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

[2023] SGHC 326

Suit No 1095 of 2020

Between

Ho Dat Khoon

… *Plaintiff*

And

(1) Chan Wai Leen, as the administratrix of the estate of Wong Ching Fong, deceased, and in her personal capacity
(2) Wong Cai Juan

… *Defendants*

GROUNDS OF DECISION

[Gifts — Avoidance — Whether *inter vivos* gift could be set aside for mistake]
[Land — Registration of title — Whether rectification of the land-register should be ordered]
[Tort — Conspiracy]
[Restitution — Unjust enrichment — Whether proprietary remedies could be obtained for a claim in unjust enrichment]
[Civil Procedure — Costs —Principles]

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Ho Dat Khoon
v
Chan Wai Leen (in her personal capacity and as administratrix of the estate of Wong Ching Fong, deceased) and another

[2023] SGHC 326

General Division of the High Court — Suit No 1095 of 2020
Aedit Abdullah J
4–6, 9–12, 17–20, 23–26 May 2022, 30 January 2023

17 November 2023

Aedit Abdullah J:

1 This case involved a dispute among relatives. Central to this family feud was a private landed residence worth between $7.5m and $7.8m ("the Property") by one estimation, with two factions of the same family having competing claims in respect of the Property. The overarching tenor of the plaintiff's case was that she had transferred the title of the Property by way of a purported gift to the second defendant in objectionable circumstances, an allegation which the defendants unsurprisingly denied. Yet, given the way family arrangements are conducted, not much in the way of contemporaneous documentary evidence was available in the present case. Indeed, this case turned in large part on the credibility of the testimonies of the persons connected with the dispute.

2 Having considered the evidence, I concluded that the transfer of the Property should be set aside as the plaintiff was operating under a mistake when she executed the transfer. I disallowed a claim for expenses incurred by the defendants in respect of the property. I also found against the plaintiff on several other claims made by her. I now provide the full grounds of my decision on the merits, and as well as my decision on the costs of this action.

Background

3 As this was essentially a family dispute, it is apposite to set out, by way of background, the key persons who are connected with this dispute and how they are related to each other.

4 The patriarch of the family was Mr Ho Kwang Ming ("Mr HKM"), who was the plaintiff's late father. Around the late 1920s or the early 1930s, Mr HKM left his home in what is presently the Hainan province of the People's Republic of China and came to Singapore in search of better opportunities.[1] After his arrival in Singapore, Mr HKM operated a few businesses, including a provision shop[2] and a hotel.[3] He passed away in 1970 at the age of 71.[4]

5 Mr HKM had five other children apart from the plaintiff.[5] One of whom was the plaintiff's sister who passed away in 2017, Mdm Ho Tat Noor ("Mdm HTN"). One of Mdm HTN's children was Mr Wong Ching Fong ("Mr Alan Wong"), who was married to the first defendant, Ms Chan Wai Leen.

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1 Plaintiff's Closing Submissions ("PCS") at para 8.

2 PCS at para 9.

3 PCS at para 22.

4 PCS at para 117.

5 PCS at para 7.

The first defendant is therefore the plaintiff's niece-in-law. When Mr Alan Wong passed away in 2015, the first defendant became the administratrix of his estate.[6] The second defendant, Ms Wong Cai Juan, is the middle child of the three daughters of Mr Alan Wong and the first defendant.[7] This makes the second defendant the grandniece of the plaintiff.

6 Another of the plaintiff's siblings was her brother Mr Ho Tat Song ("Mr HTS"), who passed away in 2017. Mr HTS had six children, two of whom are Mr Ho Chiuen Sheey and Ms Nicola Reece Sheffield Ho Chuien Yheeg (He Junyu).[8]

7 On 2 December 2016, the plaintiff signed an instrument of transfer ("the Instrument of Transfer") in favour of the second defendant as the sole transferee ("the Transfer"). The Property was registered in the plaintiff's name since 1970, when Mr HKM purchased the Property and registered it in the plaintiff's name.[9] It was the plaintiff's only property.[10] The Transfer was registered in the second defendant's name in 2017.[11] The Instrument of Transfer stated that the Transfer was made "BY WAY OF GIFT".[12] On the same day, the plaintiff also executed a will ("the 2016 Will").[13]

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6 PCS at para 183.

7 PCS at para 7.

8 PCS at para 7.

9 PCS at para 4.

10 PCS at para 4.

11 PCS at para 4.

12 PCS at para 4.

13 Defendants' Closing Submissions ("DCS") at para 161.

8 On 30 April 2020, pursuant to a Power of Attorney, Mr Ho Chiuen Sheey and Ms Nicola Reece Sheffield Ho Chuien Yheeg (He Junyu), the children of Mr HTS (see [6] above), became the attorneys of the plaintiff. For ease of reference, they will be hereafter referred to as "the Attorneys". The Attorneys were granted powers to "investigate, verify and/or make enquiries with the relevant parties and/or authorities in respect of the transaction(s) and/or matter(s) relating to the Property, including but not limited [the Transfer] …" They were also empowered to "institute and/or abandon any legal proceeding … in connection with the Property and/or recovery of [the plaintiff's] legal and/or equitable interests in the Property from such relevant parties/entities".[14] Thus, in the present case, the Attorneys were involved in obtaining legal advice and giving affidavit evidence on behalf of the plaintiff.

9 Following the Attorneys' appointment, the present suit was commenced on 13 November 2020 against the defendants. In this suit, the plaintiff and the Attorneys contended, among others, that the Transfer should be set aside. In essence, they contended that the circumstances surrounding the Transfer were suspect and this raised the question of whether the plaintiff fully appreciated the effect of the Transfer. The defendants disputed this and argued that the plaintiff freely intended to make an *inter vivos* gift to the second defendant. The present case therefore appeared to be a dispute between two sides of a family: the Attorneys (who are the children of Mr HTS) and the plaintiff on the one side, and the defendants from Mdm HTN's family ("HTN's Family") on the other.

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[14] AEIC of Ho Chiuen Sheey and Nicola Reece Sheffield Ho Chuien Yheeg (He Junyu) dated 3 March 2022 at p 41.

The parties' arguments

The plaintiff

10 The plaintiff's case was that she was a very simple, gullible, vulnerable, and unsophisticated person[15] who did not intend to make an *inter vivos* gift to the second defendant when she executed the Transfer,[16] relying on medical reports to prove that she was not fully aware of what she was doing when she signed the Transfer and that her cognition was likely to have been affected to a significant degree due to her various medical conditions.[17] The plaintiff also argued that she did not, through her conduct, evince an intention to make a gift of all her beneficial interest in the Property to HTN's Family.[18]

11 In this regard, the plaintiff further submitted that she was the legal and beneficial owner of the Property prior to the Transfer and was not, as the defendants suggested, holding the Property on trust for HTN's Family such that she had transferred the Property to the second defendant in accordance with the alleged trust.[19] The plaintiff further argued that it was crucial that the defendants had not pleaded the type of trust being alleged and that it was therefore not possible for the plaintiff to address that matter specifically.[20] Moreover, the plaintiff contended, relying on s 7(1) of the Civil Law Act 1909 (2020 Rev Ed), that a declaration of trust in respect of immovable property must be manifested in writing and signed by a person who is able to declare such trust. Since there

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15 PCS at para 12.

