

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

[2022] SGHC 320

Suit No 639 of 2021

Between

Rasalingam Letchumee

... Plaintiff

And

1. The Estate of the Late
Jaganathan Rajendran,
Deceased
2. Shankar s/o Rajendran

... Defendants

Counterclaim

Between

1. The Estate of the Late
Jaganathan Rajendran,
Deceased
2. Shankar s/o Rajendran

... Plaintiffs in Counterclaim

And

Rasalingam Letchumee

... Defendant in Counterclaim

JUDGMENT

[Probate and Administration — Intestate succession]
[Probate and Administration — Distribution of assets]
[Equity — Estoppel — Proprietary estoppel]
[Personal Property — Passing of property]

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
DRAMATIS PERSONAE	2
THE TANJONG PAGAR FLAT	2
PASSING OF THE DECEASED	3
PARTIES' CASES	5
THE PLAINTIFF'S CASE	5
THE DEFENDANTS' CASE	6
PROCEDURAL HISTORY	7
ORIGINATING SUMMONS 67 OF 2021	7
INJUNCTIONS IN RELATION TO THE TANJONG PAGAR FLAT	8
CHANGE OF PLAINTIFF'S SOLICITORS	9
ISSUES	10
THE TANJONG PAGAR FLAT	10
THE LAW ON PROPRIETARY ESTOPPEL	10
<i>On representation</i>	11
<i>On reliance</i>	11
<i>On detriment</i>	12
<i>Overarching inquiry of unconscionability</i>	12
<i>Interaction with the Intestate Succession Act</i>	12
PARTIES' SUBMISSIONS	13

WHETHER REPRESENTATIONS WERE MADE BY THE DECEASED	15
WHETHER MDM RASALINGAM RELIED ON THE REPRESENTATIONS TO HER DETRIMENT	17
<i>Household expenses</i>	17
<i>Moving into the Tanjong Pagar flat to stay with the deceased</i>	18
<i>S\$25,000 expended on renovation and repairs to the Tanjong Pagar flat</i>	19
THE OTHER ASSETS	20
PARTIES' SUBMISSIONS	20
WHETHER REPRESENTATIONS WERE MADE BY THE DECEASED	20
WHETHER MDM RASALINGAM RELIED ON THE REPRESENTATIONS TO HER DETRIMENT	22
THE DEFENDANTS' COUNTERCLAIM FOR THE WITHDRAWALS MADE.....	22
THE LAW ON UNJUST ENRICHMENT.....	24
WHETHER THE DEFENDANTS HAVE MADE OUT THEIR COUNTERCLAIM IN UNJUST ENRICHMENT	24
CONCLUSION.....	28

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Rasalingam Letchumee

v

**The estate of the late Jaganathan Rajendaran, deceased and
another**

[2022] SGHC 320

General Division of the High Court — Suit No 639 of 2021

Lee Seiu Kin J

31 August, 1–2 September, 17 October 2022

30 December 2022

Lee Seiu Kin J:

Introduction

1 This dispute arose over the parties' claims to assets left behind by the Deceased, who had died intestate. The plaintiff brings a claim in proprietary estoppel for the Deceased's HDB flat and for monies in the Deceased's bank accounts. The defendants bring a counterclaim in unjust enrichment for monies in the Deceased's bank account, which they allege had been withdrawn and transferred to the plaintiff without the necessary authorisation by the administrator of the Deceased's estate.

Background

Dramatis personae

2 The plaintiff, Rasalingam Letchumee (“Mdm Rasalingam”), is the mother of Jaganathan Rajendaran (the “Deceased”).¹

3 The first defendant is the sole administrator of the estate of the Deceased.² The second defendant, Shankar s/o Rajendran (“Mr Shankar”), is the Deceased’s only son, and Mdm Rasalingam’s grandson.³

The Tanjong Pagar flat

4 The Tanjong Pagar flat had initially been the matrimonial home of the Deceased and his ex-wife. They were married on 2 March 1987 and their son, Mr Shankar, was born in 1996. The ex-wife had left the flat with Mr Shankar in around 1997 or 1998. The Deceased commenced divorce proceedings in 2002 and the divorce was finalised on 30 January 2004.⁴

5 Pursuant to an order of court made in the divorce proceedings, the Deceased’s ex-wife transferred her interest in the flat to the Deceased. The

¹ Statement of Claim (“SOC”) at para 1; Defence and Counterclaim (“DCC”) at para 2.

² SOC at para 4; DCC at para 4.

³ SOC at para 2; DCC at para 3.

⁴ SOC at para 6, DCC at para 6; Shankar s/o Rajendran’s AEIC at para 6; Rasalingam Letchumee’s AEIC at paras 10–11.

transfer was registered on 18 April 2005.⁵ It is undisputed that for the rest of his lifetime, the Deceased was the sole owner of the Tanjong Pagar flat.

Passing of the Deceased

6 The Deceased was involved in a traffic accident on the night of 30 July 2019. He was brought to hospital. His sisters, Malaveli d/o Jaganathan (“Ms Malaveli”) and Maanvili d/o Jaganathan (“Ms Maanvili”) were informed of the accident on around 10pm the same night. Ms Malaveli, Ms Maanvili, the Deceased’s friend, K P Luthesamy (“Mr Luthesamy”) and Mr Luthesamy’s wife arrived at the hospital at 11.00pm. The Deceased was then brought for surgery.⁶ His death was certified at 2.18a.m. on 31 July 2019.⁷ It is undisputed that the Deceased had died intestate.

