IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 22

Civil Appeal No 90 of 2021

Between

(1) Tay Yak Ping
(2) Tay Sia Yong

… *Appellants*

And

Tay Nguang Kee Serene

… *Respondent*

In the matter of Suit No 1103 of 2019

Between

Tay Nguang Kee Serene

… *Plaintiff*

And

(1) Tay Yak Ping
(2) Tay Sia Yong

… *Defendants*

JUDGMENT

[Trusts — Resulting trusts — Presumed resulting trusts]
[Equity — Defences — Laches]

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Tay Yak Ping and another
v
Tay Nguang Kee Serene

[2022] SGHC(A) 22

Appellate Division of the High Court — Civil Appeal No 90 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Chua Lee Ming J
18 March 2022

23 May 2022 Judgment reserved.

Belinda Ang Saw Ean JAD (delivering the judgment of the court):

Introduction

1 This appeal concerns a family dispute over the beneficial ownership of the sale proceeds of an apartment at 24 River Valley Close ("the Pacific Mansion Apartment"). The Pacific Mansion Apartment had been registered in the joint names of Mr Tay Yak Ping ("Yak Ping") and his father, Mr Tay Sia Yong ("Father"). We refer to Yak Ping and Father collectively as "the appellants". Ms Tay Nguang Kee Serene ("Serene"), who is Yak Ping's older sister and Father's youngest daughter, is the respondent in this appeal. In the proceedings below, Serene was the plaintiff and Yak Ping and Father were the defendants. The High Court judge ("the Judge") held that moneys beneficially owned by Serene had been used to pay for 96.07% of the purchase price of the Pacific Mansion Apartment, and that 96.07% of the sale proceeds of the Pacific

Mansion Apartment were consequently held on resulting trust for Serene. This is the appellants' appeal against the Judge's decision.

2 In our view, the salient issues were comprehensively addressed by the Judge in his judgment in *Tay Nguang Kee Serene v Tay Yak Ping and another* [2021] SGHC 194 ("the Judgment"), and there is no basis for appellate interference with the Judge's findings as they were not against the weight of the evidence before him or plainly wrong. We therefore dismiss the appeal. Separately, we will comment on an incidental question of law raised by the facts of the present case – namely, whether monetary contributions towards the ancillary costs of purchasing a property (such as stamp duty) should be taken into account in determining the parties' respective beneficial shares in that property under a resulting trust. Although this question was not squarely addressed by either party to this appeal, this topic would benefit from clarification and resolution in an appropriate future case. For now, it suffices to mention some contemporary jurisprudence on the matter, and to draw attention to the divergent approaches that have been adopted in other jurisdictions.

The facts

The parties involved

3 Father and Mdm Goh Ah Moi ("Mother") had seven children: Mr Tay Yak Hoe, Mr Tay Jee Soon ("Jee Soon"), Mdm Tay Mui Kiah, Mdm Tay Lah Moi ("Lah Moi"), Ms Tay Nguang Keow ("Nguang Keow"), Serene, and Yak Ping (listed from oldest to youngest). Father ran a wholesale bamboo business selling bamboo poles and sticks, and he supported Mother and their children. The family initially lived in a rented shophouse at Mohamed Sultan Road ("the Shophouse"). By 1987, all the children except Nguang Keow, Serene and Yak Ping had married and moved out (see the Judgment at [4]).

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Serene Leather

4 On 12 December 1987, a business known as "Serene Leather" was registered, and it commenced its business in the Westin Plaza Hotel either later that month (on Serene's case) or in early January 1988 (on the appellants' case). Its principal activities were the wholesale of textiles, leathers and clothing. Based on its Accounting and Corporate Regulatory Authority ("ACRA") profile, Serene Leather had four partners:

(a) Serene (registered as an owner on 12 December 1987);

(b) Jee Soon (registered as an owner on 18 December 1987); and

(c) Father and Yak Ping (both registered as owners on 13 April 1988).

5 There was, however, no written partnership agreement between the parties (see the Judgment at [5]), and the issue of who owned Serene Leather and its proceeds is in dispute. Serene Leather's proceeds were initially banked in, but after a few months, they were brought home in cash to Mother for safekeeping (see the Judgment at [5]). On 12 December 1995, Serene Leather's business was terminated.

The Valley Apartment

6 In or around the second half of 1988, an apartment at 18 Tong Watt Road ("the Valley Apartment") was purchased for a price of $270,000. On 10 October 1988, a five-year housing loan of $150,000 secured by a legal mortgage over the Valley Apartment ("the Loan") was granted to Father, Mother and Yak Ping by Overseas Union Bank Limited, under which the monthly instalments ranged from $2,808 to $2,907 ("the Instalments"). The remaining $120,000 was paid in cash, in three separate payments: a payment of $27,000 for the "booking fee"

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in September 1988; another $27,000 for the second 10% deposit in October 1988; and a further payment of $66,000 in November 1988. The source of the funds used to pay the various components of the purchase price of the Valley Apartment is another disputed question of fact.

7 Near the end of 1988, Father, Mother, Nguang Keow, Serene and Yak Ping moved from the Shophouse to the Valley Apartment (see the Judgment at [6]).

8 The legal title to the Valley Apartment was held by Father, Mother and Yak Ping as tenants-in-common with shares of 50%, 25% and 25% respectively. On 6 May 1994, Mother made a will giving her 25% share of the Valley Apartment to Jee Soon, Lah Moi and Yak Ping absolutely in equal shares ("Mother's Will"). Thus, after Mother passed away on 20 April 1996, the legal title to the Valley Apartment was owned in the following shares: half by Father, one-third by Yak Ping, one-twelfth by Jee Soon and one-twelfth by Lah Moi (see the Judgment at [7]). In December 2005, the Valley Apartment was sold for a sum of $898,403.18, which was subsequently paid out to Father, Yak Ping, Jee Soon and Lah Moi in accordance with their respective shares (see the Judgment at [8]).

9 According to Serene, a few days after the distribution of the sale proceeds from the Valley Apartment in 2006, she had a meeting with Father. They met at Lah Moi's home with Lah Moi and Nguang Keow present ("the 2006 Meeting"). Yak Ping was not present at this meeting. What led to this meeting was Serene's discovery in 2006 that Yak Ping's name had been included in the legal title to the Valley Apartment (see the Judgment at [81]). At the meeting, Father allegedly told Serene (in Teochew) something along the lines of: "there is a name but it is useless. The money isn't his. In future, it will

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all be yours" ("the Oral Assurance"). Serene understood these words to mean that the fact that Yak Ping's name was on the register was useless because the money was not his, and in the future it would all be Serene's (see the Judgment at [41]). The appellants dispute that the alleged Oral Assurance was in fact made by Father.

