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

[2022] SGHC 143

Suit No 1248 of 2020

Between

Abdul Salam bin Mohamed Kunhi

… *Plaintiff*

And

Napisah bte Chukor

… *Defendant*

JUDGMENT

[Gifts — Inter vivos]

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Abdul Salam bin Mohamed Kunhi
v
Napisah bte Chukor

[2022] SGHC 143

General Division of the High Court — Suit No 1248 of 2020
Kannan Ramesh
25–27 January, 21 March 2022

20 June 2022 Judgment reserved.

Kannan Ramesh J:

1 In this action, the plaintiff, Abdul Salam bin Mohamed Kunhi, alleges that the defendant, Napisah binte Chukor, holds the following sale proceeds of two properties (collectively "the Properties") on trust for him:

(a) half of the net sale proceeds of 45 Corporation Rise Singapore 618359 ("Corporation Rise") amounting to $250,000 ("the Balance Corporation Rise Proceeds"); and

(b) the net sale proceeds of Blk 40 Teban Gardens #04-340 Singapore 600040 amounting to $354,500.80 ("the Teban Gardens flat" and "the Teban Gardens Proceeds" respectively).

2 While various forms of trusts have been asserted by the plaintiff, the common factual premise that undergirds his claims is that the plaintiff did not gift Corporation Rise and the Teban Gardens Proceeds to the defendant. Having

considered the parties' submissions and the evidence before me, I find that both Corporation Rise and the Teban Gardens Proceeds were gifted by the plaintiff to the defendant. As such, the plaintiff's claims fail, and I therefore dismiss this action.

Facts

The parties

3 The parties married on 21 March 1981. They subsequently divorced on 13 November 1983 and remarried on 3 April 1984. The parties divorced again on 25 January 2017. It is undisputed that throughout their second marriage, the plaintiff was the sole breadwinner while the defendant was a housewife. The parties have four children, who were called as witnesses by the defendant at the trial. They are, in descending order of seniority:

(a) Munirah Abdul Salam ("Munirah"), the eldest daughter;

(b) Mohammad Noh Abdul Salam ("Mohammad Noh"), the only son;

(c) Khatijah Abdul Salam ("Khatijah"), the second daughter; and

(d) Fatimah Abdul Salam ("Fatimah"), the third daughter.

The plaintiff had originally brought claims against the four children as well on the basis that the defendant distributed certain sums of monies to them from the Salary Account and the Savings Account (as defined at [9] and [16] below respectively). The plaintiff discontinued these claims with costs on 22 December 2021.

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Background to the dispute

The Properties

4 The parties bought and sold several properties over the course of their second marriage. Their first purchase was a resale unit in Boon Lay in late 1984 in their joint names. This was subsequently sold in 1990 for negligible profit. Their second purchase, in 1989, was a flat at Block 950 Jurong West Street 91, #02-641 Singapore 640950 ("the Jurong West flat") for around $80,000 in their joint names. This was sold in 2002 for $289,000. The net sale proceeds were $156,868.08.

5 In early 2000, before the Jurong West flat was sold, the plaintiff purchased the Teban Gardens flat in his sole name. The defendant accepts that the Teban Gardens flat was purchased using only the plaintiff's CPF monies. However, she asserts that she contributed towards the renovation costs for the Teban Gardens flat from the sale proceeds of the Jurong West flat. Nothing of substance turns on this assertion.

6 In the first half of 2006, Corporation Rise was purchased by the plaintiff, the defendant, Munirah and Mohammad Noh as joint tenants. At that time, the Teban Gardens flat had not been sold. A housing loan for Corporation Rise was taken by all the purchasers. The defendant submits that the plaintiff and Mohammad Noh contributed towards the downpayment of Corporation Rise, with the latter's contribution being between $10,000 to $12,000. However, the plaintiff denies that Mohammad Noh made any contribution, his position being that he was the sole contributor.

7 It is undisputed that the plaintiff made a public announcement at the defendant's 50th birthday celebrations on 26 March 2006 that Corporation Rise

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had been purchased. However, the parties disagree on whether the plaintiff had said on that occasion that he had purchased Corporation Rise as a gift for the defendant. I set out the circumstances in which Corporation Rise was purchased in greater detail at [37]–[38] below.

8 As the family stayed in Corporation Rise, the Teban Gardens flat was rented out. Part of the rental proceeds was used towards payment of the monthly instalments for the housing loan for Corporation Rise. The defendant made no contributions towards the remainder of the monthly instalments, though it is in dispute as to whether Munirah and Mohammad Noh contributed. Corporation Rise was sold sometime between 2009 to 2010 resulting in net sale proceeds of $500,000 ("the Corporation Rise Proceeds"). The parties agreed that the Corporation Rise Proceeds would be split equally between them to enable each to purchase insurance policies of $250,000 in their respective names. To this end, two policies for $200,000 and $50,000 were purchased by the plaintiff in April 2010, leaving the Balance Corporation Rise Proceeds in the defendant's hands. However, as the defendant did not purchase any insurance policies in her name, the Balance Corporation Rise Proceeds remained in an account in her name. As noted earlier at [1], the plaintiff claims this sum. I should add that the defendant asserts that the Balance Corporation Rise Proceeds were subsequently used to meet the expenses of the family. This is relevant to the plaintiff's claim for the Balance Corporation Rise Proceeds.

9 The Teban Gardens flat was sold on 13 April 2011 for $520,000 resulting in the Teban Gardens Proceeds of $354,500.80. The cashier's order for the Teban Gardens Proceeds was banked into the parties' joint Post Office Savings Bank ("POSB") account ("the Savings Account"). The circumstances surrounding the deposit of the cashier's order in the Savings Account are in issue. The plaintiff claims that he had instructed the defendant to deposit the

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cashier's order in a POSB account in his sole name ("the Salary Account"). On the other hand, the defendant claims that the plaintiff told her that the Teban Gardens Proceeds were a gift to her and instructed her to deposit the cashier's order in the Savings Account. I address this at [58]–[64] below. The defendant similarly asserts that the Teban Gardens Proceeds were subsequently used to meet the expenses of the family. Again, this is relevant to the plaintiff's claim for the Teban Gardens Proceeds.