16 PCS at para 200.

17 PCS at paras 62 and 66.

18 PCS at para 195.

19 PCS at para 184.

20 PCS at para 187.

was no such declaration by the plaintiff, it was argued that any express trust would be null, void and/or unenforceable.[21]

12 Even assuming that the plaintiff held the Property on trust for HTN's Family, the plaintiff argued that the Property would have to be transferred to seven beneficiaries in that case. However, the Transfer was made to the second defendant only and, thus, the Transfer could not be said to have been made in accordance with the alleged trust.[22]

13 The plaintiff also mounted claims for damages against the defendants on the bases of both unlawful and lawful conspiracy. In this regard, the plaintiff argued as follows:[23]

> (a) the first defendant played a key role in (i) the preparation and making of the plaintiff's 2013 will ("the 2013 Will"); (ii) the plaintiff's application for a replacement certificate of title of the Property; (iii) the preparation and making of the plaintiff's 2016 Will; (iv) the discussion with her daughters on the raising of funds to pay stamp duty on the Transfer (so as to avoid additional stamp duty); (v) the preparation of the Transfer to the second defendant as a gift; and (vi) procuring the plaintiff to sign the Transfer;
>
> (b) the second defendant participated with the first defendant in (i) the discussion with her sisters on the raising of funds to pay stamp duty on the Transfer (so as to avoid additional stamp duty); (ii) the preparation of the Transfer to her name as a gift; (iii) procuring the

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21 PCS at para 187.

22 PCS at para 193.

23 PCS at para 208.

plaintiff to sign the Transfer; and (iv) the payment of the stamp duty in order to register the Transfer in her name;

(c) the predominant purpose of both the defendants was to cause harm to the plaintiff by procuring her to make an *inter vivos* gift to the second defendant; and

(d) the plaintiff signed the Transfer without any consideration, but "BY WAY OF GIFT", and thereby suffered the loss of the Property, which was her only property estimated to be valued between $7.5m and $7.8m.

14 Additionally, the plaintiff sought to rely on several bases to reverse the Transfer. First, she sought to set aside the Transfer on the bases of: (a) total lack of consideration; (b) mistake; (c) unconscionability; and (d) undue influence.[24] Second, she argued that she was entitled to restitution of the Property under unjust enrichment by reversing the Transfer from the second defendant to her.[25] Third, she argued that she was entitled to appropriate rectification of the land-register under s 160 of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"), paragraph 14 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed), and/or the inherent jurisdiction of the court.[26]

15 Lastly, the plaintiff also claimed against the first defendant in her capacity as the administratrix of the estate of Mr Alan Wong, for the sum of $13,411.41 which the plaintiff argued that the first defendant had wrongfully withdrawn from one HDK-WCF Joint Savings Account with the Bank of China

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[24] PCS at paras 210–223.

[25] PCS at paras 232–233.

[26] PCS at paras 234–236.

("the Bank Account") held between Mr Alan Wong and the plaintiff.[27] As I will elaborate on below, the first defendant did not contest this claim.

The defendants

16 The defendants provided a different version of events. The defendants first argued that the plaintiff had the mental capacity to execute the Transfer.[28] They also submitted that the plaintiff held the Property on trust for HTN's Family, in line with the intentions of the plaintiff's father, Mr HKM, who had purchased the Property. They also argued that the plaintiff had, throughout her conduct over the years (including during the execution of the Transfer), always shown at all material times that she recognised HTN's Family as the true beneficial owners of the Property, and that she wanted to transfer the legal ownership of the Property to HTN's Family in the course of her lifetime. The defendants argued in any event that the plaintiff, intended, when she signed the Transfer, to make an *inter vivos* transfer of the legal ownership of the Property to the second defendant. Furthermore, it was averred that the plaintiff had, at all material times, the benefit of independent legal advice, received explanation of the documents which she signed, and was fully aware of the nature, effect, and consequences of the Transfer, which was to transfer the title of the Property to the second defendant.[29]

17 In essence, the defendants argued that the plaintiff was neither a simple nor gullible lady who had been deceived into transferring her only major asset to a relative, and who had no choice but to commence the present litigation to

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27 PCS at 3.

28 DCS at paras 31–52.

29 DCS at para 5.

regain ownership of the Property.[30] Instead of being someone who could be easily pressured into signing documents against her will, the defendants argued that the evidence revealed that the plaintiff was someone who had a mind of her own, and who could not be asked to do something against her will.[31] The defendants also submitted that it was the Attorneys who were the masterminds in bringing these proceedings and that they were involved at every step of the matter and gave instructions to the plaintiff's solicitors.[32]

18 The defendants also counterclaimed, on the basis of proprietary estoppel, for expenses they had incurred based on their reasonable expectation and/or belief that they were the true beneficial owners of the Property in the event that the plaintiff was entitled to her claim.[33] They argued that the plaintiff had represented that HTN's Family, of which the defendants are part, was the true beneficial owner of the Property and that HTN's Family, and the defendants had in reliance on this representation incurred significant costs in connection with the Property.[34]

The issues determined

19 Considering the parties' arguments, the following issues arose for my determination:

(a) whether the Transfer should be set aside and, if so, on what basis;

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30 DCS at paras 7–8.

31 DCS at para 9.

32 DCS at paras 317–318.

33 DCS at para 389.

34 DCS at paras 392–393.

(b) whether the plaintiff was entitled to damages from the defendants; and

(c) whether, in the event that the Transfer was invalid, the defendants were entitled to succeed in their counterclaim.

The Transfer was set aside

20 I turn first to the question of whether the Transfer should be set aside, and, if so, on what basis. I found that while the plaintiff had mental capacity at the time of the Transfer, the Transfer was set aside for mistake as the plaintiff did not think that she was making an *inter vivos* gift of the Property to the second defendant when she executed the Transfer. I therefore ordered the cancellation of the registration of the Transfer and the rectification of the land-register to reflect the plaintiff's ownership of the Property.

The plaintiff possessed mental capacity at the time of the Transfer

21 I turn first to the factual issue concerning the medical condition of the plaintiff at the time when the Transfer was executed, in relation to which a considerable amount of evidence was adduced at trial. While I accepted that the plaintiff was suffering from various ailments and conditions, she did not display such weakness from these that she was helpless in her dealings. Indeed, I found that she did not suffer from a mental impairment such that the Transfer would be set aside on this basis.

22 First, her actions in the period proximate to the time when the Transfer was executed strongly suggested that she was not suffering from a mental impairment at the time of the Transfer. In this regard, the defendants adduced in evidence records from Singapore General Hospital ("SGH") during the

plaintiff's hospitalisation from 25 August 2016 to 1 September 2016, and records of the plaintiff's review at SGH on 21 December 2016.

23 During her hospitalisation, the plaintiff gave her consent in several instances which were documented. Evidence was tendered as to the plaintiff's signing of consent forms for: admission, oesophago gastro-guodenoscopy, colonoscopy, sedation, and transfusion of blood and blood products.[35] These consent forms were recorded by at least three doctors, and I was persuaded by the explanation provided at trial by Dr Lim Kim Wei ("Dr Lim") from SGH that the doctors would not have allowed the plaintiff to sign the consent forms if they did not deem her to have the requisite mental capacity to give informed consent.[36] I also agreed with the defendants that those doctors also had to ensure that the plaintiff received and understood sufficient information in order for her to give informed consent to the various processes and procedures.[37] In fact, it was confirmed by Dr Lim that the plaintiff could demonstrably understand, retain, and use information to make decisions and communicate them in a coherent manner.[38] The fact that the plaintiff could consent meaningfully to such medical procedures during this period strongly pointed to the inference that she was not so helpless as to be lacking in mental capacity when she executed the Transfer.

24 When the plaintiff went back to SGH for a review on 21 December 2016, it was recorded in the NUR Ambulatory Assessment Checklist SGH, by one Ms Diana Muszalifah Bte Mustafa who was the "Enrolled Nurse", that the

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35 Agreed Bundle of Documents (vol 2) at p 819, 824, 828, 832 and 859.