The Pacific Mansion Apartment

10 In or around March 2006, the Pacific Mansion Apartment was purchased for a purchase price of $670,000 in the joint names of Yak Ping and Father. It is not disputed that the purchase price of the Pacific Mansion Apartment was paid for mostly using the sale proceeds of the Valley Apartment, save for $26,300 which was paid from Yak Ping's Central Provident Fund ("CPF") account. Yak Ping also paid $17,700 from his CPF account towards the stamp duty for the purchase of the Pacific Mansion Apartment (see the Judgment at [2] and [9]), such that his total monetary contribution was $44,000.

11 In March 2018, the Pacific Mansion Apartment was sold for a sum of $3,268,739.39 (see the Judgment at [2] and [9]). On 7 February 2019, Father was certified to have lost mental capacity (see the Judgment at [84]).

Commencement of proceedings

12 In 2018, when the Pacific Mansion Apartment was to be sold, Yak Ping sought his siblings' consent for him to be named Father's sole deputy. Such consent was not forthcoming (see the Judgment at [84]). On 1 July 2019, Yak Ping applied to the court to be appointed as Father's sole deputy to manage his property and affairs. Yak Ping's application included a clause granting him authority to collect any sums payable to Father from the collective sale of the Pacific Mansion Apartment and to deposit the moneys received into Father's

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trust account, as well as to select and purchase a new private residential property as joint tenants with Father.

13 On 25 October 2019, Serene commenced proceedings against Yak Ping and Father, claiming primarily that they held the sale proceeds from the Pacific Mansion Apartment on a resulting trust for her. This claim was premised on two key assertions of fact: first, that the purchase price of the Valley Apartment was paid using the proceeds of Serene Leather's business; and second, that Serene Leather itself was solely owned by Serene. Yak Ping acted as Father's litigation representative in the suit, and continues to do so on appeal.

Decision below

14 The Judge first found, on a balance of probabilities, that the Valley Apartment was purchased using the proceeds of Serene Leather. Taking into consideration the objective evidence relating to the family's financial situation before the operation of Serene Leather, the Judge found that Father did not have sufficient cash at the time the Valley Apartment was purchased to pay for the cash component of its purchase price ($120,000) without using Serene Leather's proceeds. The Judge also accepted that Serene Leather's proceeds were used to pay the monthly instalments for the Loan (see the Judgment at [22]–[48]).

15 Next, the Judge found that Serene Leather was solely owned by Serene on a balance of probabilities (see the Judgment at [52] and [58]). Serene had founded Serene Leather as a sole proprietor on her own initiative. Father had acted only as an intermediary to help Serene secure a loan of $50,000 from his friend (one "Hiap Heng") and did not himself make any capital contribution to Serene Leather (see the Judgment at [54]). Jee Soon, Yak Ping and Father were added as merely nominee partners of Serene Leather (see the Judgment at [55]–[56]), and there was no evidence that Serene Leather's proceeds were split

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between Father, Serene, Jee Soon and Yak Ping; on the contrary, they were treated by the family as being safekept for Serene solely (see the Judgment at [57]).

16 In the light of the above findings, the Judge found that the Valley Apartment (and its sale proceeds) was held by the appellants on resulting trust for Serene because the proceeds of Serene Leather, which was solely owned by Serene, were used to pay the purchase price of the Valley Apartment. $643,700 of the sale proceeds from the Valley Apartment were then used to purchase the Pacific Mansion Apartment, with the balance $26,300 of the purchase price contributed by Yak Ping from his CPF account. Consequently, 96.07% of the purchase price of the Pacific Mansion Apartment was paid with moneys held on trust by the appellants for Serene, and the appellants therefore held 96.07% of the sale proceeds from the Pacific Mansion Apartment on resulting trust for her. Nevertheless, as Yak Ping had paid $17,700 from his CPF account towards the stamp duty for the Pacific Mansion Apartment, the Judge ordered Serene to reimburse Yak Ping for her 96.07% share of the $17,700 together with accrued interest (amounting to $23,299.65) (see the Judgment at [63]–[65]).

17 Finally, the Judge held that Serene's claim was not barred by the Limitation Act (Cap 163, 1996 Rev Ed) ("the Limitation Act") or by the doctrine of laches (see the Judgment at [66] and [86]). With regard to the former, the Judge held that s 22(1)(*b*) of the Limitation Act applied as the appellants held the sale proceeds from the Pacific Mansion Apartment on resulting trust for Serene, and that Serene's claim was therefore not subject to the six-year limitation period in s 22(2) of the Limitation Act (see the Judgment at [71]–[75]). With regard to the doctrine of laches, the Judge held that Serene's decision to bring her claim in 2019 did not constitute undue delay in the circumstances of this case, as it was only in 2018 that it became clear to Serene

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that Yak Ping wanted to collect all the sale proceeds from the Pacific Mansion Apartment and purchase another private residential property to be held by himself and Father as joint tenants (see the Judgment at [80]–[84]). There was also no prejudice to the appellants caused by any undue delay or fault on Serene's part (see the Judgment at [85]).

The parties' cases

18 The parties' cases on appeal are predominantly factual in nature. The appellants make four main arguments:

(a) First, that no weight should be given to the bare assertions of Serene and her two biased "supporters", Lah Moi and Nguang Keow; and that the court's findings of fact in this case should instead be based on "objective evidence", by which they mean "documents, undisputed facts and obvious facts of which judicial notice can be taken".

(b) Second, that the objective evidence shows that Father did not use Serene Leather's proceeds to pay for the Valley Apartment, and that Father's own money was used instead. During the hearing before us, counsel for the appellants, Mr Vincent Yeoh ("Mr Yeoh"), clarified that their references to Father's money related specifically to money *from Father's bamboo business*, rather than from any other source. This was also the position taken by Yak Ping at trial (see the Judgment at [23]).

(c) Third, that the objective evidence shows that Serene Leather was not solely owned by Serene, and was instead Father's business.

(d) Fourth, that the doctrine of laches bars Serene's claim. Prejudice has been caused to the appellants because witnesses and documentary evidence are now unavailable, and "objective evidence" is needed to

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justify Serene's 13-year delay in bringing her claim; Serene's "hearsay" evidence in the form of the alleged Oral Assurance cannot justify the delay.

19 In response, Serene makes the following arguments:

(a) First, that her testimony, and the testimony of Lah Moi and Nguang Keow, should be given due weight, and that Lah Moi and Nguang Keow were independent and honest witnesses who testified against their own financial interests.

(b) Second, that she has proven on a balance of probabilities that the Valley Apartment was purchased using Serene Leather's proceeds.

(c) Third, that she has proven on a balance of probabilities that Serene Leather was solely owned by her.

(d) Fourth, that the doctrine of laches is not applicable because the period of less than two years that she took to bring her claim, starting from when she became aware that Yak Ping was attempting to appropriate the sale proceeds from the Pacific Mansion Apartment for himself in 2018, does not constitute delay, and the appellants have not been unfairly prejudiced.