The bank accounts used by the parties

10 Several bank accounts were used by the parties over the course of their marriages and four are of significance in this action.

11 The first is POSB account number 248-62383-7 in the defendant's sole name. I shall refer to this as the "defendant's Personal Account".

12 The second is an United Overseas Bank ("UOB") account in the joint names of the defendant and Khatijah. I shall refer to this as the "UOB Account". The defendant transferred $100,000 from the Savings Account to the UOB Account on or about 27 July 2011, this being a portion of the Teban Gardens Proceeds.

13 The third is POSB account number 248-11980-2, which is the Savings Account. The Savings Account was opened in 1984 in the joint names of the parties for the purposes of paying for groceries, expenses of the children's education, and ancillary expenses of the family.

14 The Savings Account was closed on or about 23 June 2012. It is common ground that following its closure, a total of $272,611.17 ("the 23 June 2012 Transfer Amount") was transferred from the Savings Account to the defendant's

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Personal Account ("the 23 June 2012 Transfer"). It is disputed whether both parties were, or just the defendant was, present when the Savings Account was closed and the 23 June 2012 Transfer took place. I address this at [65]–[70] below. Nonetheless, the parties are in agreement that the 23 June 2012 Transfer Amount comprised the following sums:

(a) The balance of the Teban Gardens Proceeds of $254,500.80 (after deducting the $100,000 that was transferred out on 27 July 2011 (see [12] above)).

(b) And a further sum of $18,110.37 in the Savings Account that was unrelated to the Teban Gardens Proceeds.

15 I pause to note that the plaintiff has not made a claim for all of the 23 June 2012 Transfer Amount (see [20]–[21] below). His claim is restricted to the Teban Gardens Proceeds only. Accordingly, the claim concerns only that part of the 23 June 2012 Transfer that relates to the Teban Gardens Proceeds, the sum of $254,500.80 (see [14(a)] above), and the sum of $100,000 that was transferred on 27 July 2011 (see [12] above). That leaves the sum of $18,110.37 which was part of the 23 June 2012 Transfer Amount but is not related to the Teban Gardens Proceeds. The plaintiff makes no claim over this sum. In any case, it is the defendant's position that all of the 23 June 2012 Transfer Amount was also gifted to her by the plaintiff and that "she was free to do whatever she wanted with it". In other words, the defendant's position is that the sum of $18,110.37 was also gifted to her. As the plaintiff has only claimed the Teban Gardens Proceeds, it is not necessary for me to consider whether the $18,110.37 was also gifted by the plaintiff to the defendant. I say no more on this point. It suffices for me to consider whether (a) the Teban Gardens Proceeds were gifted by the plaintiff to the defendant when the Teban Gardens flat was sold on 13

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April 2011, and (b) the plaintiff reaffirmed his intention when the Savings Account was closed and the 23 June 2012 Transfer occurred (see [58] below).

16 The fourth is the Salary Account with POSB account number 103-78050-0. The Salary Account was opened in 1984 in the sole name of the plaintiff. The plaintiff's salary was credited into this account. The funds in the Salary Account were used to top up the Savings Account to meet the needs of the family. The plaintiff was the sole account signatory of the Salary Account and therefore the only one who could operate it. The plaintiff closed the Salary Account on 6 May 2011.

17 Having set out the material facts, I turn to consider the parties' cases.

The parties' cases

The plaintiff's case

18 The plaintiff contends that the defendant holds the Teban Gardens Proceeds and the Balance Corporation Rise Proceeds on trust for him. He contends that he never intended to gift Corporation Rise and the Teban Gardens Proceeds to the defendant. The plaintiff makes the following points in his closing submissions:

(a) He retained control of the Teban Gardens flat and Corporation Rise at all times;

(b) The parties' children are not credible witnesses;

(c) The Teban Gardens flat and Corporation Rise were assets that were too substantial to be gifted to the defendant; and

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(d) The parties' relationship was such that the plaintiff gave money and assets to the defendant only for safekeeping and not as gifts.

The Balance Corporation Rise Proceeds

19 The plaintiff's case on the Balance Corporation Rise Proceeds suffers from a lack of clarity. The plaintiff's position, as set out in [15] of the Statement of Claim ("SOC"), is that the parties agreed that the Corporation Rise Proceeds would be used "for each of them to purchase insurance policies in the sum of $250,000". The plaintiff also states that two insurance policies amounting to $250,000 were purchased in his name (see [8] above). The plaintiff's position, that the parties had agreed that the defendant could use half the Corporation Rise Proceeds to purchase insurance policies in her name, suggests that the same was hers. Yet, the plaintiff claims that the defendant failed to return the Balance Corporation Rise Proceeds to him (it being common ground that the defendant did not buy any insurance policies for herself) and thus holds the proceeds on resulting trust for him. These are contradictory positions in my view. I deal with this at [56] below.

The Teban Gardens Proceeds

20 The plaintiff ran three alternative arguments in relation to the Teban Gardens Proceeds. I set them out in turn. The first is the plaintiff's primary case that a resulting trust in favour of the plaintiff arose over the $100,000 and the $254,500.80 that was transferred from the Savings Account to the UOB Account and the defendant's Personal Account respectively. The resulting trust arose because the defendant deposited the cashier's order for the Teban Gardens Proceeds in the Savings Account instead of the Salary Account as instructed, and thereafter transferred the Teban Gardens Proceeds, purportedly without the plaintiff's knowledge, to the UOB Account and the defendant's Personal

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Account on the dates and in the amounts set out earlier at [12] and [14]. The plaintiff claims that the resulting trust was breached when the defendant claimed ownership of the Teban Gardens Proceeds in the parties' divorce proceedings in the Syariah Court.

