring only to the Yishun flats was an *ex post facto* explanation, which I have no hesitation in rejecting.

135 Fifth, about a week after the meeting, the defendant made a police report on 2 July 2017. In that report, he claimed that he was coerced at a meeting by his siblings to sign a document which states that he would share the Yishun flats

⁹⁸ Transcript, 27 August 2020, p 27 lines 5–13.

⁹⁹ Transcript, 3 September 2020, p 10 lines 15–19.

¹⁰⁰ Lee Mui Lin's AEIC at p 144.

and the Hougang shophouse.¹⁰¹ When cross-examined as to how he came to the understanding that the family meeting document also dealt with the Hougang shophouse, the defendant said that he had showed the family meeting document to a friend, who then told him it also referred to the Hougang shophouse.¹⁰² But, later in cross-examination, the defendant admitted that, after he signed the family meeting document on 25 June 2017, he was *not* given a copy of the document. When he made the police report a week later, he still did not have a copy of the document.¹⁰³ Despite this, the defendant was able to describe in his police report the contents of the family meeting document from memory. This clearly shows that the defendant lied when he said that he only understood that the family meeting document referred to the Hougang shophouse after he showed the document to his friend. This is because the defendant could not have shown this document to his friend *before* he filed his police report, since he did not, by his own admission, have the document then. In my judgment, this shows beyond any serious argument that the defendant understood what the family meeting document stated before he signed it. As aforementioned at [129] above, KG had already clearly explained to him what the family meeting document stated, and he understood the document concerned the fact that the proceeds of the Hougang property was meant to be shared by all the Ong siblings equally.

136 Sixth, I find that the defendant was not ambushed at the family meeting, as he claims he was. He already knew that the family meeting that had been called by KG was about the family properties, including the Hougang shophouse. This had been the subject of some contention since their mother

¹⁰¹ See CS's AEIC at p 100.

¹⁰² Transcript, 3 September 2020, p 45 lines 4–10.

¹⁰³ Transcript, 3 September 2020, p 53 line 30–p 54 line 20.

died. In fact, SA gave unchallenged evidence that, prior to the meeting, he got a call from the defendant, who told her not to say anything at the meeting and also not to tell KG that he had called her.¹⁰⁴ In my view, it is quite clear that the defendant was prepared to go to the meeting to argue his case as to why the Hougang shophouse was not family property. That being the case, there is really no basis for the defendant to assert that he was misled into thinking that the document he signed at the meeting had nothing to do with the Hougang shophouse.

137 For the above reasons, I reject the defendant’s submissions on *non est factum* as being not borne out by the evidence. On a balance of probabilities, I find that the defendant did know and understand the contents of the family meeting document when he signed it. In any event, as I have already found, the plaintiffs are not relying on the family meeting document as a standalone contract. Thus, the *non est factum* doctrine is not even applicable in the way that the defendant has pleaded (*viz*, as a defence against the “agreement” under the family meeting document).

138 In my judgment, the defendant’s acknowledgment in the family meeting document that the Hougang shophouse is to be shared equally with the plaintiffs bolsters my conclusion that there is a common intention constructive trust over the Hougang shophouse (and its sale proceeds) for the benefit of all the Ong siblings in equal shares.

¹⁰⁴ Transcript, 28 August 2020, p 73 lines 27–30.

Section 51 of the Housing and Development Board Act

Parties’ submissions and the caselaw on s 51(10)

139 I now come to s 51 of the HDA. The relevant provisions of the HDA are ss 51(8)–51(11), which provide as follows:

Property not to be used as security or attached, etc., and no trust in respect thereof to be created without approval of Board

...

(8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.

(9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.

(10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

(11) In this section —

...

“protected property” means any flat, house or other building that has been sold by the Board under the provisions of this Part;

...

140 There are thus three main provisions in s 51 which deal with trusts: ss 51(8)–(9) deal with trusts that are purported to be “created” (such as express trusts) while s 51(10) deals specifically with resulting trusts and constructive trusts. As I highlighted at [2] above, it is unfortunate that the parties’ counsel have failed to appreciate the nuances of the issues relating to s 51(10) of the HDA, and, as such, I was left largely unassisted by counsel on the proper analysis of this provision and its applicability to the facts. The defendant pleaded very broadly that s 51 applies in this case to preclude a trust from being

created over HDB property. In the defendant's opening statement, the defendant then specified that he is relying on s 51(10) against the plaintiffs' claims of express and constructive trusts.¹⁰⁵ However, in the defendant's closing and reply submissions, the defendant completely omitted any mention of s 51(10). Instead, the defendant relied on ss 51(8)–(9) to submit that “an express trust created by [Mdm Ang] over the Hougang [shophouse] would fail”.¹⁰⁶ I found it highly unsatisfactory that the defendant could not maintain a consistent and clear position on s 51.

141 It is common ground between the parties that the Hougang shophouse is “protected property” within the meaning of s 51(10) of the HDA. I note, for completeness, that “protected property” means “any flat, house or other building that has been sold by the Board under the provisions of this Part” of the HDA, viz, Part IV of the HDA. Section 46(1) of the HDA, which is under Part IV, provides the HDB with the power to “sell any developed land”, which means “any land of the [HDB] upon which a building has been erected” (s 2(1), HDA). As neither counsel has suggested that the Hougang shophouse may be outside the scope of “protected property” within the meaning of s 51(10), I shall proceed on this basis and consider if s 51(10) applies in this case.

142 The plaintiffs submit that s 51(10) does not render a common intention constructive trust or resulting trust over the Hougang shophouse null and void. In this regard, the plaintiffs rely on Sundaresh Menon JC's (as he then was) holding in *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (“*Tan Chui Lian*”) at [10], which I quote in full because it is the central plank of the plaintiffs' submission on s 51(10):

¹⁰⁵ Defendant's opening statement at [13(a)].