7 In or about early August 2019, Mr Shankar was alerted by his maternal relatives to his father’s obituary notice.⁸ He subsequently applied through his lawyers, PKWA Law Practice LLC, for a Grant of Letters of Administration in relation to the Deceased’s estate.⁹ This Grant of Letters of Administration was issued on 10 September 2020.¹⁰

⁵ DCC at para 19.

⁶ Transcript of 1 September 2022 p 38 ln 18 to p 43 ln 14.

⁷ SOC at para 3; DCC at para 4; Agreed Bundle at p 7.

⁸ Shankar s/o Rajendran’s AEIC at para 9.

⁹ Shankar s/o Rajendran’s AEIC at para 13.

¹⁰ Shankar s/o Rajendran’s AEIC at para 18 and pp 59–65.

8 As part of Mr Shankar’s application for the Grant of Letters of Administration, a Schedule of Assets was filed on 31 August 2020.¹¹ According to the Schedule of Assets, the Deceased’s assets at the time of his passing comprised:¹²

- (a) The Tanjong Pagar flat valued at S\$450,000.00;
- (b) A POSB Passbook Savings account with an account balance of S\$120,822.36 (the “POSB account”);
- (c) An OCBC Current Account with an account balance of S\$55,514.51 (the “OCBC account”);
- (d) A Citiport Credit Co-operative Limited account, with a Subscription account balance of S\$50,480 and a funeral grant of S\$2,000; and
- (e) Group Term Insurance of S\$46,296 and the Deceased’s last salary of S\$3,363.20 from the Deceased’s employer, PSA Corporation Ltd.

Mr Shankar has provided letters from DBS Bank and OCBC Bank to PKWA Law Practice LLC, stating that the balances in the POSB account and OCBC account were S\$120,822.36 and S\$55,514.51 respectively as of 31 July 2019.¹³

¹¹ Shankar s/o Rajendran’s AEIC at para 13.

¹² Shankar s/o Rajendran’s AEIC at p 64.

¹³ Shankar s/o Rajendran’s AEIC at para 19 and pp 67–68.

Parties' cases

The plaintiff's case

9 Mdm Rasalingam seeks a declaration that she is entitled to the Tanjong Pagar flat or the sale proceeds thereof, and a declaration that she is entitled to all other assets of the Deceased (the “Other Assets”) at the time of his death. In the alternative, she seeks for damages to be assessed.¹⁴

10 Mdm Rasalingam’s claims to both the Tanjong Pagar Flat and the Other Assets are founded on the doctrine of proprietary estoppel. Her position is that after the Deceased’s divorce was finalised, he invited her, Ms Maanvili and Ms Malaveli to move into the Tanjong Pagar flat and reside with him.¹⁵ Since mid-2005, the Deceased had repeatedly represented to Mdm Rasalingam that he would give the flat or any proceeds from the sale of the flat to her if he should pre-decease her.¹⁶ In reliance on the Deceased’s representations, Mdm Rasalingam treated the Tanjong Pagar Flat as her home, expended money to renovate and improve the flat, looked after the Deceased, handled household chores and paid for household expenses.¹⁷ Mdm Rasalingam hence avers that as she had relied and acted on the Deceased’s representations, it would be unconscionable for her to be deprived of the flat.¹⁸

11 As for the Other Assets, Mdm Rasalingam’s position is that the Deceased had also repeatedly represented to her from on or around mid-2005

¹⁴ SOC at para 14.

¹⁵ SOC at para 8.

¹⁶ SOC at para 9.

¹⁷ SOC at para 10.

¹⁸ SOC at para 11.

that he would give the Other Assets to her should he pre-decease her.¹⁹ In reliance on these representations, Mdm Rasalingam expended money on household expenses and buying groceries for the Deceased and on renovating and improving the flat, such that it would be unconscionable for her to be deprived of the Other Assets.²⁰

The defendants’ case

12 The defendants deny that any representations were made regarding the Tanjong Pagar flat or the Other Assets.²¹ They also aver that even if the representations had been made to Mdm Rasalingam, her daughters or Mr Luthesamy, Mdm Rasalingam had not suffered any detrimental reliance in respect of these representations.²²

13 The defendants’ position is that as the Deceased had died intestate, Mr Shankar is the sole beneficiary of the Deceased’s estate by operation of the Intestate Succession Act (Cap 146, 2013 Rev Ed) (“Intestate Succession Act”).²³

14 The defendants also aver that at the time of the Deceased’s passing, there was S\$120,822.36 in his POSB account and S\$55,514.51 in his OCBC account. On or about September or October 2020, Ms Shankar discovered that there was only S\$1,762.28 in the POSB account and S\$466.50 in the OCBC account.²⁴ The defendants plead that Mdm Rasalingam or her daughters had made

¹⁹ SOC at para 12.

²⁰ SOC at paras 13–14.

²¹ DCC at paras 10 and 13.

²² DCC at paras 11–12 and 14.

²³ DCC at para 18.