21 Second, the plaintiff argues that an institutional constructive trust arose over the Teban Gardens Proceeds when the plaintiff handed over the cashier's order for the Teban Gardens Proceeds to the defendant with instructions to deposit it in the Salary Account. The plaintiff claims that the trust was breached when the defendant transferred the Teban Gardens Proceeds in two tranches to the UOB Account and the defendant's Personal Account. Third, the plaintiff argues that a remedial constructive trust arose over the Teban Gardens Proceeds when the plaintiff handed over the cashier's order for the Teban Gardens Proceeds to the defendant. The subsequent transfers to the UOB Account and the defendant's Personal Account resulted in the plaintiff being denied access to the same, thus affecting the defendant's conscience.

22 Finally, I note that in his closing submissions, the plaintiff relies on s 58 of the Housing and Development Act 1959 (2020 Rev Ed) ("the HDA") as regards the Teban Gardens Proceeds. However, this was neither pleaded nor explored at trial and thus does not arise for my consideration. In any case, I find such reliance misplaced as the defendant does not rely on a trust with regard to the Teban Gardens flat. Instead, her case is that the Teban Gardens Proceeds were gifted to her (see [26] below). Thus, the question of whether s 58 of the HDA applies does not arise.

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The defendant's case

23 The defendant's overarching position is that Corporation Rise and the Teban Gardens Proceeds were gifts to her from the plaintiff. Consequently, the Balance Corporation Rise Proceeds and the Teban Gardens Proceeds were hers.

The Balance Corporation Rise Proceeds

24 The defendant claims that Corporation Rise was a gift for her 50th birthday. The plaintiff disclosed his intention at a gathering on 26 March 2006 of the defendant's family and extended family at the defendant's mother's house in Boon Lay for her 50th birthday.

25 The defendant further claims that the cheque for the Corporation Rise Proceeds was made out to both parties. As Corporation Rise was a birthday gift to the defendant, the plaintiff insisted that the Corporation Rise Proceeds were hers as well. The defendant, however, agreed to divide the Corporation Rise Proceeds equally with the plaintiff as she wanted to share the proceeds with him. Accordingly, the plaintiff was given half of the sale proceeds in the sum of $250,000, leaving the Balance Corporation Rise Proceeds with the defendant. The defendant therefore denies that she holds the Balance Corporation Rise Proceeds on resulting trust for the plaintiff. The defendant also relies on the presumption of advancement. Finally, the defendant claims that the Balance Corporation Rise Proceeds were completely used up to pay for the family's expenses over the course of the parties' marriage.

The Teban Gardens Proceeds

26 The defendant claims that the plaintiff gifted the Teban Gardens Proceeds to her as he "had not given her a single cent of 'nafkah' (meaning

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financial support for a wife by her husband under Islamic law)". The defendant states that in any event, she is entitled to at least half of the Teban Gardens Proceeds as it represents the sale proceeds of the parties' matrimonial home. Accordingly, the defendant submits that there is no basis for any resulting trust, institutional constructive trust or remedial constructive trust over the Teban Gardens Proceeds. In this regard, the defendant also denies that there was (a) any unconscionable conduct that affects her conscience, or (b) any unjust enrichment or breach of any fiduciary duties on her part. The defendant also relies on the presumption of advancement. Finally, the defendant claims that the Teban Gardens Proceeds were also used to pay for the family's expenses over the course of the parties' marriage.

Issues to be determined

27 The threshold factual issue in relation to the Teban Gardens Proceeds and the Balance Corporation Rise Proceeds is whether the plaintiff gifted Corporation Rise and the Teban Gardens Proceeds to the defendant. If Corporation Rise and the Teban Gardens Proceeds were not gifts, consequential issues of whether they are held on trust by the defendant arise for determination. Accordingly, my analysis will be as follows:

(a) First, I consider whether Corporation Rise was a gift from the plaintiff to the defendant ("Issue 1").

(b) Second, I consider whether the Teban Gardens Proceeds were a gift from the plaintiff to the defendant ("Issue 2").

(c) Third, I consider whether any of the plaintiff's claims that the sale proceeds in question are held on trust by the defendant can be made out ("Issue 3").

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Observations common to Issues 1 and 2

28 Before addressing Issues 1 and 2, I make some observations about the parties' relationship during their second marriage. These observations are relevant, as they provide the context to understanding the plaintiff's claim. It was clear to me that the parties enjoyed a loving marriage prior to their divorce in 2017. Despite the divorce, the plaintiff was not shy to admit in cross-examination that he still loved the defendant very much. The plaintiff elaborated that he would show his love for her in the past by "buy[ing] jewelleries and things for her whenever [he had] an increment, promotion or bonus and everything". He further testified that he would buy gifts for the defendant from time to time throughout the course of their marriage. The following extracts from the plaintiff's cross-examination capture many of these points:

Notes of Evidence, Day 1, p 26, lines 2 to 18

Q ---you had also on multiple times in your affidavits admitted that you love the defendant very much.

A *I do and I still do.*

Q Yes. And that can be found at ABD441 and 446. If you can turn to page 441.

A Yes, started with paragraph 76, correct?

Q Paragraph 77---yes, it starts from paragraph 76.

A Okay.

Q And paragraph 77 says the wife and family that you have loved so much. And as you have stated, you still love your wife.

A Yes, I do.

Q *Even up till today?*

A *Up till today, yes, I do.*

Q Yes.

A We're childhood---childhood love.

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Q Yes. In fact, yes, like you said, she was your first love---

A Exactly.

Q ---since childhood.

Notes of Evidence, Day 1, p 27, lines 1 to 3

Q Yes. In fact, during the divorce proceedings in 2015, Mr Salam, you had also stated that you were still very much in love with the defendant.

A *I just told you until today I still love her very much.*

[emphasis added]

Notes of Evidence, Day 1, p 28 lines 6 to 22

Q Yes. And at page 565, points (e) and (f), you again reiterated that the defendant is your true love and childhood sweetheart, and *you cherish the memories of your relationship spanning decades long and even before you married her in 1981.*

A *Exactly true.*

Q Correct. And you deeply appreciate her sacrifices for the relationship.

A Well, in fact, we both made sacrifices.