¹⁰⁶ DCS at [166].

... Parliament’s intention was *not* to prevent any interest in an HDB flat arising under a resulting trust or a constructive trust regardless of the circumstances, but rather to prevent any entitlement to own an HDB flat arising in favour of a person by virtue of the law implying a resulting or constructive trust, ***where that person would otherwise have been ineligible to acquire such an interest.*** In my judgment, having regard to the mischief underlying the section, ***the provision was not intended to have any application where the parties concerned were already entitled to some interest in the property*** and therefore no issue could arise as to their eligibility to such entitlement. In such circumstances, the parties concerned would not be claiming to become entitled to own an interest in the flat by virtue of the implied trust and there would be no concern of their bypassing the eligibility criteria set by the HDB from time to time. [emphasis in original in italics; emphasis added in bold italics]

143 The primary basis for Menon JC’s holding in *Tan Chui Lian* at [10] is the following explanation of s 51(6) of the HDA then (now s 51(10)) by then Minister Mah Bow Tan (*Singapore Parliamentary Debates*, Official Report (15 August 2005) vol 80 at col 1259 (Mah Bow Tan, Minister for National Development), cited in *Tan Chui Lian* at [9]):

Clause 6 of the Bill amends section 51 to make it clear that, in addition to prohibiting the voluntary creation of trusts over an HDB flat, the Act also prohibits any person from becoming entitled to a [sic] HDB flat under a resulting trust or constructive trust. *This will help to prevent a situation where a person who is ineligible to own an HDB flat may become entitled to own one, for example, by paying the purchase price of the flat on behalf of the owner.* [Menon JC’s emphasis in *Tan Chui Lian* in italics]

144 Relying on *Tan Chui Lian* at [10], the plaintiffs submit that the defendant has not asserted that any of the plaintiffs would be “ineligible to acquire an interest” in the Hougang shophouse. Consequently, s 51(10) of the HDA does not assist the defendant.

145 However, *Tan Chui Lian* has not been the final word on the matter. There have been numerous other High Court decisions interpreting s 51(10) and

the extent of *Tan Chui Lian*'s holding on s 51(10). It appears to me that two broad approaches have emerged from the caselaw.

146 The first approach appears to be the predominant approach adopted in the cases, and which has very recently been approved, *obiter*, by the Court of Appeal (see [150] below). This approach interprets *Tan Chui Lian* as holding that s 51(10) only applies to prevent ineligible persons from holding any interest in an HDB property under a constructive or resulting trust ("first approach"). An ineligible person is someone who is ineligible to acquire the disputed HDB property. This approach thus applies a more purposive interpretation of s 51(10) to read down and confine the meaning and effect of the provision. The clearest example of this approach is found in Judith Prakash J's (as she then was) judgment in *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125 ("*Koh Cheong Heng*"). In that case, Prakash J was considering the question of whether the plaintiff husband's transfer to the defendant wife of a joint interest in the HDB property was revocable on the basis that it was a *donatio mortis causa* (ie, a gift that was conditional upon death). Prakash J found at [16] that there was a valid *donatio mortis causa*, and this involved the donor's giving of a defeasible gift which, upon revocation, would result in a remedial constructive trust arising. More pertinently for present purposes, Prakash J then held at [57], relying on *Tan Chui Lian*, that *donatio mortis causa* "does not offend s 51(10) of the HDA" because "resulting and constructive trusts are not precluded by the HDA if the beneficiary is eligible to own an HDB flat". Prakash J explained at [56] that, although s 51(6) of the then-HDA was amended in 2010, after *Tan Chui Lian* was decided in 2006, by Parliament adding the words "or arising" at the end of the present s 51(10) (see [139] above):

... in my opinion the addition of the words "or arising" only clarify that a "resulting trust" or a "constructive trust" may be more properly said to arise by operation of law, rather than by the creation of parties. ***It is neither evident from Hansard,***

nor from the plain reading of the provision, that Parliament was seeking to change the legal position as it stood in Tan Chui Lian. Indeed, if such a change was deemed necessary, Parliament could have said for instance, “No person shall become entitled, *regardless of eligibility, ...*”. This Parliament did not do. Furthermore, the words “become entitled”, which formed the basis for Menon JC’s judgment, were left unchanged by Parliament. As Menon JC expressly noted in his judgment, it would have been much “plainer and simpler” for Parliament to have said that no person shall “be entitled to any interest in” an HDB flat if Parliament were indeed minded to prohibit all trusts, regardless of the beneficiary’s eligibility (*Tan Chui Lian* at [11]). Again, Parliament did not make such a change. Accordingly, in my view, the law regarding creation of trusts over HDB property remains as stated in *Tan Chui Lian*. [emphasis in original in italics; emphasis added in bold italics]

147 Other High Court decisions which have adopted this approach (though without detailed analysis) include *Philip Anthony Jeyaretnam and another v Kulandaivelu Malayaperumal and others* [2020] 3 SLR 738 at [26] (where Debbie Ong J stated that s 51(10) of the HDA “prohibits a party who is ineligible to own HDB property from having any interest in the HDB property by virtue of a resulting or constructive trust”) and *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 (“*Low Heng Leon Andy*”) at [18] (where Quentin Loh J (as he then was) stated that s 51(10) does not provide a “blanket prohibition” against resulting and constructive trusts, and that its object, instead, is to “prevent ineligible persons from owning HDB flats by way of resulting or constructive trust”).