Issues

20 Three broad issues arise for this court's determination:

(a) First, the preliminary issue of the weight to be given to the evidence of Lah Moi, Nguang Keow and Serene.

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(b) Second, whether the Judge was correct to hold that 96.07% of the sale proceeds from the Pacific Mansion Apartment are held by the appellants on resulting trust for Serene. This issue requires an examination of the Judge's two key findings of fact outlined at [25] below.

(c) Third, whether the Judge was correct to hold that Serene's claim was not barred by the doctrine of laches.

Our decision

Weight to be given to the evidence of Lah Moi, Nguang Keow and Serene

21 Preliminarily, we address the appellants' contention that no weight should be given to the assertions made by Lah Moi, Nguang Keow and Serene. This contention forms a central pillar of the appellants' case. Having found that these three witnesses were credible and came across as "forthright and honest people" in giving their testimony (see the Judgment at [26]), the Judge accepted the evidence of these three witnesses in arriving at his key findings of fact.

22 We reject the appellants' suggestion that the evidence of Lah Moi, Nguang Keow and Serene should be disregarded. The appellants have not adduced any evidence to rebut the Judge's views that these witnesses were honest and truthful, or to substantiate their allegation that Lah Moi and Nguang Keow were biased towards Serene. The appellants also contend that Serene was not credible based on the discrepancy between her alleged cheque payment of $50,000 from Serene Leather for the deposit for the Valley Apartment, and the option to purchase the Valley Apartment dated 17 September 1988 ("the Option to Purchase") which stated that the amount of the deposit was only $27,000. However, upon a closer examination of the Option to Purchase, this contention

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is not valid. The figure of $27,000 was the "booking fee" in consideration of which the Option to Purchase was granted (cl 1), while the deposit was 20% of the purchase price less the booking fee (*ie*, an additional $27,000) (cl 3). Serene testified that the cheque from Serene Leather for "about $50,000" was issued in 1988 "for deposits and option". Based on the Option to Purchase, the sum of the booking fee (or option fee) and deposit was $54,000. The Option to Purchase is thus broadly consistent with Serene's account. While there is a small discrepancy of about $4,000 in the figures, this is in our view understandable, given that these events took place more than 30 years ago.

23 More broadly, the appellants appear to be relying on the lack of *documentary* evidence in the present case to argue that Serene has not proven her case. For example, they point out that the solicitors' correspondence regarding the purchase of the Valley Apartment does not show that Serene made a cheque payment of $50,000 from Serene Leather to the developer for the deposit. However, the Judge acknowledged from the outset of the Judgment that, in family disputes involving heavily contested events spanning several years and a lack of documentation, the court would have to "carefully evaluate the credibility of the parties to ascertain the truth from the disparate versions of events presented" (see the Judgment at [1]). The Judge proceeded to do precisely this throughout the Judgment in making his findings of fact. In our view, this argument therefore does not take the appellants very far.

Resulting trust over the sale proceeds from the Pacific Mansion Apartment

24 The legal principles on resulting trusts were set out by the Judge at [59]–[62] of the Judgment and are undisputed on appeal. In particular, the appellants do not dispute that the presumption of resulting trust, if it arises, is not displaced by any intention on Serene's part to make a gift to them; by the presumption of

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advancement; or by any common intention to hold the beneficial interest in the Pacific Mansion Apartment (and its sale proceeds) in a proportion other than that which corresponds with the parties' respective financial contributions (applying the principles set out in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160], as set out in the Judgment at [62]).

25 The sole question is therefore whether the presumption of resulting trust arises, based on the parties' respective financial contributions to the purchase price of the Pacific Mansion Apartment at the time it was acquired (applying the principles in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), *Chan Yuen Lan*, and *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*")). Based on the appellants' arguments in this appeal, we are not persuaded that the Judge erred in making the two key findings of fact which led to his conclusion on this issue:

(a) first, that the Valley Apartment (96.07% of the sale proceeds of which were used to pay for the Pacific Mansion Apartment) was purchased using Serene Leather's proceeds; and

(b) second, that Serene Leather (or more specifically, Serene Leather's proceeds) was owned solely by Serene.

26 In our judgment, the totality of the evidence supports the Judge's key findings of fact on these factual issues, which we now consider in turn.

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Whether the Valley Apartment was purchased using Serene Leather's proceeds

27 It is not disputed that the purchase price of the Valley Apartment was $270,000, and that this was paid for partly by the Loan of $150,000 (repaid by the monthly Instalments ranging from $2,808 to $2,907) and three payments amounting to $120,000, which were made from September to November 1988 (see [6] above).

28 The appellants' case with regard to the payment of the purchase price of the Valley Apartment has two aspects. The first aspect is their reliance on eight pieces of "objective evidence" in support of their argument that the moneys used to purchase the Valley Apartment did not come from Serene Leather's proceeds. In our view, the points raised by the appellants, many of which are conjectural assertions, do not establish any basis for disturbing the Judge's factual finding that the purchase price of the Valley Apartment was paid for using Serene Leather's proceeds on a balance of probabilities, especially when they are considered in the light of the other evidence in Serene's favour. The Judge arrived at this factual finding after having heard the testimony of the various witnesses and having considered the evidence before him. We deal briefly with each of these pieces of "objective evidence".

(1) "Objective evidence" relied on by the appellants

29 The first piece of "objective evidence" relied on by the appellants is two cheques given to the developer of the Valley Apartment for a total of $26,636, which were issued by Father on 10 November 1988 from his own bank account. In our view, these cheques are inconclusive for two reasons. First, the total amount of the cheques accounts for only a small proportion of the cash portion of the purchase price of the Valley Apartment ($120,000), the whole amount of

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which would have fallen due by November 1988. Second, the Judge (at [38] of the Judgment) accepted Lah Moi's evidence that Father would deposit Serene Leather's proceeds into his bank account and then issue cheques from that account, and the appellants have provided no countervailing evidence or credible basis for challenging this finding.

30 Second, the appellants rely on the fact that the Valley Apartment was registered in the names of Father, Mother and Yak Ping, and argue that Serene's explanation that her name was intentionally excluded to prevent her boyfriend from cheating her out of her assets is based on bare assertions which hold no water. This argument was rejected by the Judge, who instead accepted Serene's explanation that she consented to having the legal title to the Valley Apartment put in Father and Mother's names because of Father's fear that she would be cheated by her boyfriend (at [40] of the Judgment). On appeal, to counter Serene's explanation based on Father's fear of a cheating boyfriend, the appellants point to the fact that Serene bought another property at Jalan Rajah in her own name shortly after the purchase of the Valley Apartment ("the Jalan Rajah Property"), in 1991.

