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

[2025] SGHC 7

Originating Claim No 214 of 2023

Between

Che'som Binti Abdullah

… *Claimant*

And

Qurratu Ain Binti Mohamed Yusope

… *Defendant*

JUDGMENT

[Contract — Undue influence — Presumed]

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Che'som bte Abdullah
v
Qurratu Ain bte Mohamed Yusope

[2025] SGHC 7

General Division of the High Court — Originating Claim No 214 of 2023
Valerie Thean J
22–23, 25 October, 17 December 2024

17 January 2025

Valerie Thean J:

Introduction

1 This dispute concerns a property (the "Property") held in the names of the claimant ("Mdm Che'som") and her daughter, the defendant ("Mdm Ain"), as joint tenants. The Property was initially purchased, on 1 March 1996, in the joint names of Mdm Che'som and her husband, Mr Mohamed Yusope Bin Sidik ("Mr Yusope").

2 Subsequently, in 2017, Mdm Che'som and Mr Yusope executed documents at the Housing and Development Board ("HDB") to include Mdm Ain as a joint tenant (the "Transfer"). A housing loan was then obtained from HDB to refinance the Property's mortgage, with Mdm Ain being responsible for the repayments.

3 Mdm Che'som now seeks to set aside or rescind the Transfer and to rectify the land register by removing Mdm Ain as a joint tenant.[1] For the reasons below, I dismiss Mdm Che'som's claim.

Background

4 Mdm Che'som is a 68-year-old widow and has been a housewife since her marriage to Mr Yusope on 9 September 1972.[2] She dropped out of Malay vernacular school around the age of ten,[3] and converses and writes in the Malay language.[4] The late Mr Yusope had been working as a road sweeper for the National Environmental Agency ("NEA") until he ceased employment due to ill health in or around early 2018.[5] Mr Yusope was conversant in Malay and had a limited verbal grasp of English and Chinese dialects by virtue of his interactions at work.[6]

5 Mdm Che'som and Mr Yusope purchased the Property on 1 March 1996 in their joint names at a purchase price of $218,000.[7] Mr Yusope paid upfront a sum of $51,000, while the remainder was financed through an HDB mortgage under their joint names.[8]

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1 Statement of Claim (Amended No. 2) dated 26 September 2024 ("SOC") at pp 22–23.

2 SOC at para 1; Defence (Amendment No. 1) dated 5 July 2024 ("Defence") at para 1.

3 Notes of Evidence ("NE") 23 October 2024 at p 18, lines 19–20.

4 Supplemental Affidavit of Evidence-in-Chief of Che'som Binti Abdullah dated 25 September 2024 ("Che'som AEIC-2") at para 4.

5 SOC at para 3; Defence at para 23.

6 Che'som AEIC-2 at para 8.

7 Che'som AEIC-2 at para 12; Agreed Bundle of Documents ("AB") at p 18.

8 Che'som AEIC-2 at para 12; AB at p 18.

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6 Mdm Che'som and Mr Yusope had four children together. Mdm Ain is their eldest daughter.[9] Mdm Ain is a property agent with some 23 years of experience, and regularly deals with the sale and purchase of HDB flats.[10] When Mr Yusope's health deteriorated in 2016 and he was no longer able to work on a full-time basis, Mr Yusope and Mdm Che'som turned to Mdm Ain for assistance with the outstanding mortgage payments with the view to lowering the mortgage payments.[11] At that time, Mdm Ain was staying in the Property and had been doing so since her second divorce.[12]

7 Subsequently, Mdm Ain applied to HDB to determine her eligibility to take up a housing loan.[13] On 24 January 2017, HDB responded with a letter addressed to Mr Yusope, Mdm Che'som and Mdm Ain (the "First HDB Letter").[14] This letter indicated that Mdm Ain would be able to obtain a loan from HDB for not more than $42,900, to be paid over a repayment period of 22 years and with a monthly instalment of $214 at 2.60% interest per annum.

8 On 18 February 2017, a meeting was held at the HDB Bedok Branch (the "First HDB Meeting").[15] Mdm Che'som, Mr Yusope and Mdm Ain attended the First HDB Meeting,[16] and Mdm Che'som and Mr Yusope signed an Application for Transfer of HDB Flat Ownership ("Transfer Application").

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9 SOC at para 4; Defence at para 4.

10 NE 23 October 2024 at p 20, lines 10–13; p 22, lines 27–29.

11 Che'som AEIC-2 at para 30; NE 23 October 2024 at p 23, lines 2–7; p 24, lines 4–6.

12 Che'som AEIC-2 at para 29; Supplementary Affidavit of Evidence-in-Chief of Qurratu Ain Binti Mohamed Yusope dated 24 September 2024 ("Ain AEIC-2") at para 9.

13 Ain AEIC-2 at para 20.

14 Ain AEIC-2 at para 33, AB at pp 19–22.

15 Ain AEIC-2 at paras 21−22.

16 Che'som AEIC-2 at para 44; Ain AEIC-2 at para 22.

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The Transfer Application was an application to HDB for approval to transfer ownership of the Property from Mdm Che'som and Mr Yusope as joint tenants to Mdm Ain, Mdm Che'som and Mr Yusope as joint tenants.[17] During the First HDB Meeting, an HDB officer explained in Malay the contents of the Transfer Application that Mdm Che'som and Mr Yusope were to sign.[18]

9 On 20 March 2017, HDB sent a second letter to Mr Yusope, Mdm Che'som and Mdm Ain (the "Second HDB Letter").[19] The Second HDB Letter was to inform them that HDB had granted in-principle approval for the transfer of the ownership of the Property.[20] The Second HDB Letter further informed that another meeting would be required to finalise the transfer of ownership, and that HDB would provide further information in about a month's time on the date of the meeting.