148 On the other hand, the second approach – which was recently adopted by Andre Maniam JC in *Lim Kieuh Huat and another v Lim Teck Leng and another* [2020] SGHC 181 (“*Lim Kieuh Huat (HC)*”) at [80]–[87] – takes the view that s 51(10) does not only impact persons who are ineligible to own HDB property (“ineligible person”). Rather, s 51(10) prevents *any* person who was not originally a registered owner of the disputed HDB property from becoming

entitled to any interest in *that property* by way of a constructive or resulting trust (“second approach”). This is because, by not being a registered owner of the property at the material time of the proceedings, the person would not already be “entitled” to the property. It follows that such a person who was not a registered owner of the HDB property cannot, pursuant to s 51(10), then “become entitled” to any beneficial interest in the property by way of a constructive or resulting trust. This approach places more emphasis on the plain meaning of the text of s 51(10). Maniam JC highlighted that the provision, on its face, draws no distinction between eligible and ineligible persons in relation to whether they can “become entitled” to an HDB flat: see *Lim Kieuh Huat (HC)* at [80]. This approach also seeks to confine the holding of *Tan Chui Lian* to the facts of that case. In *Tan Chui Lian*, the plaintiff was already a registered co-owner of the flat in question. He was seeking a bigger share of the HDB flat (and its sale proceeds) by virtue of a resulting trust because he contributed more towards the purchase of the flat. Therefore, there was no issue as to the plaintiff’s eligibility in *Tan Chui Lian*, and he was not claiming to “become entitled” to an interest in the flat because he already had such an entitlement: see *Lim Kieuh Huat (HC)* at [84].

149 The appeal against Andre Maniam JC’s decision was just recently heard by the Court of Appeal in *Lim Kieuh Huat v Lim Teck Leng and another and another appeal* [2021] SGCA 28 (“*Lim Kieuh Huat (CA)*”). In that case, the disputed HDB flat was registered in the sole name of the plaintiffs’ son, but the plaintiffs claimed that they were the true beneficial owners of the HDB flat in question because they had funded the purchase of the flat. The Court of Appeal delivered an *ex tempore* judgment and upheld Maniam JC’s decision and dismissed the plaintiffs’ claim to a beneficial interest in the HDB flat on the ground that it was barred by ss 51(8)–51(10) of the HDA. The Court of Appeal found that the plaintiffs’ case, even if taken at its highest, showed that they

intentionally wanted to register the HDB flat in their son's name for them to avoid paying the resale levy, which they would have had to pay if they had tried to buy the HDB flat in their own names, and for the son to be able to obtain a housing loan for which they would have been ineligible. This was a nominee arrangement which purported to create a bare trust in respect of the HDB flat that was rendered null and void by s 51(9) of the HDA: see *Lim Kieuh Huat (CA)* at [11].

150 More pertinently for present purposes, the Court of Appeal, citing *Tan Chui Lian* and *Koh Cheong Heng*, also observed (at [13]) that the second approach to s 51(10) by Maniam JC may not be correct, though the Court of Appeal left the question open for determination in a future case:

We also conclude that the Parents are precluded by virtue of s 51(10) of the HDA from claiming beneficial ownership of the Kim Tian Flat. In this regard, we note that the Judge had held that s 51(10) of the HDA would prevent even an otherwise eligible owner from obtaining an interest under the trust if that person did not already have an interest in the flat in question (see the Judgment at [80] and [84]). *With respect, this might go further than the existing authorities which have hitherto focused on ineligibility as the central consideration in determining whether s 51(10) (or its equivalent in prior versions of the HDA) precluded a claim* (see *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (“*Tan Chui Lian*”) at [10]; *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125 (“*Koh Cheong Heng*”) at [54]). *However, as it is not necessary to determine this for our decision, and given our views on the Parents’ ineligibility, we leave this open in the present appeal.* [emphasis added]

151 Therefore, it appears that the Court of Appeal has tentatively expressed the view in *obiter* in its *ex tempore* judgment that the first approach is the more appropriate interpretation of s 51(10), *ie*, s 51(10) only prevents ineligible persons from becoming entitled to an interest in HDB property under a constructive or resulting trust.

152 As the proper interpretation to be given to s 51(10) has been extensively dealt with, as shown above, I do not propose to add any new views to the mix. Not only that, I have not had the benefit of full submissions by counsel as to which approach is the right one. It suffices for me to observe at present that, with respect, I am tentatively inclined to agree with the second approach adopted in *Lim Kieuh Huat (HC)*. I accept and agree that the cases before *Lim Kieuh Huat (HC)* – particularly *Tan Chui Lian* and *Koh Cheong Heng* – focused on the issue of the plaintiff’s eligibility to own HDB property. However, in my respectful view, that is not conclusive of whether s 51(10) *should* bear such an interpretation, because the previous cases before *Lim Kieuh Huat (HC)* did not involve situations where the plaintiff *did not already have an interest in the property*, but was otherwise eligible to own the disputed HDB property. Rather, a determination of the scope of s 51(10) must necessarily focus on the text of that provision and the legislative intent behind the provision, in accordance with the established principles of statutory interpretation set out in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”) at [37]–[54].

153 Critically, under the *Tan Cheng Bock* framework, statutory interpretation, while purposive, must still accord primacy to the text, and extraneous material should not contradict the express text of the provision except in very limited circumstances: see *Tan Cheng Bock* at [50]. The plain text of s 51(10) bars *anyone* from becoming entitled to any interest in HDB property under a constructive or resulting trust. Section 51(10) does *not* draw any distinction between eligible and ineligible persons. For s 51(10) to be interpreted to mean that it only applies to ineligible persons, that would require the phrase “entitled to ... any interest in such property” in s 51(10) to mean “entitled to become eligible to own an interest in such property”, or that the meaning of the term “entitled” should be equated with the meaning of the term “eligible to own”. It is only then that eligible persons can be said to be *already*

“entitled to” an interest in the HDB property, and that therefore that eligible person is not “becoming entitled to” the HDB property because of the resulting or constructive trust. This, in my view, would be stretching the words in that provision beyond their natural and ordinary meaning.