²⁴ DCC at para 21.

withdrawals of monies (the “Withdrawals”) from the POSB account and the OCBC account, which had not been authorised by Mr Shankar in his capacity as Administrator of the Deceased’s estate. As a result, Mdm Rasalingam has been unjustly enriched by the Withdrawals.²⁵

15 The defendants hence bring a counterclaim for:

- (a) The sum of S\$181,608.01; or
- (b) Alternatively, that Mdm Rasalingam account to the Deceased’s estate the sums withdrawn from the Deceased’s bank accounts from the Deceased’s passing to date; or
- (c) Further/alternatively, damages to be assessed.²⁶

Procedural History

Originating Summons 67 of 2021

16 This suit was initially begun as an action by Originating Summons²⁷ (“OS 67”). On 16 April 2021, the defendants applied for OS 67 to be converted to a writ.²⁸ On 23 July 2021, it was ordered by consent that OS 67 be converted to a writ action.²⁹

²⁵ DCC at paras 22–24.

²⁶ DCC at p 10.

²⁷ See Originating Summons for HC/OS 67/2021 filed 25 January 2021.

²⁸ See summons no 1756 of 2021 filed 16 April 2021.

²⁹ See HC/ORC 4169/2021.

17 On 21 May 2021, the defendants applied for Mdm Rasalingam's claim under OS 67 to be struck out.³⁰ This application was granted on 24 June 2021.³¹ Mdm Rasalingam appealed on 25 June 2021³² and her appeal was allowed.³³

Injunctions in relation to the Tanjong Pagar flat

18 An injunction was granted on 8 April 2021 pursuant to Mdm Rasalingam's application under summons no 1533 of 2021 for the defendants to be restrained from evicting Mdm Rasalingam and her daughters or disposing of their personal effects and belongings from the Tanjong Pagar flat, pending the trial or determination of this action or until further order, with liberty to the defendants to apply to set it aside on an urgent basis.³⁴

19 On 22 July 2022, the defendants applied under summons no 2731 of 2022 for the injunction under summons no 1533 of 2021 be set aside, and for an injunction for Mdm Rasalingam and her daughters to remove all their personal effects and belongings from and to vacate the Tanjong Pagar flat. The defendants also sought for the removal of a caveat lodged by Mdm Rasalingam in respect of the Tanjong Pagar flat.³⁵

20 The defendants submitted that monetary compensation would suffice if Mdm Rasalingam should succeed on her claims and that she would not be

³⁰ See summons no 2371 of 2021 filed 21 May 2021.

³¹ See HC/ORC 3580/2021.

³² See Notice of Appeal for HC/RA 168/2021 filed 25 June 2021.

³³ See HC/ORC 4031/2021.

³⁴ See HC/ORC 1975/2021.

³⁵ See summons no 2731 of 2022 filed 22 July 2022.

prejudiced by the orders sought for.³⁶ On the other hand, the defendants would be seriously prejudiced if Mdm Rasalingam were to continue occupying the flat as she had been conducting hazardous activities at the Tanjong Pagar flat and had caused damage to the flat.³⁷ They also submitted that Mdm Rasalingam did not have a valid caveatable interest in the flat.³⁸

21 I heard parties on this application on the first day of trial. At trial, counsel for the defendants submitted that there was a measure of urgency to this application as letters had been sent by the authorities on possible fire hazards in the flat and officers had stated that they wished to inspect the premises. As the immediate matter at hand was the possible fire hazards in the Tanjong Pagar flat, I ordered Mdm Rasalingam to be present at the premises on the dates and times that the SCDF and HDB arranged to inspect the premises. I also ordered Mdm Rasalingam to give access to the premises to the SCDF and HDB officers and to comply with all directions of the SCDF and HDB given in the course of those inspections.

Change of plaintiff's solicitors

22 The plaintiff's original solicitor, Mr Yeo Yao Hui, Charles,³⁹ left the country and became uncontactable since August 2022. Mdm Rasalingam's present solicitor was instructed on the matter on 9 August 2022. In view of the

³⁶ Defendants' Written Submissions for summons no 2731 of 2022 dated 30 August 2022 at paras 36–37.

³⁷ Defendants' Written Submissions for summons no 2731 of 2022 dated 30 August 2022 at para 38.

³⁸ Defendants' Written Submissions for summons no 2731 of 2022 dated 30 August 2022 at para 42.

³⁹ See affidavit of Yeo Yao Hui, Charles dated 21 July 2022.

circumstances of the case, I allowed Mdm Rasalingam’s application for an extension of time to file her affidavit of evidence-in-chief.⁴⁰

Issues

23 This suit boils down to three issues:

- (a) Whether Mdm Rasalingam had a valid claim to the Tanjong Pagar flat.
- (b) Whether Mdm Rasalingam had a valid claim to the Other Assets.
- (c) Whether the defendants could establish that Mdm Rasalingam had been unjustly enriched by the Withdrawals from the OCBC and POSB accounts.

The Tanjong Pagar flat

The law on proprietary estoppel

24 In order to establish a claim in proprietary estoppel, it must be shown that: (a) a representation or an assurance was made that the claimant would have an interest in the property, and that (b) in reliance on this representation, (c) the claimant had suffered a detriment (*Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 at [94]; *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 (“*Sumoi*”) at [69]; *Ong Chai Koon and others v Ong Chai Soon* [2021] SGHC 76 (“*Ong Chai Koon*”) at [166]).

⁴⁰ See summons for extension of time for summons no 2778 of 2022 filed 22 July 2022; HC/ORC 4085/2022.