31 We reject this argument. First, the names in which the legal title to the Valley Apartment was registered can only be the starting point of the analysis, and the appellants' contention is circular given that Serene's case is that the beneficial ownership of the Valley Apartment was *not reflected in its legal ownership*, due to the operation of a resulting trust. Second, although the manner in which the Jalan Rajah Property was held may cast some doubt on Serene's explanation that her name was excluded from the legal title to the Valley Apartment so as to protect her from her boyfriend, Serene was – as Mr Yeoh acknowledged during the hearing – not cross-examined at trial on why the Jalan Rajah Property was purchased in her name, whereas the Valley Apartment was

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not. Instead, Mr Yeoh said that he was "leaving that for submission" and "only relying … on the objective fact that [Serene] had purchased another property". This point therefore does not take the appellants very far.

32 We turn to the third, fourth and fifth arguments made by the appellants. These relate to Father and Mother's treatment of the Valley Apartment and its sale proceeds. The appellants rely on the following pieces of "objective evidence":

(a) when Lah Moi received her share of the sale proceeds of the Valley Apartment, Father could "exert the authority" to direct her to distribute it among his four daughters;

(b) after Father received his share of the sale proceeds of the Valley Apartment and Serene asked him for some of it, Father refused (on the appellants' version of events); and

(c) in Mother's Will, she left her 25% share of the Valley Apartment to Jee Soon, Lah Moi and Yak Ping absolutely in equal shares (see [8] above) and did not give this share to Serene.

33 We disagree with the appellants' submission that this shows that the Valley Apartment did not belong to Serene. The key question in relation to a resulting trust claim is what the parties' respective financial contributions to the purchase price were. Father's actions (as summarised at [32(a)] and [32(b)] above) and Mother's Will at most show that Father and Mother, rightly or wrongly, *regarded themselves* as being entitled to control the sale proceeds of the Valley Apartment (in Father's case) and to dispose of her 25% share of the Valley Apartment as she wished (in Mother's case). They do not necessarily establish that the money for the purchase did not come from Serene. With regard to Mother's Will in particular, as the Judge stated (at [46] of the Judgment), the

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case of *Quek Hung Heong v Tan Bee Hoon (executrix for estate of Quek Cher Choi, deceased) and others and another suit* [2014] SGHC 17 relied on by the appellants does not set out any presumption or rule that the proper inference to draw from a testamentary disposition is necessarily that the person making the will is in fact the outright beneficial owner of the property, rather than a resulting trustee. Whether such an inference should be drawn is ultimately a fact-sensitive inquiry, and the facts of the present case do not support such an inference.

34 Sixth, the appellants rely on the fact that the bank granted the Loan of $150,000 to Father as "reliable independent verification" that Father had sufficient income of his own to repay the Loan, as the bank would not have granted the Loan without verifying this. The difficulty with this argument is that it is unknown what considerations the bank's verification and due diligence processes took into account in deciding to grant the Loan, and what the terms and conditions of the Loan were. The granting of the Loan therefore does not assist the appellants in showing that Father had sufficient income of his own to pay the Instalments for the Loan, much less that he did actually do so.

35 The seventh piece of "objective evidence" relied on by the appellants is that Serene did not stake a claim to the Valley Apartment when she returned to Singapore in 2004 after her failed ventures in South Korea and China, and when she was in need of money. The appellants suggest that the reason for this is that Serene knew at that time that she would not be able to prove her case, as Father would have been able to rebut her arguments. This is a bald assertion which we are unable to accept.

36 The eighth and final piece of "objective evidence" which the appellants rely on is the fact that the purchase of the Valley Apartment took place only a

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few months after the commencement of Serene Leather's business. They contend that Serene has not provided evidence to "overcome the improbability" that Serene Leather earned a net *profit* of $120,000 within those few months. We deal with this point in the next section, together with the appellants' argument that the Valley Apartment was instead paid for using Father's money from his bamboo business.

(2) Sources of funding for the purchase price of the Valley Apartment

37 The second aspect of the appellants' case on this issue is that the Judge erred in finding that Father had used Serene Leather's proceeds to pay the purchase price of the Valley Apartment because, without these proceeds, he would not have had the financial means to do so. The Judge made four key findings of fact in this regard:

> (a) First, that the timing of the purchase of the Valley Apartment – which was a few months after Serene Leather was started – could be explained by Serene Leather's high earnings. Father had been operating his bamboo business for many years, but the family still could not afford accommodation better than the Shophouse; it was the substantial profits generated by Serene Leather that enabled the family's financial situation to improve. This was corroborated by the evidence of Lah Moi and Nguang Keow, as well as (to some extent) by Yak Ping's own testimony (see the Judgment at [32]–[34]).
>
> (b) Second, that Serene's estimate of Serene Leather's monthly profits (between April 1990 and July 1991) as being between $7,911.31 and $47,626.80, based on contemporaneous sales documents, provided a good and reliable estimate of the kind of monthly profits that could be generated by Serene Leather (see the Judgment at [32]).

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(c) Third, that Father did not have sufficient cash at the time of the purchase of the Valley Apartment to pay the $120,000 cash portion of the purchase price without using Serene Leather's proceeds. This was based on two main considerations: (i) the fact that Yak Ping's evidence relating to the revenue of Father's bamboo business was inconsistent and lacking in credibility; and (ii) the objective evidence relating to the family's financial situation and living conditions before Serene Leather was started (see the Judgment at [23]–[31]).

(d) Fourth, that Serene Leather's proceeds kept in the family's safes were used to pay the Instalments for the Loan, pursuant to her agreement to this effect with Father and Mother. This was corroborated by Lah Moi and Nguang Keow. Yak Ping's assertion that Father used his own money to pay the Instalments was rejected (see the Judgment at [36]–[39]).

38 In our view, the appellants have not provided any basis for disturbing these findings of fact made by the Judge. Their contention that the family's austere lifestyle was equally attributable to Father's stinginess, and that the "objective evidence" of Father's bamboo business (which had few competitors at the time) and expenditure suggests that he could not have been poor, is conjectural. Moreover, as the Judge noted, Yak Ping did not even ask Jee Soon whether documents relating to Father's bamboo business still existed. Such documents, if available, would have helped to substantiate his claims regarding its revenue and would thus have provided important support for his case that Father's own moneys were the true source of funding for the Valley Apartment (see the Judgment at [25]). The appellants' suggestion that the decline of Father's business after moving to the Valley Apartment did not mean that Father had used Serene Leather's proceeds to pay the Instalments, because Father's reduced earnings were compensated for by his reduced spending, is also wholly

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speculative and unsupported by any credible evidence of either Father's earnings from his bamboo business or Father's reduced spending.