154 As the state of the law on s 51(10) is unclear and has been left open by the Court of Appeal in *Lim Kieuh Huat (CA)*, I will, for completeness, consider the appropriate outcome in this case on both approaches.

First approach

155 On the first approach, s 51(10) would not prevent the plaintiffs from becoming entitled to an interest in the Hougang shophouse, *if* the plaintiffs are eligible persons. The test for “eligibility” is whether the particular person could purchase the particular flat, and what conditions must be met before that purchase would be approved. The concept of “eligibility” is not a merely notional one and does not turn on whether a person could conceivably apply for an HDB flat, considered abstractly: *Lim Kieuh Huat (CA)* at [14]. It follows that whether a plaintiff is “eligible” to own the particular HDB property in question is a question of fact, to be determined based on the evidence adduced by the parties.

156 In this case, neither party adduced any evidence to prove (a) what the eligibility conditions are to own the Hougang shophouse, and (b) whether the plaintiffs are so eligible. Section 51(10) applies to the Hougang shophouse as it is HDB property, and the plaintiffs are the parties seeking to prove that s 51(10) does not apply to bar them from having an interest in the shophouse. Therefore, in my view, following ss 103(1) and 105 of the Evidence Act (Cap 97, 1997 Rev Ed), the burden is on the plaintiffs to prove that they are eligible persons such that s 51(10) does not bar them from having an interest in

the shophouse. Indeed, as a matter of common sense, this must be the case because it is only *the plaintiffs* who would have full knowledge of their own circumstances and whether they satisfy the eligibility criteria set by HDB.

157 Nevertheless, it is clear from the parties’ submissions that the parties do not dispute that the plaintiffs are eligible to own the Hougang shophouse. In their written closing submissions, the plaintiffs specifically highlighted that the defendant “has not asserted that the [p]laintiffs would be ineligible to acquire an interest in the Hougang [shophouse]”.¹⁰⁷ The defendant did not, in his written reply submissions, address or contradict this point in any way.¹⁰⁸ Therefore, as it appears to be common ground between the parties that the plaintiffs are eligible to own the Hougang shophouse, I accept this as an undisputed fact. This was also the approach in *Tan Chui Lian* at [17], where Menon JC likewise proceeded on the basis that “there was no suggestion that either party before [him] was ineligible” to own the HDB property in question. In future cases, however, counsel should bear in mind the considerations noted at [156] above.

158 As such, on the first approach, s 51(10) would not bar the plaintiffs’ claim to be entitled to the Hougang shophouse under a common intention constructive trust or resulting trust, as the plaintiffs are eligible to own the Hougang shophouse.

Second approach

159 On the second approach, the text of s 51(10) is clear that it prevents a party from “becoming entitled” to, or “any interest” in, HDB property under a constructive or resulting trust. Therefore, s 51(10) would bar the plaintiffs from

¹⁰⁷ PCS at [95].

¹⁰⁸ See, for instance, Defendant’s Reply Submissions dated 18 December 2020 at [42].

becoming entitled to a beneficial interest in the Hougang shophouse under a common intention constructive trust or resulting trust, since they are not registered owners of the Hougang shophouse.

160 However, s 51(10) does not state that it prevents a constructive trust or resulting trust from arising at all. Thus, s 51(10) should not have the latter effect, *ie* s 51(10) does not prevent a constructive or resulting trust from *arising* over HDB property, although it does prevent a person from *becoming entitled* to any interest in that HDB property by virtue of the constructive or resulting trust. In other words, that statutory provision seeks to bar the granting of a remedy which gives the beneficiary ownership of, or an interest in, the HDB property, but it does not render any constructive or resulting trust over the property void. The constructive or resulting trust would still arise, but it is prevented by s 51(10) from taking effect. This is similar to the approach of Quentin Loh J (as he then was) in *Low Heng Leon Andy* at [20], where he held that s 51(10) did not operate to render any transaction or transfer which might lead to ineligible persons taking an interest in HDB flats void, but merely prevented ineligible persons from taking an interest in HDB flats as a result of any transaction or transfer which purported to do so.

161 I note on the other hand that, in *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 (“*Cheong Yoke Kuen*”) at [20], the Court of Appeal had held that the resulting trust that arose in that case was “void”. Relying on *Cheong Yoke Kuen* at [13]–[19], Woo Bih Li J (as he then was) further held in *Chong Sze Pak v Chong Ser Yoong* [2011] 3 SLR 80 (“*Chong Sze Pak*”) at [59] that the plaintiff’s attempt in *Chong Sze Pak* to claim the sale proceeds of the disputed HDB flat under a resulting trust must also fail.

162 However, the holding in *Cheong Yoke Kuen* must be seen in its specific context. That case involved an application by the appellants for a declaration as to the beneficial interest of the parties in the flat and for an order that the flat be sold. The Court of Appeal rejected the appellants’ argument that they held an interest in the flat by virtue of a resulting trust on the basis that ss 51(4)–51(5) of the HDA (now ss 51(8)–51(9) in slightly amended terms) applied. Therefore, the Court of Appeal was dealing with s 51(5) of the then-HDA (now s 51(9)), which states that every trust purportedly “*created*” in respect of any HDB property without prior written approval of HDB “shall be *void*” [emphasis added] (see also [139] above for the present day s 51(9)). The Court of Appeal reasoned at [20] that the respondent had “*created*” the alleged resulting trust in his favour as he had intended to remain the beneficial owner of the flat when transferring his interest in that flat to his mother. The alleged trust was thus subject to ss 51(4) and 51(5) of the then-HDA.