10 On 3 May 2017, a second meeting was held at the HDB (the "Second HDB Meeting"). Mdm Che'som, Mr Yusope and Mdm Ain attended the Second HDB Meeting.[21] They signed another set of documents, which comprised the instrument of transfer, the refinanced Mortgage under the names of all three parties, and a Concessionary Stamp Duty Form (the "Completion Documents").[22] Mdm Ain was separately required to sign an application form for the withdrawal of CPF monies under the Public Housing Scheme as well as

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17 AB at pp 23–36.

18 Che'som AEIC-2 at para 45; Ain AEIC-2 at para 22.

19 Che'som AEIC-2 at para 53; Ain AEIC-2 at para 25.

20 AB at pp 37–38.

21 Che'som AEIC-2 at para 59; Ain AEIC-2 at para 25.

22 AB at pp 39–47.

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a Home Protection Scheme Form.[23] As with the First HDB Meeting, an HDB officer explained the contents of the documents that Mdm Che'som and Mr Yusope would be signing.[24]

11 I pause here to note that there appears to be some confusion as to when the documents were signed, although nothing turns on the specific dates. Mdm Che'som's recollection is that documents were signed at both the First HDB Meeting and the Second HDB Meeting.[25] She made reference to the Transfer Application, dated 18 February 2017, as having been signed at the Second HDB Meeting, and the Completion Documents, dated 3 May 2017, as having been signed at the First HDB Meeting.[26] This cannot be right as the dates do not match up. Mdm Ain's recollection, on the other hand, is that no documents were signed at the First HDB Meeting, and that the First HDB Meeting was only meant to inform them that the housing loan had been approved.[27] However, Mdm Ain's recollection does not seem to be entirely accurate as she does not offer any date on which the Transfer Application could have been signed. The Completion Documents must have been signed at the Second HDB Meeting on 3 May 2017.[28] Therefore, rationalising the documents tendered and timeline of events, the Transfer Application was likely to have been signed at the First HDB Meeting.

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23 AB at pp 48–50.

24 Che'som AEIC-2 at paras 60–61; Ain AEIC-2 at paras 27–28.

25 Che'som AEIC-2 at paras 47, 60.

26 Che'som AEIC-2 at paras 50, 60.

27 Ain AEIC-2 at paras 22–24.

28 Affidavit of Neo Sin Ee, Selina ("Selina Affidavit") at paras 6–9.

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Dispute over the Property

12 The marriage of Mr Is Haans, Mdm Che'som's eldest son, failed. He moved back to the Property sometime in early 2018.[29] Mdm Ain remarried on 5 May 2018 to Mr M D Naser Bin Salleh ("Mr Naser"), who moved into the Property.[30] Mr Yusope passed away on 18 September 2018.[31] This sequence of events preceded the family discord over ownership of the Property, the facts surrounding which are disputed by parties.

13 According to Mdm Che'som, she and Mr Yusope only discovered that Mdm Ain had been included as a joint tenant shortly after Mdm Ain had stated her intent to marry Mr Naser.[32] Mr Yusope and Mdm Che'som were concerned that Mr Naser may somehow inherit the Property to the exclusion of the rest of the children.[33] Thus, they enquired with HDB on selling the Property, in view of purchasing a smaller flat for just the two of them to stay and distributing the net proceeds equally to the children.[34] Only then were they informed that they could not sell the Property without Mdm Ain's consent, and that they could not effect any transfer until the minimum occupancy period of five years had lapsed, since Mdm Ain had just been added in as a joint tenant.[35]

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29 Ain AEIC-2 at paras 44–45, NE 22 October 2024 at p 17, lines 17–28.

30 Ain AEIC-2 at para 43, Che'som AEIC-2 at para 66.

31 Che'som AEIC-2 at para 78; Ain AEIC-2 at para 46.

32 Che'som AEIC-2 at para 66.

33 Che'som AEIC-2 at para 69.

34 Che'som AEIC-2 at paras 70–71.

35 Che'som AEIC-2 at para 72.

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14 On or around 18 May 2021, Mdm Che'som informed Mdm Ain of her intention to add Mr Is Haans as a joint tenant of the Property.[36] However, Mdm Ain rejected the proposal and quarrelled with her.[37] Mdm Ain further demanded to rent out the room occupied by Mr Is Haans and half of the room occupied by Mdm Che'som.[38] She refused.[39] After the quarrel, Mdm Ain and Mr Naser moved out of the Property. Mr Is Haans was in his room during the quarrel and only came out to investigate after hearing the commotion.[40]

15 According to Mdm Ain, Mdm Che'som began to repeatedly demand her to agree to a sale of the Property sometime from November 2018, but she refused.[41] Mdm Che'som wanted to sell the Property as Mdm Che'som wanted to remarry a man who already owned an HDB flat, who passed on subsequently.[42] At some point, Mdm Che'som also wanted to include Mr Is Haans' name as a joint tenant.[43] After a quarrel with Mdm Che'som and Mr Is Haans on 17 May 2021, Mdm Ain and Mr Naser left the Property on 18 May 2021 in fear of being physically harmed.[44] Mdm Ain filed a police report on the same day alleging that Mr Is Haans had forced her out of the Property.[45] On 19 May 2021, she applied for a Personal Protection Order against

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36 Che'som AEIC-2 at para 82.