Q Yes. Now, Mr Salam, with such acknowledgment of love towards the defendant and also the confirmation of your loving relationship with the defendant, *do you confirm that you have made gifts to the defendant during the course of the marriage from time to time?*

A Gift, you're referring to on occasions or as and when I feel I want to give a gift?

Q Well, firstly, just generally you have made gifts to her?

A *I buy jewelleries and things for her whenever I have an increment, promotion or bonus and everything.*

Q Yes.

A No special day.

29 The plaintiff's evidence at trial is consistent with his position in the divorce proceedings in the Syariah Court in 2015. There, the plaintiff similarly professed his love for the defendant despite applying for a divorce. In his

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affidavit of evidence-in-chief dated 29 July 2015 ("the Syariah Court Affidavit"), the plaintiff stated the following:

> *…the defendant is my first love since childhood, I care for her and I did not spend a moment of my life after marriage with my bachelorhood [sic] friends and my working colleagues. I will leave straight from work to home to be with her and our children.* This is my routine ever since and until the defendant left home in June 2014. *Although I still love the defendant* I have no choice but to apply for this divorce as the defendant has clearly refused to reconcile with me… [emphasis added]

30 The observation that the plaintiff was, and still is, in love with the defendant is important for two reasons. First, it is at odds with the plaintiff's submission that the parties' relationship "was one where the plaintiff gave money and assets to the defendant for safekeeping and not intended as gifts" (see [18(d)] above). In my assessment, it is more plausible that he would have been willing to gift the defendant money and assets as a demonstration of his love and affection for her. This in turn lends credence to the defendant's claim that Corporation Rise and the Teban Gardens Proceeds were gifted by the plaintiff to her. Corporation Rise was purchased in 2006 and sold sometime between 2009 to 2010 while the Teban Gardens Proceeds were received by the defendant on or about 13 April 2011. This was well before acrimony set in their relationship resulting in divorce proceedings being commenced in 2015. When viewed in totality, these observations suggest that the defendant's position that Corporation Rise and the Teban Gardens Proceeds were gifts is credible.

31 Second, the plaintiff's characterisation of the marital relationship is also at odds with the essence of his claim, which is that the defendant misappropriated substantial sums of his monies. It is difficult to understand why the defendant would need to do this given the loving marriage the couple had at the material time. In this regard, I make four further points.

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32 First, the fact that the defendant shared half of the Corporation Rise Proceeds with the plaintiff in order to enable him to purchase insurance policies in his name is inconsistent with an intention to misappropriate. I note that the plaintiff has not made an attempt to address this.

33 Second, as noted at [25] and [26] above, the defendant's case is that the Teban Gardens Proceeds and Balance Corporation Rise Proceeds were used for familial expenses. This was not challenged by the plaintiff and is again inconsistent with an intention to misappropriate.

34 Third, the bulk of the Teban Gardens Proceeds were retained in the Savings Account following the deposit of the cashier's order. As noted at [13], the Savings Account was a joint account in the names of both parties. If there was an intention to misappropriate, it is difficult to understand why the cashier's order was deposited in the Savings Account as opposed to the defendant's Personal Account. Moreover, the bulk of the Teban Gardens Proceeds were only transferred to the defendant's Personal Account when the Savings Account was closed on 23 June 2012, more than a year after the cashier's order was deposited in the Savings Account (see [9] and [14] above). This again is not consistent with an intention to misappropriate. I return to this point at [68] below.

35 Fourth, the plaintiff pleads that the ATM cards for the Savings Account and Salary Account were taken by the defendant without the plaintiff's consent, and she refused to return them when he demanded that she did. I note that this was not the position that the plaintiff pleaded originally. His original pleading was that the ATM cards and the bank books were held by the defendant. This comports with his testimony at trial that he trusted the defendant to be his "financial controller" and would leave the running of the family affairs to her. The revised plea is difficult to accept given the plaintiff's characterisation of the

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state of the marital relationship. In fact, the original plea is consistent with how the marriage actually was.

36 Accordingly, the loving state of the parties' marriage suggests that Corporation Rise and the Teban Gardens Proceeds were gifted by the plaintiff to the defendant as a show of his love and affection for her. I now turn to Issue 1.

Issue 1: Whether Corporation Rise was a gift by the plaintiff to the defendant

37 Before I consider the issues concerning Corporation Rise, it is important to clarify a point on its ownership. As noted above at [6], Corporation Rise was bought by the parties, Munirah and Mohammad Noh as joint tenants. However, the plaintiff's claim in relation to Corporation Rise has been framed as a bilateral issue between the plaintiff and the defendant. There is no explanation for why Munirah and Mohammad Noh have been left out even though they are also joint tenants. However, it is important that neither of the two children assert any interest over Corporation Rise or the Corporation Rise Proceeds. This, notwithstanding their evidence that (a) they had contributed towards the monthly instalment payments for the housing loan for Corporation Rise, and (b) Mohammad Noh contributed towards the downpayment. They have clarified that even if they had any interest, they want the defendant to have their share. Understanding why the two children came to be joint tenants might clarify their positions.

38 The plaintiff explains that the two children were added as joint tenants to extend the term of the housing loan from seven to 35 years. The bank was initially only prepared to offer the housing loan for a seven-year period. A loan tenure of seven years meant that the monthly instalments were too high for the

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plaintiff to service. Adding the two children as borrowers enabled the tenure of the housing loan to be extended to 35 years thereby reducing the monthly instalments and allowing the housing loan to be taken up. This facilitated the purchase of Corporation Rise. Thus, it does not seem that the two children were meant to have a share in Corporation Rise.

39 I shall therefore proceed on the basis that the claim concerning the Balance Corporation Rise Proceeds is between the plaintiff and the defendant only.

The plaintiff's intention to gift Corporation Rise to the defendant

40 In determining whether a gift was made, the court has to objectively assess the transferor's subjective intention at the time of the transfer: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [83]. The plaintiff's subjective intention on Corporation Rise was evidenced on two occasions. On both occasions, he expressed his intention to gift Corporation Rise to the defendant. The first was a discussion between the plaintiff, Munirah and Mohammad Noh prior to the defendant's 50th birthday celebrations. The second was the declaration by the plaintiff on 26 March 2006 at the defendant's 50th birthday celebrations.