36 NE dated 9 May 2022 at p 12 lines 1–12.

37 DCS at para 62; NE dated 9 May 2022 p 10 lines 4–16.

38 NE dated 9 May 2022 at p 22 lines 8–12.

plaintiff's mental status was "Rational", her functional impairment was "Nil", and that she had no "Altered Mental State".[39] In a similar vein, it was also recorded that the plaintiff received "instruction for procedure and bowel prep [*sic*]" and that she "Verbalised Understanding".[40] According to Dr Kua Ee Hock ("Dr Kua"), SGH nurses would be trained to recognise signs of cognitive impairment and to call for a specialist if there was any cause for concern. No concerns were raised in that regard. Accordingly, the proper inference to draw was that the plaintiff was not suffering from any mental impairment at the time of the Transfer, which was close in time to her hospitalisation from 25 August 2016 to 1 September 2016, and her subsequent review at SGH on 21 December 2016.

25 Second, I gave some, albeit limited, weight to the cognitive tests administered on the plaintiff by doctors in 2020 and 2021. While these tests were administered close to four years after the Transfer was executed, I found them to be of relevance to the plausibility of the plaintiff suffering from a mental impairment at the time of the Transfer. It was not in dispute that the plaintiff had mental capacity by the time of the trial. In this regard, five cognitive tests were administered on her between 2020 and 2021. Four of these tests indicated that the plaintiff was cognitively normal.[41] While one test, the Mini-Mental State Examination, administered by Dr Lim Yun Chin ("Dr Lim YC") on 2 November 2020 led Dr Lim YC to opine that the plaintiff had "mild cognitive impairment", he nevertheless concluded that the plaintiff had mental capacity in respect of her personal welfare, property, and affairs to make a Lasting Power of Attorney and a Power of Attorney, and that she had testamentary capacity and capacity to

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39 Agreed Core Bundle ("ACB") at p 348.

40 ACB at p 350.

41 DCS at para 72.

litigate.[42] These reports further supported the plausibility that the plaintiff was free of mental impairment in 2016 when she executed the Transfer.

26 Third, I found that the plaintiff generally understood the questions that were put to her during trial, and also remembered the questions that were posed to her in the earlier parts of trial. This was evident during her re-examination at trial in 2022:[43]

> Q Mdm Ho, yesterday you were asked a question about where your father and you celebrated a meal at a restaurant after purchase of a property. You remember that question?
>
> A Yes, I remember.
>
> Q So my question is, can you tell this Court which was the property that was purchased for which the meal was celebrated?
>
> A Yes, the celebration was for the purchase of [the Property].
>
> Q Right. Now earlier today, you were asked a series of questions about, you know, when you fainted and then you're admitted to the Singapore General Hospital in August 2016, you remember that?
>
> A Yes.
>
> Q Right. And then you were asked a question about a month before that, you went to see the doctor at Bendemeer Clinic who told you you had lack of blood. You remember those---that question?
>
> A Was said---it was said.
>
> Q Okay, my question, Mdm Ho, is that can you recall why did you had to go to that Bendemeer Clinic about a month before you were warded in Singapore General Hospital?

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42 AEIC of Dr Lim Yun Chin dated 25 January 2022 at p 10.

43 NE dated 6 May 2022 at p 50 lines 7–26.

> A Well, I go to the clinic to see the doctor even when I fell unwell. The clinic was nearby. I visited the clinic because it was nearby.

The above exchange between the plaintiff and Mr Ranvir Kumar Singh ("Mr Singh") showed that the plaintiff was able to remember significant questions that were posed to her a day ago and, in addition, was able to provide meaningful responses to them. This confirmed the earlier conclusions by doctors administering the cognitive tests that the plaintiff was not mentally impaired during the period between 2020 and 2022. If the plaintiff truly suffered from significant mental impairment at the time when she executed the Transfer in 2016, it was inexplicable that her condition would have improved to such an extent by 2022. Indeed, the plaintiff had provided no explanation for why this would have been a plausible turn of events. Accordingly, I was not persuaded that the plaintiff had lacked mental capacity when she signed the Transfer.[44]

The Transfer was set aside for mistake

27 Nevertheless, I set aside the Transfer on the ground of mistake. In my judgment, the plaintiff was, at the time of the Transfer, under a mistaken belief as to the legal effect of the Transfer and it was unconscionable to deny relief.

The plaintiff did not intend to make an inter vivos *gift of the Property to the second defendant*

28 In my judgment, it was implausible that the plaintiff intended to make an *inter vivos* gift of the Property to the second defendant through the Transfer; rather, I found that she had intended to make a testamentary gift of the Property to the second defendant. This was for two reasons. First, finding that the plaintiff intended to make an *inter vivos* gift would have been inconsistent with the

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[44] Reply and Defence to Counterclaim (Amendment No 2) at para 24(5).

2016 Will that the plaintiff executed, which expressed the plaintiff's intention for the Property to be a testamentary gift. Second, it was likely that the plaintiff would have misunderstood the effect of the Transfer given the lack of clarity in the explanations provided to her in that regard.

29 To begin with, it was implausible that the plaintiff intended to make an *inter vivos* gift of the Property given that she executed the 2016 Will on the same day of the Transfer, which instead bequeathed the Property to the second defendant upon the plaintiff's death. Clause 6 of the 2016 Will provided:[45]

> 6. I **GIVE DEVISE AND BEQUEATH** all my movable and immovable property whatsoever and wheresoever situate (including any property over which I may have a general power of appointment and disposition by will) **UPON TRUST** to my Trustee for the following: -
>
> …
>
> (2) to hold and transfer all my rights, title and interests in [the Property] to my grand-niece, **WONG CAI JUAN** [*ie*, the second defendant] … absolutely;
>
> **PROVIDED ALWAYS THAT** in the event if she predeceases me or does not survive me for at least thirty (30) days, then her share shall accrue to **WONG CAI LING** …
>
> [emphasis in original]

In this regard, Mr David Liew ("Mr Liew"), the lawyer who advised the plaintiff in relation to the Transfer and the 2016 Will,[46] testified that he had gone through the 2016 Will line-by-line with the plaintiff and ensured that she understood its contents.[47] It was significant that the defendants did not dispute this.

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45 ACB at p 84.

46 DCS at para 15.

47 AEIC of David Liew Tuck Yin dated 8 March 2022 at para 27(b).

30 Yet, if it were accepted that the plaintiff knew that the Property would be bequeathed to the second defendant as a testamentary gift, it would be very, very odd, and peculiar, to accept the defendants' contentions that the plaintiff knew that she was making an *inter vivos* gift through the Transfer. This would have entirely negated the effect of clause 6 of the 2016 Will and made it redundant. Indeed, it was more likely than not that the plaintiff had intended to make a testamentary gift of the Property to the second defendant, and hence did not understand the nature of the Transfer when she executed it.

31 This misunderstanding on the part of the plaintiff was plausibly due to Mr Liew's advice to the plaintiff that her signing of the Transfer would *not* mean that her ownership was "taken away". Given this statement, it was very likely that she understood it to mean that the gift of the Property to the second defendant would only take effect after her death.

32 To be fair to Mr Liew, while the substance of his evidence was that he had advised the plaintiff that the Transfer would mean that ownership of the Property would pass to the second defendant while the plaintiff was still alive,[48] there were serious doubts as to whether he had explained this to the plaintiff in a manner that was clear enough for the plaintiff to understand. These doubts were raised by the lack of clarity in Mr Liew's answers during cross-examination. When asked to describe in court how he had explained the effect of the Transfer to the plaintiff, Mr Liew first said that he had explained to the plaintiff that "it doesn't mean that once [the plaintiff had] signed the transfer form, automatically the property is gifted away or transferred away from [the plaintiff's] ownership [*sic*]".[49] He subsequently reiterated that the signing of the

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48 NE dated 25 May 2022 at p 20 lines 24–26.

49 NE dated 25 May 2022 at p 57 lines 10–12.

Transfer "[did] not mean that once [the plaintiff] signed the transfers, it mean[t] that straightaway the [P]roper[ty] is given away [*sic*]".[50] To a layperson such as the plaintiff, it was not unlikely that these statements cemented an incorrect perception that the Property would not be gifted to the second defendant while the plaintiff was still alive.