163 Therefore, *Cheong Yoke Kuen* was not a case dealing with s 51(10) of the HDA. Furthermore, the present s 51(10) of the HDA, which is in issue in this case, does not state that it renders any resulting trusts or constructive trusts, which arise by operation of law, “void”. By contrasting the text of s 51(9) with s 51(10), it is clear that Parliament did not intend for s 51(10) to have the same consequence as s 51(9) (*viz*, to render the constructive or resulting trust “null and void”).

164 In this case, I have found on the evidence that the parties shared a common intention for the Hougang shophouse (and its sale proceeds) to be owned beneficially by them in equal shares. However, on the second approach to s 51(10) per *Lim Kieuh Huat (HC)*, s 51(10) of the HDA prevents the plaintiffs from becoming entitled to an interest in the HDB shophouse via the common intention constructive trust (or even via a resulting trust). They are not

entitled to the remedy of a declaration of their interests in the shophouse, nor are they entitled to any order that they be registered as co-owners of the shophouse. However, s 51(10) does not prevent a common intention constructive trust over the Hougang shophouse from arising in the first place. What this potentially means for the plaintiffs, in terms of the remedies available to them, will be dealt with at [176] to [191] below.

Do the plaintiffs have a claim of proprietary estoppel against the defendant?

165 The plaintiffs' alternative argument is that, even if no trust arises in relation to the Hougang shophouse, they can nonetheless raise an estoppel against the defendant as the legal owner of the property. In this regard, the plaintiffs rely on the doctrine of proprietary estoppel as a basis for their assertion that they are entitled to a beneficial interest in the Hougang shophouse. As I have already found that the parties share a common intention to hold the proceeds of sale of the Hougang shophouse in equal shares, and that this is not prevented by ss 51(8)–(10) of the HDA, there is no need for me to consider this claim. Nevertheless, I shall, for completeness, address the contentions briefly.

166 The principles governing proprietary estoppel are well established and summarised by the Court of Appeal in *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 at [94]: it must be shown that (a) a representation or an assurance was made that the claimant would have an interest in the property, and that (b) in reliance on this representation (c) the claimant had suffered a detriment. In *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 (“*Hong Leong*”) at [170], Sundaresh Menon JC (as he then was) also endorsed Prof Tan Sook Yee’s explanation of the doctrine, and its differences with a constructive trust, in *Principles of Singapore Land Law* (Butterworths Asia, 2nd Ed, 2001) at pp 97–98 as follows:

The principle of proprietary estoppel may be summed up as follows: where an owner of land permits the claimant to have, or encourages him in his belief that he has, some right or interest in the land, and the claimant acts on this belief to his detriment then the owner of the land cannot insist on his strict legal rights if that would be inconsistent with the claimant's belief. The claimant may have an equity based on estoppel. The connection with constructive trusts imposed to prevent fraud or unconscionable dealings is evident, as both doctrines deal with unconscionable behaviour. But although the source is unconscionable behaviour and the requirements seem almost the same, there are differences. For a start, the constructive trust in this context is based either on an intention to create a trust, but the formalities are not complied with, or on a common intention that the other party is to have an interest in the property, which is acted upon to the detriment of the alleged beneficiary. In either case there is an intention that the other party is to have an equitable interest in the land. *In proprietary estoppel, the main emphasis is that the landowner has to have acted in an unconscionable manner taking the entire set of circumstances into account. There is no clear intention that the other party is to have an equitable interest in the land.* The other important difference lies in the remedies. In a constructive trust the beneficiary claims, and if his claim is successful, he has an equitable interest in the property. *While in a case where proprietary estoppel has been successful the relief is at the discretion of the court.* [emphasis added]

167 As is clear from the authorities, the plaintiffs must establish that the defendant made a representation, express or implied, through words or conduct, that the plaintiffs each had an equal beneficial share in the Hougang shophouse. Silence or acquiescence can amount to an implied representation that is sufficient to give rise to proprietary estoppel. Where silence is relied upon, it will normally be necessary to show that the silence was maintained in circumstances where the court considers that the party in question ought to have spoken. In the “acquiescence” cases, it must be shown that the representor was aware that the representee was in fact doing the thing which the former is said to have acquiesced in, but there is no need for the representor to be aware that the representee was acting on a mistaken belief: *Hong Leong* at [194], [197]–[198]. The “essence of the doctrine” is that (*Hong Leong* at [203]):

... what is unconscionable or unfair is that the legal owner, intending, or giving the appearance of intending to do so, has induced the other party by a representation that he has acquired, or will acquire, an interest in property, to act in such a way that he will be worst off if the legal owner resiles from the representation than if the representation had not been made, in which case he would not have acted as he did. [emphasis in original omitted]

168 As to whether s 51(10) of the HDA prohibits a proprietary estoppel claim as well, Quentin Loh J (as he then was) held in *Low Heng Leon Andy* at [31] that “s 51(10) of the HDA does not necessarily preclude a claim in proprietary estoppel”. Loh J arrived at this conclusion on the following basis (*Low Heng Leon Andy* at [30]):

- (a) A mere inchoate equity will arise in favour of the claimant as a result of the unconscionability of the defendant.
- (b) The court needs to determine the remedial relief in order to satisfy the equity.
- (c) In doing so, the court will only award the claimant the minimum interest necessary to do justice between the parties.
- (d) The court does not necessarily have to award an interest in the land to the claimant. Monetary compensation for the detriment suffered is a possible remedy.
- (e) Section 51(10) of the HDA, in achieving its objective, does not operate by nullifying the underlying right which may result in an ineligible person having an interest in a HDB flat. Instead, it only prevents an interest in a HDB flat from arising in favour of ineligible persons.
- (f) *A proprietary estoppel claim is therefore not extinguished from the outset. Furthermore, as long as a proprietary estoppel claim does not give rise to an interest in the land, it should not be affected by s 51(10) of the HDA.*

[emphasis added]

169 I agree with Loh J’s analysis in *Low Heng Leon Andy*. With these observations out of the way, I proceed now with my analysis as to whether proprietary estoppel can arise on the facts of this case.