The first occasion

41 The discussion between the plaintiff, Munirah and Mohammad Noh took place in early 2006, before the defendant's 50th birthday celebrations on 26 March 2006. The plaintiff told them that he intended to purchase Corporation Rise as a 50th birthday gift for the defendant. Munirah testified that the plaintiff had told her that he intended to "buy … the landed house in Corporation Rise for [her] mum as a birthday gift". Mohammad Noh's evidence was in similar

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terms. He testified that prior to the defendant's birthday, the plaintiff told Munirah and him that he intended "to buy 45 Corporation Rise as a birthday gift for [his] mum".

42 The plaintiff does not dispute that the discussion took place. However, he attacks the credibility of Munirah and Mohammed Noh's evidence on the basis that they contradicted each other on when the discussion took place. It is not clear what purpose the attack serves since the plaintiff does not dispute the discussion or its contents. The plaintiff submits that Munirah's evidence was that the discussion took place *after* the defendant's 50th birthday celebrations on 26 March 2006 while Mohammad Noh's evidence was that the discussion took place *before* the celebrations. However, the alleged contradiction is not borne out by the evidence. Munirah's evidence was in fact that the discussion took place *before* the event on 26 March 2006. The following extract from Munirah's cross-examination makes this crystal clear:

Notes of Evidence Day 3, page 22 at lines 16 to 30

Q Okay, so you are now saying that before the purchase---the 26th March event, he---you had already agreed with him on this?

A Yes, correct.

Q And when was this?

A *This was when I---I believe it was earlier in the year, probably in February, around there, I can't remember the exact time, but it was before the event at my grandmother's house.*

Q Okay, so who were present in this discussion?

A Me, my brother, and my father.

Q Okay. So at this time, what was discussed was in relation to the purchase of the house?

A Yes, correct.

Q What were the exact things that were discussed on that day?

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> A Basically, he said that he intended to buy Corporation---the---the---the landed house in Corporation Rise for my mum as a birthday gift…
>
> [emphasis added]

43 Thus, there is no material discrepancy between Munirah and Mohammad Noh's evidence. I therefore find that the plaintiff did inform Munirah and Mohammad Noh in early 2006 (before 26 March 2006) that he intended to purchase Corporation Rise as a 50th birthday gift for the defendant.

The second occasion

44 The second occasion when the plaintiff expressed his intention to gift Corporation Rise to the defendant was when he announced its purchase at the defendant's 50th birthday celebrations on 26 March 2006. It is undisputed that (a) the defendant and all the four children were present when the announcement was made, and (b) the plaintiff had brandished a document relating to the purchase of Corporation Rise in front of those who were gathered at the celebrations. However, the parties diverge on exactly what the plaintiff had said.

45 The evidence of all the four children was broadly consistent. While they candidly accepted that they were unable to recall the exact words uttered by the plaintiff, they were clear that they had heard the plaintiff declare that Corporation Rise was purchased as a gift for the defendant's 50th birthday. I reproduce the relevant extracts of their testimonies below:

> **Notes of Evidence, Day 3, p 19 at lines 12-14 (Munirah's cross-examination)**
>
> A I don't remember the exact words, but I know that he said he make---wanted to make an announcement because *he has bought a landed property as a birthday gift for my mum.* [emphasis added]
>
> **Notes of Evidence, Day 2, p 138 at lines 4-13 (Mohammad Noh's cross-examination)**

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A Okay. I can't remember if it's in English or Malay. The thing is, "I have"--- "*I bought a gift" or "I have a gift for my wife*"; to that effect. But, specifically, I can't tell you because, you know, I can remember the gist of it.

Q Okay.

A Like old memories. But I can't tell you specifically what are the words used.

Q Correct. So if you can't remember it specifically, you'll agree with me that he---there is a possibility he may not have used the word "gift"? Isn't there a possibility because you can't recall it?

A *That is not possible because the exclamation was him presenting a gift to my mum in front of everyone*.

[emphasis added]

Notes of Evidence, Day 2, p 106 at lines 1-2 (Khatijah's cross-examination)

A Yes, I recall that he said, "I purchased this house for my wife. I bought---*I bought this house for my wife*." [emphasis added]

Notes of Evidence, Day 3, p 44 at lines 23-26 (Fatimah's cross-examination)

Q Okay. Now, tell me exactly what he said if you can recall.

A He said along the lines of, "I have an announcement to make. As you---as you all know, it's my wife's birthday." And I don't recall the exact words after that, but he did say that, "*I bought for her a birthday present - it's a 3-storey house."*

[emphasis added]

46 While there were some differences in their description of what the plaintiff had specifically uttered, this is perfectly understandable given the passage of time. However, despite these slight discrepancies, their testimonies were consistent in conveying what the plaintiff meant — that he had purchased Corporation Rise as a 50th birthday gift for the defendant.

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47 The plaintiff does not dispute that he announced the purchase of Corporation Rise and brandished the purchase documents on the second occasion. However, he denies that he mentioned "gift" when making the declaration. I find his evidence not credible for two reasons. First, it is inconsistent with what he had told Munirah and Mohamed Noh on the first occasion. He did not explain why he would have changed his mind shortly after. Second, it is also not consistent with his admission in the Syariah Court Affidavit that he (a) purchased Corporation Rise to show his deep appreciation for the defendant, and (b) wanted to surprise her with the purchase on her birthday. I reproduce the relevant extract from [61] of the Syariah Court Affidavit:

> We had purchased the terrace house at 45 Corporation Rise. *The reason why I had purchased this Terrace house at Corporation Rise is because I love the defendant so much and to show my deep appreciation for the Defendant for taking care of me and the children all these while. I had intended to surprise her on her birthday.* However, I had initially rejected the purchase because I could not afford the monthly instalment and would lose the paid deposit/downpayment. [emphasis added]

48 When this extract from the Syariah Court Affidavit was put to the plaintiff in cross-examination, he tried to draw a distinction between *gifting* the defendant and *surprising* her with Corporation Rise on her birthday. In other words, while the plaintiff accepted that he intended to surprise the defendant with Corporation Rise on her birthday, he denied using the word "gift" when he made the announcement *because he did not intend a gift*. I find this distinction to be contrived and contradicted by the plaintiff's subsequent evidence. When asked to elaborate about the nature of the gifts he had bought the defendant over the course of their marriage in re-examination, he testified that Corporation Rise was a gift to the defendant for "[her] 50th birthday and [their] 25th anniversary, jubilee and gold".