On representation

25 The plaintiff must establish that the defendant had made a representation, express or implied, through words or conduct that the claimants had a share/interest in the property in question (*Ong Chai Koon* at [167]). There is no legal requirement for a representor to have intended for the representations to be acted upon, and purely oral promises would suffice (*Letchimy d/o Palanisamy Nadasan Majeed (alias Khadijah Nadasan) v Maha Devi d/o Palanisamy Nadasan (administrator of the estate of Devi d/o Gurasamy, deceased* [2021] 1 SLR 970 at [15]–[16]). Conduct, including silence, or acquiescence can amount to an implied representation. (*Ong Chai Koon* at [167]; *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 (“*Hong Leong*”) at [194] and [197]). The representee is a person to whom a representation is made whether directly or through an agent or an intermediary and includes a person to whose notice the representation was intended to and did come, such intention being express or inferred (*Hong Leong* at [205]).

On reliance

26 There must be a sufficient link between the promise and the conduct, *ie*, the reliance must be on a statement which a reasonable person would have understood to be taken seriously and acted upon (*Sumoi* at [73], citing *Thorner v Major* [2009] 1 WLR 776). For there to be detrimental reliance, the party must act in a manner to give effect to, or at least be related to, the representation made *Ong Chai Koon* at [174]). Once the claimant establishes the relevant representation and a change of position which is capable of causal relation to it, the burden shifts to the other party to establish that the claimant did not rely on the representation (*Hong Leong* at [208]).

On detriment

27 Detriment is considered at the time when the promisor attempts to resile from his stated position and refers to the detriment or harm which would result from the change of position (*Sumoi* at [77]).

Overarching inquiry of unconscionability

28 The overarching inquiry for proprietary estoppel is whether it would be unconscionable for the court not to raise the estoppel. This inquiry is undertaken within the framework of the above three elements. These three elements are directed at showing that something for which the defendant is responsible has caused or contributed to the plaintiff adopting a certain course of action such that it would be unconscionable to permit the defendant to act in accordance with his strict legal rights and indifferent to the plaintiff's plight (*Hong Leong* at [191]–[192]).

Interaction with the Intestate Succession Act

29 Preliminarily, I note that counsel for both Mdm Rasalingam and the defendants have sought to articulate the interaction between the Intestate Act and the doctrine of proprietary estoppel. Both counsel are incorrect in different ways. Counsel for the defendants submits that Mdm Rasalingam's claims are a backdoor attempt to legitimise an oral will which would be legally invalid. This conflates the doctrine of proprietary estoppel with the issue of formality of wills. Counsel for Mdm Rasalingam in turn suggests that equity demands that her grandson is not the most fitting recipient as his entitlement springs from the "raw workings of the Law – the fearful [Intestate Succession Act] which ...

throws to the wind emotional and moral inklings”⁴¹ and seeks to rely on the case of *R v Lucas* [1981] QB 720 (“*R v Lucas*”). I do not see how this authority can be relevant by any stretch of the imagination as *R v Lucas* pertains to when a lying statement can amount to corroboration of other evidence against an accused person. Neither can the rules of equity be applied in an unprincipled fashion.

30 The correct reading is that the common law equitable remedy of proprietary estoppel cannot override the Intestate Succession Act, but a claim founded on proprietary estoppel can be a legitimate course of action against the Deceased’s estate (*Letchimy d/o Palanisamy Nadasan Majeed (alias Khadijah Nadasan) v Maha Devi d/o Palanisamy Nadasan (administrator of the estate of Devi d/o Gurusamy, deceased)* [2020] SGHC 132 at [13]–[14]; *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [43]–[44]). What this means for the present dispute is that if I find that Mdm Rasalingam succeeds on any of her heads of claim, the assets or amounts granted in her favour would constitute a debt which Mr Shankar as estate administrator should settle as part of the probate process.

Parties’ Submissions

31 Counsel for Mdm Rasalingam relies on the doctrine of proprietary estoppel to submit that it would be unconscionable for Mdm Rasalingam to be denied the full benefit of the Deceased’s promise that his flat and wealth would be hers if he predeceased her.⁴²

⁴¹ PCS at para 37.

⁴² Plaintiff’s Closing Submissions (“PCS”) at para 37.

32 Counsel for the defendants contend that there was no representation, assurance or promise made⁴³ – specifically, that the Deceased’s conduct in not making a will suggests that he did not intend to give the Tanjong Pagar flat to Mdm Rasalingam⁴⁴ and that Mdm Rasalingam’s recount of the representations is sketchy and unspecific.⁴⁵

33 The defendants further submit that even if there was a valid representation made by the Deceased, Mdm Rasalingam did not exhibit detrimental reliance on these representations.⁴⁶ Rather, her acts of looking after the Deceased, handling household chores and moving into the flat were done out of love and concern for the Deceased.⁴⁷ Also, while Mdm Rasalingam initially suggested that she had paid monthly instalments for the flat, the flat had been fully paid up at the point of its transfer to the Deceased, the Deceased was a man of means who often paid for the groceries and it was undisputed that the Deceased had paid utility bills and town council payments.⁴⁸ As for Mdm Rasalingam’s pleaded position that she had paid S\$25,000 for repairs and renovations to the flat, the defendants submit that this is unsupported by documentary evidence⁴⁹ and that the plaintiff’s witnesses were unable to give consistent evidence of the particulars of these renovation and repair works. They also submit that the claim of S\$25,000 had been raised only after OS 67 was struck out and constituted new evidence belatedly introduced to cure

⁴³ Defendants’ Closing Submissions (“DCS”) at para 56.