37 Che'som AEIC-2 at para 83.

38 Che'som AEIC-2 at para 84.

39 Che'som AEIC-2 at para 85.

40 Che'som AEIC-2 at para 86.

41 Ain AEIC-2 at para 47.

42 Ain AEIC-2 at para 48.

43 Ain AEIC-2 at para 70.

44 Ain AEIC-2 at para 51.

45 Ain AEIC-2 at para 52.

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Mr Is Haans and a Domestic Exclusion Order, which were not successful.[46] Since then, she has not resided at the Property.[47]

16 Mdm Che'som filed the present action on 19 May 2022.

Parties' cases

17 Mdm Che'som contends that the Transfer, resulting in the addition of Mdm Ain as joint tenant, should be set aside or rescinded, and the land register should be rectified by removing Mdm Ain as a joint tenant.[48] Mdm Che'som advances this case on five grounds: (a) fraudulent misrepresentation;[49] (b) negligent misrepresentation;[50] (c) undue influence;[51] (d) mistake;[52] and (e) *non est factum*.[53]

Mdm Che'som's case

18 Mdm Che'som contends that she and Mr Yusope had approached and thereafter relied on Mdm Ain to handle the transaction.[54] She claims that they had only wanted to reduce the monthly loan payments and had not understood the implications and details of the reduction.[55] Therefore, they assumed

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46 Ain AEIC-2 at para 55.

47 Ain AEIC-2 at para 63.

48 SOC at pp 22–23.

49 SOC at para 46.

50 SOC at paras 53–54.

51 SOC at paras 60–61.

52 SOC at paras 64–65.

53 SOC at para 67.

54 Che'som AEIC-2 at para 30.

55 Affidavit of Evidence-in-Chief of Che'som Binti Abdullah dated 2 November 2023 at para 23 ("Che'som AEIC"); Che'som AEIC-2 at para 28.

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Mdm Ain's assistance would be to appeal to the HDB for a lower mortgage payment without more, given Mdm Ain's experience as a property agent.[56] There was no intention for Mdm Ain to be included as an owner of the Property to achieve this.

19 Mdm Che'som's position is that she did not understand the contents of the Transfer Application and Completion Documents at the time when she signed them.[57] Further, she claims that Mdm Ain was shown both the First HDB Letter and the Second HDB Letter (collectively, the "HDB Letters").[58] In relation to the First HDB Letter, she claims that Mdm Ain had only explained to them that the letter would reduce their monthly housing loan payments.[59] In relation to the Second HDB Letter, she claims that Mdm Ain did not explain the letter's contents to them.[60] According to her, both the First and the Second HDB Meeting were scheduled by Mdm Ain, and Mdm Ain had informed them as to when to attend.[61]

20 Mdm Che'som avers that at the material time during the signing of the Completion Documents, she thought that the documents were only meant to reduce the monthly instalment to $200.[62] When cross-examined on this, she explained that although the HDB officers had gone through and explained the contents of the documents to her in Malay, she did not focus on the explanation

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56 Che'som AEIC-2 at para 28.

57 Che'som AEIC-2 at paras 45–47; paras 61–62.

58 NE 22 October 2024 at p 21, lines 19–25.

59 Che'som AEIC-2 at para 34.

60 Che'som AEIC-2 at para 53.

61 Che'som AEIC-2 at paras 37, 56.

62 NE 23 October 2024 at p 8, lines 7–10.

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as Mr Yusope was having an asthmatic attack.[63] Her attention was on her ailing husband and his ill health.[64] Therefore, despite the HDB officers' explanations, she still did not understand the documents.

Mdm Ain's case

21 Mdm Ain, on the other hand, avers that Mr Yusope and Mdm Che'som had visited the HDB on their own accord on several occasions in the past to discuss the possibility of reducing the monthly instalments, and Mr Yusope had, in the past, refinanced his mortgage instalments without assistance from the children.[65] Further, she claims that HDB had suggested to Mr Yusope and Mdm Che'som that her name could be included to continue with the mortgage payments.[66] She further avers that Mr Yusope had requested for her help to take over the Property to help with the monthly mortgage sometime in 2014 and more recently in 2016, in the absence of Mdm Che'som.[67] Therefore, her case is that Mr Yusope had planned for her to take over the Property[68] and that Mdm Che'som was aware and agreeable to this plan.[69] She did not make any representations to Mr Yusope and Mdm Che'som. It was her father who asked her to assist with the mortgage and she only took steps to ensure that she was able to take an HDB loan to do so.[70]

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63 NE 22 October 2024 at p 35, lines 8–13.

64 NE 22 October 2024 at p 29, lines 1–4.

65 Ain AEIC-2 at paras 10–11.

66 Ain AEIC-2 at para 12.

67 Ain AEIC-2 at para 15–16.

68 Ain AEIC-2 at para 15; NE 23 October 2024 at p 28, lines 29–31.

69 NE 23 October 2024 at p 28, lines 19–24.

70 Ain AEIC-2 at paras 27, 29.

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22 Mdm Ain further argues that Mdm Che'som did not rely on her at all as the HDB Letters were not shown to her.[71] She further contends that it was Mr Yusope and Mdm Che'som who had arranged for the HDB Meetings and who had informed her to attend.[72]

23 Mdm Ain's case is that Mdm Che'som knew that her name was in the Property and that it was intended for her name to be included.[73] She claims that Mdm Che'som understood the explanations that the HDB officers proffered as she did not raise any queries during the First and Second HDB Meetings.[74] Therefore, Mdm Che'som should not be entitled to set aside or rescind the Transfer.