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49 For completeness, I should mention that in a subsequent paragraph at [65] of the Syariah Court Affidavit, the plaintiff averred that "in the end, [Corporation Rise] is not a gift to the defendant". The plaintiff explained the change of position on the basis that while he initially intended to buy Corporation Rise for the defendant, this was frustrated by his difficulties in obtaining financing. I find this explanation unconvincing. There is no evidence that the plaintiff rejected the purchase of Corporation Rise because of such difficulties. Indeed, the fact that (a) Munirah and Mohammed Noh were added as joint tenants and borrowers to facilitate taking up the housing loan (see [37]–[38] above), and (b) Corporation Rise was eventually purchased, puts this excuse to bed.

50 In my view, the announcement must be assessed in the context of (a) what the plaintiff said on the first occasion, and (b) the fact that it was made at the defendant's 50th birthday celebrations. This, taken together with the plaintiff's admission at [61] of the Syariah Court Affidavit and his response in re-examination (see [48] above), leads to the conclusion that the plaintiff must have announced at the defendant's 50th birthday celebrations that he had purchased Corporation Rise as a gift for her as he wanted to surprise her. I thus accept the children's evidence that the plaintiff declared that he had purchased Corporation Rise as a gift for the defendant at her 50th birthday celebrations.

51 I make two further points. First, the fact that the defendant was made a joint tenant is consistent with the plaintiff's intention to gift Corporation Rise to her. As I noted at [37]–[38] above, Munirah and Mohammad Noh were added as joint tenants to secure a longer tenure for the housing loan. I also accept that the plaintiff financed the bulk of the purchase of Corporation Rise. The defendant was thus the only joint tenant out of the four who was not working, who did not make a financial contribution towards the purchase and who would

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not impact the bank's assessment of whether to grant the housing loan for Corporation Rise and the tenure thereof. The fact that the defendant was nonetheless included as a joint tenant suggests that a gift of Corporation Rise was intended.

52 Second, from the initiation of the divorce proceedings in the Syariah Court, the defendant's consistent position had been that Corporation Rise was gifted to her. The following extract from [32] of the defendant's affidavit of evidence-in-chief in the Syariah Court makes this clear:

> *The Plaintiff had very clearly insisted that the money from the sale of the terrace house was mine alone as the house was meant to be mine only in the first place.* The Plaintiff also added that it was only right for me to keep and use the profit as I deemed fit as he had never given me *nafkah* over the years. This was a mutual agreement between the Plaintiff and me, or between a husband and his wife to be more precise. There was of course no "black and white".
>
> [emphasis added]

53 For these reasons, I find that Corporation Rise was a gift from the plaintiff to the defendant. Given this conclusion, it therefore follows that the Corporation Rise Proceeds and the Balance Corporation Rise Proceeds belong to the defendant as well. This makes it unnecessary for me to consider whether the presumption of advancement arises on the facts. For completeness, I make three final points in relation to the Balance Corporation Rise Proceeds.

54 First, it is telling that the plaintiff did not make a claim for the Balance Corporation Rise Proceeds when this action was first commenced on 25 January 2021. In the first iteration of the SOC, the plaintiff's primary claim against the defendant was for the Teban Gardens Proceeds. There was no claim as regards Corporation Rise or the Balance Corporation Rise Proceeds. At a Pre-Trial Conference before me on 29 November 2021, counsel for the plaintiff started

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by stating that the plaintiff did not intend to amend his pleadings. He then resiled from this position and said that the plaintiff intended to amend the SOC, but only in relation to the Teban Gardens Proceeds. There was no mention of the Balance Corporation Rise Proceeds. The claim for the Balance Corporation Rise Proceeds was only introduced on 21 December 2021, shortly before the trial commenced on 25 January 2022. The plaintiff's eleventh-hour amendment to introduce a claim for the Balance Corporation Rise Proceeds does raise doubts as to its veracity.

55 Second, the plaintiff does not challenge the defendant's assertion that she had spent the Balance Corporation Rise Proceeds on family expenses. I note that the plaintiff himself states "in 2010, [he] stopped working sometime in January and earn[ed] a total of S$1,882.00". This coincides with when Corporation Rise was sold (see [8] above). That the plaintiff was unemployed after 2010 could mean that he was not able to contribute to the family expenses. This lends credibility to the defendant's assertion, which I accept, that the Balance Corporation Rise Proceeds were spent on family expenses. If so, the question arises as to whether there is a basis for recovering the Balance Corporation Rise Proceeds from the defendant.

56 Third, at [15] of the SOC, the plaintiff accepts that the Balance Corporation Rise Proceeds belonged to the defendant. I reproduce the relevant extract below:

> The Corporation Rise House was subsequently sold sometime in June 2009. The net sale proceeds of the same amounted to S$500,000.00. *The Defendant suggested to the Plaintiff for each of them to purchase insurance policies in the sum of S$250,000.00. The plaintiff agreed* and had purchased two insurance policies in the sum of S$200,000.00 and S$50,000.00 respectively… [emphasis added]

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This was subsequently repeated in the plaintiff's closing submissions, where he states at [11] that:

> *The Defendant subsequently suggested that parties buy insurance policies in the sum of S$250,000.00 each with the money from the net sale proceeds of the Corporation Rise House. The Plaintiff agreed* and had used S$250,000.00 from the net sale proceeds of the Corporation Rise House to purchase insurance policies. However, *the remaining S$250,000.00 was never used as agreed* and remained in the Defendant's possession. [emphasis added]