⁴⁴ DCS at paras 70 and 72.

⁴⁵ DCS at para 73.

⁴⁶ DCS at para 74.

⁴⁷ DCS at paras 84–87.

⁴⁸ DCS at paras 89, 93–96.

⁴⁹ DCS at para 102.

deficiencies in her case.⁵⁰ The defendants further submit that in any event, the expenditure of the S\$25,000 would not constitute a detriment to Mdm Rasalingam as she would have expended it for her own and Ms Maanvili's benefit.⁵¹

Whether representations were made by the Deceased

34 I am of the view that the Deceased, more likely than not, had represented to Mdm Rasalingam that the Tanjong Pagar flat would belong to her should he predecease her. That being said, in coming to this conclusion, I am mindful that several evidential difficulties exist with respect to the issue of whether these representations had been made. Mr Shankar, having not been in touch with the Deceased and his paternal relatives prior to the Deceased's passing, would not have been privy to the alleged representations and could not be expected to provide evidence that directly contradicts Mdm Rasalingam's version of events. That, however, did not mean that Mdm Rasalingam's version of events should be taken at face value; neither was it necessary for me to do so. I considered the following factors to ascertain whether Mdm Rasalingam has successfully established that the Deceased had made the relevant representations.

35 First, the witnesses called by Mdm Rasalingam were consistent in their evidence that multiple representations had been made. While it is true (as counsel for the defendants highlight) that details of the representations were lacking in Mdm Rasalingam's evidence, counsel for the defendants unfortunately did not seek to elicit specific details on the representations – such as what was said, when these statements were made, et cetera, when

⁵⁰ DCS at paras 101–126.

⁵¹ DCS at paras 130–133, 143.

Mdm Rasalingam, Ms Maanvili, Ms Malaveli and Mr Luthesamy were on the witness stand. Counsel for the defendants hence did not manage to shake Mdm Rasalingam's factual claim when cross-examining the plaintiff's witnesses. This, coupled with the fact that Mdm Rasalingam is of advanced age and the representations were allegedly made on multiple occasions over numerous years, suggests that on the evidence available, Mdm Rasalingam has established on a balance of probabilities that the Deceased did represent that she would own the flat if he should die before her.

36 Second, the Deceased's conduct in his lifetime did not suggest that he had no intention of passing the flat on to Mdm Rasalingam. Counsel for the defendants point specifically to the fact that the Deceased had not made a will. I am unpersuaded by this argument. If the Deceased had made a will, this dispute would not have arisen in the first place; counsel's argument is against the entire doctrine of proprietary estoppel rather than the Deceased's intent to give the flat to his mother.

37 By way of an aside, I note the oddity of an able-bodied son making such representations to his aged mother. However, I did not think this conclusive. The Deceased and Mdm Rasalingam appeared to have been close and Mdm Rasalingam had offered much support to him after his divorce. Moreover, Mdm Rasalingam pleaded that the Deceased had made these representations from mid-2005 to 2019, *ie*, from his late forties to early sixties. It is not improbable that the Deceased would, at that stage in his life, have contemplated to whom he would want his flat to go to in the event of his passing.

38 As such, on the evidence available, it appears on a balance of probabilities that the Deceased would have made these representations.

Whether Mdm Rasalingam relied on the representations to her detriment

Household expenses

39 Counsel for the defendants submit that the Deceased had been in charge of purchasing groceries and of paying utility bills and town council payments.⁵² As it is undisputed that the utility bills and town council payments were paid for by the Deceased,⁵³ I will deal only with the grocery payments.

40 Mdm Rasalingam’s evidence was that their expenses are “not really that much” and that while the Deceased did buy items from the market or supermarket, she would also buy items sometimes as she did not wish to trouble him.⁵⁴ Mdm Rasalingam also stated that she would pay expenses for her son due to their familial relationship.⁵⁵ When questioned on the household expenses borne by Mdm Rasalingam, Ms Maanvili stated that the expenses were for items such as a “mat” which would be changed every two years, “pillowcases”, “laundry” and “whatever is needed by a lady ... for the maintenance of the house”.⁵⁶ On the limited evidence available, it appears the Deceased and Mdm Rasalingam had likely paid for groceries as and when it was convenient and necessary for them. Moreover, these expenses (at least in part) were for Mdm Rasalingam and Ms Maanvili’s benefit. Any household expenses borne by Mdm Rasalingam hence cannot be considered a detriment suffered in reliance on the representations made.

⁵² DCS at paras 93–94.

⁵³ Transcript of 31 August 2022 at p 45 ln 31 to p 46 ln 5.

⁵⁴ Transcript of 31 August 2022 p 85 ln 22 to ln 31.

⁵⁵ Transcript of 31 August 2022 at p 35 ln 13 to ln 16.

⁵⁶ Transcript of 1 September 2022 at p 21 ln 24 to ln 32.