Issues to be determined

24 Having regard to the parties' pleaded cases, three primary issues arise for my determination:

(a) First, whether Mdm Che'som understood what was signed on 3 May 2017 during the Second HDB Meeting. Since the transfer of the ownership of the Property would only be completed upon due execution of the instrument of transfer, Mdm Che'som's state of mind must be determined at the date of the Second HDB Meeting. Because I find that Mdm Che'som understood the Completion Documents at the Second HDB Meeting, the claims of misrepresentation, mistake, and *non est factum* fail.

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71 Ain AEIC-2 at para 38.

72 Ain AEIC-2 at paras 21, 26.

73 Ain AEIC-2 at para 57.

74 Defendant's Submissions dated 2 December 2024 ("DWS") at para 33.

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(b) Secondly, whether Mdm Che'som had validly consented to the Transfer, in view of the circumstances in which Mdm Che'som had signed it. In the present case, this is relevant to the remaining claim in undue influence.

(c) Thirdly, if any of the claims in misrepresentation, mistake, *non est factum* or undue influence are made out, whether the Transfer can be set aside when the consent of one joint tenant, Mdm Che'som, is vitiated while the consent of the other joint tenant, Mr Yusope, is not impugned.

25 For the reasons set out below, I find that Mdm Che'som has failed to discharge her burden of proof to show that she did not understand what was signed on 3 May 2017 during the Second HDB Meeting or that her consent was otherwise vitiated. As a result, Mdm Che'som's claims of misrepresentation, mistake, *non est factum* and undue influence fail. It is therefore unnecessary for me to deal with the third issue. I dismiss the claim.

Issue 1: Mdm Che'som's understanding

26 I first consider whether Mdm Che'som understood the Completion Documents on 3 May 2017 when the documents were signed. In this, the burden of proof is on Mdm Che'som to show that she did not understand what was being signed, given that it is she who is seeking to set aside or rescind the Transfer.

27 In my judgment, Mdm Che'som has failed to prove, on a balance of probabilities, that she did not understand the Completion Documents signed at the Second HDB Meeting. It is not disputed that HDB officers had explained, in Malay, the ownership transfer in both the First and Second HDB Meetings. It is also common ground that Mdm Che'som did not raise any queries during

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the First and Second HDB Meetings, nor did she expressly state that she did not understand the contents of the Completion Documents.[75] Therefore, Mdm Che'som must proffer a convincing reason as to why I should find, in spite of such contemporary indicia, that she nonetheless did not understand the documents.

28 Mdm Che'som has failed to do so. In her affidavit of evidence-in chief ("AEIC") and supplemental AEIC, Mdm Che'som avers that she did not understand what she was signing or the consequences of doing so.[76] She explained that the HDB documents were too complex; thus, she trusted Mdm Ain's explanation that the documents would lower the monthly housing loans and believed that Mdm Ain would highlight anything that was amiss.[77] However, in cross-examination, she proffered an additional reason, explaining instead that Mr Yusope had been suffering from an asthmatic attack and as a result, she did not focus on the HDB officer's explanations.[78] Mdm Che'som further claimed that the HDB officer could see that Mr Yusope was having a medical condition and hence asked them to sign, implying that perhaps the process was rushed:[79]

> Q: Subsequently, at paragraph 9, the documents were signed that day and discussed at the completion meeting was a transfer instrument, a mortgage instrument, financial plan, CPF withdrawal form, home protection scheme form and concessionary stamp fee form. You would—were these documents brought to your attention, Mdm Che'som?

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75 Che'som AEIC-2 at paras 62.

76 Che'som AEIC-2 at para 45 and 61.

77 Che'som AEIC-2 at para 47.

78 NE 22 October 2024 at p 29, lines 1–4; p 35, lines 8–13; NE 23 October 2024 at p 8, lines 7–8.

79 NE 22 October 2024 at p 34, lines 15–22.

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> A: Yes. But on that day, there's not much talking, so they---they asked us to sign. Because she can---she could see that Mr Yusope is having some medical condition, so they asked us to sign.

29 I am not convinced by Mdm Che'som's explanation. First, there were *two* meetings with HDB where explanations were furnished by an HDB officer in Malay. While there is no evidence as to what explanation was furnished at the First HDB Meeting, a comprehensive explanation would have been rendered at the Second HDB Meeting. According to Mdm Neo Sin Ee, Selina ("Mdm Neo"), the HDB officer who had attended to the parties at the Second HDB Meeting, she would have instructed her Malay colleague to inform the parties, in Malay, of the following key information:[80]

> (1) The nature of the transfer, i.e. they were including their daughter (Mdm Ain) as a co-owner of the Bedok North flat without payment from Mdm Ain;
>
> (2) The purpose of the Completion Meeting, i.e. it was the last signing, where the daughter (Mdm Ain) would be included as a co-owner;
>
> (3) The manner of holding of the Bedok North flat, i.e. as joint tenants, and the difference between joint tenancy and tenants in common, namely that in joint tenancy, if one owner passed on, the other owner(s) will take over the share of the owner who had passed on and the other next-of-kin will have no share in the flat;
>
> (4) The effect of the transfer, i.e. after the transfer, all three co-owners would need to agree or sign on any matters relating to the Bedok North Flat, whether to sell or rent;
>
> (5) The financial plan, i.e. the total loan amount from HDB, the loan repayment period, the monthly repayment amount and the amounts to be deducted from CPF.

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80 Selina Affidavit at para 11.

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30 Mdm Neo's affidavit was not disputed and was admitted by consent.[81] Mdm Che'som herself accepted in cross-examination that an explanation along the lines of what Mdm Neo had described was furnished.[82] I am thus satisfied that such an explanation had described had been rendered at the Second HDB Meeting, and that Mdm Che'som was sufficiently capable to understand what was explained to her.