A plain reading of this submission is that (a) the parties agreed that insurance policies amounting to $250,000 were to be purchased in each of their names, (b) the plaintiff did in fact purchase insurance policies in the sum of $250,000 (this was done in April 2010), and (c) the remaining $250,000 was not used by the defendant "as agreed" (that is, used by the defendant to purchase insurance policies in her name) and remained in her possession. Implicit in the submission is the factual premise that the Balance Corporation Rise Proceeds were the defendant's, with the plaintiff's real complaint being that the defendant failed to use the same to purchase insurance policies for herself. This factual premise is incompatible with the plaintiff's pleading that "the defendant is holding the [Balance Corporation Rise Proceeds] on a resulting trust for him." Surely the plaintiff would not be making a claim if the defendant had used the Balance Corporation Rise Proceeds to purchase insurance policies for herself. If this is correct, why should it matter that she did not and kept the proceeds for herself? Therefore, even on the plaintiff's case, there is no basis for his claim to the Balance Corporation Rise Proceeds.

57 For the reasons above and one that I touch on in the analysis on the Teban Gardens Proceeds below at [62], I dismiss the claim for the Balance Corporation Rise Proceeds.

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Issue 2: Whether the Teban Gardens Proceeds were gifted to the defendant

58 The defendant's claim is that the Teban Gardens Proceeds were gifted to her. She makes no claim over the Teban Gardens flat itself. As such, the factual issue is whether the plaintiff told the defendant that the Teban Gardens Proceeds were a gift to her when he handed over the cashier's order to her. In this regard, I find that (a) the plaintiff told the defendant that the Teban Gardens Proceeds were a gift to her when he handed the cashier's order over to her on or about 13 April 2011, and (b) when authorising the closure of the Savings Account and the 23 June 2012 Transfer, he reaffirmed his intention to gift the Teban Gardens Proceeds to the defendant. I explain why I have come to these conclusions.

59 The plaintiff's SMS to the defendant on 12 November 2014 ("the SMS") is crucial. This SMS was part of the evidence in the divorce proceedings in the Syariah Court. It made reference to the Teban Gardens Proceeds. It is notable that there was no reference in the SMS to the Balance Corporation Rise Proceeds. I consider this briefly at [62] below. In the SMS, the plaintiff stated as follows:

> I m not asking for *S$360,000 I gv u.* U hv my income of 30 years, my bonus, income from profit of selling share, Income profit sharing n many other bonus income which my estimate u hv btwn 600k to 800k n my Rm 150k wormg in thermatek…*u hv not been working since 1984, from where u get the money other than $360k*? [emphasis added]

It is clear that the reference to the sum of $360,000 in the SMS is to the Teban Gardens Proceeds of $354,500.80. The plaintiff did not challenge this at trial. However, he explained that by using "gv" instead of "gift", he intended to "give" the Teban Gardens Proceeds to the defendant for safekeeping as he wished to purchase a house using the funds, rather than gift the same to her.

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60 I find the plaintiff's explanation to be contrived. In the SMS, the plaintiff clearly distinguishes between monies that were given (as in gifted) to the defendant (the Teban Gardens Proceeds) and monies that were his own funds (consisting of salaries over the years and income from trading and selling shares) by referring to the latter, which is asserted to be between $600,000 and $800,000, as "the monies other than 360k". This was repeated in a separate SMS from the plaintiff to the defendant when he stated:

> … u claim (you) don't have any more of my money with u *except that 360,000 sgd dollars I have gave u* n did u tell them I request u to show me all the bank books of which u strongly object n u said "no way"… My rough estimation yah u hv at least $600,000 total not including that *$360,000 I gave you u*… [emphasis added]

61 It is pertinent that the plaintiff demanded repayment of his own funds but not the Teban Gardens Proceeds. If indeed the Teban Gardens Proceeds were handed to the defendant for safekeeping, it is odd that the plaintiff did not demand repayment of the same in the SMS when he had demanded repayment of monies that were his. It is apparent from the tenor of the SMS that the relationship between the parties at that time was no longer harmonious. The distinction that he drew and the failure to demand payment of the Teban Gardens Proceeds suggest that the latter was a gift to the defendant.

62 To segue back to the Balance Corporation Rise Proceeds, it is telling that the SMS makes no demand for this amount. For very much the same reasons why a demand for the Teban Gardens Proceeds was to be expected in the SMS, one would have also expected to see a demand in the SMS for the Balance Corporation Rise Proceeds. The failure to do so reinforces the conclusion that the plaintiff always understood Corporation Rise and its proceeds as belonging to the defendant as Corporation Rise had been gifted to her.

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63 Returning to the Teban Gardens Proceeds, the plaintiff's pleaded position is important. He pleads that the cashier's order was given to the defendant with instructions to be deposited in "his bank account" which can only be reasonably understood as the Salary Account, since the Savings Account was in the joint names of the parties. Accordingly, the cashier's order could not have been given to the defendant for safekeeping. It is pertinent that this position, that the cashier's order was given to the defendant for safekeeping, was neither asserted in the plaintiff's affidavit of evidence-in-chief nor explored with and put to the defendant. It came out for the first time in his cross-examination, with the plaintiff accepting that he had not adduced any evidence that the Teban Gardens Proceeds were entrusted to the defendant for safekeeping. The following excerpt from the plaintiff's cross-examination makes this clear.

> **Notes of Evidence, Day 1, p 44 lines 8 to 15**
>
> Q Yes. I also put it to you that the chain of messages with regards to the 360,000 which we were looking at earlier would evidence that you had gifted the said sum of 360,000 to the defendant.
>
> A I deny, it was not G-I-F-T.
>
> Q Yes, Mr Salam, I also put it to you that you have not adduced any evidence in your various affidavits to show that the sum of 360,000 was given to the defendant for safekeeping.
>
> A *There's no evidence shows that, correct.*
>
> [emphasis added]

64 When cross-examined on the distinction he drew in the SMS between the Teban Gardens Proceeds and his own funds, the plaintiff was evasive and testified that he did not understand what it meant to "draw a distinction". When pressed further, the plaintiff tried to explain the distinction on the basis that (a) the defendant was still his wife, (b) they were still "living together happily", and

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(c) he wanted to remind her that the Teban Gardens Proceeds were "for safekeeping". This explanation was not an honest answer. Aside from the points made earlier at [60]–[63] as to why this was not credible and the fact that the explanation does not square with the contents of the SMS, I note that the parties were already not living together by the time the SMS was sent as the defendant had left the home in June 2014. The following excerpt from the plaintiff's cross-examination makes this crystal clear:

> **Notes of Evidence, Day 1, p 27 at lines 17-19**
>
> Q And this was your routine ever since and until you left-
> --*until the defendant left home in June 2014*.
>
> A Yes.
>
> [emphasis added]

Accordingly, I conclude that the SMS is an acknowledgement by the plaintiff that he had gifted the Teban Gardens Proceeds to the defendant.