Moving into the Tanjong Pagar flat to stay with the deceased

41 While I think it believable that Mdm Rasalingam had stayed in the Tanjong Pagar flat as her son was lonely post-divorce, the evidence does not suggest that this was *detrimental* reliance. Counsel for Mdm Rasalingam submits that Mdm Rasalingam had “practically abandoned her home back in Jurong East”⁵⁷ and suggests that she had given her own apartment in Jurong East to her children.⁵⁸ The evidence does not give rise to such a bold inference. Mdm Rasalingam’s evidence was that another son of hers is presently residing at her flat in Jurong East, that Ms Malaveli would sometimes stay at the Jurong East flat and that she had willed the flat to Ms Malaveli.⁵⁹ In my view, allowing her children to reside at her flat in Jurong East and making arrangements for the same flat in her will do not constitute giving up the flat in Jurong East. In fact, her leaving the Jurong East flat to Ms Malaveli in her will, and the fact that she could⁶⁰ and would return to the Jurong East flat when necessary⁶¹ suggests that she has continued to behave as the owner of the Jurong East flat.

42 Rather, I accept the defendants’ submission that she had moved into the Tanjong Pagar flat out of love and concern for the Deceased and not in reliance on the representations. This characterisation would be consistent with Mdm Rasalingam’s repeated evidence that she had moved into the Tanjong Pagar flat as the Deceased was lonely and unwell.

⁵⁷ PCS at para 37.

⁵⁸ PCS at para 19.

⁵⁹ Transcript of 31 August 2022 at p 27 ln 9 to ln 25; p 30 ln 6 to ln 8; Transcript of 1 September 2022 p 2 ln 13 to ln 16.

⁶⁰ Transcript of 31 August 2022 at p 30 ln 11 to ln 14.

⁶¹ Transcript of 1 September 2022 at p 74 ln 5 to ln 8.

S\$25,000 expended on renovation and repairs to the Tanjong Pagar flat

43 Preliminarily, the defendants submit that the sum expended on repairs and renovation was not raised by Mdm Rasalingam before OS 67 was struck out and constitutes new evidence belatedly introduced to cure deficiencies in her case.⁶² However, given Mdm Rasalingam’s advanced age and her change of solicitor in the lead-up to the trial, I decline to make any finding on the lateness of the evidence and whether it weakens her evidence.

44 In any event, I am of the view that the evidence available is insufficient to establish that Mdm Rasalingam had expended approximately S\$25,000 on renovation and repairs. It is not sufficient for the plaintiff’s witnesses to simply assert, as they had, that repairs had occurred over the years. Unlike the oral representations (for which the evidential difficulties are more understandable), more evidence would have to be adduced to show that on a balance of probabilities, the renovations and repairs were paid for by Mdm Rasalingam. There were no photographs tendered of the renovation or repair works, no consistent or specific breakdown of the sums expended, no mention of who was contracted to do the works and no evidence of communications between the Deceased, his sisters, Mdm Rasalingam and/or any contractor about the renovation works. Mdm Rasalingam herself acknowledged that she could not recall much about the renovation.⁶³ There is hence insufficient evidence to support Mdm Rasalingam’s claim that she had paid for the renovations and repairs to the Tanjong Pagar flat.

⁶² DCS at paras 101–126.

⁶³ Transcript of 31 August 2022 p 66 ln 11 to ln 14; p 67 ln 11 to ln 25; p 91 ln 14 to ln 17.

45 Therefore, I find that Mdm Rasalingam has not succeeded in making out her claim in proprietary estoppel. By operation of the Intestate Succession Act, Mr Shankar is the sole beneficial owner of the Tanjong Pagar flat.

The Other Assets

Parties' submissions

46 Counsel for Mdm Rasalingam again relies on the doctrine of proprietary estoppel to suggest that “all [the Deceased’s] wealth” should be Mdm Rasalingam’s should he predecease her.⁶⁴ Counsel for the defendants in turn submit that Mdm Rasalingam failed to mention the Other Assets or her detrimental reliance on representations pertaining to the Other Assets in her first affidavit filed in support of OS 67.⁶⁵ Neither was there any mention of her detrimental reliance on such representations in the solicitors’ letters sent prior to the commencement of OS 67. Counsel for the defendants hence suggest that there was no reliance by Mdm Rasalingam on these representations.⁶⁶

Whether representations were made by the Deceased

47 I am of the view that these representations regarding the Other Assets had been made. I preface my findings by saying that while Mdm Rasalingam had not given evidence of representations regarding the Other Assets in her first affidavit, I note (as stated above at [43]) that Mdm Rasalingam is uneducated, of advanced age and had gone through an unexpected change of counsel. Therefore, I would be slow to conclude from this discrepancy that no representation about the Other Assets was ever made.

⁶⁴ PCS at paras 36–37.

⁶⁵ DCS at paras 57–59 and 76.

⁶⁶ DCS at paras 76–83.

48 These alleged representations are supported by the evidence of the Deceased's conduct in hospital. To begin with, Mdm Rasalingam has successfully established that the cards and PIN numbers had been passed to Ms Maanvili when the Deceased was at the hospital.

49 The parties have differing accounts as to how the cards and PIN numbers came into the hands of Ms Maanvili. The defendants plead that the Deceased's wallet had been passed to Mdm Rasalingam and/or Ms Maanvili for safekeeping by the police after the Deceased's passing.⁶⁷ However, Mr Shankar had not been present at the hospital at the material time and the only documentary evidence in support of this version of events furnished by the defendants was a police report made by Mr Shankar in which he stated:⁶⁸

When my father passed away I am unsure if his belongings were given to his family. I am unsure where his belongings are currently and I do not know who had made the withdrawals.