170 The plaintiffs submit that the defendant's representations to them are through his conduct by acting in a manner that led them to believe that they would be equal beneficial owners of the Hougang shophouse. The plaintiffs rely on the same facts used to justify a common intention constructive trust to support their claim on proprietary estoppel. In particular, the plaintiffs submit that the defendant had allowed the plaintiffs to believe that they would equally enjoy the Hougang shophouse, and that Red Point would be run as a family business; the plaintiffs detrimentally relied on this representation by – in SK, SM, and KG's case – accepting meagre salaries at Red Point and – in CK's case – by working for free.

171 The trouble with this submission is that it does not identify any particular conduct of the plaintiffs but instead simply refers to the general conduct of the defendant over the years by behaving as if he was *not* the sole beneficial owner of the property. In other words, the defendant did not assert any control over matters concerning the Hougang shophouse as a reasonable person who owned the shophouse exclusively would have been expected to do.

172 I am unable to agree that such general conduct on the part of the defendant can amount to a representation as a matter of law. All the defendant is guilty of is being uninterested and uninvolved in the affairs concerning the acquisition of the property, the sub-tenants, Red Point's business and how the property was being paid for. He simply used his room on the second floor of the property as his abode, and left it to KG and his sisters who worked at Red Point to handle all the matters relating to the property. He would sign whatever documents KG asked him to sign for the acquisition, financing and re-financing of the property, but that was the extent of his involvement. In my judgment, such conduct on the part of the defendant may be consistent with him not being the sole owner of the property, but there is scant evidence to show that the

defendant was aware of what exactly the plaintiffs were doing which is said to be consistent with a belief on their part that they too were equal owners of the property.

173 As the plaintiffs themselves argued, the defendant was unaware of what salaries KG, SK, and SM were paying themselves. He was also unaware of the details of how often CK had helped with carpentry works in relation to the Hougang shophouse over the years. All he knew was that CK had helped in the carpentry work for the fitting out of Red Point's premises, but that is hardly enough to show that the defendant was aware that CK was not paid anything or that he did these works in the belief that he was contributing to the enhancement of a family asset. The defendant was also not aware of how long CK's business operated at the property. The fact that the defendant did not attempt to charge CK any rent for the use of the premises for his business does not suggest that he was encouraging CK to believe that the latter held an ownership stake in the property, as it is equally consistent with him acting out of brotherly affection, if one was to assume that the defendant was the true owner of the property. Further, I noted that SA was not involved in the business of Red Point, so it cannot be said that the defendant conducted himself in such a manner *vis-à-vis* SA which led her to believe that she owned a share in the Hougang shophouse.

174 Leaving aside the question of whether the defendant made any representation about the ownership of the Hougang shophouse, the other difficulty I have with the plaintiffs' proprietary estoppel claim here is that there does not seem to be sufficient detrimental reliance. The plaintiffs could not point to any detriment suffered by SA. As for the fact that SK, SM, and KG accepted "meagre salaries" at Red Point, and that CK worked on the fitting-out and repairs of the premises for free, I hesitate to find that these acts alone are sufficient "detriment". For there to be detrimental reliance, the party must act

in a manner to *give effect* to, or at least be related to, the representation made. For instance, if party A tells party B that the latter owns half of the share in a property which party A is the sole registered owner, and party B thereby moves into the property and sells party B's own separate property, this would clearly be detriment that is *related* to the representation that B owns half of the interest in the property. In this case, I am unconvinced that the mere act of accepting "meagre salaries" at Red Point and working on carpentry work for free would suffice as detrimental reliance.

175 In my judgment, therefore, the plaintiffs' submission on proprietary estoppel fails.

Reliefs

176 I now turn to the reliefs sought by the plaintiffs.

177 First, the plaintiffs seek a declaration that the defendant holds the Hougang shophouse on trust for the benefit of all the Ong siblings in equal shares. This declaration would be possible on the first approach to s 51(10) of the HDA (see [158] above). However, it would not be possible on the second approach to s 51(10), in accordance with my analysis summarised at [164] above, as the plaintiffs cannot, under the second approach, become entitled to the Hougang shophouse, or an interest in the shophouse, under a constructive or resulting trust.

178 Second, the plaintiffs seek an order that the defendant, within six months, transfer to the plaintiffs their proportionate shares in the Hougang shophouse, free from encumbrances, by registering the Ong siblings as the registered tenants in common of the Hougang shophouse in equal shares. This would be permissible under the first approach to s 51(10) of the HDA, but it is

impermissible under the second approach to s 51(10) because it would be allowing the plaintiffs to become entitled to an interest in the Hougang shophouse because of a constructive or resulting trust.

179 Third, the plaintiffs seek, alternatively, an order that the defendant, within 12 months, sell the Hougang shophouse in the open market. KG and the defendant shall have joint conduct of the said sale and are to exercise their best endeavours to obtain the highest possible sale price. The net proceeds from the sale of the Hougang shophouse (sale proceeds less costs, expenses and outstanding loan of the Hougang shophouse) shall be distributed amongst the Ong siblings equally (*ie* one-sixth share each to the parties).