31 Secondly, Mdm Che'som's explanations in her affidavits and proffered during cross-examination are not consistent. Her account of events in her initial AEIC was also materially different from her supplemental AEIC. In her initial AEIC, she made no mention of the explanations proffered by the HDB officers nor being unable to understand the explanations. Her initial account was that the HDB officer during the Second HDB Meeting had informed Mr Yusope and her that the repayment would be reduced to $201.00, but she made no reference to any further explanation given by the HDB officer.[83] Only in her supplemental AEIC did she add that the HDB officer had sought to explain the documents and that she did not understand the explanation.[84]

32 I further note that she did not mention that the asthmatic attacks had occurred during the HDB Meetings in her affidavits, nor did she mention that her worry for her husband's medical condition had hindered her ability to understand the explanations. She first brought up an incident of an asthmatic attack in her supplemental AEIC, where she averred that on the day of the Second HDB Meeting, Mr Yusope "just had an asthma attack and was quite

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81 NE 22 October 2024 at p 33, lines 7–13.

82 NE 22 October 2024 at p 34, line 26 to p 35, line 7.

83 Che'som AEIC at para 11.

84 Che'som AEIC-2 at para 60–61.

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weak on that day".[85] However, this implies that the asthmatic attack occurred *before* and not *during* the Second HDB Meeting. She also made no mention that the HDB officer was cognisant of Mr Yusope's medical condition and as a result asked them to sign. In my view, these are material facts that a reasonable person would have included in the affidavit to explain why she did not understand the HDB officers' explanation, and undermines the credibility of her account.

33 Thirdly, it is not clear whether Mdm Che'som's explanation of Mr Yusope's asthmatic attack during her cross-examination referred to the First HDB Meeting or the Second HDB Meeting.[86] She did not specify whether the asthmatic attack happened at the First HDB Meeting or the Second HDB Meeting. In her written submissions, it appears that her explanation of an asthmatic attack was meant to apply to *both* the First HDB Meeting and the Second HDB Meeting.[87] It is rather coincidental that Mr Yusope would suffer an asthmatic attack during both meetings when the Malay officer was explaining the transaction. Despite this coincidence of trauma, neither incident was detailed in Mdm Che'som's affidavits.

34 Fourthly, Mdm Che'som's understanding of the matter strikes me as selective. In cross-examination, she accepted that the HDB officer had explained to her in Malay that HDB had already approved the lower monthly mortgage instalment plans.[88] She also understood from the HDB Meetings that the refinanced mortgage would have been borne by Mdm Ain.[89] She further

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85 Che'som AEIC-2 at para 57.

86 NE 22 October 2024, at p 32, lines 2-5.

87 CWS at para 71.

88 NE 22 October 2024 at p 28, lines 28–30.

89 NE 22 October 2024 at p 24, lines 10–11; NE 23 October 2024 at p 8, lines 22–31.

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testified that she did not ask the HDB officers to clarify any doubt because "[t]hey have done their job well and [she had] no questions that time", albeit qualifying her statement by adding that her attention was focused on Mr Yusope's health.[90] In my view, it is strange that she would understand only that the refinanced mortgage was to be borne by Mdm Ain, but not any of the other details explained by the HDB officer. Furthermore, this understanding is also inconsistent with her evidence on affidavit that she only understood the process to be related to the reduction of the monthly housing loans and did not know that Mdm Ain would be seeking an HDB loan.[91] Notably, it is not her evidence that Mdm Ain had informed her that Mdm Ain would be taking over the loan. Therefore, this understanding that Mdm Ain would bear the refinanced mortgage must have come from the HDB officer's explanation.

35 Fifthly, Mdm Che'som and Mr Yusope's concern that Mr Naser would somehow inherit the Property to the exclusion of the other children indicates that they knew that Mdm Ain was a joint tenant of the Property and might include her husband as a joint tenant should she succeed to the Property as a sole owner in the future. If they had indeed been unaware that Mdm Ain was a joint tenant and stood to inherit by the right of survivorship, there does not appear to be any good reason for them to believe that the Property would be inherited by Mr Naser to the exclusion of the other children. Mdm Che'som suggests that her concern was a result of Mr Naser's residence in the Property.[92] However, if she truly believed that Mr Naser's staying in the Property entitled him to inherit the same, it is unclear why she did not likewise take the view that

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90 NE 22 October 2024 at p 29, lines 1–4.

91 Che'som AEIC-2 at paras 35–36.

92 Claimant's Written Closing Submissions dated 2 December 2024 ("CWS") at para 35.

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her other children, who had also resided in the Property from time to time previously, would similarly inherit the Property.

Testimony of Mdm Norlina

36 In coming to this conclusion, I am fortified by the testimony of Mdm Norlina Binte Zainol ("Mdm Norlina"), a family friend who was called by Mdm Ain as a witness. I find Mdm Norlina to be a credible witness.

37 According to Mdm Norlina, her grandfather and mother used to live near the Property, and her family has known Mdm Che'som for at least 45 years.[93] Mdm Norlina herself has also known Mdm Che'som's family since the time she was born and has experienced close ties with the family.[94] Mdm Che'som's youngest son, according to Mdm Norlina, was named after her grandfather, who was a religious teacher, and Mdm Che'som would speak to her mother on any family issues.[95]

38 In her affidavit, Mdm Norlina averred that sometime in 2018, when Mr Yusope was still alive, she and her mother encountered Mdm Che'som at the void deck of one of the blocks near the Property. According to Mdm Norlina, Mdm Che'som informed her and her mother that she was relieved that Mdm Ain had taken over the mortgage of the Property, and that

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93 Affidavit of Evidence-in-Chief of Norlina Binte Zainol dated 24 September 2024 ("Norlina Affidavit") at para 3.