39 As for the profits generated by Serene Leather, the appellants argue that Serene Leather prospered (as seen from its cash being brought home in large amounts) only *after* the family had moved to the Valley Apartment, and that since the $120,000 had been paid by this time, it could not have come from Serene Leather's cash. However, this is inconclusive at best, particularly given that (based on Lah Moi's evidence before the Judge) the two safes in which Serene Leather's proceeds were stored at home were *themselves* purchased only after the family moved into the Valley Apartment. The appellants also assert that Serene Leather could not have generated a net profit of $120,000 in just a few months after its opening because Serene was young and her other business ventures had failed. This, again, is a bald assertion and we are not minded to interfere with the Judge's acceptance of Serene's evidence on the earnings and profitability of Serene Leather on this basis.

40 We pause here to note that the state of the evidence as regards Serene Leather's monthly profits is not entirely satisfactory. There is a gap in the documentation of Serene Leather's earnings in 1988, when the Valley Apartment was purchased. In the proceedings before the Judge, Serene explained that the appellants had only provided Serene Leather's documents from 1990 onwards, and Serene and Lah Moi stated that Serene Leather's books were in either Father or Yak Ping's possession at the time of the suit. Meanwhile, the appellants' position is that Yak Ping had already produced the documents he held. Nevertheless, based on the documents that were before the Judge, Serene calculated Serene Leather's monthly profits in 1990 and 1991 to be between $7,911.31 and $47,626.80. Although there was no direct documentary evidence of these profits, the Judge was satisfied that Serene's

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calculations based on the contemporaneous sales memoranda "provide[d] a good and reliable estimate of the kind of monthly profits that could be generated by Serene Leather", and that the available documentation corroborated Serene's estimates of Serene Leather's monthly profits. Serene's evidence was that Serene Leather's profits in 1988 and 1989 were *higher* than those in 1990 and 1991. Although the Judge did not make any specific findings regarding the likely profits made by Serene Leather *in 1988*, the Judge was satisfied on the whole that the fact that the Valley Apartment was purchased a few months after Serene Leather was started could be explained by "the high earnings from Serene Leather that came in since its operation" (see the Judgment at [32]).

41 In our view, the appellants have not provided a sufficient basis for disturbing the Judge's findings and conclusion on this point. These findings are also corroborated, to some extent, by *Yak Ping's own evidence* that Serene Leather's monthly sales revenue in 1988 and 1989 was $10,000 to $30,000, and that its net monthly profits during that period were between "a few thousand dollars" and $20,000 *per* month (see the Judgment at [34]). This was acknowledged by Mr Yeoh in the hearing before us. Yak Ping also stated during his cross-examination that Serene Leather's takings were between $20,000 and $50,000 in 1990 and 1991, and these figures are broadly consistent with Serene's calculations for those years. While there are considerable disparities between Serene and Yak Ping's estimates of Serene Leather's profits in the critical year of *1988*, Yak Ping himself accepted that Serene Leather was making money (albeit that his position was that it "[d]idn't make a lot of money") in that year. The fact that the $120,000 cash portion of the purchase price of the Valley Apartment was paid in three separate payments between September and November 1988, instead of all at once in September 1988, further strengthens Serene's case that Serene Leather's profits were sufficient to fund the cash portion of the purchase price of the Valley Apartment. By

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September and November 1988, Serene Leather would have been in operation for at least eight months and ten months respectively, and – even on Yak Ping's more conservative estimate of its net profits – would have been capable of accumulating substantial profits during that time. On the whole, therefore, we see no reason to depart from the Judge's factual findings on this point.

42 We therefore affirm the Judge's finding that, at the material time, Father did not have the money to purchase the Valley Apartment without Serene Leather's proceeds, and that he also did not have the financial means to pay the Instalments for the Loan. With regard to the Loan, we add that there is sufficient evidence to infer on a balance of probabilities that Serene Leather's proceeds were used to pay the Loan Instalments pursuant to a *prior* agreement made between Serene, Father and Mother *at the time the Loan was obtained* in October 1988, such that these payments of the Instalments were "direct" contributions to the purchase price giving rise to a resulting trust (*Lau Siew Kim* at [113] and [116]–[117]; see also *Su Emmanuel* at [89]–[92]). Serene's evidence was that she told Father and Mother to use her money to pay for the purchase price of the Valley Apartment in full, and the fact that she did not know that the purchase price was partly paid for by taking out the Loan is not decisive. Although the Judge does not appear to have expressly considered the issue of the *timing* of this agreement between the parties (see the Judgment at [36]–[38]), we are of the view that this can be inferred in the present case.

Whether Serene Leather's proceeds were solely owned by Serene

43 The second factual issue on which Serene's resulting trust claim turns is whether Serene Leather's proceeds can be treated as payments made by Serene. This, in turn, depends on whether Serene Leather's proceeds were owned solely

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by Serene. The appellants rely on five pieces of "objective evidence" that Serene Leather was not solely Serene's:

(a) first, Serene Leather's ACRA profile;

(b) second, that Serene received a sum of $50,000 from Father to start Serene Leather's business;

(c) third, that Father handled Serene Leather's accounting and taxes;

(d) fourth, that Serene received a salary from Serene Leather; and

(e) fifth, that Serene Leather's cash was taken home and given to Mother, and Mother exercised tight control over this cash.

Having considered these points, we see no reason to disturb the Judge's findings (at [58] of the Judgment) that the appellants and Jee Soon were merely nominal partners of Serene Leather, and that Serene Leather was owned solely by Serene, such that all the proceeds of Serene Leather belonged to her.

44 As at April 1988, Serene Leather had four registered partners and owners listed on its ACRA profile: Serene, Jee Soon, Father and Yak Ping. The starting point is that the registration of a business as a partnership provides *prima facie* evidence that it is a partnership. However, it remains open to the party challenging the existence of the partnership to prove otherwise, and co-partners are not estopped from proving that an alleged partner who is registered as a partner is in fact merely a nominal partner, where the true facts are known to the parties who merely made temporary arrangements for their mutual convenience: Yeo Hwee Ying, *Law of Partnerships in Singapore – including LLP and LP* (LexisNexis, 2015) ("Yeo") at para 1.4.7 and *Sivagami Achi v P R M Ramanathan Chettiar and another* [1959] MLJ 221, cited with approval in *Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel*

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Proprietors) v Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others [2014] SGHC 119 at [93]. Other than the definition of a partnership in the Partnership Act (Cap 391, 1994 Rev Ed), the court also looks at "the intention of the parties as appears from the whole facts of the case" in determining whether there is a partnership: *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 at [69].

45 On the appellants' own case, the registration of the four named partners, as reflected on Serene Leather's ACRA profile, is inconclusive. Their reliance on the ACRA profile therefore does not take them very far in showing that Serene Leather was not solely Serene's. As Serene's counsel, Mr Justin Zehnder ("Mr Zehnder"), correctly pointed out during the hearing, the appellants do not seek to argue that *all four* registered partners of Serene Leather were true partners who were all entitled to share equally in its profits. Instead, the appellants' case, both before the Judge and on appeal, is that Serene Leather was *Father's* business or Father's "family business". The appellants' emphasis on the official ACRA records is thus contradicted by their own position.