65 If the Teban Gardens Proceeds were a gift, it stands to reason that the plaintiff would have subsequently authorised the closure of the Savings Account and the 23 June 2012 Transfer, thus reaffirming his intention to gift the Teban Gardens Proceeds to the defendant. The defendant's case is that the plaintiff had accompanied her to close the Savings Account on 23 June 2012, and she had closed the account and made the 23 June 2012 Transfer on his directions. The plaintiff's testimony at trial was that he did not accompany the defendant to close the Savings Account, though he did not address this point in his closing submissions. His position is that he only discovered the 23 June 2012 Transfer when the divorce proceedings commenced in 2015. I accept the defendant's version of events. The plaintiff's assertions are against the weight of evidence. In this regard, I make three points.

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66 First, it was undisputed at trial that the dynamics of the relationship between the parties was that the defendant would do the plaintiff's bidding. The plaintiff admitted in cross-examination that the defendant always followed his directions and would only buy things with his consent. The following extract from the plaintiff's cross-examination is pertinent:

> **Notes of Evidence, Day 1, p 54 at lines 6 to 13**
>
> Q Now, Mr Salam, moving on to another point. You agree that the defendant is very good with managing the family expenses?
>
> A After a certain time, I realised that, yes.
>
> Q And you agree that she is very prudent, responsible and thrifty?
>
> A *I do not know what she have done but she have never buy anything without my consent.*
>
> Q Yes, correct. So she follows your directions.
>
> A Yes…
>
> [emphasis added]

67 This was corroborated by the testimony of the parties' children at trial. Munirah testified that whenever the defendant wanted to withdraw money, she would have to wait for the plaintiff to return before she would proceed to do so. Khatijah testified in relation to the plaintiff that "whatever we need, whatever we want, we have to ask him. He must have the say so, he must give us the permission to do so". She elaborated that the defendant was not spared and would not be able to make lunch without asking the plaintiff what she could cook. Fatimah testified that she had never seen the defendant do "anything without his [*ie*, the plaintiff's] permission". Finally, Mohammad Noh testified that based on his "years of living with [his] dad and [his] mum", the defendant would only have closed the Savings Account and made the 23 June 2012 Transfer "with [the plaintiff's] knowledge and consent".

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68 Second, the SMS implicitly acknowledges that the Teban Gardens Proceeds were with the defendant. It was sent on 12 November 2014, before the divorce proceedings were commenced in 2015. Thus, it cannot be the case that the plaintiff only discovered the 23 June 2012 Transfer when the divorce proceedings were commenced in 2015. Further, the fact that the plaintiff did not demand repayment of the Teban Gardens Proceeds in the SMS is inconsistent with his assertion that the defendant misappropriated the monies by making the 23 June 2012 Transfer. Instead, the context and content of the SMS is consistent with the defendant's version of events on the closure of the Savings Account and the 23 June 2012 Transfer.

69 Third, the plaintiff had the means to find out whether the Savings Account had been closed. In this regard, I do not accept his assertion that the ATM card for the Savings Account was taken without his consent and that he was unable to track the funds in the Savings Account (see [35] above). Mohammad Noh testified that he saw "[his] father with his own card before". Munirah also testified that she saw the plaintiff with a separate card that he used to purchase items with. In any case, the plaintiff accepted in cross-examination that he had access to the Savings Account and could operate it by showing the bank his NRIC even if he did not have the ATM card. Accordingly, the plaintiff must have known of the closure of the Savings Account. He would have surely confronted the defendant if she had closed the Savings Account and made the 23 June 2012 Transfer without his knowledge, given the degree of control he exercised over her (see [65]–[67] above). That nothing was done by the plaintiff to assert a claim until the divorce proceedings (about three years after the Savings Account was closed) is telling. It belies the fact that he must have authorised the closure of the Savings Account and told the defendant to keep the monies therein for herself, resulting in the 23 June 2012 Transfer.

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70 I thus find it not credible that the defendant would have closed the Savings Account and made the 23 June 2012 Transfer surreptitiously. The plaintiff's narrative is all the more unconvincing as it implied that the defendant unilaterally decided to close a joint account and transfer a significant sum of monies to herself, *believing that the plaintiff would not be able to find out what she had done*. I therefore accept the defendant's version of events that the parties attended at the bank to close the Savings Account and the plaintiff authorised the 23 June 2012 Transfer. This reaffirms my finding that the Teban Gardens Proceeds were gifted to the defendant.

71 For all the above reasons, I find that the Teban Gardens Proceeds were a gift by the plaintiff to the defendant. Given this conclusion, it is unnecessary for me to consider whether a presumption of advancement arises on the facts.

Issue 3: Whether any of the plaintiff's claims that the sale proceeds of the Properties are held on trust by the defendant can be made out

72 In view of my conclusion that Corporation Rise and the Teban Gardens Proceeds were gifts to the defendant, it is not necessary for me to address the arguments on whether a resulting trust, institutional constructive trust or remedial constructive trust arises. Suffice it to say, none of these grounds are factually sustainable in light of the evidence before me.

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Conclusion

73 For all the above reasons, I dismiss the plaintiff's claim. I invite submissions on costs, including quantum, which are to be filed within 14 days from the date hereof, limited to 10 pages each.

Kannan Ramesh
Judge of the High Court

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