180 This would be permissible under the first approach to s 51(10) of the HDA. The question I have to grapple with is whether it would also be permissible under the second approach to s 51(10), and it is to that question that I now turn.

181 The court’s power to direct the sale of land where it appears necessary or expedient is provided for by s 18(2) read with para 2 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”) (see also *BYX v BYY* [2020] 3 SLR 1074 at [20]):

Powers of General Division

18.—(1) The General Division shall have such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the General Division shall have the powers set out in the First Schedule.

...

FIRST SCHEDULE

Additional powers of GENERAL DIVISION

Partition and sale in lieu of partition

2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and *in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.*

[emphasis added]

182 Order 31 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) states that the High Court has the power to order that any immovable property be sold where it appears “necessary or expedient” for the purposes of the cause or matter to do so:

Power to order sale of immovable property (O. 31, r. 1)

1. Where in any cause or matter relating to any immovable property it appears necessary or expedient for the purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property or part to be sold, and any party bound by the order and in possession of that property or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

183 The court’s power under both the SCJA and the ROC to order the sale of a property is contingent on there being a substantive legal basis to justify the exercise of that power: *Tan Poh Beng v Choo Lee Mei* [2014] 4 SLR 462 at [19]. In this case, a common intention constructive trust has arisen over the Hougang shophouse and the Court would have granted a declaration that each of the plaintiffs are entitled to a one-sixth beneficial interest in the shophouse, but for s 51(10) of the HDA (pursuant to the second approach). Given the operation of that statutory provision, I am of the view that the plaintiffs’ claim to a beneficial interest in the Hougang shophouse cannot be the basis to justify a sale of the shophouse. Further, the common intention constructive trust that would arise

over the sale proceeds of the shophouse also cannot be the basis to justify a sale of the shophouse simply because it has not been sold (so that common intention constructive trust over the sale proceeds has not yet arisen).

184 However, given the common intention of the parties that the shophouse was intended to be a “retirement fund” and that a common intention constructive trust would arise over the sale proceeds if the shophouse is sold, I find that *an equity* arises in favour of the plaintiffs against the defendant in relation to the Hougang shophouse which compels the defendant to act in a manner which is consistent with the common intention. The imposition of such an equity is permitted because it seeks to do justice, by analogy to what the Court does where proprietary estoppel has been established. The equity will also operate on the conscience of the defendant to require him to sell the shophouse in the present circumstances, given that the Ong siblings are now relatively advanced in their ages, the Red Point business is no longer in operation, and the common intention was that the shophouse serve as their “retirement fund”. Therefore, the plaintiffs have established a substantive legal basis for a sale of the Hougang shophouse to be ordered because of the equity that has arisen in favour of the plaintiffs to hold the defendant to their common intention for an equal beneficial share in the Hougang shophouse and its sale proceeds. In my judgment, to satisfy this equity, it is necessary and expedient to order the sale of the Hougang shophouse, and for its sale proceeds to be divided in equal one-sixth shares among the plaintiffs and defendant.

185 In reaching this conclusion, I am cognisant that a common intention constructive trust is an institutional constructive trust arising out of the operation of law from the facts, and not as the result of the exercise of judicial discretion, unlike a remedial constructive trust: see, *eg, Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 at [61]. The difference is that a

common intention constructive trust identifies the true beneficial owners, and the size of their beneficial interests. Normally, the function of the court is merely to declare that such a trust has arisen. On the other hand, a remedial constructive trust is a judicial remedy giving rise to an enforceable equitable obligation, and the extent to which it operates retrospectively to the prejudice of third parties lies in the discretion of the court: see *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 714G per Lord Browne-Wilkinson.

186 Therefore, a common intention constructive trust is a constructive trust in the proprietary sense, and it is for this reason that it is said that a plaintiff's successful claim of a common intention constructive trust immediately and automatically establishes a beneficial interest in the property (see [166] above). In this sense, a common intention constructive trust is distinct from the situation when a party is said to be liable to account as a "constructive trustee" (*eg* because he dishonestly assisted in a breach of trust), which is when an equity is usually said to arise.

187 This, however, does not mean that an equity does not and cannot arise from a common intention constructive trust. As explained in Joseph Campbell, "When and Why a Bribe is Held on a Constructive Trust: The Method of Reasoning Towards an Equitable Remedy" (2015) 39(3) Australian Bar Review 320 ("*Campbell*") (albeit while addressing a different issue), it is wrong to assume that beneficial ownership will necessarily lead to the court granting a proprietary remedy, unless the plaintiff elects to take only a personal remedy. Rather, the notion of "an equity" remains central in the administration of equitable principles. As explained in Denis Browne, *Ashburner's Principles of Equity* (Butterworths, 2nd Ed, 1933) at p 3:

Before the Judicature Act a person was said to have an equity if he had a claim to the interposition of the Court of Chancery or of some other court exercising a similar jurisdiction; he had no equity if he had no claim to the interposition of any such court. An equity was not necessarily identical with a cause of action; where a plaintiff sued in the Court of Chancery upon a legal title his equity was the ingredient in his cause of action which transferred the jurisdiction from the court of common law.