94 Norlina Affidavit at para 4.

95 Norlina Affidavit at para 5.

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the Property had been transferred to Mdm Ain.[96] Mdm Ain also adduced a series of voice notes from Mdm Norlina, dated 1 February 2023.[97]

39 First, counsel for Mdm Che'som sought to emphasise an apparent inconsistency in Mdm Norlina's account of the meeting. Mdm Norlina's position on affidavit was that she had met Mdm Che'som at the void deck while Mdm Ain claimed that Mdm Norlina had informed her that they had met at the market.[98] On this, I accept Mdm Norlina's explanation that this inconsistency can be attributed to colloquial talk as the void deck was situated near the market.[99]

40 Second, counsel for Mdm Che'som also sought to highlight an apparent inconsistency between Mdm Norlina's voice notes and her affidavit. In the voice notes where Mdm Norlina was speaking in Malay, she stated that when Mr Yusope was still around but sickly, "*dia*" had said that the Property was handed over to Mdm Ain for Mdm Ain to continue paying for it. The Malay word "*dia"* was translated to "he" in English.[100] Therefore, counsel for Mdm Che'som interpreted Mdm Norlina's voice note as stating that Mr Yusope had said that the Property had been handed over to Mdm Ain. This was allegedly inconsistent with her account on affidavit,[101] in which Mdm Norlina testified that Mdm Che'som was the one who said that the Property had been handed to Mdm Ain (see [38] above). However, in re-examination, Mdm Norlina clarified

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96 Norlina Affidavit at para 8.

97 AB at p 94.

98 NE 25 October 2024 at p 66, lines 13–23,

99 NE 25 October 2024 at p 66, lines 21–23; p 71, line 12 to p 72, line 8.

100 AB at p 94.

101 NE 25 October 2024 at p 64, line 20 to p 65, line 7.

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that when she said "*dia*", she was referring to Mdm Che'som.[102] While the certified translator had translated the word "*dia*" as "he", the interpreter who was assisting at the hearing confirmed that the word "*dia*" can refer to both he or she.[103] Thus, Mdm Norlina could also have been referring to Mdm Che'som in the voice notes, and there is no inconsistency.

41 I am satisfied that Mdm Norlina's testimony is credible. The voice notes are not complete and reflect only Mdm Norlina's responses to Mdm Ain.[104] It is thus unsafe to attribute too much weight to the voice notes, but they are nonetheless consistent with Mdm Norlina's testimony. Mdm Norlina has furnished a reasonable explanation for the inconsistency as to the place of the meeting and also explained in cross-examination that she could recollect this conversation as she regarded Mdm Che'som and her family to be like family to her.[105] The close relationship between their families is not challenged by Mdm Che'som, Mdm Che'som has not alleged any motive on the part of Mdm Norlina to lie, and did not dispute the existence of nor offer a different version of the conversation.

42 Mdm Norlina's evidence – that Mdm Che'som expressed relief that Mdm Ain had taken over the mortgage – is not consistent with Mdm Che'som's account of events. Mdm Che'som would be expected to express her indignation to Mdm Norlina at her daughter's deception. Mdm Norlina's testimony indicates that Mdm Che'som had not just known but in fact approved of the ownership transfer. Therefore, Mdm Norlina's testimony contributes to my

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102 NE 25 October 2024 at p 68, lines 15–16.

103 NE 25 October 2024 at p 68, lines 22–32.

104 NE 25 October 2024 at p 65, lines 22 to p 66, line 12.

105 NE 25 October 2024 at p 71, lines 6–11.

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finding that Mdm Che'som has not proven that she did not understand what was signed.

***Fraudulent misrepresentation, negligent misrepresentation, mistake,* non est factum**

43 The above finding disposes of Mdm Che'som's claims of fraudulent misrepresentation, negligent misrepresentation, mistake and *non est factum*. For a misrepresentation to be actionable, the misrepresentation must have been operative on the representee when entering the contract (see *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [13]; *Low Sing Khiang v LogicMills Learning Centre Pte Ltd and others* [2024] 3 SLR 759 at [30(b)]). Since I had found that Mdm Che'som has not proven that she did not understand what was being signed, it follows that she cannot prove that any misrepresentation by Mdm Ain was still operative when she signed the Completion Documents. Therefore, I reject her claims of fraudulent and negligent misrepresentation.

44 Similarly, to vitiate a contract for mistake, a claimant must prove that she had operated under a mistake as to a sufficiently important or fundamental term of the contract (see *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [34]). For *non est factum*, a specific category of mistake, to be made out, there must be a radical difference between what was signed and what was thought to be signed (*Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 at [119])). For similar reasons, Mdm Che'som has failed to prove that she had either operated under a mistake as to the terms of the Completion Documents, or that there was a radical difference between what was signed and what was thought to be signed. Therefore, her claims of mistake and *non est factum* must fail as well.

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Issue 2: Mdm Che'som's consent

Undue influence

The law relating to undue influence

45 Undue influence may be established in two ways – (a) direct proof of the exercise of undue influence, also known as actual undue influence or (b) by a presumption (*BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM"*) at [101]). Mdm Che'som has pleaded the application of the presumption in this case.[106]

46 To establish undue influence by presumption, a claimant must demonstrate (*BOM* at [101])

> … (i) that there is a relationship of trust and confidence between him and the defendant; (ii) that the relationship was such that it could be presumed that the defendant abused the plaintiff's trust and confidence in influencing the plaintiff to enter into the impugned transaction; and (iii) that the transaction was one that calls for an explanation. ….