33 Indeed, it was evident during cross-examination that Mr Liew had difficulty clearly articulating his responses to answer the real issue at hand. When asked whether the plaintiff knew that the Transfer had the effect of an *inter vivos* gift, his answers with respect to the timing of the gift appeared to be made in the context of the assessment of stamp duty. In other words, when Mr Liew mentioned that the transfer of ownership was not immediate, he meant that the Transfer could not be registered until the stamp duty had been paid, which was besides the point. Indeed, the exchanges between Mr Singh, counsel for the plaintiff, and Mr Liew illustrated this:

> Q So on this occasion, she's being asked to sign documents which is one is a testamentary gift, and another one which is a lifetime gift. Did it not occur to you to really, you know, get clarity on her intention on these gifts and to make sure that she really wanted to make a lifetime gift to get a deed of gift signed?
>
> A Well, when I went, yes, I did check with her. Because when I met her, I said, "Look, if you are doing, you---your want---if you want to make sure that you can transfer this property to your grandniece while you're still around, alright, first, like I said, you know, you already done your will, you already signed your will. The other thing is we'll do it by way of transfer, by gift. Alright. And this is the purpose of the document, you see." Because it's all tied with that fact that I already explained to her that---I already explained to her earlier. And so at my---if I recall on that day that, "You need the stamp duty to be paid."

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[50] NE dated 25 May 2022 p 57 lines 25–27.

> Q Yes.
>
> A Alright. If there's no stamp duty be paid, then don't bother about---talking about transfer.[51]

Further, in another instance, when pressed about whether he told the plaintiff that she could not revoke the gift once the Transfer was registered, Mr Liew responded:

> Q Yes. My point is quite different, Mr Liew, and I---perhaps I'll suggest to you that you did not tell mis---Mdm Ho that once the transfer is registered, she cannot revoke the gift.
>
> A (No audible answer)
>
> Court: Do you agree or disagree, Mr Liew?
>
> Witness: I disagree. Why I disagree is that I did inform her, "***Once the stamp duty is paid, alright, the transfer can then be registered***. Once it's registered, then your decision has come through."[52]
>
> [emphasis added]

These repeated references to the stamp duty payable before the Transfer could be registered, even when Mr Liew was pressed on the real question of whether he told the plaintiff that the Transfer was an *inter vivos* or testamentary gift, gave rise to serious doubts as to whether Mr Liew was able to explain the effect of the Transfer in a way that the plaintiff could have understood. This was especially since his explanation was given in a mixture of Cantonese and Mandarin. It was more likely than not that there were legal nuances that his translation to the plaintiff did not capture.

34 While there were some instances where Mr Liew testified that the plaintiff had explicitly told him that she wanted to make a gift during her

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51 NE dated 25 May 2022 at p 61 lines 19–31 to p 62 lines 1–2.

52 NE dated 25 May 2022 at p 62 at lines 14–21.

lifetime, I was not persuaded that the plaintiff understood what that entailed. Mr Liew's reference to the plaintiff communicating to him that she was "hop[ing] that she can do this before she passed on"[53] was, in my view, an expression of her intention to make arrangements before her passing so that the second defendant would own the Property *after* she had passed on. This would have explained why she executed the 2016 Will expressly stating that upon the plaintiff's death, the Property would be given to the second defendant. It was more plausible that the plaintiff, untrained in legal technicalities, simply accepted without question that both instruments were necessary to ensure that the second defendant would inherit the Property after her death. Considered together, the Transfer and the 2016 Will reflected the plaintiff's attempt during her lifetime to make provision for how her assets would be distributed after her death. Therefore, I found on a balance of probabilities that when the plaintiff said that she wanted to transfer the Property to the second defendant during her lifetime, she did not understand it to mean that she would lose ownership of the Property during her lifetime.

35 Against this conclusion, the defendants submitted that the plaintiff's account should not be believed as it contained inconsistencies.[54] They pointed out that she was inconsistent as to: (a) where she had signed the Transfer; (b) who else was present when she signed the Transfer; and (c) who handed her the Instrument of Transfer.[55] They relied on Dr Kua's testimony that the plaintiff's inconsistent answers were due to the fact that her memory was affected by the emotional trauma which she experienced by her knowledge that she had triggered a schism between her brother's and her sister's families.

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53 NE dated 25 May 2022 at p 28 at lines 12–13.

54 DCS at para 189.

55 DCS at paras 191–193.

Dr Kua further explained that the plaintiff had in fact intended to make the Transfer but repressed this memory because to reveal this to HTS's Family (with whom she was living) would upset them. Her memory was hence repressed, and she experienced emotional turmoil when trying to recall the events of the day, causing her to give conflicting answers.[56] The defendants submitted in the alternative that if the plaintiff was free from any psychological impediments preventing her from recalling the events of 2 December 2016, the only explanation for her inconsistent statements was that she was lying.[57]

36 However, I did not find these inconsistencies to be fatal to the plaintiff's version of events. The trial was heard in 2022, more than five years after the events of 2 December 2016. Given the plaintiff's advanced age, it was reasonable that she could not fully remember the details of what had happened. What was important, in my view, was that she stuck to the consistent position that she did not intend to make an *inter vivos* gift of the Property to the second defendant. The inconsistencies about where she had signed the Transfer, who else was present, and who handed her the Instrument of Transfer did not contradict the consistent position in her account that she had no intention of making an *inter vivos* gift.

37 Lastly, as for the defendants' contention that the plaintiff's evidence should not be regarded as being independently given as the Attorneys were the masterminds behind this litigation,[58] I did not think that the fact of the Attorneys' heavy involvement in this litigation necessarily meant that the plaintiff's evidence was not independent. In my view, it was telling that the

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56 DCS at para 196.

57 DCS at paras 207–209.

58 DCS at para 326.

plaintiff had simply admitted that it was *her view* that the Property should be passed on to the family of Mr HTS, who was the father of the Attorneys.[59] This showed that the plaintiff's bringing of this suit was motivated by her own reasons and that she was not merely acting on the wishes of the Attorneys.

38 Accordingly, I found that the plaintiff was under the mistaken belief that she was making a testamentary gift, and not an *inter vivos* gift, when she executed the Transfer. There was also no sufficient reason to doubt her credibility in this regard.

The plaintiff did not hold the Property on trust for HTN's Family nor did she regard herself as doing so

39 An argument raised by the defendants was that the plaintiff had held the Property on trust for HTN's Family, and her actions on 2 December 2016 served to "return" the Property to its true owners.[60] However, I found that there was no basis for the assertion that the plaintiff believed the Property to be held on trust for the benefit of HTN's Family or that she intended to make an *inter vivos* gift through the Transfer pursuant to the alleged trust arrangement.

40 The evidence relied upon by the defendants fell short: there was inadequate evidence to show any acceptance or recognition by the plaintiff that she held the Property on trust for HTN's Family. To the contrary, the purported effect of the Transfer and the 2016 Will contradicted the trust that was pleaded by the defendants. The Transfer and the 2016 Will would have only benefitted the second defendant. However, as the plaintiff correctly pointed out, assuming that she was holding the Property on trust for HTN's Family, then it was

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59 NE dated 6 May 2022 at p 12 lines 27–32.

60 DCS at para 12.

inexplicable that the plaintiff did not also transfer the ownership of the Property to the other members of HTN's Family.[61] The inference to be drawn was therefore that she did not regard herself as holding the Property on trust for HTN's Family.

41 The defendants' assertion that the Property was held by the plaintiff on trust for HTN's Family on the behest of the plaintiff's father (*ie*, Mr HKM) was also unsupported by evidence. Mdm HTN had passed away,[62] and there was no contemporaneous evidence nor documentary evidence to support the assertion that a trust of the Property was created for her family: Mr HKM and Mdm HTN's husband Mr Wong Kai Swee had of course passed away as well.[63] Accordingly, there was no direct evidence from the parties who allegedly came up with the arrangement to prove the alleged trust.