46 In relation to the inclusion of the appellants' and Jee Soon's names as partners in Serene Leather, we add that the appellants' reliance on the fact that Serene had other businesses which the appellants and Jee Soon were *not* added as owners of, is misplaced. These other businesses were started several years after Serene Leather, beginning with Spring Wood Pte Ltd in March 1990. Moreover, as Mr Yeoh acknowledged during the hearing before us, there is no evidence before the court of how these other businesses were performing, and thus whether they would have needed a similar level of protection. This point is therefore neither here nor there.

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47 Looking beyond Serene Leather's ACRA profile, the appellants have not provided any basis for challenging any of the following findings of fact made by the Judge, which led him to conclude that Serene Leather was owned solely by Serene:

(a) First, that Serene had started Serene Leather as a sole proprietor on her own initiative, took the critical steps in relation to the business and made all the major decisions pertaining to it, and operated and managed it on a daily basis (see the Judgment at [53]). While the initiation and management of a partnership alone does not indicate sole ownership or give rise to an entitlement to a greater share (see, *eg*, *Koh Ewe Chee v Koh Hua Leong and another* [2003] SGHC 24 at [106]), this is nevertheless an important part of the factual matrix which goes towards ascertaining the parties' intentions. In this regard, we also note that Serene started Serene Leather as a sole proprietor on 12 December 1987; Jee Soon was only added as a partner on 18 December 1987, while Father and Yak Ping were added as partners a few months later, on 13 April 1988. Furthermore, the name of the business uses only Serene's name.

(b) Second, that – bearing in mind the family's financial circumstances at the time Serene Leather was started, as well as Nguang Keow and Lah Moi's testimony – the sum of $50,000 that Serene had received from Father to help her start Serene Leather was not loaned or given to her from Father himself. Instead, Father acted as an intermediary to help Serene secure the loan of $50,000 from Hiap Heng, and did not himself make any capital contribution to Serene Leather. Yak Ping's assertion that Father gave an additional sum of $20,000 to

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Serene as capital for Serene Leather was also disbelieved (see the Judgment at [31] and [54]).

(c) Third, that Serene had been persuaded by Father to include Jee Soon and the appellants' names as partners in Serene Leather for tax and administrative purposes, and to prevent her boyfriend from usurping her business. The limited involvement of Jee Soon and the appellants in Serene Leather also showed that they were merely nominal partners, as there was no evidence that they were involved in any of its decision-making or were asked to bear any liabilities in relation to Serene Leather – including liability to repay the loan of $50,000 from Hiap Heng, which was repaid by Serene (see the Judgment at [54]–[56]). Indeed, Yak Ping conceded that Father, Jee Soon and he did not know anything about selling leather goods (see the Judgment at [56]). Furthermore, we note that Serene's evidence at trial, which the appellants have not provided any basis for challenging on appeal, was that Serene Leather's accounting and taxes were done by Father's accountant, who was paid by Serene, and to whom Father simply passed the relevant documents. In our view, it is therefore an overstatement for the appellants to claim that Father handled Serene Leather's accounting and taxes and thereby "controlled" this "most vital aspect" of its business.

(d) Fourth, that Serene Leather's proceeds were treated by the family as being safekept in the safes in their home for Serene to ensure that she was not cheated by her boyfriend, and these proceeds were not split between Serene, Jee Soon and the appellants in any proportion. The proceeds were Serene's solely (see the Judgment at [57]).

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48 We are also unable to accept the appellants' argument that Serene was given a salary for her work in Serene Leather, alongside Yak Ping and Nguang Keow. The appellants submit that this indicates that Serene Leather was Father's family business, because if it had been solely Serene's, she would have drawn out any amount at any time for her own use, which she did not do. We disagree. While the receipt of a salary is associated with employment instead of partnership, whether a salaried partner is indeed a partner or an employee will depend on the true substance of the relationship between the parties, and not the label attached to it, having regard to the totality of the evidence and the proper inferences to be drawn therefrom: *Chua Ka Seng v Boonchai Sompolpong* [1993] 1 SLR(R) 17 at [23]–[24] and Yeo at para 3.4. Serene explained at trial that she did not draw a salary every month and her "salary" was more of a record of the money she took from Serene Leather for her personal expenses. The appellants have not provided any basis for challenging Serene's evidence on this point, other than suggesting that there should also have been a record of expenses if this were the case. This is insufficient to displace the inference that Serene Leather was Serene's business, and that she was not a mere employee.

49 Therefore, the appellants have not established that the Judge erred when he found that Serene Leather's proceeds were owned solely by Serene. As such, they are to be treated as payments made by Serene towards the purchase price of the Valley Apartment.

Conclusion on the resulting trust claim

50 It follows from our conclusions above that the Valley Apartment was purchased using moneys belonging to Serene. As it is undisputed in the present case that 96.07% of the purchase price of the Pacific Mansion Apartment was paid for using the Valley Apartment's sale proceeds, we agree with the Judge

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that Serene can be taken to have contributed 96.07% of the purchase price of the Pacific Mansion Apartment. We therefore affirm the Judge's finding that, following the sale of the Pacific Mansion Apartment, Serene is the beneficial owner of 96.07% of the sale proceeds from the Pacific Mansion Apartment, and this sum is held by the appellants on a resulting trust for her.

Doctrine of laches

51 We turn now to the appellants' submission that Serene's claim is barred by the doctrine of laches. We note that, although the appellants' case before the Judge was that *both* the doctrine of laches and s 22(2) of the Limitation Act barred Serene's claim, they have only pursued their argument on laches in this appeal. As Mr Yeoh confirmed at the hearing before us, the appellants are no longer relying on the Limitation Act.

52 We affirm the Judge's finding that Serene's claim is not barred by the doctrine of laches. The doctrine of laches requires "a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy" (*Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46]; see also *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 at [97]).

53 In our judgment, the requirement of a substantial lapse of time has not been established. There was no undue delay on Serene's part as it was only in March 2018, when Yak Ping sought to be named as Father's sole deputy and it became clear to Serene that Yak Ping intended to claim the entirety of the sale proceeds from the Pacific Mansion Apartment (as the Judge found at [80]–[84] of the Judgment), that time started to run. In these circumstances, we are of the view that Serene's commencement of the suit against the appellants on 25 October 2019 did not constitute undue delay.