188 The expression “an equity” can be used in two different ways: the narrow sense of referring to an immediate right to positive equitable relief, and the broader and less precise sense to refer to any entitlement or obligation (“the equities”) of which a court of equity will take cognizance: see *Commonwealth of Australia v Verwayen* (1990) 95 ALR 321 at 348–349 per Deane J. A plaintiff’s equity arises from an actual infringement of one of equity’s standards of conduct, or an infringement that *would* arise if effect was not given to a claim of the plaintiff. As soon as there has been a breach of an equitable obligation, an equity – at the least one of the broader type – arises in the person who is owed the obligation, viz, the beneficiary plaintiff (*Campbell* at 327–328). Therefore, for instance, in the Australian case of *Parianos v Melliush (as trustee for the estate of the late George Parianos)* (2003) 30 Fam LR 524 at [61], Jacobson J held that a common intention constructive trust, like a remedial constructive trust, also “create[s] a personal equity between the parties which may be defeated by competing claims”.

189 In this case, bearing in mind the factors listed at [183] above, the fact is that the parties – including the defendant – always shared a common intention that they would treat the Hougang shophouse as their collective “retirement fund”, and that the shophouse would be sold at some point in time, so that its sale proceeds can be shared by them equally. The parties are not highly educated or sophisticated individuals, and it is clear from the evidence that none of them set out to get round the HDB eligibility criteria for the Hougang

shophouse, whatever that might have been. They simply acquiesced to the defendant being the registered owner of the property out of convenience. It bears noting that, on the *defendant's own case*, this arrangement made sense because the defendant claims that his family is a “traditional Chinese family” that favoured the sons over the daughters, and the “eldest male child is doted on the most”.¹⁰⁹ As the eldest son, therefore, it made sense then that they would register the shophouse in the defendant’s name for convenience, and in the belief that the defendant would honour the shared intentions in relation to the shophouse.

190 It is the parties’ intention for there to be a common intention constructive trust over the Hougang shophouse, but statute, *viz*, s 51(10) of the HDA, prevents the trust’s operation in such a manner as to allow the court to declare that the plaintiffs are to be entitled to individual shares in the shophouse. Nonetheless, an equity arises to affect the conscience of the defendant to honour and give effect to this common intention constructive trust. In this regard, it bears noting that, at the time of the acquisition of the Hougang shophouse in 1995, s 51(10) of the HDA did not exist. Only ss 51(4)–51(5) – which are *in pari materiae* with ss 51(8)–51(9) of the HDA today (albeit in slightly amended terms) – existed, but these provisions make no mention of constructive or resulting trusts. The Court of Appeal’s decision in *Cheong Yoke Kuen* which held that ss 51(4)–51(5) of the then-HDA also applied to resulting trusts was only delivered in 1999. Therefore, on balance, it is very likely to be the case that none of the parties, at the time of the acquisition of the Hougang shophouse, were even aware that they could not have a beneficial interest in the Hougang shophouse by virtue of a constructive or resulting trust.

¹⁰⁹ DCS at [113].

191 In order to satisfy this equity, I find that it is “necessary or expedient” to order the Hougang shophouse to be sold so that the Ong siblings can share equally in the sale proceeds. In this case, the Hougang shophouse was never intended to be a shared accommodation for the Ong siblings, and it is clear from the parties’ discussion at the family meeting on 25 June 2017 that they do not intend to carry on the Red Point business, or to continue to lease out the premises for rental income. There is also nothing in relation to the plaintiffs’ conduct or their shared intentions with the defendant that would inhibit the Court, on equitable considerations, from the granting of such an order of sale. The plaintiffs have clearly all come with clean hands in this case. Consequently, in my judgment, the Hougang shophouse should be sold and its sale proceeds should be shared equally among the plaintiffs and defendant in six equal shares.

192 As a final remark, I note that the foregoing analysis is not meant to be a convenient way for claimants in future to claim an indirect interest in HDB property under a constructive or resulting trust. The specific features of this case, for the reasons outlined at [189] to [191] above, are unique and are what have led to my conclusion that, *in this case*, the minimum that is necessary to satisfy the equity is to order the sale of the shophouse, which is intended by the parties to be their “retirement fund” (and not accommodation), so that its sale proceeds can be split equally among the parties. In many other situations, the same conclusion might not be drawn.

193 In sum, under the first approach to s 51(10) of the HDA, the plaintiffs would be entitled to a one-sixth beneficial share of the Hougang shophouse under a common intention constructive trust (or, alternatively, a resulting trust), as s 51(10) does not prevent the plaintiffs, who are indisputably eligible to own the Hougang shophouse, from becoming entitled to such an interest in the shophouse. I would order the shophouse to be sold in such circumstances to

allow each Ong sibling to monetise his or her one-sixth share in the property since it was intended to be their “retirement fund”. Under the second approach to s 51(10), an equity arises in favour of the plaintiffs against the defendant to require him to honour the common intention constructive trust over the Hougang shophouse and its sale proceeds (intended by the parties to be their “retirement fund”), and it is necessary or expedient to order a sale of the shophouse to satisfy this equity. As such, on either approach to s 51(10), I find it necessary and appropriate to order a sale of the Hougang shophouse, and for its sale proceeds to be split equally among the Ong siblings.

Conclusion

194 For the reasons set out in this judgment, I grant the plaintiffs an order that the defendant, within 12 months, sell the Hougang shophouse in the open market. KG and the defendant shall have joint conduct of the said sale and are to exercise their best endeavours to obtain the highest possible sale price. The net proceeds from the sale of the Hougang shophouse (sale proceeds less costs, expenses and outstanding loan of the Hougang shophouse) shall be distributed amongst the Ong siblings equally (*ie*, one-sixth share each to the parties).

195 I will deal with the issue of costs separately.

Ang Cheng Hock
Judge of the High Court

Quah Chun En Joel and Henry Li-Zheng Setiono (Gabriel Law
Corporation) for the plaintiffs;
Wee Pan Lee and Low Chang Yong (Wee, Tay & Lim LLP) for the
defendant.