42 The defendants also argued that the plaintiff had all along evinced an intention to benefit HTN's Family with the Property and that this intention had been set out in three separate wills, *ie*, a will executed in 2003 ("the 2003 Will"), the 2013 Will, and the 2016 Will.[64] As with my earlier observations in relation to the 2016 Will (at [29]–[30] above), I did not find that these wills evinced any intention of the plaintiff to make an *inter vivos* gift as opposed to a testamentary gift.

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61 PCS at para 193.

62 PCS at para 20.

63 PCS at paras 4 and 20.

64 DCS at para 99.

43 To begin with, the defendants could not find a copy of the 2003 Will[65] but instead relied on the two other wills. The 2013 Will provided that all of the plaintiff's real and personal property including but not limited to the Property would be given to her trustees (*ie*, the second defendant's sister Wong Cai Ting ("WCT"), or if WCT did not survive the plaintiff, the second defendant) upon trust, and after payment thereout of her debts, funeral and testamentary expenses and estate duties, the balance would be distributed to Mr Alan Wong, the first defendant, the second defendant, and the second defendant's two sisters.[66] And, as mentioned above (at [29]), the 2016 Will bequeathed the Property to the second defendant upon the plaintiff's death. However, this did not show that the plaintiff intended to transfer the ownership of the Property *in her lifetime*. In fact, it clearly showed the opposite: that she intended for those beneficiaries to inherit the Property after her death. If she wanted to make an *inter vivos* gift of the Property, she could have done so through the appropriate legal instrument, instead of executing the three wills.

44 In so far as the defendants suggested that the plaintiff did not execute the proper legal instrument to make an *inter vivos* transfer between 2003 and 2016 because she was concerned with the stamp duty payable, this in fact further supported the conclusion that the plaintiff did *not* intend to make an *inter vivos* gift for this reason and that, instead, she intended to bequeath the Property as a testamentary gift. There was no convincing reason provided as to why, in 2016, she would have changed her mind. Though not poor,[67] she was an elderly worker at a flower shop when she signed the documents on 2 December 2016,[68] and

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65 DCS at para 101.

66 DCS at para 102; ACB at p 80.

67 DCS at para 376.

68 DCS at para 90.

there was no evidence that she had reached an agreement with the defendants, or the rest of HTN's Family, that she would be indemnified or reimbursed by the latter in respect of the stamp duty payable. Accordingly, I did not find that it would have been likely that the plaintiff understood that she was making an *inter vivos* gift when she signed the Transfer pursuant to any alleged trust arrangement.

45 The defendants also submitted that the fact that the plaintiff never stayed in the Property, that various members of HTN's Family stayed in the Property instead, HTN's Family had been paying for the outgoings of the Property, and that the certificate of title of the Property was kept not with the plaintiff but in the Property itself, showed that the Property was held on trust by the plaintiff for HTN's Family.[69] However, I did not think that those were strongly probative of the defendants' assertions. It could very well be that the plaintiff was simply content with permitting HTN's Family to stay in the Property as long as they paid for the outgoings of the Property. It did not follow from these that the plaintiff was holding the Property on trust, or that she was willing to cede ownership of the Property during her lifetime to HTN's Family. These facts only went as far as to show that the plaintiff was not active in managing the affairs of the Property, and nothing more.

46 The defendant also made much of the relationship between the plaintiff and HTN's Family.[70] However, I did not think that was a strong factor pointing towards the plaintiff's intention to make an *inter vivos* gift to the second defendant in light of the other evidence suggesting otherwise.

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69 DCS at para 126.

70 DCS at para 132.

47 For the reasons expressed above, I found that the plaintiff did not hold, nor did she regard herself as holding the Property on trust for HTN's Family.

The legal effect of the plaintiff's mistake

48 The legal effect of the plaintiff's mistake was that the Transfer was set aside. In this regard, the applicable test was set out by the Court of Appeal in *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM*") at [90]. The court's equitable jurisdiction to set aside voluntary dispositions on the ground of mistake is exercisable when there was (a) a causative mistake, as to either the legal character of the transaction or a matter of fact or law that was basic to the transaction (b) that was of such gravity that it would be unconscionable to refuse relief. In this regard, the Court of Appeal in *BOM* endorsed the principles expressed in the judgment of Lord Walker of Gestingthorpe in *Pitt v Holt* [2013] 2 AC 108 ("*Pitt*"), which can be summarised as follows:

> (a) a causative mistake is to be distinguished from mere ignorance, inadvertence, and misprediction of a future event. That notwithstanding, forgetfulness, inadvertence or ignorance may *lead* to a false belief or assumption that constitutes a mistake upon which a voluntary disposition could be set aside. The mistake can also arise from carelessness, unless it is shown that the person making the voluntary disposition deliberately ran the risk of being wrong, or the facts are such that he must be taken to have run the risk of being wrong. Additionally, there is no requirement that the beneficiary of the disposition must have been aware of the mistake (*Pitt* at [104]–[105] and [114]); and
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> (b) the mistake must be sufficiently grave such that it would be unjust, unfair or unconscionable for the court to refuse relief. To that end, the court must closely examine the facts, determine the

circumstances of the mistake, consider its centrality to the transaction in question, and evaluate the seriousness of its consequences to the person who made the voluntary disposition (*Pitt* at [126] and [128]).

49 The first element of a causative mistake was made out: as explained above (at [28]–[38]), the plaintiff was under a mistaken belief as to the legal effect of the Transfer. She did not understand that she was making an *inter vivos* gift to the second defendant; indeed, the circumstances suggested that she had intended to make a testamentary gift instead. For completeness, I found that the plaintiff was positively under a mistaken belief and that this case was distinguishable from the cases of mere ignorance, inadvertence, and misprediction of a future event. I also did not find, nor was there any allegation that the plaintiff deliberately ran the risk of being wrong, or the facts were as such that she must have been taken to run the risk of being wrong.

50 As for the question of whether the mistake was of such gravity that it would be unconscionable to refuse relief, I was readily satisfied that this was so. The plaintiff was not highly educated, elderly, and while the Instrument of Transfer was supposedly explained to her in Cantonese and Mandarin, there were serious doubts about whether she could meaningfully understand the legal technicalities associated with such a document. This mistake was central to the Transfer as it went towards the very nature of the transaction. The mistake resulted in the plaintiff losing ownership of the Property, which was her only major asset and which was worth $7.5m to $7.8m. In this respect, the present case is analogous to *BOM*, where the Court of Appeal granted relief under this stage. The court regarded it relevant that the deed of trust that the husband in that case executed had a completely different legal effect from what the husband thought it had, and the result was that he was completely divested of his assets because of his mistake. It was therefore clear to the Court of Appeal that the

centrality of the husband's mistake to the execution of the deed of trust and the seriousness of its consequences rendered the mistake sufficiently grave to warrant the setting aside of the deed of trust. Similarly, in the present case, it was unconscionable to refuse relief, and I so ordered the Transfer to be set aside.

Rectification of the land-register was ordered

51 In light of my finding that the Transfer should be set aside, I ordered the rectification of the land-register pursuant to ss 160(1)(*b*) and 160(2) of the LTA. Those provisions state:

> **Rectification of land-register by court**
>
> **160.**—(1) Subject to subsection (2), the court may order rectification of the land-register by directing that any registration be cancelled or amended in any of the following cases:
>
> …
>
> (*b*) where the court is satisfied that any registration or notification of an instrument has been obtained through fraud, omission or mistake;
>
> …
>
> (2) The land-register must not be rectified so as to affect the registered estate or interest of a proprietor who is in possession unless that proprietor is a party or privy to the omission, fraud or mistake in consequence of which the rectification is sought, or has caused that omission, fraud or mistake or substantially contributed thereto by that proprietor's act, neglect or default.