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54 The appellants have also provided no basis for disturbing the Judge's findings regarding the Oral Assurance made by Father to Serene at the 2006 Meeting (see the Judgment at [41]–[43] and [82]), whereby Father represented that the Valley Apartment belonged to her. Lah Moi and Nguang Keow's evidence at trial corroborated Serene's case that Father had assured her that the Valley Apartment (or a subsequent property purchased using its sale proceeds) would still be hers in the future. Further, the appellants' contention that the evidence of Serene, Lah Moi and Nguang Keow as to the making of the Oral Assurance is hearsay is wholly misconceived. The fact that these three witnesses were the only people present to hear the Oral Assurance does not make their evidence hearsay, given that these witnesses had personal knowledge of what was or was not said by Father in their presence during the 2006 Meeting, and they gave direct oral evidence on what they heard. This plainly falls outside the scope of hearsay evidence.

55 As for the appellants' submission that it would be unconscionable for Serene's delay to be justified by hearsay evidence in the "cloistered setting" Serene "created", in which "no independent person could rebut the hearsay" save for Father who had since lost mental capacity and could no longer give evidence, this holds no water. As we have explained at [21]–[22] above, we see no reason to disregard Lah Moi and Nguang Keow's corroborative evidence on the ground of their alleged lack of independence or bias towards Serene. We are not persuaded by the appellants' suggestion that the evidence given by these witnesses should be dismissed as unreliable or a fabrication. In the circumstances of this case, and in view of the Judge's findings on the making of the Oral Assurance which we see no reason to disturb, we agree with the Judge's conclusion (at [82] of the Judgment) that it was reasonable for Serene not to have brought her claim from 2006 to 2018.

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56 We are also not persuaded that the appellants would suffer any particular prejudice that would make it unjust for Serene to be granted relief. The appellants contend that they have suffered prejudice because the persons who "truly knew" whether money from Serene Leather was used to pay for the Valley Apartment, whether Serene Leather was solely Serene's, and whether Father made the Oral Assurance (*ie*, Mother and Father), were unable to give evidence, and because certain documentation relating to the purchase of the Valley Apartment no longer exists. However, it bears emphasising that Jee Soon was not called as a witness to corroborate Yak Ping's account, and that Yak Ping did not even ask Jee Soon whether documents relating to Father's bamboo business still existed (see [38] above). The appellants' submission that they could not have called Jee Soon to produce these documents "because Serene had in the Order on Summons for Directions claimed [Jee Soon] as her witness" is puzzling given that these documents (if any) would have gone towards supporting the appellants' own case. Moreover, Lah Moi and Nguang Keow were able to give contemporaneous first-hand evidence of key events such as the making of the Oral Assurance at the 2006 Meeting. The disadvantages caused by the unavailability of evidence and the passage of time therefore cut both ways and are, as the Judge held (at [85] of the Judgment), simply unfortunate.

57 We therefore agree with the Judge that the doctrine of laches does not bar Serene's claim.

Observations: Significance of monetary contributions towards the ancillary costs of purchasing a property in the resulting trust analysis

58 Our conclusions above are sufficient for the disposal of the present appeal. On a separate note, we take the opportunity to draw attention to an issue which was not raised or addressed by either party. This is necessary to avoid

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any misguidance – which may arise from uncritically adopting the Judge's computation of the parties' respective beneficial shares in the Pacific Mansion Apartment and its sale proceeds – as to what can and cannot constitute monetary contributions for the purpose of the resulting trust analysis.

59 In this case, it is not disputed that Yak Ping made a monetary contribution of $17,700 towards the payment of the stamp duty for the Pacific Mansion Apartment (see the Judgment at [64]). We note that the relevant letter from the CPF Board to the appellants stated that the Board had approved the use of the sum of $17,700 for the payment of "outstanding survey fees, stamp duty and legal costs incurred in connection with [their] purchase of the property", and that the completion account for the purchase of the Pacific Mansion Apartment states that the stamp duty was only $14,700 and the remaining $3,000 went towards paying the solicitors' invoice, although the same completion account indicates elsewhere that the full sum of $17,700 was subtracted to reflect the payment of stamp duty using CPF moneys. Nevertheless, as the parties and the Judge treated this sum as going towards stamp duty only, we will proceed on this basis. Notably, at [65] of the Judgment, the Judge *expressly declined to include* this contribution of $17,700 for the payment of the stamp duty as a contribution towards the *purchase price* of the Pacific Mansion Apartment.

60 This raises an interesting, and as yet unresolved, question of law as to whether monetary contributions towards the ancillary costs of purchasing a property (such as stamp duty, solicitors' fees and agents' fees) should be taken into account in determining the parties' respective beneficial shares in that property under a resulting trust.

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61 Although the Judge did not cite any authority for the approach he took at [65] of the Judgment, it is consonant with the decision of the English Court of Appeal in *Curley v Parkes* [2004] EWCA Civ 1515 ("*Curley*"). That case involved a dispute between two cohabiting individuals ("Mr Curley" and "Ms Parkes") over the beneficial interest in the property in which they had been living immediately before their separation, which was in Ms Parkes' sole name. Mr Curley contended that a resulting trust arose in his favour because he had made three contributions to the purchase moneys for the property. Only one is relevant for present purposes – the payment of solicitors' fees and expenses. Peter Gibson LJ, delivering the judgment of the court, held that this payment "was of no part of the purchase price" for the purposes of a *resulting* trust, whereas such ancillary payments of expenses might be relevant for the purposes of a *constructive* trust (see *Curley* at [21]). Gibson LJ noted that a different approach appeared to have been taken in *Huntingford v Hobbs* [1993] 1 FLR 736 ("*Huntingford*"), where the English Court of Appeal had calculated the parties' respective beneficial shares in a property on the footing that costs of £610 incurred on top of the actual purchase price were to be treated as part of the purchase cost. However, Gibson LJ noted that there was "no discussion by any member of this court of that point", and that in any event *Huntingford* was a case involving a constructive trust claim, not a resulting trust claim (*Curley* at [22]).

62 Based on the position taken in *Curley*, the editors of *Hayton and Mitchell: Text, Cases and Materials on the Law of Trusts and Equitable Remedies* (Ben McFarlane & Charles Mitchell eds) (Sweet & Maxwell, 14th Ed, 2015) at footnote 76 to para 14–036 state that "[i]t has been unclear whether acquisition costs, *eg*, legal fees and stamp duty, count as part of the purchase price. [*Huntingford*] suggests that they do, but in [*Curley*] at [22], Peter Gibson LJ held otherwise". A slightly more cautious view is taken in *Underhill*

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and Hayton: Law of Trusts and Trustees (Charles Mitchell, Paul Matthews, Jonathan Harris & Sinéad Agnew eds) (LexisNexis, 20th Ed, 2022) at footnote 4 to para 26.9, which states that "*[i]t is unclear* whether capital acquisition costs like legal fees, survey fees and stamp duties should be treated as part of the cost of purchase when making this calculation" of the parties' respective contributions [emphasis added]. However, Gibson LJ's approach in *Curley* does not appear to have been consistently followed, even by the English courts. For example, in *Samad v Thompson and another* [2008] EWHC 2809 (Ch) ("*Samad*"), Sales J considered it "appropriate" to take stamp duty, legal and other fees in relation to the transaction, and mortgage fees into account in arriving at the "total acquisition cost" of the property, and therefore in calculating the parties' respective financial contributions for the purpose of a resulting trust analysis, though Sales J did not cite *Curley* or *Huntingford* (see *Samad* at [120] and [124]).