50 On the other hand, Mdm Rasalingam's evidence that the PIN number was passed to one of her daughters⁶⁹ is consistent with Ms Maanvili⁷⁰ and Mr Luthesamy's evidence that the Deceased had passed his bag containing his wallet and ATM card to Ms Maanvili in the hospital.⁷¹ Counsel for the defendants submit that the witnesses have not been credible as Ms Maanvili and Mr Luthesamy differ in their accounts of the hospital interactions with the Deceased – specifically, whether the Deceased had gesticulated or communicated verbally. According to Ms Maanvili, the Deceased had been able

⁶⁷ DCC at para 24(a).

⁶⁸ Shankar s/o Rajendran's AEIC at pp 187–189.

⁶⁹ Transcript of 31 August 2022 p 71 ln 9.

⁷⁰ Transcript of 1 September 2022 p 42 ln 15 to ln 25.

⁷¹ Transcript of 1 September 2022 p 76 ln 22 to p 77 ln 13.

to speak. Her evidence was that he had told her to take his belongings and to pass them to Mdm Rasalingam, and that he had told her his PIN number and asked her to inform Mdm Rasalingam of the number.⁷² Mr Luthesamy's evidence was that the Deceased had communicated by way of gesticulations.⁷³ However, as the evidence reflects that the interaction was brief, and as Mr Luthesamy's evidence was that only Ms Maanvili had been talking to the Deceased,⁷⁴ I do not find this inconsistency very damaging to their account of events. I accept that the Deceased had passed the cards and communicated the PIN numbers to Ms Maanvili, and I find that this conduct reinforces Mdm Rasalingam's case that the Deceased had represented that he wished to pass the Other Assets to her should he predecease her.

Whether Mdm Rasalingam relied on the representations to her detriment

51 However, detrimental reliance has not been made out. The same instances of detrimental reliance vis-à-vis the Tanjong Pagar flat were pleaded with regard to the Other Assets, and my reasoning is the same as above (see above at [39]–[44]). Hence, Mdm Rasalingam's claim in proprietary estoppel also falls with respect to the Other Assets, and Mr Shankar remains the sole beneficial owner of the Other Assets.

The defendants' counterclaim for the Withdrawals made

52 In their counterclaim, the defendants claim for the sum of S\$181,608.01, which they say was withdrawn from the Deceased's POSB and OCBC accounts. In the alternative, they pray that Mdm Rasalingam be ordered to account for the

⁷² Transcript of 1 September 2022 p 42 ln 5 to ln 22; AEIC of Maanvili d/o Jaganathan at para 15.

⁷³ Transcript of 1 September 2022 p 76 ln 12 to p 78 ln 14.

⁷⁴ Transcript of 1 September 2022 p 76 ln 4 to ln 6.

sums withdrawn from the Deceased's account from after the Deceased's passing to date, and further/alternatively for damages to be assessed. The defendants' counterclaim relies on the doctrine of unjust enrichment.⁷⁵

53 I begin by stating that it is not in dispute that these withdrawals had been carried out by Ms Maanvili on Mdm Rasalingam's instructions, and that the monies withdrawn had been transferred to Mdm Rasalingam. Mdm Rasalingam has acknowledged that she had instructed Ms Maanvili to withdraw these monies and that the monies had then been passed to her:

Q Okay. Mdm Letchumee, you confirm that you instructed your daughter Maanvili to withdraw monies from the deceased's POSB and OCBC accounts?

A Yes, Your Honour.

...

Q No, did you use the monies that was withdrawn from the deceased's POSB and OCBC account towards yourself?

A It's true that I withdrew from the accounts because it's my entitlement. He gave me the entitlement. Yes, and I used it for myself.

Q Okay. thank you. Okay. And just to confirm one last point. These monies were all withdrawn after the passing of your son, correct?

A Yes, Your Honour.⁷⁶

When shown withdrawals from the OCBC account in August 2019, Mdm Rasalingam again stated that her daughter had made those withdrawals under her instructions after the Deceased's passing.⁷⁷ Ms Maanvili similarly

⁷⁵ DCC at para 24.

⁷⁶ Transcript of 31 August 2022 p 69 ln 23 to p 70 ln 7.

⁷⁷ Transcript of 31 August 2022 p 70 ln 29 to p 71 ln 4.

stated that her mother “was the one who told [her] to withdraw the monies” and that she had done so and passed the monies to Mdm Rasalingam accordingly.⁷⁸

The law on unjust enrichment

54 To make out a cause of action in unjust enrichment, a claimant is to establish the following elements: (a) that a benefit has been received or an enrichment has accrued to the defendant; (b) that the benefit or enrichment is at the claimant’s expense; and (c) that the defendant’s enrichment is “unjust”. If the three elements are satisfied, the next question would be whether any defences can be established to the claim: *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 (“*Singapore Swimming Club*”) at [90], citing *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801. Unjust enrichment focuses on the claimant’s loss or deprivation and not on the fault of the recipient. It is hence not based on a general or broad notion of unconscionability or unjustness, and claimants must demonstrate a positive reason for restitution and identify specific grounds of restitution which are legally recognised factors that make the defendant’s enrichment unjust: *Singapore Swimming Club* at [92]–[93].

Whether the defendants have made out their counterclaim in unjust enrichment

55 The defendants’ counterclaim in respect of the Withdrawals is solely in unjust enrichment.⁷⁹ The defendants’ submissions, somewhat confusingly, make no express reference to unjust enrichment and do not cite any authorities on the law of unjust enrichment. However, as I see no reason to depart from the

⁷⁸ Transcript of 1 September 2022 p 52 ln 29 to ln 30.