52 From these provisions, there are two cumulative requirements for the rectification of the land-register under ss 160(1)(*b*) and 160(2) of the LTA. First, the registration or notification of any instrument must have been obtained through fraud, omission, or mistake. Second, the proprietor who is in possession must be a party or privy to the omission, fraud, or mistake in consequence of which the rectification is sought, or has caused that omission, fraud or mistake or substantially contributed thereto by that proprietor's act, neglect, or default.

53 Since it had been established that the plaintiff executed the Transfer upon the mistaken belief that she was not making an *inter vivos* gift but a testamentary one, the question was whether the second defendant, who became the sole proprietor after the Transfer, fell within the ambit of the second requirement. In my judgment, this was the case. The second defendant was privy to the plaintiff's mistake as she, together with the first defendant, would have been apprised as to the legal effect of the Transfer, on their own case that they had discussions with the plaintiff about the Transfer.[71]

54 Accordingly, I found that the requirements of ss 160(1)(*b*) and 160(2) of the LTA were met, and I ordered the cancellation of the registration of the Transfer and the rectification of the land-register to reflect the plaintiff's ownership of the Property.

The other vitiating factors which the plaintiff relied on were not made out

55 Given that the Transfer was set aside on the ground of mistake, it was unnecessary for me to consider whether the other grounds relied upon by the plaintiff to set aside the Transfer were made out. Nevertheless, I will briefly explain why these grounds were not made out.

56 First, the plaintiff's contention that the Transfer should be set aside as it was made without consideration fell away in light of my earlier finding that the plaintiff did not lack donative intent; instead, she was simply under a misunderstanding as to the timing of the Transfer. Thus, she still intended to make a *gift* (albeit a testamentary one), and the requirement of consideration was therefore irrelevant.

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71 DCS at para 162.

57 Second, the plaintiff could not successfully rely on the doctrine of undue influence as there was insufficient proof that there was such actual or presumed influence by the defendants on the plaintiff that would have triggered the application of this doctrine, following the two categories set out by the Court of Appeal in *BOM* [101]. There was no evidence of actual influence by the defendants, and it is worth noting in this regard that the plaintiff only provided a bare assertion that she had signed many documents provided to her by the first defendant and Mr Alan Wong without knowing their contents.[72] Even if it were taken as true, on the plaintiff's contentions, that the first defendant had assisted the plaintiff with the preparation of the plaintiff's 2016 Will and with her application for a replacement certificate of title in respect of the Property, mere assistance alone without more cannot constitute undue influence. More must be provided in evidence to show that the person's free will was impaired in some manner (see *BOM* at [106]). It was also clear that presumed undue influence could not be established as the plaintiff's relationship with the defendants was not such as to give rise to that presumption.

58 Lastly, as against the plaintiff's submission, unconscionability was not made out as a ground that would vitiate the Transfer. As the Court of Appeal held in *BOM*, the plaintiff had to show that she was suffering from an infirmity that the other party exploited in procuring the transaction (at [142]). However, as I had found (at [22]), while I accepted that the plaintiff was suffering from various ailments and conditions, she did not display such weakness from these that she was helpless in her dealings. She was still very much capable of making her own decisions. Accordingly, there was no need to require the defendants to show that the Transfer was fair, just, and reasonable (see *BOM* at [142]).

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[72] PCS at para 222.

The other claims by the plaintiff

The Bank Account claim

59 I turn now to the other claims made by the plaintiff. It is apposite to first deal with the claim against the first defendant in her capacity as the administratrix of the estate of Mr Alan Wong, for the sum of $13,411.41. This was the sum standing in the Bank Account as of the date of Mr Alan Wong's death. The Bank Account was in the joint names of Mr Alan Wong and the plaintiff.

60 The first defendant confirmed in her affidavit in evidence-in-chief,[73] as well as at trial,[74] that she was not contesting this claim. Indeed, the plaintiff correctly suggested what remained to be done for that claim was to enter judgment in favour of the plaintiff for the first defendant to make payment.[75] I therefore awarded the sum of $13,411 to the plaintiff, being the amount claimed rounded down the nearest whole number.

Conspiracy

61 However, I found that the plaintiff's other claims were not made out. Beginning with the plaintiff's claim for both unlawful means and lawful means conspiracy, the relevant elements were expressed in the Court of Appeal decisions of *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112] and *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [187].

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73 AEIC of Chan Wai Leen at para 81.

74 NE dated 4 May 2022 at p 3 lines 16–19.

75 PCS at para 3.

62 To establish a claim for unlawful means conspiracy, the following must be proved: (a) two or more persons combined to do certain acts; (b) the conspirators intended to cause damage or injury to the plaintiff by those acts; (c) the acts were unlawful (including intentional acts that are tortious); (d) the acts were performed in furtherance of the agreement; and (e) the acts caused loss. These elements largely apply to a claim for lawful means conspiracy as well, save that a plaintiff must prove that the defendant(s) had a higher requisite mental state – that the predominant purpose of the alleged conspirators must be to cause damage or injury to the plaintiff (see the High Court decision of *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2023] SGHC 243 ("*Axis Megalink*") at [137]).

63 First, as regards the claim in unlawful means conspiracy, central to the present case was the question of whether the defendants even intended to cause damage or injury to the plaintiff. In this respect, the plaintiff had to show that the unlawful means and the conspiracy were "targeted or directed" at the plaintiff. This meant that damage or injury to the plaintiff had been intended as either a means to an end or an end in itself. It was not sufficient that harm to the plaintiff would be a likely, or probably or even inevitable consequence of the defendants' alleged conduct. Lesser states of mind, such as an appreciation that a course of conduct would inevitably harm the plaintiff, would "not amount to an intention to injure, although it may be a factor supporting an inference of intention on the factual circumstances of the case" (see *EFT Holdings* at [101] and *Axis Megalink* at [135]).

64 In my judgment, this element was not made out. The plaintiff simply asserted that "[t]he predominant purpose of both the defendants was to cause harm to the plaintiff by procuring her to make an *inter vivos* gift of [the

Property] to the second defendant".[76] However, nothing was argued as to whether damage or injury to the plaintiff had been intended as a means to an end or an end in itself. From the sole fact of the Transfer, it could at best be proved that the intention of the defendants in procuring the Transfer was to benefit the second defendant, even as it was appreciated that this would inevitably harm the plaintiff. As a result, I did not find that the requisite mental element of unlawful means conspiracy was made out.

65 Given this conclusion, it also followed that lawful means conspiracy, which requires a higher requisite mental state, was not made out. I therefore dismissed the claims in unlawful and lawful means conspiracy.

Declaration as to resulting and/or constructive trust

66 The plaintiff also sought a declaration that the second defendant held the Property on resulting and/or constructive trust for the benefit of the plaintiff.[77] However, even if the second defendant was a resulting and/or constructive trustee, such declaration would have been unnecessary, and I accordingly declined to grant it.

67 As the High Court observed in *Kok Zhen Yen and another v Beth Candice Wu* [2023] SGHC 126 ("*Kok Zhen Yen*"), a declaration is a remedy by which a court simply pronounces on the rights or even the remedies of the parties, even if such declaration is implicit in all remedies. They may aid in the resolution of a dispute or prevent one from arising, especially if parties in a dispute know what their legal positions are (at [77]). While the High Court has the power to grant all reliefs and remedies at law or in equity (see paragraph 14

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[76] PCS at para 208(3).

[77] PCS at para 224.

of the First Schedule to the SCJA), including a declaration, "the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making" (see *Kok Zhen Yen* at [78], citing the Privy Council decision of *Ikebife Ibeneweka v Peter Egbuna* [1964] 1 WLR 219 at 225, *per* Viscount Radcliffe).

68 It was unnecessary to grant a declaration in the present case as I had held that the Transfer could be set aside and that the land-register would be rectified. After the land-register is rectified, the issue of whether the second defendant held the Property on resulting and/or constructive trust would become academic as the land-register would reflect the plaintiff's legal ownership over the Property.