This class of undue influence is further broken down into two categories. Mdm Che'som does not rely on Class 2A undue influence, where the relationship in question is presumed under law to irrebuttably give rise to a relationship of trust and confidence. She relies on Class 2B undue influence, which applies where the claimant has proved that there is a relationship of trust and confidence (*BOM* at [101]).[107] Once undue influence is presumed, the defendant bears the burden of rebutting the presumption (*BOM* at [101]).

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106 SOC at para 63.

107 CWS at paras 98–111.

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Whether there was a relationship of trust and confidence

47 I am satisfied that a relationship of trust and confidence existed at the time of the Transfer.

48 Mdm Che'som's case is that she fully trusted and relied on Mdm Ain to deal with HDB for two reasons: (a) Mdm Ain being her eldest daughter and (b) Mdm Ain's experience as a property agent with extensive experience dealing with HDB.[108] Mdm Che'som further observes that Mdm Ain herself took the position that there were no problems between Mdm Che'som and Mdm Ain before the death of Mr Yusope.[109] Mdm Che'som points out that her reliance on Mr Yusope to handle the family's affairs meant that she was similarly reliant on Mdm Ain to lower the monthly mortgage payments.[110] Therefore, she argued, she had reposed trust and confidence in Mdm Ain.[111]

49 Mdm Aim argues that no particulars of the relationship of trust and confidence were pleaded.[112] She goes on to argue that there was no relationship of trust and confidence simply as a result of a daughter-mother relationship.[113] She points out that Mdm Che'som's demeanour on the stand showed that Mdm Che'som did not at all material times place any trust and confidence in her.[114] Additionally, Mdm Che'som, having successfully chased her out of the

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108 CWS at para 105.

109 CWS at para 106; Ain AEIC-2 at para 14.

110 CWS at para 107.

111 CWS at para 109.

112 DWS at para 85.

113 DWS at para 84.

114 DWS at para 85.

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Property, could not be said to have been dominated by her.[115] By her account, on 17 May 2021, Mdm Che'som had banged on her door at night, yelling and screaming, and had sought the assistance of Mr Is Haans to shout and try to break into her room.[116] Further, Mdm Aim contends that there was no reason for her to believe that Mdm Che'som had relied on her experience.[117]

50 In my judgment, a relationship of trust and confidence did exist at the time of the Transfer. Mdm Che'som pleaded sufficient particulars of the same, including her education level, Mdm Ain's occupation as a property agent, and Mdm Ain's position as her daughter.[118] Furthermore, Mdm Che'som's demeanour on the stand is not relevant to whether a relationship of trust and confidence existed *at the time of the Transfer*.[119]

51 In the present case, Mdm Che'som is a housewife with little formal education. Therefore, she and Mr Yusope relied on Mdm Ain, as their eldest daughter with significant experience handling property transactions. It was reasonable for Mdm Che'som to rely on and trust Mdm Ain even if there is no evidence that they shared an exceptionally close relationship. At the material time in 2017, while Mr Yusope was still alive, the relationship was not hostile, and there was no animosity between the two of them that would lead to any particular mistrust. Furthermore, Mdm Che'som had relied on Mr Yusope in the past for household matters. In the light of Mr Yusope's ailing heath, it made even more sense for Mdm Che'som to rely on Mdm Ain due to her lack of

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115 DWS at para 85.

116 Ain AEIC-2 at paras 50–51.

117 Defendant's Reply Submissions dated 16 December 2024 ("DRS") at para 27.

118 SOC at paras 61–63.

119 Claimant's Written Reply Submissions dated 16 December 2024 ("CRS") dated at para 25.

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experience dealing with property matters and Mdm Ain's experience in the same. That Mdm Che'som relied on Mdm Ain was accepted by Mdm Ain herself on the stand,[120] even though Mdm Ain subsequently sought to recant her concession by contending that her parents had relied on HDB instead of her.[121] I reproduce the exchange, where Mdm Ain readily accepted that her parents had relied on her, for ease of reference:[122]

> Q: Would you say it's reasonable to say that he had asked you for assistance because you're his daughter?
>
> A: Yes.
>
> Q: Would it be reasonable to say that he had asked you for help because you're an experienced real estate agent?
>
> A: Yes.
>
> Q: Would it also be reasonable to say that he had relied upon you to help him with his mortgage payments?
>
> A: Yes.
>
> Q: Would it also be reasonable to say that your mother also relied upon you to ensure that she could continue to stay in the Bedok flat?
>
> A: Yes
>
> Q: And that's reasonable because she's a housewife. And according to you, she was reliant upon your late father, yes?
>
> A: Yes.
>
> Q: So I put it to you that your parents relied upon you to help them with their mortgage payments, yes?
>
> A: Yes.

52 There was, accordingly, an existing relationship of trust and confidence. I pause to note that Mdm Ain's exact role in the Transfer is disputed. Her

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120 NE 23 October 2024 at p 23, line 21 to p 24, line 6.