63 In Australia, several courts have elected to *include* stamp duty (and analogous monetary contributions towards the ancillary costs of purchasing a property) for the purposes of determining the parties' respective shares under a resulting trust. In *Currie v Hamilton* [1984] 1 NSWLR 687 ("*Currie*"), the Supreme Court of New South Wales held that, in determining the parties' respective contributions to the cost of acquisition of the relevant property, the cost of acquisition was not merely the purchase price, but also included "incidental costs, fees and disbursements". McLelland J explained that "[s]ince what is significant is the *cost to the purchasers* rather than the benefit to the vendor, [there was] no reason to doubt that it is the aggregate cost rather than the mere purchase price that should form the basis of the calculation" [emphasis added] (*Currie* at 691A). Thus, McLelland J took into account stamp duty, legal costs, bank charges and registration fees in calculating the total cost of acquisition of the property as well as the parties' respective contributions to the

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same (see *Currie* at 689C–689G and 693C). This has been followed in a series of cases and was recently reaffirmed by the Supreme Court of New South Wales in *Cong v Shen (No 3)* [2021] NSWSC 947 at [1704], where Ward CJ also noted that "[i]n identifying the purchase moneys, a 'broader concept' is to be applied than simply the stipulated consideration for the purchase". Thus, in his view, "[r]egard may be had to the incidental costs of the purchase, such as legal expenses, stamp duty and registration".

64 A similar but more nuanced approach was taken by the Supreme Court of Victoria in *Sivritas v Sivritas* [2008] VSC 374 ("*Sivritas*"), albeit only in *obiter* as a constructive trust (rather than a resulting trust) governed the ownership of the relevant property in that case. Kyrou J's reasoning on this point at [126] of *Sivritas* is worth setting out in full:

> Some cases have treated incidental costs such as stamp duty, registration fees, legal fees and bank fees as part of the purchase price on the basis that the underlying principle is concerned with the cost to the purchaser and not the benefit to the vendor [citing, among other cases, *Currie*]. If it had been necessary for me to reach a conclusion on this matter, I would have concluded that ***only costs necessarily incurred prior to and as a condition of obtaining registration of the interest which is to be held on trust should be included in the purchase price***. On this basis, *stamp duty and registration fees would be included but legal fees and bank fees would not be.* Although legal fees and bank fees are normally incurred in the purchase of property, *they are not always incurred, and where they are incurred, their amounts may vary significantly depending on the purchaser's circumstances* and, more importantly, *they may be incurred as debts that are paid after the registration of the interest which is to be held on trust.*
>
> [footnotes omitted; emphasis added in italics and bold italics]

65 In support of this distinction between "costs necessarily incurred prior to and as a condition of obtaining registration" of the relevant interest, and costs that are not so incurred, Kyrou J referred to the comments made by Mason J and Brennan J in *Calverley v Green* (1984) 155 CLR 242 at 257 – that "[t]he

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purchase price is what is paid in order to acquire the property" – and reasoned that the legal interest in a property cannot be acquired without prior payment of applicable stamp duty and registration fees (*Sivritas* at footnote 24 to [126]).

66 Closer to home, the Hong Kong courts have also taken into account stamp duty and similar monetary contributions towards the ancillary costs of purchasing a property in quantifying the parties' respective shares under a resulting trust, though without expressly stating their reasons for doing so. A recent example is *Wong Chor Cheung v Wong Hark Chung* [2021] HKCU 24 ("*Wong Chor Cheung*") at [3]–[6], where the Hong Kong Court of First Instance made the preliminary finding that the "total cost of the purchase" included not only the purchase price, but also other expenses in relation to the purchase of the property, namely legal fees and disbursements, stamp duty and agency fees. Although the court ultimately dismissed the plaintiff's claim, it would have based its calculation of the plaintiff's contribution to the purchase of the property on this total figure if it had otherwise accepted the plaintiff's case (see *Wong Chor Cheung* at [6]).

67 There appears to be no published court decision in Singapore expressly considering the question of whether these monetary contributions towards the ancillary costs of purchasing a property should be taken into account in the resulting trust analysis. We also note that the question does not directly arise for our determination in the present case. During the hearing before us, Mr Yeoh confirmed that the appellants did not seek to argue that Yak Ping's payment of the stamp duty should entitle him to a larger equitable interest in the Pacific Mansion Apartment, and that they were not taking issue with the percentage of 3.93% which the Judge calculated to be Yak Ping's beneficial share of the sale proceeds from this property (based on his contribution of $26,300 towards the purchase price of $670,000).

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68 Suffice it to say that the Judge's legal reasoning behind his exclusion of stamp duty in computing the parties' beneficial shares is not clear-cut. It seems to us to be at least arguable that, whether or not one agrees with the distinction drawn by the Supreme Court of Victoria in *Sivritas*, monetary contributions towards stamp duty *should* be included by the court in determining the parties' respective beneficial shares under a resulting trust. It is relevant to bear in mind that the classic description of purchase money resulting trusts in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708 refers to a presumption of resulting trust arising where one party "pays (wholly or in part) *for the purchase of property* which is vested either in [the other party] alone or in the joint names of [both parties]" [emphasis added]. On this formulation of the doctrine of purchase money resulting trusts, the analysis is not limited to the *purchase price* of the property, but is instead broad enough to encompass stamp duty payable on the purchase of the property in question. Moreover, we find quite persuasive McLelland J's reasoning in *Currie* that what matters is the *cost to the purchasers* of acquiring the property (which would include not only the purchase price, but also necessary ancillary costs such as stamp duty), rather than the benefit to the vendor (which is limited to the purchase price) (see [63] above). This makes sense given that the focus of the resulting trust analysis is on the proper apportionment of the beneficial interest in a property between those claiming to have acquired an interest in that property *inter se*, and not on the apportionment of any interest as between those parties and the vendors of the property. We add that it is often fortuitous whether the money of one person or another is used to pay the purchase price or the stamp duty (or even the legal expenses). The broader approach may also commend itself to the practical importance of this issue bearing in mind the stamp duty regime in Singapore.

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69 Thus, for present purposes, we stress the importance of resolving this question in an appropriate case where it arises for determination, and we highlight some of the considerations that may be relevant.

Conclusion

70 For the foregoing reasons, we dismiss the appeal. As to costs, we order the appellants to pay Serene the costs of the appeal, fixed at $45,000 (inclusive of disbursements). The usual consequential orders will apply.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Chua Lee Ming
Judge of the High Court

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