Unjust enrichment

69 Finally, I turn to the plaintiff's claim under unjust enrichment. The plaintiff argued that she was entitled to "restitution for the unjust enrichment by reversal of the transfer of [the Property] from the second defendant to the plaintiff".[78] This evinced the plaintiff's understanding of "restitution" as being a proprietary remedy that would "revers[e]" the Transfer.

70 However, this claim was misconceived in as much as it was premised on the availability of proprietary remedies in a claim for unjust enrichment. It is clear from the Court of Appeal decision of *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben*") that a proprietary claim is separate and distinct from a claim in unjust enrichment, which is a personal

[78] PCS at para 223.

claim giving rise to the remedy of restitution in monetary terms. Indeed, an important question that the Court of Appeal commented on in *Esben* was whether the availability of a proprietary claim *precluded* a claim in unjust enrichment in cases where lack of consent is relied upon as an unjust factor, the concern being 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 (see *Esben* at [251(c)(iii)]).

71 The distinction between a proprietary claim and a personal claim in unjust enrichment was also explicitly endorsed in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie*"), where the Court of Appeal, disagreeing with argument that the seminal House of Lords decision of *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 ("*Lipkin Gorman*") was concerned with a proprietary restitutionary claim and not a claim in unjust enrichment, observed that Lord Goff in *Lipkin Gorman* was "evidently alive to the distinction between proprietary restitutionary claims and personal claims for unjust enrichment" (see *Alwie* at [119]).

72 I pause to observe that this issue has been subject to considerable debate elsewhere. On one view, it has been argued that it is more appropriate to classify proprietary claims under the law of wrongs, rather than the law of unjust enrichment (see David Salmons, "The Availability of Proprietary Restitution in Cases of Mistaken Payments" (2015) 74(3) CLJ 534). On the other side of the debate, the Supreme Court of Canada in *Kerr v Baranow* [2011] 1 SCR 269 has taken the position that proprietary remedies are available to claims in unjust enrichment. This aligns with the view advanced by the late Professor Peter Birks in "Restitution and Resulting Trusts" in *Equity and Contemporary Legal Developments* (S Goldstein ed) (Hebrew University, 1992) at p 368, who argued

that the resulting trust should play a wider role in an unjust enrichment claim, particularly in cases of mistake and failure of consideration.

73 Professor Birks's view was however rejected by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, who opined that such a position would involve "a distortion of trust principles" (at 709). It would also result in commercial uncertainty as third parties might be negatively impacted if the original recipient becomes insolvent, for the trust assets in question would not be available to the general body of creditors; instead, the plaintiff who has a proprietary claim for unjust enrichment in those trust assets would be able to obtain restitution over third parties who have themselves not been enriched at the expense of such a plaintiff, and indeed have no dealings with him. Moreover, if the assets were transferred pursuant to a valid contract, such a plaintiff would only have personal rights against the original recipient of the assets. There is no reason why he should be better off when an unjust enrichment claim is available when the contract is instead void (at 703–705).

74 Despite the ongoing debate, it is nevertheless clear, from the statements of the Court of Appeal, that the legal position in Singapore leans strongly towards the non-recognition of proprietary remedies for claims in unjust enrichment. The plaintiff's claim in unjust enrichment was therefore a non-starter.

The defendants' counterclaim was not made out

75 I turn now to the defendants' counterclaim, which I did not find were made out.

76 The defendants argued that in the event I found that the plaintiff was entitled to her claim, the defendant ought to be entitled to their counterclaim, on the basis of proprietary estoppel, for expenses that they had incurred based on their reasonable expectation and/or belief that they are the true beneficial owners of the Property.[79]

77 The elements of proprietary estoppel were set out by the Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [56], being: (a) a representation or assurance made to the claimant; (b) reliance on it by the claimant; and (c) detriment to the claimant in consequence of his (reasonable) reliance.

78 The defendants submitted, as regards the first element, that it is well established that silence may amount to a representation and that, for decades, the plaintiff has through her actions intimated to the defendants that HTN's Family were the true beneficial owners of the Property. They contended that the plaintiff "informed" Mr Alan Wong and the first defendant to stay in the Property as their matrimonial home, and always permitted members of HTN's Family to stay in the Property. The defendants also highlighted that the plaintiff left payment of any and all expenses relating to the Property (including property tax which is a tax on ownership of the Property) to HTN's Family and did not involve herself in such matters.[80] In relation to the second and third elements, the defendants submitted that HTN's Family, in reliance of the above

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79 DS at paras 389–390.

80 DCS at para 392.

representation by the plaintiff, incurred significant costs in relation to the Property.[81]

79 I disagreed with that submission. First, while silence may amount to a representation, this finding will not be made so readily and will be assessed by reference to how a reasonable person would view the silence in the circumstances (see the Court of Appeal decision of *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [28]). Here, it did not follow that HTN's Family's occupancy of the Property amounted to a representation that they were the beneficial owners of it. Indeed, people may live in a property for various reasons, including out of the owner's goodwill and beneficence. It cannot be that the mere fact of living in a property, even for a long period, is always evidence of beneficial ownership. Accordingly, I did not on the evidence find that there was a representation by the plaintiff in the substance of what the defendants suggested.

80 The lack of a representation was sufficient for me to dismiss the defendants' counterclaim. However, I agreed with the plaintiff that the defendants have failed to produce sufficient evidence to show (a) which member(s) of HTN's Family paid for those outgoings and expenses; and (b) what the exact quantum of expenses incurred were.[82] As the defendants failed to prove their loss, this meant that the second and third elements of proprietary estoppel (*ie*, detrimental reliance) were not made out either.

81 In the premises, I dismissed the defendants' counterclaim in its entirety.

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81 DCS at para 393.

82 PCS at para 238.

Decision on costs

82 In respect of costs, I fixed costs and ordered that the defendants be jointly and severally liable to the plaintiff for the sum of $360,000 and for disbursements in the sum of $123,019.17, before the addition of Goods and Services Tax ("GST") at the rate of 8% and the usual interest of 5.33% *per annum*. The parties did not dispute that the defendants are liable to pay costs and disbursements to the plaintiffs but disputed over the quantum payable. I will deal with party-to-party costs and reasonable disbursements separately. Thereafter, I will address the issue of the applicable GST rate that was raised by the defendants.

Party-to-party costs

83 As regards the party-to-party costs for which the defendants were liable, the plaintiffs submitted that the sum of $415,500 (excluding GST and interest) would be appropriate,[83] whereas the defendants argued that a much lower sum of $160,000 (excluding GST and interest) should be payable.[84] In my view, the plaintiff was entitled to party-to-party costs of $360,000.

The full costs of the plaintiff's successful claim of $13,411 against the first defendant should be awarded

84 As a preliminary matter, and contrary to the defendants' submissions, I was of the view that the full costs of the plaintiff's successful claim of $13,411 against the first defendant should be awarded, applying the trite principle of costs following the event. Against this conclusion, the defendants argued, relying on *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20,

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[83] Plaintiff's Costs Submissions dated 16 February 2023 ("PCoS") at para 26.

[84] Defendants' Reply Costs Submissions dated 14 March 2023 ("DRCoS") at para 41.

that the defendants had made the plaintiff an Offer to Settle ("OTS"), and that the judgment entered in her favour was not more favourable than the OTS. Therefore, the defendants argued that they should be awarded indemnity costs or that alternatively the plaintiff should not be awarded full costs in respect of her successful claim for $13,411 against the first defendant.[85]

85 However, I saw no reason to depart from the general position in this case. Although the sum offered to the plaintiff in the OTS was $13,411.41, I agreed with the plaintiff that it was more favourable for her to obtain the judgment sum as compared to the OTS. To begin with, O 22A r 9(4)(*a*) of the Rules of Court (2014 Rev Ed) ("ROC 2014") provides that "[a]ny interest awarded in respect of the period before service of the offer to settle is to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle". In this regard, the only term of the OTS offered by the first defendant was the sum of $13,411.41, with the OTS being made three months before the trial. No interest was offered in the OTS. Even if the plaintiff had accepted the OTS, the prevailing interest rate at that time was low and ranged from 0.35% to 1.74% *per annum*.[86] By contrast, I awarded the plaintiff $13,411 plus interest thereon at the rate of 5.33% *per annum* from the date of the writ (*ie*, 30 November 2020) to the date of judgment (*ie*, 30 January 2023), which was about two and a half years of higher interest. It was therefore clear that the judgment sum was more favourable to the plaintiff than the OTS.