121 NE 25 October 2024 at p 49, line 30 to p 50, line 4.

122 NE 23 October 2024 at p 23, line 21 to p 24, line 6.

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position was that her parents, having been advised by HDB, had arranged for the HDB Meetings on their own accord. After agreeing to assist, she simply applied to determine her HDB loan eligibility and was advised by her parents as to the meeting dates. Mdm Che'som, on the other hand, asserted that Mdm Ain had arranged for the HDB Meetings and was in the driver's seat in relation to HDB processes. In my view, it is not necessary to decide this dispute of fact as it is not determinative as to whether a relationship of trust and confidence existed and in light of the paucity of direct evidence as to Mdm Ain's role. Even if Mdm Ain's role in the Transfer was indeed limited to what she asserted, a relationship of trust and confidence could and did abide between Mdm Che'som and Mdm Ain at the material time.

Whether the transaction calls for an explanation

53 Nevertheless, the transaction is not one that calls for an explanation on the facts of the present case.

54 Mdm Che'som argues that the addition of Mdm Ain as a joint tenant calls for an explanation.[123] First, Mdm Che'som's position is that the Property was a family home in which each of her children was viewed to have a stake and was a place where each of them could return to if they had nowhere else to go.[124] Each of the four children had stayed in the Property before marriage and when they underwent divorces.[125] Further, Mdm Ain had known that Mdm Che'som wanted all her children to inherit or benefit from the Property. Therefore, it was inexplicable that Mdm Che'som would agree to Mdm Ain to be added as a joint tenant which would place Mdm Ain in a position to inherit

123 CWS at para 112.

124 CWS at para 113.

125 CWS at para 113.

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the Property as its sole owner.[126] Instead, it would have been more reasonable for Mdm Ain to be added in as a tenant in common, which would have affirmed Mdm Ain's share in the Property in recognition of her contributions to the refinanced mortgage while leaving the remaining portion of the Property available for the rest of her siblings to inherit.[127] In addition, Mdm Ain did not justify why she did not raise the possibility of adding herself as a tenant in common, only explaining that "HDB was the one who suggested it. Joint tenancy is the priority, not tenancy-in-common when it comes to the HDB flat".[128]

55 A transaction that calls for an explanation is one that cannot "be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act" (*Royal Bank of Scotland plc v Etridge* (No 2) [2002] 2 AC 773 at [22]). This is a "fact-sensitive inquiry" where "much would depend on the strength of inferences to be drawn from the circumstances" (*Goh Yng Yng Karen (executrix of the estate of Liew Khoon Fong (alias Liew Fong), deceased) v Goh Yong Chiang Kelvin* [2021] 3 SLR 896 at [119]).

56 Of significance is the fact that the Transfer gave immediate practical benefit to Mr Yusope and Mdm Che'som. It allowed them to continue to live at the Property. It was also reasonably explicable on the ground of familial relationship. Even though Mdm Che'som initially averred that the parents had expected Mdm Ain to remarry and move out,[129] Mdm Che'som admitted that

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126 CWS at para 115.

127 CWS at para 115.

128 CWS at para 118.

129 Che'som AEIC-1 at para 28.

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Mdm Ain's intent to remarry caught them by surprise.[130] There was an expectation that Mdm Ain would live with the parents and be responsible for the mortgage.[131] At the time when this was done, all the other children were married and had moved out or were about to move out.[132] Mdm Ain was single.[133] In my view, the arrangement was such that Mdm Ain was to live with them, take care of them and their joint family property. Further, the difference between joint tenancy and tenancy in common was clearly explained by the HDB,[134] and there is no evidence to indicate that Mr Yusope's and Mdm Che'som's intention was otherwise. Mdm Che'som's case – that the Property was intended for the inheritance of all four of her children – is contradicted by her request, on her own evidence, to Mdm Ain to add only Mr Is Haans as a joint tenant (see [14] above). The circumstances may have changed after Mr Yusope's death, Mr Is Haans' divorce and Mdm Ain's third marriage, but the relevant intention is that which parties held *at the time of the transfer*.

57 Furthermore, a joint tenancy is not as draconian and irreversible an arrangement as Mdm Che'som seeks to portray. It was and remains open to Mdm Che'som to sever the joint tenancy pursuant to the Land Titles Act 1993 (2020 Rev Ed), and to apply to the court to determine their respective beneficial interests as tenants in common (see, *eg*, *Damodaran s/o Subbarayan v Rogini w/o Subbarayan* [2020] 5 SLR 1409; *Lee Hwee Khim Rosalind v Lee Sai Khim and others* [2011] SGHC 64). Unfortunately, the relief of severance was not

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130 Che'som AEIC-2 at para 68.

131 NE 22 October 2024 at p 24, lines 10–11; NE 23 October 2024 at p 8, lines 22–31.

132 Che'som AEIC-1 at para 9; NE 25 October 2024 at p 42, lines 12–16.

133 Che'som AEIC-2 at para 29; Ain AEIC-2 at para 9.

134 Selina Affidavit at para 11; Ain AEIC-2 at para 28.

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claimed, nor were the material facts relating to trust principles required for the determination of beneficial interest pleaded, in the Statement of Claim.

58 Therefore, in my judgment, the Transfer does not call for an explanation.

Whether undue influence is made out

59 Mdm Che'som's pleaded case of undue influence – and her evidence – centred solely on presumed undue influence and *not* actual undue influence.[135] Because I find that the Transfer does not call for an explanation, no presumption of undue influence arises (*BOM* at [101]). This is sufficient to dispose of the undue influence claim, because the facts are insufficient for Mdm Che'som to prove on the balance of probabilities that she was unduly influenced.

Conclusion

60 For the reasons set out in this judgment, I dismiss the claim.

Valerie Thean
Judge of the High Court

135 SOC at paras 60–63.

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Muhammad Imran Bin Abdul Rahim and Kuek Zihui (Eldan Law LLP) for the claimant;
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