⁷⁹ DCC at para 24.

general rule that parties be bound by their pleadings (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]), their submissions can only be considered within the parameters of their pleaded case in unjust enrichment.

56 As stated above at [54], it is for the defendants to identify legally recognised factors that make Mdm Rasalingam’s enrichment unjust. The defendants pleaded that:

At all material times, [Mr Shankar], in his capacity as the Administrator of the Deceased’s estate, did not authorize any persons, including but not limited to, [Mdm Rasalingam] and [Mdm Rasalingam’s daughters], to withdraw monies from the Deceased’s POSB Account and/or OCBC Account.⁸⁰

57 They have also pleaded that:

At all material times, the withdrawals / transfers were not authorized by [Mr Shankar] and/or the Deceased (prior to his passing) nor known to [Mr Shankar]. Neither [were] the Unauthorised Withdrawals made in the benefit of [Mr Shankar], being the sole beneficiary of the Deceased’s estate.⁸¹

58 The defendants rely on their assertion that the Withdrawals were made without Mr Shankar’s authorisation. In *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 (“*Esben Finance*”), the Court of Appeal considered the question of whether the lack of consent, in and of itself, can be considered an unjust factor. It held (at [251]–[252]) that:

251 To summarise our views on whether lack of consent ought to be recognised as an unjust factor justifying restitution on the basis of unjust enrichment:

⁸⁰ DCC at para 23.

⁸¹ DCC at para 24(c).

(a) There is in principle *no reason* why lack of consent ought not to be recognised as an unjust factor because to hold otherwise would result in defendants who have received stolen property or value benefitting from a windfall.

(b) However, the recognition of lack of consent as an unjust factor cannot be blanket and uncircumscribed because to do so would result in unacceptable encroachments on other areas of law, denuding them of their legal significance. In addition, *legally valid* transfers of the claimant's property or value without his consent, or the *retention by the defendant* of the claimant's property or value to which the defendant is *legally entitled* cannot be said to have been unjust.

(c) Thus, an unjust enrichment action on the basis of the unjust factor of lack of consent would *generally not* be available where:

(i) The transfer of the property or value in question from the claimant is a *legally valid* one;

(ii) The defendant is *legally entitled* (under a legal principle, rule or defence to *any* claim) to retain the property or value which is the subject-matter of the claim; and

(iii) Where the claimant has any other available cause of action for recovery of the property or value in question under established areas of law (for example, the vindication of property rights). This follows from the need to prevent unjust enrichment from encroaching on or making otiose established areas of the law or denuding them of much of their legal significance.

252 The principles set out above are sufficient to dispose of the present case and we need not go further than this for the purposes of this judgment. We stress that the law of unjust enrichment ought to be developed *incrementally* on a case-by-case basis and we thus leave the issues of whether there may be lack of consent situations in which a claim in unjust enrichment ought to be allowed, and whether there are *other* limits to recognising novel unjust factors, for a future appropriate case, as it is unnecessary for us to decide these points.

[emphasis in original]

59 In *Esben Finance*, the appellants were offshore companies which were principally managed by one Mr Wong Kie Nai. The respondent was his son. Upon Mr Wong Kie Nai's death, effective control of the appellants passed to his brothers. One of Mr Wong Kie Nai's brothers noticed that the appellants' bank accounts were lower than expected and discovered that 50 payments had been made from these accounts to the respondent's personal bank account. The appellants sued the respondent to recover these 50 payments on the basis of unjust enrichment, dishonest assistance, knowing receipt and unlawful means conspiracy. For 36 of the payments, the monies used for the payments stemmed from a practice of coordinated transactions to evade taxes in Malaysia. The court held that if moneys are transferred from an entity to an intermediary with the purpose of having the intermediary channel these monies onto an eventual receiver, there would be no subtraction from the intermediary's assets and any enrichment received by the receiver would not be at the intermediary's expense. As the role played by the appellants in the practice of coordinated transactions was akin to that played of such an intermediary, the moneys for these 36 payments could not be regarded as the appellants' assets. Rather, both the making of the payments and the wherewithal for making these payments stemmed from the practice itself. Therefore, the respondent had not been enriched at the appellants' expense by the 36 payments (at [154]–[155]). The remaining 14 payments were found to have been unauthorised, but as the appellants retained property to the monies, they had a proprietary claim for the monies which precluded the recognition of an unjust enrichment claim on the same facts (at [253]).

60 Turning to the present case, I do not think the defendants have successfully established a lack of consent. Indeed, the evidence is that the Withdrawals were done in accordance with the Deceased's express wishes, even

though the money was only withdrawn after his death. Although Mr Shankar did not authorise it, at the time the monies were withdrawn, he was not yet appointed the Administrator and therefore not in a position to grant or withhold consent. I do not think that the circumstances of this case justify a finding that Mdm Rasalingam had been unjustly enriched. I therefore dismiss the defendants' counterclaim.

Conclusion

61 In summary, I find that Mdm Rasalingam has been unsuccessful in her claim for the Tanjong Pagar flat, and that the defendants have also been unsuccessful in their counterclaim for the S\$181,608.01 withdrawn from the Deceased's bank accounts.

62 I will hear parties on costs.

Lee Seiu Kin
Judge of the High Court

Rajwin Singh Sandhu (Rajwin & Yong LLP) (instructed) (S K
Kumar Law Practice LLP) for the plaintiff;
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