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85 Defendants' Costs Submissions dated 2 March 2023 ("DCoS") at paras 3–11.

86 PRCoS at para 8.

The plaintiff's global claim for party-to-party costs was partially granted

86 I turn now to the issue of the quantum of party-to-party costs to be awarded. This was derived from an assessment of the costs of pre-trial, trial, and post-work with reference to Appendix G of the Supreme Court Practice Directions 2013 ("Appendix G").

87 As for pre-trial work, Appendix G provides for costs in the range between $25,000 and $90,000. In the present case, the plaintiff had submitted that she should be entitled to costs of $217,500.[87] While I agreed with the plaintiff that a higher amount was justified because of the extensive pre-trial work required in identifying the various causes of action,[88] assessing the evidence of the various expert witnesses,[89] and preparing the voluminous number of affidavits,[90] this sum nevertheless greatly exceeded the recommended range provided for in Appendix G. I therefore adjusted this figure downwards, considering that the plaintiff's efforts in canvassing the detailed family history of the plaintiff,[91] while tangentially relevant, was not strictly necessary. I also took into account the plaintiff's admission that the sum of $4,000 should be reduced from the overall quantum of the plaintiff's claim for pre-trial costs.[92] In light of these considerations, I awarded $162,000 to the plaintiff as pre-trial costs.

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87 PRCoS at para 30.

88 PCoS at para 16.

89 PCoS at paras 17–18.

90 PCoS at para 22.

91 PCoS at para 20.

92 PRCoS at para 33.

88 Nevertheless, given the moderate to high complexity of this matter, with much evidence going towards the mental capacity of the plaintiff, I was of the view that the party-to-party costs claimed by the plaintiff in respect of trial and post-trial work were reasonable, which were $168,000 and $30,000, and allowed it accordingly. This gave rise to a global figure of $360,000 in respect of party-to-party costs.

89 In this regard, the defendants submitted that the plaintiff should not be awarded more than half her costs.[93] I also did not think that the principles in *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 that were relied upon by the defendants were applicable in the present case. In this regard, the High Court had held that a "Type I Order", which deprives the successful party of the right to recover all or part of his costs from the unsuccessful party, would be justified under O 59 r 6A of the ROC 2014 when (a) the successful party failed to establish a discrete claim or issue which he raised in the litigation; and (b) he thereby unnecessarily or unreasonably protracted or added to the costs or complexity of the litigation.

90 While the defendants contended that the plaintiff's other arguments on undue influence and unconscionability failed, I did not think that these were discrete issues from the issue of mistake on which the plaintiff succeeded. Indeed, while the facts required to establish these issues did not fully overlap with the issue of mistake, there was nevertheless still some overlap, and all these issues could be said to broadly arise from the same factual background. Specifically, I agreed with the plaintiff that the lack of intention on the plaintiff's part to make an *inter vivos* gift to the second defendant would have been a relevant consideration to the issues of undue influence and

93 DRCoS at para 29.

unconscionability, notwithstanding that these vitiating factors were not made out. Furthermore, I did not agree with the defendants that these issues were unnecessarily or unreasonably protracted or added to the costs or complexity of the litigation. In the course of the proceedings, the evidence mainly centred on the mental capacity, and indeed mental state, of the plaintiff when she executed the Transfer and the 2016 Will on 2 December 2016. These were questions that would have to be canvassed in any event to establish the ground of mistake. Accordingly, I did not find any reason to make a "Type I Order" to reduce the costs awarded to the plaintiff.

Reasonable disbursements

91 I turn now to the quantum of reasonable disbursements that were awarded to the plaintiff. The plaintiff submitted that she should be entitled to $132,335.26[94] while the defendants submitted that $73,817.44, being the costs of the medical reports, should be deducted from the claimed sum as the defendants contended that the court did not derive any assistance from the testimony of the various doctors.[95] Alternatively, the defendants submitted that $9,316.09 should be deducted from the claimed sum as they took objection with several aspects of the plaintiff's list of claimed disbursements.[96]

92 I was not persuaded by the defendants' submission that the costs of the medical reports should be deducted from the disbursements awarded. In my view, the medical reports were still tangentially relevant to the issue of mistake on which the plaintiff succeeded. It was helpful, in my view, that the mental state of the plaintiff – including her mental capacity – was ascertained for the

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94 PCoS at p 27.

95 DRCoS at para 45.

96 DRCoS at paras 46–47.

purposes of these proceedings. While I ultimately did not go as far as to find that the plaintiff lacked mental capacity, the finding of mistake was still tangentially relevant to the issue of mental capacity. If the plaintiff lacked mental capacity when she executed the Transfer, then the issue of mistake would not have arisen. It was only after it was found that the plaintiff had mental capacity that I could conclude that the plaintiff was under a mistaken belief when she executed the Transfer. It was for this reason that I regarded the medical reports as being relevant and of assistance to some extent.

93 I was however persuaded by the defendants that certain items of medical expenses claimed by the plaintiff amounting to $9,316.09 should not be awarded. While I do not intend to exhaustively list out the individual items that the defendants took objection with,[97] it suffices for me to say that I agreed with their objections that the medical expenses claimed were irrelevant to the medical reports relied upon in the evidence or that they were incurred for purposes unrelated to the proceedings. There was therefore no basis to award those expenses in the form of disbursements.

94 Accordingly, deducting $9,316.09 from the sum of $132,335.26 originally claimed, I awarded $123,019.17 to the plaintiff as reasonable disbursements.

The applicable rate of interest and GST

95 Finally, I turn to the rate of GST that is applicable to both the party-to-party costs and reasonable disbursements awarded in the present case. I disagreed with the defendants that the applicable rate for some of the items

97 DRCoS at para 46.

should be 7% and not the prevailing rate of 8% at the time of the costs order dated 12 May 2023. The defendants' argument in this regard was that all the work would have been done before 1 January 2023, when the rate of GST was increased from 7% to 8%. However, the date on which the work underlying the claim for reasonable disbursements was actually supplied was irrelevant. What mattered for the purposes of GST was the date on which the costs order was made. This was after 1 January 2023 and hence fell within the higher GST rate of 8% (see, for *eg*, the Court of Appeal's observation in *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455 at [19]).

96 I also awarded the interest at the usual rate of 5.33% *per annum* as there was no reason to depart from the norm.

Conclusion

97 In conclusion, having found that the Transfer was made under a mistake, I ordered the cancellation of the registration of the Transfer as well as the rectification of the land-register to reflect the plaintiff's continued ownership over the Property. I also ordered that the sum of $13,411 be returned to the plaintiff, with interest at 5.33% *per annum* from the date of the writ (*ie*, 30 November 2020) to the date of judgment (*ie*, 30 January 2023). I also ordered the defendants to pay the plaintiff party-to-party costs in the sum of $360,000 and reasonable disbursements in the sum of $123,019.17, with GST at the rate of 8% and the usual interest of 5.33% *per annum*.

98 I further gave liberty to apply in terms of effecting the court's decision in case any further issues were to arise with respect to the land-register.

Aedit Abdullah
Judge of the High Court

Ranvir Kumar Singh (UniLegal LLC) and Ong Eng Tuan Eben (Loh Eben Ong LLP) for the plaintiff;
Ng Hui Min and Mok Zi Cong (Dentons Rodyk & Davidson LLP) for the defendants.